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OWNER PARTICIPATION AGREEMENT

By and Between

THE CITY OF LONG BEACH,

and

PACIFIC COURT – PINE SQUARE PARTNERS

(Property address: 245 Pine Avenue)

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OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT ("Agreement"), dated as of October 29, 2012, is entered into by and between the CITY OF LONG BEACH, a chartered city, AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH ("City"), and PACIFIC COURT – PINE SQUARE PARTNERS, a California general partnership ("Participant").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Participant hereby agree as follows:

1. SUBJECT OF AGREEMENT

1.1 Purpose of Agreement

The purpose of this Agreement is to allow the repositioning and development of certain real property (the "Site") within the downtown area of the City as a residential development (the "Project") and as depicted on the Site Map, Attachment No. 1 and as legally described in Attachment No. 2. The entire Site is owned by Participant. Participant, subject to the terms of this Agreement and the Scope of Development (the "Scope of Development") attached hereto as Attachment No. 3, will cause the repositioning of the Site by converting the existing Theater Space (as defined in Section 2.1.1, below) to approximately 69 residential units to be contiguous to and fully integrated into and with the existing 142 residential units (the "Project").

The Project and the fulfillment generally of this Agreement will assist the City by eliminating blight and will preserve and enhance the tax base of the City all in the vital and best interests of the City and the health, safety and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws, ordinances and requirements.

1.2 The Site

The Site is that portion of the downtown area of the City shown on the Site Map attached hereto as Attachment No. 1.

1.3 Parties to the Agreement

1.3.1 The City

City is a municipal corporation and charter city. City is the successor agency to the Redevelopment Agency of the City of Long Beach, a public body corporate and politic ("RDA") and is vested with the rights and obligations of the dissolved RDA. The City is entering into this Agreement in its proprietary capacity only.

The principal office of City, for purposes of this Agreement, is located at 333 West Ocean Boulevard, 3rd Floor, Long Beach, California 90802, Attn: Director of Development Services ("Director"). "City" as used in this Agreement is the City of Long Beach and any assignee of or successor to its rights, powers and responsibilities.

1.3.2 The Participant

The Participant is Pacific Court – Pine Square Partners, a California general partnership. The partners of Participant are Long Beach Pine Square, LLC, a California limited liability company (formerly, Tweedy Properties, LLC, a Delaware limited liability company) and Long Beach Villa La Palma, LLC, a California limited liability company (formerly Villa La Palma, LLC, a Delaware limited liability company).

The address of Participant for purposes of this Agreement is 9550 Firestone Boulevard, Suite 105, Downey, California 90241.

1.3.3 Prohibition Against Change In Ownership, Management and Control of Participant

Subject to Section 3.3, below:

(a) Participant represents and agrees that its ownership of the Site and its other undertakings pursuant to this Agreement are, and will be used, for the purpose of repositioning and developing of the Site. Participant acknowledges that, in view of:

(i) the importance of the development of the Site to the general welfare of the community; and

(ii) the fact that a change in ownership or control of Participant is, for practical purposes, a transfer or disposition of the property then owned by Participant;

the qualifications and identity of Participant, and its principals, are of particular concern to the community and City. Participant further acknowledges that it is because of such qualifications and identity that City is entering into this Agreement

with Participant. No voluntary or involuntary successor in interest of Participant shall acquire any rights or powers under this Agreement.

(b) Accordingly:

(i) Participant shall not assign all or any part of this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld; and

(ii) Without the prior written approval of City, which approval shall not be unreasonably withheld, there shall be no change in the identity of the persons or entities in control of Participant, by any method or means.

The restrictions of this Section shall terminate upon issuance by City of a Certificate of Occupancy for the Project as described in Section 3.4 of this Agreement.

2. CONDITIONS PRECEDENT TO DEVELOPMENT OF THE PROJECT.

The Site is currently developed as a retail center with a movie theater that has gone "dark", is contiguous to residential apartments also owned by Participant, and is subject to certain covenants and restrictions which affect development of the Project.

2.1 Agreements to be Terminated or Amended.

2.1.1 AMC Theater Lease. A portion (the "Theatre Space") of the Site is currently leased by Participant to AMC Theaters (the "AMC Lease") for use as a movie theater. As of the date of this Agreement, the AMC Lease is in effect; however, AMC Theaters ceased operations in the Theatre Space on November 28, 2010. The term of the AMC Lease expires by its own terms on December 31, 2012. Participant may cause the early termination of the AMC Lease; otherwise any construction performed in 2012 will not affect the Theatre Space.

2.1.2 Theatre Space Offsite Parking Agreement. Participant as the "Benefited Party" and City as successor in interest to the RDA, are parties to that certain Theatre Space Offsite Parking Agreement dated as of July 23, 1991, as amended (the "TSOPA"). Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the TSOPA. Pursuant to the TSOPA, City agreed to provide parking for the benefit of the tenant of the "Theatre Space," whether that tenant is a movie theater or some other commercial use. If the Site is developed with the Project, City will have no further obligations under the TSOPA. Participant and City agree to terminate the TSOPA prior to or concurrently with Closing (as defined below at Section 2.4) by executing a termination agreement substantially in form as attached hereto as Attachment No. 4.

2.1.3 Parking Easement Agreement. Pursuant to the TSOPA, the City executed for the benefit of the tenant of the Theatre Space the Parking Easement Agreements and recorded these agreements as an encumbrance upon the Parking Easement Locations. Participant agrees that it will execute and record, at or prior to Closing, a termination of the Parking Easement Agreements in form as attached to the Agreement to Terminate the TSOPA, Attachment No. 4.

2.1.4 Communities Facilities District. The Site is encumbered with those certain Special Tax A and Special Tax B liens, which liens secure repayment of the Community Facilities District No. 3 Special Tax Bonds (the "CFD Bonds"). The current principal balance of the CFD Bonds is approximately \$8,000,000. While the Site is encumbered by these liens, the existing subterranean parking on the Site may only be used as a public parking facility. At or prior to Closing Participant shall repay the CFD Bonds in full and obtain from the City a release of the Special Tax A and the Special Tax B liens.

2.1.5 Maintenance and Reciprocal Easement Agreement. The Site is subject to the Maintenance and Reciprocal Easement Agreement by and among Participant's predecessor-in-interest, RDA and City, dated as of September 1, 1993 (the "REA"). The REA provides, among other matters, that 233 on-site automobile parking spaces shall be permanently maintained as general public parking facilities within the Public Facilities Parcel. While the CFD Bonds are outstanding, the REA will not be terminated. The Site will not remain subject to the REA once the CFD Bonds are repaid in full. Participant has determined, through the advice of City's bond counsel, that the CFD Bonds may be repaid in full and that, upon such repayment, the REA may be terminated by recordation of a termination agreement executed by the parties thereto (the "REA Termination Agreement") substantially in form as attached hereto as Attachment No. 7.

2.1.6 Public Facilities Lease. The underground garage serving Pine Court is leased to the City pursuant to the Public Facilities Lease dated as of September 1, 1993, between Participant as Landlord and City as Tenant, and operated by Participant pursuant to the Operating Agreement for Pine Avenue Parking Facilities. The Public Facilities Lease is scheduled to terminate on August 31, 2056. Article 2 of the Public Facilities Lease provides that the lease shall not be terminated so long as the Public Facilities Bonds are outstanding, and Paragraph 7.2 includes a covenant to use the parking garage as public parking until the "Scheduled Termination," August 31, 2056. Until the CFD Bonds are repaid in full and all such bonds have been redeemed, the Public Facilities Lease cannot be terminated. Participant intends to repay the CFD Bonds and terminate the Public Facilities Lease. At such time as the CFD Bonds are repaid and the "Notice of Cancellation of Special Tax Lien" has been recorded in the official records, City will terminate the Public Facilities Lease by execution and recordation of the Agreement to Terminate the Public Facilities Lease in form as attached hereto as Attachment No. 5.

2.1.7 Agreement Containing Covenants. The Site is subject to that certain Agreement Containing Covenants dated as of June 30, 2003, and recorded in the official records of Los Angeles County on August 29, 2003, as instrument number 03-2520900 ("Covenant Agreement"). Paragraph 1.b of the Covenant Agreement provides that the Site and the Retail Parcel (as defined in the Covenant Agreement) shall be held as one parcel together with the Multifamily Parcel (as defined in the Covenant Agreement) and shall not be subdivided for the duration of the Downtown Long Beach Redevelopment Plan, and Paragraph 2 provides that the Site shall only be used for retail and commercial purposes. Provided that all other conditions precedent to development of the Site as contained in this Section 2.1 are satisfied, City agrees to amend the Covenant Agreement to (a) allow the subdivision of the Site (b) remove the restriction that the Retail Parcel and the Multifamily Parcel (as those terms are defined in the Covenant Agreement) shall be held as one parcel, and (c) to permit use of the Site for residential uses, by the execution and recordation of an First Amendment to Agreement Containing Covenants substantially in form as attached hereto as Attachment No. 6. In addition, because the REA is being terminated, the Covenants Agreement will be amended to include an obligation to maintain the improvements and landscaping on the Property in accordance with reasonable standards.

2.2 Submission of Evidence of Financing Commitments

Participant shall submit to the Director with a copy to the Deputy Director evidence that Participant or its principal or affiliate has sufficient equity capital and firm and binding commitments for financing necessary for the development of the Site in accordance with this Agreement and the Schedule of Performance. The Director shall approve or disapprove such evidence of financing commitments within seven (7) business days; failure to disapprove Participant's evidence of financing shall be deemed an approval. Approval by the Director shall not be unreasonably withheld. Such evidence of financing shall include:

2.2.1 Copies of all conditional and firm financing commitments. Conditional commitments shall be firm and binding commitments (subject only to the condition that the final plans conform to the approved preliminary plans and other conditions satisfactory to the City) and shall contain an agreement that the security instruments for construction financing required under the commitment shall record next in order to the First Amendment to Agreement Containing Covenants;

2.2.2 Proof of acceptance of each loan commitment by Participant required to fund the financing commitments; and

2.2.3 Proof of availability of any equity capital contributions that may be required for the development of the Site.

2.3 Conditions Precedent to Recordation of First Amendment

City shall not be obligated to execute and record the First Amendment to Agreement Containing Covenants until the Director has determined, in her reasonable discretion, that the following conditions have been satisfied:

2.3.1 The Director has approved Participant's evidence of financing.

2.3.2 City has approved the Final Construction Drawings and related documents for the development of the Project.

2.3.3 The Director has approved Participant's construction budget for the Project.

2.3.4 Participant has provided City with a copy of its construction contract with Merona Construction, Inc. or other reputable, licensed contractor providing for the development of the Project in accordance with the Scope of Development. City acknowledges that Merona Construction, Inc., is affiliated with Participant through common ownership. If Participant determines to enter into a construction contract with a different contractor, such contractor and contract shall be subject to City's review and approval, which approval shall not be unreasonably withheld.

2.3.5 Participant shall have executed and delivered to City or the Title Company the following documents in recordable form: the Agreement to Terminate the Parking Easements, the Agreement to Terminate the REA, the Agreement to Terminate the Public Facilities Lease, which document shall have been executed by the City, and the First Amendment to Agreement Containing Covenants.

2.3.6 Participant shall have executed and delivered to the City the Agreement to Terminate the TSOPA.

2.3.7 Participant shall have presented proof acceptable to the Director that the lien of Special Tax A has been, or at Closing will be, extinguished.

2.3.8 Participant shall have presented proof acceptable to the Director that it has obtained insurance in accordance with the requirements of Section 3.1.11 below.

2.3.9 Participant shall have obtained, or concurrently with Closing and payment of appropriate fees shall obtain, a demolition permit or a building permit for the Project.

2.3.10 Participant shall have complied with the Percent for Public Art Program as provided below at Section 7.3.

2.3.11 Participant shall not be in material default under this Agreement.

Within seven (7) business days after receipt from Participant of a written statement that all of the above conditions precedent to release of the covenants have been satisfied, City shall either notify Participant that it will proceed with release of the covenants, or deliver a written statement setting forth those conditions precedent which City submits have not been satisfied. The failure by City to respond to Participant's statement that the conditions precedent have been satisfied shall be deemed to constitute a waiver of the conditions precedent set forth above.

2.4 Closing

The City agrees to open an order ("Title Order") with First American Title Insurance Company or other title insurance company selected by City and reasonably acceptable to Participant (the "Title Company") within the time set forth in the Schedule of Performance for the recordation of the various recordable instruments (the "Instruments") set forth above at Section 2.1. The Title Order may be coordinated with any escrow opened by Participant for the closing of Participant's construction loan, if any. In addition, in the event of a conflict between these instructions and instructions contained in joint instructions to escrow agreed to by City, the joint instructions shall control. This Agreement shall constitute the joint instructions of the City and Participant with respect to recordation of the Instruments. Participant shall pay all costs incurred in connection with escrow, title and the recordation of the Instruments.

The City shall timely and properly execute, acknowledge and deliver the Instruments.

The Title Company is authorized to:

- (a) Pay and charge Participant for any fees, charges and costs payable under this Section;
- (b) Record the Instruments with the Los Angeles County Recorder in the following order: the Agreement to Terminate the Parking Easements, the Agreement to Terminate the REA, the Agreement to Terminate the Public Facilities Lease, and the First Amendment to Agreement Containing Covenants. The date the Instruments are recorded in the official records is referred to as the "Closing;"
- (c) Deliver any documents to the parties entitled thereto when the conditions of this Agreement have been fulfilled by the City and Participant, and the City authorizes the Title Company to do so.

Upon recordation of the Instruments, City shall deliver to Participant the fully executed Agreement to Terminate the TSOPA.

If the Title Company is not able to record the Instruments pursuant to this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, demand the return of its money, papers, or documents from the Title Company. No demand for return shall be recognized until ten (10) days after the Title Company shall have mailed copies of such demand to the other party or parties at the address of its principal place of business. Objections, if any, shall be raised by written notice to the Title Company and to the other party within the 10 day period, in which event, the Title Company is authorized to hold the Instruments until instructed by a mutual agreement of the parties or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the Closing shall occur as soon as possible.

The Title Company shall not be obligated to return any such money, papers, or documents except upon the written instructions of both the City and Participant, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

Any amendment to these instructions shall be in writing and signed by both the City and Participant. At the time of any amendment the Title Company shall agree to carry out its duties as Title Company under such amendment.

All communications from the Title Company to the City or Participant shall be directed to the addresses and in the manner established in Section 6.1 of this Agreement for notices, demands, and communications between the City and Participant.

The liability of the Title Company under this Agreement is limited to performance of the obligations imposed upon it under Sections 2.1 through 2.4 (inclusive) of this Agreement.

If Closing has not occurred by the time provided in the Schedule of Performance, City may, in its sole discretion, terminate this Agreement.

2.5 Warranties, Representations, and Covenants of Participant.

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

2.5.1 Participant has no actual knowledge of, nor is it aware of, any actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign;

2.5.2 during its ownership of the Site, Participant has received no percentage rent on account of the AMC Lease;

2.5.3 until the Closing, Participant shall not do anything to impair Participant's title to the Site which would prohibit or impair conversion of the Site in the manner required by this Agreement; and

2.5.4 until the Closing, Participant shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true as of Closing, promptly give written notice of such fact or condition to City.

For breach of any of the warranties, representations, or covenants of this Section, City may, at its option, terminate this Agreement pursuant to Section 5.6.2 below.

3. CONVERSION OF THE SITE

3.1 Conversion of the Site.

3.1.1 Scope of Conversion.

The Site shall be converted by Participant in accordance with and within the limitations established therefor in the "Scope of Development," attached hereto as Attachment No. 3 and incorporated herein by reference, and plans approved by City pursuant hereto.

3.1.2 Basic Concept Drawings

The Participant has prepared and submitted to the City the Site Plan and Development Review Drawings and related documents for the conversion of the Site, which drawings and related documents were approved upon execution of this Agreement by City.

The conversion will be as generally established in the Site Plan and Development Review Drawings and related documents.

3.1.3 Site Plans and Related Documents

The Participant has prepared and submitted site plans, elevations and related documents in preliminary stages for the conversion of the Site to the City for review and written approval. Any items so submitted and approved in writing by the City will not be subject to subsequent disapproval by City.

3.1.4 [Reserved]

3.1.5 City and Other Governmental Permits

Before commencement of conversion of any building, structures or other work of improvement on or with the Site, the Participant will at its own expense secure or cause to be secured any and all permits which may be required by the City or any other federal, state or local governmental agency having jurisdiction over such demolition, clearance, construction, development or work. To the extent that any environmental document under the California Environmental Quality Act is required with respect to the conversion under this Agreement, the City will prepare such documents at Participant's expense. Participant agrees to provide all information, assistance and cooperation necessary to prepare any required documents.

Nothing contained herein shall be deemed to entitle Participant to any City permit or other City approval necessary for the conversion of the Site, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Participant, (b) supersede, nullify or amend any condition which may be imposed by the City in connection with approval of the conversion described herein, (c) guarantee to Participant or any other party any profits from the conversion of the Site, or (d) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864. Without cost to City, City shall provide appropriate technical assistance to Participant in connection with Participant's obtaining all necessary entitlements, permits and approvals for the construction of the Improvements. City is entering into this Agreement in its proprietary capacity only.

3.1.6 Construction Costs and Schedule

The cost of converting the Site and constructing all improvements, including costs associated with implementing mitigation measures as required to comply with the California Environmental Quality Act, will be borne by the Participant.

The Participant will begin and complete all construction and conversion within the times specified in the Schedule of Performance. The Schedule of Performance is subject to revision from time to time as mutually agreed on in writing between the Participant and City. The Director, in her reasonable discretion, may extend the times for performance as set forth in the Schedule of Performance up to a cumulative total of one hundred eighty (180) days.

3.1.7 Hiring Practices and Preferences; Job Training

To assist in providing job opportunities to lower income residents of the City, Participant shall utilize the services of the City's Pacific Gateway Workforce Investment Network (the "Network") as provided in this Section. The Network administers a Job Training Program pursuant to state and federal law which program provides opportunities to local residents and contractors to apply and/or bid for work on projects developed within the City (the "Network Services"). Participant and/or its contractor or subcontractors shall invite the executive director of the Network to attend any pre-bid conferences in order to ensure that the contractor and its subcontractors understand the requirements of this

Section. In addition, prior to the commencement of construction Participant shall meet with the executive director of the Network (or designee) in order to notify the Network of anticipated workforce needs. Thereafter, Participant shall provide to the Network notice of opportunities for training, employment or bidding for contracts in order that the Network may provide local residents and contractors with the ability to apply and/or bid for work on the Project. Participant shall in good faith and as practicable utilize, and shall require its contractors and subcontractors to utilize, in good faith and as practicable, the Network Services in their hiring programs in connection with the development of the Project. For Participant's Contractor or subcontractors that are unionized, such Contractor or subcontractors may notify the union representative of anticipated workforce needs in lieu of notifying the Network. The ultimate determination of employment or contracting, however, shall remain with Participant and its contractors and subcontractors in their sole discretion.

For any portion of the Project subject to the Prevailing Wage law, Participant shall require its contractors and their subcontractors to submit to Participant their certified payrolls for each pay day, and Participant shall maintain such certified payrolls on behalf of the City. Participant shall submit such certified payrolls to the Network within thirty (30) days after issuance of the Certificate of Occupancy. Participant shall maintain the certified payrolls for at least two (2) years after the issuance of a certificate of occupancy for the Project, or longer if required by the California Department of Industrial Relations.

3.1.8 Rights of Access

Representatives of City and City shall have the reasonable right of access to the Site throughout the Project without charge or fees, at normal construction hours, during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. City agrees to and shall indemnify, defend and hold harmless Participant from any and all injuries or damages arising out of the negligence of said representative while on the Site.

3.1.9 Local, State and Federal Laws; Prevailing Wage

Participant shall carry out the construction of the improvements on the Site in conformity with all applicable laws, including all applicable federal and state labor standards. City makes no representation that the Project is or is not a "public work" as defined in California Labor Code Section 1720.

Prevailing Wage. Participant agrees that all public work (as defined in California Labor Code Section 1720) performed pursuant to this Agreement (the "work") shall comply with the requirements of California Labor Code Sections 1770 et seq. In all bid specifications, contracts and subcontracts for the work, Participant (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or

subcontract must contain the following provision:

It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code Section 1775 and the payroll record keeping requirements of California Labor Code Section 1771.

Participant shall indemnify and hold City harmless from and against any and all claims, demands, causes of action, obligations, damages, liabilities, costs and expenses, including reasonable attorneys' fees, that may be asserted against or incurred by City with respect to or in any way arising from Participant's compliance with or failure to comply with applicable laws, including all applicable federal and state labor standards including without limitation the requirements of Labor Code Section 1720.

3.1.10 Nondiscrimination During Construction

Participant for itself, its successors and assigns, agrees that in the construction of the improvements on the Site provided for in this Agreement, Participant will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, sexual orientation, AIDS, AIDS-related condition, age, marital status, disability or handicap, or veteran status.

3.1.11 Indemnification; Bodily Injury and Property Damage Insurance

Participant agrees to and shall defend, indemnify and hold City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person resulting from the negligent or intentional acts or omissions of Participant, its officers, agents or employees in the performance of this Agreement.

This indemnification provision supplements and in no way limits the scope of the indemnification set out elsewhere in this Agreement. The indemnity obligation of Participant under this Section 3.1.11 shall survive the expiration or termination, for any reason, of this Agreement.

(a) Required Insurance Coverage. Prior to any entry on the Site, until the issuance of the Certificate of Occupancy, Participant shall procure and maintain, at Participant's expense, the following insurance coverages from insurance carriers authorized to write insurance in the State of California or nonadmitted insurers listed in the California Department of Insurance List of Eligible Surplus Line Insurers (LESLI) with a current rating of or equivalent to A:VIII by A.M. Best Company:

(i) Commercial general liability insurance equivalent in scope to ISO form CG 00 01 11 85 or 11 88 in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate. Such coverage shall include but shall not be limited to independent contractors liability, broad form contractual liability, cross liability protection, and products and completed operations liability. The City and its officials, employees, and agents shall be named as additional insureds by endorsement equivalent in scope to ISO form CG 20 26 11 85 with respect to liability arising out of activities by or on behalf of Participant or in connection with the development, use or occupancy of the Site. This insurance shall contain no special limitations on the scope of protection afforded to the City and its officials, employees, and agents.

(ii) Commercial automobile liability insurance equivalent in scope to ISO form CA 00 01 06 92 covering Auto Symbol 1 (Any Auto) in an amount not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

(iii) Professional liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim covering the work of any person providing architectural, engineering, environmental, landscape architectural, surveying, project management, soils engineering, or other professional services with respect to the development and construction of the Facilities. If such insurance is written on a claims-made basis, it must be provided with a pre-paid, one-year extended reporting endorsement incepting at the date of the Certificate of Occupancy.

(iv) "All Risk" Property insurance, including builder's risk protection during the course of construction and debris removal, in an amount sufficient to cover the full replacement value of all buildings and structural improvements erected on the Site. The City shall be named as an additional insured and loss payee under a standard loss payable endorsement.

Participant shall also obtain coverage for the perils of earthquake and flood, if available from responsible insurance companies at commercially reasonable rates, and the City shall be named as an additional insured and loss payee under a standard loss payable endorsement.

(v) All Risk property insurance in an amount sufficient to cover the full replacement value of Participant's personal property, improvements and equipment on the Site.

(vi) Workers' compensation insurance as required by the Labor Code of the State of California and endorsed, as applicable, to include United States Longshoremen and Harbor Workers' Act coverage, Jones' Act coverage, and

employer's liability insurance with minimum limits of One Million Dollars (\$1,000,000) per accident.

(b) Insurance Requirements for Participant's Contractors and Subcontractors. Participant shall require Participant's contractors and subcontractors to meet the insurance requirements herein as applicable. With respect to Section 3.1.11(a)(i), the limit applicable to this Section shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate. With respect to Section 3.1.11(a)(iv), this insurance is not applicable to this Section. In addition, City's Risk Manager shall consider contractors' and subcontractors' written requests for modification of the insurance requirements based on the scope of work to be performed.

(c) Waiver of Subrogation. With respect to damage to property, City and Participant hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.

(d) Self-insurance and Deductibles. Any self-insurance program, self-insured retention, or deductible must be approved separately in writing by City's Risk Manager or designee and shall protect the City and its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

(e) Cancellation; Severability of Interests; Primary and Noncontributing. In addition to the endorsements specified herein, each insurance policy required herein shall also be endorsed to provide as follows: (a) that coverage shall not be voided, canceled or changed by either party except after thirty (30) days prior written notice to City, (b) that the insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; and (c) and that coverage shall be primary and not contributing to any other insurance or self-insurance maintained by City and its officials, employees, or agents.

(f) Delivery of Insurance Documentation.

(i) Prior to the start of performance under this Agreement, Participant shall deliver to the Director with a copy to the Deputy Director certificates of insurance and required endorsements evidencing the insurance coverage required by this Agreement for approval as to sufficiency and form, including any insurance required of Participant's contractors or subcontractors. The certificates and endorsements shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf.

(ii) Participant shall, at least thirty (30) days prior to expiration of the policies of insurance required herein, furnish City with certificates of insurance and endorsements evidencing renewal of the insurance required herein. City reserves the right to require complete certified copies of all policies of the Participant or any of the Participant's contractors or subcontractors at any time.

(g) No Limitation of Liability. The insurance required herein shall not be deemed to limit Participant's liability relating to performance under this Agreement. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Agreement. Participant understands and agrees that, notwithstanding any insurance, Participant is obligated to defend, indemnify, and hold City and its officials, employees, and agents harmless hereunder for the full and total amount of any damage, injury, loss, expense, cost, or liability caused by the condition of the Site or in any manner connected with or attributed to the acts, omissions or operations of Participant, its officers, agents, contractors, subcontractors, employees, Participants, or visitors, or their use, misuse, or neglect of the Site.

(h) Books and Records. Participant agrees to make available to City all books, records and other information relating to the insurance coverage required by this Agreement during normal business hours.

(i) Amendments to the Insurance Provisions.

(i) If in the opinion of City's Risk Manager from time to time, the amount, scope, or type of insurance coverage specified herein is not adequate, Participant shall amend its insurance as required by City's Risk Manager or designee.

(ii) Any modification or waiver of the insurance requirements herein shall be made only with the written approval and sole discretion of the City's Risk Manager or designee after a written request from Participant.

3.2 Prohibition Against Transfer

Prior to the recordation by the City of a Certificate of Occupancy of construction for the Site, and except as described in Section 3.3., below, the Participant will not make any total or partial sale, transfer or conveyance, or assign the whole or any part of, the Site or the buildings or structures on the Site without the prior written consent of the Director, which consent shall not be unreasonably withheld. This prohibition will not be deemed to prevent the granting of temporary easements or permits to facilitate the development of the Site.

No transfer or assignment will be deemed to relieve the Participant or any other party from any obligations under this Agreement.

3.3 Security Financing; Right of Holders

3.3.1 No Encumbrances Except Mortgages, Deeds of Trust or Other Conveyance for Financing for Conversion

Mortgages, deeds of trust or any other form of conveyance required for any reasonable method of financing are permitted before completion of the construction of the improvements, but only for the purpose of securing loans of funds to be used for financing the construction of the improvements on the Site, and any other expenditures necessary and appropriate to convert the Site under this Agreement, including the repayment of the CFD Bonds. The Participant will notify the City in advance of any mortgage or deed of trust. The Participant will not enter into any conveyance for financing without the prior written approval of the Director, which approval shall not be unreasonably withheld.

3.3.2 Holder Not Obligated to Construct Improvements

The holder of any mortgage or deed of trust or other security interest authorized by this Agreement will in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee construction or completion; nor will any covenant or any other provision in the deed be construed so to obligate the holder. Nothing in this Agreement will be deemed to construe, permit, or authorize any holder to devote the Site or any part of it to any uses, or to construct any improvements authorized by this Agreement.

3.3.3 Notice of Default to Mortgagee or, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the City will deliver any notice or demand to the Participant with respect to any breach or default by the Participant in completion of construction of the improvements, the City will at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement a copy of such notice or demand. Each holder will (insofar as the rights of the City are concerned) have the right at its option within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any default and to add the cost to the security interest debt and the lien on its security interest. Nothing contained in this Agreement will be deemed to permit or authorize the holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Participant's obligations to City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform the obligations. Any holder properly completing the improvements will be entitled, upon written request made to the City, to a Certificate of Occupancy from the City.

3.3.4 Failure of Holder to Complete Improvements

In any case where three months after default by the Participant in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance on the Site or any part of it has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt. If the ownership of the Site or any part of it has vested in the holder, the City, if it so desires, will be entitled to a conveyance from the holder to the City of the Site or any part on payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings.
- b. All expenses with respect to foreclosure.
- c. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site.
- d. The costs of any improvements made by such holder.
- e. An amount equivalent to the interest that would have accrued on the aggregate of the amounts had all the amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

3.3.5 Right of the City to Cure Mortgage, Deed of Trust Default or Other Security Interest Default

In the event of a default or breach by the Participant of a mortgage, deed of trust or other security interest prior to the recordation of a Certificate of Occupancy for the improvements on the Site and the holder of any security interest has not exercised its option to construct, the City may cure the default. In that event, the City will be entitled to reimbursement from the Participant of all costs and expenses incurred by the City in curing the default. The City will also be entitled to a lien on the Site to the extent of such costs and disbursements. Any lien will be subject to mortgages, deeds of trust or other forms of financing executed for the sole purpose of obtaining funds to convert the Site.

3.4 Certificate of Occupancy

Upon completion of all construction to be completed by the Participant on the Site, Participant shall apply to the Building and Safety Bureau for the issuance of a Certificate of Occupancy, and shall deliver a copy of such certificate to the Director when received.

4. USE OF THE SITE

4.1 Uses

Participant covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof that during construction and thereafter, Participant, such successors, and such assigns shall convert and devote the Site to the uses permitted in this Agreement and plans, drawings and related documents approved by City pursuant hereto.

4.2 Obligation to Refrain from Discrimination

Participant covenants and agrees for itself, its successors and its assigns in interest to the Site or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or veteran status, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land. Participant agrees that compliance with the Americans with Disabilities Act ("ADA") shall be its sole responsibility and shall defend, indemnify and hold harmless City and the City of Long Beach for any liability arising from failure to comply therewith.

4.3 Form of Nondiscrimination and Nonsegregation Clauses

Participant shall refrain from restricting the rental, sale or lease of the Site on the basis of sex, sexual orientation, marital status, race, color, creed, religion, ancestry, national origin or veteran status of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

4.3.1 In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, 12955.2 of

the Government Code or veteran status, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

4.3.2 In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code or veteran status, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

4.3.3 In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code or veteran status, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

4.4 Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Site and taxes upon this Agreement or any rights hereunder levied, assessed, or imposed after conveyance of title shall be paid by Participant.

4.5 Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on Participant and any successor in interest to the Site, or any part thereof, for the benefit and in favor of City, its successors and assigns.

The covenants of Participant contained in this Agreement shall remain in effect with respect to each parcel of the Site until the Certificate of Occupancy for the Project is recorded against the Site, at which time the Grant Deed recorded as Instrument No. 03-2520898 on August 29, 2003 in the Official Records of the Recorder's Office of Los Angeles County and the Covenants Agreement as amended by the First Amendment to Agreement Containing Covenants shall control.

5. DEFAULTS, REMEDIES AND TERMINATION

5.1 Defaults - General

Subject to the extensions of time set forth in Section 6.7 of this Agreement, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.2 Legal Actions

5.2.1 Institution of Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions may be instituted in the Superior Court of the County of Los Angeles, State of California or in the Federal District Court in the Central District of California.

5.2.2 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

5.3 Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

5.4 Damages

If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the defaulting party shall be liable to the nondefaulting party for any damages caused by such default, and the nondefaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

5.5 Specific Performance

If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the nondefaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

5.6 Remedies and Rights of Termination

5.6.1 Termination by Participant for City Default

Provided Participant is not in material default of any of the terms and conditions of this Agreement, and City refuses to negotiate in good faith with respect to the Instruments as set forth above at Section 2.1, and such failure is not cured (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 Participant shall have the right to terminate this Agreement by written notice to City. In such event, the good faith deposit referred to in Section 7.2 of this Agreement shall be returned to Participant.

5.6.2 Termination by City 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 subleasing of the whole or any part of the Site or the improvements to be developed thereon, in violation of this Agreement; or

(b) There is any change in the ownership or identity of Participant;
or

(c) Participant breaches any of the representations, warranties, or covenants set forth in Section 2.4 of this Agreement; or

(d) Participant does not submit plans, drawings and related documents as required by Section 3.1 of this Agreement by the times respectively provided therefor in the Schedule of Performance; or

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

any default or failure referred to in subdivisions (a) through (e) of this Section 5.6.2 shall not be cured within thirty (30) days after the date of written demand by City, 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 within ninety (90) days after the date of written demand by City, then this Agreement and any rights of Participant or transferee thereof arising from this Agreement may, at the option of City, be terminated by City by written notice thereof to Participant. In such event, the good faith deposit referred to in Section 7.2 of this Agreement shall be retained by City as liquidated damages.

NOTWITHSTANDING ANY CONTRARY PROVISION CONTAINED HEREIN, IN THE EVENT THIS AGREEMENT IS TERMINATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF PARTICIPANT, REMAINING AMOUNTS OF THE GOOD FAITH DEPOSIT SHALL BE RETAINED BY CITY AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY PARTICIPANT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE PERFORMANCE DEPOSIT HAS BEEN AGREED ON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES AND AS CITY'S EXCLUSIVE REMEDY AGAINST PARTICIPANT IN THE EVENT OF A DEFAULT ON THE PART OF PARTICIPANT. IN THE EVENT THIS PROVISION SHOULD BE HELD TO BE VOID OR UNENFORCEABLE FOR ANY REASON, CITY SHALL BE ENTITLED TO ANY AND ALL DAMAGES AND REMEDIES WHICH CITY WOULD HAVE HAD UNDER LAW OR IN EQUITY IN THE ABSENCE OF SAID PROVISION.

CITY AND PARTICIPANT ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF, AND CONFIRM THE ACCURACY OF THE STATEMENTS MADE IN THIS PARAGRAPH AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

City's Initials SF Assistant City Manager Participant's Initials B

5.6.3 Liquidated Damages.

The parties agree that under certain circumstances as set forth in this Subsection 5.6.3, City may assess liquidated damages in the amounts set forth below. Liquidated damages may be assessed at any time prior to the issuance of a Certificate of Occupancy.

a. Hours of Construction. Participant shall comply with the City's permitted hours of construction (*i.e.*, 7 a.m. until 7 p.m., Monday through Friday, and 9 a.m. until 6 p.m. on Saturday). With the prior written consent of the Director, Participant may undertake construction activities at times other than the permitted hours of construction. If Participant undertakes construction activities at times other than the permitted hours of construction without the Director prior written consent, the Director shall deliver written notice to Participant of violation of this Subsection. Commencing with the third violation and for each subsequent violation of this Subsection, the Director may, after sending written notice to Participant of the violation, assess liquidated damages against the Participant in the amount of five thousand dollars (\$5,000) per violation, and withdraw such amount from the Performance Deposit.

b. Failure to Comply with Approved Plans and Drawings. If the Project as constructed materially deviates from the approved plans and drawings, the Director may assess liquidated damages as provided in this Subsection. Prior to constructing any component of the Project which materially deviates from the approved plans and drawings Participant shall request in writing that the Director approve such material deviation, which approval may be withheld in the Director's sole and absolute discretion. If the Director determines that a component of the Project may materially deviate from the approved plans and drawings, the Director shall notify Participant as soon as is reasonably practicable of such deviation and request that Participant correct the identified material deviation. If Participant fails to correct the identified deviation prior to issuance of a certificate of occupancy, the Director may assess liquidated damages against Participant in the amount of five thousand dollars (\$5,000) for each month such deviation remains uncorrected (but subject to the force majeure provisions of Section 6.7 below) and withdraw a portion of such amount from the Performance Deposit.

c. Completion of Construction. If Participant fails to complete construction (as evidenced by the issuance of a Certificate of Occupancy) by the time set forth therefor in the Schedule of Performance for reasons other than *force majeure* (see Section 6.8), the Director may, without notice, assess liquidated damages in the amount of five thousand dollars (\$5,000) for every thirty (30) days completion of the Project is delayed, and withdraw such amount from the Performance Deposit.

d. Acknowledgement. **NOTWITHSTANDING ANY CONTRARY PROVISION CONTAINED HEREIN, IN THE EVENT PARTICIPANT IS IN VIOLATION OF ONE OR MORE OF SUBSECTIONS a. THROUGH e., INCLUSIVE, CITY MAY RETAIN THE AMOUNTS AS SET FORTH IN THOSE SUBSECTIONS FROM THE PERFORMANCE DEPOSIT AS LIQUIDATED DAMAGES; PROVIDED, HOWEVER, THAT IF THE PERFORMANCE DEPOSIT HAS BEEN DEPLETED, THE LIQUIDATED DAMAGES AMOUNT MAY BE ASSESSED AGAINST PARTICIPANT AND SHALL BE DUE AND PAYABLE WITHIN THIRTY (30) DAYS AFTER ASSESSMENT; AMOUNTS NOT PAID WHEN DUE SHALL BEAR INTEREST AT THE HIGHEST LEGAL RATE UNTIL PAID. THE PARTIES ACKNOWLEDGE THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF SUCH VIOLATIONS BY PARTICIPANT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS ABOVE AT SUBSECTION 5.6.2, THE PARTIES ACKNOWLEDGE THAT THE LIQUIDATED DAMAGES AMOUNT FOR EACH SUCH VIOLATION HAS BEEN AGREED ON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES AND AS CITY'S EXCLUSIVE REMEDY AGAINST PARTICIPANT IN THE EVENT OF THE VIOLATIONS AS DESCRIBED ABOVE ON THE PART OF PARTICIPANT. IN THE EVENT THIS PROVISION SHOULD BE HELD TO BE VOID OR UNENFORCEABLE FOR ANY REASON, CITY SHALL BE ENTITLED TO ANY AND ALL DAMAGES AND REMEDIES WHICH CITY WOULD HAVE HAD UNDER LAW OR IN EQUITY IN THE ABSENCE OF SAID PROVISION.**

CITY AND PARTICIPANT ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF, AND CONFIRM THE ACCURACY OF THE STATEMENTS MADE IN THIS SECTION AND BY THEIR INITIALS ABOVE AT SUBSECTION 5.6.2 (IN CONNECTION WITH LIQUIDATED DAMAGES UPON TERMINATION BY CITY PRIOR TO CONVEYANCE) AGREE TO BE BOUND BY ITS TERMS.

6. GENERAL PROVISIONS

6.1 Notices, Demands and Communications Between the Parties

All notices under this Agreement shall be in writing and shall be effective upon

receipt whether delivered by personal delivery or recognized overnight delivery service, telecopy, or sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the respective parties as follows:

If to Participant: Pacific Court – Pine Square Partners
9550 Firestone Blvd., Suite 105
Downey, California 90241
Attn: Armando Delgado

If to City: The City of Long Beach
333 West Ocean Boulevard, 3rd Floor
Long Beach, California 90802
Attn: Director of Development Services

With a copy to: Office of the City Attorney
City of Long Beach
333 West Ocean Boulevard, 3rd Floor
Long Beach, California 90802
Attn: Assistant City Attorney

Any party can notify the other party of their change of address by notifying the other party in writing of the new address.

6.2 Conflicts of Interest

No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

6.3 Warranty Against Payment of Consideration for Agreement

Participant warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, attorneys, and public relations consultants.

6.4 Nonliability of City Officials and Employees

No member, official or employee of City shall be personally liable to Participant, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Participant or successor, or on any obligation under the terms of this Agreement.

6.5 Attorney's Fees

In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out of court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including actual attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees (collectively "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include, without limitation, attorneys' fees, costs and expenses incurred in (i) postjudgment motions, (ii) contempt proceeding, (iii) garnishment, levy, and debtor and third party examination, (iv) discovery, and (v) bankruptcy litigation.

6.6 Approval by City and Participant

Wherever this Agreement requires City or Participant to approve any contract, document, plan, proposal, specification, drawing or other matter, such approval shall not be unreasonably withheld or delayed, unless expressly provided to the contrary.

6.7 Force Majeure

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, or suppliers; acts of the other party; acts or failure to act of the City or any other public or governmental agency or entity (other than that acts or failure to act of the City or the City shall not excuse performance by the City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by mutual agreement between the City and Participant.

6.8 Real Estate Commissions

The City shall not be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement. The City and Participant each

represent that neither has engaged any broker, agent or finder in connection with this transaction. In the event of any claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement, then Participant shall indemnify, save harmless and defend City from and against such claims.

6.9 Representations and Warranties of Participant.

Participant hereby covenants that the following representations and warranties of Participant are true as of the date of this Agreement and shall be true and correct as of the Closing. City's rights with respect to the following representations and warranties shall survive the Closing.

6.9.1 Power and Authority of Participant.

Participant is a general partnership, duly organized, validly existing and in good standing under the laws of the State of California. Participant has the requisite right, power and authority to enter into and carry out the terms of this Agreement and the execution and delivery hereof and of all other instruments referred to herein. The person(s) executing this Agreement on behalf of Participant has been duly authorized to do so. The performance by Participant of Participant's obligations hereunder will not violate or constitute an event of default under the terms and provisions of any material agreement, document or instrument to which Participant is a party or by which Participant is bound. All proceedings required to be taken by or on behalf of Participant to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by Participant of its obligations under this Agreement, including, without limitation, the consent or approval of any bankruptcy or other court having jurisdiction over Participant.

6.9.2 Validity of Agreement.

This Agreement is a valid and binding obligation of Participant, enforceable against Participant in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the rights of creditors generally and general equitable principles.

6.9.3 No Bankruptcy Proceedings.

Participant has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Participant's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Participant's assets, or (iv) suffered the attachment or other judicial seizure of all or substantially all of Participant's assets.

7. SPECIAL PROVISIONS

7.1 Right to Estoppel Certificates

Each party, within ten (10) days after written notice from the other party, shall execute and deliver to the other party a certificate stating that this Agreement is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate shall also state whether or not the requesting party is in default in the performance of the Agreement, and whether or not the requesting party has breached the Agreement and would be in default with just the giving of notice.

7.2 Good Faith Deposit

Participant shall deposit or maintain with the City a performance deposit (the "Performance Deposit") in the amount of Ten Thousand Dollars (\$10,000). Pursuant to the Memorandum of Understanding between the parties dated as of January 27, 2011, Participant paid a good faith deposit (the "MOU Deposit") of Thirty Five Thousand Dollars (\$35,000.00). City has expended approximately Eight Thousand Dollars (\$8,000) for third party costs incurred in connection with the MOU and to prepare further agreements with Participant. The remaining amount of the MOU Deposit shall be held by the City as the Performance Deposit. At any time that the amount of the Performance Deposit held by City is less than Ten Thousand Dollars (\$10,000), upon the written request of City, Participant shall replenish the Performance Deposit to the amount of Ten Thousand Dollars (\$10,000). In the event that this Agreement is terminated pursuant to Section 5.6.2, or a Certificate of Occupancy is not issued pursuant to Section 3.4, City shall retain the Performance Deposit. In the event that this Agreement is terminated pursuant to Section 5.6.1, the Performance Deposit shall be returned to the Participant. In the event that this Agreement is not terminated and a Certificate of Occupancy is issued pursuant to Section 3.4 below, the Performance Deposit shall be returned to Participant.

7.3 Percent for Public Art

Participant shall comply with the "Percent for Public Art Guidelines" established by City and attached hereto as Attachment No. 9. Participant's percent for public art fee shall be based upon its total project costs for the Project not including those costs attributable to tenant improvements. Based upon Participant's pro forma budget for the Project, the parties estimate the public art fee to be approximately \$14,000, all of which shall be paid by Participant to the Long Beach Arts Council.

8. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in three (3) duplicate originals each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City or Participant, and all amendments hereto must be in writing and signed by the appropriate authorities of City and Participant.

9. TIME FOR ACCEPTANCE OF AGREEMENT BY CITY

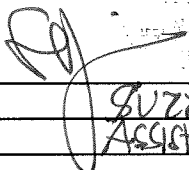
This Agreement, when executed by Participant and delivered to City, must be approved and executed by City within sixty (60) days after the submission by Participant to City of an executed original of this Agreement, or this Agreement may be withdrawn by Participant by written notice to City. The effective date of this Agreement shall be the date it shall have been signed by City.

IN WITNESS WHEREOF, City and Participant have executed this Agreement as of the date set opposite their signatures.

CITY

THE CITY OF LONG BEACH, a municipal corporation and charter city, as Successor Agency to the Redevelopment Agency of the City Of Long Beach

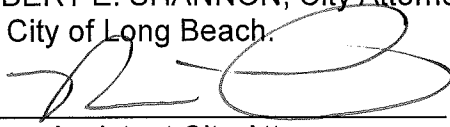
Date: 10/29, 2012

By:  Assistant City Manager
Name: Suzanne Fink
Its: Asst. City Manager

Approved as to form this 29 day of October, 2012.

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

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

By: 
Assistant City Attorney
Deputy

(Signatures continue)

PARTICIPANT

PACIFIC COURT – PINE SQUARE
PARTNERS, a California general partnership

By: Long Beach Pine Square, LLC, a
California limited liability company (formerly
known as Tweedy Properties, LLC, a Delaware
limited liability company), Partner

By: LBPS Management Company, Inc., a
California corporation, Managing Member

By: _____
Name: Alex Meruelo
Its: President

By: Long Beach Villa La Palma, LLC, a
California limited liability company (formerly
known as Villa La Palma, LLC, a Delaware
limited liability company), Partner

By: Pacific Court Residential Management,
Inc., a California corporation, Managing
Member

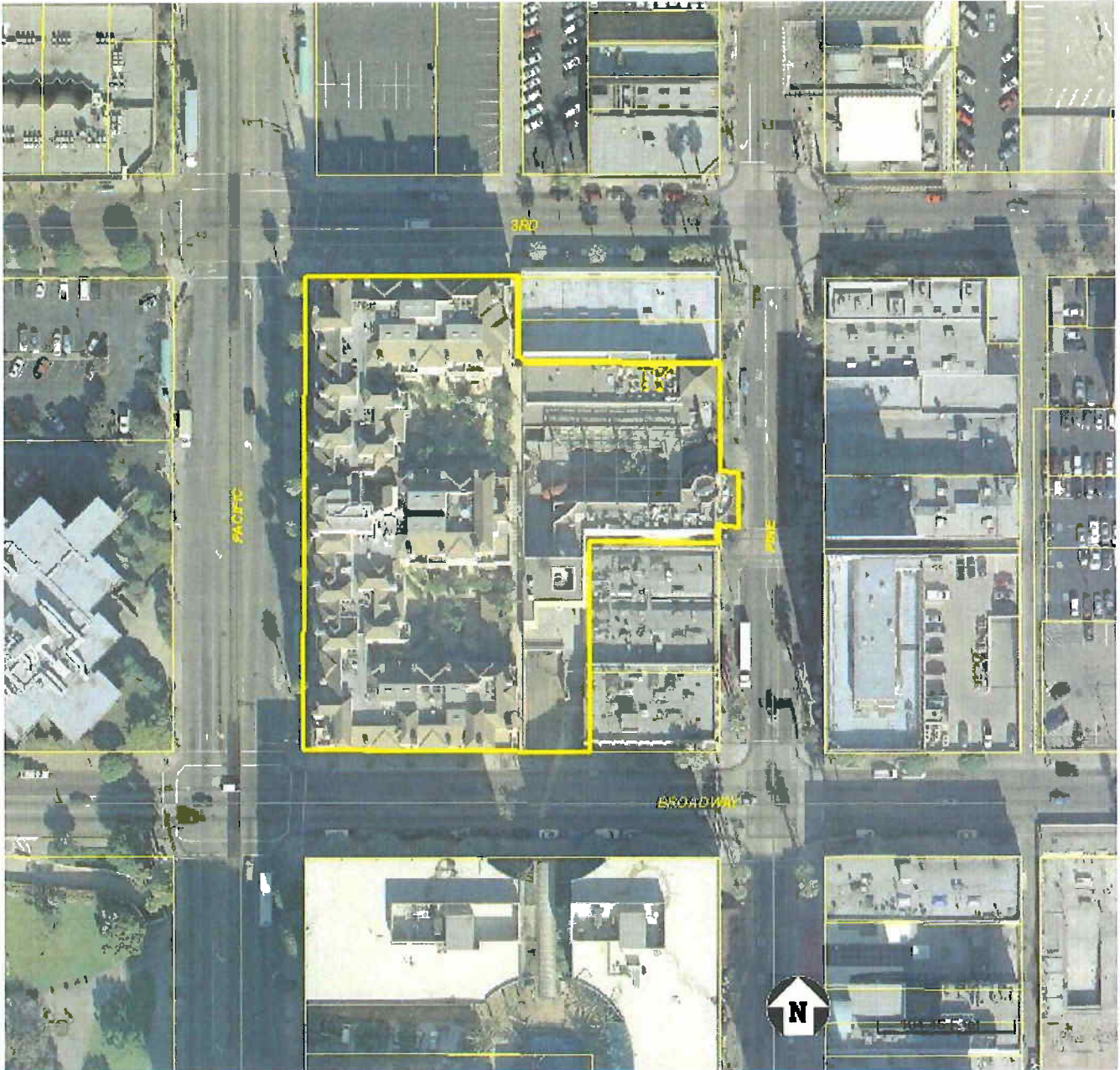
By: _____
Name: Alex Meruelo
Its: President

ATTACHMENT NO. 1
SITE MAP

ATTACHMENT NO. 1



Pine Court



Disclaimer

DISCLAIMER OF DATA ACCURACY: The services provided on this web site are intended for informational purposes only and the GIS data used is compiled from various sources and is subject to constant change. While reasonable effort has been made to ensure the accuracy of the data, the information provided herein may be inaccurate or out of date.

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE SITE

Real property in the City of Long Beach, County of Los Angeles, State of California, described as follows:

LOTS 1 THROUGH 5, INCLUSIVE, 6A, 6B, 6C, 7 THROUGH 21 INCLUSIVE, 22A, 22B, 22C, 22D, 23, 24 AND 25 OF TRACT 51618, IN THE CITY OF LONG BEACH, AS SHOWN ON MAP RECORDED IN BOOK 1201 PAGES 31 TO 44 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY 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 DEED RECORDED SEPTEMBER 17, 1986 AS INSTRUMENT NO. 86-1227335.

ALSO EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER ANY 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 BY PACIFIC LONG BEACH, A GENERAL PARTNERSHIP, IN THE DEED RECORDED DECEMBER 31, 1986 AS INSTRUMENT NO. 86-1834826.

ALSO EXCEPT ALL OIL, 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 OR OTHER LANDS

BUT WITHOUT HOWEVER, ANY 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 DEED RECORDED JUNE 30, 1987 AS INSTRUMENT NO. 87-1034659.

ALSO EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY 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 BY LYLE WILCOX AND ROBERT WILCOX IN THE DEED RECORDED APRIL 10, 1986 AS INSTRUMENT NO. 86-441231.

ALSO EXCEPT THEREFROM, ALL OIL, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN 500 FEET BELOW THE SURFACE OF THAT PORTION OF THE LAND DESCRIBED HEREIN, LYING WITHIN THAT CERTAIN LAND DESCRIBED IN THE DOCUMENT HEREINBELOW REFERRED TO, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY 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 DEED RECORDED JANUARY 28, 1986 AS INSTRUMENT NO 86-103958.

APN: 7280-021-037

ATTACHMENT NO. 3

SCOPE OF DEVELOPMENT

The Scope of Development ("Scope") consists of the conversion of the existing Theater Space on the Site to approximately 69 residential units to be contiguous to and fully integrated into and with the existing 142 residential units pursuant to plans to be approved by City.

The following drawings and renderings generally depict the Scope and include, by way of example:

- Architectural bay projections with large energy saving glass windows creating a more articulated façade and allowing for more natural light to penetrate the units.
- Removal of existing horizontal canopy above the residential entrance on Pacific Ave., and addition of metal balcony railings and an entrance marquee.
- Creation of enclosed art displays and addition of landscaping walls with metal mesh screens that allows plants to grow vertically.
- Creation of more appealing and pedestrian friendly entrance to the Broadway Avenue entrance.
- Reconfiguration of the 3rd Street parking garage entrance with new elevations.
- Remodeling of the Pine Square commercial courtyard and entrance, including removal of existing structures and escalators and the addition of pavers, seating / dining areas and digital media screen.

The Conceptual Drawings for the Project follow.

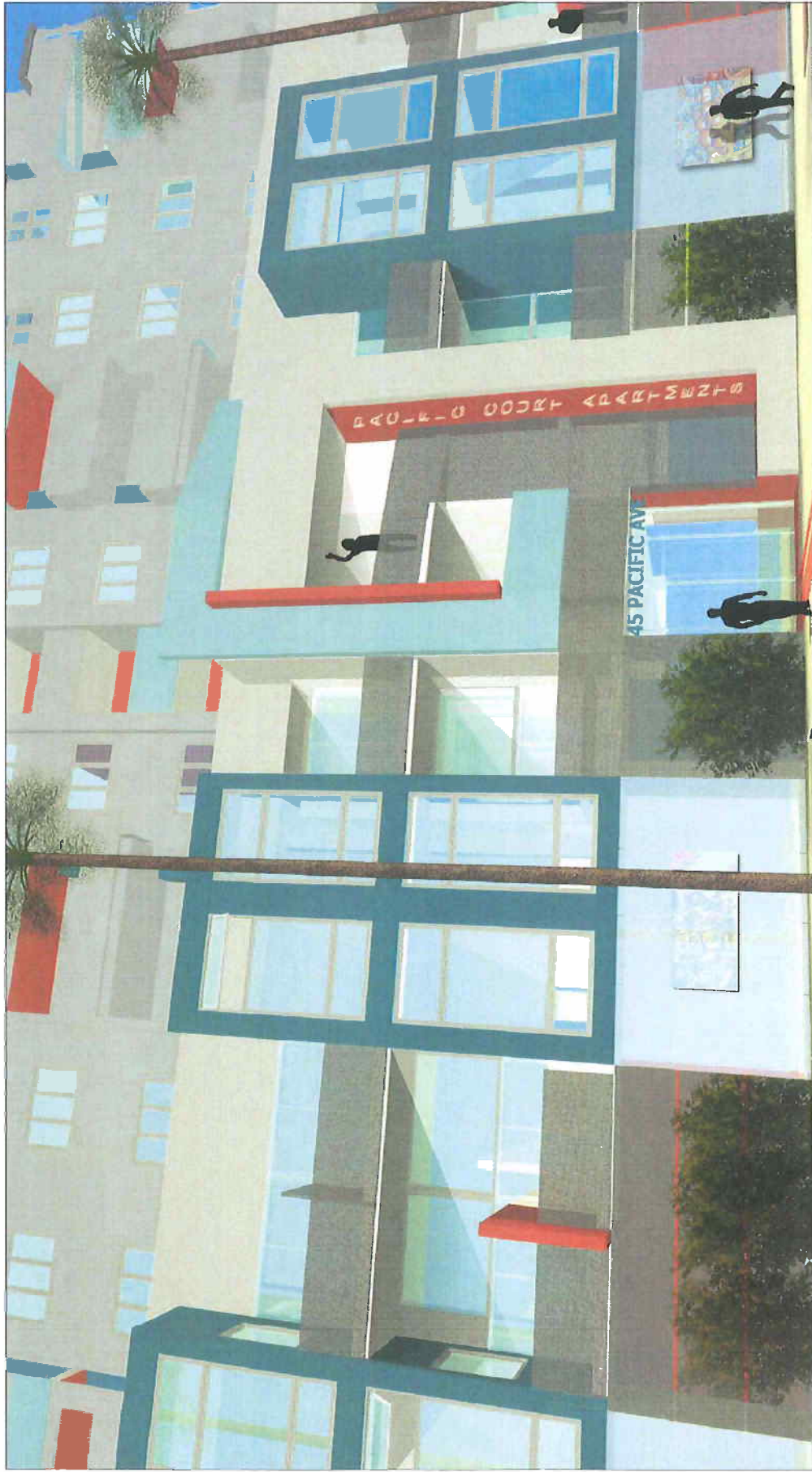




PROPOSED PACIFIC AND BROADWAY



PROPOSED - PACIFIC



PROPOSED - PACIFIC MAIN ENTRANCE



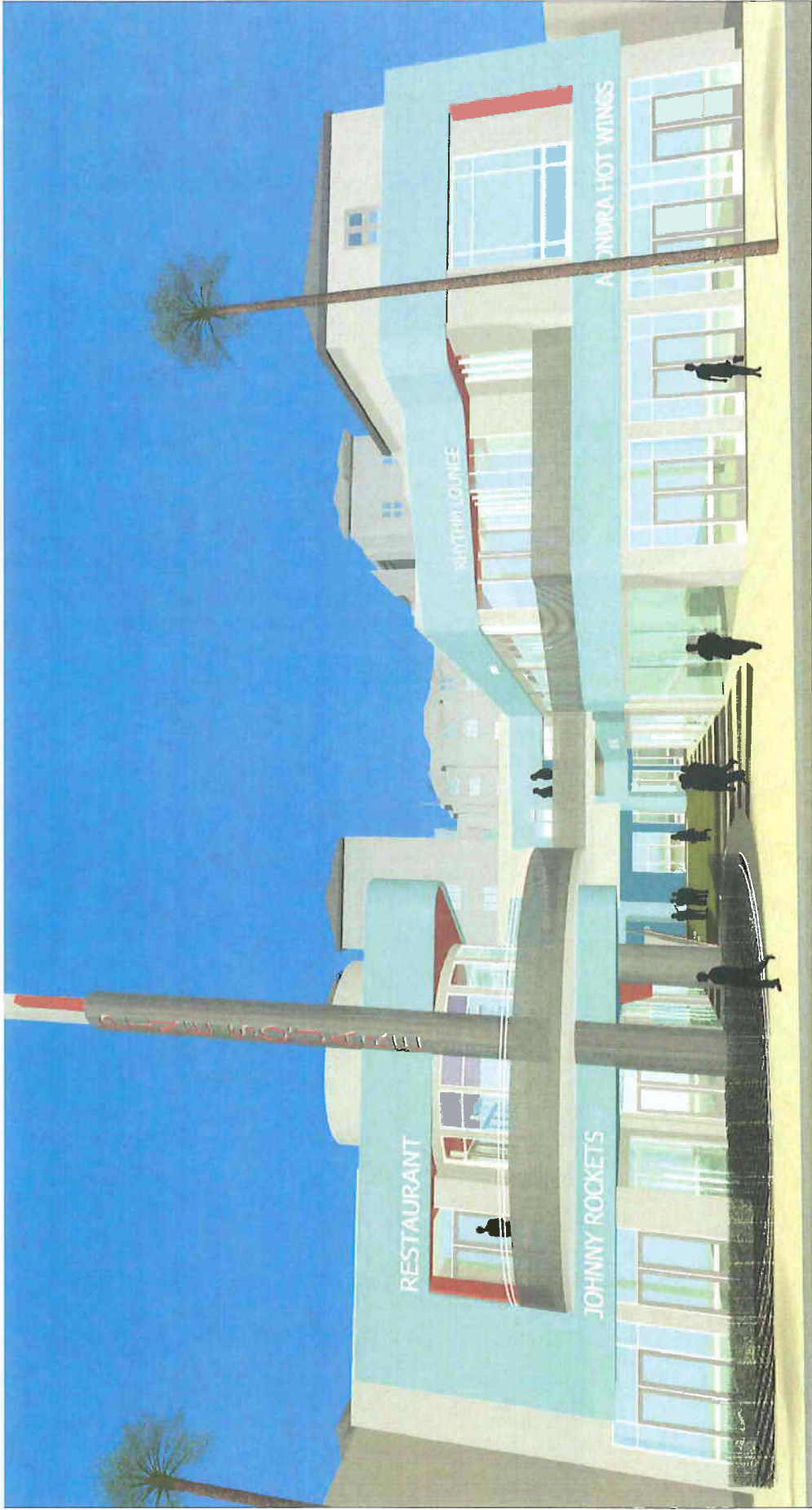
PACIFIC SIDEWALK



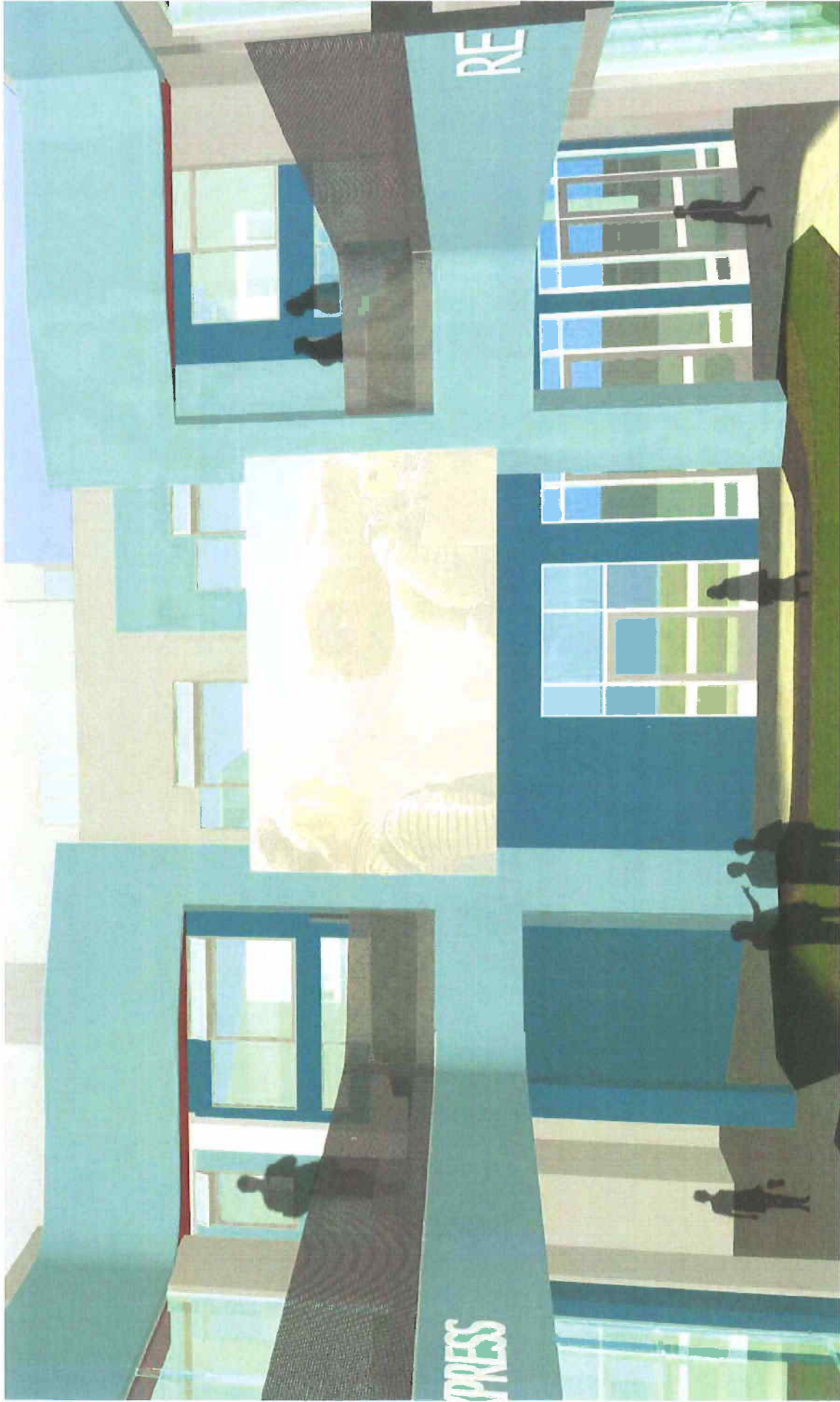
PROPOSED 3RD STREET



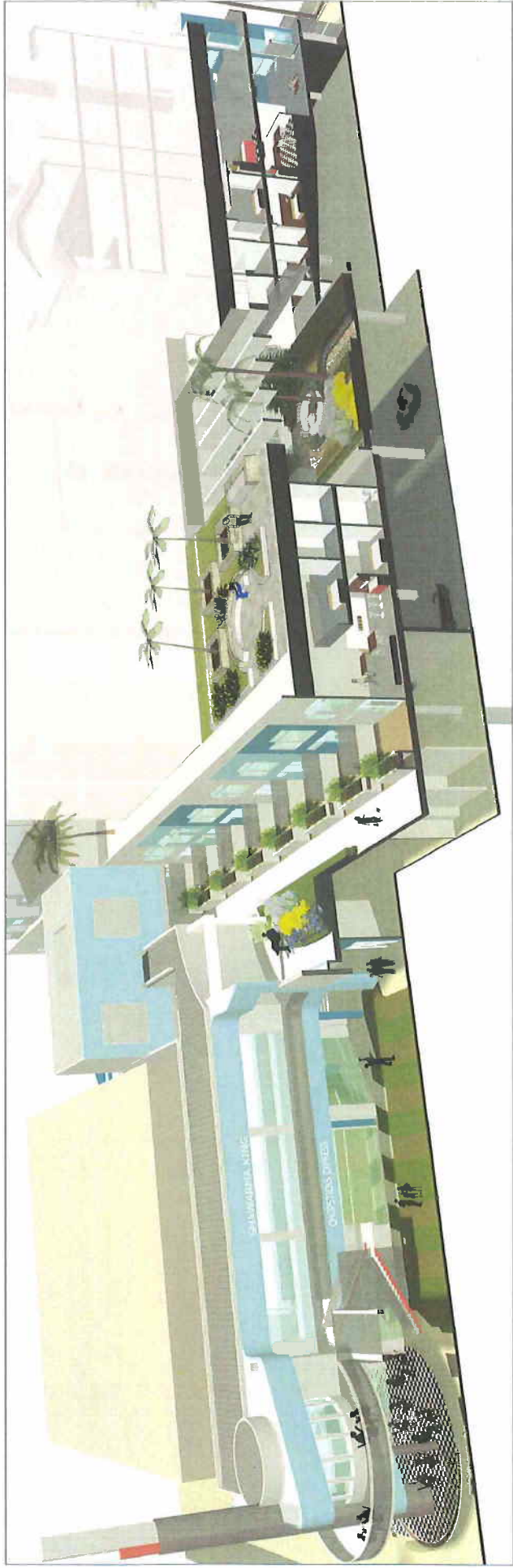
3RD STREET ENTRANCE DETAIL



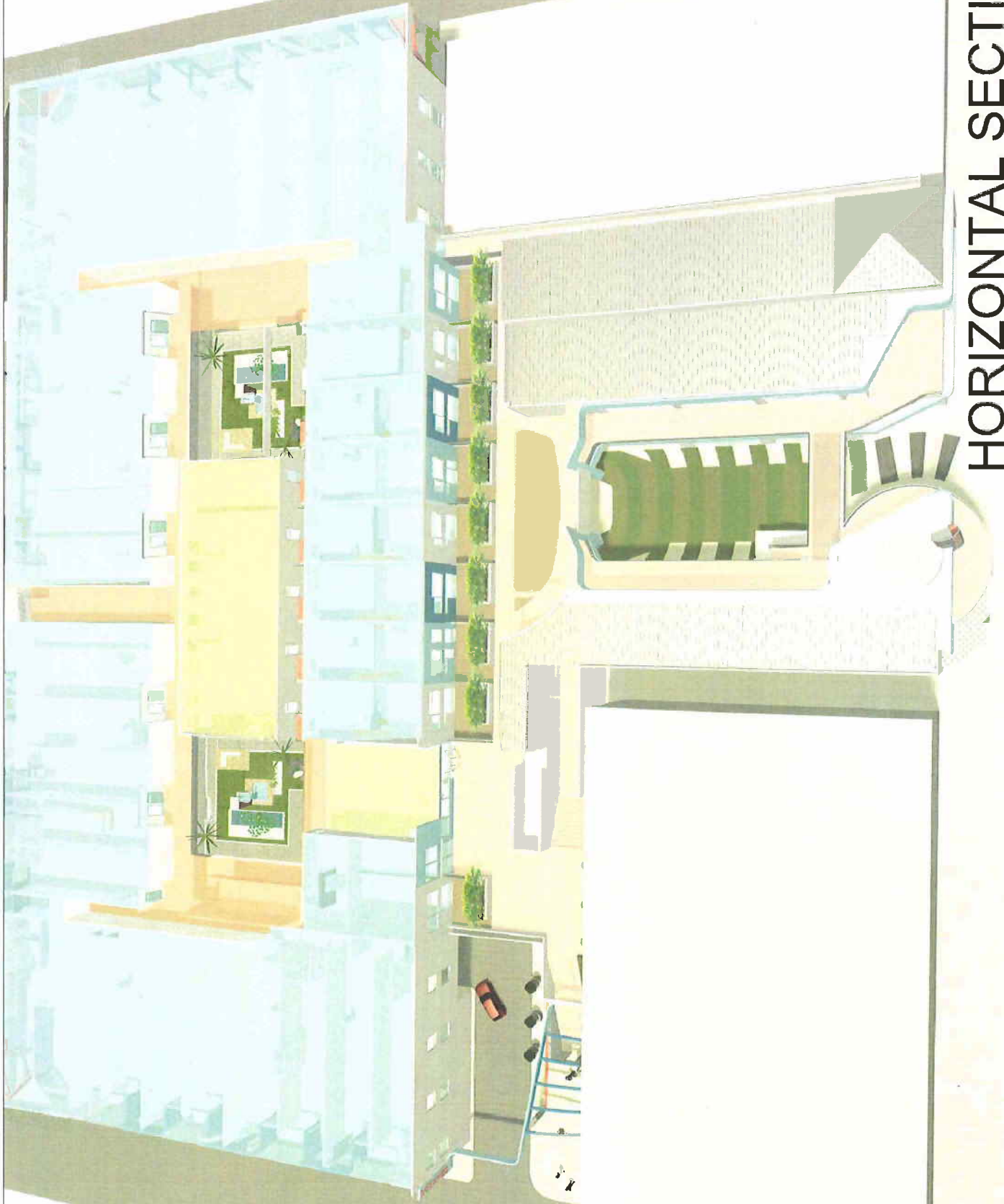
PROPOSED - PINE AVENUE



PROPOSED - VIEW OF COURT AT PINE



PROPOSED SECTION THROUGH BUILDING



HORIZONTAL SECTION



SECTION THROUGH STACKED UNITS



SECTION THROUGH TOWNHOUSE UNITS

ATTACHMENT NO. 4

AGREEMENT TO TERMINATE THE TSOPA
(WITH TERMINATION OF THE PARKING EASEMENTS)

(behind this page)

ATTACHMENT NO. 4

AGREEMENT TO TERMINATE
THE THEATRE SPACE OFFSITE PARKING AGREEMENT

This Agreement to Terminate the Theatre Space Offsite Parking Agreement ("Agreement to Terminate") is entered into as of _____, 2012, by and between the CITY OF LONG BEACH, a chartered city, AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH ("City"), and PACIFIC COURT – PINE SQUARE PARTNERS, a California general partnership ("Participant").

RECITALS

A. Participant owns real property within the downtown area of City commonly known as Pine Court, and legally described on Exhibit A hereto (the "Property").

B. In order to provide adequate parking for the tenant of the movie theater portion (the "Theatre Space") of the Property, the Redevelopment Agency of the City of Long Beach ("Redevelopment Agency") in its capacity as the provider of the offsite parking and the Redevelopment Agency in its capacity as fee owner of the Property (the "Beneficiary"), entered into the Theatre Space Offsite Parking Agreement dated as of July 23, 1991, which agreement was amended by the First Amendment to Theatre Space Offsite Parking Agreement dated as of October 29, 1991, and the Second Amendment to Theatre Space Offsite Parking Agreement dated as of December 18, 1992 (as amended, the "TSOPA").

C. In order to ensure the Beneficiary that parking will be available under the TSOPA, the City and the Redevelopment Agency entered into that certain Parking Easement Agreement dated July 23, 1991 (the "Easement Agreement") pursuant to which each of City and Redevelopment Agency agreed to encumber certain properties with an easement in favor of Beneficiary to provide parking for the tenant of the Theatre Space; no properties owned by the Redevelopment Agency have been encumbered by the Easement Agreement; two properties owned by City, legally described in an attachment to Exhibit B hereto and commonly known as the Lincoln Park Underground Parking Structure and the Broadway Parking Structure, were encumbered by the Easement Agreement.

D. The rights of the Beneficiary under the TSOPA were assigned by the Redevelopment Agency to Participant by that certain Assignment and Assumption Agreement dated August 29, 2003, which agreement was recorded in the official records of Los Angeles County on August 29, 2003 as Instrument No. 03-2520904 ("Assumption Agreement").

E. The Theatre Space is now vacant, and Participant has determined to rebuild the Theatre Space as a residential apartment or condominium project (the "Project").

F. Accordingly, the parties have determined to terminate the TSOPA and the Easement Agreement as provided herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Termination of the TSOPA and Assumption Agreement. Participant as the Beneficiary under the TSOPA and City as the provider of the parking under the TSOPA hereby terminate the TSOPA and the Assumption Agreement.
2. Termination of the Parking Easement Agreement. The Parking Easement provides, at Section 4, that its term is the same as the term of the TSOPA. Because the TSOPA is terminated, City as the Successor Entity and City hereby terminate the Parking Easement Agreement, and Participant as the only Benefited Party under the Parking Easement Agreement, hereby consents to termination of the Parking Easement Agreement. Each of Participant, City as Successor Entity and City agree to execute in recordable form the document entitled "Termination of Parking Easement Agreement" attached hereto as Exhibit B; City shall record such agreement in the official records of Los Angeles County.
3. Entire Agreement. This Agreement to Terminate constitutes the entire understanding and agreement of the parties. This Agreement to Terminate integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between Agency and Participant concerning all or any part of the subject matter of this Agreement to Terminate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to Terminate as of the date first set forth above.

THE CITY OF LONG BEACH, a chartered city,
AS SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY
OF LONG BEACH

By: _____
Name: _____
Its: _____

THE CITY OF LONG BEACH, a chartered city

By: _____
Name: _____
Its: _____

Approved as to form this _____ day of
_____, 2012.

ROBERT E. SHANNON, City Attorney of
the City of Long Beach, California and
general counsel of the City of Long Beach
as successor entity

By: _____
Assistant

Participant as the sole Beneficiary under the Theatre Space Offsite Parking Agreement hereby consents to the termination of such Agreement.

PACIFIC COURT – PINE SQUARE
PARTNERS, a California general partnership

By: Long Beach Pine Square, LLC, a
California limited liability company (formerly
known as Tweedy Properties, LLC, a Delaware
limited liability company), Partner

By: LBPS Management Company,
Inc., a California corporation, Managing
Member

By: _____
Name: Alex Meruelo
Its: President

By: Long Beach Villa La Palma, LLC, a
California limited liability company (formerly
known as Villa La Palma, LLC, a Delaware
limited liability company), Partner

By: Pacific Court Residential
Management, Inc., a California
corporation, Managing Member

By: _____
Name: Alex Meruelo
Its: President

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE REAL PROPERTY IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 1 THROUGH 25, INCLUSIVE, OF TRACT 51618, IN THE CITY OF LONG BEACH, AS SHOWN ON MAP RECORDED IN BOOK 1201 PAGES 31 TO 44 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID LAND OR ANY PORTION OF SAID LAND WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSES OR PURPOSES WHATSOEVER, AS RESERVED IN DEED RECORDED SEPTEMBER 17, 1986 AS INSTRUMENT NO. 86-1227335.

ALSO EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER ANY 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 BY PACIFIC LONG BEACH, A GENERAL PARTNERSHIP, IN THE DEED RECORDED DECEMBER 31, 1986 AS INSTRUMENT NO. 86-1834826.

ALSO EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY 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 DEED RECORDED JUNE 30, 1987 AS INSTRUMENT NO. 87-1034659.

ALSO EXCEPTING ALL OIL, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER 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, ANY 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 BY LYLE WILCOX AND ROBERT WILCOX IN THE DEED RECORDED APRIL 10, 1986 AS INSTRUMENT NO. 86-441231.

ALSO EXCEPTING THEREFROM SAID PARCEL 2, ALL OIL, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN 500 FEET BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE RIGHT OF DRILL INTO, THROUGH AND TO USE AND OCCUPY AL 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY 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 DEED RECORDED JANUARY 28, 1986 AS INSTRUMENT NO. 86-103958.

EXHIBIT B

TERMINATION OF PARKING EASEMENT AGREEMENT

Recording Requested By
and When Recorded Return to:

The City of Long Beach
as Successor Agency
333 West Ocean Blvd., Third Floor
Long Beach, California 90802
Attn: Director of Development Services

TERMINATION OF THE
PARKING EASEMENT AGREEMENT
AND ASSIGNMENT AND ASSUMPTION AGREEMENT
WITH CONSENT

THIS TERMINATION OF THE PARKING EASEMENT AGREEMENT ("Termination Agreement") is entered into this ____ day of _____, 2012, by and among the CITY OF LONG BEACH, a chartered city, AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH ("Agency"), and the CITY OF LONG BEACH, a chartered city, ("City") with the consent of PACIFIC COURT – PINE SQUARE PARTNERS, a general partnership ("Participant"), with reference to the following:

A. Agency and City, for the benefit of the as-then unnamed "Benefited Parties" entered into that certain Parking Easement Agreement dated as of July 23, 1991 (the "Easement Agreement"), and recorded in the official records of Los Angeles County on August 12, 1991, as Instrument No. 91-1267566. Capitalized terms when used herein shall have the meanings ascribed to them in the Easement Agreement unless expressly defined otherwise herein.

B. The purpose of the Easement Agreement was to implement that certain Theatre Space Offsite Parking Agreement dated as of July 23, 1991, which agreement was amended by the First Amendment to Theatre Space Offsite Parking Agreement dated as of October 29, 1991, and the Second Amendment to Theatre Space Offsite Parking Agreement dated as of December 18, 1992 (as amended, the "TSOPA") between the Agency in its capacity as the provider of the offsite parking and the Agency (the "Beneficiary") in its capacity as fee owner of certain real property commonly known as Pine Court (the "Property").

C. The rights of Agency as the "Beneficiary" under the TSOPA were assigned by the Agency to Participant by that certain Assignment and Assumption Agreement dated August 29, 2003, which agreement was recorded in the official records of Los Angeles County on August 29, 2003 as Instrument No. 03-2520904 ("Assumption Agreement").

D. Among other matters, the Easement Agreement burdened the City Parking Property, legally described in Exhibit A hereto, with an easement to provide parking for the benefit of the "Benefited Parties" (as that term is defined in the TSOPA).

E. As of the date hereof, the only Benefited Party of the Easement Agreement is Participant.

F. The TSOPA is being terminated concurrently herewith.

NOW, THEREFORE, AGENCY AND CITY AGREE AS FOLLOWS:

1. Termination of Easement Agreement. The Easement Agreement is hereby terminated and of no further force or effect.

2. Extinguishment of Easement. The easement created by the Easement Agreement burdening the Easement Property described in Exhibit A hereto, commonly known as the Lincoln Park Underground Parking Structure and the Broadway Parking Structure, is hereby extinguished.

3. Termination of Assumption Agreement. The Assumption Agreement is hereby terminated and of no further force or effect.

4. Entire Agreement. This Termination Agreement constitutes the entire understanding and agreement of the parties with respect to the Easement Agreement and the easements created thereby. This Termination Agreement integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between City and Agency concerning all or any part of the subject matter of this Termination Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the Agency and City have executed this Termination Agreement.

AGENCY

THE CITY OF LONG BEACH, a charter city, AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH

By: _____
Name: _____
Its: _____

CITY

THE CITY OF LONG BEACH, a charter city

By: _____
Name: _____
Its: _____

Approved as to form this ____ day of _____, 2012.

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

By: _____

(Signatures continue)

Participant as the sole Benefited Party under the Easement Agreement hereby consents to the termination of such agreement and to the termination of the Assignment and Assumption Agreement.

PACIFIC COURT – PINE SQUARE
PARTNERS, a California general
partnership

By: Long Beach Pine Square, LLC, a
California limited liability company
(formerly known as Tweedy Properties,
LLC, a Delaware limited liability
company), Partner

By: LBPS Management Company,
Inc., a California corporation,
Managing Member

By: _____
Name: Alex Meruelo
Its: President

By: Long Beach Villa La Palma, LLC,
a California limited liability company
(formerly known as Villa La Palma, LLC,
a Delaware limited liability company),
Partner

By: Pacific Court Residential
Management, Inc., a California
corporation, Managing Member

By: _____
Name: Alex Meruelo
Its: President

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

On _____ before me, (here insert name and title of the officer), personally appeared _____ who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary's Signature (Seal)

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

On _____ before me, (here insert name and title of the officer), personally appeared _____ who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary's Signature (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE
LINCOLN PARK UNDERGROUND PARKING STRUCTURE
AND THE BROADWAY PARKING STRUCTURE

(Easement Property)

The land referred to herein is situated in the City of Long Beach, County of Los Angeles, State of California, and is described as follows:

PARCEL 1: LINCOLN PARK UNDERGROUND PARKING

The northerly 323 feet of the "Lincoln Park" Block, formerly known as "Pacific Park" as shown on the map of the Townsite of Long Beach, recorded in Book 19, Pages 91 through 96, inclusive, of Miscellaneous Records, in the office of the County Recorder of said County AND the easterly 40 feet of the northerly 323 feet of Cedar Avenue, 80 feet in width, as shown on said Townsite of Long Beach, vacated by the City Council of said City of Long Beach, per Resolution C-21397, adopted May 14, 1973, recorded in Book D-5869, Pages 730 and 731, Official Records in the office of said County Recorder and per Resolution No. C-22281, adopted May 10, 1977, and recorded as Document No. 77-631651 in the office of said County Recorder.

Said Parcel 1 includes all improvements now or hereafter located thereon, including, without limitation, the two level underground parking structure commonly known as the "Lincoln Park Underground Parking Structure," as shown on Drawing D-432 on file in the office of the City Engineer of said City of Long Beach.

PARCEL 2: BROADWAY PARKING STRUCTURE

Lots 1 through 6, inclusive, and Lots "A", "B", "C", "D", "E", "F", "G", "H", "I", and "J", all in Block 107, as shown on the map of the Townsite of Long Beach, recorded in Book 19, Pages 91 through 96, inclusive, of Miscellaneous Records in the office of the County Recorder of said County AND the northerly 200 feet of Chestnut Avenue, 80 feet in width, AND the westerly 40 feet of the northerly 200 feet of Cedar Avenue, 80 feet in width, AND the northerly 200 feet of Del Rey Court, 16 feet in width, lying southerly of the south line of Broadway, 80 feet in width, all as shown on said Townsite of Long Beach, vacated by the City Council of said City of Long Beach per Resolution C-21397, adopted May 14, 1973, recorded in Book D-5869, Pages 730 and 731, Official Records in the office of said County Recorder and by Resolution No. C-22281, adopted May 10, 1977, and recorded as Document No. 77-631651 in the office of said County Recorder.

Said Parcel 2 includes all improvements now or hereafter located thereon, including, without limitation, the four level parking structure, commonly known as the "Broadway Parking Structure," as shown on Drawing No. B-3403A on file in the office of the City Engineer of said City of Long Beach.

page 1 of 1

EXHIBIT A
TO THE TERMINATION OF
PARKING EASEMENT AGREEMENT

ATTACHMENT NO. 5
AGREEMENT TO TERMINATE THE PUBLIC FACILITIES LEASE
(behind this page)

ATTACHMENT NO. 5

Recording Requested By
and When Recorded Return to:

Pacific Court – Pine Square Partners
9550 Firestone Blvd., Suite 105
Downey, California 90241
Attn: Armando Delgado

TERMINATION OF
THE PUBLIC FACILITIES LEASE

This Termination of the Public Facilities Lease ("Agreement to Terminate") is entered into as of _____, 2012, by and between the CITY OF LONG BEACH, a chartered city ("City"), and PACIFIC COURT – PINE SQUARE PARTNERS, a California general partnership ("Developer").

RECITALS

- A. Developer owns real property within the downtown area of City commonly known as Pine Court, and legally described on Exhibit A hereto (the "Public Facilities Parcel").
- B. In order to provide financing for certain of the improvements located on the Property, the City issued approximately \$13,500,000 aggregate principal amount of 1993 Special Tax Bonds (the "CFD Bonds"), secured by a first pledge of certain tax revenues and other revenues received by the CFD.
- C. The CFD Bonds required, among other matters, that the underground garage serving Pine Court within the Public Facilities Parcel shall be used as parking available to the public.
- D. The Public Facilities Parcel is leased to the City pursuant to the Public Facilities Lease dated as of September 1, 1993, between Developer as Landlord and City as Tenant, and operated by Developer pursuant to the Operating Agreement for Pine Avenue Parking Facilities. A Memorandum of Lease dated September 1, 2003 was recorded on October 18, 1993 as Instrument No. 93-2022944 in the Official Records of Los Angeles County.
- E. The Public Facilities Lease is scheduled to terminate on August 31, 2056. Article 2 of the Public Facilities Lease provides that the lease shall not be terminated so long as the Public Facilities Bonds are outstanding, and Paragraph

7.2 includes a covenant to use the parking garage as public parking until the "Scheduled Termination," August 31, 2056.

F. Concurrently herewith, the CFD Bonds are being repaid.

NOW, THEREFORE, the parties hereto agree as follows:

1. Termination of the Public Facilities Lease. Developer and City hereby terminate the Parking Facilities Lease and the Operating Agreement for Pine Avenue Parking Facilities dated as of September 1, 1993.
2. Entire Agreement. This Agreement to Terminate constitutes the entire understanding and agreement of the parties. This Agreement to Terminate integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between City and Developer concerning all or any part of the subject matter of this Agreement to Terminate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to Terminate as of the date first set forth above.

"CITY"

THE CITY OF LONG BEACH, a chartered city

By: _____
Name: _____
Its: _____

Approved as to form this _____ day of _____, 2012.

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

By: _____
Assistant

“DEVELOPER”

PACIFIC COURT – PINE SQUARE
PARTNERS, a California general partnership

By: Long Beach Pine Square, LLC, a
California limited liability company (formerly
known as Tweedy Properties, LLC, a Delaware
limited liability company), Partner

By: LBPS Management Company,
Inc., a California corporation, Managing
Member

By: _____
Name: Alex Meruelo
Its: President

By: Long Beach Villa La Palma, LLC, a
California limited liability company (formerly
known as Villa La Palma, LLC, a Delaware
limited liability company), Partner

By: Pacific Court Residential
Management, Inc., a California
corporation, Managing Member

By: _____
Name: Alex Meruelo
Its: President

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

On _____ before me, (here insert name and title of the officer), personally appeared _____ who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Notary's Signature

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

On _____ before me, (here insert name and title of the officer), personally appeared _____ who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (Seal)
Notary's Signature

EXHIBIT A

LEGAL DESCRIPTION OF THE PUBLIC FACILITIES PARCEL

All that real property located in the City of Long Beach, County of Los Angeles, State of California described as follows:

Lots 6A and 6B, as shown on that certain tract map for condominium purposes for Tract No. 51618 recorded in the Official Records of Los Angeles County on October 14, 1993 in Map Book 1201, Pages 31 through 44, inclusive.

ATTACHMENT NO. 6
FIRST AMENDMENT TO AGREEMENT CONTAINING COVENANTS
(behind this page)

ATTACHMENT NO. 6

Recording Requested By
and When Recorded Return to:

The City of Long Beach
as Successor Agency
333 West Ocean Blvd., Third Floor
Long Beach, California 90802
Attn: Director of Development Services

FIRST AMENDMENT TO THE
AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY

THIS FIRST AMENDMENT TO THE AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY ("Amendment") is entered into this ____ day of _____, 2012, by and between PACIFIC COURT – PINE SQUARE PARTNERS, a general partnership ("Owner") and the CITY OF LONG BEACH, a chartered city, AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH ("City"), with reference to the following:

A. Owner is the owner of the real property in the City of Long Beach, County of Los Angeles, State of California (hereinafter referred to as the "Property"), described in Exhibit A, attached hereto and incorporated herein by this reference; and

B. Owner and City's predecessor-in-interest, the Long Beach Redevelopment Agency, a public body corporate and politic (the "Redevelopment Agency") are parties to that certain Agreement Containing Covenants Affecting Real Property dated June 30, 2003, and recorded in the official records of Los Angeles County on August 29, 2003 as instrument number 03-2520900 (the "Covenants Agreement"); capitalized terms when used herein shall have the meanings ascribed to them in the Covenants Agreement unless expressly defined otherwise herein; and

C. Owner and City are parties to that certain Owner Participation Agreement dated _____, 2012 (the "OPA"), pursuant to which Owner will redevelop the Public Facilities Parcel and the Retail Parcel; and

D. The parties wish to amend the Covenants Agreement as set forth herein.

NOW, THEREFORE, CITY AND OWNER AGREE AS FOLLOWS:

1. Use of the Property. Paragraph 1 of the Covenants Agreement is hereby amended to read in its entirety as follows:

Owner, its successors, assigns, and any successor in interest to the Property shall develop, use and maintain the Property subject to the Grant Deed dated June 30, 2003 and recorded as Instrument No. 03-2520898 in the Official Records of the Recorder's Office of Los Angeles County, California and this Covenants Agreement, as amended. The Property may be subdivided.

2. Use and Restrictions Affecting the Retail Parcel Only. Paragraph 2.a. of the Covenants Agreement is hereby amended to read in its entirety as follows:

- a. Uses. Subject only to the prohibitions and restrictions contained in subparagraph (b) below, the Retail Parcel may be used for any lawful residential and/or retail purpose, any use typically found in a first-class shopping center and other incidental uses (including entertainment, health club, restaurant food service, theaters and sale of goods, products and services to consumers). In addition, the Retail Parcel may be used for commercial office purposes.

- b. [Paragraph 2.b. is not amended.]

3. Maintenance of the Property. Paragraph 3 of the Covenants Agreement is hereby amended to read in its entirety as follows:

Owner, its successors, assigns, and any successor in interest to the Property, covenants and agrees to maintain the improvements and landscaping on the Property in accordance with the "Reasonable Standards," as hereinafter defined. Said improvements (the "Improvements") shall include, but not be limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, and any and all improvements on the Property. To accomplish the maintenance, the Owner shall either staff or contract with qualified and if required by law, licensed personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. The obligations of Owner regarding maintenance of the Property in accordance with this Paragraph 3 are referred to herein as the "Owner Obligations."

(a) Reasonable Standards. The Improvements shall be maintained in conformance and in compliance with the currently approved construction and architectural plans and design scheme, and in accordance with the "Reasonable Standards" as set forth in Exhibit B hereto.

(b) Failure to Maintain Improvements. In the event the Owner does not maintain the Property and Improvements in the manner set forth herein and in accordance with Reasonable Standards, the City shall have the right to enter the Property and maintain such Improvements, or to contract for the correction of such deficiencies, after written notice to the Owner. However, prior to taking any such action, the City agrees to notify the Owner in writing if the condition of said Improvements does not meet with Reasonable Standards and to specify the deficiencies and the actions required to be taken by the Owner to cure the deficiencies. Upon notification of any maintenance deficiency, the Owner shall have thirty (30) days within which to commence, and thereafter diligently correct, remedy or cure the deficiency. If the written notification states the problem is urgent and relates to public health and safety, the Owner shall have forty-eight (48) hours to commence to rectify the problem.

(c) Right to Enter and Maintain. In the event the Owner fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after the period of correction has lapsed, then the City shall have the right to enter the Property and maintain such Improvements. The Owner agrees to pay the City such charges and costs incurred by the City in curing such maintenance deficiency. Until so paid, the City shall have a lien on the Property as provided by these Covenants for the amount of such charges or costs; provided that such lien shall be subordinate to any first trust deed encumbering the Property.

(d) Remedies. Owner agrees that City may pursue any and all remedies available in law or equity in the event Owner fails to remedy any maintenance deficiency after notice and within the period of correction.

(e) Attorney's Fees. Owner shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

4. Design Guidelines. Paragraph 4 of the Covenants Agreement, Design Guidelines, is hereby deleted in its entirety.

5. Interpretation. All references to "Agency" in the Covenants Agreement shall be interpreted to refer to the City of Long Beach as Successor Agency to the Redevelopment Agency of the City Of Long Beach.
6. Entire Agreement. This Amendment integrates all of the terms and conditions mentioned or incidental to the parties' agreement, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter of this Amendment.
7. Impact of Amendment on Covenants Agreement. Unless otherwise specifically amended by this Amendment, all provisions of the Covenants Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and the Owner have executed this First Amendment to the Agreement Containing Covenants Affecting Real Property.

CITY

THE CITY OF LONG BEACH, a charter city,
AS SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY
OF LONG BEACH

By: _____
Name: _____
Its: _____

Approved as to form this ____ day of _____, 2012.

ROBERT E. SHANNON, City Attorney
of the City of Long Beach and general
counsel to the City as Successor
Agency.

By: _____

(Signatures continue)

OWNER

PACIFIC COURT – PINE SQUARE
PARTNERS, a California general partnership

By: Long Beach Pine Square, LLC, a
California limited liability company (formerly
known as Tweedy Properties, LLC, a Delaware
limited liability company), Partner

By: LBPS Management Company, Inc., a
California corporation, Managing Member

By: _____
Name: Alex Meruelo
Its: President

By: Long Beach Villa La Palma, LLC, a
California limited liability company (formerly
known as Villa La Palma, LLC, a Delaware
limited liability company), Partner

By: Pacific Court Residential Management,
Inc., a California corporation, Managing
Member

By: _____
Name: Alex Meruelo
Its: President

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

On _____ before me, (here insert name and title of the officer), personally appeared _____ who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary's Signature (S Seal)

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

On _____ before me, (here insert name and title of the officer), personally appeared _____ who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary's Signature (S Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(Multifamily, Retail and Public Facilities Parcels)

THE LAND REFERRED TO IN THIS POLICY IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOTS 1 THROUGH 5, INCLUSIVE, 6A, 6B, 6C, 7 THROUGH 21 INCLUSIVE, 22A, 22B, 22C, 22D, 23, 24 AND 25 OF TRACT 51618, IN THE CITY OF LONG BEACH, AS SHOWN ON MAP RECORDED IN BOOK 1201 PAGES 31 TO 44 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID LAND OR ANY PORTION OF SAID LAND WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSES OR PURPOSES WHATSOEVER, AS RESERVED IN DEED RECORDED SEPTEMBER 17, 1986 AS INSTRUMENT NO. 86-1227335.

ALSO EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER ANY 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 BY PACIFIC LONG BEACH, A GENERAL PARTNERSHIP, IN THE DEED RECORDED DECEMBER 31, 1986 AS INSTRUMENT NO. 86-1834826.

ALSO EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY 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 DEED RECORDED JUNE 30, 1987 AS INSTRUMENT NO. 87-1034659.

ALSO EXCEPTING ALL OIL, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER 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, ANY 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 BY LYLE WILCOX AND ROBERT WILCOX IN THE DEED RECORDED APRIL 10, 1986 AS INSTRUMENT NO. 86-441231.

ALSO EXCEPTING THEREFROM SAID PARCEL 2, ALL OIL, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN 500 FEET BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE RIGHT OF DRILL INTO, THROUGH AND TO USE AND OCCUPY AL 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY 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 DEED RECORDED JANUARY 28, 1986 AS INSTRUMENT NO. 86-103958.

AND FURTHER EXCEPTING THEREFROM ALL IMPROVEMENTS SITUATED ON OR OVER SAID LAND.

EXHIBIT B

MAINTENANCE ITEMS

All maintenance and repairs will be the responsibility of the property owner. The following standards of maintenance are the "Reasonable Standards" for purposes of the Covenants Agreement.

Building

The building skin and trim shall be kept in good condition. Any deterioration or damage to the building shall be repaired immediately. Any painting accomplished to repair deterioration or damage, or to cover graffiti, shall match the existing paint color. Any proposed repainting of the building with a color other than the existing shall be approved by the City prior to the painting being completed. No wires, piping or other items shall be allowed to be installed on the building faces.

Windows and doors

All windows and doors shall be kept in good working order. Any damaged glazing shall be replaced immediately. Door and window mullions will be maintained free from deterioration and repaired or replaced if damaged.

Lighting

All lighting will be kept in good working order at all times. Any worn out light bulbs will be replaced immediately. Lighting standards will be repaired or replaced with identical lighting in case of deterioration or damage.

Awnings

All awnings shall be cleaned with soap and water every six months to remove dirt, grime and dust. Awnings shall be repaired as necessary or replaced with identical awnings of the same fabric and color to match existing awnings in case of deterioration or damage. Any deterioration of or damage to the awning supports shall be repaired or replaced immediately.

Signage

All permanent building signage shall be kept in good working order at all times. Any non-working light bulbs shall be replaced immediately. Permanent building signage shall be repaired as necessary or replaced with identical materials as constructed due to deterioration or damage. No temporary signs or banners shall be allowed to be placed on the building fronts. No signage will be painted on any doors, windows or

building surface. Any signs that are removed must have the wall patched and painted to match the existing surface.

Screening (Grille Doors)

All door and trash enclosure screening shall be kept in good working order at all times. The screening shall be repaired as necessary or replaced with identical materials and paint color as installed. No security bars or screening shall be allowed to be placed on the exterior of the building or over the doors or windows except as expressly approved by the Executive Director.

ATTACHMENT NO. 7
AGREEMENT TO TERMINATE THE RECIPROCAL EASEMENTS AGREEMENT
(behind this page)

ATTACHMENT NO. 7

Recording Requested By
and When Recorded Return to:

Pacific Court – Pine Square Partners
9550 Firestone Blvd., Suite 105
Downey, California 90241
Attn: Armando Delgado

TERMINATION OF
THE MAINTENANCE AND RECIPROCAL EASEMENTS AGREEMENT

This Termination of Maintenance and Reciprocal Easements Agreement ("Agreement to Terminate") is entered into as of _____, 2012, by and among the CITY OF LONG BEACH, a chartered city, AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH ("City"), and PACIFIC COURT – PINE SQUARE PARTNERS, a California general partnership ("Developer").

RECITALS

A. Developer owns real property within the downtown area of City commonly known as Pine Court, and legally described on Exhibit A hereto (the "Property").

B. In order to provide financing for certain of the improvements located on the Property, the City issued approximately \$13,500,000 aggregate principal amount of 1993 Special Tax Bonds (the "CFD Bonds"), secured by a first pledge of certain tax revenues and other revenues received by the CFD.

C. City, Agency and Developer's predecessor-in-interest, Janss/TYS Long Beach Associates, a California limited partnership entered into that certain Maintenance and Reciprocal Easement Agreement dated September 1, 1993, and recorded in the official records of Los Angeles County on October 18, 1993 as instrument no. 93-2018111 (the "REA") to provide for the maintenance and operation of the portions of the improvements on the Property which were constructed using the proceeds of the CFD Bonds and are designated for common or public use or access, among other purposes. Capitalized terms when used herein shall have the meanings ascribed to them in the REA unless expressly provided otherwise herein.

D. The REA is no longer necessary because Developer is fee owner of all three parcels, the Theatre Space is now vacant and no portion of the Retail Parcel will be used as a movie theater and related purposes.

E. Accordingly, the parties have determined to terminate the REA as provided herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Termination of the REA. Developer, City and Agency hereby terminate the REA.

2. Entire Agreement. This Agreement to Terminate constitutes the entire understanding and agreement of the parties. This Agreement to Terminate integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements among Agency, City and Developer concerning all or any part of the subject matter of this Agreement to Terminate.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to Terminate as of the date first set forth above.

“AGENCY”

THE CITY OF LONG BEACH, a chartered city,
AS SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY
OF LONG BEACH

By: _____
Name: _____
Its: _____

“CITY”

THE CITY OF LONG BEACH, a chartered city

By: _____
Name: _____
Its: _____

Approved as to form this _____ day of _____, 2012.

ROBERT E. SHANNON, City Attorney of
the City of Long Beach, California and
general counsel of the City of Long Beach
as successor entity

By: _____
Assistant

“DEVELOPER”

PACIFIC COURT – PINE SQUARE
PARTNERS, a California general partnership

By: Long Beach Pine Square, LLC, a
California limited liability company (formerly
known as Tweedy Properties, LLC, a Delaware
limited liability company), Partner

By: LBPS Management Company,
Inc., a California corporation, Managing
Member

By: _____
Name: Alex Meruelo
Its: President

By: Long Beach Villa La Palma, LLC, a
California limited liability company (formerly
known as Villa La Palma, LLC, a Delaware
limited liability company), Partner

By: Pacific Court Residential
Management, Inc., a California
corporation, Managing Member

By: _____
Name: Alex Meruelo
Its: President

State of California)
County of _____)

On _____, before me, (here insert name and title of the officer) _____, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

THE REAL PROPERTY IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 1 THROUGH 25, INCLUSIVE, OF TRACT 51618, IN THE CITY OF LONG BEACH, AS SHOWN ON MAP RECORDED IN BOOK 1201 PAGES 31 TO 44 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID LAND OR ANY PORTION OF SAID LAND WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSES OR PURPOSES WHATSOEVER, AS RESERVED IN DEED RECORDED SEPTEMBER 17, 1986 AS INSTRUMENT NO. 86-1227335.

ALSO EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER ANY 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 BY PACIFIC LONG BEACH, A GENERAL PARTNERSHIP, IN THE DEED RECORDED DECEMBER 31, 1986 AS INSTRUMENT NO. 86-1834826.

ALSO EXCEPT ALL OIL, 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY 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 DEED RECORDED JUNE 30, 1987 AS INSTRUMENT NO. 87-1034659.

ALSO EXCEPTING ALL OIL, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER 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, ANY 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 BY LYLE WILCOX AND ROBERT WILCOX IN THE DEED RECORDED APRIL 10, 1986 AS INSTRUMENT NO. 86-441231.

ALSO EXCEPTING THEREFROM SAID PARCEL 2, ALL OIL, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN 500 FEET BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE RIGHT OF DRILL INTO, THROUGH AND TO USE AND OCCUPY AL 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 OR OTHER LANDS BUT WITHOUT, HOWEVER, ANY 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 DEED RECORDED JANUARY 28, 1986 AS INSTRUMENT NO. 86-103958.

ATTACHMENT NO. 8

SCHEDULE OF PERFORMANCE

- | | |
|--|---|
| 1. <u>Submission - Preliminary Design for the Site.</u> Participant will prepare and submit to the City Preliminary Drawings for the Site. | Prior to consideration of this Agreement by City. |
| 2. <u>Payment of the Performance Deposit.</u> Participant shall pay the Performance Deposit to City. | Prior to consideration of this Agreement by City. |
| 3. <u>Submission – Preliminary Evidence of Financing.</u> Participant shall submit to City its preliminary evidence of financing. | Prior to consideration of this Agreement by City. |
| 4. <u>Execution of Agreement.</u> Agreement authorized, executed and delivered to Participant by City. | Subject to City approval, within 60 days after the Participant delivers a copy of this Agreement signed by Participant to the City. |
| 5. <u>Opening of Title Order.</u> City will open an order with the Title Company. | Within 10 days after receipt of written request from Participant but, in any event, no later than 10 days after City executes this Agreement. |

- | | |
|---|--|
| 6. <u>Submission - Final Construction Drawings of the Site.</u> The Participant will prepare and submit to the City and City Planning Department Final Construction Drawings. | Prior to conveyance of the Site to Participant. |
| 7. <u>Approval - Final Drawings and Plans.</u> The City will approve or disapprove the Final Construction Drawings. | Within 7 days after receipt by City of Participant's final construction drawings. |
| 8. <u>Submission - Financing Documents and Insurance Certificates.</u> The Participant will deliver to City financing documents and insurance certificates. | Prior to release of the Covenants. |
| 9. <u>Approval - Financing Documents and Insurance Certificates.</u> The City will approve or disapprove financing documents and insurance certificates. | Within 7 days after receipt by Director and the Deputy Director of Participant's financing documents and insurance certificates. |
| 10. <u>Percent for Public Art Program Requirements.</u> Participant shall complete all Percent for Public Art Program requirements. | Prior to issuance of building permits. |
| 11. <u>Obtaining Permits.</u> Participant will have obtained building, zoning and other requirements permits. | Prior to release of the Covenants. |
| 12. <u>Satisfaction of Conditions Precedent.</u> Participant shall have satisfied all conditions precedent for the benefit of City for release of the Covenants. | Within 180 days of City's execution of this Agreement. |
| 13. <u>Commencement of Construction on Site.</u> Participant will commence construction of the improvements on the Site. | Within 18 months after the date of this Agreement. |
| 14. <u>Completion of Construction on the Site.</u> Participant will complete the construction of improvements on the | Within 48 months after the date of this Agreement. |

ATTACHMENT NO. 8

Site.

15. Compliance Report. Participant shall submit to the Director of Development Services a written report regarding its compliance with the requirements of Section 3.1.7.

Prior to the issuance of a certificate of occupancy.

16. Issuance of the Certificate of Occupancy. Participant shall apply to the Building and Safety Bureau for a Certificate of Occupancy for the Project.

Upon completion of the Project.

ATTACHMENT NO. 8

**REDEVELOPMENT AGENCY
OF THE CITY OF LONG BEACH**

PERCENT FOR PUBLIC ART PROGRAM



September 18, 2006

ATTACHMENT NO. 9

Redevelopment Agency of the City of Long Beach

PERCENT FOR PUBLIC ART PROGRAM

September 2006

- I. PUBLIC ART PROGRAM
 - A. Program Description
 - B. Policy

- II. PROGRAM COMPONENTS
 - A. PCA Public Art Fund
 - B. On-Site Public Art Programs

- III. COSTS
 - A. Development Costs
 - B. On-Site Public Art Budget
 - C. Eligible and Ineligible Art Budget Expenditures

- IV. SELECTION PROCESSES
 - A. Advisory Committee for Public Art
 - B. On-Site Public Art Selection Process
 - C. Selection Process for Artists
 - D. Eligible Locations for Public Art

- V. PUBLIC ART PLANNING AND DEVELOPMENT PROCESS
 - A. On-Site Public Art Project Development
 - B. Maintenance of Public Art
 - C. Ownership of Public Art

APPENDIX: EXHIBITS

- A) Map of Redevelopment Project Areas in Long Beach
- B) Building Development and Land Cost Table
- C) RDA Maintenance Covenant

I. PUBLIC ART PROGRAM

A. PROGRAM DESCRIPTION

The Redevelopment Agency of the City of Long Beach (RDA) in cooperation with the City of Long Beach and the Arts Council for Long Beach (ACLB) adopted the Percent for Public Art Program for private and public developments in all redevelopment project areas including; Central Long Beach, North Long Beach, West Long Beach Industrial, Los Altos, Long Beach Polytechnic High School (Poly High), West Beach, and Downtown. Refer to the attached map (Exhibit A) of the City of Long Beach Redevelopment Project Areas.

It is the Redevelopment Agency's intent to implement the Percent for Public Art Program through partnership with the Arts Council for Long Beach, the arts council and official advisory body to the City of Long Beach. Percent for Public Art Program goals are to integrate art and art programs into the fabric of the city's redevelopment areas by means of community participation, cultural exchange between citizens, and collaboration of various professional disciplines such as artists, architects and planners and developers among others.

B. POLICY

The RDA Percent for Public Art Program requires that at least 1% of the total development costs, including construction, land and parking costs, for either public or private developments beginning at \$250,000 be allocated to finance public art programs or the Arts Council for Long Beach (ACLB) Public Art Fund. This obligation is required when a contractual agreement with the RDA, such as an Owner Participation Agreement, a Disposition and Development Agreement or other agreement, is entered into. The 1% obligation excludes both low- and moderate-income housing and tenant improvements to the interior, non-public spaces of existing buildings.

- Projects that cost between \$250,000 and \$10 million shall deposit the 1% obligation into the ACLB's Public Art Fund for general enhancement of the City's public cultural resources in redevelopment project areas.
- Projects with a total development cost in excess of \$10 million are required to allocate 1% of total development costs to a public art program (art works, cultural programming, or cultural facilities). Of this 1% obligation, 85% shall be used to fund on-site art programs and 15% shall be deposited in the ACLB's Public Art Fund.
- Projects with a cost of less than \$250,000 have no public art program obligation.
- Projects that include historically designated buildings and landmarks shall participate based on total development costs as for other development projects (described above). Projects that qualify for on-site public art programs involve the restoration, rehabilitation, or preservation of exterior facades or exterior decorative elements only, and shall as a rule, be in conformance with the Secretary of the Interior's Standards for Historic Preservation Projects. The developer's plan for facade or decorative work shall be presented to and approved by the ACLB's Advisory Committee for Public Art for conformance with the 1% obligation.

II. PROGRAM COMPONENTS

A. ACLB PUBLIC ART FUND

The ACLB Public Art Fund is a funding mechanism in which the ACLB aggregates portions of the Public Art Program requirement and redistributes these funds to publicly accessible locations throughout redevelopment project areas, for general enhancement of the City's cultural resources. Redistribution of funds for arts and cultural purposes shall be considered in keeping with Public Art Program goals and with redevelopment goals in Long Beach.

Funds in the Public Art Fund will be allocated by the ACLB to support community art programs, including citywide public art displays. Funds may also be used to support cultural facilities, cultural programming, conservation and maintenance of public art, artists on design/planning teams, artists' residencies, cultural events and festivals, long-range planning, documentary projects, and other programs pertaining to arts and culture in Long Beach, subject to the approval by the RDA and the ACLB's Advisory Committee for Public Art (ACPA).

The developer shall provide the required Public Art Fund obligation to the ACLB before issuance of the first permit for the project (demolition, grading, building, for example). For projects in excess of \$10 million, an initial application fee submitted by the developer to the ACLB before the project's Site Plan Review phase shall be credited to the developer at this time.

B. ON-SITE PUBLIC ART PROGRAMS

On-site public art programs (for development projects in excess of \$10 million) in redevelopment areas are reviewed by the ACLB's Advisory Committee for Public Art (ACPA) and administered by the ACLB's Director of Public Art Programs. On-site public art programs may include the following three options:

- Public Art Works – as approved by the ACPA (includes a broad interpretation of art forms and all media)
- Cultural Programming – as approved by the ACPA (requires management agreements with arts/cultural organizations)
- Arts Spaces or Cultural Facilities – as approved by the ACPA (requires management agreements with arts/cultural organizations)

For Public Art Works, the on-site public art program must be completed and installed before the Certificate of Occupancy is issued for the project. In the case of Cultural Programming or Cultural Facilities, the management agreements must be in place before issuance of the Certificate of Occupancy.

III. COSTS

A. DEVELOPMENT COSTS

Total development costs for the Percent for Public Art Public Program are estimated by calculating construction, parking and land costs. The cost of land is determined by using

either the documented purchase price of the land, the present value of the base rent payments of a long-term lease, or by using the table of land cost multipliers. Building costs are estimated by using the table of estimated building cost multipliers by Marshall and Swift Valuation Service. Refer to the attached tables to determine estimated land and building costs (Exhibit B). The RDA shall make a final determination of the estimated land, parking and construction costs and provide the information to the ACLB.

B. ON-SITE PUBLIC ART BUDGET

Developers shall discuss the specifics of compliance with the Percent for Public Art Program with the Arts Council for Long Beach (ACLB) prior to planning the public art program. The public art program for the development must be planned and approved by the ACLB's Advisory Committee for Public Art during the project's Site Plan Review phase and, in all cases, prior to issuance of any permit for construction of the development project (demolition, grading, building, etc.)

The preliminary public art budget must be based on the estimated costs of the project and shall be determined no later than submittal of the preliminary plans to the city. The art budget shall be no less than 1% of the actual construction costs, including land costs and parking costs, and shall be increased proportionally if the actual development costs exceed the estimated costs. The developer shall be required to submit a revised proposal to the ACPA in a mutually agreed upon time frame for inclusion of additional funds, either into the on-site public art program or into the ACLB's Public Art Fund.

C. ELIGIBLE AND INELIGIBLE ART BUDGET EXPENDITURES

Eligible art budget expenditures may include but are not limited to the following:

- Creation of public art works, art spaces, cultural facilities and/or cultural programming
- Artist design proposals and related documentation for the art component
- Professional fees for the artist
- Fees for assistants, materials, professional and contracted services required for the design, engineering, fabrication, and installation of the artwork
- Dealer, gallery, or consultant fees not to exceed 10% of the artist fee
- Travel expenses of the artist for site visitation, research, and presentations
- Transportation or installation of the artwork
- Preparation of the site to receive artwork beyond that which would normally be required
- Installation expenses directly related to the public art project
- Plaque to identify the public art program, per ACLB plaque criteria
- Publications devoted exclusively to the public art project as approved by the ACPA
- Expenses associated with the artist selection process, including artist selection and art review panel fees and/or honoraria
- Permits or certificate fees, including specialized reports or studies directly related to the public art program
- Artist studio and operating costs, including artists' expenses pertaining to project development and fabrication
- Developer's public art application fee

Ineligible art budget expenditures include but are not limited to the following:

- Directional elements such as supergraphics, signage or color-coding except where these elements are integral parts of the original work of art
- Art objects which are mass produced of standard, commercial design such as playground equipment, fountains, or statuary objects
- Reproductions, by mechanical or other means, of original artwork, except in cases of film, video, photography, printmaking, or other media arts
- Decorative, ornamental, or functional elements which are designed by the building architect or other design industry professionals, as opposed to an artist commissioned for this purpose
- Landscape architecture, landscape gardening and engineering except where these elements are designed by the artist and/or are an integral part of the artwork by the artist
- Fees for architectural, engineering or other design professional services not under the direct purview of the project artist
- Services or utilities necessary to operate or maintain the artwork over time (maintenance of art must be included in building maintenance costs)
- Receptions or grand openings
- Publications not pertaining specifically to the public art project

IV. SELECTION PROCESSES

A. ADVISORY COMMITTEE FOR PUBLIC ART

Public art works, cultural programming or cultural facilities originating from the Public Art Fund or through the on-site public art program obligation (for projects in excess of \$10 million) are reviewed by the ACLB's Advisory Committee for Public Art.

Members of the Advisory Committee for Public Art (ACPA) are appointed by the ACLB Board of Directors and form a community-based group, which reviews a developer's plans for conformance with the public art program. Membership of the ACPA includes two artists (performing and visual), two arts professionals (such as arts administrators, educators, conservators and critics), one member of the ACLB Board of Directors, one member of the RDA Board of Directors, one community member-at-large and one RDA Staff member.

Where appropriate, the ACPA appoints a Project Committee for a specific project to assist the developer or the area community in the process of selecting a project artist and to review on-site public art program proposals. The Project Committee conveys recommendations to the ACPA for review. For on-site public art programs, once the artist is selected and the public art program concept has been approved by the ACPA, the RDA and ACLB Board of Directors will be notified that the project's Site Plan Review requirements have been met.

If the public art program is disapproved, the developer may appeal to the ACPA or present an alternative proposal for consideration. All proposals for on-site art, cultural programs or cultural facilities will be evaluated by the ACPA and the Project Committee members within the context of the Percent for Public Art Program goals and objectives as established by the ACLB and the RDA.

B. ON-SITE PUBLIC ART SELECTION PROCESS

For development projects in excess of \$10 million, the developer may choose from the following methods for artist selection for on-site public art programs:

- Open Competition – the ACPA issues a call to artists to submit qualifications for consideration
- Invitational Competition – the ACPA issues a call to a limited number of artists to submit qualifications for consideration
- Direct Selection – the developer and/or developer's art consultant recommends artists for ACPA approval

Art projects, programming or cultural facility proposals will be evaluated by the ACPA, ACLB staff and participating Project Committee members within the context of the Percent for Public Art Program goals and objectives as established by the ACLB and the RDA. Each proposed public art program will be evaluated based, at a minimum, on the following criteria:

- Artistic merit of the design concept, evidencing creative and distinctive solutions to stated objectives
- Appropriateness to the site and the overall urban context
- Social and historic context
- Experience and ability of the artist to work collaboratively in the public realm with design professionals and others
- Long-term safety, durability, liability, and maintenance considerations
- Feasibility of the proposed project
- Environmental impact

C. SELECTION PROCESS FOR ARTISTS

The Percent for Public Art Program is intended for the participation of practicing professional artists. Artist eligibility for each project will be determined by the ACPA. Not eligible for selection are the project's architects or members of architectural, landscape, engineering, or professional design firms; members of the selection panel Committee for Public Art, the ACPA-appointed Project Committee, or members of their immediate families; or employees of the ACLB, RDA, or the City of Long Beach. Students are not eligible to participate unless under the direct purview of a professional artist.

General criteria for considering artists may include, but not be limited to:

- Artistic merit of the artist's public art proposal
- Responsiveness and appropriateness to the site
- Feasibility of the proposed public art
- Experience and ability to work in the public realm
- Ability to work collaboratively with other design professionals
- Proven experience in working with the given budget, time frame, and city parameters
- Record of art training, achievement, education, and recognition

For on-site public art programs, all financial arrangements shall be negotiated between the developer and the artist and shall be verified per the terms of a written agreement. The City

of Long Beach, the Redevelopment Agency, and the Arts Council for Long Beach shall be held harmless from any liability arising from the default of either the developer or the artist as part of the developer/artist agreement. A copy of the executed contract(s) between the developer and the artist shall be submitted to the ACLB upon its execution. For Public Art Fund projects the artist shall enter into agreement for design services with the ACLB and with the City of Long Beach as the project may warrant and as approved on a case-by-case basis by the ACPA and the City of Long Beach.

D. ELIGIBLE LOCATIONS FOR PUBLIC ART

Interior or exterior spaces that are accessible to the public on a regular basis for a minimum of 12 hours a day may be considered suitable locations for public art. The definition of "location" or the "accessibility" of public art within a site or building may be expanded by an artist's ability to extend the possibilities of public art, and shall require the approval of the ACLB's Advisory Committee for Public Art on a case-by-case basis. The developer shall submit a narrative of the proposed type and location of the public art project, and proposed days and hours of accessibility, to the ACLB during the project's Site Plan Review stage.

Upon the ACPA's approval of public art project location and accessibility to the general public, the developer shall take all steps, execute and record all reasonable documents as necessary to assure the right of public access to the public art project.

V. PUBLIC ART PLANNING & DEVELOPMENT PROCESS

A. ON-SITE PUBLIC ART PROJECT DEVELOPMENT

Proposed projects from \$10 million and over within any of the redevelopment project areas (see Exhibit A) must comply with the Percent for Public Art Program. The developer shall work with the Arts Council for Long Beach to select the project artist and to convey a preliminary art budget to the ACLB during the project's Site Plan Review stage.

The on-site public art process consists of five stages of review with mandatory approvals by the ACLB's Advisory Committee for Public Art (ACPA). The stages coincide with the Redevelopment Agency's Design Review Process, which correspond to conventional phases of architectural and artistic design practice, from design concept to final construction.

Prior to submission of the project's Site Plan Review requirements, the owner/developer must attend an initial briefing with the ACLB and the RDA to review the ACLB's Percent for Public Art Program Guidelines for Developers. This briefing stage shall help the developer to understand the public art program goals.

The steps for this phase are as follows:

- Developer briefing
- Approval of artist selection method (if applicable)
- Approval of developer's art consultant (if applicable)
- Submittal of ACLB *Developer Application Form* and application fee (a \$10,000 non-refundable retainer fee is required and shall be credited to the total Public Art Fund budget requirement)

Stage I / Site Plan Review:

- Submittal of the artist(s) resume(s), biographical materials and evidence of artistic/cultural qualifications
- Brief narrative description of proposed type and location of on-site public art program
- Approval of selected artist
- Submittal of the ACLB's *Public Art Project Proposal Form*
- Submittal of one copy of the Developer/Artist agreement

Stage II / ACPA Review:

- Submittal of the artist(s) preliminary public art plan

Stage III / Final Review:

- Submittal of the artist(s) final public art plan

Stage IV / Design Check:

- Developer shall submit any revisions or modifications to the original) approved public art design concept) scope) time line, or budget. Modifications may require an additional design presentation to the ACPA. This submittal may occur any time between the completion of Final Review Stage and the end of the Design Check Stage.
- Submittal of a copy of the Artist/Developer agreement for fabrication, installation, and completion of the art program.
- Submittal of copies of permits and approvals required for completion of the art program.
- Developer shall submit Public Art Fund cash obligation to the ACLB prior to, but in no case later than, issuance of the first permit sought for the project.
- RDA staff reviews the construction documents for inclusion of the public art program and recommends to the Building Department issuance of a building permit.

Stage V / Construction Check:

- Submittal of the final public art budget expenditures
- Submittal of the final maintenance program and costs
- Submittal of copies of lien releases from the artist, artist subcontractors, and art consultants (if applicable)
- The Certificate of Occupancy shall be issued upon approval of the completed and installed public art program and verification provided that all contractual obligations have been met

B. MAINTENANCE OF PUBLIC ART

The maintenance of the on-site public art program will be the responsibility of the developer and its successor for the lifetime of the development project or length of time as approved by the ACPA. Maintenance responsibility for public art works commissioned through the Public Art Fund process shall be determined on a case-by-case basis by the ACPA. The RDA and the ACLB will encourage artists and developers to include maintenance provisions in the artwork contract that stipulate the length of time that the artist will be responsible for repairs (typically one year).

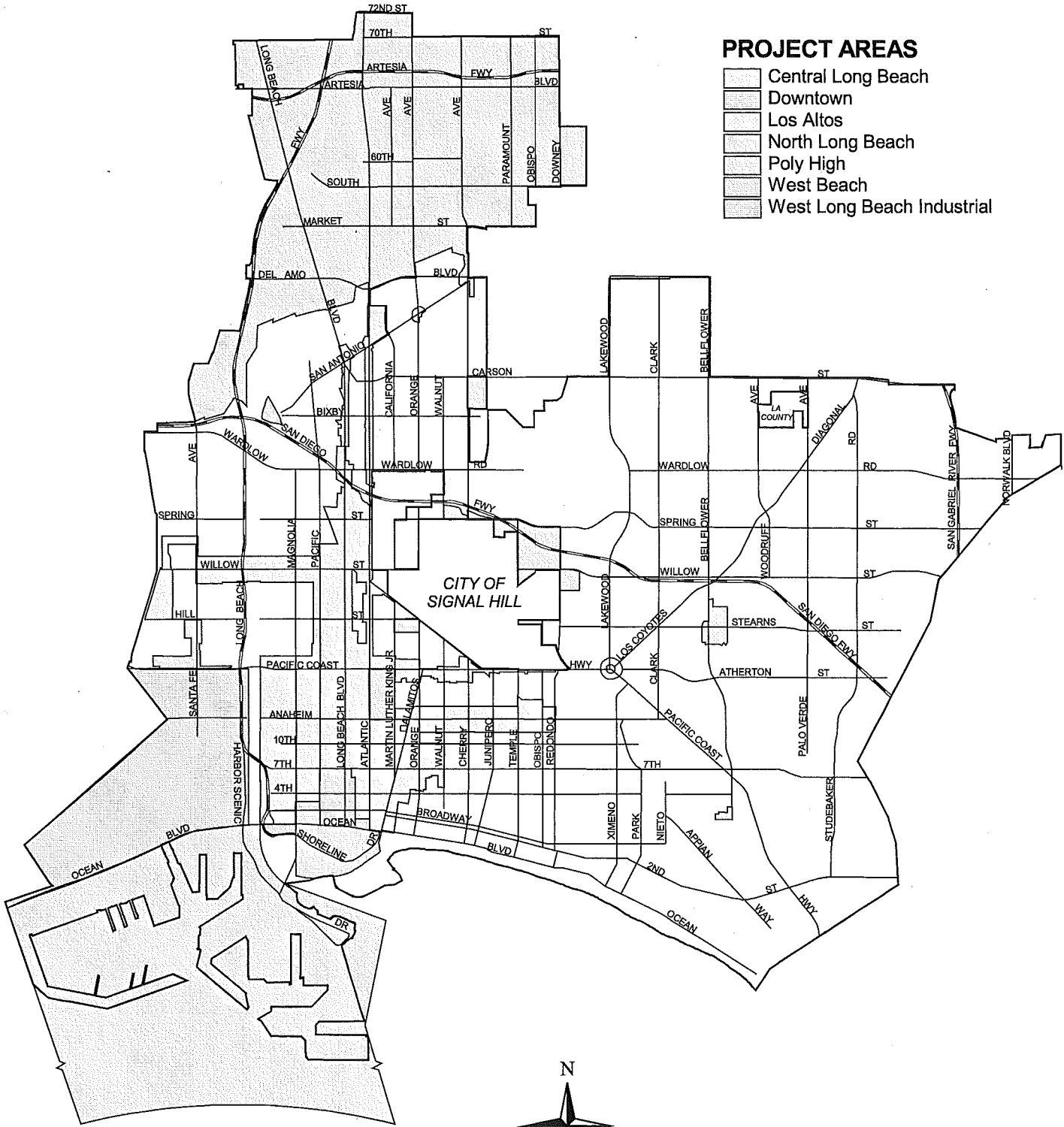
The artists shall provide a maintenance manual with a maintenance schedule to be reviewed by the ACPA for appropriateness and shall have the right of first refusal on the repair contract for their artwork. The owner/developer shall be required to execute a maintenance covenant with the RDA per the terms of the attached sample maintenance covenant (Exhibit C). The maintenance covenant shall be recorded against the property and transferred to subsequent owners should the property be sold. Subsequent owners of the property shall be responsible for fulfilling all maintenance requirements as stipulated in the covenant with the RDA.

C. OWNERSHIP OF PUBLIC ART

All artwork included in a specific project or redevelopment area belongs to the project owner, the commissioning body or other entity as determined through the selection and implementation process by the ACPA. However, the artwork copyright belongs to the artist. The copyright remains with the artist unless specifically addressed in the artist developer agreement. If the development or improvements where the artwork is installed is either abandoned or sold by the owner/developer, the artist shall be given the first right of refusal to receive or purchase art. Photographing, altering, or replicating the artwork in any way for public consumption or use requires prior written permission from the artist. The ACLB and the RDA shall have the exclusive right to use any photos, slides, models, printed materials, etc. of the artwork for non-commercial purposes. The ACLB and the ACPA recommend that the developer act in accordance with Federal and State of California artist's rights legislation with regard to the ownership, maintenance, preservation, disposition, sale, copyright, and other legal considerations concerning public art.



CITY OF LONG BEACH REDEVELOPMENT AREAS



PROJECT AREAS

-  Central Long Beach
-  Downtown
-  Los Altos
-  North Long Beach
-  Poly High
-  West Beach
-  West Long Beach Industrial



EXHIBIT B

**Table to Determine Building Development & Land Costs
Percent for Public Art Program
Long Beach, California**

Category	Marshall & Swift Cost	Cost Multiplier	Local Multiplier	Base Cost (1)	Description
Residential					
Low Rise (1 to 3 stories)	59.23	1.03	1.18	\$70 psf	Good Class D Apartments
High Rise (3+ stories)	75.22	1.03	1.18	\$90 psf	Excellent Class D Apartments
Office					
Low Rise (1 to 3 stories)	108.89	1.01	1.16	\$130 psf	Good Class A Office Building
High Rise (3+ stories)	135.69	1.01	1.16	\$160 psf	Excellent Class A Office Building
Hotel	122.92	1.03	1.16	\$150 psf	Excellent Class A Hotel
Retail	92.14	1.06	1.16	\$110 psf	Excellent Class A Retail Store
Parking Structure					
Above Grade	8,750	1.00	1.17	\$10,000 sp	Average Class B Parking Structure
Below Grade	17,388	1.00	1.16	\$20,000 sp	Average Class B Parking Structure

Land Cost

Low Rise - Residential	50%	of base cost
Low Rise - Office & Retail	40%	of base cost
High Rise - Residential, Office & Hotel	20%	of base cost

(1) The base building costs (excluding parking) presented above must be adjusted to reflect increases in height of over three stories, at the rate of 0.5% (1/2%) of base building costs for each story over three, up to 30 stories. Add 0.4% (4/10%) for each additional story over 30.

EXHIBIT C

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Redevelopment Agency of the
City of Long Beach, California
333 West Ocean Boulevard
Third Floor
Long Beach, California 90802
Attn: Executive Director

NO FEE REQUIRED FOR RECORDATION PURSUANT
TO GOVERNMENT CODE SECTION 6103

PUBLIC ART MAINTENANCE AGREEMENT

THIS PUBLIC ART MAINTENANCE AGREEMENT ("Maintenance Agreement") is made as of _____, 20__, by and between the REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH, CALIFORNIA, a public body, corporate and politic (the "Agency"), and _____, a _____ (the "Owner"), with respect to the following facts:

A. Owner and the Agency entered into a Disposition and Development Agreement (the "DDA") on _____, 20__.

B. Pursuant to the DDA, Owner owns fee title to certain real property (the "Property") located in the City of Long Beach, California, more fully described in Exhibit A hereto.

C. Pursuant to the DDA, Owner is obligated to maintain certain public art (the "Public Art") proximate to the Property; the location of the Public Art is shown on the Site Map, Exhibit B hereto; the Public Art is described on Exhibit C hereto.

NOW, THEREFORE, the parties agree as follows:

1. Maintenance of the Public Art. Owner, its successors, assigns, and any successor in interest to the Property, covenants and agrees to maintain the Public Art in

accordance with the "Reasonable Standards," as hereinafter defined. Said Public Art includes, but is not limited to, adjacent sidewalks, pedestrian lighting, and landscaping which is part of the Public Art. To accomplish the maintenance, the Owner shall either staff or contract with qualified and if required by law, licensed personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. The obligations of Owner regarding maintenance of the Public Art in accordance with this paragraph 1 are referred to herein as the "Owner Obligations."

2. Reasonable Standards. The following standards ("Reasonable Standards") shall be complied with by the Owner and its maintenance staff, contractors or subcontractors:

A. Maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from the Public Art and immediately surrounding areas and removal of all graffiti.

B. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; weeding; removal and replacement of dead landscaping material; trimming of grass; tree and shrub pruning.

C. The Public Art shall be maintained in accordance with the custom and practice generally applicable to comparable high quality commercial properties located within the City, including but not limited to, periodic cleaning of all exterior surfaces.

3. Failure to Maintain Public Art. In the event the Owner does not maintain the Public Art in the manner set forth herein and in accordance with Reasonable Standards, the Agency and/or the City of Long Beach ("City") shall have the right to maintain the Public Art, or to contract for the correction of such deficiencies, after written notice to the Owner. However, prior to taking any such action, the Agency agrees to notify the Owner in writing if the condition of the Public Art does not meet with Reasonable Standards and to specify the deficiencies and the actions required to be taken by the Owner to cure the deficiencies. Upon notification of any maintenance deficiency, the Owner shall have thirty (30) days within which to commence, and thereafter diligently correct, remedy or cure the deficiency. If the written notification states the problem is urgent and relates to public health and safety, the Owner shall have forty-eight (48) hours to commence to rectify the problem.

A. Right to Maintain. In the event the Owner fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after the period of correction has lapsed, then the Agency and/or City shall have the right to maintain the Public Art. The Owner agrees to pay the

Agency and/or City such charges and costs incurred by the Agency and/or City in curing such maintenance deficiency. Until so paid, the Agency and/or City shall have a lien on the Property as provided by this Agreement for the amount of such charges or costs.

B. Lien for Owner's Obligations. Owner hereby mortgages the Property, and each subsequent purchaser by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to mortgage the Property to Agency, with power of sale, for the purpose of securing the payment of the Owner Obligations. Owner Obligations, together with interest at the Applicable Rate (as defined in the following sentence) as of the date of the lien, late charges, reasonable collection costs, and reasonable attorney fees, to the extent permitted by this Agreement, shall be a charge on the Property and shall be a continuing lien upon the Property. The "Applicable Rate" shall be prime rate of interest as published in the Wall Street Journal, but in no event higher than the maximum rate permitted by law. The lien shall become effective upon recordation of a "Notice of Default" in accordance with paragraph 3.C below. No "Notice of Default" (as hereinafter defined) shall be released until all amounts correctly provided in such notice have been paid in full. The lien created hereby shall be prior and superior to any and all liens except (1) for taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) any Mortgages (as defined below) made in good faith and for fair value. The lien created hereby may be foreclosed in the manner provided by law for the foreclosure of a Mortgage under power of sale or by an appropriate action in court.

C. Notice of Default. In the event Owner fails to pay any Owner Obligation, Agency may declare an "Event of Default" hereunder and cause a written notice of default and election to sell the Property (hereinafter referred to as "Notice of Default") to be prepared and have the Notice of Default filed for record in the office of the County Recorder of Los Angeles County. An Event of Default shall not be declared, and a Notice of Default shall not be recorded, until Owner has been given written notice of delinquency and has not cured said delinquency within thirty (30) days of the giving of said notice in the case of a monetary default, or within sixty (60) days of the giving of said notice in the case of a nonmonetary default, provided that if such nonmonetary default cannot be cured within such 60-day period then within such reasonable period of time as may be necessary to commence and pursue cure within diligence to completion. A Notice of Default shall also not be recorded until any holder of each Mortgage shall have been given written notice of delinquency and shall have failed to cure said delinquency as provided in paragraph 3.B. of this Agreement. A Notice of Default shall state the amount of such delinquent sums (and may include sums which become delinquent prior to the sale) and other authorized charges and interest at the Applicable Rate as of the date of the lien (including the cost of recording such notice), a sufficient description of the Property, and the name of the record owner thereof. The Notice of Default (and any notice of satisfaction and release as referred to below) shall be signed on behalf of Agency by the Chairman or Executive Director or any duly authorized

officer. A Notice of Default executed and acknowledged by Agency stating the amount of indebtedness secured by a lien on the Property shall be conclusive upon Agency and the purchaser at a foreclosure sale as to the amount of such indebtedness on the date of the Notice of Default in favor of all persons who rely thereon in good faith without notice of any error therein. Upon payment to Agency of such delinquent sums and charges in connection therewith, or other satisfaction thereof, Agency shall cause to be recorded in the office of the County Recorder of Los Angeles County a further notice stating the satisfaction and release of such delinquent sums and charges. Agency may demand and receive the cost of recordation of such release before recording same. Any purchaser or encumbrancer acting in good faith and for value, may rely upon such notice of satisfaction and release as conclusive proof of the full satisfaction of the sums stated in the Notice of Default pertaining thereto. After three (3) months or such longer time as may be allowed by law shall have elapsed from the recordation of any Notice of Default, and after a written notice of sale has been given to the extent required by the then applicable law (but in any event not less than 30 days' prior written notice to Owner and each holder of a Mortgage), Agency, without legal action or demand on Owner, may sell the Property at such time and place fixed in said notice of sale or at the time and place to which the sale is postponed as hereinafter provided without additional notice at public auction to the highest bidder for cash in lawful money of the United States at the time of sale or upon such other terms as Agency may consider advisable and as permitted by law. Agency may postpone the sale of the Property by public announcement thereof at the time and place of sale and from time to time thereafter by public announcement at the time and place of the preceding postponement. Agency in conducting or postponing said sale may act through the agents, officers or employees of Agency or any other person designated by Agency whether or not such party shall be a licensed auctioneer. Agency, or any other person designated by it in writing, shall be deemed to be acting as the Agent of Owner and shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. Agency shall deliver to the buyer or buyers at such sale its deeds or deeds conveying the Property so sold, but without any covenant or warranty expressed or implied. The Property shall be sold subject to the lien created by this Agreement and to the liens of any holders of Mortgages. The recitals in such deed or deeds of any matters of fact shall be conclusive proof of the truthfulness thereof against the buyer, its successors and assigns, and all other persons. Any person may purchase at such sale. Owner shall surrender immediately and without demand possession of the Property to the buyer at such sale. Any such sale provided for herein shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c of the Civil Code of the State of California, applicable to the exercise of powers of sale in Mortgages and deeds of trust, or in any other manner permitted or provided by law. Agency, through its duly authorized agents, shall have the power to bid on the Property at any foreclosure sale, and to acquire and hold, lease, Mortgage and convey the same.

D. Application of Proceeds. Agency shall apply the proceeds of such sale in

the following manner and order:

- i. Reasonable expenses of such sale and all reasonable costs, fees, charges and expenses of Agency, including costs of evidence of title and reasonable attorneys' fees;
- ii. Satisfaction of delinquent sums hereunder;
- iii. The remainder, if any, to Owner or other person or persons legally entitled thereto.

E. Judicial Foreclosure. In addition, Agency may foreclose the lien created hereby by court action in the manner provided by the laws then applicable to this Agreement, in which case the foreclosed owner of the Property agrees to pay all reasonable costs and expenses thereof, including reasonable attorneys' fees as the court may determine. The foreclosure shall not affect the lien created by this Agreement as to any future amounts owing hereunder and shall not affect the liens of any holders of Mortgages, or the priority of this Agreement with respect to such other liens. In the event that Agency proceeds to enforce this Agreement pursuant to paragraph 3.A or this paragraph 3.E hereof, neither such enforcement nor the existence of Agency's rights contained herein shall prevent Agency from proceeding directly against Owner pursuant to the other provisions hereof, nor prevent the bringing of an action to enforce similar provisions contained in other agreements between the parties hereto, as long as any unpaid Owner Obligation is not collected more than once, in all such cases, however, subject to applicable contractual provisions and laws of the State of California.

F. Appointment of a Receiver. Upon an Event of Default, Agency shall have the right (but not the obligation) to have a court immediately appoint a receiver for the Property. Any such appointment may be made either before or after sale, with such notice, if any, as may be required by court rule or proceeding and applicable law, and without regard to the solvency or insolvency at the time of application for such receiver of the person or person(s), if any, liable for the payment of the payment obligation secured hereby and without regard to the then value of the Property and without bond being required of the applicant. Said receiver shall have the power to take possession, control, and care of the Property and to collect the rents and profits of the Property and, in the case of a sale and a deficiency, during the full statutory period of redemption, as well as during any further times Agency, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the Property during the whole of said period. To the extent permitted by law, the receiver may be authorized by the court to extend or modify any then existing leases and to make new leases. It is understood and agreed that any

such new lease and the extensions, modifications or other such provisions shall be binding upon trustor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers from sale.

G. Copies of Notice. Copies of the Notice of Default and any notice of sale hereunder shall be posted at the Property, delivered to Owner at Owner's last known address, and if applicable, to Owner's agent for the service of process in California.

4. Indemnification; Bodily Injury and Property Damage Insurance. Owner agrees to and shall defend, indemnify and hold Agency and City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person resulting from the alleged negligent or intentional acts or omissions of Owner, its officers, agents or employees in the performance of its duty to maintain the Public Art pursuant to this Agreement.

A. Insurance. Prior to any maintenance of the Public Art pursuant to Paragraph 2 of this Agreement, until termination of this Agreement, Owner, at its sole cost and expense but for the mutual benefit of Agency and Owner, shall procure and maintain, at Owner's expense, the following insurance coverages including any extensions, renewals or holding over thereof, from insurance carriers admitted to write insurance in California or having a minimum rating of or equivalent to a current rating of A:VIII by A.M. Best Company for at least the coverages and limits listed herein unless otherwise determined by City's Risk Manager or designee.

(a) By Owner:

(i) Commercial general liability insurance equivalent in scope to ISO form CG 00 01 11 85 or 11 88 in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and in aggregate. Such coverage shall include but shall not be limited to independent contractors liability, broad form contractual liability, cross liability protection, and products and completed operations liability. The City, the Redevelopment Agency, and their officials, employees, and agents shall be named as additional insureds by endorsement equivalent in scope to ISO form CG 20 26 11 85 with respect to liability arising out of activities by or on behalf of Owner or in connection with the development, use or occupancy of the Site. This insurance shall contain no special limitations on the scope of protection afforded to the City, the Redevelopment Agency, and their officials, employees, and agents.

(ii) Commercial automobile liability insurance equivalent in scope to ISO form CA 00 01 06 92 covering Auto Symbol 1 (Any Auto) in an amount

not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

(iii) Professional liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim covering the work of any person providing architectural, engineering, environmental, landscape architectural, surveying, project management, soils engineering, or other professional services with respect to the development and construction of the Facilities. If such insurance is written on a claims-made basis, it must be provided with a pre-paid, one-year extended reporting endorsement incepting at the date of the Certificate of Completion.

(iv) "All Risk" Property insurance, including builder's risk protection during the course of construction and debris removal, in an amount sufficient to cover the full replacement value of all buildings and structural improvements erected on the Site. The City and the Redevelopment Agency shall be named as additional insured and loss payee under a standard loss payable endorsement.

Owner shall also obtain coverage for the perils of earthquake and flood, if available from responsible insurance companies at commercially reasonable rates, and the City and the Redevelopment Agency shall be named as additional insured and loss payee under a standard loss payable endorsement.

(v) Workers' compensation insurance as required by the Labor Code of the State of California and endorsed, as applicable, to include United States Longshoremen and Harbor Workers' Act coverage, Jones' Act coverage, and employer's liability insurance with minimum limits of One Million Dollars (\$1,000,000) per accident.

(b) Insurance Requirements for Owner's Contractor and Subcontractors. Owner shall require Owner's contractors and subcontractors to meet the insurance requirements herein as applicable. With respect to the insurance required in paragraph A(i), the limit applicable to this Paragraph shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate. The insurance required by paragraph A(iv) is not applicable to this Paragraph. In addition, City's Risk Manager shall consider contractors' and subcontractors' written requests for modification of the insurance requirements based on the scope of work to be performed.

B. Certificates. Prior to the start of any inspection, excavation or construction under this Agreement, Owner shall deliver to City certificates of insurance with original endorsements evidencing the insurance coverage required by this Agreement for

approval as to sufficiency and form. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. City reserves the right to require complete certified copies of all policies of the Owner or any of the Owner's contractors or subcontractors at any time.

C. Books and Records. Owner agrees to make available to City all books, records and other information relating to the insurance coverage required by this Agreement during normal business hours.

D. Self Insurance. Any self-insurance program, self-insured retention, or deductibles must be approved separately in writing by City's Risk Manager or designee and shall protect the City of Long Beach, its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions. Owner may be required to reduce or eliminate deductibles or self-insured retentions or to procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense costs.

E. Insurance Primary. Insurance required herein shall be primary insurance as respects any insurance or self-insurance maintained by the City. Any insurance or self-insurance maintained by the City shall be excess of this insurance. Coverage shall state that the insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and all policies shall be endorsed to state that coverage shall not be suspended, voided, changed, or canceled except after thirty (30) days prior written notice to City.

F. Amendment. If in the opinion of City from time to time, the amount, scope, or type of insurance coverage specified herein is not adequate, Owner shall amend its insurance as required by City's Risk Manager or designee.

G. No Limitation of Liability. The insurance required herein shall not be deemed to limit Owner's liability relating to performance under this Agreement. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Agreement. Owner understands and agrees that, notwithstanding any insurance, Owner is obligated to defend, indemnify, and hold City of Long Beach, its officials, employees, and agents harmless hereunder for the full and total amount of any damage, injury, loss, expense, cost, or liability caused by the condition of the Property or in any manner connected with or attributed to the acts, omissions or operations of Owner, its officers, agents, contractors, subcontractors, employees, licensees, or visitors, or their use, misuse, or neglect of the Property.

H. Modifications. Any modification or waiver of the insurance requirements

herein shall be made only with the written approval of the City's Risk Manager or designee.

5. Mortgagee Protection.

A. Nothing contained in this Agreement shall render invalid or in any way impair the lien of any mortgage or deed of trust placed upon the Property, but title to the Property obtained through sale or otherwise in satisfaction of any such mortgage or deed of trust shall thereafter be held subject to the restrictions and provisions hereof.

B. The holder of any mortgage or deed of trust shall in no way be obligated to comply with any of the other covenants contained herein, except for the period of time such holder owns fee simple title to the Property and upon any conveyance by such holder, such holder shall be released from liability for any obligations accruing after the time of such conveyance.

C. At the time the Agency delivers any notice or demand with respect to any breach or default by Owner hereunder, the Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust a copy of such notice or demand at an address designated by such holder by notice given to the Agency, or otherwise, at the address for such holder of record set forth in the recorded instrument. Each such holder shall have the right, at its option, within 90 days after receipt of such notice to cure or remedy such default, provided, however, if such default cannot be reasonably cured within 90 days, then such holder shall have such additional time as is reasonably required to cure such default, but not in excess of 180 days following such notice from the Agency, on the condition such holder commences to cure within such 90 days and thereafter diligently pursues such cure to completion.

6. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to any other party or any other person shall be in writing and either served personally or sent by prepaid, certified or registered mail, return receipt requested. Any such notice, demand, request, consent, approval, or communication shall be addressed as follows:

To the Agency: Executive Director
 Redevelopment Agency of the
 City of Long Beach, California
 3rd Floor
 333 West Ocean Boulevard
 Long Beach, California 90802

To the Owner: _____

Any party may change its address by notifying the other parties of the change of address. All notices shall be effective on the date set forth on the return receipt or on the date delivery is refused.

7. Termination. This Agreement may be terminated with the written consent of Agency. In the event the Agency subsequently determines in the exercise of its reasonable discretion, whether at the request of Owner or otherwise, that the obligations imposed upon Owner by this Agreement are no longer required, the Agency will execute instruments in recordable form releasing Owner and its successors in interest from any liability under this Agreement.

8. General Provisions

A. No Public Dedication. Nothing in this Agreement is intended or shall be construed to be a dedication to the public of any portion of the Owner's Property or the Subterranean Parcels.

B. Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Agreement shall entitle Owner or Agency to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other right or remedies which the parties may have hereunder by reason of any breach of this Agreement.

C. Estoppel Certificate. Owner and Agency hereby covenant that upon written request of the other, it will issue to such requesting party or any other person specified by such requesting party, an estoppel certificate stating to the best of its knowledge (a) whether the party or signatory to whom the request has been directed knows of any default under the Agreement, and if there are known defaults, specifying the nature thereof; (b) whether the Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and (c) that the Agreement as of that date is in full force and effect.

D. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

E. Amendments. This Agreement may not be modified or amended except by a written instrument executed by all parties or their successors in interest.

F. California Law. This Agreement shall be governed by and construed in

accordance with the laws of the State of California applicable to contracts made and performed within the State of California.

G. Force Majeure. Owner shall not be in breach or default hereunder, or liable to the Agency or the City, for failure or delay in performance of any of its obligations under this Agreement caused by floods, earthquakes, acts of God, fires, wars, riots and similar hostilities, strikes or other labor difficulties, shortages of materials, government regulations or actions or other causes beyond Owner's reasonable control.

H. Severability. If any term(s) or provision(s) of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term(s) or provision(s) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each and every term of this Agreement shall be valid and enforced to the fullest extent permitted by law.

I. Interpretation. This Agreement is to be deemed to have been prepared jointly by the parties hereto and if any inconsistencies exist herein they shall not be interpreted or construed against any party as the drafter.

J. Attorneys Fees. In the event of a dispute between the parties hereto or their representatives or assigns relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection therewith.

K. No Partnership. Nothing herein contained shall be construed to create a joint venture or partnership nor to create the relationship of principal and agent or of any association between the City, the Agency and Owner.

L. Further Cooperation. Each party hereto agrees to execute any and all documents and writings which may be necessary or expedient and do such other acts as will further the purposes hereof.

M. Successors and Assigns. As used herein, Owner means Long Beach Plaza Associates, a California corporation, or any subsequent fee owner of the Subterranean Parcels. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their assigns and successors.

N. No Discrimination. There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, national origin, sex, sexual orientation, AIDS, AIDS-related condition, age, marital status, disability or handicap, or Vietnam Era veteran status in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of their Property, nor shall Owner himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or

segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees in their property. The foregoing covenants shall run with the land.

IN WITNESS WHEREOF, the Agency, the City and the Owner have executed this Agreement as of the date set forth opposite their respective signatures.

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

_____, 20____

By: _____
Executive Director/Secretary

Approved as to form this ____ day
of _____, 20____.

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

OWNER

_____, a

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

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

On this _____ day of _____, 200_, before me, _____, a Notary Public in and for said State, duly commissioned and sworn, personally appeared _____, 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.

Notary's Signature (Seal)

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

On this _____ day of _____, 200_, before me, _____, a Notary Public in and for said State, duly commissioned and sworn, personally appeared _____, 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.

Notary's Signature (Seal)

Exhibit A

LEGAL DESCRIPTION

(To be inserted)

Exhibit B

MAP OF PUBLIC ART LOCATIONS