

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

1 **FIRST AMENDMENT TO LEASE NO. 29263**

2 **29263**

3 THIS FIRST AMENDMENT TO LEASE NO. 29263 ("Amendment") is made
4 and entered as of May 1, 2018 ("Effective Date"), pursuant to minute order adopted by
5 the City Council of the City of Long Beach on April 17, 2018, by and between the CITY
6 OF LONG BEACH, a municipal corporation and trust grantee of the State of California of
7 certain tide and submerged lands within said City ("Lessor" or "City"), and CDCF III
8 PACIFIC CATALINA LANDING LONG BEACH, LLC, a Delaware limited liability company
9 ("Lessee"), as successor-in-interest to Special Services Asset Management Company, an
10 Illinois corporation, as successor-in-interest to AC-Catalina Landing LLC, a Delaware
11 limited liability company, as successor-in-interest to John Hancock Life Insurance
12 Company, a Massachusetts corporation ("Original Lessee").

13 **RECITALS**

14 A. Lessor and Lessee are parties to that certain Lease No. 29263 dated
15 as of June 30, 2000, as clarified by those certain letters from Vincent Coughlin of Lessor
16 to John M. Nagle of Original Lessee dated April 29, 2002 and May 23, 2002 and as
17 memorialized by that certain Memorandum of Lease Agreement between Lessor and
18 Original Lessee dated as of April 29, 2002 and recorded on June 25, 2002 in the Official
19 Records of Los Angeles County, California (the "Official Records") as Document Number
20 02-1432897 (collectively, the "Lease"), pursuant to which Lessee leases from Lessor
21 certain tidelands property more particularly described in the Lease (the "Premises").
22 Lessee is the successor to the leasehold interest in the Lease pursuant to that certain
23 Assignment and Assumption of Lease and Dredge Agreement dated as of August 28,
24 2015 and recorded on August 31, 2015 in the Official Records as Document Number
25 20151072450.

26 B. The term of the Lease is currently scheduled to expire on April 28,
27 2068 (the "Initial Term").

28 C. Lessor and Lessee desire to amend the Lease to, among other

1 things, extend the Lease term and to add provisions regarding future rent adjustments.

2 **AGREEMENT**

3 1. Term. The term of the Lease, as described in Paragraph 2.2 of the
4 Lease, is hereby extended so that the term of the Lease shall expire on April 28, 2084.
5 Lessee has no option to extend the term of the Lease.

6 2. Fair Market Rental Adjustment. In addition to all other rental
7 adjustments provided for by the Lease, on May 1, 2043 and May 1, 2068 (each, a "Fair
8 Market Rental Adjustment Date"), the ground rent will be adjusted to reflect the fair
9 market rental value of the Premises as described below. On or before the date which is
10 one hundred eighty (180) days prior to each Fair Market Rental Adjustment Date, Lessor
11 and Lessee shall negotiate in good faith to determine an appropriate adjusted rental rate
12 for the Premises based upon the fair market rental value of the Premises (which, for the
13 purposes of the Lease, as hereby amended, shall mean the fair market rental value of the
14 Premises with consideration given to the permitted uses under the Lease and
15 improvements on the Premises, in each case as of the applicable Fair Market Rental
16 Adjustment Date). In determining the appropriate adjusted rental rate for the Premises,
17 either party may obtain its own appraisal, which may be used throughout subsequent
18 steps in the rental adjustment process, if necessary. If the parties are unable to agree
19 upon an appropriate adjusted rental rate on or before the date which is one hundred
20 twenty (120) days prior to a Fair Market Rental Adjustment Date, then the fair market
21 rental value of the Premises as described above shall be determined by appraisals
22 prepared by two appraisers, one appointed by Lessor at its expense and one appointed
23 by Lessee at its expense, both of whom shall be licensed by the State of California as
24 Certified General Appraisers and members of the Appraisal Institute or a successor
25 organization in the event the Appraisal Institute ceases to exist. Each appraisal shall be
26 completed within sixty (60) days prior to a Fair Market Rental Adjustment Date. The two
27 appraisals shall be averaged and the resulting average shall thereafter be the adjusted
28 rental rate, unless the higher of the two appraisals exceeds the lesser by ten percent

1 (10%) or more, in which case the two appraisers shall appoint a third appraiser, also
2 licensed by the State of California as a Certified General Appraiser and a member of the
3 Appraisal Institute or a successor organization. Selection of the third appraiser as
4 described below, if necessary, shall occur no later than ten (10) days after both initial
5 appraisals are completed. The cost of such third appraiser shall be shared equally by the
6 parties to the Lease, as hereby amended. In order to select such third appraiser, if the
7 two appraisers do not agree on a third appraiser within ten (10) days after both initial
8 appraisals are completed, the appraisers shall obtain a list of five (5) appraisers from the
9 President of the Southern California Chapter of the American Institute of Real Estate
10 Appraisers and shall alternately strike names from such list until one remains to become
11 the third appraiser. The two appraisers shall flip a coin to determine which appraiser first
12 strikes a name from the list. If the selected third appraiser is unwilling or unavailable to
13 serve or cannot complete the appraisal report within the required time limit described
14 below, the fourth stricken name shall be the third appraiser, and so on in reverse order
15 until the third appraiser is selected. The third appraiser shall complete and submit the
16 required appraisal to both parties within sixty (60) days after appointment. Lessor and
17 Lessee shall cause a copy of their appraisals prepared by their respective appraisers to
18 be delivered to the third appraiser upon receipt of the completed third appraisal. All
19 appraisals shall be in the form of complete, self-contained narrative written appraisal
20 reports supported by facts and analysis. All selected market data used in the appraisal
21 reports shall be gathered, reviewed and analyzed independently by the respective
22 appraisers. The two of the three appraisers arriving at a fair market rental value of the
23 Premises closest to each other shall attempt to concur on such value. Disagreements
24 between the two appraisers as to the method of appraisal shall be resolved by the
25 appraiser whose value is not being considered, and such appraiser's decisions as to the
26 method of appraisal shall be final for purposes of the appraisal process. If the two
27 appraisers arriving at a fair market rental value of the Premises closest to each other are
28 unable to concur on such value within fifteen (15) days after completion of the third

1 appraisal, the two closest appraisals shall be averaged and that value shall be the fair
2 market rental value of the Premises, which shall be final and binding on the parties. In
3 the event the rental adjustment process is not completed prior to an applicable Fair
4 Market Rental Adjustment Date, the ground rent shall be based upon the lower of the two
5 appraised rental rates that are closest to each other as described above until such time
6 as the rental adjustment process described herein is complete. The final adjusted rental
7 rate shall be retroactive to the applicable Fair Market Rental Adjustment Date and shall
8 constitute the ground rent until further adjusted in accordance with Paragraph 3.2.2 of the
9 Lease, as clarified. The parties shall remit appropriate overpayments or underpayments
10 within thirty (30) days after the determination of the final adjusted rental rate if such
11 determination occurs after the applicable Fair Market Rental Adjustment Date. The
12 ground rent determined through this process in no event shall be less than the ground
13 rent payable immediately prior to the applicable Fair Market Rental Adjustment Date.

14 3. Extension Fee. In addition to all existing rent and other payment
15 obligations as provided for by the Lease, Lessee shall make a one-time lump-sum
16 payment to Lessor in the amount of One Million Nine Hundred Thousand Dollars
17 (\$1,900,000) ("Extension Fee"). The Extension Fee shall be due upon execution of this
18 Amendment, and payable within thirty (30) calendar days after the Effective Date. Failure
19 to pay such Extension Fee, or any portion thereof, within such 30-day period shall
20 constitute a default under Paragraph 10.2 of the Lease.

21 4. Wayfinding Fee. In addition to all existing rent and other payment
22 obligations as provided for by the Lease, Lessee shall make a one-time lump-sum
23 payment to Lessor in the amount of Two Hundred Fifty Thousand Dollars (\$250,000)
24 ("Wayfinding Fee"), to be used exclusively by Lessor in order to install and/or upgrade
25 wayfinding signage and improvements to the general vicinity of the Premises. The
26 Wayfinding Fee shall be due upon execution of this Amendment, and payable within thirty
27 (30) calendar days after the Effective Date. Failure to pay such Wayfinding Fee, or any
28 portion thereof, within such 30-day period shall constitute a default under Paragraph 10.2

1 of the Lease.

2 5. Condition of Premises. Paragraph 5.5 of the Lease is hereby
3 amended and restated in its entirety to read as follows:

4 "5.5 Condition of Premises. Tenant covenants to keep the Premises
5 reasonably neat and clean, and to keep all improvements constructed thereon in good
6 order, repair, and condition, reasonable wear and tear and damage by casualty and
7 governmental authority excepted, and Tenant shall otherwise maintain the Premises and
8 all improvements thereon in a first-class manner comparable to similar office projects in
9 the downtown area of Long Beach."

10 6. Amendment to Memorandum of Lease. Concurrent with its
11 execution and delivery of this Amendment, each of Lessor and Lessee shall execute and
12 deliver an Amendment to Memorandum of Lease in substantially the form attached
13 hereto as Exhibit "A" and made a part hereof. All recording costs, documentary transfer
14 taxes, taxes assessed, and fees related thereto shall be paid by Lessee.

15 7. Special Events. Lessee acknowledges that Lessor intends, from
16 time-to-time, to issue permits for special events in the vicinity of the Premises, including
17 without limitation permits in connection with the Long Beach Grand Prix and the 2028
18 Olympics, and that such special events may impact (but shall not prohibit) access to the
19 Premises and/or limit adjacent public parking for Lessee, its subtenants and invitees.
20 Lessor and Lessee agree to cooperate with each other to accommodate all such events
21 and to limit adverse impacts to the Premises as much as reasonably possible.

22 8. Capitalized terms not otherwise defined herein shall have the
23 meaning ascribed to such terms in the Lease.

24 9. Except as herein amended, the Lease shall remain unchanged and
25 in full force and effect.

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IN WITNESS WHEREOF, Lessor and Lessee have signed this First Amendment to Lease No. 29263 as of the date opposite their signature.

LESSEE
CDCF III PACIFIC CATALINA LANDING LONG BEACH, LLC, a Delaware limited liability company

May 1, 2018

By: 
Name: Keisha V. Freeman
Title: Authorized Signer

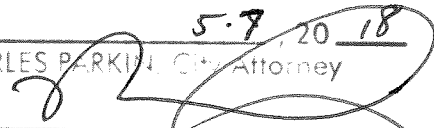
LESSOR
CITY OF LONG BEACH, a municipal corporation

May 10 2018
Tom Modica
Assistant City Manager

By: 
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER

APPROVED AS TO FORM

5-7, 2018
CHARLES PARKIN, City Attorney
By: 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

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

RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Century Plaza Towers
2029 Century Park East, Suite 3100
Los Angeles, CA 90067
Attention: Brandon Barker

29263

AMENDMENT TO MEMORANDUM OF LEASE

THIS AMENDMENT TO MEMORANDUM OF LEASE (this “**Amendment**”) is executed as of May 1, 2018, between the CITY OF LONG BEACH, a municipal corporation and trust grantee of the State of California of certain tide and submerged lands within said City (“**Lessor**”), and CDCF III PACIFIC CATALINA LANDING LONG BEACH, LLC, a Delaware limited liability company (“**Lessee**”).

RECITALS

WHEREAS, Lessor and Lessee are parties to that certain unrecorded Lease dated as of June 30, 2000, as clarified by those certain letters from Vincent Coughlin of Lessor to John M. Nagle of Original Lessee dated April 29, 2002 and May 23, 2002, as memorialized by that certain Memorandum of Lease Agreement (the “**Memorandum**”) between Lessor and Original Lessee dated as of April 29, 2002 and recorded on June 25, 2002 in the Official Records of Los Angeles County, California (the “**Official Records**”) as Document Number 02-1432897, and as amended by that certain First Amendment to Lease No. 29263 (the “**Lease Amendment**”) dated as of even date herewith (collectively, the “**Lease**”), pursuant to which Lessee leases from Lessor certain tidelands property more particularly described in the Lease (the “**Premises**”). Lessee is the successor to the leasehold interest in the Lease pursuant to that certain Assignment and Assumption of Lease and Dredge Agreement dated as of August 28, 2015 and recorded on August 31, 2015 in the Official Records as Document Number 20151072450. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Lease.

WHEREAS, Lessor and Lessee desire to amend the Memorandum to record notice of the Lease Amendment and certain terms specified in the Lease Amendment in the Official Records.

NOW, THEREFORE, in consideration of the foregoing, Lessor and Lessee hereby declare as follows:

1. Lease Term. Pursuant to the Lease Amendment, the term of the Lease is extended and shall expire on April 28, 2084.

2. Purpose of this Amendment. This Amendment is executed for the purpose of being recorded, in order to give notice of the Lease Amendment and the extension of the term of the Lease. This Amendment is not a complete summary of the terms and conditions of the Lease, and is subject to, and shall not be used to interpret or modify, the Lease. In the event of any conflict or inconsistency between the terms of the Lease and the terms of the Memorandum, as amended by this Amendment, the terms of the Lease shall control. Except as hereby amended, the Memorandum is ratified and confirmed and remains in full force and effect.

3. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

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IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment as of the date and year first written above.

LESSEE:

CDCF III PACIFIC CATALINA LANDING LONG BEACH, LLC,
a Delaware limited liability company

By: 
Name: Keisha V. Freeman
Title: Authorized Signer

LESSOR:

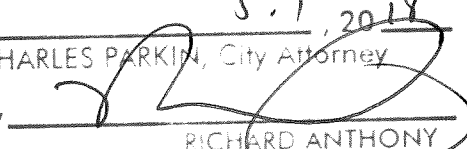
CITY OF LONG BEACH,
a municipal corporation

Tom Modica
Assistant City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

By: 
Name: TOM MODICA
Title: ASSISTANT CITY MANAGER

APPROVED AS TO FORM

5.7.2018

CHARLES PARKIN, City Attorney
By: 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

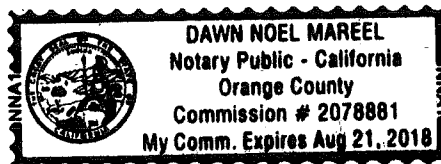
State of California)
County of ORANGE)

On 5/1/2018 before me, DAWN NOEL MAREEL, personally appeared KEISHA V. FREEMAN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On May 17, 2018 before me, Kate Brewer, Notary Public personally appeared TOM MODICA, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kate Brewer

