

**AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH
AND DAVID CARMANY AND LAURA CARMANY
FOR TENANCY IN COMMON AT 2913 PACIFIC AVENUE**

THIS AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND DAVID CARMANY AND LAURA CARMANY FOR TENANCY IN COMMON AT 2913 PACIFIC AVENUE (this "Agreement") is dated as of January 26, 2011 and is entered into by and between the CITY OF MANHATTAN BEACH, a municipal corporation ("City"), and DAVID CARMANY and LAURA CARMANY (collectively, the "Carmanys"). The City and the Carmanys are sometimes individually referred to herein as a "party".

RECITALS:

WHEREAS, City owns an undivided fifty percent (50%) tenancy-in-common interest in the land described on Exhibit "A" attached and the improvements thereon (collectively, the "**Property**") which have a street address of 2913 Pacific Avenue in the City of Manhattan Beach, County of Los Angeles, State of California; and

WHEREAS, the Carmanys own an undivided fifty percent (50%) tenancy-in-common interest in the Property; and

WHEREAS, the parties desire to provide for the orderly joint ownership of the Property, and therefore desire to agree upon their respective rights and obligations as joint owners of the Property.

AGREEMENT:

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. Improvements. The Carmanys shall not materially alter or make any material improvements to the Property without the prior written consent of the City in its proprietary capacity, which will not be unreasonably withheld. As used in the preceding sentence, the terms "materially alter" and "material improvements" shall mean any alteration or improvement that costs more than \$50,000 and for which a building permit is required and shall not include alterations and improvements made with the Additional Equity as defined in the Housing Assistance Agreement between the City of Manhattan Beach and David Carmany and Laura Carmany.

2. Mutual Waiver of Partition Rights. EACH PARTY HERETO, FOR THE MUTUAL BENEFIT AND PROTECTION OF BOTH PARTIES, HEREBY SPECIFICALLY WAIVES AND RELEASES ANY AND ALL RIGHT TO BRING ANY ACTION FOR PARTITION OR SALE OF THE PROPERTY OR ANY PART THEREOF, AND SPECIFICALLY WAIVES ITS RIGHTS IN CONNECTION WITH ANY SUCH ACTION TO FILE A NOTICE OF LIS PENDENS AGAINST THE PROPERTY OR ANY INTEREST THEREIN.

3. Occupancy; Use; Leasing. The Carmanys shall have the right to use and occupy the entire Property, but only as their principal residence. The Carmanys shall not lease the Property.

4. Maintenance and Repair. The Carmanys shall be responsible for the maintenance, safety, cleanliness and repair of the Property.

5. Insurance; Damage. The Carmanys shall maintain reasonable home casualty insurance on all improvements and homeowner's liability insurance for the Property and shall deliver evidence thereof to City upon written request. The liability insurance shall name the City as additional insured. All casualty insurance proceeds shall be used to repair improvements, subject to any applicable terms of any deed of trust held by City. The Carmanys shall pay for all costs of rebuilding or repair not covered by insurance, unless the damage was caused by City, in which case City shall pay such costs. The Carmanys shall promptly repair all damage.

6. Real Property Taxes. The Carmanys shall pay (i) all real property taxes on the Carmany's interest in the Property; and (ii) all assessments (including those assessed on or allocable to the City's interest). The City shall reimburse the Carmanys within thirty (30) days after written demand, accompanied by copies of bills and evidence of payment, for fifty percent of the total assessments. The City will pay all property taxes (if any) on the City's interest in the Property. The City will pay all possessory interest taxes assessed to the City or the Carmanys after receipt from the Carmanys of the applicable bills for possessory interest taxes.

7. Utilities. The Carmanys shall arrange and pay for all utilities.

8. Restrictions on Transfer. Except for any deed of trust in favor of City, neither City nor the Carmanys shall have the right, at any time, to sell or otherwise convey title to all or any portion of or interest in its interest in the Property unless the other shall consent in writing to the same.

9. Purchase Options. The Carmanys may elect to purchase the City's interest in the Property at any time by giving written notice of such election to the City. The City may elect to purchase the Carmanys' interest in the Property during a thirty (30) day period that is between sixty (60) days and ninety (90) days after the end of Mr. David Carmany's employment by City by giving notice of the election to the Carmanys. Following delivery of such a notice by either party, the Carmanys and City shall promptly open an escrow with an escrow company selected by City, and the buyer shall deposit the applicable purchase price (as described below) within one (1) business day prior to the scheduled close of escrow. Escrow shall close no later than ninety (90) days following the delivery of the applicable notice of election to purchase.

The sale shall be on the following terms: (A) title shall be conveyed by grant deed on an AS IS, WITH ALL FAULTS basis, and without representation or warranty of any kind except for the implied warranties in the grant deed, and except for any legal obligation that the seller, as a seller of real property in California, may have to disclose material facts regarding the Property, (B) there shall be no contingencies or conditions to the close of escrow other than: (i) the delivery of appropriate documents (including any applicable tax withholding affidavits); (ii) the removal of any monetary liens (which may occur concurrently with the closing) suffered or

placed on the interest by the seller (other than the City's deed of trust); and (iii) the delivery of the grant deed (and acceptance certificate if the City is the purchaser). If the City is the purchaser, then the Carmanys shall remove all personal property from the Property and vacate the Property by the close of escrow and this Agreement shall be of no further force or effect except as to obligations arising hereunder prior to the close of escrow. Both parties shall promptly execute such documents and perform such other acts as may be necessary or reasonable to accomplish the sale.

The purchase price for a purchase of an interest shall be fifty percent (50%) of the Fair Market Value (hereinafter defined) of the Property. However, if City is the buyer, then City may also deduct the amount of any unpaid taxes and assessments and the outstanding principal and accrued interest of the City's loan to the Carmanys from the purchase price.

The Fair Market Value of the Property shall be determined by an independent MAI appraiser jointly selected by City and the Carmanys. If they are unable to agree on the selection of an appraiser within thirty (30) days following delivery of an option exercise notice, then each of the two parties shall select an independent MAI appraiser within twenty (20) days after expiration of the thirty (30) day period. The two appraisers so selected shall each independently appraise the Premises and, as long as the difference in the two appraisals does not exceed five percent (5%) of the lower of the two appraisals, the fair market value shall be conclusively deemed to equal the average of the two appraisals. The determination of such appraisers shall be binding on the parties. If either party fails to select an independent MAI appraiser within the time required by this paragraph, the fair market value of the Property shall be conclusively deemed to equal the appraisal of the independent MAI appraiser timely selected by the other.

If the difference between the two appraisals referred to above exceeds five percent (5%) of the lower of the two appraisals, the two appraisers selected shall select a third MAI appraiser who shall also independently and promptly appraise the Property and shall deliver its appraisal to the other appraisers and to each party. In such case, the fair market value of the Property shall be the average of the two closest appraisals. The determination of such appraisers shall be binding on the parties.

Each appraiser shall have at least ten (10) years experience appraising residential real estate in the City of Manhattan Beach. Each party shall pay the cost of its own appraiser and 50% of the cost of the third appraiser, if any.

Each party shall pay 50% of the escrow charges. The seller shall pay for the cost of a CLTA owner's title policy (or appropriate endorsement to the buyer's existing owner's policy) in the amount of the purchase price insuring the buyer. The seller shall pay documentary transfer taxes and any recording charges.

If one party purchases the other party's interest in the Property, then this Agreement shall terminate except for obligations arising prior to the acquisition. The buying party shall have the remedy of specific performance with respect to any failure by the selling party to sell under this Section.

10. Option to Cause Property to be Sold. If neither party elects to acquire the other party's interest in the Property under Section 9 above, then the City will have ten (10) days after the expiration of the thirty (30) day period provided to the City in Section 9 to cause the Property to be sold. Such election shall be by written notice to the Carmanys. If the City fails to exercise its option within that ten (10) day period, then the Carmanys may elect at any time to cause the Property to be sold. Such election shall be by written notice to City. If either party elects to cause the Property to be sold, then the net proceeds (calculated after deducting brokerage commissions payable by seller, the amount of a lien in favor of City encumbering the Carmanys interest, and the seller's share of escrow costs, title insurance costs, transfer taxes, recording fees, and prorated Property costs) shall be shared in proportion to the parties' respective percentage interests in the Property. The party giving the election notice shall list the Property for sale with a local residential real estate broker selected by such party and such party shall have the sole and exclusive right to select among competing arms length offers. Each party will fully cooperate with the other, with the escrow holder and with the broker in connection with the sale. The party giving the election notice shall have the right of specific performance against the other party with respect to the obligations of such other party under this Section.

11. Further Encumbrancing. Neither the City nor the Carmanys shall encumber their interest (except that the Carmanys may encumber their interest with a deed of trust in favor of the City) without the prior written consent of the other party.

12. Default; Remedies. If either Party fails to perform any of its obligations under this Agreement ("Defaulter"), the other Party ("Non-Defaulter") shall have the right to give the Defaulter a written notice of default setting forth the nature of the default. If the default is not cured within five (5) business days in the case of a monetary default, or thirty (30) days in the case of a non-monetary default (provided that if the non-monetary default cannot be cured within such thirty (30) day period despite all commercially reasonable efforts, then the Defaulter shall not be in default if the Defaulter promptly commences such efforts and thereafter diligently prosecutes the same to completion of the cure), then the Non-Defaulter shall have all remedies available to it at law or in equity, including the right to damages.

13. Indemnity. The Carmanys shall indemnify, defend (with counsel reasonably satisfactory to City) and hold harmless City from and against any and all claims, demands, damages, losses, liabilities, penalties, costs and expenses, including reasonable attorneys' fees and costs arising out of the use of the Property by the Carmanys or their invitees, licensees or contractors, and all other activities and events on the Property, except activities of City, and after sale or assignment of the promissory note evidencing any loan made by City to purchase the Property, all losses, damages, costs and expenses resulting from the Carmanys failure to make any payment required of them under such promissory note. The Carmanys' obligations under this Section shall survive any termination of this Agreement with respect to obligations and liabilities arising prior to such termination.

14. Miscellaneous.

(a) Governing Law. This Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of California.

(b) Entire Agreement. This Agreement contains the entire agreement between the parties relative to the parties' Tenancy in Common Interests. No modifications or changes herein or hereof shall be binding upon any party unless set forth in a document duly executed by, or on behalf of, such party.

(c) Waiver. No consent or waiver, express or implied, by any party to or of any breach or default by any other party in performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such other party hereunder. Failure on the part of any party to complain of any act or failure to act of any other party or to declare any other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

(d) Successors and Assigns. Subject to the restrictions on transfers and encumbrances set forth herein, this Agreement shall inure to the benefit of and be binding upon the undersigned parties and their respective successors and permitted assigns.

(e) Notices. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and personally delivered, sent by first class certified mail, postage prepaid, return receipt requested, or sent overnight by a nationally recognized courier service such as Federal Express, addressed to the parties as follows:

To City: City Clerk
 City of Manhattan Beach
 1400 Highland Avenue
 Manhattan Beach, California 90266

To Employee: Mr. David Carmany
 at the most recent address on file in Employee's
 personnel file held by City's Human Resources Department

Delivery of any notice or other communication hereunder shall be deemed made on the date of actual delivery thereof to the address of the addressee, if personally delivered, and on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by certified mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

(f) Counterparts. This Agreement may be executed by facsimile and in one or more counterparts, all of which taken together shall be deemed to be one original.

(g) Time of Essence. Time is of the essence of each and every provision of this Agreement.

(h) No Partnership or Agency. Neither this Agreement nor the operation of the Property shall cause the parties to be partners or joint venturers, and no party shall have the authority to bind, or shall otherwise be, an agent for any other party with respect to a party's ownership interest in this Property.

(i) City Actions. Neither the City's execution of this Agreement nor any consent or approval given by City hereunder in its capacity as a party hereto shall waive, abridge, impair or otherwise affect the City's rights and powers as a governmental entity.

15. Recordation. A Memorandum of this Agreement in the form attached hereto as Exhibit "B" shall be executed, acknowledged, delivered and recorded by the parties in the Official Records of Los Angeles County.

16. City Cure Right. In the event the Carmanys fail to pay or perform any of their obligations under this Agreement within thirty (30) days after written notice from the City, the City may pay/perform the same, and the Carmanys shall reimburse the city for the costs thereof within ten (10) days after written demand from the City.

17. Interest; Late Charges. If any payment to be made by one party to the other is not paid when due, it shall bear interest at the lesser of: (i) ten percent (10%) per annum, or (ii) the highest rate permitted by law. If any payment to be made by one party to the other is not paid within ten (10) business days after written notice that it is past due, the party that failed to make the payment shall pay to the other party three percent (3%) of the amount due (excluding interest) as a late charge. Each party acknowledges, stipulates and agrees that such late payment of any sums due will cause the other party to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impracticable to determine. Such costs include, without limitation, processing and accounting charges, and cash-flow/budgeting costs, as well as other material adverse effects and damages. Therefore, the parties have agreed upon the late charge described above as liquidated damages for such costs and effects and damages.

18. Joint and Several Liability. The obligations of the Carmanys under this Agreement are joint and several.

19. City Inspection Rights. City shall have the right to inspect the Property at reasonable times upon twenty-four (24) hours' prior written notice to the Carmanys.

20. Mutual Cure Rights as to Assigned City Loan. If City sells or otherwise assigns any loan it shall have made to the Carmanys that is secured by the Property, then each party shall have the right to cure any failure by the other party to make payments or perform other acts required of such other party under the applicable loan documents. The party which failed to pay or perform shall reimburse the curing party for the costs of curing the default within ten (10) business days after written demand.

IN WITNESS WHEREOF, this Agreement is executed effective as of the date first set forth above.

CITY:

CITY OF MANHATTAN BEACH,
a municipal corporation

By: _____

Richard Montgomery,
Mayor

ATTEST:

1-31-11
Liza Tamura,
City Clerk



Approved as to Form:

Bruce Galloway
Bruce Galloway of Richards,
Watson & Gershon, counsel to City

CARMANYS:

David Carmany
David Carmany

Laura Carmany
Laura Carmany

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

The Northerly 42 feet of the Southerly 46 feet of lot 14, in Block 19 of Tract No. 1638, in the City of Manhattan Beach, County of Los Angeles, State of California, as per map recorded in Book 21, Pages 46 and 47 of Maps, in the Office of the County Recorder of said County.

EXHIBIT "B"

FORM OF MEMORANDUM OF AGREEMENT AND PURCHASE RIGHTS

(Attached.)

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266
Attn: City Clerk

[Space Above For Recorder's Use Only]

The undersigned declare that this Memorandum of Tenancy-In-Common Agreement and Purchase Rights is exempt from Recording Fees pursuant to California Government Code Section 27383.

**MEMORANDUM OF TENANCY-IN-COMMON AGREEMENT AND PURCHASE
RIGHTS AND PURCHASE RIGHTS**

THIS MEMORANDUM OF TENANCY-IN-COMMON AGREEMENT AND PURCHASE RIGHTS (this "**Memorandum**") is dated as of 1/25, 2011, and is entered into by and between the CITY OF MANHATTAN BEACH, a municipal corporation ("City"), and DAVID CARMANY and LAURA CARMANY (collectively, the "Carmanys").

RECITALS

A. The Carmanys and the City have entered into that certain "Agreement Between the City of Manhattan Beach and David and Laura Carmany for Tenancy In Common at 2913 Pacific Avenue" (the "**Agreement**"), pursuant to which City and the Carmanys have set forth their respective rights and obligations with respect to their tenancy-in-common interests in the land described on Exhibit A attached hereto and the improvements thereon, in the City of Manhattan Beach, County of Los Angeles, State of California, commonly known as 2913 Pacific Avenue, Manhattan Beach, California.

B. City and the Carmanys now desire to enter into and record this Memorandum to ensure that the rights and obligations of the Agreement bind successors-in-interest to the City's and the Carmanys' tenancy-in-common interests.

AGREEMENT

1. **Term of Agreement.** The Agreement commences on January 25, 2011, and shall remain in effect in perpetuity, unless terminated pursuant to the terms of the Agreement, or by a person or entity which has acquired all tenancy-in-common interests in the Property.
2. **Purchase Rights.** In addition to setting forth the parties' rights and obligations with respect to their tenancy in common in the Property, the Agreement gives each party certain rights and obligations with respect to purchasing the other party's tenancy-in-common interest.
3. **Purpose.** This Memorandum is prepared for the purposes of recordation only and in no way modifies the terms and conditions of the Agreement. In the event any provision of this

Memorandum is inconsistent with any term or condition of the Agreement, the term or condition of the Agreement shall prevail.

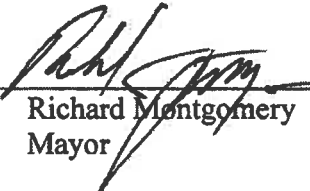
4. Counterparts. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

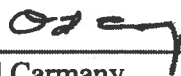
IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first written above.

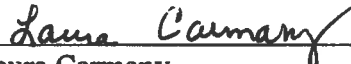
CITY:

CARMANYS:

THE CITY OF MANHATTAN BEACH

By: 
Richard Montgomery
Mayor


David Carmany


Laura Carmany

ATTEST:

 1-31-11
Liza Tamura
City Clerk



ACKNOWLEDGMENT

State of California)
County of Los Angeles)

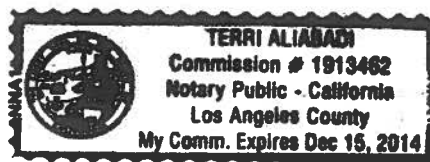
On 1/25/11 before me, Terri Aliabadi
(insert name and title of the officer)

personally appeared Richard Montgomery

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 [Signature]
Signature of Notary Public

(Seal)

ACKNOWLEDGMENT

State of California)
County of Los Angeles)

On 1/31/11 before me, Terri Aliabadi, Notary Public
(insert name and title of the officer)

personally appeared David N. Larmany

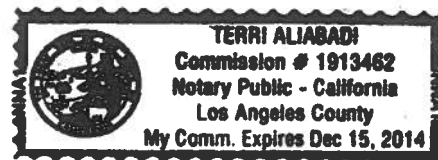
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument 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 
Signature of Notary Public

(Seal)



ACKNOWLEDGMENT

State of California)
County of Los Angeles)

On 1/31/11 before me, Terr Aliabadi, Notary Public
(insert name and title of the officer)

personally appeared Laura L. Carmany,

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 
Signature of Notary Public

(Seal)



EXHIBIT "A"

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