

Robert E. Shannon
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1 MEMORANDUM OF UNDERSTANDING

2 **29663**

3 THIS MEMORANDUM OF UNDERSTANDING ("Agreement") is made and
4 entered, in duplicate, as of July 12, 2006 (the "Effective Date"), pursuant to a minute
5 order adopted by the City Council of the City of Long Beach at its meeting on April 18,
6 2006, by and between THE LEE GROUP, INC., a California corporation, and
7 KENSINGTON HOLDINGS, LLC, a California limited liability company (collectively,
8 "Developer") and the CITY OF LONG BEACH, a municipal corporation ("City").

9 1. NEGOTIATIONS

10 City and Developer agree (for the period stated below) to negotiate in good faith
11 pursuant to the terms of this Agreement with respect to the purchase and sale and
12 subsequent development of certain real property more particularly depicted in Exhibit "A"
13 attached hereto (the "Property"). The general terms and conditions of such proposed
14 purchase and development negotiated by City and Developer will be reflected in a pro
15 forma (the "Pro Forma") and a design package for the Property. After City and Developer
16 have finalized the Pro Forma and design package submitted by Developer, then City staff
17 may, but shall not be required to, recommend to the Long Beach City Council (the "City
18 Council") that the City Council authorize, but not require, City to enter into a purchase and
19 sale agreement and/or certain development agreements to be executed between
20 Developer and City, using the Final Pro Forma and Final Conceptual Plans (each as
21 defined below) as the general basis therefor, but without limiting City's ability to further
22 negotiate the terms of the Pro Forma and the design package.

23 Subject to the provisions of Section 9, City agrees (for the period stated below) not
24 to negotiate with any other person or entity regarding development of the Property without
25 the consent of Developer. Nothing in this Agreement shall be deemed a covenant,
26 approval, promise or commitment by City, or any agency or Department of City, with
27 respect to the acquisition of the Property or the approval of development, including without
28 limitation approvals given during the normal course of development by the Planning &

1 Building Department, Public Works, the Fire Department, the Community Development
2 Department and all other applicable City Departments. City's acceptance of this
3 Agreement is merely an agreement to enter into a period of negotiations according to the
4 terms hereof, reserving final and absolute discretion and approval by City as to any actions
5 required of City.

6 **2. NEGOTIATION PERIOD**

7 City and Developer agree to negotiate for a period of one hundred twenty (120) days
8 after the Effective Date of this Agreement in order to complete and finalize the Pro Forma.
9 If, upon the expiration of such period of time, Developer has not finalized a Pro Forma and
10 submitted the same to City and/or City has not accepted the same, then this Agreement
11 shall automatically terminate and Developer shall have no further rights regarding the
12 subject matter of this Agreement or the Property, and City shall be free to negotiate with
13 any other persons or entities with regard to the Property. The Director of City's Community
14 Development Department, or designee, shall negotiate the terms and conditions of the
15 purchase and sale and development of the Property subject to the City Council's final
16 approval.

17 **3. GOOD FAITH DEPOSIT**

18 Prior to the execution of this Agreement and as a condition to the effectiveness
19 hereof, Developer shall deposit with the City Fifty Thousand Dollars (\$50,000) in
20 immediately available funds (the "Good Faith Deposit"), Ten Thousand Dollars (\$10,000)
21 of which shall be non-refundable. The Good Faith Deposit shall be drawn upon by City to
22 reimburse City for all costs and expenses reasonably incurred by City in connection with
23 the execution and administration of this Agreement and the negotiations with Developer
24 that are the subject hereof. Developer shall be obligated to reimburse City for all of the
25 costs and expenses incurred by City under this Agreement, including without limitation staff
26 time, surveyor fees, engineering fees, economic advisor fees and architect fees, regardless
27 of whether this Agreement is terminated, extended, or results in the finalization and
28 acceptance of the Pro Forma; provided, however, that Developer shall not be obligated to

1 reimburse City for costs and expenses that exceed the amount of the Good Faith Deposit.
2 When City has drawn upon the first \$10,000 of the Good Faith Deposit, City shall provide
3 Developer with an accounting of the fees and expenses incurred by City and the
4 corresponding deductions from the Good Faith Deposit, and thereafter shall provide
5 monthly accountings of said fees and expenses and corresponding deductions.

6 If this Agreement terminates by its own terms without the finalization and
7 acceptance by City of the Pro Forma and without default by Developer, then the remaining
8 balance of the Good Faith Deposit, but in no event more than Forty Thousand Dollars
9 (\$40,000), shall be returned to Developer after the City processes all outstanding and final
10 invoices. If this Agreement terminates due to the default of the Developer, then the
11 remaining balance of the Good Faith Deposit shall be retained by City. Developer agrees
12 that in the event of a default by Developer hereunder City's damages would be difficult to
13 determine, and that retention of the Good Faith Deposit by City represents a reasonable
14 estimate of such damages. If this Agreement results in the acceptance of the Pro Forma
15 and the selection of the Developer for recommendation to the City Council for further
16 purchase and development negotiations, any unspent amount of the Good Faith Deposit
17 shall be held by City and applied towards City expenses and applicable fees during the
18 subsequent purchase and development process.

19 **4. PRO FORMAS**

20 Within forty-five (45) days of the Effective Date, Developer shall complete a
21 formulation of two alternate development plans, one which contemplates 5% of project
22 units to be affordable as "moderate income" units and the other which contemplates 100%
23 market rates (collectively, the "Draft Pro Forma"), on a pro forma template to be provided
24 to Developer by City on or before the Effective Date and shall submit the same to City for
25 its review. Within forty-five (45) days of the City's receipt of the Draft Pro Forma, City will
26 deliver its analysis and written comments to Developer ("City Pro Forma Comments").
27 Within thirty (30) days of Developer's receipt of the City Pro Forma Comments, Developer
28 shall revise its Draft Pro Forma and re-submit the same to City ("Final Pro Forma"). The

1 Final Pro Forma, along with the Final Conceptual Plans, shall represent the Developer's
2 final offer for purchase and development of the Property, which may be accepted or
3 rejected by City in its sole and absolute discretion. If Developer fails to deliver its Draft Pro
4 Forma or Final Pro Forma within the time periods applicable to each submission,
5 Developer shall immediately be in default hereunder, this Agreement shall automatically
6 terminate, and City shall have the right to retain any remaining balance of the Good Faith
7 Deposit.

8 **5. DESIGN PACKAGE**

9 Within forty-five (45) days of the Effective Date, Developer shall submit a design
10 package for the development of the Property ("Draft Conceptual Plans") to City for its
11 review. The design package shall be comprehensive enough to allow City to objectively
12 analyze and understand the design intent of the proposal and such package should
13 explore sustainable features and should also identify treatment of the potentially historic
14 building located upon the Property. Notwithstanding the above, the design package
15 required hereunder is not expected to meet site plan review requirements. Within forty-five
16 (45) days of the City's receipt of the Draft Conceptual Plans, City will deliver its analysis
17 and written comments to Developer ("City Plan Comments"). Within thirty (30) days of
18 Developer's receipt of the City Plan Comments, Developer shall revise its Draft Conceptual
19 Plans and re-submit the same to City ("Final Conceptual Plans"). If Developer fails to
20 deliver its Draft Conceptual Plans or Final Conceptual Plans within the time periods
21 applicable to each submission, this Agreement shall automatically terminate. If Developer
22 fails to deliver its Draft Conceptual Plans or Final Conceptual Plans within the time periods
23 applicable to each submission, Developer shall immediately be in default hereunder, this
24 Agreement shall automatically terminate, and City shall have the right to retain any
25 remaining balance of the Good Faith Deposit.

26 **6. OTHER OBLIGATIONS OF CITY**

27 City shall provide Developer with all due diligence documentation and other
28 materials in City's possession which may be legally disclosed to Developer for the

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1 purposes of this negotiation ("Due Diligence Materials") within five (5) business days after
2 the Effective Date.

3 City shall provide Developer access to the Property, during business hours, up to
4 five (5) times during the term of this Agreement. Developer shall deliver at least five (5)
5 business days advance notice to City of its intention to access the Property, and City shall
6 make all arrangements necessary to grant such access.

7 7. FEES

8 All fees and expenses associated with engineers, architects, financial consultants,
9 lawyers, planning consultants and all other consultants and contractors retained by
10 Developer, and all fees associated with subsequent environmental consultants, permitting
11 processes and CEQA review, including negative declarations or EIRs, shall be the sole
12 responsibility of Developer. Under no circumstances shall City be obligated to pay or
13 reimburse any costs or fees incurred by Developer in performance of any obligations of
14 Developer under this Agreement.

15 8. NOTICES

16 All notices given pursuant to the provisions hereof may be served either by: (1)
17 enclosing the same in a sealed envelope addressed to the party intended to receive the
18 same at the address indicated herein and deposited postage prepaid, in the U.S. Postal
19 Service as certified mail, return receipt requested, or (2) personal service. Such notices
20 shall be effective on the date personal service is effected or the date of the signature on
21 the return receipt. For the purposes hereof, the address of City and the proper party to
22 receive any such notices on its behalf is City of Long Beach Project Development Bureau
23 Manager, Community Development Department, 333 West Ocean Boulevard, 3rd Floor,
24 Long Beach, California 90802; and Developer's address for service of any such notices
25 shall be 310 Washington Blvd., Marina Del Rey, CA 90292

26 9. LIMITED EXCLUSIVITY

27 Developer acknowledges that notwithstanding the provisions of Section 1, City is
28 negotiating for the purchase and sale and subsequent development of the Property with

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1 Grand Prix Place LLC, a California limited liability company ("Grand Prix") in addition to
2 Developer, pursuant to terms and conditions substantially the same as those contained in
3 this Agreement. Developer acknowledges and agrees that City may freely negotiate with
4 Grand Prix and during the course of negotiations may offer terms and conditions
5 substantially different from those offered to Developer.

6 **10. TRANSFER OR ASSIGNMENT**

7 Developer shall not transfer or assign any interest in, or benefits from, this
8 Agreement to any person, agency or entity not named as a party in the opening recital of
9 this Agreement (collectively, "Third Parties"). Developer shall not allow any Third Parties
10 access to any Due Diligence Materials nor shall Developer provide copies of the same to
11 any Third Parties.

12 **11. PREVAILING WAGE**

13 At this point in the negotiations to purchase and develop the Property it is uncertain
14 whether the development of the Property will be subject to the prevailing wage
15 requirements of the California Labor Code. Nevertheless, Developer must assume that
16 prevailing wage requirements will apply and prepare the Pro Forma accordingly. Developer
17 acknowledges that notwithstanding such an assumption prevailing wage requirements may
18 not ultimately apply to the development of the Property.

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THE PARTIES have executed this Agreement as of the date
first written above.

CITY OF LONG BEACH

By [Signature]
City Manager

CITY

THE LEE GROUP, INC.,
a California corporation

By: [Signature]
Its: [Signature]

By: [Signature]
Its: [Signature]

Tax ID #: 95-4401294

KENSINGTON HOLDINGS, LLC,
a California limited liability company

By: [Signature]
Its: _____

Tax ID #: [REDACTED]

DEVELOPER

Approved as to form this 10th day of July, 2006.

ROBERT E. SHANNON, City Attorney
of the City of Long Beach

By [Signature]
Deputy

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

RFA:abc; 06/01/06; #06-01983
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County of Los Angeles Rick Auerbach, Assessor

7281

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14/34

REVISOR
2009/02/24/09/2301-44

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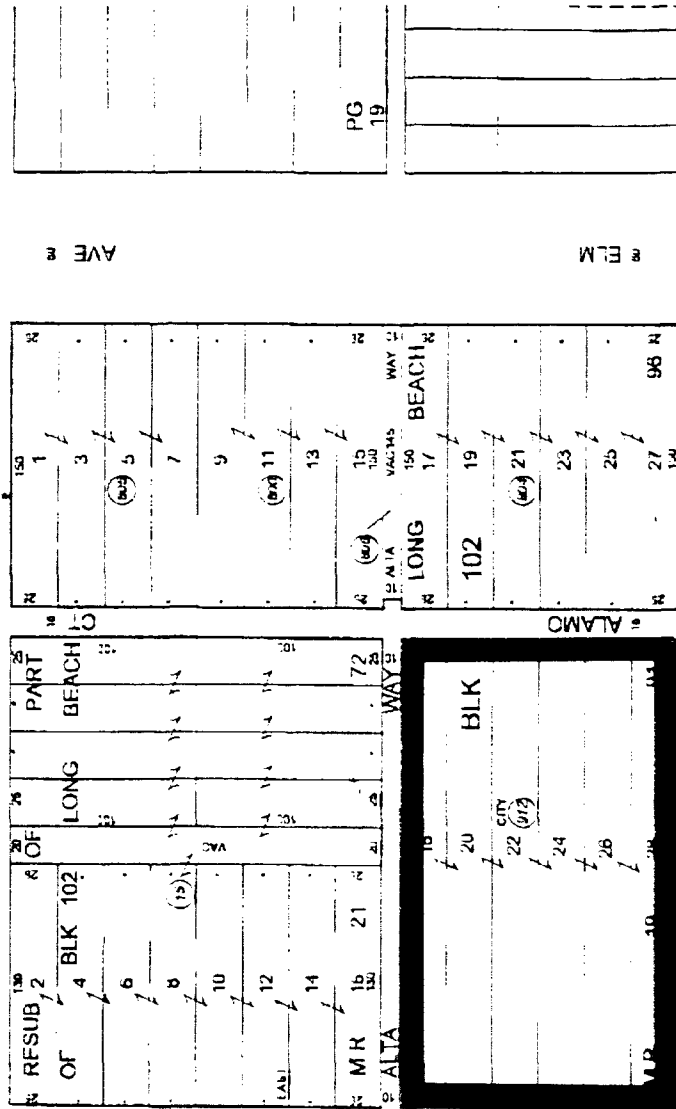
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EXHIBIT A 100 LONG BEACH BLVD.



MAPPING AND LAND
SERVICES
SANTA FE, NM

BROADWAY



100 LONG BEACH BOULEVARD

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