

1 PSA for the purchase and development of the Property and, if so, the terms and
2 conditions of such PSA. At the request of Developer, the City Manager may, in his or her
3 reasonable discretion, extend the Exclusive Negotiation Period not more than two (2)
4 times for up to ninety (90) days each. If, upon expiration of the Exclusive Negotiation
5 Period (including the extension(s), if any), a PSA has not been approved and executed
6 by City and Developer (or an entity owned or controlled by Developer), then (i) this
7 Agreement shall automatically terminate, (ii) Developer shall have no further rights
8 regarding the subject matter of this Agreement or the Property, and (iii) City shall be free
9 to negotiate with any other person or entity with regard to the Property.

10 3. PROPOSED DEVELOPMENT.

11 A. Development Plan. The proposed development to be
12 negotiated hereunder shall be the new construction of a commercial retail center
13 on the Property incorporating the adjoining property owned by Developer all as a
14 single cohesive project, all subject to City's approval which shall be provided in
15 writing to Developer (the "Project"). Developer shall be solely responsible for the
16 construction costs of the proposed Project, unless expressly agreed otherwise by
17 City, and preparation of the Development Plan, consisting of all necessary
18 documents to obtain entitlements. Neither City, nor any of its officers, employees
19 or agents has provided any direct or indirect information which in any way would
20 indicate that the proposed Project is or is not subject to the State of California's
21 prevailing wage requirements.

22 B. Essential Terms and Conditions. The terms and conditions of
23 any PSA shall include the following:

24 i. Developer, or an entity within Westland Real Estate
25 Group, shall acquire the Property from City.

26 ii. Developer shall pay a purchase price in an amount and
27 upon such payment terms as negotiated pursuant to this Agreement.

28 iii. The Property will be conveyed to Developer in an "as-

1 is" condition with no warranty, express or implied by City, and Developer
2 shall release the City from all liability, as to the condition of the Property or
3 improvements, soil or water, its geology or the presence of known or
4 unknown faults; it is Developer's responsibility and cost to connect the
5 utilities to the improvements on the Property.

6 iv. Developer shall design and construct the Project in
7 accordance with the then-applicable land use requirements, and be
8 responsible to obtain all applicable land use, planning and zoning
9 approvals, permits and entitlements for the Property.

10 C. Schedule of Performance. Attached hereto as Exhibit "B" is a
11 Schedule of Performance indicating the dates by which the parties are to have
12 accomplished their respective tasks.

13 4. OBLIGATIONS OF DEVELOPER.

14 A. Condition of the Property. Developer may conduct such tests,
15 surveys, and other analyses of the Property as Developer deems necessary to
16 determine the feasibility of the Project, and shall complete such tests, surveys and
17 other analyses as set forth in Exhibit B.

18 B. Development Plan. Developer shall formulate a development
19 plan for the Project, and shall submit same to City for its approval.

20 C. Plans and Drawings. Developer shall have prepared
21 conceptual plans and drawings prepared by a licensed architect or building/design
22 professional that are sufficient in detail and scale to show the planned construction
23 and to obtain building permits. Design approval by Planning Commission may be
24 required in addition to City's design review and entitlement process.

25 D. Operating Plan. The parties acknowledge that City is
26 interested in the long term management and operation of the Project. By the time
27 required in Exhibit B, Developer shall submit for the approval by City, a detailed
28 "Operating Plan" which sets forth in detail the identity and the duties of the

1 property manager, the tenant selection process, a security system and crime
2 prevention program, the procedures for the collection of rent, the procedures for
3 eviction of tenants, the rules and regulations of the Project and manner of
4 enforcement, a standard lease form, and other matters relevant to the operation
5 and management of the Project. In addition, Developer shall submit to City for its
6 reasonable approval an estimated budget for the operation of the Project.

7 E. CEQA Compliance. Developer shall coordinate with City's
8 Development Services Department to determine and conduct the environmental
9 review required by the California Environmental Quality Act ("CEQA"). Developer
10 shall be responsible to pay all costs incurred to comply with CEQA. The parties
11 agree that they will cooperate with each other with respect to CEQA compliance
12 as required in order to permit City to consider approval of a PSA and certification
13 of a negative declaration, mitigated negative declaration or, if required, and
14 environmental impact report.

15 F. Intentionally Deleted.

16 G. Good Faith Deposit. Developer shall pay to City a deposit in
17 the amount of Ten Thousand Dollars (\$10,000) (the "Good Faith Deposit"). The
18 Good Faith Deposit will be used by City to pay for its outside attorney's and third
19 party consultant's reasonable fees to negotiate this Agreement and the PSA,
20 appraisals and such other costs as City and Developer agree will be paid from the
21 Good Faith Deposit. If this Agreement is terminated without the execution of a
22 PSA, remaining amounts, if any, of the Good Faith Deposit shall be returned to
23 Developer. If negotiations result in the execution of a PSA between Developer (or
24 an entity owned or controlled by Developer) and City, then remaining amounts, if
25 any, of the Good Faith Deposit shall be applied to the performance deposit
26 required under the PSA.

27 H. Developer to Pay all Costs and Expenses. All fees and
28 expenses for engineers, architects, financial consultants, legal, planning and other

1 consultants and contractors, retained by Developer to perform Developer's
2 obligations set forth in this Section 4, shall be the sole responsibility of Developer.
3 City shall not be obligated to pay or reimburse any costs or fees incurred by
4 Developer in performance of any of the obligations of Developer under this
5 Agreement, whether or not this Agreement is terminated or extended or results in
6 the execution of a PSA.

7 I. Indemnity. Developer agrees to defend, indemnify and hold
8 harmless City and its officers, agents and employees from damages, claims or
9 liability arising from Developer's acts or omissions; provided, the obligation to hold
10 harmless and indemnify for damages, claims and liability shall only be to the
11 extent any are caused by Developer's acts or omissions.

12 5. OBLIGATIONS OF CITY.

13 A. City Cooperation. City shall cooperate fully in providing
14 Developer with all appropriate information in the possession of City staff regarding
15 the Property.

16 B. Right to Inspect the Property. City shall provide to Developer,
17 its agents, and its representatives the right to enter the Property, and to conduct
18 such tests, surveys, and other procedures (the "Tests") after Developer enters into
19 a right of entry agreement with City. The right of entry agreement shall provide,
20 among other matters, that Developer shall indemnify and hold harmless City from
21 any loss, cost, or damage (including, without limitation, reasonable attorney's fees)
22 arising out of any such entry on the Property by Developer, its agents, or its
23 representatives, and shall, among other things, present City with evidence of a
24 general liability insurance policy in form and in an amount as prescribed by City's
25 Risk Manager.

26 C. Appraisal of the Property and the Project. City shall prepare
27 an appraisal of the Property, by an appraiser selected by Developer from City's
28 on-call list of appraisers, , indicating the estimated fair market value of the

1 Property at City's expense. City shall use reasonable efforts to obtain such
2 appraisal within sixty (60) days after the execution date of this Agreement; upon
3 completion of the appraisal, City shall provide relevant portions of the appraisal to
4 Developer.

5 D. City Council Approval. If the negotiations culminate in a PSA,
6 signed by Developer (or an entity owned or controlled by Developer), such PSA
7 shall become effective only if and after the PSA has been considered and
8 approved by the City Council of the City of Long Beach.

9 6. CONDITIONS PRECEDENT TO RECOMMENDATION OF
10 APPROVAL. Notwithstanding paragraph 8.B below and subject to compliance with
11 CEQA, City staff shall recommend to the City Council conveyance of the Property and
12 development of the Project upon satisfaction of the following conditions precedent:

13 A. Developer has approved City's fair market value appraisal of
14 the Property;

15 B. Developer has approved the physical condition of the
16 Property, all improvements on the Property, and the soils, geology and any
17 groundwater of the Property and agrees to accept conveyance of the Property "as
18 is", and release the City from all liability therefor;

19 C. City has approved Developer's Development Plan, Operating
20 Plan and pro forma budget for development of the Project;

21 D. City and Developer have agreed upon the purchase price for
22 the Property.

23 7. NO BROKERS. City shall not be liable for any real estate
24 commission or brokerage fees which may arise in connection with this Agreement or
25 Developer's purchase of the Property. City represents that it has engaged no broker,
26 agent or finder in connection with this transaction, and Developer agrees to hold City
27 harmless from any claim by any broker, agent or finder retained by Developer.

28 8. ACKNOWLEDGEMENTS AND RESERVATIONS.

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A. No Further Obligations. City and Developer agree that neither of City or Developer shall be under any further obligation, except for City's obligation to return remaining amounts of the Good Faith Deposit as outlined above, to each other regarding the assembly and disposition of the Property or the development of the proposed Project on the Property if this Agreement expires, is terminated for any reason, or a PSA is not executed by City and Developer (or an entity owned or controlled by Developer).

B. No Agreement. Developer acknowledges and agrees that no provision of this Agreement shall be deemed to be an offer by City, nor an acceptance by City of any offer or proposal from Developer, for City to convey any interest in all or a portion of the Property to Developer (or an entity owned or controlled by Developer) or for City to provide any financial or other assistance to Developer for redevelopment of the Property.

C. No Acquisition. Developer acknowledges and agrees that it has not acquired, nor will acquire, by virtue of the terms of this Agreement, any legal or equitable interest in real or personal property from City.

D. Limitations of this Agreement. Nothing contained in this Agreement shall constitute a waiver, amendment, promise or agreement by City of Long Beach (or any of its departments or boards) as to the granting of any approval, permit, consent or other entitlement in the exercise of City's regulatory capacity or function. Developer acknowledges that any proposed PSA or further amendment that may result from these negotiations will have to be submitted to the City Council of the City of Long Beach, for review and approval. Developer further acknowledges and agrees that no City staff, consultant, or agent has the authority to bind City. Although City will not be bound to any agreement nor to any course of action except after approval and execution of the proposed PSA, or, as the case may be, the further agreement to negotiate, it is intended by all parties that these negotiations be conducted to carry out the terms set forth in this

1 Agreement without material change and in good faith. The final form of any
2 proposed PSA to be negotiated may contain matters not contemplated by this
3 Agreement, including, but not limited to, matters necessary to accommodate
4 compliance with law, including without limitation CEQA.

5 9. LIMITATIONS ON REMEDIES FOR BREACH.

6 A. Exclusive Right and Remedy. City and Developer each
7 acknowledge and agree that neither City nor Developer would have entered into
8 this Agreement if it were to be liable to the other for monetary damages or other
9 remedies. Accordingly, City and Developer each acknowledge and agree that their
10 respective sole and exclusive right and remedy upon the breach of this Agreement
11 by the other is to terminate this Agreement, without cost, expense or liability to
12 either party or their respective officers, officials, employees, consultants or agents.

13 B. Section 1542. Each party acknowledges that it is aware of the
14 meaning and legal effect of California Civil Code Section 1542, which provides:

15 "A general release does not extend to claims which the creditor does not
16 know or suspect to exist in his or her favor at the time of executing the
17 release, which if known by him or her would have materially affected his or
18 her settlement with the debtor."

19 C. General Release. California Civil Code Section 1542
20 notwithstanding, it is the intention of each of City and Developer to be bound by
21 the limitation on damages and remedies set forth in this Section 9, and City and
22 Developer release any and all claims against each other and their respective
23 officers, officials, employees, consultants or agents for monetary damages or other
24 legal or equitable relief related to any breach of this Agreement, whether or not
25 any such released claims were known or unknown to either City or Developer as
26 of the date of this Agreement. City and Developer each waive the benefits of
27 California Civil Code Section 1542 and all other statutes and judicial decisions
28 (whether state or federal) of similar effect with regard to the limitations on

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

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damages and remedies and waivers of any such damages and remedies contained in this Section 9.

10. ENTIRE AGREEMENT. This Agreement represents the entire agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to development of the Property. This Agreement may not be amended except by a writing executed by both parties.

WESTLAND REAL ESTATE GROUP

March 15, 2016

By [Signature]
Name YANKI GREENSPAN
Title PRESIDENT

_____, 2016

By _____
Name _____
Title _____

"Developer"

CITY OF LONG BEACH, a municipal corporation
Assistant City Manager

April 7, 2016

By [Signature]
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City"

This Agreement is approved as to form on March 17,

2016.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

EXHIBIT "A"

Legal Description for 6141 Atlantic Boulevard

THE REAL PROPERTY IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS:

THAT PORTION OF LOT 26 OF BLOCK 25 OF THE CALIFORNIA CO-OPERATIVE COLONY TRACT, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 21 PAGES 15 AND 16 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WEST OF THE WEST LINE OF ATLANTIC AVENUE 100 FEET WIDE, AS DESCRIBED IN THE DEED TO THE CITY OF LONG BEACH, RECORDED IN BOOK 3566 PAGE 130, OF OFFICIAL RECORDS.

APN: 7125-036-900

Exhibit B Schedule of Performance

1. Good Faith Deposit. Prior to execution of this Agreement by City
Developer shall pay the Good Faith Deposit to City
2. Developer Access to Property. Upon execution of this Agreement
City shall provide Developer with access to the Property
3. Conceptual Design Drawings. Within 60 days of execution of the Agreement
Developer shall submit its design drawings to Development Services
4. Completion of Appraisal. Within 60 days of execution of the Agreement
City shall have completed its appraisal of the Property
5. Approval of Conceptual Design Drawings. Within 90 days of execution of the Agreement
City shall approve or dis-approve of the Conceptual Design Drawings
6. Due Diligence. Within 90 days of execution of the Agreement
Developer shall have approved the condition and title of the Property
7. Development Plan. Within 120 days of execution of the Agreement
Developer shall submit all necessary entitlement application materials to Development Services, including but not limited to environmental review and site plan review applications
8. Site Plan Review Drawings. Within 120 days of execution of the Agreement
Developer shall submit site plan review drawings to City
9. Submission of Operating Plan. Within 120 days of execution of the Agreement
Developer shall submit to City a comprehensive Operating Plan for the Project.
10. Submission of Pro Forma Budget. Within 120 days of execution of the Agreement
Developer shall submit to City its pro forma budget for the Project.
11. Entitlements. Within 180 days of execution of the Agreement
Developer shall secure all entitlements for the Project

12. Purchase Price. Within 180 days of execution of the Agreement
The parties shall have agreed upon a purchase price and payment terms for the Property.
13. Approval of the Pro-Forma Budget, Site Plan Drawings and Operating Plan. Within 180 days of execution of the Agreement
City Manager shall have approved or dis-approved the Pro-Forma Budget, Site Plan Drawings and Operating Plan
14. Purchase and Sale Agreement. Within 180 days of execution of the Agreement
Developer shall have executed and submitted to City the Purchase and Sale Agreement for approval by City Council