

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 **RESTORATION AND PRESERVATION AGREEMENT**

2 **34615**

3 **THIS RESTORATION AND PRESERVATION AGREEMENT** ("Agreement")
4 is entered into, as of June 1, 2017 ("Effective Date"), by and between the CITY OF LONG
5 BEACH ("City"), and WORLD FAMOUS VIP RECORDS LLC, a California corporation ("VIP
6 Records").

7 **WHEREAS**, City desires to remove, protect rehabilitate and preserve that
8 certain sign owned by VIP Records which has been identified by City as a resource deemed
9 to be eligible for historic landmark designation and is depicted on Exhibit "A" attached
10 hereto (the "Sign"); and

11 **WHEREAS**, the Sign is currently located on certain real property owned by
12 Triss LLC located at 1014 Pacific Coast Highway, Long Beach, California, more particularly
13 depicted on Exhibit "B" attached hereto (the "Property"); and

14 **WHEREAS**, VIP Records desires that City provide financial and logistical
15 assistance in removing, storing and rehabilitating the Sign to prepare it for designation as
16 an historic landmark; and

17 **WHEREAS**, the Sign is an international tourist destination of important
18 historical and cultural value, and its restoration and preservation shall contribute to the
19 preservation of local African American and Long Beach music history.

20 **NOW, THEREFORE**, in consideration of the mutual terms, covenants and
21 conditions of this Agreement, the City and VIP Records agree as follows:

22 1. **Term.** The term of this Agreement shall commence on the Effective
23 Date and shall terminate on the date on which the Sign no longer exists.

24 2. **Removal.** VIP Records grants City (and its contractors) the right to
25 enter upon the Property for the limited purpose of removing the Sign, at City's sole cost
26 and expense. City shall not be obligated to pay VIP Records any fees for the right to enter
27 and/or temporarily occupy portions of the Property in connection with the removal. VIP
28 Records acknowledges that removal of the Sign may cause damage to the Property, and

1 VIP Records expressly releases and indemnifies City from any and all liability directly or
2 indirectly resulting from City's entry onto the Property and removal of the Sign. VIP
3 Records shall reasonably approve of the contractor City selects to perform such removal
4 work, and VIP Records and City shall work together to direct and manage the contractor
5 during the removal process. Prior to removal of the Sign, VIP Records shall provide City
6 with reasonably acceptable evidence that the Property owner consents to the removal of
7 the Sign.

8 **3. Transportation and Storage.** The Sign shall be transported, at City's
9 sole cost and expense, to a storage site determined by City in its sole discretion. City shall
10 store the Sign at no cost to VIP Records for a period of up to (2) years. City shall provide
11 VIP Records and its authorized agents access to the Sign for the limited purposes of
12 fulfilling its restoration obligations under Section 4 and videotaping or photographing the
13 Sign.

14 **4. Restoration.** VIP Records, at its sole cost and expense (except as
15 otherwise expressly provided below) shall be obligated to restore the Sign to a condition
16 reasonably acceptable to City (the "Restoration"). Prior to commencement of Restoration,
17 VIP Records shall provide City with a rendering of the Sign showing the anticipated
18 condition of the Sign after Restoration. VIP Records shall complete Restoration within
19 twenty-four (24) months after the Effective Date. Within thirty (30) days after the Effective
20 Date, City agrees to provide VIP Records with Fifty Thousand Dollars (\$50,000), to be
21 spent by VIP Records exclusively on (i) the Restoration and fundraising, project
22 management, and promotion related thereto, and (ii) trademarking and the historical
23 designation process related to the Sign ("Authorized Expenditures"). VIP Records agrees
24 to keep and maintain detailed written records, available for inspection by City upon
25 reasonably advance notice, which evidence all of the Authorized Expenditures. City
26 agrees, on an as-needed basis, to reimburse VIP Records up to Thirty Thousand Dollars
27 (\$30,000) upon presentation by VIP Records to City of invoices and/or other documentation
28 reasonably acceptable to City evidencing costs actually expended by VIP Records in

1 connection with the Authorized Expenditures. VIP Records acknowledges and accepts the
2 likelihood that total costs of Restoration to a standard reasonably acceptable to City will
3 exceed City's reimbursement obligation, and that such additional costs will be the sole
4 obligation of VIP Records. City's total obligations under this Section shall not exceed
5 Eighty Thousand Dollars (\$80,000).

6 **5. Preservation.** VIP Records shall be obligated to manage, brand and
7 document (photography and video) the landmark designation process for the Sign. This
8 includes, without limitation, researching, preparing documentation, hiring consultants and
9 legal assistance, setting up an online presence, and conducting public relations and
10 community outreach.

11 **6. Relocation.** VIP Records and City shall work together to locate a
12 mutually-acceptable permanent site for relocation of the Sign located within the City of
13 Long Beach. VIP Records, at its sole cost and expense, shall be obligated to transport the
14 Sign to, and install the Sign at, the relocation site, or otherwise as needed to facilitate the
15 Restoration.

16 **7. Sign Ownership and Brand Management.** VIP Records shall retain
17 complete ownership of the Sign and all intellectual property rights associated with the Sign
18 at all times. VIP Records shall manage the publicity and branding of the restoration and
19 relocation of the Sign, and shall thereafter work cooperatively with City to position and
20 publicize the Sign as a tourist destination and otherwise to maximize community benefits.

21 **8. Release and Indemnity.**

22 A. VIP Records hereby releases City, its Boards, Commissions, and their
23 officials, employees and agents ("Indemnified Parties"), and indemnifies, protects
24 and holds harmless the Indemnified Parties, from and against any and all liability,
25 claims, demands, damage, loss, obligations, causes of action, proceedings, awards,
26 fines, judgments, penalties, costs and expenses, arising or alleged to have arisen,
27 in whole or in part, out of or in connection with (1) VIP Records' breach or failure to
28 comply with any of its obligations contained in this Agreement, (2) City's removal,

1 transport and/or storage of the Sign in accordance with this Agreement, or (3)
2 ownership of the Sign or any intellectual property rights associated therewith
3 (collectively "Claims" or individually "Claim").

4 B. In addition to VIP Records' duty to indemnify, VIP Records shall have
5 a separate and wholly independent duty to defend Indemnified Parties at VIP
6 Records' expense by legal counsel approved by City, from and against all Claims,
7 and shall continue this defense until the Claims are resolved, whether by settlement,
8 judgment or otherwise. No finding or judgment of negligence, fault, breach, or the
9 like on the part of VIP Records shall be required for the duty to defend to arise. City
10 shall notify VIP Records of any Claim, shall tender the defense of the Claim to VIP
11 Records, and shall assist VIP Records, as may be reasonably requested, in the
12 defense.

13 C. If a court of competent jurisdiction determines that a Claim was caused
14 by the sole negligence or willful misconduct of Indemnified Parties, VIP Records'
15 costs of defense and indemnity shall be (1) reimbursed in full if the court determines
16 sole negligence by the Indemnified Parties, or (2) reduced by the percentage of
17 willful misconduct attributed by the court to the Indemnified Parties.

18 D. The provisions of this Section shall survive the expiration or
19 termination of this Agreement.

20 9. **Insurance.** As a condition precedent to the effectiveness of this
21 Agreement, VIP Records shall procure and maintain (and provide evidence to City thereof)
22 the following insurance at VIP Records' expense for the duration of this Agreement from
23 insurance companies that are admitted to write insurance in the State of California or from
24 non-admitted insurers that are on California's List of Eligible Surplus Lines Insurers (LESLI)
25 and that have a rating of or equivalent to an A:VIII by A.M. Best Company:

26 A. Commercial general liability equivalent in scope to ISO form CG 00 01
27 11 85 or 10 93 in an amount not less than One Million Dollars (\$1,000,000) per
28 occurrence and Two Million Dollars (\$2,000,000) general aggregate. This insurance

1 shall be endorsed to add City, its officials, employees, and agents as additional
2 insureds by endorsement equivalent in scope to Insurance Services Office, Inc.
3 (ISO) form CG 20 10 11 85 pr CG 20 26 11 85 and to waive the insurer's rights of
4 subrogation against City, its officials, employees, and agents.

5 B. Insurance Services Office form number CA 00 01 06 92 covering
6 Automobile Liability, Symbol 1 (any auto) with limits of Five Hundred Thousand
7 Dollars (\$500,000) combined single limits.

8 C. Commercial automobile liability equivalent in scope to ISO form CA 00
9 01 06 90 covering Symbol 1 (Any Auto) in an amount not less than Five Hundred
10 Thousand Dollars (\$500,000) combined single limit for bodily injury and property
11 damage liability.

12 D. Workers' compensation insurance as required by the Labor Code of
13 the State of California, and employer's liability insurance in an amount not less than
14 One Million Dollars (\$1,000,000) per accident. The policy shall be endorsed to
15 provide that the insurer waives all rights of subrogation against City, its officials,
16 employees, and agents for losses arising from work performed in connection with
17 this Agreement.

18 VIP Records shall deliver to City certificates of insurance for approval
19 as to sufficiency and form prior to the start of performance hereunder. "Claims
20 made" policies of insurance are not acceptable unless the City Risk Manager
21 determines that "occurrence" policies are not available in the market for the risk
22 being insured. If a "claims made" policy is accepted, it must provide for an extended
23 reporting period of not less than 180 days. Such insurance as required herein shall
24 not be deemed to limit VIP Records' liability related to performance under this
25 Agreement. Any modification of the insurance requirements (as they pertain to this
26 Agreement) herein shall only be made with the approval of City's Risk Manager.
27 The procuring of insurance shall not be construed as a limitation on liability or as full
28 performance of the indemnification of this Agreement.

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1 10. **VIP Records Covenants.** No later than the completion of
2 Restoration, VIP Records shall apply to the City Planning Department to designate the
3 Sign as a historical landmark. VIP Records agrees that for so long as the Sign remains in
4 existence the Sign shall not leave the boundaries of the City of Long Beach, temporarily or
5 otherwise, without the express written consent of City, which may be withheld or
6 conditioned in its sole discretion.

7 11. **Notice.** A party giving notice as provided for by this Agreement shall
8 send the notice by United States Mail, postage prepaid, to the address of the other party
9 as set forth in this Agreement, or to the address as designated by a party in writing.

10 To: World Famous VIP Records LLC
11 1030 Pacific Coast Hwy
12 Long Beach, CA 90806

13 To: City of Long Beach
14 333 W. Ocean Blvd., 3rd Floor
15 Long Beach, CA 90802
16 Attn: Director of Economic and Property Development

17 12. **Amendment.** This Agreement may be modified, amended or
18 supplemented only by a writing signed by the parties or the authorized agents or
19 employees of the parties to this Agreement.

20 13. **Assignment and Successors.** VIP Records shall not assign this
21 Agreement, whether by operation of law, or otherwise, in part or in full, except in writing
22 and with the prior written approval of City and subject to the terms and conditions as City,
23 in City's sole discretion, may deem necessary.

24 14. **No Waiver of Performance.** Failure by any party at any time to
25 require performance by another party or to claim a breach of any provision of this
26 Agreement will not be construed as a waiver of any right accruing under this Agreement,
27 nor affect any subsequent breach, nor affect the effectiveness of this Agreement or any
28 part of this Agreement, nor prejudice any party in regard to any subsequent action.

 15. **Entire Agreement.** This Agreement constitutes the entire agreement
between VIP Records and City with respect to the subject matter of this Agreement and no

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1 representation or statement not contained in the main body of this Agreement shall be
2 binding on City or VIP Records.

3 16. **Governing Law.** This Agreement shall be construed by and governed
4 by the laws of the State of California.

5 IN WITNESS WHEREOF, the parties hereto have caused these presents to
6 be duly executed with all the formalities required by law as of the date first stated.

7 "VIP Records"

8 WORLD FAMOUS VIP RECORDS LLC,
9 a California limited liability company

10 By: *Kevin Anderson*
11 Print Name: CEO
12 Title: _____

13 "City"

14 CITY OF LONG BEACH,
15 a municipal corporation

16 By: *T. Bull*
17 City Manager

Assistant City Manager

18 Approved as to form this 26th day of May, 2017.

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

19 CHARLES PARKIN, City Attorney

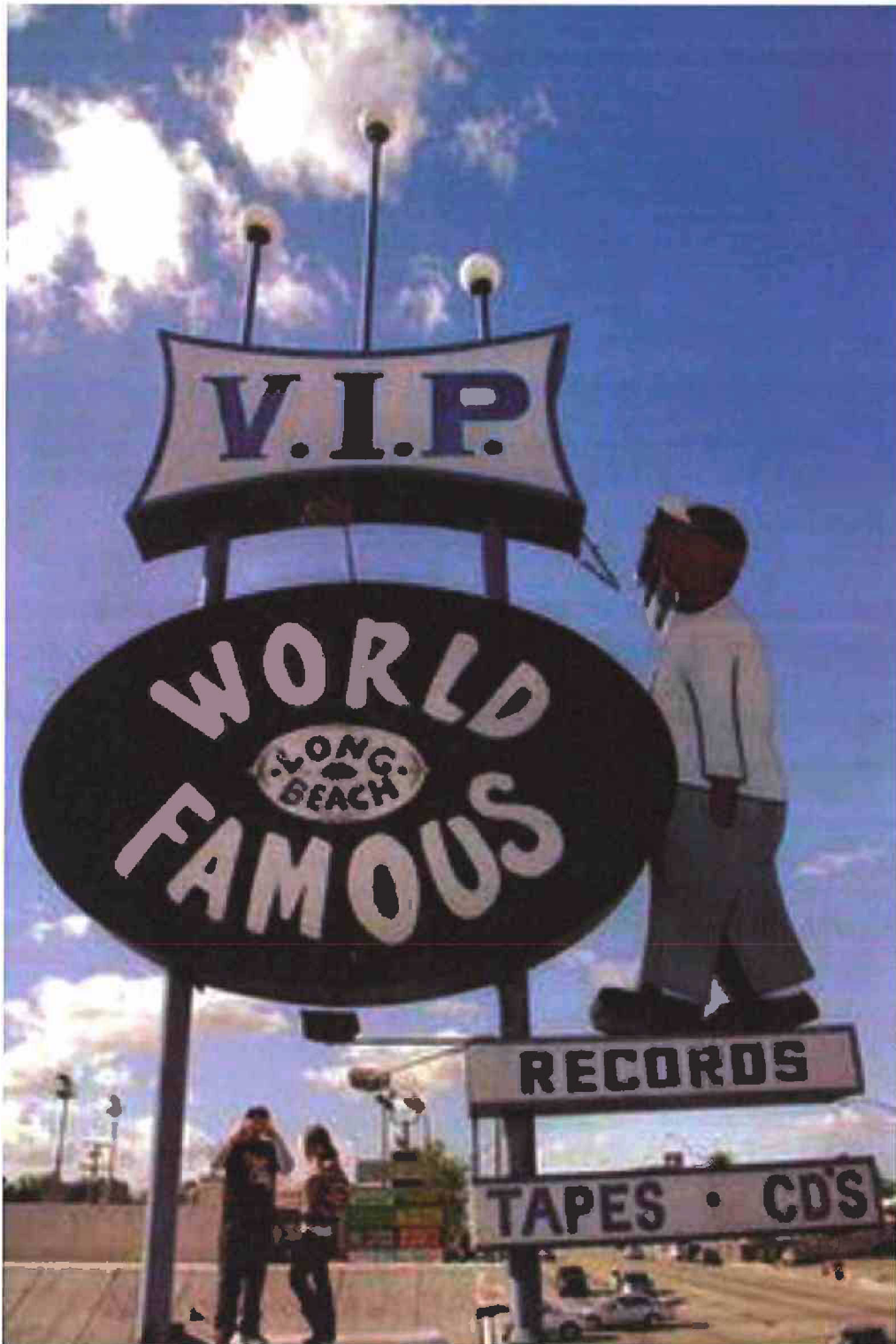
20 By: *Charles Parkin*
21 Deputy
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EXHIBIT "A"

EXHIBIT A



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EXHIBIT "B"

EXHIBIT B

