

28468

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, CONSENT AND AMENDMENT TO OWNER PARTICIPATION AGREEMENT** (this "Agreement") is dated, for references purposes only, as of June 9, 2005 by and among **COVENTRY LONG BEACH PLAZA LLC**, a Delaware limited liability company ("Assignor"), **PROMENADE LOFT PARTNERS, LLC**, a California limited liability company ("Assignee"), the **REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH**, a public body, corporate and politic (the "Redevelopment Agency"), and the **CITY OF LONG BEACH**, a charter city and municipal corporation (the "City"), with reference to the following facts:

**RECITALS**

A. Assignor has entered into an Owner Participation Agreement dated as of September 12, 2000 with the Redevelopment Agency and the City, as implemented by a First Implementation Agreement to Owner Participation Agreement dated as of June 12, 2001 (as so implemented, the "**Owner Participation Agreement**"), that provides, among other things, that Assignor will develop certain real property located in the City of Long Beach, State of California and more particularly described on Exhibit A to this Agreement (the "**Site**") with the "Project" (as defined in the Owner Participation Agreement), which is to be a mixed use development that includes commercial and residential uses. The Owner Participation Agreement further provides that Assignor may, subject to obtaining the prior approval of the Redevelopment Agency, assign its right and delegate its obligation to build certain components of the Project to third-party developers, although Assignor will remain the "master developer" for the entire Project.

B. Assignor and Assignee have entered into an agreement (the "**Purchase Agreement**") that provides, among other things, that (i) Assignor will sell to Assignee, and Assignee will purchase from Assignor, that portion of the Site more particularly described on Exhibit B to this Agreement (the "**Property**"), and (ii) Assignor will assign and delegate to Assignee, and Assignee will accept and assume from Assignor, all of Assignor's rights and obligations under the Owner Participation Agreement to develop the Property with a mixed-use project, the ground floor of which will be leased for retail uses and the upper floors of which will be leased as residential apartment units or sold as residential condominium units at market rates free of any restrictions by the City regarding affordability or low-income housing. The Purchase Agreement provides that the closing of the transactions contemplated thereby is subject to and conditioned upon, among other things, the Redevelopment Agency's consent thereto.

C. Assignor, Assignee, the Redevelopment Agency and the City have entered into that certain Second Implementation Agreement to Owner Participation Agreement dated as of June 9, 2005 (the "**Second Implementation Agreement**") and, pursuant thereto, the Redevelopment Agency desires to consent to the transactions described above. The parties are entering into this Agreement to (i) effectuate the

effectuate the assignment and delegation by Assignor, and the acceptance and assumption by Assignee, of Assignor's rights and obligations under the Owner Participation Agreement with respect to the Property, (ii) evidence the Redevelopment Agency's consent to such assignment and acceptance and such delegation and assumption, and (iii) clarify certain provisions of the Owner Participation Agreement as it relates to the Property.

**NOW, THEREFORE**, with reference to the foregoing Recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Effectiveness**. This Agreement shall be effective as of the date and time on which the Grant Deed covering the Property between Assignor, as grantor, and Assignee, as grantee, is recorded in the Official Records of Los Angeles County, California.

2. **Assignment, Assumption and Consent**. Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts and assumes from Assignor, all of Assignor's rights and obligations as the "Participant" under the Owner Participation Agreement, as implemented by the Second Implementation Agreement, with respect to the Property and the improvements to be constructed thereon, which rights and obligations are more particularly described in Paragraph 3 of this Agreement, except that Assignor is not assigning Assignor's right to receive any portion of the financial assistance described in Article 9 of the Owner Participation Agreement regardless of whether Assignor has previously allocated any portion of such assistance to the Property. Without limiting the foregoing, Assignee hereby agrees, for the benefit of Assignor, the Redevelopment Agency and the City, to perform all of the obligations of the "Participant" under the Owner Participation Agreement, as implemented by the Second Implementation Agreement, that relate to the Property. The Redevelopment Agency hereby consents to the assignment and delegation by Assignor, and the acceptance and assumption by Assignee, of such rights and obligations.

3. **Rights and Obligations of Assignee**. The rights and obligations of Assignee under the Owner Participation Agreement are those under the Sections of the Owner Participation Agreement listed in Part 1 of Exhibit C attached to this Agreement, provided that as among Assignee, the Redevelopment Agency and the City with respect to the Property only, certain of the Sections listed in Part 1 of Exhibit C are hereby amended as provided in Part 2 of Exhibit C. Without limiting the foregoing, Assignor has not assigned or delegated to Assignee any of Assignor's rights and obligations under the Owner Participation Agreement with respect to the remainder of the Site.

4. **Conditional Release of Assignor**. The Redevelopment Agency and the City hereby release and discharge Assignor from its obligations under the Owner Participation Agreement that relate to the Property; provided, however, that Assignor shall continue to be the master developer of the Project and from and after the date on which Assignor reacquires possession and control of the Property (if that occurs), Assignor shall again have the obligation to develop the Property as provided in the

Owner Participation Agreement. The Redevelopment Agency and the City further agree that in no event, however, shall Assignor have any liability for any acts or omissions of Assignee or its agents with respect to the Property or for any defaults by Assignee under the Owner Participation Agreement, as implemented by the Second Implementation Agreement as assigned to and assumed by Assignee hereunder and as amended hereby.

5. No Effect on Assignor's Other Obligations Under the Owner Participation Agreement. Nothing in this Agreement shall affect the rights and obligations of Assignor, the Redevelopment Agency and the City under the Owner Participation Agreement with respect to the remainder of the Site.

6. Additional Covenants of Assignor and Assignee. Pursuant to the Purchase Agreement, Assignor has the right under certain circumstances to purchase the Property from Assignee (see Exhibit E to Purchase Agreement, the "Form of Option Agreement"). Pursuant to Section 12.8.2 of the Owner Participation Agreement as modified by this Agreement, if Assignee has not commenced construction by July 1, 2006 (which date shall be extended by one day for each day that the date for commencement of construction specified in the Schedule of Performance is extended pursuant to Section 12.8.1), Agency may request Assignor to assign to Agency Assignor's rights as Optionee under the Option Agreement to purchase the Property. Upon receipt of such request, Assignor shall assign to Agency all of its rights under the Option Agreement. In addition, upon a "Triggering Event" (as defined in the Option Agreement) Assignor shall notify Agency in writing (the "Notice of Rights") that Assignor has the right pursuant to the Option Agreement to purchase the Property and that Agency may, for a period of sixty (60) days following its receipt of the Notice of Rights, elect to assume Assignor's rights under the Option Agreement. Within sixty (60) days after receipt of the Notice of Rights, Agency may elect to require Assignor to assign its rights under the Option Agreement to Agency. Upon Assignor's receipt of written notice of such election, Assignor shall assign its rights under the Option Agreement to Agency.

6.1 Purchase Price. If Assignor's rights under the Option Agreement are assigned to Agency, Assignee hereby agrees that the Purchase Price (as that term is defined at Paragraph 1.5 of the Option Agreement) shall be one million dollars (\$1,000,000) regardless of whether construction has started or the extent of progress on the construction. Provided, however, that Agency's right to purchase the Property hereunder shall be subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any mortgage or deed of trust or other security instrument permitted by the Owner Participation Agreement or approved by Agency; or

(b) Any rights or interests provided in the Owner Participation Agreement for the protection of the holders of such mortgage, deed of trust, or other security interest.

6.2 Assignment. Agency may assign its rights hereunder

without the consent of Assignor to a developer for development of a retail/residential project similar to the project described in Assignee's Stage II drawings or such other project as Agency deems appropriate in its sole discretion.

6.3 Expiration of Purchase Right. If Agency has not elected to purchase the Property within sixty (60) days after receipt of the Notice of Rights, then Assignor shall proceed to re-purchase the Property as provided in accordance with the Option Agreement.

6.4 Quitclaim. If Agency has not elected to purchase the Property within sixty (60) days after receipt of the Notice of Rights, Agency shall, at Assignor's request, execute and deliver to Assignor a quitclaim deed quitclaiming all of Agency' rights to purchase the Property under this Section.

7. Notices to Assignee. Assignee's address for notices under the Owner Participation Agreement is c/o Urban Pacific Builders, LLC, 244 Pine Avenue, Long Beach, California 90802, Attention: Scott K. Choppin.

8. Entire Agreement. This Agreement is the entire Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Agreement. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or in behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Agreement attached thereto.

10. Further Assurances. Each of the parties agrees to execute such further and supplemental instruments as may be requested by another party to effectuate the purposes and intent of this Agreement.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to its conflicts of law principles.

12. Third Party Beneficiaries. No third party shall have any rights under this Agreement.

13. Exhibits. Exhibits A through E, inclusive, attached to this Agreement are hereby incorporated into and are made a part of this Agreement.

14. Time of Essence. Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement.


**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

**ASSIGNOR:**

**COVENTRY LONG BEACH PLAZA LLC,**  
a Delaware limited liability company

By: Retail Value Investment Program Limited  
Partnership III,  
a Delaware limited partnership,  
Its Sole Member

By: Coventry Real Estate Partners, Ltd.,  
an Ohio limited liability company  
General Partner

By:   
Name: DAVID E. WEISS  
Its: VICE PRESIDENT

**ASSIGNEE:**

**PROMENADE LOFT PARTNERS, LLC,**  
a California limited liability company

By: Urban Pacific Builders, LLC, a California  
limited liability company

By: \_\_\_\_\_  
Scott K. Choppin,  
Managing Member

By: \_\_\_\_\_  
Mark F. Tolley,  
Managing Member

[Signatures Continued On Next Page]

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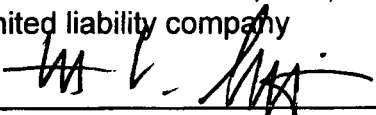
By: Coventry Real Estate Partners, Ltd.,  
an Ohio limited liability company  
General Partner

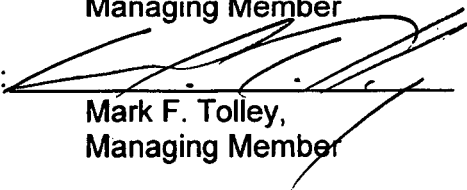
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE:**

**PROMENADE LOFT PARTNERS, LLC,**  
a California limited liability company

By: Urban Pacific Builders, LLC, a California  
limited liability company

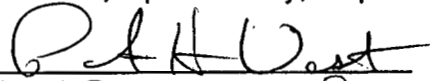
By:   
\_\_\_\_\_  
Scott K. Choppin,  
Managing Member

By:   
\_\_\_\_\_  
Mark F. Tolley,  
Managing Member

[Signatures Continued On Next Page]


**REDEVELOPMENT AGENCY:**

**REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH, a public body, corporate and politic**

By:   
Its: Executive Director

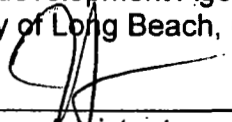
**CITY:**

**THE CITY OF LONG BEACH, a municipal corporation and charter city**

By:   
Its: City Manager

Approved as to form this 21<sup>st</sup>  
day of September, 2005.

ROBERT E. SHANNON,  
City Attorney of the City of Long Beach. General Counsel for the Redevelopment Agency of the City of Long Beach, California

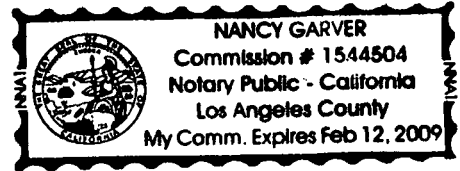
By:   
Assistant

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On this 4<sup>th</sup> day of October, 2005, before me, a Notary Public in and for said State, duly commissioned and sworn, personally appeared Patrick H. West, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~, to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

*Nancy Garver* (Seal)  
Notary's Signature

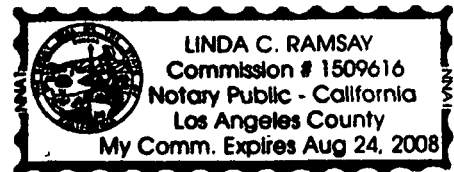


STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On this 6th day of October, 2005, before me, a Notary Public in and for said State, duly commissioned and sworn, personally appeared GERALD R. Miller, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person~~(s)~~ whose name~~(s)~~ ~~(is)~~ are subscribed to the within instrument, and acknowledged to me that ~~(he/she/they)~~ executed the same in ~~(his/her/their)~~ authorized capacity~~(ies)~~, and that by ~~(his/her/their)~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

*Linda C. Ramsay* (Seal)  
Notary's Signature





STATE OF Ohio )  
COUNTY OF Cuyahoga ) ss.

On June 29th, 2005, before me, Gloria J. Harmon, a Notary Public in and for said State, personally appeared David E. Weiss, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

WITNESS my hand and official seal.

Gloria J. Harmon  
Notary Public

GLORIA J. HARMON, Notary Public  
State of Ohio  
Recorded in Lake County  
My Commission Expires on 2-16-2008

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

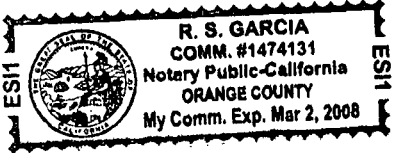
State of CALIFORNIA

County of ORANGE

On JUNE 30, 2005 before me, R.S. GARCIA, NOTARY PUBLIC  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared SCOTT K. CHOPPIN AND MARK F. TDLEY  
Name(s) of Signer(s)

personally known to me -OR-  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

*[Signature]*  
Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

## Description of Attached Document

Title or Type of Document: ASSIGNMENT AND ASSUMPTION AGREEMENT

Document Date: JUNE 9, 2005 Number of Pages: 22

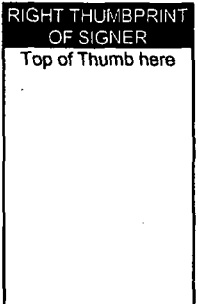
Signer(s) Other Than Named Above: \_\_\_\_\_

## Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Titles(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

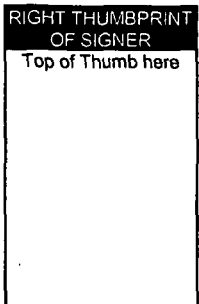


EXHIBIT A

Description of Site

Lots 1, 2, 3, 4, 5, 6, 8, 8A, 9, 9A, 12, 12A, 13, 14, 15, 15A, 16, 17, 17A, 19 and 19A of Tract No. 53306, in the City of Long Beach, State of California, as per the Map recorded in Book 1261, Pages 31 through 34, inclusive, in the office of the County Recorder of said County.

## EXHIBIT B

### Legal Description of Property

Lots 17 and 17A of Tract No. 53306 in the City of Long Beach, County of Los Angeles, State of California as per the Map recorded in Book 1261, Pages 31 through 34, inclusive, in the Office of the County Recorder of said County.

Excepting therefrom all oil, gas, hydrocarbon substances and minerals of every kind and character lying more than 500 feet below the surface of said land, together with the right to drill into, through and to use and occupy all parts of said land lying more than 500 feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said land or other lands, but without however, the right to use either the surface of said land or any portion of said land within 500 feet of the surface for any purpose or purposes whatsoever as reserved in various deeds of record.

## EXHIBIT C

### Rights and Obligations of Assignee

#### 1. PROVISIONS OF OWNER PARTICIPATION APPLICABLE TO ASSIGNEE

The following Sections of the Owner Participation Agreement shall be applicable to Assignee, subject to the modifications to certain of said Sections set forth in Part 2 of this Exhibit C:

- Section 1.5.4 – Prohibition Against Change in Ownership, Management and Control of Participant
  - Section 3.8 – Taxes and Assessments
- Section 3.10 – Condition of the Agency Parcels, the 4th Street Parcel and the Acquisition Parcels
- Section 3.12 – Right of Agency to Satisfy Liens on the Site After Title Passes
  - Section 4.1 – Financing Plan
  - Section 4.2 – Submission of Evidence of Financing Commitment
  - Section 4.3 – Application for City and Other Governmental Approvals
  - Section 4.6 – Construction Contracts
  - Section 4.7 – Performance and Payment Bonds
  - Section 5.1 – Scope of Development
  - Section 5.3 – Landscaping and Finish Grading Plans
- Section 5.4 – Agency Approval of Plans, Drawings, and Related Documents
  - Section 5.5 – Cost of Construction
  - Section 5.7 – Schedule of Performance
- Section 5.8 – Indemnification; Bodily Injury and Property Damage Insurance
  - Section 5.9 – City and Other Governmental Agency Permits
  - Section 5.12 – Rights of Access
  - Section 5.13 – Local, State and Federal Laws
  - Section 5.14 – Nondiscrimination During Construction
  - Section 5.15 – Certificate of Completion
- Section 6.1 – No Encumbrances Except Mortgages, Deeds of Trust or Other Conveyance for Financing for Development
- Section 6.2 – Holder Not Obligated to Construct Improvements
- Section 6.3 – Notice of Default to Mortgagee or, Deed of Trust or Other Security Interest Holders; Right to Cure
- Section 6.4 – Failure of Holder to Complete Project
- Section 6.5 – Right of Agency to Cure Mortgage, Deed of Trust Default or Other Security Interest Default
- Article 7 – Prohibition Against Transfer

- Section 8.1 – Uses
- Section 8.2 – Stipulated Taxable Assessed Value
- Section 8.3 – Obligation to Refrain from Discrimination; Americans with Disabilities Act
- Section 8.4 – Form of Nondiscrimination and Nonsegregation Clauses
- Section 8.5 – Effect and Duration of Covenants
- Section 11.1 – Warranties, Representations, and Covenants of Participant
- Section 11.2 – Warranties, Representations, and Covenants of Agency
- Section 11.3 – Warranties, Representations, Covenants of City
- Section 12.1 – Defaults – General
- Section 12.2 – Legal Actions
- Section 12.3 – Rights and Remedies are Cumulative
- Section 12.4 – Damages
- Section 12.5 – Specific Performance
- Section 12.6 – Remedies and Rights of Termination
- Section 13.1 – Notices, Demands and Communications Between the Parties
- Section 13.2 – Conflicts of Interest
- Section 13.3 – Warranty Against Payment of Consideration for Agreement
- Section 13.4 – Nonliability of Agency Officials and Employees
- Section 13.5 – Attorneys’ Fees
- Section 13.6 – Approval by City, Agency and Participation
- Section 13.7 – Plans and Data
- Section 13.8 – Force Majeure
- Section 13.9 – Real Estate Commissions
- Section 13.10 – Parties Not Co-Venturers
- Section 13.11 – Multiple Originals; Counterparts
- Section 13.12 – Successors and Assigns
- Section 14.1 – Rights to Estoppel Certificates
- Section 14.2 – Good Faith Deposit
- Section 14.3 – Percent for Public Art

**2. MODIFICATIONS TO OWNER PARTICIPATION AGREEMENT**

As among Assignee, the Redevelopment Agency and the City with respect to the Property only:

**2.1 General Modifications**

2.1.1 All references in the Owner Participation Agreement to “Participant” shall be deemed to refer to Assignee.

2.1.2 All references in the Owner Participation Agreement, as amended hereby, to the “Site” shall mean the Property.

2.1.3 The "Scope of Development" is, and all references in the Owner Participation Agreement to the "Scope of Development" shall be deemed to refer to, the Scope of Development attached to this Agreement as Exhibit D.

2.1.4 The "Schedule of Performance" is, and all references in the Owner Participation Agreement to the "Schedule of Performance" shall be deemed to refer to, the Schedule of Performance attached to this Agreement as Exhibit E.

2.2 Section 1.5.4 – Prohibition Against Change in Ownership, Management and Control of Participant. As used in Section 1.5.4 and elsewhere in the Owner Participation Agreement, "Significant Change" means "a sale, transfer or assignment in one or more transactions of a controlling interest in Participant."

2.3 Cost of Construction. Section 5.5 of the Owner Participation Agreement is hereby amended and restated as follows:

"5.5 Cost of Construction. The cost of developing the Property and of constructing all improvements thereon shall be borne by Participant.

"Within ten (10) days after the request of the Executive Director, Participant shall provide to the Executive Director payroll information related to the development of the Project certified by an officer of Participant to be true and correct. In addition, Participant shall require its contractors and subcontractors to provide such certified payroll information to the Executive Director within ten (10) days of the Executive Director's request."

2.4 Section 6.1 – No Encumbrances Except for Mortgages, Deed of Trust or Other Conveyances for Financing or Development. Section 6.1 of the Owner Participation Agreement is hereby amended and restated as follows:

"6.1 No Encumbrances Except Mortgages, Deeds of Trust or Other Conveyance for Financing for Development

"Mortgages, deeds of trust or any other form of conveyance required for any reasonable method of financing are permitted after acquisition of the Property and before completion of the construction of the improvements, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the construction of the Project, and any other expenditures necessary and appropriate to develop the Property under this Agreement. Participant will notify Agency in advance of granting any mortgage or deed of trust against the Property. Participant will not enter into any conveyance for financing not previously approved in the Financing Plan without the prior

written approval of the Agency's Executive Director, which approval will not be unreasonably withheld."

2.5 Article 7 – Prohibition Against Transfer. Article 7 of the Owner Participation Agreement is hereby amended and restated as follows:

**"7. PROHIBITION AGAINST TRANSFER**

"Prior to issuance by Agency of a Certificate of Completion (referred to in Section 5.15 of this Agreement) and subject to the last sentence of this Article 7, Participant shall not assign this Agreement, nor make any total or partial sale, transfer, conveyance, assignment or subleasing of the whole or any part of the Property, or the improvements thereon, without prior written approval of Agency. Agency may withhold its approval of any proposed assignment in its sole and absolute discretion. This prohibition shall not be deemed to prevent the granting of easements or permits or the making of dedications to facilitate the development of the Property, nor shall it prohibit the following: (i) granting any security interests expressly described in this Agreement for financing the acquisition and development of the Site, or (ii) transfers approved pursuant to this Article 7."

2.6 Section 8.2 – Stipulated Taxable Assessed Value. For purposes of Section 8.2.1 of the Owner Participation Agreement, the Stipulated Value of the Property as improved with the Project will be based on the values specified in Paragraph 8(1) of the Agreement Containing Covenants Affecting Real Property recorded in the official records of Los Angeles County on September 24, 2001 as instrument number 01-1799118 (the "Agreement Containing Covenants").

2.7 Section 11.1 – Warranties, Representations, and Covenants of Participant. Section 11.1 of the Owner Participation Agreement is hereby amended and restated as follows:

**"11.1 Warranties, Representations, and Covenants of Participant**

"Participant hereby warrants, represents, and/or covenants to Agency that:

"11.1.1 Participant has no actual knowledge of, nor is it aware of, any actions, suits, material claims, legal proceedings, or any other proceedings involving the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign which, if decided adversely to Participant would be likely to have a material adverse effect on Participant's ability to develop the Property as provided in this Agreement.

"11.1.2 [Intentionally Omitted]



"11.1.3 Participant has no actual knowledge of, nor is it aware of, any event which, with the passage of time or the giving of notice, would be a default under any of its agreements which could adversely affect Participant's ability to fulfill its obligations under this Agreement.

"11.1.4 Participant has no actual knowledge, without investigation, of the presence of any hazardous materials on the Property.

"11.1.5 Participant has no actual knowledge, without investigation, of any legal or physical impediments to the development of the Property contemplated by the Scope of Development.

"11.1.6 [Intentionally omitted]

"11.1.7 It shall maintain the Property as vacant and not permit any third party to occupy any of the Property until the development has been completed.

"For breach of any of the warranties, representations, or covenants of this Section, Agency may, at its option, terminate this Agreement pursuant to Section 12.6.2 below."

2.8 Section 11.2 – Warranties, Representations, and Covenants of Agency.  
Section 11.2 of the Owner Participation Agreement is hereby amended and restated as follows:

"11.2 Warranties, Representations, and Covenants of Agency

"Agency hereby warrants, represents, and/or covenants to Participant that:

"11.2.1 Agency has no actual knowledge of, nor is it aware of, any actions, suits, material claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

"11.2.2 Agency has no actual knowledge of, nor is it aware of, any actions, suits, material claims, legal proceedings, or any other proceedings challenging the validity of the Redevelopment Plan;

"11.2.3 Agency has complied with its rules regarding the rights of owners to participate in the redevelopment of the Property;

"11.2.4 [Intentionally omitted]

"11.2.5 Agency has no actual knowledge of, nor is it aware of, any event which, with the passage of time or the

giving of notice, would be a default under any of its agreements which could adversely affect Agency's ability to fulfill its obligations under this Agreement.

"11.2.6 Agency has no actual knowledge of, nor is it aware of, any actions, suits, material claims, legal proceedings, or any other proceedings involving the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign which, if decided adversely to Agency would be likely to have a material adverse effect on Participant's ability to develop the Property as provided in this Agreement.

"11.2.7 Agency has no actual knowledge, without investigation, of the presence of any hazardous materials on the Property.

"11.2.8 Agency has no actual knowledge, without investigation, of any legal or physical impediments to the development of the Property contemplated by the Scope of Development.

"11.2.9. [Intentionally Omitted]

"11.2.10 [Intentionally Omitted]

"For breach of any of the warranties, representations, or covenants of this Section, Participant may, at its option, terminate this Agreement pursuant to Section 12.6.1 below."

2.9 Section 11.3 – Warranties, Representations, and Covenants of City.  
Section 11.3 of the Owner Participation Agreement is hereby amended and restated as follows:

"11.3 Warranties, Representations, and Covenants of City

that: "City hereby warrants, represents, and/or covenants to Participant

"11.3.1 City has no actual knowledge of, nor is it aware of, any actions, suits, material claims, legal proceedings, or any other proceedings affecting the Property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

"11.3.2 [Intentionally Omitted]

"11.3.3 [Intentionally Omitted]

"11.3.4 The zoning classification of PD-30 permits the project contemplated by this Agreement.

"11.3.5 [Intentionally Omitted]

“For breach of any of the warranties, representations, or covenants of this Section, Participant may, at its option, terminate this Agreement pursuant to Section 12.6.1 below.”

2.10 Section 12.6 – Remedies and Rights of Termination. Section 12.6 of the Owner Participation Agreement is hereby amended and restated as follows:

“12.6 Remedies and Rights of Termination

“12.6.1 Termination by Participant for Agency Default

“Provided Participant is not in default of any of the terms and conditions of this Agreement, and:

“(a) [Intentionally Omitted]

“(b) [Intentionally Omitted]

“(c) Agency or City breaches any of the representations, warranties or covenants set forth at Sections 11.2 or 11.3, as applicable, of this Agreement; or

“(d) Agency or City is in breach of any other material obligations herein,

“and such failure is not cured (or Agency or City has not commenced to cure and is not diligently prosecuting such cure) within thirty (30) days after the date of written demand from Participant, then, without limiting Participant’s rights under Section 12.4 and 12.5, Participant shall have the right to terminate this Agreement by written notice to Agency.”

“12.6.2 Termination by Agency for Participant Default

“In the event that:

“(a) Participant (or any successor in interest) assigns or attempts to assign this Agreement or any rights herein, or makes any total or partial sale, transfer, conveyance, or leasing of the whole or any part of the Property or the improvements to be developed thereon, in violation of this Agreement; or

“(b) There is any Significant Change with respect to Participant in violation of the terms of this Agreement; or

“(c) [Intentionally Omitted]

“(d) [Intentionally Omitted]

“(e) Participant fails to submit the Financing Plan or its evidence of financing in accordance

with this Agreement by the time provided therefor in the Schedule of Performance; or

“(f) Participant breaches any of the representations, warranties, or covenants set forth in Section 11.1 of this Agreement; or

“(g) Participant does not submit plans, drawings and related documents as required by Section 5.4 of this Agreement by the times respectively provided therefor in the Schedule of Performance; or

“(h) Participant is in breach of any other material obligation herein, and

“any default or failure shall not be cured within thirty (30) days after the date of written demand by Agency, or, if impossible of cure within said thirty (30) day period, then commenced to be cured within said thirty (30) day period, which cure is diligently and continuously prosecuted to completion, then this Agreement and any rights of Participant thereof arising from this Agreement may, at the option of Agency, be terminated by Agency by written notice thereof to Participant. Notwithstanding the foregoing, if Participant has not commenced construction (as that phrase is defined in Section 12.8) by July 1, 2006 (which date shall be extended by one day for each day the commencement of construction is delayed pursuant to Section 12.8.1), there shall be no cure period and the only notice required shall be notice of termination as set forth at Section 12.8.”

2.11 New Section 12.8 – Agency’s Remedies for Default After Close of Escrow.  
The Owner Participation Agreement is hereby amended by adding the following as a new Section 12.8 thereto:

“12.8 Agency’s Remedies for Default After Close of Escrow.

“12.8.1 Failure to Timely Commence Construction; Liquidated Damages. If Participant has not commenced construction of its project by the date specified in the Schedule of Performance (*i.e.*, April 1, 2006), then, commencing on said date and continuing on the first day of each month thereafter until construction has commenced, Participant shall pay Agency the amount of Five Thousand Dollars (\$5,000) (the “Monthly Liquidated Damages Amount”); provided, however, that the foregoing April 1, 2006 commencement date shall be extended by one (1) day for each day by which the plan check process exceeds eight (8) months for reasons other than the fault of

Participant. If the plan check process exceeds eight (8) months because of delays caused by Participant, then the Monthly Liquidated Damages Amount shall be payable beginning on April 1, 2006.

"(a) For purposes of this Section 12.8, the plan check process will commence on the earlier of (i) August 31, 2005 or (ii) the date Participant submits materials to City's Department of Building and Planning for plan check. For purposes of this Section 12.8, Participant shall be deemed to have commenced construction of its project when (a) City's Department of Building and Planning has issued a building permit for construction of the building on the Property (*i.e.*, not foundation only), (b) a construction contract has been executed, (c) the Project has been adequately financed and (d) the contractor is working on the Property.

"(b) Participant acknowledges that Agency's actual damages in the event construction of Participant's project is not timely commenced would be extremely difficult or impracticable to determine and acknowledges that the Monthly Liquidated Damages Amount has been agreed upon after negotiation as a reasonable estimate of Agency's damages in the event construction is not commenced as required under the Schedule of Performance. In the event this provision should be held to be void or unenforceable for any reason, Agency shall be entitled to any and all damages and remedies that Agency would have had under law or in equity in the absence of said provision.

**"12.8.2 Failure to Timely Commence Construction; Right to Purchase.** If Participant has not commenced construction on or before July 1, 2006 (which date shall be extended by one day for each day the commencement of construction is delayed pursuant to Section 12.8.1), and if Agency elects, in its sole and absolute discretion, to purchase the Property, Participant agrees that, in addition to any rights Agency may have pursuant to the Agreement Containing Covenants, Agency may request Coventry Long Beach Plaza LLC ("Coventry") to assign to Agency its rights under the Option Agreement between Coventry as "Optionee" and Participant as "Optionor" affecting the Property (the "Option Agreement"), a memorandum of which is recorded in the official records, and thereafter may exercise the option to purchase the

Property at a Purchase Price as provided in Paragraph 6 of the Assignment and Assumption Agreement.

**"12.8.3 Other Default; Right to Purchase.** In addition to the remedies provided in the Agreement Containing Covenants and above at Section 12.8.2, Participant agrees that upon a "Triggering Event" as that term is defined in the Option Agreement, and if Agency elects, in its sole and absolute discretion, to purchase the Property, Agency may request Coventry to assign to Agency its rights under the Option Agreement, and thereafter may exercise the option to purchase the Property at a Purchase Price as provided in Paragraph 6 of the Assignment and Assumption Agreement.

**"12.8.4 Failure to Timely Complete Construction; Liquidated Damages.** If Participant has not completed construction of the Project before October 1, 2007 (and Agency has not exercised its rights under this Section to purchase the Property), Participant shall pay to Agency as liquidated damages the Monthly Liquidated Damages Amount commencing on October 1, 2007 and on the first of each month thereafter until the Project has been completed for purposes of issuance of a Certificate of Completion. Participant acknowledges that Agency's actual damages in the event construction of Participant's project is not timely completed would be extremely difficult or impracticable to determine and acknowledges that the Monthly Liquidated Damages Amount has been agreed upon after negotiation as a reasonable estimate of Agency's damages in the event construction is not completed by the date required by the Schedule of Performance. In the event this provision should be held to be void or unenforceable for any reason, Agency shall be entitled to any and all damages and remedies that Agency would have had under law or in equity in the absence of said provision.

**"12.8.5 Rights of Mortgagees.** Nothing contained in this Section 12.8 shall be interpreted to adversely affect the holder of any mortgage, deed of trust or other security instrument permitted by the Owner Participation Agreement."

2.12 Section 13.12 – Successors and Assigns. Section 13.12 of the Owner Participation Agreement is hereby amended and restated as follows:

**“13.12 Successors and Assigns**

“Subject to Article 7, the terms and conditions of this Agreement shall be binding upon and inure to the benefit of any successors and assigns of City, Agency and Participant.”

2.13 Section 14.2 – Good Faith Deposit. Section 14.2 of the Owner Participation Agreement is hereby amended and restated as follows:

**“14.2 Good Faith Deposit.** Pursuant to that certain Second Implementation Agreement to Owner Participation Agreement dated \_\_\_\_\_, 2005, Participant (Promenade Loft Partners, LLC) deposited with the Agency a performance deposit (the “Performance Deposit”) in the amount of Fifty Thousand Dollars (\$50,000). At and after the Close of Escrow (whereby Participant acquires title to the Property), Agency will continue to hold the Performance Deposit as the “Good Faith Deposit” to secure Participant’s performance under this Agreement. In the event that this Agreement is terminated pursuant to Sections 12.6.2 or 12.8 or a Certificate of Completion is not issued pursuant to Section 5.15, Agency shall retain or otherwise realize upon the Good Faith Deposit. In the event that Participant is required to pay Agency the Monthly Liquidated Damages Amount (as defined at Section 12.8), Agency may deduct the Monthly Liquidated Damages Amount from the Good Faith Deposit. In the event that this Agreement is terminated pursuant to Section 12.6.1, the Good Faith Deposit (less any Monthly Liquidated Damages Amounts which may have been paid) shall be returned to the Participant. In the event that this Agreement is not terminated and a Certificate of Completion is issued pursuant to Section 15.5, the Performance Deposit (less any Monthly Liquidated Damages Amounts which may have been paid) shall be returned to Participant.”

## EXHIBIT D

### Scope of Development

A mixed-use building containing approximately 6,500 square feet of retail space on the ground floor and a total of 39 condominium units on the upper floors.



## EXHIBIT E

### Schedule of Performance

#### APPROVALS

1. Stage I Approval. Assignee shall submit revised concept drawings to the Redevelopment Agency's Design Review Subcommittee for Stage I approval. Completed.
2. Stage II Approval. Assignee shall submit schematics to the Redevelopment Agency's Design Review Subcommittee for Stage II approval. Completed.
3. Stage III Approval. Assignee shall submit design development documents to the Redevelopment Agency's Design Review Subcommittee for Stage III approval. Completed. *[Not yet complete, but to be completed prior to the close of escrow]*
4. Stage IV Approval. Assignee shall submit construction documents to the Redevelopment Agency staff for Stage IV approval. Completed. *[Not yet complete, but to be completed prior to the close of escrow]*
5. First Plan Check. Assignee shall submit materials to the City's Department of Planning and Building for plan check. Completed. *[Not yet complete, but to be completed prior to the close of escrow]*
6. Second Plan Check. Assignee shall submit revised plans to the City's Department of Planning and Building for second plan check. Completed. *[Not yet complete, but to be completed prior to the close of escrow]*
7. Third Plan Check. Assignee shall submit revised plans to the City's Department of Planning and Building for third plan check. Completed. *[Not yet complete, but to be completed prior to the close of escrow]*

8. Submission of Evidence of Financing. Assignee shall submit to Agency the Financing Plan and Evidence of Financing. Completed. *[Not yet complete, but to be completed prior to the close of escrow]*
9. Submission of Construction Contract. Assignee shall submit its construction contract to the Redevelopment Agency's Executive Director. Completed. *[Not yet complete, but to be completed prior to the close of escrow]*
10. Approval of Evidence of Financing. The Redevelopment Agency shall approve or disapprove the Financing Plan and Evidence of Financing. Completed. *[Not yet complete, but to be completed prior to the close of escrow]*
11. Approval of Construction Contract. The Redevelopment Agency shall approve or disapprove the construction contract. Completed. *[Not yet complete, but to be completed prior to the close of escrow]*
12. Close of Escrow. Assignee shall have closed on its purchase of the Site. Completed. *[Not yet complete, but to be completed on or before February 15, 2006].*
13. Building Permit. Assignee shall obtain a building permit for Assignee's project. Concurrently with the Close of Escrow.

CONSTRUCTION OF  
PROJECT

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| 14. <u>Commencement of Construction of Improvements.</u> Assignee shall commence construction of the improvements on the Site.   | On or before April 1, 2006. •  |
| 15. <u>Right of Agency to Assess Liquidated Damages for Failure to Timely Commence Construction.</u> Agency may assess the Monthly Liquidated Damages Amount for failure to timely commence construction.              | After April 1, 2006. •   |
| 16. <u>Right of Agency to Purchase Property for Failure to Commence Construction of Improvements.</u> Agency may elect to purchase the improvements on the Property if Assignee has not timely commenced construction. | After July 1, 2006. •  |
| 17. <u>Right of Agency to Assess Liquidated Damages for Failure to Timely Complete Construction.</u> Agency may assess liquidated damages for failure to timely complete construction.                                 | October 1, 2007.   |
| 18. <u>Completion of Construction of Improvements.</u> Assignee shall complete the construction of the improvements on the Site.   | Within 18 months after the date on which Assignee commences construction.  |
| 19. <u>Certificate of Completion.</u> Agency shall issue a Certificate of Completion.  | Within 30 days after Assignee's request for the Certificate and satisfaction of the requirements of Section 5.15 of the Owner Participation Agreement. |

• These dates are subject to extension pursuant to Section 12.8.1.