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1 MEMORANDUM OF UNDERSTANDING

2 **29662**

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 GRAND PRIX PLACE LLC, a California limited liability company  
7 ("Developer") and the CITY OF LONG BEACH, a municipal corporation ("City").

8 1. NEGOTIATIONS

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

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

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

5 **2. NEGOTIATION PERIOD**

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

16 **3. GOOD FAITH DEPOSIT**

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

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

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

#### 18 4. PRO FORMAS

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

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

## 7 5. DESIGN PACKAGE

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

## 25 6. OTHER OBLIGATIONS OF CITY

26 City shall provide Developer with all due diligence documentation and other  
27 materials in City's possession which may be legally disclosed to Developer for the  
28 purposes of this negotiation ("Due Diligence Materials") within five (5) business days after

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1 the Effective Date.

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

6 7. FEES

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

14 8. NOTICES

15 All notices given pursuant to the provisions hereof may be served either by: (1)  
16 enclosing the same in a sealed envelope addressed to the party intended to receive the  
17 same at the address indicated herein and deposited postage prepaid, in the U.S. Postal  
18 Service as certified mail, return receipt requested, or (2) personal service. Such notices  
19 shall be effective on the date personal service is effected or the date of the signature on  
20 the return receipt. For the purposes hereof, the address of City and the proper party to  
21 receive any such notices on its behalf is City of Long Beach Project Development Bureau  
22 Manager, Community Development Department, 333 West Ocean Boulevard, 3<sup>rd</sup> Floor,  
23 Long Beach, California 90802; and Developer's address for service of any such notices  
24 shall be 385 SECOND STREET, LAGUNA BEACH CA 92651

25 9. LIMITED EXCLUSIVITY

26 Developer acknowledges that notwithstanding the provisions of Section 1, City is  
27 negotiating for the purchase and sale and subsequent development of the Property with  
28 The Lee Group, Inc., a California corporation, and Kensington Holdings, LLC, a California

1 limited liability company (collectively, "Lee/Kensington") in addition to Developer, pursuant  
2 to terms and conditions substantially the same as those contained in this Agreement.  
3 Developer acknowledges and agrees that City may freely negotiate with Lee/Kensington  
4 and during the course of negotiations may offer terms and conditions substantially different  
5 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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Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

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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

GRAND PRIX PLACE LLC,  
a California limited liability company

By Griffin Realty Corp.,  
a California corporation

By: [Signature]  
Its: CEO

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Tax ID #: [REDACTED]

DEVELOPER

Approved as to form this 22<sup>nd</sup> day of June, 2006.

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

By: [Signature]  
Deputy

RFA:abc; 06/01/06; #06-01983  
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**State of California**  
**Secretary of State**



I, BRUCE McPHERSON, Secretary of State of the State of California, hereby certify:

That the attached transcript of  1  page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

MAY 27 2006

A handwritten signature in cursive script, appearing to read "Bruce McPherson".

**BRUCE McPHERSON**  
Secretary of State



State of California Secretary of State

LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION

File # 200614610087

ENDORSED - FILED in the office of the Secretary of State of the State of California

MAY 24 2006

A \$70.00 filing fee must accompany this form.

IMPORTANT - Read instructions before completing this form.

This Space For Filing Use Only

ENTITY NAME (End the name with the words "Limited Liability Company," "Ltd. Liability Co.," or the abbreviations "LLC" or "L.L.C.")

1. NAME OF LIMITED LIABILITY COMPANY

GRAND PRIX PLACE LLC

PURPOSE (The following statement is required by statute and may not be altered.)

2. THE PURPOSE OF THE LIMITED LIABILITY COMPANY IS TO ENGAGE IN ANY LAWFUL ACT OR ACTIVITY FOR WHICH A LIMITED LIABILITY COMPANY MAY BE ORGANIZED UNDER THE BEVERLY-KILLEA LIMITED LIABILITY COMPANY ACT.

INITIAL AGENT FOR SERVICE OF PROCESS (if the agent is an individual, the agent must reside in California and both items 3 and 4 must be completed. If the agent is a corporation, the agent must have on file with the California Secretary of State a certificate pursuant to Corporations Code section 1505 and item 3 must be completed (leave item 4 blank).

3. NAME OF INITIAL AGENT FOR SERVICE OF PROCESS

Roger N. Torrero

4. IF AN INDIVIDUAL, ADDRESS OF INITIAL AGENT FOR SERVICE OF PROCESS IN CALIFORNIA CITY STATE ZIP CODE

385 Second Street Laguna Beach CA 92651

MANAGEMENT (Check only one)

5. THE LIMITED LIABILITY COMPANY WILL BE MANAGED BY:

- ONE MANAGER (checked)
MORE THAN ONE MANAGER
ALL LIMITED LIABILITY COMPANY MEMBER(S)

ADDITIONAL INFORMATION

6. ADDITIONAL INFORMATION SET FORTH ON THE ATTACHED PAGES, IF ANY, IS INCORPORATED HEREIN BY THIS REFERENCE AND MADE A PART OF THIS CERTIFICATE.

EXECUTION

7. I DECLARE I AM THE PERSON WHO EXECUTED THIS INSTRUMENT, WHICH EXECUTION IS MY ACT AND DEED.

Signature of Diann E. Kozlowski

SIGNATURE OF ORGANIZER

5/23/06

DATE

DIANN E. KOZLOWSKI

TYPE OR PRINT NAME OF ORGANIZER

RETURN TO (Enter the name and the address of the person or firm to whom a copy of the filed document should be returned)

8. NAME [DIANN E. KOZLOWSKI]
FIRM FREELANCE PARALEGAL
ADDRESS 4142 RICARDO DRIVE
CITY/STATE/ZIP [YORBA LINDA, CA 92886]

