

31049

ASSIGNMENT AND ASSUMPTION AGREEMENT AND CONSENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT AND CONSENT ("Assignment") is made and entered into on DECEMBER 31, 2015 ("Effective Date") by and among the CITY OF LONG BEACH, a municipal corporation ("Assignor"), 4TH STREET PARKING & BUSINESS IMPROVEMENT AREA ("Assignee") and FRANCES ROSS and SCOTT ROSS, individuals (collectively, "Landlord").

Section 1. Assignor hereby assigns to Assignee all of its right, title and interest in that certain Lease No. 31049 dated February 25, 2009 executed by Assignor, as tenant, and Landlord, as landlord, as the same has been amended (the "Lease"), a copy of which is attached hereto as Exhibit A. Assignee hereby accepts the assignment from Assignor and unconditionally assumes all of the obligations of Assignee under the Lease.

Section 2. Pursuant to Section 15 of the Lease, Landlord hereby consents to the assignment of the Lease by Assignor to Assignee, and acknowledges and agrees that the Assignee shall be solely liable for all rent and other obligations under the Lease arising after the Effective Date.

Section 3. This Assignment constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein, and the interpretation and enforcement of this Assignment shall be governed by California law. This Assignment is meant to effect and acknowledge the transfer of the tenant's interest in the Lease, and shall not otherwise amend any provision of the Lease.

THE PARTIES have executed this Assignment as of the day and year first indicated above.

"Assignor"

CITY OF LONG BEACH

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

By: RBULL Assistant City Manager

Name: Patrick H. West

Title: City manager

"Assignee"

4TH STREET PARKING &

APPROVED AS TO FORM

12-4, 2015

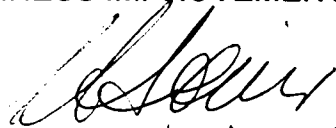
CHARLES PARKIN, City Attorney

By

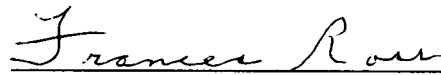
[Signature]

AMY R. WEBBER  
DEPUTY CITY ATTORNEY


BUSINESS IMPROVEMENT AREA

By:   
Name: K. KANSTEINER  
Title: CO-CHAIR

"Landlord"

  
\_\_\_\_\_

FRANCES ROSS

  
\_\_\_\_\_

SCOTT ROSS

EXHIBIT A  
LEASE

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OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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LEASE  
**31049**

THIS LEASE is made and entered, in duplicate, as of February 25, 2009 pursuant to a minute order of the City Council of the City of Long Beach adopted at its meeting held on February 10, 2009, by and between ROBERT ROSS, FRANCES ROSS, and SCOTT ROSS, whose address is 16861 Saybrook Lane, Huntington Beach, California 92649 ("Landlord"), and the CITY OF LONG BEACH, a municipal corporation, whose address is 333 W. Ocean Boulevard, 3rd Floor, Long Beach, California 90802, Attention: Property Services Bureau Manager ("Tenant").

Landlord and Tenant, in consideration of the mutual terms, covenants, and conditions herein, agree as follows:

1. Premises. Landlord hereby leases to Tenant and Tenant hereby accepts and leases from Landlord those certain premises commonly known as 2000 E. 4<sup>th</sup> Street, consisting of approximately 9,921 square feet (the "Premises") and located at the corner of E. 4<sup>th</sup> Street and Cherry Avenue, such premises being more particularly depicted in Exhibit "A" attached hereto. The Premises shall be leased in "as is" condition.

2. Term. The term of this Lease shall commence on the date on which both parties have executed this Lease, and shall terminate at midnight on February 28, 2014. Tenant shall have one option to extend the term of this Lease for an additional five (5) year period (to February 28, 2019), by providing written notice of its intent to exercise such option no later than thirty (30) days prior to the expiration of the initial term, and, in that event, the parties shall execute an amendment to this Lease that extends the term. Notwithstanding anything to the contrary contained herein, Tenant shall have the right to terminate this Lease at any time during the term, upon thirty (30) days' advance written notice, if Tenant loses the Proposition A and/or the CDBG monies currently allocated to funding the improvements and rental payments contemplated by this Lease.

3. Rent. Beginning on the date this Lease is fully-executed, and continuing thereafter on or before the first day of each month, Tenant shall pay to Landlord in

1 advance a monthly rental payment equal to Two Thousand and No/100 Dollars  
2 (\$2,000.00), such rent to be prorated for any partial month. Notwithstanding the  
3 foregoing, the initial payment of rent under this Lease shall not be due until the date  
4 which is fourteen (14) days after this Lease is fully-executed.

5 4. Use. The Premises shall be used for general public parking on a first  
6 come first served basis, at hourly rates reasonably determined by Tenant.

7 5. Premises Improvements. Tenant shall, at its own cost, (i) pave the  
8 Premises and paint and mark parking stalls, and (ii) install landscaping, bike racks and  
9 parking fee collection facilities.

10 6. Tenant's Maintenance Obligations. Tenant shall keep the Premises in a  
11 neat, safe and sanitary condition. Tenant may, at its own expense, contract with third  
12 parties to provide maintenance services to the Premises.

13 7. Utilities. Tenant shall, at its own expense, provide any utilities to the  
14 Premises that Tenant deems necessary for its use of the Premises, but shall be under no  
15 obligation to do so. Tenant shall pay the monthly costs for such utilities. To the extent  
16 necessary, Landlord shall reasonably cooperate with Tenant with regard to establishing  
17 certain utility connections at the Premises.

18 8. Taxes. Landlord shall be responsible for payment of all real property  
19 taxes.

20 9. Hazardous Materials. In the event any Hazardous Materials are  
21 detected during the Lease term, such materials shall be removed promptly in accordance  
22 with applicable law at the sole cost and expense of Landlord. In the event Landlord  
23 determines it is cost prohibitive to remove such materials, Tenant shall have the option of  
24 terminating this Lease by giving written notice.

25 No goods, merchandise, supplies, personal property, materials, or items of  
26 any kind shall be kept, stored, or sold in or on the Premises which are in any way  
27 explosive or hazardous. Tenant shall comply with California Health and Safety Code  
28 Section 25359.7 or its successor statute regarding notice to Landlord on discovery by

1 Tenant of the presence or suspected presence of any hazardous material on the  
2 Premises. "Hazardous Materials" means any hazardous or toxic substance, material or  
3 waste which is or becomes regulated by the City, the County of Los Angeles, the State of  
4 California or the United States government.

5 10. Insurance. Within five (5) days after the execution of this Lease,  
6 Tenant shall deliver to Landlord a Certificate of Self-Insurance on Tenant's standard form  
7 providing evidence of coverage for:

8 a. Commercial general liability self-insurance equivalent in  
9 coverage scope to ISO CG 00 01 10 93 in an amount not less than One Million Dollars  
10 (US \$1,000,000) per occurrence and Two Million Dollars (US \$2,000,000) in aggregate  
11 and

12 b. Special perils property coverage in an amount sufficient to  
13 cover the full replacement value of Tenant's personal property, improvements, and  
14 equipment on the Premises.

15 The self-insurance program shall not be suspended, voided, or canceled by  
16 Tenant except after thirty (30) days prior written notice to Landlord, and shall be primary  
17 and not contributing to any other insurance maintained by Landlord.

18 With respect to damage to property, Landlord and Tenant hereby waive all  
19 rights of subrogation, one against the other, but only to the extent that collectible  
20 commercial insurance is available for said damage.

21 Any modification or waiver of the insurance requirements herein shall be  
22 made only with the written approval of the Tenant's Risk Manager or designee.

23 11. Default by Tenant. The occurrence of any of the following acts shall  
24 constitute a default by Tenant:

25 a. Failure to pay rent when due after ten (10) days written notice;

26 b. Failure to perform any of the terms, covenants, or conditions of  
27 this Lease if said failure is not cured within thirty (30) days after written notice of said  
28 failure; or

1 c. Any attempted assignment, transfer, or sublease except as  
2 approved by Landlord or otherwise authorized pursuant to Section 15.

3 If Tenant does not comply with each provision of this Lease or if a default  
4 occurs, then Landlord may terminate this Lease and Landlord may enter the Premises  
5 and take possession thereof provided, however, that these remedies are not exclusive  
6 but cumulative to other remedies provided by law in the event of Tenant's default, and the  
7 exercise by Landlord of one or more rights and remedies shall not preclude Landlord's  
8 exercise of additional or different remedies for the same or any other default by Tenant.

9 12. Default by Landlord. The occurrence of any of the following acts shall  
10 constitute a default by Landlord:

11 a. Failure to perform any of the terms, covenants, or conditions of  
12 this Lease if said failure is not cured within thirty (30) days after written notice of said  
13 failure.

14 If Landlord does not comply with each provision of this Lease or if a default  
15 occurs, then Tenant may terminate this Lease, provided, however, that this remedy is not  
16 exclusive but cumulative to other remedies provided by law in the event of Landlord's  
17 default, and the exercise by Tenant of one or more rights and remedies shall not preclude  
18 Tenant's exercise of additional or different remedies for the same or any other default by  
19 Landlord.

20 13. Right of Entry. Landlord shall have the right of access to the Premises  
21 during normal business hours and with reasonable advance notice to inspect the  
22 Premises, to determine whether or not Tenant is complying with the terms, covenants,  
23 and conditions of this Lease, to serve, post, or keep posted any notice, and for any other  
24 legal purpose. Landlord shall also have the right to enter in case of emergencies.

25 14. Condemnation. If the whole or any part of the Premises shall be taken  
26 by any public or quasi-public authority under the power of eminent domain, then this  
27 Lease shall terminate as to the part taken or as to the whole, if taken, as of the day  
28 possession of that part or the whole is required for any public purpose, and on or before

1 the day of the taking Tenant shall elect in writing either to terminate this Lease or to  
2 continue in possession of the remainder of the Premises, if any. All damages awarded  
3 for such taking shall belong to Landlord, whether such damages be awarded as  
4 compensation for diminution in value to the leasehold or to the fee provided, however,  
5 that Landlord shall not be entitled to any portion of the award made for loss of Tenant's  
6 business.

7           15. Assignment. Tenant shall not assign or transfer this Lease or any  
8 interest herein, nor sublease the Premises or any part thereof without the prior written  
9 approval of Landlord.

10           16. Signs. Tenant may, at its own cost, install exterior signage on the  
11 Premises.

12           17. Access. Tenant shall have access to the Premises twenty-four (24)  
13 hours per day, seven (7) days per week.

14           18. Holding Over. If Tenant holds over and remains in possession of the  
15 Premises or any part thereof after the expiration of this Lease with the express or implied  
16 consent of Landlord, then such holding over shall be construed as a tenancy from month  
17 to month at the monthly rent then in effect and otherwise on the same terms, covenants,  
18 and conditions contained in this Lease.

19           19. Surrender of Premises. On the expiration or sooner termination of this  
20 Lease Tenant shall deliver to Landlord possession of the Premises in substantially the  
21 same condition that existed immediately prior to the date of execution hereof, reasonable  
22 wear and tear excepted.

23           20. Notice. Any notice required hereunder shall be in writing and  
24 personally served or deposited in the U.S. Postal Service, first class, postage prepaid to  
25 Landlord and Tenant at the respective addresses first stated above. Notice shall be  
26 deemed effective on the date of mailing or on the date personal service is obtained,  
27 whichever first occurs. Change of address shall be given as provided herein for notice.  
28



1           21. Waiver of Rights. The failure or delay of Landlord to insist on strict  
2 enforcement of any term, covenant, or condition herein shall not be deemed a waiver of  
3 any right or remedy that Landlord may have and shall not be deemed a waiver of any  
4 subsequent or other breach of any term, covenant, or condition herein. The receipt of  
5 and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other  
6 default but shall only constitute a waiver of timely payment of rent. Any waiver by  
7 Landlord of any default or breach shall be in writing. Landlord's approval of any act by  
8 Tenant requiring Landlord's approval shall not be deemed to waive Landlord's approval of  
9 any subsequent act of Tenant.

10           22. Successors in Interest. This Lease shall be binding on and inure to the  
11 benefit of the parties and their successors, heirs, personal representatives, transferees,  
12 and assignees, and all of the parties hereto shall be jointly and severally liable hereunder.

13           23. Force Majeure. Except as to the payment of rent, in any case where  
14 either party is required to do any act, the inability of that party to perform or delay in  
15 performance of that act caused by or resulting from fire, flood, earthquake, explosion,  
16 acts of God, war, strikes, lockouts, or any other cause whether similar or dissimilar to the  
17 foregoing which is beyond the control of that party and not due to that party's fault or  
18 neglect shall be excused and such failure to perform or such delay in performance shall  
19 not be a default or breach hereunder. Financial inability to perform shall not be  
20 considered cause beyond the reasonable control of the party.

21           24. Partial Invalidity. If any term, covenant, or condition of this Lease is  
22 held by a court of competent jurisdiction to be invalid, void or unenforceable, the  
23 remainder of the provisions hereof shall remain in full force and effect and shall in no way  
24 be affected, impaired or invalidated thereby.

25           25. Time. Time is of the essence in this Lease, and every provision hereof.

26           26. Governing Law. This Lease shall be governed by and construed in  
27 accordance with the laws of the State of California.

28

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANINON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1           27. Integration and Amendments. This Lease represents and constitutes  
2 the entire understanding between the parties and supersedes all other agreements and  
3 communications between the parties, oral or written, concerning the subject matter  
4 herein. This Lease shall not be modified except in writing signed by the parties and  
5 referring to this Lease.

6           28. Joint Effort. This Lease is created as a joint effort between the parties  
7 and fully negotiated as to its terms and conditions and nothing contained herein shall be  
8 construed against either party as the drafter.

9           29. No Recordation. This Lease shall not be recorded.

10          30. Attorney's Fees. In any action or proceeding relating to this Lease, the  
11 prevailing party shall be entitled to its costs, including a reasonable attorney's fee.

12          31. Captions and Organization. The various headings and numbers herein  
13 and the grouping of the provisions of this Lease into separate sections, paragraphs and  
14 clauses are for convenience only and shall not be considered a part hereof, and shall  
15 have no effect on the construction or interpretation of this Lease.

16          32. Relationship of Parties. The relationship of the parties hereto is that of  
17 Landlord and Tenant, and the parties agree that nothing contained in this Lease shall be  
18 deemed or construed as creating a partnership, joint venture, association, principal-agent  
19 or employer-employee relationship between them or between Landlord or any third  
20 person or entity.

21          33. Broker's Fees. Both Landlord and Tenant acknowledge that neither  
22 party has used the services of a real estate broker to represent them in this transaction  
23 and that no commission fees shall be due any other party in connection with this Lease.

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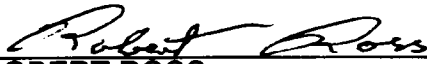
OFFICE OF THE CITY ATTORNEY  
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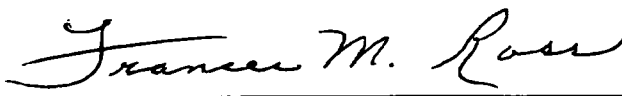
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IN WITNESS WHEREOF, the parties have executed this Lease with all of the formalities required by law as of the date first above written.

"Landlord"

Date: 2/19/, 2009

  
ROBERT ROSS


  
FRANCES ROSS

  
SCOTT ROSS

"Tenant"

CITY OF LONG BEACH, a municipal corporation

Date: 2-25, 2009

By  Assistant City Manager  
City Manager **EXHIBIT A - RESO 2009-02  
TO SECTION 301 OF  
THE CITY CHARTER**

This Lease is hereby approved as to form this 19 day of February, 2009.

ROBERT E. SHANNON, City Attorney

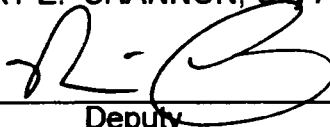
By   
Deputy

Exhibit "A"

EAST FOURTH STREET

N90° 00' 00.00"E 99.60'

N0° 00' 00.00"E 99.60'

99.60' S0° 00' 00.00"E

AREA = .22 ACRES  
OR 9921 SQ FT.

99.60' N90° 00' 00.00"W

CHERRY AVENUE

EW ALLEY E/O CHERRY AVENUE

CITY OF LONG BEACH - CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS, ENGINEERING BUREAU

Exhibit "A"  
Leased Premises Map  
for  
2000 East Fourth Street

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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FIRST AMENDMENT TO LEASE NO. 31049

THIS FIRST AMENDMENT TO LEASE NO. 31049 (this "Amendment") is made and entered into in duplicate as of January 1, 2014, pursuant to minute order adopted by the City Council of the City of Long Beach at its meeting of February 10, 2009, by and between ROBERT ROSS, FRANCES ROSS, and SCOTT ROSS (collectively, "Landlord"), and the CITY OF LONG BEACH, a municipal corporation ("Tenant").

A. Landlord and Tenant entered into that certain Lease (Contract No. 31049) dated as of February 5, 2009 (the "Lease"), pursuant to which Tenant leases from Landlord a parking lot on certain premises more particularly described in the Lease.

B. Landlord and Tenant desire to amend the Lease by extending the term of the Lease.

NOW, THEREFORE, Landlord and Tenant agree as follows:

1. Term. Landlord and Tenant hereby recognize Tenant's exercise of its option to extend the term of the Lease for an additional five (5) year term. The expiration date of the term of the Lease, as amended hereby, shall be February 28, 2019.

2. Binding Effect. Except as amended by this Amendment, the Lease remains unchanged and in full force and effect.

3. Entire Agreement, Counterparts. This Amendment constitutes the entire agreement between the parties with respect to the subject matter hereof, and may not be modified except in writing signed by both parties. This Amendment may be executed in counterparts, each of which when taken together shall constitute the entire agreement.

4. Effective Date. This Amendment shall be effective as of the date executed by City.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

Robert Ross  
ROBERT ROSS

Frances Ross  
FRANCES ROSS

Scott Ross  
SCOTT ROSS

"Landlord"  
CITY OF LONG BEACH, a municipal corporation

By SM Assistant City Manager  
City Manager

"Tenant" EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

The foregoing First Amendment to Lease is approved as to form this 13<sup>th</sup> day of December, 2013.

CHARLES PARKIN, City Attorney  
By Ang J. Anderson  
for Richard F. Anthony, Deputy

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664