

1 MEMORANDUM OF UNDERSTANDING

2 **29924**

3 THIS MEMORANDUM OF UNDERSTANDING ("Agreement") is made and
4 entered, in duplicate, as of January 11, 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 August 8,
6 2006 and a minute order adopted by the Redevelopment Agency of the City of Long Beach
7 at its meeting on August 7, 2006, by and among WILLIAMS & DAME DEVELOPMENT,
8 INC., an Oregon corporation ("Developer"), THE REDEVELOPMENT AGENCY OF THE
9 CITY OF LONG BEACH ("Agency") and the CITY OF LONG BEACH, a municipal
10 corporation ("City").

11 1. NEGOTIATIONS

12 City, Agency and Developer agree (for the period stated below) to negotiate in good
13 faith pursuant to the terms of this Agreement with respect to the purchase and sale and
14 subsequent development of certain real property more particularly depicted in Exhibit "A"
15 attached hereto (the "Property"). For purposes of preparing its Pro Forma and design
16 package described herein, Developer should assume that the scope of development shall
17 include the entire Property; however, Developer acknowledges that City and/or Agency
18 may be unable to acquire all of the parcels comprising the Property and that therefore the
19 scope of development may be reduced in the future. The general terms and conditions of
20 such proposed purchase and development negotiated by City, Agency and Developer will
21 be reflected in a pro forma (the "Pro Forma") and a design package for the Property. After
22 City, Agency and Developer have finalized the Pro Forma and design package submitted
23 by Developer, then City and Agency staff may, but shall not be required to, recommend to
24 the Long Beach City Council (the "City Council") and the Agency Board that the City
25 Council and Agency Board authorize, but not require, City and Agency, respectively, to
26 enter into a disposition and development agreement and/or certain other development
27 agreements to be executed between Developer, Agency and City, using the Final Pro
28 Forma and Final Conceptual Plans (each as defined below) as the general basis therefor,

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1 but without limiting City's or Agency's ability to further negotiate the terms of the Pro Forma
2 and the design package.

3 City and Agency agree (for the period stated below) not to negotiate with any other
4 person or entity regarding development of the Property without the consent of Developer;
5 provided that Developer continues to fulfill all of its obligations under this Agreement.
6 Nothing in this Agreement shall be deemed a covenant, approval, promise or commitment
7 by City or Agency, or any Department of City or Agency, with respect to the acquisition of
8 the Property or the approval of development, including without limitation approvals given
9 during the normal course of development by the Planning & Building Department, Public
10 Works, the Fire Department, the Community Development Department and all other
11 applicable City Departments. City and Agency's respective acceptance of this Agreement
12 is merely an agreement to enter into a period of negotiations according to the terms hereof,
13 reserving final and absolute discretion and approval by City as to any actions required of
14 City, and final and absolute discretion and approval by Agency as to any actions required
15 of Agency.

16 2. NEGOTIATION PERIOD

17 City, Agency and Developer agree to negotiate for a period of two hundred seventy
18 (270) days after the Effective Date of this Agreement in order to complete and finalize the
19 Pro Forma; provided that during said period Developer continues to fulfill all of its
20 obligations under this Agreement. If, upon the expiration of such period of time, Developer
21 has not finalized a Pro Forma and a design package and submitted the same to City and/or
22 City or Agency has not accepted the same, then this Agreement shall automatically
23 terminate and Developer shall have no further rights regarding the subject matter of this
24 Agreement or the Property, and City and Agency shall be free to negotiate with any other
25 persons or entities with regard to the Property. The Director of City's Community
26 Development Department, or designee, shall negotiate the terms and conditions of the
27 disposition and development agreement (and any other development agreements) which
28 will govern the purchase and sale and development of the Property, subject to the City

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1 Council's and Agency Board's final approval.

2 3. GOOD FAITH DEPOSIT

3 Prior to the execution of this Agreement and as a condition to the effectiveness
4 hereof, Developer shall deposit with City Fifty Thousand Dollars (\$50,000) in immediately
5 available funds (the "Good Faith Deposit"), Ten Thousand Dollars (\$10,000) of which shall
6 be non-refundable. City may transfer some or all of the Good Faith Deposit to Agency.
7 The Good Faith Deposit shall be drawn upon by City and/or Agency to reimburse City and
8 Agency for all respective costs and expenses reasonably incurred by City or Agency in
9 connection with the execution and administration of this Agreement and the negotiations
10 with Developer that are the subject hereof. Developer shall be obligated to reimburse City
11 and Agency for all of the costs and expenses incurred by City or Agency under this
12 Agreement, including without limitation staff time, surveyor fees, engineering fees,
13 economic advisor fees and architect fees, regardless of whether this Agreement is
14 terminated, extended, or results in the finalization and acceptance of the Pro Forma;
15 provided, however, that Developer shall not be obligated to reimburse City or Agency for
16 costs and expenses that exceed the amount of the Good Faith Deposit. When City or
17 Agency has drawn upon the first \$10,000 of the Good Faith Deposit, City shall provide
18 Developer with an accounting of the fees and expenses incurred by City and the
19 corresponding deductions from the Good Faith Deposit, and thereafter shall provide
20 monthly accountings of said fees and expenses and corresponding deductions.

21 If this Agreement terminates by its own terms without the finalization and
22 acceptance by City and Agency of the Pro Forma and without default by Developer, then
23 the remaining balance of the Good Faith Deposit, but in no event more than Forty
24 Thousand Dollars (\$40,000), shall be returned to Developer after City and Agency process
25 all outstanding and final invoices. If this Agreement terminates due to the default of the
26 Developer, then the remaining balance of the Good Faith Deposit shall be retained by City.
27 Developer agrees that in the event of a default by Developer hereunder City's damages
28 would be difficult to determine, and that retention of the Good Faith Deposit by City

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1 represents a reasonable estimate of such damages. If this Agreement results in the
2 acceptance of the Pro Forma and the selection of the Developer for recommendation to
3 the City Council and the Agency Board for further purchase and development negotiations,
4 any unspent amount of the Good Faith Deposit shall be held by City and applied towards
5 City and Agency expenses and applicable fees during the subsequent purchase and
6 development process.

7 4. OBLIGATIONS OF CITY AND AGENCY

8 City and Agency shall provide Developer with all reports, studies, test results,
9 analyses, surveys, title reports and other material information about or concerning the
10 Property in City's or Agency's possession which may be legally disclosed to Developer for
11 the purposes of this negotiation ("Due Diligence Materials") within five (5) business days
12 after the Effective Date. Within one hundred twenty (120) days of the Effective Date, City
13 shall provide Developer with programming guidelines for the cultural art center which will
14 be a required element of the design package ("Art Center Guidelines"). A Schedule of
15 Performance listing all performance benchmarks required of either party to this Agreement
16 is attached as Exhibit "B" hereto.

17 5. PRO FORMAS

18 Within sixty (60) days of delivery of the Art Center Guidelines by City to Developer,
19 Developer shall complete a formulation of two alternate development plans, one which
20 contemplates 5% of project units to be affordable as "moderate income" units and the other
21 which contemplates 100% market rates (collectively, the "Draft Pro Forma"), on a pro forma
22 template to be provided to Developer by City on or before the Effective Date, and shall
23 submit the same to City for its review. Each Draft Pro Forma shall also specifically break
24 down the costs of constructing the art center required by Section 4. City shall promptly
25 deliver copies of the Draft Pro Forma to Agency for its review. Within forty-five (45) days
26 of the City's receipt of the Draft Pro Forma, City will deliver its and Agency's analysis and
27 written comments to Developer ("City Pro Forma Comments"). Within forty-five (45) days
28 of Developer's receipt of the City Pro Forma Comments, Developer shall revise its Draft

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1 Pro Forma and re-submit the same to City ("Final Pro Forma"), and City shall thereafter
2 promptly deliver copies of the Final Pro Forma to Agency. The Final Pro Forma, along with
3 the Final Conceptual Plans, shall represent the Developer's final offer for purchase and
4 development of the Property, which may be accepted or rejected by City in its sole and
5 absolute discretion. If Developer fails to deliver its Draft Pro Forma or Final Pro Forma
6 within the time periods applicable to each submission, Developer shall immediately be in
7 default hereunder, this Agreement shall automatically terminate, and City shall have the
8 right to retain any remaining balance of the Good Faith Deposit. Notwithstanding the
9 foregoing, if City fails to timely perform its obligations's under this Agreement and such
10 failure impacts Developer's ability to timely perform its obligations hereunder, including,
11 without limitation, the delivery of Developer's Draft Pro Forma or Final Pro Forma, then the
12 time period for Developer to perform shall be extended by one day for each day of City
13 delay.

14 6. DESIGN PACKAGE

15 Within sixty (60) days of the delivery of the Art Center Guidelines by City to
16 Developer, Developer shall submit a design package for the development of the Property
17 ("Draft Conceptual Plans") to City for its review. City shall promptly deliver copies of the
18 Draft Conceptual Plans to Agency for its review. The design package shall be
19 comprehensive enough to allow City and Agency to objectively analyze and understand the
20 design intent of the proposal and such package should explore sustainable features and
21 should also identify treatment of the potentially historic building located upon the Property.
22 Developer is strongly encouraged to integrate building materials and methods in the design
23 package that incorporate the U.S. Green Building Council LEED Standards.
24 Notwithstanding the above, the design package required hereunder is not expected to
25 meet site plan review requirements. Within forty-five (45) days of the City's receipt of the
26 Draft Conceptual Plans, City will deliver its and Agency's analysis and written comments
27 to Developer ("City Plan Comments"). Within forty-five (45) days of Developer's receipt of
28 the City Plan Comments, Developer shall revise its Draft Conceptual Plans and re-submit

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1 the same to City ("Final Conceptual Plans"), and City shall thereafter promptly deliver
2 copies of the Final Conceptual Plans to Agency. If Developer fails to deliver its Draft
3 Conceptual Plans or Final Conceptual Plans within the time periods applicable to each
4 submission, Developer shall immediately be in default hereunder, this Agreement shall
5 automatically terminate, and City shall have the right to retain any remaining balance of the
6 Good Faith Deposit.

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 or Agency be obligated to
13 pay or reimburse any costs or fees incurred by Developer in performance of any
14 obligations of Developer under this Agreement.

15 8. NOTICES

16 All notices given pursuant to the provisions hereof may be served with all postage
17 and delivery charges prepaid, by: (1) U.S. Postal Service as certified mail, return receipt
18 requested, (2) personal delivery or messenger service, or (3) overnight courier service.
19 Such notices shall be addressed to the party intended to receive the same at the address
20 indicated herein and shall be effective on the earlier of actual delivery or refusal of a party
21 to accept delivery thereof. For the purposes hereof, the address of City and the proper
22 party to receive any such notices on its behalf is City of Long Beach Project Development
23 Bureau Manager, Community Development Department, 333 West Ocean Boulevard, 3rd
24 Floor, Long Beach, California 90802; the address of Agency and the proper party to
25 receive any such notices on its behalf is Redevelopment Bureau Manager, Redevelopment
26 Agency of the City of Long Beach, 333 West Ocean Boulevard, 3rd Floor, Long Beach,
27 California 90802; and Developer's address for service of any such notices shall be
28 Williams & Dame Development, Inc., 1308 NW Everett, Portland, Oregon 97209, Attn:

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1 Dike Dame/Jim Atkins, with a copy to Ball Janik LLP, Attn: Dina Alexander, 101 SW Main
2 Street, Suite 1100, Portland Oregon 97204.

3 9. TRANSFER OR ASSIGNMENT

4 Developer shall not transfer or assign any interest in, or benefits from, this
5 Agreement to any person, agency or entity not named as a party in the opening recital of
6 this Agreement (collectively, "Third Parties"); provided, that Developer may assign its
7 interest in this Agreement to an entity managed or controlled by Developer. Developer
8 shall not allow any Third Parties access to any Due Diligence Materials nor shall Developer
9 provide copies of the same to any Third Parties; provided, that Developer may provide
10 copies of due Diligence Materials to its consultants, joint venture partners, employees,
11 attorneys, accountants, title and escrow officers, potential lenders and investors and to any
12 other third party working with Developer on its negotiations hereunder or on its assessment
13 of the Property.

14 10. PREVAILING WAGE

15 The prevailing wage requirements of the California Labor Code will apply to all work
16 performed in connection with the development of the Property, and Developer shall
17 prepare its Pro Forma and design package accordingly.

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THE PARTIES have executed this Agreement as of the date

first written above.

CITY OF LONG BEACH

By 
City Manager



CITY

REDEVELOPMENT AGENCY OF THE
CITY OF LONG BEACH

By 
CB Director

AGENCY

WILLIAMS & DAME DEVELOPMENT,
INC., an Oregon corporation

By: 
Its: 

By: _____
Its: _____

Tax ID #: _____

DEVELOPER

Approved as to form this 29th day of December, 2006.

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

By 
Deputy

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

RFA:abc; 12/5/06; #06-003817
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County of Los Angeles: Rick Auerbach, Assessor

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PG 9

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EXHIBIT "A"

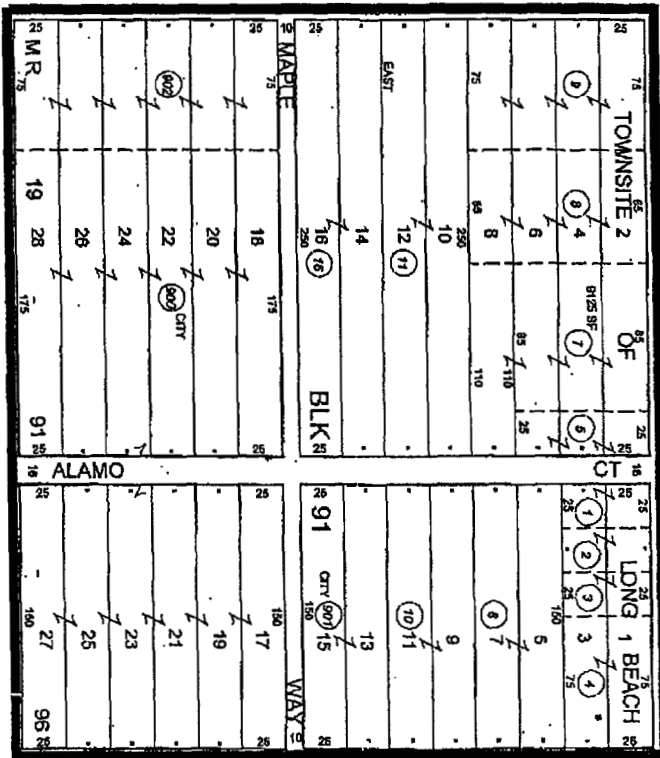
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BROADWAY

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PG 16

ALL ROW STRIPS PARCELS ON THIS PAGE ARE ASSIGNED TO THE REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH UNLESS OTHERWISE NOTED

EXHIBIT B

SCHEDULE OF PERFORMANCE

1. Good Faith Deposit. Developer shall provide the City with a \$50,000 Good Faith Deposit. Prior to City & Agency's execution of the Agreement.
2. Execution of Agreement. Agreement authorized, executed and delivered to Developer by the City/Agency Subject to the City/ Agency approval, within 30 days after the Developer delivers a copy of this Agreement signed by Developer to the City/Agency.
3. Due Diligences. The City/ Agency is to provide all due diligence materials to Developer. Within 5 business days after the Agreement is executed.
4. Art Center Guidelines. The City/ Agency is to provide guidelines for the development of the art center. With 120 days after the Agreement is executed.
5. Submission of Draft Conceptual Design for the Site. Developer will prepare and submit to the City/ Agency conceptual drawings for the site. Within 60 days upon receipt of the Art Center Guidelines.
6. Submission of Draft Pro Forma. Developer will prepare and submit to the City/Agency a Draft Pro Forma for review. Within 60 days upon receipt of the Art Center Guidelines.
7. City/Agency Comment Period. Both the City/Agency review conceptual plans & pro forma and provide comments to the developer. Within 45 days upon receipt of the Submission of the Draft Conceptual Design Plan & Pro Forma Submittal
8. Final Conceptual Design Submission for the Site. Developer will prepare and submit final conceptual drawings to the City/Agency for review. Within 45 days after receipt of the City/ Agency comments
9. Final Prof Forma Submission. Developer will prepare and submit to the City/ Agency a Final Pro Forma Within 45 days after receipt of the City/ Agency comments