

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

1 GROUND LEASE

2 **30946**

3 THIS LEASE is entered, into as of 10-21, 2008, pursuant  
4 to an order of the City Council of the City of Long Beach, at its meeting on September 23,  
5 2008, by and between the CITY OF LONG BEACH, a California municipal corporation  
6 ("Landlord"), and WILMINGTON-LOMITA BLVD., LLC, a California limited liability  
7 company ("Tenant"), whose address is 3626 Long Beach Boulevard, Long Beach,  
8 California 90807.

9 In consideration of the faithful performance of the terms, covenants and  
10 conditions herein, the parties agree as follows:

11 1. Leased Premises. Landlord hereby leases to Tenant and Tenant  
12 leases from Landlord that certain real property located within the Terminal Island  
13 Freeway right-of-way, comprised of approximately 5.3 gross acres, and more particularly  
14 described in Exhibit "A" attached hereto (the "Premises").

15 2. Term. The term of this Lease shall commence on the date upon  
16 which both parties have executed this Lease (the "Commencement Date") and shall  
17 terminate on the thirtieth (30<sup>th</sup>) anniversary of the Commencement Date, unless sooner  
18 terminated or extended as provided herein (the "Term"). Following execution of this  
19 Lease and on determination of the Commencement Date and Rent Commencement Date  
20 (as defined below), the parties shall sign and attach to this Lease, as a replacement for  
21 the blank form of Exhibit "B" attached hereto, a Memorandum of Commencement Date,  
22 Rent Commencement Date and Term.

23 3. Option to Extend. The Term may be extended by Tenant for two (2)  
24 additional periods of ten (10) years each. In each case, Tenant shall deliver Landlord  
25 written notice of its election to exercise not more than one (1) year, and not less than  
26 ninety (90) days, before the then-current expiration date of the Term. The parties shall  
27 execute an amendment to this Lease extending the Term. All other terms and conditions  
28 of this Lease shall remain in full force and effect during the extension periods.

1           4.    Early Termination. If Landlord reasonably determines that the  
2 Premises or any portion thereof are necessary for the expansion or improvement of the  
3 Terminal Island Freeway adjacent to the Premises, or otherwise necessary for public  
4 right-of-way purposes, then upon (i) one hundred eighty (180) days advance written  
5 notice to Tenant and (ii) reimbursement by Landlord to Tenant unamortized costs of  
6 Tenant's permanent improvements on the Premises (but not including the Required  
7 Improvements) as reasonably documented by Tenant under a twenty-year straight line  
8 rate, Landlord may terminate this Lease and Tenant shall have no further rights or  
9 obligations hereunder. If Landlord does not agree to Tenant's request for a delay to the  
10 Rent Commencement Date as provided in Section 6, then Tenant may immediately  
11 terminate this Lease upon written notice to Landlord.

12           5.    Use. Tenant shall use the Premises for large equipment storage  
13 (including without limitation cranes, trucks, containers and HVAC units) and related  
14 purposes (including without limitation trucking support). Any other use shall be subject to  
15 the prior approval of Landlord, which approval shall not be unreasonably withheld.  
16 Landlord and Tenant agree to cooperate in an effort to identify and employ operating  
17 methods which would increase the environmental sustainability of Tenant's operations on  
18 the Premises.

19           6.    Rent. Beginning on the Rent Commencement Date and continuing  
20 monthly thereafter, Tenant shall pay to Landlord as rent the sum of Six Thousand Nine  
21 Hundred Dollars (\$6,900) per month, payable in advance, without offset (other than the  
22 offset specifically provided for by Section 8), deduction, demand, or notice. The "Rent  
23 Commencement Date" shall mean the earlier of (i) the date on which all necessary  
24 entitlements are in place for Tenant's use of the Premises, or (ii) the date which is six (6)  
25 months after the Commencement Date (the "Rent Commencement Date"). Tenant may  
26 request to delay the Rent Commencement Date for up to six (6) months if entitlements  
27 are not yet in place, and Landlord may in its sole and absolute discretion agree to such  
28 delay. The rent to be paid to Landlord by Tenant for the Premises shall be adjusted

1 annually effective on each anniversary of the Rent Commencement Date (each, a "Rent  
2 Adjustment Date"), by the 12 Months Percent Change in the Consumer Price Index for All  
3 Urban Consumers, All Items, Base Period 1982-84=100, for the Los Angeles-Riverside-  
4 Orange County, CA Area, published by the United States Department of Labor, Bureau of  
5 Labor Statistics. The monthly index immediately prior to each Rent Adjustment Date  
6 shall be the "Current Index," and the monthly index for the same month from the year  
7 previous shall be the "Beginning Index". If the Current Index is greater than the  
8 Beginning Index, the then-current rent shall increase by the same percentage rounded to  
9 the nearest tenth as did the Current Index increase over the Beginning Index, so that the  
10 monthly rent or adjusted rent shall increase each year by the same percentage as did the  
11 Consumer Price Index. In no event shall any rent adjustment result in a rent less than  
12 that paid during the preceding period.

13 7. Condition of Premises. Tenant accepts the Premises in their "as is"  
14 condition and acknowledges that Tenant has not received and Landlord has not made  
15 any warranty, express or implied as to the condition of the Premises or access thereto, or  
16 any improvements, structures, substructures, or infrastructures located thereon.

17 8. Improvements. Tenant shall (i) construct a block wall along the  
18 entirety of the eastern boundary of the Premises, at least six (6) feet high and otherwise  
19 acceptable to Landlord; and (ii) plant wall-covering foliage along the easterly face of the  
20 wall (collectively, the "Required Improvements"). Prior to constructing any Required  
21 Improvements, Tenant shall deliver to Landlord plans, specifications and drawings  
22 (collectively, "Required Improvements Plans") for the Required Improvements together  
23 with a cost estimate, and such Required Improvements Plans and cost estimate shall be  
24 subject to the approval of Landlord in its sole and absolute discretion. Tenant may offset  
25 monthly rent due under Section 6 until Tenant has been fully reimbursed for all  
26 reasonably documented and Landlord-approved costs of Tenant in completing the  
27 Required Improvements. Tenant shall, at its sole cost and expense, without offset to rent  
28 hereunder, construct whatever improvements may be necessary to access the Premises.

1 Tenant may construct, at its sole cost and expense and without offset to rent hereunder,  
2 temporary improvements on the Premises to facilitate the intended use of the Premises.  
3 Tenant shall not construct any permanent structures on the Premises (other than the  
4 Required Improvements) without the prior written consent of Landlord, which consent  
5 may be withheld or conditioned in Landlord's sole and absolute discretion. Prior to  
6 commencing any construction of temporary or permanent improvements Tenant shall  
7 deliver to Landlord plans, specifications and drawings (collectively, "plans") for such  
8 improvements and such plans shall be subject to Landlord's approval within sixty (60)  
9 calendar days from receipt, which approval shall not be unreasonably withheld. All  
10 temporary and permanent improvements constructed by Tenant shall be subject to the  
11 normal permitting process of the City of Long Beach acting in its municipal capacity.

12 9. Possessory Interest Taxes. Tenant acknowledges that this Lease  
13 may create a possessory interest subject to taxation and that Tenant may be liable for  
14 payment of taxes levied on such interest.

15 10. Relocation. Tenant agrees that nothing in this Lease shall create  
16 any right in Tenant to any relocation assistance or payment pursuant to the provisions of  
17 Title 1, Division 7, Chapter 16 of the Government Code, or any successor statute, from  
18 Landlord on the termination or expiration of this Lease.

19 11. Insurance.

20 A. Concurrent with the Commencement Date of this Lease and  
21 throughout the term, Tenant shall procure and maintain, at its cost, from insurance  
22 companies admitted to write insurance in the State of California or from nonadmitted  
23 insurers that are on California's List of Eligible Surplus Lines Insurers ("LESLI") and  
24 that have a minimum rating of or equivalent to A:VII by A.M. Best Company:

25 i. Commercial general liability insurance (equivalent in  
26 coverage scope to Insurance Services Office, Inc. (ISO) form CG 00 01 11  
27 85 or 11 88), in an amount not less than Five Million Dollars (\$5,000,000)  
28 per occurrence and general aggregate. Such insurance shall include (as

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may be applicable to Tenant's operations) products and completed operations, and fire legal liability, and shall not limit or exclude coverage for contractual liability, independent contractors liability, or cross liability protection. This insurance shall be endorsed to include Landlord, its officials, employees and agents as additional insureds (by an endorsement equivalent in coverage scope to ISO form CG 20 26 11 85) and to waive the insurers' rights of subrogation against Landlord, its officials, employees and agents.

ii. Workers' compensation insurance as required by the State of California and employer's liability insurance with minimum limits of One Million Dollars (\$1,000,000) per accident. The policy shall be endorsed by the insurer to waive the insurer's rights of subrogation against Landlord, its officials, employees and agents.

iii. Automobile liability insurance (equivalent in coverage scope to ISO form CA 00 01 06 92) in an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident for bodily injury and property damage covering Auto Symbol 1 ("Any Auto").

iv. "All Risk" property insurance, including debris removal but excluding earthquake and flood, in an amount to cover the full replacement value of the Premises. Under this coverage, Landlord shall be an additional insured and loss payee as its interests may appear.

v. "All Risk" property insurance, including debris removal and builders risk coverage during the course of any construction on the Premises but excluding earthquake and flood, in an amount sufficient to cover the full replacement value of buildings and structural improvements constructed or erected on or about the Premises by Tenant. Landlord shall be named as an additional insured under a standard loss payable endorsement.

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vi. "All Risk" property insurance, excluding earthquake and flood, in an amount sufficient to cover the full replacement value of Tenant's personal property and equipment on the Premises, whether owned, leased, or in the care, custody or control of Tenant, and of Landlord's personal property and equipment on the Premises including but not limited to furnishings and equipment. Landlord shall be named as an additional insured under a standard loss payable endorsement, as its interests may appear.

vii. Any other insurance that may be required by the state and any federal regulatory agency having jurisdiction over Tenant's business.

B. If Tenant fails to procure or maintain any insurance required herein, then Landlord may, at Landlord's sole discretion, procure and maintain such insurance on behalf of Tenant at Tenant's sole expense, and Tenant shall pay the cost of such insurance to Landlord as additional rent.

C. If Landlord exercises its discretion with respect to the procurement or maintenance of insurance for and on behalf of Tenant hereunder, then Tenant shall pay the cost of insurance as additional rent, within thirty (30) days after receipt of an invoice therefor. If Tenant fails to pay the invoice, when due, interest shall accrue and be due on the unpaid amount at the rate of two percent (2%) per month, or the maximum allowed by law, whichever is greater, commencing on the thirty-first (31st) day after the date of the invoice and compounded monthly.

D. Tenant shall provide to Landlord all policy information reasonably requested by Landlord and shall make available as soon as practicable to Landlord during Tenant's normal business hours all books, records and other information relating to insurance and shall provide copies of policies to Landlord upon request.

1                   E.     On execution of this Lease or as otherwise stated herein,  
2     Tenant shall deliver to Landlord certificates of insurance and endorsements required  
3     herein, for approval as to sufficiency and form. The certificates and endorsements  
4     for each insurance policy shall contain the original or electronic signatures of  
5     persons authorized by that insurer to bind coverage on its behalf. Tenant shall  
6     provide Landlord with certificates of insurance and endorsements for renewal  
7     policies within thirty (30) days after the existing policy expires. Landlord reserves  
8     the right to require complete certified copies of all policies at any time.

9                   F.     All insurance required herein shall be separately endorsed to  
10    require at least thirty (30) days prior written notice of cancellation (or ten (10) days  
11    prior written notice if cancellation is due to nonpayment of premiums), nonrenewal,  
12    or reduction in coverage or limits (other than reduction of limits due to claims paid)  
13    and to provide that coverage shall be primary and not contributing to any other  
14    insurance or self-insurance maintained by Landlord, its officials, employees, and  
15    agents.

16                  G.     Any self-insurance program, self-insured retention or deductible  
17    must be approved separately in writing by Landlord's Risk Manager, or designee,  
18    and shall protect Landlord, its officials, employees and agents in the same manner  
19    and to the same extent as they would have been protected had the policy or policies  
20    not contained such retention or deductible provisions.

21                  H.     With respect to damage to property, Landlord and Tenant  
22    hereby waive all rights of subrogation, one against the other, but only to the extent  
23    that collectible commercial insurance is available for such damage.

24                  I.     Not more frequently than every three (3) years or upon any new  
25    construction on the Premises or upon any assignment or transfer approved by  
26    Landlord in accordance with the provisions of this Lease, if in the opinion of  
27    Landlord's Risk Manager or designee, the amount, scope, or types of coverages  
28    specified herein are not adequate, Tenant shall amend its insurance as required by

1 Landlord's Risk Manager or designee unless Tenant establishes that any such  
2 amendments are not reasonably based on the insurance, or actuarially-certified self-  
3 insurance, maintained by similar entities in the same geographic region. Such  
4 amendments may include but are not limited to coverage for earthquake and flood, if  
5 available from responsible insurance companies at reasonable cost. The phrase  
6 "responsible insurance companies at reasonable cost" shall be determined by  
7 Landlord's Risk Manager or designee, in his/her sole discretion.

8 J. Such insurance as required herein shall not be deemed to limit  
9 Tenant's liability in any way under this Lease. The procuring or maintaining of  
10 insurance shall not be construed as performance of the indemnity provisions of this  
11 Lease. Landlord makes no representations that the limits or forms of coverage of  
12 insurance specified herein are adequate to cover Tenant's liability or obligations  
13 hereunder or otherwise.

14 K. Any modification or waiver of any insurance requirement shall  
15 be made only with the written approval of Landlord's Risk Manager or designee.

16 12. Surrender of Premises. On the expiration or sooner termination of  
17 this Lease, Tenant shall deliver to Landlord possession of the Premises in the same  
18 condition as immediately prior to the Commencement Date, reasonable wear and tear  
19 excepted. Unless otherwise determined by Landlord in its sole discretion, Tenant shall  
20 remove all improvements and fixtures constructed on the Premises. Tenant shall remove  
21 its equipment, supplies and other items so as to leave the Premises in a condition which  
22 does not damage the Premises.

23 13. Assignment. Tenant shall not assign or transfer this Lease or any  
24 interest herein or any right hereunder, nor delegate any duties hereunder provided,  
25 without the express written consent of Landlord. Any attempted assignment, transfer,  
26 delegation and any grant or sublease in violation of this Section shall be void and any  
27 assignee, transferee, delegate, grantee, or sublessee shall acquire no right or interest by  
28 reason of such attempted assignment, transfer, delegation, grant, or sublease.



1 Notwithstanding the foregoing, Tenant may, without Landlord's consent, provide short  
2 term licenses covering a portion of the Premises to third-parties for purposes of  
3 facilitating use of the Premises as a large equipment storage facility.

4 14. Default. The occurrence of any one or more of the following acts  
5 shall constitute a default by Tenant:

6 A. Failure to pay rent when due if the failure continues after three  
7 (3) days' notice;

8 B. Abandonment of the Premises, in whole or in part, except for  
9 that portion of the Premises that is unusable as a result of pre-existing infrastructure  
10 or limiting configuration, provided that failure to occupy or operate all or any part of  
11 the Premises for ten (10) consecutive days shall be deemed an abandonment as to  
12 all or as to that part so abandoned, except for temporary closures for specified dates  
13 with the prior approval of Landlord. Temporary closures shall not relieve Tenant of  
14 Tenant's duty to maintain the Premises at all times in accordance with the terms of  
15 this Lease;

16 C. Any attempted assignment, transfer, or sublease in violation of  
17 this Lease;

18 D. Failure to maintain the insurance required herein, subject to the  
19 thirty-day cure period described in Subsection "H" of this Section;

20 E. Failure to pay when due all fees and charges for any municipal  
21 service or commodity provided by the City of Long Beach in its municipal capacity,  
22 including but not limited to water, sewer, gas, electricity, refuse collection, or  
23 recycling, subject to the thirty-day cure period described in Subsection "H" of this  
24 Section ;

25 F. To the extent permitted by the United States Bankruptcy Code,  
26 insolvency of Tenant, which shall be deemed to include an assignment by Tenant  
27 for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy;  
28 an adjudication that Tenant is bankrupt; the appointment of a receiver of the

1 properties of Tenant if the receiver is not discharged within fifteen (15) days; the  
2 filing of an involuntary petition of bankruptcy and failure of Tenant to secure a  
3 dismissal of the petition within thirty (30) days after filing; attachment of or the  
4 levying of execution on the leasehold interest and failure of Tenant to secure  
5 discharge of the attachment or release of the levy of execution within fifteen (15)  
6 days. In the event of any of the foregoing, no notice that an event of default has  
7 occurred shall be required from Landlord;

8 G. Failure to comply with any applicable law, rule, ordinance, or  
9 regulation;

10 H. Any failure to perform any other term, covenant, or condition of  
11 this Lease not specifically identified in this Section or elsewhere in this Lease, if said  
12 failure is not cured within thirty (30) days after Landlord gives notice to Tenant of  
13 said failure. If the default cannot reasonably be cured in thirty (30) days, then  
14 Tenant shall not be in default if Tenant begins to cure within said period and  
15 diligently proceeds to cure to completion, but in no event shall such cure period  
16 exceed ninety (90) days.

17 15. Remedies. Upon the occurrence of any default, in addition to any  
18 other rights or remedies of Landlord hereunder, by law or in equity, Landlord shall have  
19 the following rights and remedies:

20 A. Landlord may terminate this Lease by giving to Tenant notice of  
21 termination, and Tenant shall immediately surrender possession of the Premises as  
22 described elsewhere herein, leaving them in good repair and condition subject to  
23 reasonable wear and tear. Termination hereunder shall not relieve Tenant from the  
24 payment of any sum due to Landlord or from any claim that Landlord may have for  
25 damages or indemnity. Landlord shall be entitled to recover from Tenant all  
26 damages incurred by Landlord including but not limited to the cost of recovering  
27 possession, expenses related to repairs, and reasonable attorney's fees.  
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B. Landlord may continue the Lease in full force and effect and enforce all of its rights and remedies hereunder.

C. Landlord may convert this Lease to a year-to-year tenancy or a month-to-month tenancy by notice to Tenant.

D. Landlord may require that Tenant provide evidence that Tenant can meet its current financial obligations, liabilities and expenses.

E. Landlord, at its option, may re-let the whole or any part of the Premises from time to time, either in the name of Landlord or otherwise, to such tenants, for such terms ending before, on, or after the expiration of the term of this Lease, at such rent and on such conditions as Landlord, in its sole discretion, may determine to be appropriate. To the extent allowed by law, Landlord shall not be liable for refusal to re-let or, in the event of re-letting, for failure to collect rent, and no such failure shall operate to relieve Tenant of any liability under this Lease.

F. Whether or not Landlord retakes possession or re-lets the Premises, Landlord shall have the right to recover unpaid rent, unpaid additional rent, and all other damages caused by Tenant's default. Damages shall include but not be limited to all unpaid rent, all unpaid additional rent, all legal expenses and related costs incurred by Landlord as a result of Tenant's default, all costs incurred by Landlord in restoring the Premises to good order and condition, and the value of Landlord's staff time expended as a result of the default.

G. Nothing in this Lease shall be deemed to require that Landlord wait until the date on which the Lease term expires to bring or maintain any suit or action relating to this Lease.

H. These remedies are not exclusive but cumulative to other remedies provided by law in the event of Tenant's default and the exercise by Landlord of one or more rights and remedies shall not preclude Landlord's exercise of additional or different remedies for the same or any other default by Tenant.

1           16. Notices. All notices required hereunder shall be in writing and  
2 personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid,  
3 as follows:

4           To Tenant:           Wilmington-Lomita Blvd., LLC  
5                                3626 Long Beach Boulevard  
6                                Long Beach, CA 90807  
7                                Attention: Tom Dean

8           To Landlord:        City of Long Beach  
9                                333 West Ocean Boulevard  
10                              Long Beach, CA 90802  
11                              Attention: Director of Public Works

12           Change of address shall be given in the same manner as stated for other  
13 notices. Notice shall be deemed given on the date deposited in the mail or on the date  
14 personal delivery is made, whichever first occurs.

15           17. Indemnification.

16           A. Tenant shall defend, indemnify, and hold harmless Landlord, its  
17 officials, employees and agents (collectively in this Section "Landlord") from and  
18 against any and all causes of actions, damage, proceedings, claims, demands, loss,  
19 liens, costs and expenses alleging injury to or death of persons, or damage to  
20 property, including property owned by Landlord, or any other claim of damage  
21 brought, made, filed against, imposed on or sustained by the indemnified parties, or  
22 any of them, and arising from or attributable to or caused, directly or indirectly  
23 (collectively or individually, a "claim"):

24           i. by the use of the Premises or any equipment or  
25 materials located thereon, or from operations conducted thereon by Tenant,  
26 its employees, invitees, agents, or by any person or persons acting on  
27 behalf of Tenant and with Tenant's knowledge and consent, express or  
28 implied;

          ii. by reason of or arising out of the condition or state of  
repair or maintenance of the Premises;

1                   iii.     by the construction, improvement or repair of the  
2                   improvements and facilities on the Premises by Tenant, its officers,  
3                   employees, contractors, agents or invitees, or by any person or persons  
4                   acting on behalf of Tenant and with Tenant's knowledge and consent,  
5                   express or implied; or

6                   iv.     by reason of injury to or death of employees of Tenant  
7                   or others as a result of Tenant's failure or refusal to comply with the  
8                   provisions of Section 6300 et seq. of the California Labor Code or any  
9                   federal, state or local regulations or laws pertaining to the safety of the  
10                  Premises or of equipment located upon the Premises; and

11                  v.     by acts or omissions of Tenant, regardless of whether  
12                  any act or omission of Landlord contributed thereto, but excluding any claim  
13                  caused by the sole negligence of Landlord.

14                  B.     With respect to any claim, Landlord shall notify Tenant thereof,  
15                  shall tender to Tenant the defense thereof, and shall assist Tenant as may  
16                  reasonably be requested in the defense thereof. Tenant shall defend such claim,  
17                  shall conduct or have conducted the necessary investigations related thereto, and  
18                  Tenant shall indemnify Landlord, unless and until Tenant proves that the indemnity  
19                  does not apply. Payment of a claim by Landlord or entry of judgment shall not be a  
20                  condition precedent to recovery under this indemnity.

21                  18.    Landlord's Right to Re-enter on Termination or Expiration. Tenant  
22                  shall peaceably deliver possession of the Premises to Landlord on the date of expiration  
23                  or sooner termination of this Lease. On giving notice of termination to Tenant, Landlord  
24                  shall have the right to re-enter and take possession of the Premises on the date such  
25                  termination becomes effective without further notice of any kind and without instituting  
26                  summary or regular legal proceedings. Termination of the Lease and re-entry of the  
27                  Premises by Landlord shall in no way alter or diminish any obligation of Tenant under the  
28                  Lease. Tenant waives any and all right of redemption under any existing or future law or

1 statute in the event of eviction from or dispossession of the Premises for any reason or in  
2 the event Landlord re-enters and takes possession of the Premises in a lawful manner.  
3 Tenant agrees that if the manner or method used by Landlord in re-entering or taking  
4 possession of the Premises provides Tenant with a cause of action for damages or in  
5 forcible entry and detainer, then the total amount of damages to which Tenant shall be  
6 entitled in any such action shall be One Dollar. This Section may be filed in any such  
7 action and, when filed, it shall be a stipulation by Tenant fixing the total damages to which  
8 Tenant is entitled in such action.

9           19. Nondiscrimination. Subject to applicable laws, rules and regulations,  
10 Tenant shall not discriminate against any person or group on account of race, religion,  
11 national origin, color, age, gender, sexual orientation, AIDS, HIV status, handicap, or  
12 disability in the use, operation or maintenance of the Premises or in the employment of  
13 any individual.

14           20. Utilities. Tenant shall provide for and pay for all water, sewer, gas,  
15 electricity, telephone, refuse, recycling, and other utilities to the Premises, together with  
16 the taxes thereon. If any such utilities are not separately metered to Tenant, Tenant shall  
17 pay a reasonable proportion to be determined by Landlord of all charges jointly metered  
18 with other premises.

19           21. Waiver by Tenant. Landlord shall not be liable for and Tenant  
20 hereby waives, to the extent permitted by law, all claims against Landlord, its officials,  
21 employees and agents for loss, theft, and damage to equipment, furnishings, furniture,  
22 trade and other fixtures, records, and all personal property of Tenant, its employees,  
23 invitees, subtenants, and all other persons in or about the Premises, or for loss or  
24 damage to Tenant's business, or for loss of income from Tenant's business or use of the  
25 Premises, or for injury to or death of persons on or about the Premises from any cause  
26 except to the extent caused by Landlord's negligence or willful misconduct.

27           Tenant acknowledges that it is familiar with California Civil Code Section  
28 1542 which states: "A general release does not extend to claims which the creditor does

1 not know or suspect to exist in his favor at the time of executing the release, which if  
2 known by him must have materially affected his settlement with the debtor." Tenant  
3 hereby releases Landlord from any unknown claims and waives its rights under said  
4 Section 1542.

5           22. Brokers. By signing this Lease, each party represents that it has had  
6 no contacts or dealings regarding the execution of this Lease through a broker or agent  
7 or any other person who can claim a right to a commission or fee.

8           23. Force Majeure. Except as to the payment of rent, in any case where  
9 either party is required to do any act, the inability of that party to perform or delay in  
10 performance of that act caused by or resulting from fire, flood, earthquake, explosion,  
11 acts of God, war, strikes, lockouts, or any other cause beyond the reasonable control of  
12 that party and not due to that party's fault or neglect shall be excused and shall not be a  
13 default hereunder. Financial inability to perform shall not be considered cause beyond the  
14 reasonable control of the party.

15           24. Signs. Tenant shall not place, affix, maintain or permit any sign,  
16 advertisement, name, insignia, logo, descriptive material, or similar item (collectively,  
17 "sign") on the Premises without the prior written approval of Landlord and any other  
18 governmental agencies having jurisdiction over Tenant. Any approved sign shall be  
19 installed and maintained by Tenant, at its sole cost, in good condition. Any sign not  
20 approved by Landlord may be removed by Landlord at Tenant's cost. Tenant shall  
21 remove the exterior building sign at the expiration or sooner termination of this Lease and  
22 repair the exterior of the building to its condition immediately preceding installation of  
23 Tenant's exterior sign, at no cost to Landlord. No freestanding signs are or will be  
24 permitted on the Property.

25           25. Condemnation.

26           A. If the whole of the Premises or improvements on the Premises  
27 is taken by right of eminent domain or otherwise for any public or quasi-public use,  
28 then when possession is taken thereunder by the condemnor or when Tenant is

1 deprived of practical use of the Premises or improvements, whichever date is  
2 earlier, this Lease shall terminate. If there is a partial taking so that the remaining  
3 portion of the Premises or improvements cannot be restored to an economically  
4 feasible operation or a comparable kind to that which existed prior to the taking,  
5 then this Lease shall, at Tenant's option, terminate as of the date when possession  
6 was taken by condemnor or when Tenant was deprived of practical use of the  
7 Premises, whichever date is earlier.

8 B. If there is a taking by right of eminent domain, the rights and  
9 obligations of the parties with reference to the award and the distribution thereof  
10 shall be determined in accordance with this Section. The award shall belong to and  
11 be paid to Landlord, except that Tenant shall receive from the award a sum  
12 attributable to the remaining value of Tenant's leasehold estate. Any sum  
13 attributable to loss of good will shall be paid directly by the condemning authority to  
14 Tenant. Said sum relating to the value of improvements made by Tenant shall not  
15 exceed the actual cost of improvements constructed by on or behalf of Tenant. For  
16 the purposes of condemnation only, Tenant hereby stipulates that the value of its  
17 leasehold estate in the Premises is \$1. Relocation costs and goodwill value, if any,  
18 shall not be included in the valuation of leasehold estate.

19 26. No Waiver of Landlord's Rights. The failure or delay of the Landlord  
20 to re-enter the Premises, to insist on strict enforcement of any term, covenant or  
21 condition herein, to exercise any right, power, privilege, or option arising from any default  
22 shall not impair any such right, power, privilege or option or be construed or operate as or  
23 be deemed a waiver of any term, covenant or condition of this Lease, of any default, or of  
24 any right or remedy (including indemnity) that the Landlord may have and shall not be  
25 deemed a waiver of any subsequent or other default of any term, covenant or condition  
26 hereof. Landlord's approval to any act by Tenant requiring Landlord's approval shall not  
27 be deemed to waive Landlord's approval of any subsequent act of Tenant where  
28 approval is required. The receipt and acceptance by Landlord of rent, delinquent or



1 timely, shall not constitute a waiver of any default. Any waiver of any default by Landlord  
2 shall be in writing. Failure on the part of Landlord to require exact and complete  
3 compliance hereof shall not be construed or deemed in any manner as changing this  
4 Lease, nor shall the conduct of the parties be deemed to change this Lease. No right,  
5 power, privilege, option, or remedy of Landlord shall be construed as being exhausted by  
6 the exercise thereof in one or more instances.

7           27. Access and Right of Entry. Landlord shall have access and the right  
8 to enter the Premises at all times, twenty-four (24) hours a day, seven (7) days a week  
9 provided that Landlord gives to Tenant at least forty-eight (48) hours prior notification.

10           28. Maintenance.

11           A. Landlord shall have no responsibility for the repair or  
12 maintenance of the Premises or any part thereof after the Commencement Date.  
13 Tenant shall at Tenant's sole cost maintain and repair the Premises.

14           B. Tenant hereby waives to the extent permitted by law any right to  
15 make repairs at the expense of Landlord or to vacate the Premises in lieu thereof as  
16 may be provided by law.

17           C. If Tenant fails to maintain the Premises, Landlord may notify  
18 Tenant of such failure. If Tenant fails to correct the situation within thirty (30) days  
19 thereafter or such longer period as may be established by Landlord, then Landlord  
20 may make the necessary correction and the cost thereof, including but not limited to  
21 the cost of labor, materials, equipment and administration, shall be paid by Tenant  
22 as additional rent within ten (10) days after receipt of a statement of said additional  
23 rent from Landlord.

24           29. Restoration. Tenant shall promptly give notice to Landlord of  
25 damage or destruction to the Premises and the date of same. Tenant shall promptly  
26 make proof of loss and proceed to collect all valid claims that Tenant may have against  
27 insurers or others based on such damage or destruction. All amounts recovered as a  
28 result of said claims shall be used first for the restoration of the Premises, which Tenant

1 shall promptly begin and diligently pursue so that the Premises are restored to  
2 substantially the same conditions as they were in immediately before such damage or  
3 destruction. If existing laws do not permit restoration, then Tenant may terminate this  
4 Lease by notice to Landlord, subject to the provisions of Section 12.

5 If the repair, reconstruction or restoration requires longer than one hundred  
6 twenty (120) days or if the insurance proceeds will not be sufficient to cover the cost of  
7 repair, reconstruction or restoration, then Landlord may elect to repair, reconstruct or  
8 restore and the Lease shall continue in full force and effect. If Landlord elects to repair,  
9 reconstruct or restore, then Landlord shall not be required to expend sums therefor in  
10 excess of insurance proceeds received by Landlord by reason of the casualty. If  
11 Landlord repairs, reconstructs or restores, then Tenant shall not receive a rebate or  
12 repayment of any rent and Tenant shall not be entitled to any compensation or damages  
13 for loss in the use of the whole or any part of the Premises and any inconvenience or  
14 annoyance occasioned by such damage, repair, reconstruction or restoration.

15 30. Waiver of Jury Trial. Landlord and Tenant hereby waive their  
16 respective rights to trial by jury of any contract or tort claim, counterclaim, cross-  
17 complaint, or any other cause of action in any action, proceeding, or hearing brought by  
18 either party against the other on any matter in any way connected with this Lease, with  
19 the relationship of the parties, including but not limited to the enforcement of any law,  
20 rule, ordinance, or regulation.

21 31. No Encumbrances. Tenant shall not encumber the Premises by any  
22 mortgage, deed of trust or other encumbrance of any kind.

23 32. Hazardous Materials. Tenant shall conduct all aspects of its  
24 operation and use of the Premises in strict accordance with all federal and state laws,  
25 rules and regulations relating to any hazardous material as defined by state and federal  
26 laws.

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1                   33.    Miscellaneous.

2                   A.    Each party shall bear its own costs and expenses in connection  
3 with this Lease and enforcement thereof, including but not limited to attorney's fees  
4 and court costs.

5  
6                   B.    This Lease shall be binding on and inure to the benefit of the  
7 parties and their successors, heirs, personal representatives, and subtenants, and  
8 all of the parties shall be jointly and severally liable hereunder.

9                   C.    This Lease constitutes the entire understanding between the  
10 parties and supersedes all prior negotiations, agreements and understandings, oral  
11 or written, with respect to the subject matter hereof.

12                  D.    This Lease may not be amended except in a writing duly  
13 executed by both parties and authorized by Landlord's City Council.

14                  E.    This Lease shall be governed by and construed under the laws  
15 of the state of California, and no choice of laws or principles thereof shall apply.

16                  F.    The captions and numbers herein and the grouping of the  
17 provisions of this Lease into separate sections and paragraphs are for the purpose  
18 of convenience only and shall not be considered a part hereof, and shall have no  
19 effect on the interpretation of this Lease.

20                  G.    If any term, covenant, or condition of this Lease is found to be  
21 invalid, ineffective, void, or unenforceable for any reason by a court of competent  
22 jurisdiction, the remaining terms, covenants and conditions shall remain in full force  
23 and effect.

24                  H.    Time is of the essence in this Lease and all of its provisions.  
25 No notice to Tenant shall be required to restore "time is of the essence" after waiver  
26 by Landlord of any default.

27                  I.    This Lease shall not be recorded.

28                  J.    The relationship of the parties hereto is that of landlord and

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tenant, and the parties agree that nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, principal-agent relationship, association, or employer-employee relationship between them or between Landlord or any third person or entity.

K. This Lease is created as a joint effort between the parties and fully negotiated as to its terms covenants and conditions. This Lease shall not be construed against either party as the drafter.

L. Each provision of this Lease shall be deemed both a covenant and a condition.

M. This Lease is created for the benefit of the parties only and is not intended to benefit any third person or entity.

N. If Tenant is a corporation, partnership or limited liability company, each person signing this Lease on behalf of that entity represents and warrants that he/she is authorized to sign this Lease on behalf of the entity.

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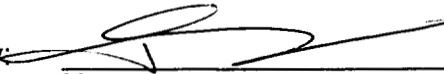
OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

WILMINGTON-LOMITA BLVD., LLC,  
a California limited liability company

Dated: 10.21, 2008

By:   
Name: Tom Dean  
Title: Manager

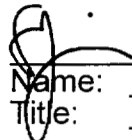
Dated: \_\_\_\_\_, 2008

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"Tenant"

RECEIVED AND FILED  
CITY OF LONG BEACH 20 109 NOTICES OF  
INVESTMENT ORIGINATOR

Dated: Oct. 30, 2008

By:   
Name: Patrick H. West  
Title: City Manager

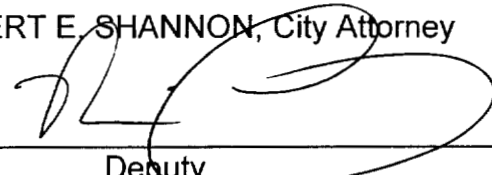
Assistant City Manager

"Landlord"

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

This Lease is approved as to form on October 21, 2008.

ROBERT E. SHANNON, City Attorney

By:   
Deputy

RFA: bg  
A08-03114



EXHIBIT A

**MEMORANDUM OF COMMENCEMENT DATE,  
RENT COMMENCEMENT DATE AND TERM**

**BLANK FORM  
TO BE REPLACED  
WITH SIGNED FORM**

**EXHIBIT B**