

**AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING
REGARDING FRED C. NELLES CORRECTIONAL FACILITY**

THIS AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING ("Memorandum") is made and entered into by and among the WHITTIER REDEVELOPMENT AGENCY ("**Agency**"), and GREENLEAF DEVELOPMENT COMPANY LLC ("**Greenleaf**") as of this ____ day of September, 2005 with regard to the following:

R E C I T A L S

A. The State of California (the "**State**") currently owns and administers certain property located within the Whittier Boulevard Specific Plan area known as the Fred C. Nelles Correctional Facility as more particularly described on **Exhibit "A"** attached hereto (the "**Nelles Site**").

B. The Agency desires to cause the Nelles Site to be redeveloped as a mixed use development consisting of residential and retail/commercial land uses.

C. On May 5, 2004, Greenleaf was selected by the City as the proposed developer of the Nelles Site.

D. The parties desired to set forth their understanding with regard to the acquisition, planning and development of the Nelles Site and, in particular, the goals and objectives of the parties and the role each party will play in achieving the objective and goals of the parties on February 8, 2005 in the Memorandum of Understanding and

E. The parties desire to amend and restate their understanding with regard to the following objective and goals for the Nelles site:

Objective for the Nelles Site:

- Develop a project that has a positive direct and indirect economic benefit to the City.

Goals for the Nelles Site:

1. Provide for a comprehensive plan for the 73.8-acre site through the Specific Plan process.
2. Incorporate a mixture of residential and commercial uses generally as follows:
 - a. *Commercial*: A minimum of 25 acres, located along the Whittier Boulevard frontage, with 15 acres at the corner of Whittier Boulevard and Sorensen Avenue set aside for a big box retail use, and additional mixed use

(retail and office on the ground floor and office or residential lofts on upper floors) along the balance of the Whittier Boulevard frontage.

- b. *Open Space*: Appropriate for the uses proposed, as determined by the City Council.
 - c. *Residential*: There shall be a variety of residential densities, which range from a minimum of 10 units per acre to a maximum of 35 units per acre, with a maximum overall average density of 22 units per acre within residentially areas (estimated maximum of 650 units). Home ownership opportunities are preferred for the Development site.
3. Generate between \$1,000,000 and \$2,000,000 per year in sales tax revenue and a minimum improvement value of \$250,000,000 so as to provide needed property tax revenue to the City of Whittier and the Whittier Redevelopment Agency. These revenues are needed to pay for public services to residents and users of the site and city-wide services and facilities, including but not limited to
 - a. Police services
 - b. Park and recreation facilities and programs
 - c. Public infrastructure and street maintenance services (i.e. sewer, storm drains, street maintenance, street tree maintenance, general governmental services, etc.)
 - d. Library services
 4. Incorporate the preservation of the former Administration Building and Superintendent's home consistent requirements of the City of Whittier and the State of California's Office of Historic Preservation.
 5. Utilize architectural designs that will complement and be compatible with the historic resources on the site.
 6. A minimum of 15% of all residential units built as part of the project shall be made available to families that qualify as "very low income", "low income", and/or "moderate income", consistent with the requirements of the City's Housing Element and Regional Housing Needs Assessment requirements. Preference will be given to first time homebuyers in these categories.
 7. The project is not intended to include tax-exempt uses.
 8. Fund its fair share of costs for off-site improvements, including but not limited to, the street widening and signal improvements on Whittier Boulevard, improvements to Sorensen Avenue, and the connection of storm drains and sewage lines to facilities in Washington Boulevard.

9. Meet the project's park and open space requirements on-site or through payment of in-lieu fees to be used for enhancement or expansion of existing City open space facilities.
10. The City/RDA is open to consider innovative public financing techniques. Further, the City will also consider assisting in the coordination of required improvements with Caltrans, the County of Los Angeles, and various utility companies.
11. The City will process the necessary project entitlements and environmental review in an expedited manner.
12. It is anticipated that vehicular access will be limited to driveway access on Whittier Boulevard and Sorensen Avenue.
13. Incorporate as much of the existing landscape material into the new project as feasible.

IN FURTHERANCE OF THE FOREGOING, the parties hereto acknowledged their mutual understanding as follows:

1. Due Diligence. Due diligence regarding the feasibility of the acquisition and development of the Nelles Site shall be conducted by the City until the acquisition of the property. Attached hereto as **Exhibit "B"** is a proposed budget for the conduct of the due diligence review. Greenleaf shall fund all due diligence efforts in accordance with Exhibit B, by which Greenleaf, on behalf of City, will retain and manage the services of various consultants and contractors as agreed upon by Greenleaf and the City. Greenleaf shall report regularly to the City Manager or City Manager's designee on the due diligence investigation and provide copies of all reports, tests and studies to the City. The parties further acknowledge that City and Greenleaf shall each have full access to all such reports, tests and studies but that all such reports, tests and studies shall remain the property of the City until acquisition of the Nelles Site by Greenleaf. A preliminary list of proposed consultants as agreed upon by City and Greenleaf is attached hereto as **Exhibit "C"**. Both parties acknowledge that some or all of the due diligence to be performed by the parties pursuant hereto may benefit the City and/or a successor developer in the event Greenleaf fails to acquire the Nelles Site for any reason. Accordingly, City and Greenleaf intend to discuss reimbursement of a pro rata share of such due diligence costs and expenses as borne by Greenleaf (a) in the event Greenleaf disapproves the feasibility of the Nelles Site, (b) if the parties fail to agree on the Purchase Price, (c) if the parties fail to agree upon the terms of a Owner Participation Agreement (OPA) or Disposition and Development Agreement (DDA), upon acquisition of the Nelles Site by the City or (d) if another developer is chosen by the City to develop the Nelles Site.

1.1 Right of Entry. The City shall obtain from the State a right of entry permit to conduct all necessary due diligence within the property boundaries of the Nelles Site.

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1.2 Purchase Price. The purchase price to be paid by the City for the Nelles Site shall be established through negotiations between the City and the State. The Purchase Price to be paid by Greenleaf shall be determined by mutual agreement of the parties and is intended to include all reasonable costs and expenses incurred by the City in acquiring the Nelles Site but shall not include any profit thereon. The Purchase Price shall be funded by Greenleaf to the City for purposes of acquiring the Nelles Site.

2. Planning and Entitlement. Although the parties envision the Nelles Site as a mixed use development consisting of primarily residential and retail/commercial land uses, it is acknowledged that the densities, retail/commercial uses, development standards, design guidelines, circulation, signage and other use and design elements will be determined through the Specific Plan process. It is further anticipated that, as part of the entitlement process, the parties shall negotiate a formal agreement (DDA or OPA) setting forth the terms and conditions for the acquisition and development of the Nelles Site by Greenleaf. Greenleaf shall cause a Specific Plan and other required planning and entitlement documents to be prepared and processed at its cost. In addition, the City shall determine the scope of required California Environmental Quality Act (CEQA) compliance and shall select the necessary consultants for such compliance, whose services shall be managed by the City in conjunction with Greenleaf. Greenleaf shall pay all costs associated with CEQA compliance. Notwithstanding the foregoing, the parties acknowledge and understand that the ultimate land use entitlements will be determined only after all necessary public hearings and environmental review.

2.1 City Processing. The City shall process Greenleaf's applications for entitlements in a timely fashion and conduct public hearings to consider such applications in good faith. Attached hereto as **Exhibit "D"** is a proposed schedule for the application and processing of entitlements for the proposed development of the Nelles Site. The City will use its best efforts to expedite the processing of all such applications in accordance with the schedule set forth in **Exhibit "D"**.

2.2 No Waiver of Discretionary Authority. Nothing contained in this Agreement may be construed to mean that the City is agreeing or has agreed to exercise its discretionary authority in support of any approvals or entitlements that may be determined to be required in order to redevelop the Nelles Site.

3. Financing Sources. The parties acknowledge that they intend to consider all appropriate and available sources of financing for the acquisition and development of the Nelles Site including, without limitation, the formation of one or more special districts. Notwithstanding the foregoing, the City shall not be required to bear any costs in relation to the formation of such districts.

4. Cooperation. The parties shall cooperate fully in carrying out the objective and goals hereof and, in furtherance thereof, agree to meet as is reasonably required and provide prompt responses to inquiries and requests for information.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date first hereinabove written.

GREENLEAF DEVELOPMENT
COMPANY, LLC

By: _____
Adrian Foley
Its: Agent

WHITTIER REDEVELOPMENT AGENCY

ATTEST:

By: _____
KATHRYN A. MARSHALL
Secretary-Treasurer

By: _____
Stephen W. Helvey
Its: Executive Director

APPROVED AS TO FORM:

By: _____
James L. Markman
Agency Counsel