

REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH

PERCENT FOR PUBLIC ART PROGRAM



September 18, 2006

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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 or 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; members of the Advisory 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

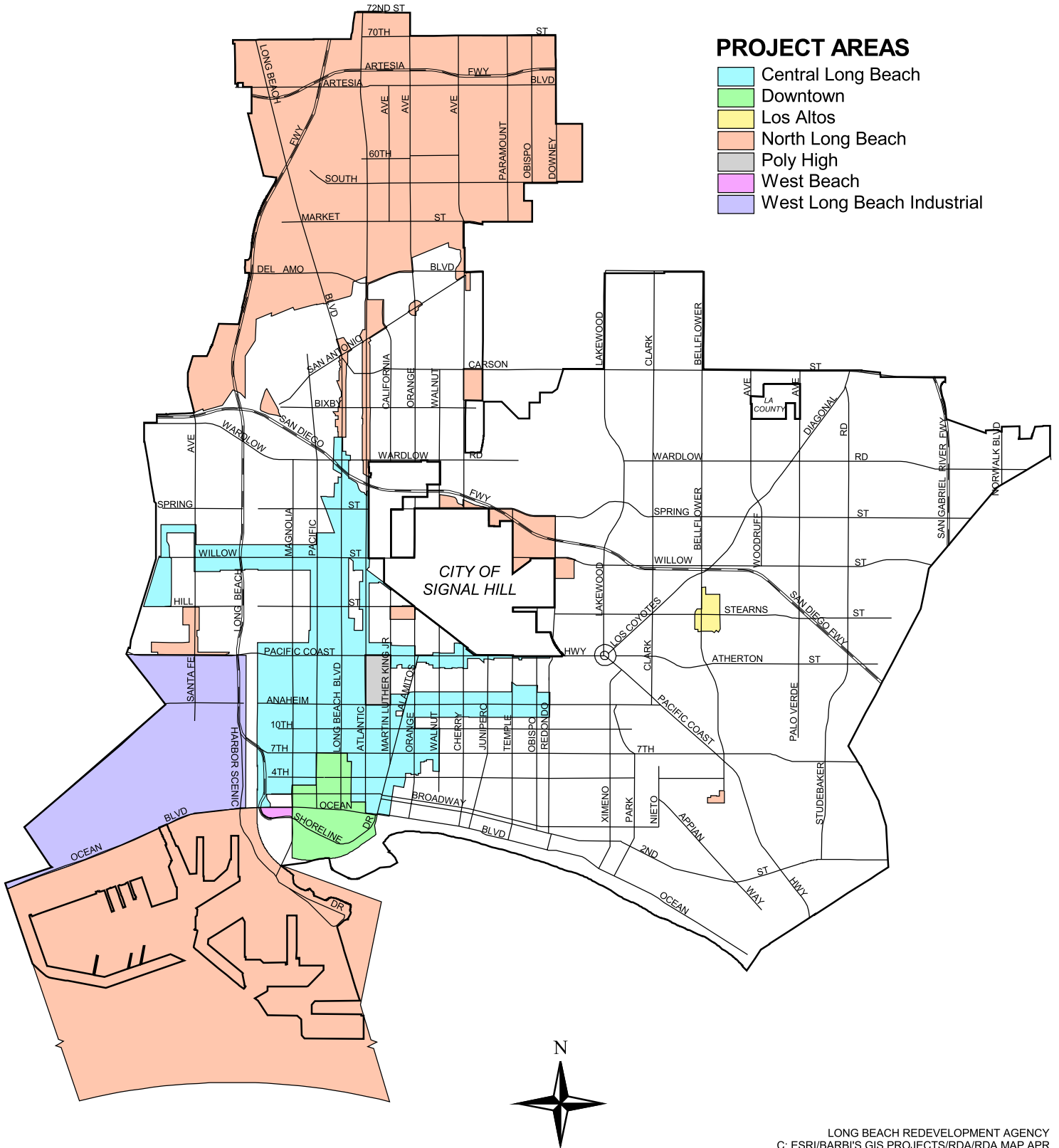


EXHIBIT B

**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
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To the Owner:	_____ _____
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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: _____

Exhibit A

LEGAL DESCRIPTION

(To be inserted)

Exhibit B

MAP OF PUBLIC ART LOCATIONS