

23828

THIRD AMENDMENT TO LEASE NO. 23828

THIS THIRD AMENDMENT TO LEASE NO. 23828 (this "Third Amendment") is entered into and executed on August 9/2, 2010 (the "Execution Date"), but is effective for all purposes as of January 1, 2010 (the "Effective Date") by and between BEHRINGER HARVARD DOWNTOWN PLAZA LP, a Delaware limited partnership, as successor by assignment from Pacifica Downtown Plaza, L.P., a California limited partnership ("Landlord") and CITY OF LONG BEACH, a municipal corporation ("Tenant").

RECITALS

A. Landlord and Tenant are parties to that certain Lease Agreement dated January 1, 1995 (the "Original Lease") (as amended by First Amendment to Lease No. 23828 dated as of June 21, 1999 [the "First Amendment"], by Second Amendment to Lease No. 23828 dated as of November 12, 2004 [the "Second Amendment"], and by that certain letter from Landlord to Tenant dated September 21, 2009 [the "Holdover Letter"], collectively, the "Lease"). The Lease covers the Premises, which is 15,369 rentable square feet known as Suite 500 (as more particularly described in the Lease) of the building known as Downtown Plaza located at 211 East Ocean Boulevard, Long Beach, California (the "Building").

B. The Term of the Lease expired on December 31, 2009, and from said date until the Execution Date of this Third Amendment (the "Holdover Period"), Tenant has occupied the Premises on a month-to-month basis and has paid Basic Rental and Additional Rent during said Holdover Period, all pursuant to the Holdover Letter.

C. Landlord and Tenant desire to extend the Term of the Lease and otherwise amend the Lease as set forth in this Third Amendment.

Accordingly, for good and valuable consideration which the parties acknowledge receiving, Landlord and Tenant agree as follows:

AGREEMENT

1. Recitals. The above Recitals are true and correct and are incorporated into this Third Amendment.

2. Application of Lease Terms. Capitalized terms used in this Third Amendment and not defined herein shall have the meanings ascribed to them in the Lease.

3. Extension of Term. The Lease is hereby amended to extend the Term for a period (the "Third Extended Term") to begin, on a retroactive basis, on January 1, 2010 and to expire at 11:59 p.m. local Long Beach, California time on August 31, 2011 (the "Expiration Date") unless sooner terminated or extended by written agreement of the parties. The Term shall be deemed to include the Third Extended Term.

4. Rent During Third Extended Term. On and after January 1, 2010 and continuing through the Third Extended Term, Tenant shall pay Monthly Basic Rental to Landlord in the amount of TWENTY SEVEN THOUSAND SIX HUNDRED SIXTY FOUR AND 20/100

DOLLARS (\$27,664.20) per month. During the Third Extended Term, Tenant shall also continue to pay Additional Rent and Taxes and any other sums of money that become due pursuant to the Lease. Tenant shall pay all such Rent at the applicable times and place and in the manner provided in the Lease, as modified by this Third Amendment.

5. Base Year. Effective as of January 1, 2010, the Base Year shall be the calendar year 2010.

6. Credit for Overage Rent. During the Holdover Period (i.e. January 1, 2010 through the Execution Date of this Third Amendment) and pursuant to the terms of the Holdover Letter, Tenant has paid monthly installments of Rent to Landlord in the amount of \$28,574.13 per month (said monthly amount consisting of Monthly Basic Rental of \$27,203.13 and Additional Rent and Taxes of \$1,371). However, pursuant to the terms of this Third Amendment which are being made effective retroactively to January 1, 2010, Tenant is obligated to pay monthly installments of Rent during the period from January 1, 2010 through the Execution Date of only \$27,664.20 per month (said monthly amount consisting only of Monthly Basic Rental, with no Additional Rent or Taxes being due during said period because of the modification of the Base Year to 2010). Therefor, Tenant has paid an overage of \$909.93 per month during the Holdover Period, and Tenant shall be entitled to a Rent credit (the "Rent Credit") equal to the product of \$909.93 times the number of months in the Holdover Period (with such credit to be prorated for any partial month during the Holdover Period). The Rent Credit shall be applied against the Monthly Basic Rental payments next coming due under the Lease following the Execution Date of this Third Amendment, until the amount of the Rent Credit is exhausted.

7. As-Is, Where-Is. Tenant acknowledges that it currently occupies the Premises, and accepts the Premises for the Third Extended Term in its "AS-IS, WHERE-IS, WITH ALL FAULTS" condition as of the Execution Date. Landlord has no obligations to make any modifications, alterations or improvements to the Premises, and any improvements to the Premises shall be at Tenant's sole cost.

8. Option to Extend. The Option to Extend set forth in Section 8 of the Second Amendment has expired, and thus Section 8 of the Second Amendment is hereby deleted in its entirety. Landlord hereby grants to Tenant the Option to Extend Term as set forth in EXHIBIT A attached to this Third Amendment.

9. Option to Terminate. The Option to Terminate set forth in Section 7 of the Second Amendment has expired, and thus Section 7 of the Second Amendment is hereby deleted in its entirety. Subject to the conditions and restrictions set forth below, Tenant shall have the option (the "Termination Option") to terminate the Lease as to the entire Premises, said termination to be effective on the Termination Date. The "Termination Date" shall be the 90th day following the delivery of the Termination Notice (hereafter defined). As a condition to Tenant's exercise of the Termination Option, Tenant must provide written notice (the "Termination Notice") to Landlord of Tenant's exercise of the Termination Option, which Termination Notice may be given to Landlord no earlier than February 1, 2011.

The Termination Option may be exercised by Tenant and/or will be effective only if, upon the date of the Termination Notice, and upon the Termination Date (i) there is no uncured

default or breach by Tenant under the Lease (or an event which, but for the passage of time or giving of notice, or both, could constitute a default or breach by Tenant, and (ii) there shall have been no assignment or delegation of Tenant's interest in the Lease or any of Tenant's rights or obligations under the Lease, and there shall have been no subletting of all or any part of the Premises. In addition, the Termination Option is personal to the original Tenant named in the Lease, and may not be transferred or exercised in whole or in part, voluntarily or involuntarily, by or to, any person or entity other than the original Tenant.

If Tenant exercises the Termination Option, Tenant must comply with all provisions of the Lease with respect to the termination of the Lease and surrender of the Premises, including without limitation, the provisions of Section 20 of the Lease. Any provision of the Lease which is intended to survive the expiration or termination of the Lease shall survive the Termination Date. With respect to all dates for exercising any rights and the performance of any obligations in connection with the exercise or implementation of this Termination Option, **time shall be of the essence.**

10. Parking. Exhibit E of the Lease (as amended by the First Amendment and Second Amendment) is hereby amended to provide that from the Execution Date through the Third Extended Term, Tenant shall have the right, at its option, to rent up to forty-eight (48) parking spaces in the parking garage/area associated with the Building. Of the 48 total spaces, up to thirty-eight (38) of these parking spaces shall be unreserved tandem spaces, and up to ten (10) shall be reserved single spaces. Tenant shall pay to Landlord on the first day of each month as Additional Rent under the Lease, the sum of \$90.00 per month for each reserved parking space rented, and \$55.00 per month for each tandem assigned parking space rented. On or before September 1, 2010, Tenant shall deliver written notice to Landlord of the number and type (reserved or tandem) of spaces Tenant desires to use initially. In the event Tenant fails to notify Landlord prior to or on September 1, 2010 of the number of spaces Tenant desires to use initially, Tenant shall be deemed to have elected to use the maximum amount of spaces to which Tenant is entitled. Quarterly thereafter, on December 1, March 1, June 1, and September 1 of each year during the Third Extended Term, Tenant shall be entitled increase or decrease the number of spaces used by Tenant by providing notice to Landlord of such change not later than the first day of the month preceding the next quarterly adjustment; provided that in no event shall Tenant be entitled to use more than 48 spaces (consisting of up to 38 unreserved tandem spaces and up to 10 reserved single spaces). All other provisions of Exhibit E of the Lease, shall remain the same and in full force and effect.

11. Brokers. Tenant warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Third Amendment other than Cushman & Wakefield of California, Inc. (Robert S. Garey) ("Tenant's Broker") and Cushman & Wakefield of California, Inc. (Robert L. Alperin) ("Landlord's Broker). Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, costs, expenses or liabilities, including reasonable attorneys' fees, for commissions or other compensation claimed by any broker or agent other than Cushman & Wakefield of California, Inc., with regard to this Third Amendment as a result of any dealings with Tenant or claiming by or through Tenant.

12. Landlord's Notice Address. Landlord's address for notice as set forth on page 28 of the Original Lease is hereby modified to read in its entirety:

Behringer Harvard Downtown Plaza LP
15601 Dallas Parkway, Suite 600
Addison, Texas 75001
Attn: Lease Administration

with a copy to: Behringer Harvard Downtown Plaza LP
c/o Property Manager
2396 East Pacifica Place, Suite 270
Rancho Dominguez, California 90220

with a copy of notices of default to:

Behringer Harvard REIT I, Inc.
15601 Dallas Parkway, Suite 600
Addison, Texas 75001
Attn: Chief Legal Officer

13. Landlord's Payment Address. Landlord's address for payments as set forth in Section 3. (b) of the Lease is hereby modified to read in its entirety:

Behringer Harvard Downtown Plaza LP
PO Box 974412
Dallas, Texas 75397-4412

14. No Default. Tenant acknowledges that as of the date hereof, Landlord has performed all of its obligations under the Lease, Landlord is not in default under the Lease, and Tenant has no claims, counterclaims, set-offs or defenses against Landlord arising out of the Lease or relating thereto.

15. Limitation of Liability. Any liability of Landlord to Tenant (or any person or entity claiming by, through or under Tenant) for any default by Landlord under the Lease or any matter relating to the occupancy or use of the Premises and/or the Building shall be limited to Landlord's interest in the Building.

16. Lender Approval. If a mortgagee of the Building has the right to consent to this Third Amendment and fails to give such consent, Landlord shall have the right, at its sole option, to terminate and cancel this Third Amendment. Such option shall be exercisable by Landlord by written notice to Tenant of such termination, whereupon this Third Amendment shall be deemed cancelled and terminated, and both Landlord and Tenant shall be relieved of any and all liabilities and obligations hereunder; provided, however, that the Lease shall remain in full force and effect.

17. Attorneys' Fees. If either Landlord or Tenant commences any litigation or judicial action to determine or enforce any of the provisions of this Third Amendment (including without limitation any claims in a bankruptcy or assignment for the benefit of creditors), the

prevailing party in any such litigation or judicial action is entitled to recover all of its costs and expenses (including, but not limited to, reasonable attorneys' fees, costs and expenditures) from the non-prevailing party.

18. Counterparts. This Third Amendment may be executed in any number of counterparts, all of which together shall constitute a single contract, and each of such counterparts shall for all purposes be deemed to be an original. This Third Amendment may be executed and delivered by fax (telecopier); any original signatures that are initially delivered by fax shall be physically delivered with reasonable promptness thereafter.

19. Miscellaneous. As amended hereby, the Lease shall continue in full force and effect and is in all respects ratified and confirmed hereby, provided, however, that nothing in this Third Amendment shall be deemed a waiver or release of any unperformed obligations of Tenant under the Lease, including, without limitation, any delinquent rentals or other delinquent payments payable by Tenant under the Lease.

20. Confidentiality. Tenant will not record this Third Amendment or a memorandum of this Third Amendment without Landlord's written consent.

21. Exhibits. The exhibits set forth below are attached to this Third Amendment are incorporated herein. If any exhibit is inconsistent with the terms of this Third Amendment, the provisions of this Third Amendment will govern.


EXHIBIT A – Option to Extend Term

(signatures on following page)

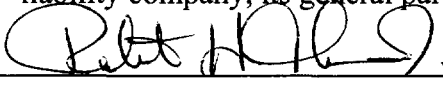
Landlord and Tenant have executed and delivered this Third Amendment to Office Lease effective as of the date and year first written above.

CITY OF LONG BEACH,
A MUNICIPAL CORPORATION

BEHRINGER HARVARD DOWNTOWN
PLAZA LP, A DELAWARE LIMITED
PARTNERSHIP

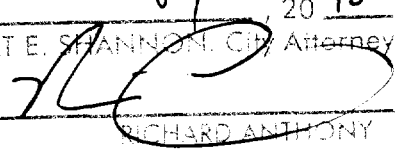
By: 
Print: Patrick H. West
Title: City Manager

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**
Assistant City Manager

By: Behringer Harvard Downtown Plaza
GP, LLC, a Delaware limited
liability company, its general partner
By: 
Print: ROBERT H. THOMAS, JR.
Title: VICE PRESIDENT

APPROVED AS TO FORM AND RETURNED:

Date: _____
By: _____
Its: _____

APPROVED AS TO FORM
8-4, 20 10
ROBERT E. SHANNON, City Attorney
By: 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

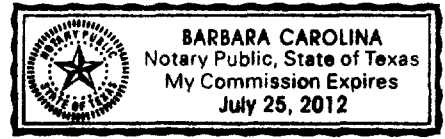
STATE OF TEXAS §
 §
COUNTY OF Dallas §

This instrument was acknowledged before me on the 28th day of July, 2010, by Robert H. Thomas, Jr. Vice President of Behringer Harvard Downtown Plaza GP, LLC, a Delaware limited liability company, as general partner of and on behalf of Behringer Harvard Downtown Plaza LP, a Delaware limited partnership.

Barbara Carolina
Notary Public in and for the State of Texas

Barbara Carolina
Printed or Typed Name of Notary

My Commission Expires: July 25, 2012



STATE OF _____ §
 § S.S.
COUNTY OF _____ §

On _____, _____ before me,
_____, a Notary Public in and for
said County and State, personally appeared, _____, 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: _____

(Notary Seal)

see attached

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

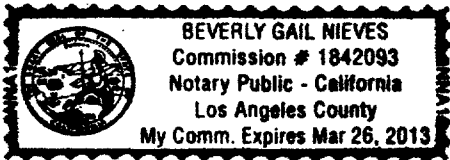
State of California

County of Los Angeles }

On 9/2/10 before me, Beverly Gail Nieves, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Suzanne Frick
Name(s) of Signer(s)

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: Beverly Gail Nieves
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Individual

Partner — Limited General Partner — Limited General

Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: _____ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

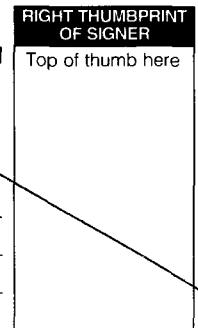
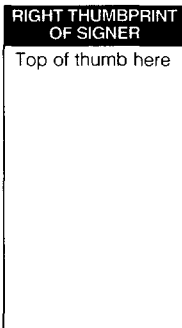


EXHIBIT A

OPTION TO EXTEND TERM

Provided that, at the time of Tenant's election to exercise this Extension Option and upon the commencement of the extended Term, this Lease is in full force and effect and there is no outstanding and uncured failure of Tenant to perform any of its obligations under the Lease, and Tenant is occupying the entire Premises at the time of such election, Tenant may elect to extend the Term for one additional period of one (1) year, which extension may be exercised only by delivering written notice of the exercise thereof to Landlord not later than one hundred eighty (180) days before the expiration of the Term. Such written notice of exercise by Tenant shall be irrevocable. The Monthly Basic Rental payable for each month during such extended Term shall be \$1.85 per rentable square foot in the Premises. Within forty-five (45) days of delivery of Tenant's written notice of exercise of this Extension Option, Landlord and Tenant shall execute an amendment to this Lease extending the Term of this Lease on the then-applicable terms provided in this Lease, except as follows:

(a) Monthly Basic Rental during the extended Term shall be \$1.85 per rentable square foot in the Premises, and the Base Year for the extended Term shall be the calendar year 2011;

(b) Tenant shall have no further renewal or extension option unless expressly granted by Landlord in writing;

(c) Landlord shall lease the Premises to Tenant for the extended Term in its then-current condition, and Landlord shall not provide to Tenant any allowances or other tenant inducements unless otherwise agreed to in writing by Landlord in its sole and absolute discretion; and

(d) Tenant shall pay for the parking spaces which it is entitled to use at the rates from time to time charged to patrons of the parking garage and/or any other parking area associated with the Building during the extended Term (plus all applicable taxes).

If Tenant fails to timely provide notice of exercise of this Extension Option as set forth above, time being of the essence with respect thereto, Tenant's rights under this Exhibit shall terminate and Tenant shall have no right to extend the term of this Lease.

Tenant's rights under this Exhibit shall terminate if (1) this Lease or Tenant's right to possession of the Premises is terminated, or (2) Tenant assigns any of its interest in this Lease or sublets any portion of the Premises.