

RESOLUTION 2019-067

RESOLUTION AUTHORIZING EXECUTION OF A SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT (SNDA) AGREEMENT BETWEEN THE DISTRICT, LFS DEVELOPMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND LATITUDE 33, INC., A CALIFORNIA S CORPORATION. DBA LATITUDE 33 BREWING

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I; and

WHEREAS, the Board of Port Commissioners (Board) adopted BPC Policy No. 355 to establish general policies for leasing the San Diego Unified Port District real estate assets; and

WHEREAS, Lane Field South's Master Lease with the District covers approximately 69,278 square feet of land area located between Pacific Highway and North Harbor Drive, north of Broadway, in the City of San Diego; and

WHEREAS, the Master Lease commenced on June 1, 2016 and has a term of 66 years, which expires on May 31, 2082; and

WHEREAS, Lane Field South's leasehold is comprised of a 400-room single-branded Intercontinental Hotel within a single tower, meeting space and banquet rooms, 686 parking spaces, and 32,850 square feet of retail space; and

WHEREAS, Latitude 33 will operate a microbrewery taproom on the ground floor of the Intercontinental Hotel; and

WHEREAS, this location will be their second taproom and will serve beverages that are manufactured offsite at their Vista location; and

WHEREAS, Latitude 33 was founded in 2011, and since then, has risen to become a "Top 10 San Diego Craft Brand"; and

WHEREAS, Latitude 33 has grown 6,300% in less than 5 years, and was ranked No. 4 in 2017, and No. 8 in 2018, "Top 100 Fastest Growing Companies" by the San Diego Business Journal; and

WHEREAS, the proposed Latitude 33 sublease with Lane Field South has a ninety-month term with one five-year option to extend, conditioned upon consent of the sublease by the District; and

WHEREAS, Lane Field South will submit plans for the tenant improvements to the sublease area for District approval upon completion of the design; and

WHEREAS, Latitude 33 will pay a minimum annual rent of approximately \$172,678 to Lane Field South versus a percentage rent over a certain breakpoint and expects to generate approximately \$775,000 in gross sales in their first year of operations; and

WHEREAS, for long term subleases (more than five years), BPC 355 states they must meet the following conditions as a requirement to consent of the sublease:

- Sublease must meet current District lease requirements
- Provide that the subtenant shall be obligated to pay any master lease rent increases that are applicable to the subleased premises
- Provide that in the event of a conflict between the master lease and the sublease, the master lease shall prevail

WHEREAS, Latitude 33 has requested a Subordination, Non-Disturbance and Attornment Agreement (SNDA) with the District; and

WHEREAS, this agreement benefits the District by getting reassurances from Latitude 33 that their sublease will remain in place should the District ever need to take over the Master Lease; and

WHEREAS, the SNDA also benefits Latitude 33 by assuring them that their sublease won't be terminated if such an event occurs and provides assurance that their investment will be protected; and

WHEREAS, the sublease is subordinate to the terms of the Master Lease between the District and Lane Field South, including any revisions, modifications, and/or renewals and if there are any conflicts between the terms of the sublease and the terms of the Master Lease, the Master Lease will control; and

WHEREAS, if Lane Field South's Master Lease is terminated or ceases, the District agrees that the sublease shall remain in full force and effect as long as Latitude 33 is not in default under their sublease; has not cancelled or terminated their sublease; or, the sublease term has not expired without an approved extension; and

WHEREAS, if Lane Field South's Master Lease is terminated or ceases, Latitude 33 agrees to acknowledge the District as their new landlord and the District agrees to acknowledge Latitude 33 as their new tenant under the terms of their sublease; and

WHEREAS, the District will not be liable for any act or omission of Lane Field South or other prior landlord; be bound by any rent Latitude 33 might have paid

beyond the current month to Lane Field South; be responsible for return of any security posted by Latitude 33 unless the District actually received it; or be responsible for completion of the premises if construction of the premises has not reached substantial completion at the time the District takes over the sublease; and

WHEREAS, District staff has determined that, if executed, the SNDA requested by Latitude 33 would be mutually beneficial to both the District and Latitude 33; and

NOW THEREFORE, BE IT RESOLVED, that the Board of Port Commissioners of the San Diego Unified Port District, hereby authorizes and directs the District's Executive Director or her designee to enter into a Subordination, Non-disturbance and Attornment Agreement between the District, LFS Development, LLC, a Delaware Limited Liability company, and Latitude 33, Inc., a California S corporation. dba Latitude 33 brewing.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL


By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 18th day of June 2019, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Valderrama, and Zucchet

NAYS: None.

EXCUSED: None.

ABSENT: None.

ABSTAIN: None.


Garry J. Bonelli, Chairman
Board of Port Commissioners

ATTEST:


Donna Morales
District Clerk



(Seal)