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# LEASE 30977

THIS LEASE ("Lease") is entered into this 2nd day of December, 2008, in duplicate pursuant to a Minute Order adopted by the City Council of the City of Long Beach at its meeting of December 2, 2008, between **LONG BEACH COMMUNITY COLLEGE DISTRICT**, a Community College District ("Landlord"), and the **CITY OF LONG BEACH** ("Tenant").

In consideration of the covenants and conditions contained below, Landlord agrees to lease to Tenant and Tenant agrees to lease from Landlord the real property described below upon the following terms and conditions:

1. Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises shown on Exhibit "A" attached hereto and incorporated herein by this reference ("Premises"). The Premises shall consist of approximately seven hundred fifty (750) parking spaces located in the northeast portion of the Veterans Stadium parking lot. Tenant agrees that access to the Premises shall be via the driveway entrance on Conant Street which is closest to the corner of Conant Street and Clark Avenue.

2. Term. The term of this Lease (the "Term") shall commence on December 22, 2008 (the "Commencement Date") and shall continue through and inclusive of January 2, 2009 (the "Expiration Date"). Notwithstanding the above, Landlord shall have the right, upon advance written notice to Tenant, to immediately terminate this Lease due to an emergency situation which reasonably requires Landlord to make the Premises, or a portion thereof, available to another entity.

3. Rent.

(a) Base Rent. Tenant shall pay to Landlord as base rent for the Premises an amount equal to the product of Eight Dollars (\$8.00) times the number of parking spaces comprising the Premises, prorated for a 30-day month, and multiplied by the number of days in the Term ("Base Rent"). For example, if seven hundred fifty (750)

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1 spaces are reserved by Tenant, the Base Rent shall be \$8.00 multiplied by 750 spaces  
2 (\$6,000), divided by 30 days (\$200/day), and multiplied by twelve days, which equals  
3 \$2,400. Base Rent shall be paid no later than sixty (60) days after the Expiration Date.  
4 All rental to be paid by Tenant to Landlord shall be paid without deduction, offset, prior  
5 notice or demand at the address set forth below Landlord's signature, or to such other  
6 person or address as Landlord may designate in writing.

7 (b) Percentage Rent

8 (1) Net Revenues. In addition to the Base Rent, Tenant shall pay to  
9 Landlord an additional rental at the time and in the manner herein specified. Percentage  
10 Rental shall be equal to fifty percent (50%) of the amount by which Tenant's Net Revenue  
11 (as hereinafter defined) made in, upon or from the Premises exceeds the Base Rent to be  
12 paid by Tenant.

13 (2) Revenue Reports. Within sixty (60) days after the Expiration Date,  
14 Tenant shall furnish to Landlord a statement in writing, certified by Tenant to be correct,  
15 showing the total Net Revenue made in, upon or from the Premises during the Term, and  
16 shall accompany each such statement with a payment to Landlord equal to said  
17 percentage of the amount by which the Net Revenue made in, upon or from the Premises  
18 Rental paid by Tenant exceeds the Base Rent.

19 (c) Definition of Net Revenues. The term "Net Revenue" as used in this  
20 Lease shall mean: (A) the entire gross receipts of every kind and nature from sales,  
21 services and rentals made in, upon or from the Premises, whether upon credit or for cash,  
22 whether operated by Tenant or a concessionaire or other party; less (B) any rebates and/or  
23 refunds to customers and the amount of all sales tax receipts which have to be accounted  
24 for by Tenant to any government or governmental agency, less (C) the management fees,  
25 if any, and employee wages and benefits, if any, incurred by Tenant directly in connection  
26 with the operation and management of the Premises, less (D) the Base Rent provided  
27 above, provided, however, that (i) wages and benefits of any employee or manager who  
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1 does not devote substantially all of his or her employed time to the Premises shall include  
2 only such wages and benefits as prorated to reflect the actual time spent by such  
3 employee or manager on operating or managing the Premises; and (ii) any amount paid  
4 by Tenant to a subsidiary or affiliate of Tenant for management or employee services at  
5 the Premises shall be limited for purposes hereof to the extent the same do not exceed  
6 the costs of such services rendered by qualified, first-class unaffiliated third parties on a  
7 competitive basis, and (E) any utility costs associated with the operation and management  
8 of the Premises by Tenant.

9 (d) Books and Records. Tenant shall keep complete and proper books,  
10 records and accounts of its daily Net Revenue. With reasonable prior notice, Landlord and  
11 its agents and employees shall have the right at any and all times, during regular business  
12 hours, to examine and inspect all of the books and records of Tenant pertaining to the  
13 business of Tenant conducted in, upon or from the Premises, for the purpose of  
14 investigating and verifying the accuracy of any statement of Net Revenue. Tenant shall,  
15 within ten (10) days of Landlord's written request, send to Landlord copies of Tenant's  
16 quarterly state sales tax reports applicable to the Term. Landlord may from time to time  
17 cause an audit or review of the business of Tenant to be made by a certified public  
18 accountant or other professional of Landlord's selection, and if the statement of Net  
19 Revenue previously made to Landlord shall be found to be inaccurate, then there shall be  
20 an adjustment and one party shall pay to the other within ten (10) days of demand such  
21 sums as may be necessary to settle in full the accurate amount of said Percentage Rental  
22 that should have been paid to Landlord for the period or periods covered by such  
23 inaccurate statement or statements. Landlord shall be responsible for the cost of any such  
24 audit, unless the audit shall disclose that Tenant's Net Revenue for the period of said audit  
25 is five percent (5%) or more greater than the monthly reported New Revenue, then Tenant  
26 shall immediately pay to Landlord the cost of such audit.

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1           4. Use. The Premises shall be used for long-term parking of motor  
2 vehicles and for such other purposes as are associated with the parking of motor vehicles.  
3 The parties agree that this Lease covers only the surface of the Premises and only so  
4 much of the subsurface, if any, as is reasonably necessary for Tenant's use of the  
5 Premises as permitted herein.

6           5. Maintenance. Tenant shall at its expense keep the Premises reasonably  
7 neat and clean and in compliance with applicable laws.

8           6. Liens. Tenant shall keep the Premises free of mechanic's or  
9 materialman's liens for any work done, labor performed or material furnished at the  
10 Premises by or on behalf of Tenant.

11           7. Condition of Premises. Except as provided herein, Tenant accepts the  
12 Premises "as is" and acknowledges that Landlord has not made any warranty or  
13 representation as to the condition of the Premises or the fitness of the Premises for any  
14 intended purpose. Landlord shall, at its sole cost and expense, fill any existing potholes  
15 on the Premises prior to the Commencement Date. All other improvements to the  
16 Premises, including fencing, signage, slurry sealing, restriping of parking stalls and the  
17 installation of parking control equipment shall be made by Tenant at its sole cost and  
18 expense. Tenant may also clean the surface parking lot, realign the bumper stops, and  
19 add a surveillance camera. Tenant may remove any parking control equipment installed  
20 pursuant to this Section 7 at its own cost upon the Expiration Date or earlier termination  
21 of this Lease, or sooner at its option.

22           8. Improvements. Except as set forth herein, Tenant shall not erect any  
23 improvements on the premises without the prior written approval of Landlord.

24           9. Utilities. Landlord shall provide all utilities to the Premises, which are  
25 reasonably necessary for the operation of the Premises as a parking lot. The utilities to  
26 be provided do not include water.

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1           10. Discrimination. Subject to applicable laws, rules, and regulations,  
2 Tenant shall not discriminate against anyone on the basis of age, sex, sexual orientation,  
3 AIDS, HIV status, marital status, race, religion, creed, ancestry, national origin, disability,  
4 or handicap in the use of the Premises.

5           11. Notices. Any notice required hereunder shall be in writing and  
6 personally served or deposited in the U. S. Postal Service, first class, postage prepaid to  
7 Tenant at 333 West Ocean Blvd., attention City Manager, 13<sup>th</sup> Floor, Long Beach, CA  
8 90802, with a copy to the attention of The City Attorney of the City of Long Beach at 333  
9 West Ocean Blvd., 11<sup>th</sup> Floor, Long Beach CA 90802, and to Landlord at Long Beach  
10 Community College District, Attention Vice President of Administrative Services, Contracts  
11 Management; G-4, 4901 E. Carson Street, Long Beach, CA 90808. Notice shall be  
12 deemed effective two (2) days after the date of mailing or on the date personal service is  
13 obtained, whichever first occurs. Change of address shall be given as provided herein for  
14 notices.

15           12. Indemnification. Tenant shall defend, indemnify and hold Landlord  
16 harmless from all claims, demands, damages, causes of action, losses, liability, of any kind  
17 or nature whatsoever ("claims") for injury to or death of persons or damage to or loss of  
18 any personal or real property occurring in, on, or about the Premises arising from the  
19 negligence or willful misconduct of Tenant, Tenant's employees, agents, representatives  
20 or invitees or arising from misuse of the Premises by Tenant, Tenant's employees, agents,  
21 representatives or invitees, or any claims arising from any breach of this Lease by Tenant.

22           13. Insurance. Tenant shall, at Tenant's sole expense, obtain and keep in  
23 force at all times during the Term of this Lease, the following policies or insurance:

24           13.1 Coverage equivalent to ISO form CG 00 01 11 88 (Commercial  
25 General Liability) Insurance or Self-Insurance that shall include the Landlord as an  
26 additional insured with coverage equivalent to an ISO form CG 20 26 11 85 in an  
27 amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate.  
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1                   13.2 Coverage equivalent to ISO form CA 00 01 (Commercial  
2 Automobile) Insurance or Self-Insurance in an amount of One Million Dollars  
3 (\$1,000,000) combined single limit (CSL) per accident for bodily injury and property  
4 damage covering owned, non-owned, and hired automobiles. This shall also cover  
5 garage keepers legal liability with limits of Fifty Thousand Dollars (\$50,000).

6                   13.3 Worker's compensation insurance or self-insurance coverage  
7 that complies with the Labor Code of the State of California, and any other  
8 applicable rules, regulations, ordinances and disability benefit acts.

9                   13.4 Property Insurance covering the Tenant's personal property  
10 from "All Risk" perils of loss (excluding flood, earthquake, and terrorism) which is  
11 brought onto or kept on the Premises on a replacement cost basis. This policy shall  
12 have a deductible no larger than Tenant's most common, current Property Insurance  
13 deductible.

14                   13.5 Tenant shall deliver to Landlord certificates evidencing the  
15 existence of coverage with additional insured endorsement and amounts of such  
16 insurance or self-insurance within seven (7) days after the Commencement Date  
17 and no later than the first day upon which Tenant commences any preparation,  
18 improvement or operation upon the Premises. No such policy shall be cancelable  
19 or subject to reduction of coverage or other modification, except for reduction of  
20 limits due to claim activity, except after thirty (30) days prior written notice to  
21 Landlord. Tenant shall, at least thirty (30) days within the expiration of such  
22 policies, furnish Landlord with renewal certificates or cover notes or binders of  
23 renewal thereof.

24                   14. Assignment. Tenant shall not assign or transfer this Lease or any  
25 interest herein, nor sublease the Premises or any part thereof without the prior written  
26 consent of Landlord, which consent shall not be unreasonably withheld.

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1           15. Possession. Tenant shall peaceably deliver possession of the Premises  
2 to Landlord on the effective date of termination or expiration of this Lease. Upon the  
3 termination or expiration of this Lease, Tenant shall return the Premises to the original  
4 condition that existed upon the Commencement Date, reasonable wear and tear excepted.  
5 If, upon the termination or expiration of this Lease, Tenant fails to return the Premises to  
6 the original condition, reasonable wear and tear excepted, Landlord may use its own forces  
7 or engage the services of a third party to perform any work necessary to return the  
8 Premises to the original condition and Tenant shall reimburse Landlord for all reasonable  
9 expenses incurred in regards thereto. On giving notice of termination to Tenant, Landlord  
10 shall have the right to re-enter and take possession of the Premises on the effective date  
11 of termination.

12           16. Attorney's Fees. In any action or proceeding relating to this Lease, the  
13 prevailing party shall be entitled to its costs, including reasonable attorney's fees.

14           17. Access. Landlord shall have the right of access to the Premises at all  
15 reasonable times to inspect the Premises, to determine whether or not Tenant is complying  
16 with the terms, covenants, and conditions of this Lease, and to serve, post, or keep posted  
17 any notice.

18           18. Signs. Tenant shall not place, affix, maintain, or permit any sign on the  
19 Premises without the prior written approval of Landlord. Any sign so approved shall be  
20 maintained in good condition by Tenant at its sole cost and expense.

21           19. Compliance with Laws. Tenant, at its sole cost, shall comply with all  
22 laws, ordinances, rules and regulations of and obtain such permits, licenses, and  
23 certificates required by all federal, state and local governmental authorities having  
24 jurisdiction over the Premises and business thereon.

25           20. Obligations of Landlord. Landlord shall do all things necessary to permit  
26 the Premises to be used for the purposes set forth in this Lease including complying with  
27 all applicable laws and regulations including those, if any, of the City of Long Beach.  
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1 Notwithstanding the foregoing, Tenant, and not Landlord, shall be fully responsible for  
2 performing, preparing, filing and/or serving any applications, notices, reviews, declarations,  
3 studies, reports or other documents necessary to satisfy any requirements arising from the  
4 California Environmental Quality Act (CEQA).

5 21. Defaults. In the event of a failure by Tenant to perform its obligations  
6 hereunder, Landlord may immediately terminate this Lease and Tenant's right to  
7 possession of the Premises. Landlord's notice shall specify the default and shall demand  
8 that Tenant perform or quit the Premises. Such notice shall not be deemed a forfeiture or  
9 termination of the Lease unless Landlord so elects in the notice. The exercise by Landlord  
10 of one or more rights and remedies shall not preclude Landlord's exercise of additional or  
11 different remedies for the same or any other default by Tenant.

12 22. No Agency. The relationship of the parties hereto is that of landlord and  
13 tenant, and the parties agree that nothing contained in this Lease shall be deemed or  
14 construed as creating a partnership, joint venture, association, principal-agent or  
15 employer-employee relationship between them or between Landlord or any third person  
16 or entity.

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IN WITNESS WHEREOF the parties have executed this Lease as of the date first above written.

**LONG BEACH COMMUNITY COLLEGE DISTRICT**, a Community College District

Dated: 10/9/, 2008

By: 

Its: DIRECTOR, RISK SERVICES

Contracts Management; G-4  
4901 E. Carson Street  
Long Beach, California 90808

**"LANDLORD"**

**CITY OF LONG BEACH**, a municipal corporation

Dated: Dec. 19, 2008

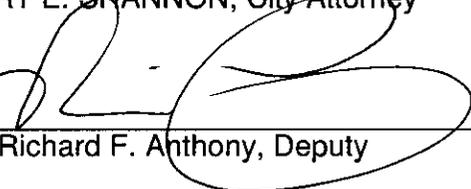
By:  Assistant City Manager  
City Manager

REMOVED PURSUANT TO SECTION 501 OF THE CIVIL RIGHTS ACT.

**"TENANT"**

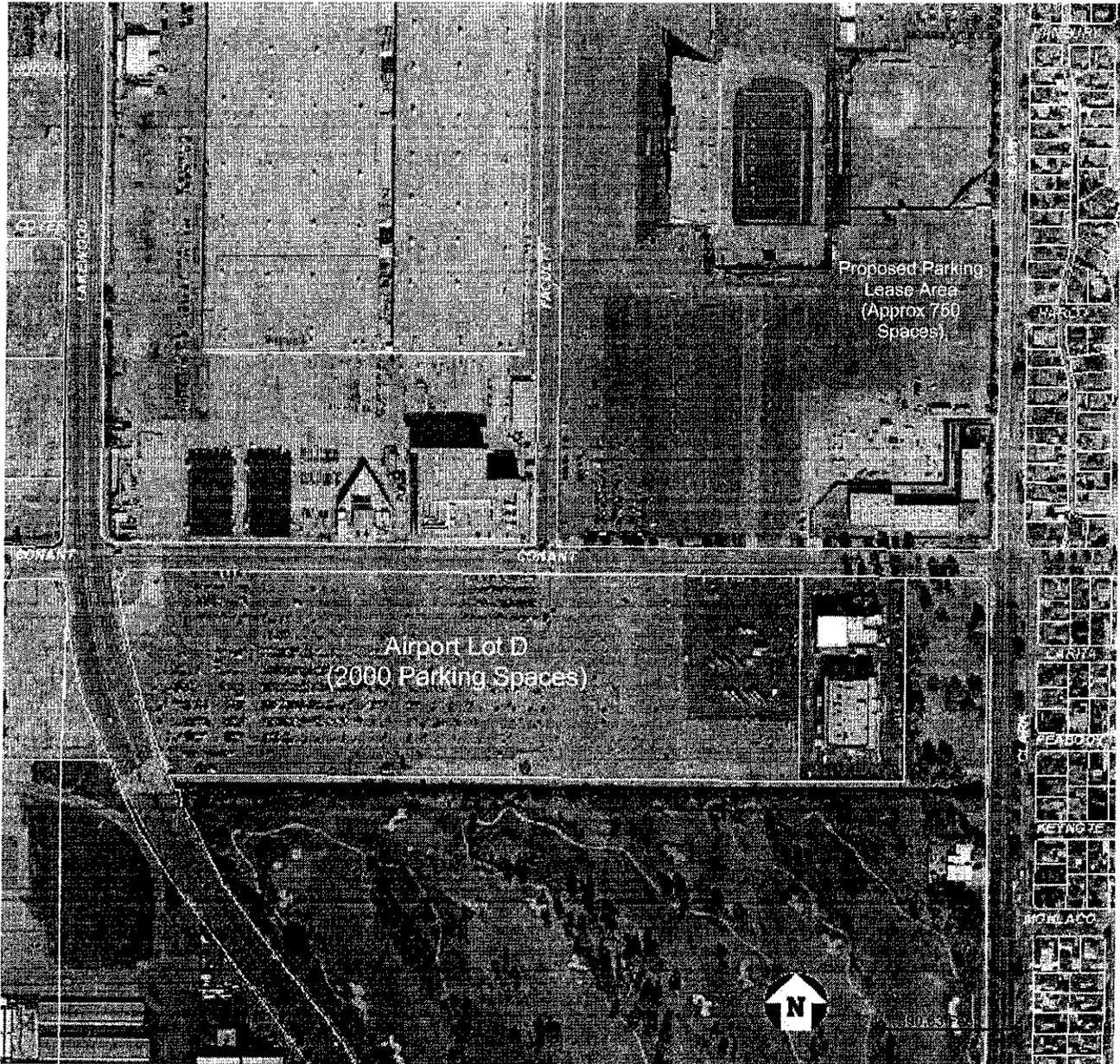
Approved as to form this 15 day of December, 2008.

ROBERT E. SHANNON, City Attorney

By:   
Richard F. Anthony, Deputy

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City of Long Beach - California  
Department of Community Development - Dennis J. Thys, Director

VICINITY MAP for PROPOSED CITY LEASED PARKING  
at VETERANS STADIUM