

CITY OF LONG BEACH

R-15

DEPARTMENT OF FINANCIAL MANAGEMENT

333 West Ocean Boulevard 6th Floor • Long Beach, CA 90802 • (562) 570-6465 • Fax (562) 570-5836

September 8, 2015

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Adopt the attached Resolution approving amendments to the Indenture of Trust for the City's 2010 Taxable Revenue Bonds (Carnival Cruise Terminal Financing) to allow additional time for the Carnival Corporation to access funds for certain terminal improvements and certain costs of operation of terminal facilities. (District 2)

DISCUSSION

On November 2, 2010, the City issued \$30,000,000 of Taxable Revenue Bonds (2010 Bonds) to refund the outstanding 2002 Taxable Revenue Bonds that had been issued on behalf of Carnival Corporation (Carnival), and to finance additional capital improvements to Carnival's leasehold interest in the area adjacent to the Queen Mary. The 2010 Bonds are a limited obligation of the City guaranteed and payable solely by Carnival from the tariff levied by the Port of Long Beach (Port), and collected by Carnival. The tariff of \$6.33 is assessed on cruise passengers embarking and debarking from Carnival's Long Beach cruise ship terminal, and is used to pay for debt service and to create a capital reserve for future Carnival improvements.

Carnival has requested two amendments to the Indenture of Trust. The first amendment would allow additional time for Carnival to use bond proceeds toward additional terminal facilities and other costs of operation of the terminal facilities. Currently, under the Indenture of Trust, bond proceeds not spent by July 1, 2015 are to be used to redeem bonds.

The second amendment would allow Carnival more time to spend the excess tariff revenues. Currently, under the Indenture of Trust, the excess tariff revenues not needed to pay for the 2010 Bond debt service are to be used to redeem bonds three years after such revenues have been received.

The Carnival Corporation unconditionally guarantees the payment of debt service on the 2010 Bonds. At any time while the 2010 Bonds are outstanding, should Carnival's wharfage tariff revenue be insufficient to pay the scheduled debt service in full, Carnival is required to make up any deficiencies in the wharfage tariff-based revenues necessary to pay the debt service.

The 2010 Bonds do not constitute a debt, liability, or general or moral obligation of the City. Neither the full faith and credit, nor any taxing power of the City, is pledged to the repayment

HONORABLE MAYOR AND CITY COUNCIL

September 8, 2015

Page 2

of the 2010 Bonds. The City does not have a claim to the 2010 Bond proceeds or the tariff revenues.

This matter was reviewed by Principal Deputy City Attorney Dominic T. Holzhaus on August 19, 2015 and by Budget Management Officer Victoria Bell on August 20, 2015.

TIMING CONSIDERATIONS

City Council action is requested on September 8, 2015, to facilitate processing of the required documents.


FISCAL IMPACT

There is no fiscal impact to the City. The amendments would extend the deadline by which Carnival may spend bond proceeds and the tariff revenues not needed to pay for scheduled debt service on the 2010 Bonds. If the Resolution is not adopted, the excess funds would be used to redeem the 2010 Bonds earlier than their stated maturity date. The financing is an obligation of Carnival, and is unconditionally guaranteed by Carnival. There is no local job impact associated with this recommendation.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

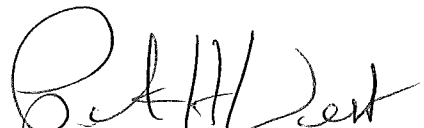


JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT

JG:DN:LK
K:\EXEC\COUNCIL LETTERS\TREASURY\09-08-15 CCL - CARNIVAL CORPORATION - AMEND 2010 BONDS.DOCX

ATTACHMENT

APPROVED:



PATRICK H. WEST
CITY MANAGER

FIRST SUPPLEMENTAL INDENTURE

by and between the

CITY OF LONG BEACH, CALIFORNIA

and

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

dated as of September 1, 2015

**relating to:
City of Long Beach, California
2010 Taxable Revenue Bonds
(Carnival Cruise Terminal Financing)**

FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE (this "First Supplemental Indenture"), dated as of September 1, 2015, is by and between the City of Long Beach, California (the "City") and U.S. Bank National Association, as trustee (the "Trustee") under the Indenture of Trust, dated as of November 1, 2010 (the "Original Indenture"), by and between the Trustee and the City. Capitalized terms used and not otherwise defined in this First Supplemental Indenture have the meanings given to such terms in the Original Indenture.

RECITALS:

WHEREAS, under and pursuant to the Original Indenture and the Law, on November 2, 2010, the City issued its City of Long Beach, California, 2010 Taxable Revenue Bonds (Carnival Cruise Terminal Financing) (the "2010 Bonds") in order to refund the then outstanding 2002 Bonds and to provide financing for improvements to Carnival Corporation's leasehold interest in certain wharf facilities located in the City; and

WHEREAS, a portion of the proceeds of the 2010 Bonds were deposited to the 2010 Improvements Account of the Program Fund established under the Original Indenture; and

WHEREAS, Section 3.03(e) of the Original Indenture provides that on July 1, 2015, all amounts then on deposit in the 2010 Improvements Account are to be transferred to the Bond Fund established under the Indenture and used to redeem 2010 Bonds on the next date for which notice of redemption can timely be given; and

WHEREAS, Carnival Corporation ("Carnival") has requested that the City and the Trustee amend the Original Indenture to return the funds to the 2010 Improvements Account that were transferred on July 1, 2015 from the 2010 Improvements Account to the Bond Fund, and change the date for the transfer of remaining amounts in the 2010 Improvements Account to the Bond Fund, so that Carnival will have additional time to draw down the funds to pay costs of Facilities; and

WHEREAS, Section 9.02 of the Original Indenture allows for modifications to the Original Indenture with the prior written consent of the owners of more than 50% in aggregate principal amount of the 2010 Bonds outstanding; and by their execution below, the beneficial owners of more than 50% in aggregate principal amount of the outstanding 2010 Bonds have consented to this First Supplemental Indenture; and

WHEREAS, the City has requested that the Trustee enter into this First Supplemental Indenture in order to amend the Original Indenture so as to accommodate the request of Carnival described in the second preceding recital.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

SECTION 1. Amendment to the Indenture. Section 3.03(e) of the Original Indenture is hereby amended, nunc pro tunc, by deleting "July 1, 2015" therein, and by inserting therein, in lieu thereof, "July 1, 2017."

SECTION 2. Direction to Trustee. In light of the amendment to the Original Indenture in Section 1 above, the Trustee is hereby directed to return to the 2010 Improvements Account the funds it transferred on July 1, 2015, from the 2010 Improvements Account to the Bond Fund, so that the funds may be used as provided in Section 3.03 of the Original Indenture, as amended by this First Supplemental Indenture.

SECTION 3. Execution in Counterparts. This First Supplemental Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 4. Governing Law. This First Supplemental Indenture shall be construed and governed in accordance with the laws of the State of California applicable to contracts made and performed in such State.

SECTION 5. Incorporation By Reference. The City and the Trustee agree that the amendment to the Original Indenture contained in this First Supplemental Indenture, when effective as provided in Section 8 below, shall be incorporated by this reference thereto into the Original Indenture, which Original Indenture as so amended shall serve as the sole operative Indenture in connection with the Bonds.

SECTION 6. Ratification and Reaffirmation of Original Indenture. Except as hereby expressly amended, the Original Indenture shall remain in full force and effect; and the Original Indenture, as amended hereby, is ratified and confirmed.

SECTION 7. Interpretation. In the event of any conflict between the provisions of the Original Indenture and the provisions of this First Supplemental Indenture, when effective as provided in Section 8 below the provisions of this First Supplemental Indenture shall control.

SECTION 8. Effective Date. This First Supplemental Indenture shall become effective upon the execution hereof by the City and the Trustee, and the execution of the consents hereto by Carnival and by the three beneficial owners of the 2010 Bonds indicated below.

SECTION 9. Binding Effect. Upon the effectiveness of this First Supplemental Indenture, as provided in Section 8 above, this First Supplemental Indenture shall inure to the benefit of and shall be binding upon the City, the Trustee, Carnival and the owners of the 2010 Bonds, and their respective successors and assigns.

IN WITNESS WHEREOF, the City and the Trustee have caused this First Supplemental Indenture to be executed as of the date first written above.

CITY OF LONG BEACH, CALIFORNIA

By: _____
Its: _____

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer

By its execution below, Carnival Corporation hereby acknowledges and consents to the foregoing First Supplemental Indenture.

CARNIVAL CORPORATION

By: _____
Its: _____
Date of Execution: _____

Bankers Life and Casualty Company, by its execution below, hereby confirms that it is the beneficial owner of \$8,500,000 principal amount of the 2010 Bonds, and that it consents to the foregoing First Supplemental Indenture.

Bankers Life and Casualty Company

By: _____
Its: _____
Date of Execution: _____

[Signature Page to First Supplemental Indenture - Carnival Cruise Terminal Financing]

Washington National Insurance Company, by its execution below, hereby confirms that it is the beneficial owner of \$4,000,000 principal amount of the 2010 Bonds, and that it consents to the foregoing First Supplemental Indenture.

Washington National Insurance Company

By: _____

Its: _____

Date of Execution: _____

Colonial Penn Life Insurance Company, by its execution below, hereby confirms that it is the beneficial owner of \$2,000,000 principal amount of the 2010 Bonds, and that it consents to the foregoing First Supplemental Indenture.

Colonial Penn Life Insurance Company

By: _____

Its: _____

Date of Execution: _____

12001.25:J13449

[Signature Page to First Supplemental Indenture - Carnival Cruise Terminal Financing]

SECOND SUPPLEMENTAL INDENTURE

by and between the

CITY OF LONG BEACH, CALIFORNIA

and

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

dated as of September 2, 2015

**relating to:
City of Long Beach, California
2010 Taxable Revenue Bonds
(Carnival Cruise Terminal Financing)**

SECOND SUPPLEMENTAL INDENTURE

THIS SECOND SUPPLEMENTAL INDENTURE (this "Second Supplemental Indenture"), dated as of September 2, 2015, is by and between the City of Long Beach, California (the "City") and U.S. Bank National Association, as trustee (the "Trustee") under the Indenture of Trust, dated as of November 1, 2010 (the "Original Indenture"), by and between the Trustee and the City. Capitalized terms used and not otherwise defined in this Second Supplemental Indenture have the meanings given to such terms in the Original Indenture.

RECITALS:

WHEREAS, under and pursuant to the Original Indenture and the Law, on November 2, 2010, the City issued its City of Long Beach, California, 2010 Taxable Revenue Bonds (Carnival Cruise Terminal Financing) (the "2010 Bonds") in order to refund the then outstanding 2002 Bonds and to provide financing for improvements to Carnival Corporation's leasehold interest in certain wharf facilities located in the City; and

WHEREAS, the City and the Trustee, with the consent of the owners of a majority in principal amount of the outstanding 2010 Bonds, have heretofore entered into a First Supplemental Indenture, dated as of September 1, 2010 (the "First Supplement"), amending certain provisions of the Original Indenture related to the 2010 Improvements Account established by the Original Indenture (the Original Indenture, as amended by the First Supplement, is referred to in this Second Supplemental Indenture as the "Amended Indenture"); and

WHEREAS, Section 5.03 of the Amended Indenture provides for an Excess Revenues Fund into which Revenues not needed to pay Debt Service are transferred on each May 2; and

WHEREAS, Section 5.03(b) of the Amended Indenture requires that amounts held in this Excess Revenues Fund for certain time periods, if not used for other purposes as described in said Section 5.03(b), be transferred to the Bond Fund established under the Amended Indenture and used to redeem 2010 Bonds on the next date for which notice of redemption can timely be given; and

WHEREAS, Carnival Corporation ("Carnival") has requested that the City and the Trustee alter the Amended Indenture to allow additional time before funds are to be transferred from the Excess Revenues Fund to the Bond Fund, so that Carnival will have additional time to use the funds for the other purposes allowed under Section 5.03(b) of the Amended Indenture; and

WHEREAS, Section 9.01(f) of the Amended Indenture allows for alterations to Section 5.03(b) of the Amended Indenture as the City shall deem necessary or desirable, and without the consent of or notice to the owners of the 2010 Bonds outstanding; and

WHEREAS, the City now desires to amend the Amended Indenture as set forth in this Second Supplemental Indenture, and has requested that the Trustee enter into this Second

Supplemental Indenture in order to alter the Amended Indenture so as to accommodate the request of Carnival described in the second preceding paragraph.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

SECTION 1. Amendment to the Indenture. Section 5.03(b) of the Amended Indenture is hereby amended, nunc pro tunc, by deleting the phrases "three (3) years" and "thirty-seven (37) months" in the third paragraph of said Section 5.03(b), and by inserting therein, in lieu thereof, the following, respectively: "five (5) years" and "sixty-one (61) months."

SECTION 2. Direction to Trustee. In light of the amendment to the Amended Indenture in Section 1 above, the Trustee is hereby directed to retain funds in the Excess Revenues Fund for the time periods allowed by the Amended Indenture, as altered by this Second Supplemental Indenture.

SECTION 3. Execution in Counterparts. This Second Supplemental Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 4. Governing Law. This Second Supplemental Indenture shall be construed and governed in accordance with the laws of the State of California applicable to contracts made and performed in such State.

SECTION 5. Incorporation By Reference. The City and the Trustee agree that the alterations to the Amended Indenture contained in this Second Supplemental Indenture, when effective as provided in Section 8 below, shall be incorporated by this reference thereto into the Amended Indenture, which Amended Indenture as so altered shall serve as the sole operative Indenture in connection with the Bonds.

SECTION 6. Ratification and Reaffirmation of Amended Indenture. Except as hereby expressly amended, the Amended Indenture shall remain in full force and effect; and the Amended Indenture, as altered hereby, is ratified and confirmed.

SECTION 7. Interpretation. In the event of any conflict between the provisions of the Amended Indenture and the provisions of this Second Supplemental Indenture, when effective as provided in Section 8 below, the provisions of this Second Supplemental Indenture shall control.

SECTION 8. Effective Date. This Second Supplemental Indenture shall become effective upon the execution hereof by the City and the Trustee, and the execution of the consent hereto by Carnival.

SECTION 9. Binding Effect. Upon the effectiveness of this Second Supplemental Indenture, as provided in Section 8 above, this Second Supplemental Indenture shall inure to the benefit of and shall be binding upon the City, the Trustee, Carnival and the owners of the 2010 Bonds, and their respective successors and assigns.

IN WITNESS WHEREOF, the City and the Trustee have caused this Second Supplemental Indenture to be executed as of the date first written above.

CITY OF LONG BEACH, CALIFORNIA

By: _____

Its: _____

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____

Authorized Officer

By its execution below, Carnival Corporation hereby acknowledges and consents to the foregoing Second Supplemental Indenture.

CARNIVAL CORPORATION

By: _____

Its: _____

Date of Execution: _____

12001.25:j13448

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

1 RESOLUTION NO.
2

3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH APPROVING AMENDMENTS TO
5 THE INDENTURE OF TRUST FOR THE CITY'S 2010
6 TAXABLE REVENUE BONDS (CARNIVAL CRUISE
7 TERMINAL FINANCING), AND AUTHORIZING RELATED
8 ACTIONS
9

10 WHEREAS, on November 20, 2002, the City of Long Beach (the "City")
11 issued \$32,100,000 principal amount of City of Long Beach, California, 2002 Taxable
12 Revenue Bonds (Carnival Cruise Terminal Financing) (the "2002 Bonds"), in order to
13 assist Carnival Corporation ("Carnival") in financing various improvements to the wharf in
14 the City at which Carnival conducts its cruise ship operations (the "Cruise Terminal"); and

15 WHEREAS, on November 2, 2010, the City issued \$30,000,000 principal
16 amount of City of Long Beach, California, 2010 Taxable Revenue Bonds (Carnival Cruise
17 Terminal Financing) (the "2010 Bonds") to refund the 2002 Bonds and to provide funds to
18 finance additional improvements to the Cruise Terminal; and

19 WHEREAS, the 2002 Bonds were payable, and the 2010 Bonds are
20 payable, from the wharfage portion of a tariff collected from passengers embarking from
21 or debarking at the Cruise Terminal (the "Tariff Revenues"), and not from any other funds
22 of the City; and

23 WHEREAS, the Indenture of Trust, dated as of November 1, 2010 (the
24 "Indenture"), between the City and U.S. Bank National Association, as Trustee, pursuant
25 to which the 2010 Bonds were issued contains provisions with respect to a 2010
26 Improvements Account into which a portion of the proceeds of the 2010 Bonds were
27 deposited, and an Excess Revenues Fund into which Tariff Revenues not needed for the
28 payment of debt service on the 2010 Bonds are deposited; and

1 WHEREAS, the Indenture provides that on certain dates (the "Transfer
2 Dates"), funds in the 2010 Improvements Account and in the Excess Revenues Fund are
3 to be used to redeem 2010 Bonds prior to their stated maturities; and

4 WHEREAS, Carnival has requested that the City amend the Indenture to
5 extend the Transfer Dates, so that funds in the 2010 Improvements Account and in the
6 Excess Revenues Fund may be used for improvements to the Cruise Terminal and
7 certain operating expenses related thereto, instead of being used to redeem 2010 Bonds,
8 and Carnival has agreed to pay the costs of the City to process the requested
9 amendments to the Indenture; and

10 WHEREAS, there have been presented to this City Council a draft of a First
11 Supplemental Indenture which amends the 2010 Improvements Account provisions of the
12 Indenture (the "First Supplement"), and which requires the consent of the owners of a
13 majority in principal amount of the 2010 Bonds outstanding to be effective, and a Second
14 Supplemental Indenture which amends the Excess Revenues Fund provisions of the
15 Indenture (the "Second Supplement"), and which does not require the consent of the
16 Bondowners to be effective, and the City Council now desires to approve the First
17 Supplement and the Second Supplement in order to accommodate the request of
18 Carnival regarding amendments to the Indenture.

19 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
20 follows:

21 Section 1. The First Supplement and the Second Supplement
22 (collectively, the "Supplements"), in the respective forms on file with the City Attorney, are
23 hereby approved. The City Manager and the City Treasurer (collectively, the "Designated
24 Officers") are hereby authorized, each acting alone, for and in the name and on behalf of
25 the City, to execute and deliver the Supplements in said form, together with such
26 additions thereto or changes therein as are recommended or approved by the
27 Designated Officer executing the Supplements upon consultation with the City Attorney
28 and Quint & Thimmig LLP, the Bond Counsel to the City for the 2010 Bonds, the approval

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

1 of such additions or changes to be conclusively evidenced by the execution and delivery
2 by a Designated Officer of the Supplements.

3 Section 2. The City Manager, the City Treasurer, the City Clerk and all
4 other officers and officials of the City are hereby authorized and directed to do any and all
5 things and to execute and deliver any and all agreements, documents and certificates
6 which they deem necessary or advisable in order to carry out and give effect to the
7 Supplements, and otherwise to comply with the intent of this resolution and the
8 Supplements.

9 Section 3. This resolution shall take effect immediately upon its adoption
10 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

11 I hereby certify that the foregoing resolution was adopted by the City
12 Council of the City of Long Beach at its meeting of _____, 2015 by the
13 following vote:

14 Ayes: Councilmembers: _____

15 _____

16 _____

17 _____

18 Noes: Councilmembers: _____

19 _____

20 Absent: Councilmembers: _____

21 _____

22 _____

23
24
25
26 _____
City Clerk

27 DTH:DN:rjr 08/18/15 #A11-00095
L:\Apps\CtyLaw32\WPDocs\ID018\IP026\00557296.DOC

28