

**34432**

**AMENDED AND RESTATED  
LEASE AND OPERATIONS AGREEMENT OF QUEEN MARY,  
ADJACENT LANDS AND IMPROVEMENTS, DOME AND  
QUEEN'S MARKETPLACE  
(LEASE NO. 22697)**

by and between

CITY OF LONG BEACH,  
a California chartered city and municipal corporation

**("Landlord")**

and

URBAN COMMONS QUEENSWAY, LLC,  
a California limited liability company

**("Tenant")**

Dated as of November 1, 2016

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## LIST OF EXHIBITS

- Exhibit "A-1" - Ordinance No. HD-1605 of Board of Harbor Commissioners
- Exhibit "A-2" - Minute Order of City Council
- Exhibit "B" - Legal Description of the Property
- Exhibit "C" - Site Plan
- Exhibit "D" - Form of Subordination Nondisturbance and Attornment Agreement
- Exhibit "E" - Form of Estoppel Certificate
- Exhibit "F" - Form of Memorandum of Lease
- Schedule 1 - Additional Financial Reporting and Related Requirements

**AMENDED AND RESTATED  
LEASE AND OPERATIONS AGREEMENT OF QUEEN MARY,  
ADJACENT LANDS AND IMPROVEMENTS, DOME AND  
QUEEN'S MARKETPLACE  
(LEASE NO. 22697)**

This Amended and Restated Lease and Operations Agreement of Queen Mary, Adjacent Lands and Improvements, Dome and Queen's Marketplace ("**Lease**") is dated for identification purposes as of the 1st day of November, 2016, and is entered into by and between the following (individually, a "**Party**" and collectively, the "**Parties**"): CITY OF LONG BEACH, a California chartered city and municipal corporation, ("**Landlord**" or "**City**"), and URBAN COMMONS QUEENSWAY, LLC, a California limited liability company ("**Urban Commons**" or "**Tenant**").

**RECITALS:**

A. City owns certain tide and submerged lands which were granted to City by the State of California and are held upon the trusts and conditions set forth in Chapter 676, Statutes of 1911; Chapter 102, Statutes of 1925; Chapter 158, Statutes of 1935; Chapter 29, Statutes of 1956, First Extraordinary Session; Chapter 1560, Statutes of 1959; and Chapter 138, Statutes of 1964, First Extraordinary Session as amended and which are described in Section 2.1 as the "**Leased Premises**". Landlord, in accordance with the procedural and substantive provisions of those statutes, purchased the Queen Mary, converted portions of it to a maritime museum and tour, and made improvements to the site adjacent thereon on Pier J and in the Harbor District of the City of Long Beach. Pursuant to Ordinance No. HD-1605 adopted on December 1, 1992 by the Board of Harbor Commissioners of the City of Long Beach (the "**Board**"), it has determined that the land and water area covered by this Lease are no longer necessary for port purposes or harbor development and control of said land and water area was transferred to the City Council of the City of Long Beach. The City Council of Long Beach by minute order adopted on December 22, 1992, accepted the control of said land, water area and City-owned improvements thereon, including the Queen Mary subject to the terms and conditions of said ordinance. A copy of Ordinance No. HD-1605 of the Board and of the Minute Order of the City Council are attached hereto as Exhibits A-1 and A-2, respectively.

B. City leased the Property to Queens Seaport Development, Inc., a California corporation ("**QSDI**") pursuant to that certain Lease and Operations Agreement of Queen Mary, Adjacent Lands and Improvements, Dome and Queen's Marketplace dated August 1, 1995, as amended by that certain Lease dated June 6, 1997, as amended and restated in its entirety by that certain First Amended Lease and Operations Agreement of Queen Mary, Adjacent Lands and Improvements, Dome and Queen's Marketplace dated as of October 29, 1998, and as amended by that certain First Amendment to First Amended Lease and Operations Agreement of Queen Mary, Adjacent Lands and Improvements, Dome and Queen's Marketplace dated as of March 20, 2001, as amended by that certain Settlement Agreement and Mutual General Release of Claims (the "**Settlement Agreement**") dated as of November 21, 2006 by and between Howard M. Ehrenberg, in his capacity as Chapter 11 Trustee (the "**Trustee**") on behalf of QSDI and City, as disclosed by a Memorandum of Lease, recorded January 2, 1996 as Instrument No. 96-74, and amended by that certain Amended Memorandum of Lease on December 14, 1998 as Instrument No. 98-2267848 (collectively, the "**Master Lease**").

C. The interest of QSDI under the Master Lease was subsequently acquired by Save the Queen, LLC, a Delaware limited liability company ("STQ"). Pursuant to that certain Assignment Agreement, dated as of April 14, 2016, and recorded as Instrument No. 20160446578 in the Official Records, STQ's interest was assigned to Tenant on April 14, 2016. Landlord and Tenant now wish to amend and restate the existing Master Lease in its entirety upon the terms set forth herein.

## AGREEMENT:

NOW, THEREFORE, in consideration of the payments to be made hereunder and the covenants and agreements contained herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the real property and improvements hereinafter defined as the "**Leased Premises**" upon the following terms and conditions.

### ARTICLE 1 DEFINITIONS

1.1. Actual Knowledge.

The term "**actual knowledge**", as used with reference to Tenant, shall mean the actual knowledge then possessed, without duty of inquiry, investigation or research, of Taylor Woods and/or Howard Wu. The fact that such individuals are used for purposes of establishing the actual knowledge of Tenant shall not create any personal liability to such individuals under this Lease for the representations and warranties set forth herein, except for such liability as may arise from any Guarantees provided pursuant hereto.

1.2. ADA.

The term "**ADA**" shall have the meaning described in Section 3.2.

1.3. Adjustment Date(s).

The term "**Adjustment Date(s)**" shall have the meaning described in Section 4.1.1.1.

1.4. Affiliate.

The term "**Affiliate**" shall mean any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with another person, which, in the case of a partnership, shall include each or any of the general partners thereof and which, in the case of a limited liability company, shall include each or any of the managers and managing members. The term "**control**", as used in the immediately preceding sentence, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

1.5. Aggregate Transfer.

The term "**Aggregate Transfer**" shall have the meaning described in Section 4.2.1(a).

1.6. Agreed Rate.

The term "**Agreed Rate**" shall mean the lesser of (a) ten percent (10%) per annum or (b) the maximum rate of interest per annum permitted by law to be charged.

1.7. Annual Rent; Rent.

The term "**Annual Rent**" or "**Rent**" shall mean and refer, collectively, to the Minimum Rent, the Pass Through Rent, the Passenger Fee Rent, and the Percentage Rent, and any amount payable as additional rent under the terms of this Lease, all Impositions, and all other sums required to be paid by Tenant pursuant to the terms of this Lease. Although not necessarily payable annually, the term "Rent" shall also include any amounts payable under Section 4.2 below as a result of Change in Ownership or Financing events.

1.8. Annual Statement.

The term "**Annual Statement**" shall have the meaning described in Section 4.1.3.

1.9. Appraiser.

The term "**Appraiser**" shall have the meaning described in Section 6.1.3.

1.10. Audit.

The term "**audit**" shall have the meaning described in Section 4.3.

1.11. Award.

The term "**Award**" shall have the meaning described in Section 13.1(a).

1.12. Bankruptcy Code.

The term "**Bankruptcy Code**" shall have the meaning described in Section 8.2(a).

1.13. Base Maintenance and Replacement Plan

The term "**Base Maintenance and Replacement Plan**" shall have the meaning described in Section 7.3.1.

1.14. Base Value.

The term "**Base Value**" shall have the meaning described in Section 4.2.1(b).

1.15. Beneficial Interest; Beneficial Interest in this Lease; Beneficial Interest in a Transfer Sublease.

The terms "**beneficial interest**", "**beneficial interest in this Lease**", or "**beneficial interest in a Transfer Sublease**" shall have the meaning described in Section 4.21(c).

1.16. BMRP Fund.

The term "**BMRP Fund**" shall have the meaning described in Section 7.3.1.

1.17. BMRP Plan.

The term "**BMRP Plan**" shall have the meaning described in Section 7.3.1.

1.18. Business Day; Business Days.

The terms "**Business Day**" or "**Business Days**" shall have the meaning described in Section 16.12.

1.19. Calculation Notice.

The term "**Calculation Notice**" shall have the meaning described in Section 4.2.4.

1.20. Capital Event.

The term "**Capital Event**" shall have the meaning described in Section 4.2.1(d).

1.21. Carnival Corporation.

The term "**Carnival Corporation**" shall mean and refer to Carnival Corporation, d/b/a Carnival Cruise Lines, a Panamanian corporation, and its successors and assigns under the Carnival Sublease.

1.22. Carnival Dome Sublease.

The term "**Carnival Dome Sublease**" shall mean and refer to that certain Sublease Agreement, dated as of January 5, 2000, as amended by that certain First Amendment to Sublease dated as of January 31, 2001 and that certain Second Amendment to Sublease dated as of October 17, 2016, as the same may be hereafter amended, and any successor or replacement sublease entered into between Tenant and Carnival Corporation for the Dome or other portion of the Leased Premises used for passenger terminal purposes, and any successor or replacement sublease hereafter entered into between Tenant and any other passenger ship operator using all or a portion of the Leased Premises for staging or passenger loading with respect to their operations adjacent or proximate to the Leased Premises.

1.23. Carnival Parking Sublease.

The term "**Carnival Parking Sublease**" shall mean and refer to that certain Sublease Agreement--Garage, dated as of January 5, 2000, as amended by that certain First Amendment to Sublease dated as of January 31, 2001, as the same may be hereafter amended, and any successor or replacement sublease entered into between Tenant and GIBS, Inc., a Delaware corporation, or another affiliate of Carnival Corporation, for the existing parking facilities subject to the Carnival Parking Sublease, or other portion of the Leased Premises used for cruise ship passenger parking purposes, and any successor or replacement sublease hereafter entered into between Tenant and any other passenger ship operator using all or a portion of the Leased Premises for passenger parking with respect to their operations adjacent or proximate to the Leased Premises.

1.24. Carnival Subleases.

The term "**Carnival Subleases**" shall mean and refer collectively to both the Carnival Dome Sublease and the Carnival Parking Sublease, as they may be amended, supplemented or modified from time to time, and including any replacement or successor sublease(s).

1.25. Catalina Channel Express Permit.

The term "**Catalina Channel Express Permit**" shall mean and refer to that certain sublease agreement entered into on or about December 31, 2003, between QSDI and Catalina Channel Express, Inc., a California corporation, as amended by that certain amendment to sublease agreement dated February 8, 2005, as further amended by that certain amendment to sublease agreement dated January 1, 2006, as further amended by that certain amendment to sublease agreement dated October 25, 2006. The Catalina Channel Express Permit covers the dock and certain water and land areas adjacent thereto, which constitute a portion of the Leased Premises subject to this Lease, and all extensions, renewals, and replacements thereof. The Catalina Channel Express Permit was assigned to Tenant and, by virtue of such assignment, Catalina Channel Express is now a Sublessee of Tenant.

1.26. CEQA.

The Term "**CEQA**" shall mean and refer to the California Environmental Quality Act, and all regulations and guidelines issued in connection therewith, as the foregoing may be amended or modified from time to time.

1.27. Change of Control.

The term "**Change of Control**" shall have the meaning described in Section 4.2.1(e).

1.28. Change of Ownership.

The term "**Change of Ownership**" shall have the meaning described in Section 4.2.1(e).

1.29. Changes.

The term "**Changes**" shall have the meaning described in Section 6.7.

1.30. City.

The term "**City**" shall mean and refer to the City of Long Beach.

1.31. CMBS.

The term "**CMBS**" shall have the meaning described in Section 8.1(a).

1.32. Commercial Sublessees.

The term "**Commercial Sublessees**" shall have the meaning described in Section 4.1.3.2.7.



1.33. Construction Commitment.

The term "**Construction Commitment**" shall mean a written commitment from a Construction Lender for the development and construction of all or a portion of the Land Improvements contemplated for a portion of the Leased Premises, including a portion of the Leased Premises created pursuant to a separate Development Lease.

1.34. Construction Contract.

The term "**Construction Contract**" shall mean and refer to a fully executed and effective construction contract(s) with a general contractor for the construction of all or a portion of the Land Improvements contemplated for a portion of the Leased Premises, including a portion of the Leased Premises created pursuant to a separate Development Lease..

1.35. Construction Lender.

The term "**Construction Lender**" shall mean a lender (licensed to do business in California if legally required) who is making a Construction Loan to Tenant for the development and construction of all or a portion of the Leased Premises, including Development Lease Improvements contemplated for a portion of the Development Lease Area created pursuant to a separate Development Lease.

1.36. Construction Loan.

The term "**Construction Loan**" shall mean and refer to a construction loan made by a Construction Lender to Tenant pursuant to a Construction Commitment for the development and construction of all or a portion of the Leased Premises, including Development Lease Improvements contemplated for a portion of the Development Lease Area created pursuant to a separate Development Lease.

1.37. Construction Period.

The term "**Construction Period**" as used herein means that portion of the term of the applicable Development Lease, beginning on the effective date of that Development Lease and ending on the earlier of (i) the first date on which revenue is generated from the operation or leasing of any Development Lease Improvements subject to the Development Lease, and (ii) the outside date for commencement of rent under the applicable Development Lease.

1.38. CPI.

The term "**CPI**" shall mean the Consumer Price Index, All Items, All Urban Consumers (base year 1982-84 = 100) for the Los Angeles-Riverside-Orange County, CA (CMSA) published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is changed so that the base is changed from 1982-84 = 100, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the Term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised. If there is no such replacement, then Landlord and Tenant shall select another price index consistent with then customary practice and approximating, so closely as reasonably possible, the result that would have been obtained had the CPI not been discontinued.

1.39. Day; Days.

The terms "**day**" or "**days**" shall have the meaning described in Section 4.21(c).

1.40. Default(s).

The term "**Default(s)**" shall have the meaning described in Section 14.1.

1.41. Demolition Notice.

The term "**Demolition Notice**" shall have the meaning described in Section 6.2.2.1.

1.42. Development Costs.

The term "**Development Costs**" shall have the meaning described in Section 7.5.

1.43. Development Lease.

The term "**Development Lease**" shall mean a separate lease for a portion of the Development Lease Area entered into by Landlord and Tenant pursuant to Section 6.1, in connection with development of a portion of the Development Lease Area with Development Lease Improvements.

1.44. Development Lease Area.

The term "**Development Lease Area**" shall mean all of the Leased Premises except the Queen Mary Lease Area.

1.45. Development Lease Improvements.

The term "**Development Lease Improvements**" shall mean those Improvements, if any, hereafter constructed on the portion of the Leased Premises subject to a Development Lease pursuant to the Scope of Development and approved Plans for that Development Lease.

1.46. Development Lease Parcel.

The term "**Development Lease Parcel**" shall mean and refer to any portion of the Leased Premises that is hereafter subjected to a Development Lease pursuant to the terms hereof.

1.47. Documented Transaction Costs.

The term "**Documented Transaction Costs**" shall have the meaning described in Section 4.2.1(f).

1.48. Dome.

The term "**Dome**" shall refer to the existing dome improvements located on the Leased Premises and a portion of which is currently subject to sublease to Carnival Corporation, and which is depicted on the Site Plan.

1.49. Effective Date.

The term "**Effective Date**" shall mean the date this Lease is fully executed and delivered by the Parties. A memorandum of this Lease shall be recorded in the Official Records at that time.

1.50. Eligible Basis.

The term "**Eligible Basis**" shall have the meaning described in Section 4.1.3.1.

1.51. Excluded Transfers.

The term "**Excluded Transfers**" shall have the meaning described in Section 4.2.1(a).

1.52. Exclusions.

The term "**Exclusions**" shall have the meaning described in Section 4.1.3.2.

1.53. Family Members.

The term "**Family Members**" shall have the meaning described in Section 9.2.2.3.

1.54. Fee Mortgage.

The term "**Fee Mortgage**" shall have the meaning described in Section 9.1.2.

1.55. FF&E.

The term "**FF&E**" shall have the meaning described in Section 6.7.

1.56. Final Approval.

The term "**Final Approval**" shall have the meaning described in Section 6.2.2.5.

1.57. Financial Statement.

The term "**Financial Statement**" shall have the meaning described in Section 16.1(d)(1).

1.58. Financing Event.

The term "**Financing Event**" shall have the meaning described in Section 4.2.1(g).

1.59. Force Majeure Events.

The term "**Force Majeure Events**" shall mean those events which constitute excusable grounds for delay under this Lease as set forth in and to the extent, but only to the extent, expressly provided by Section 14.9.

1.60. Governmental Restrictions.

The term "**Governmental Restrictions**" shall mean and include any and all laws, statutes, ordinances, codes, rulings, regulations, orders, rules, conditions of approval or authorizations of any governmental entity, agency or political subdivision, now in force or hereafter adopted, which are or may become applicable to the Leased Premises or the use thereof by Tenant.

1.61. Gross Proceeds.

The term "**Gross Proceeds**" shall have the meaning described in Section 4.2.1(h).

1.62. Hazardous Materials.

The term "**Hazardous Materials**" shall have the meaning described in Section 6.8.

1.63. HPCIP.

The term "**HPCIP**" shall have the meaning described in Section 7.3.2.

1.64. HPCIP Fund.

The term "**HPCIP Fund**" shall have the meaning described in Section 7.3.2.

1.65. HPCIP Plan.

The term "**HPCIP Plan**" shall have the meaning described in Section 7.3.3.5.

1.66. Impositions.

The term "**Impositions**" shall have the meaning described in Section 10.1.

1.67. Improvements.

The term "**Improvements**" shall mean and include all grading done on the Leased Premises or any portion thereof as well as all buildings, structures, fixtures, excavation, parking areas, walkways, driveways, landscape areas, underground installations and all other improvements of whatsoever character located on the Leased Premises, or constructed on, around, under or over the Leased Premises by Tenant from time to time pursuant to this Lease, including any such improvements constructed on a Development Lease Parcel.

1.68. Increase(s).

The term "**Increase(s)**" shall have the meaning described in Section 4.1.1.1.

1.69. Installment Agreements.

The term "**Installment Agreements**" shall have the meaning described in Section 4.1.3.1.

1.70. Insurance Coverage Adjustment Dates.

The term "**Insurance Coverage Adjustment Dates**" shall have the meaning described in Section 12.4.

1.71. Insurance Trustee.

The term "**Insurance Trustee**" shall have the meaning described in Section 12.2.

1.72. JAMS.

The term "**JAMS**" shall have the meaning described in Section 4.1.3.1.

1.73. Landlord.

The term "**Landlord**" shall mean the City of Long Beach, a California chartered city and municipal corporation, having its office at 333 West Ocean Boulevard, 13<sup>th</sup> Floor, Long Beach, California 90802, and its successors and assigns.

1.74. Land Value.

The term "**Land Value**" shall have the meaning described in Section 6.1.3.

1.75. Lease.

The term "**Lease**" shall mean and refer to this Amended and Restated Lease and Operations Agreement of Queen Mary, Adjacent Lands and Improvements, Dome and Queen's Marketplace, dated for identification purposes as of the 1st day of November, 2016, entered into by and between the City of Long Beach, a California chartered city and municipal corporation, as "landlord", and Urban Commons Queensway, LLC, a California limited liability company, as "tenant".

1.76. Leased Premises.

The term "**Leased Premises**" shall have the meaning described in Section 2.1.

1.77. Leasehold Mortgage.

The term "**Leasehold Mortgage**" shall mean any leasehold mortgage, deed of trust, assignment and leaseback for financing purposes, or other established method of securing real property financing, so long as such encumbrance is permitted by and created in conformance with the terms of this Lease. The term "**Leasehold Mortgage**" shall also include any pledge or assignment for collateral purposes of the direct or indirect ownership interests in Tenant so long as such pledge or assignment is in connection with a financing of the Project which is permitted by and created in conformance with the terms of this Lease.

1.78. Lease Year.

The term "**Lease Year**" shall mean each of the consecutive twelve (12) month calendar year periods falling within the Term of this Lease, except that the first Lease Year shall commence upon the Effective Date, and shall include only the period from the Effective Date to the following January 1, and

except that the final Lease Year shall include only the period from the January 1 preceding the expiration or earlier termination of this Lease to the date on which such expiration or earlier termination occurs.

1.79. Lender.

The term "**Lender**" shall mean the owner and holder of a Leasehold Mortgage permitted by this Lease.

1.80. Losses and Liabilities.

The term "**Losses and Liabilities**" shall mean all liabilities, claims, losses, causes of action, charges, penalties, fines, damages, costs and expenses (including reasonable attorneys' fees and costs incurred by the indemnified party with respect to counsel of its choice), of whatsoever character, nature and kind, whether to property or person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected, latent or patent.

1.81. Major Change.

The term "**Major Change**" shall have the meaning described in Section 6.7.

1.82. Major Sublease.

The term "**Major Sublease**" shall have the meaning described in Section 9.2.3.

1.83. Master Lease.

The term "**Master Lease**" shall have the meaning described in Recital B.

1.84. Material Amendment.

The term "**Material Amendment**" shall have the meaning described in Section 9.1.3.

1.85. Minimum Rent.

The term "**Minimum Rent**" shall mean the minimum annual rent payable for each Lease Year, or portion thereof, under this Lease as described in Section 4.1.1. As set forth in Section 4.1.1, the Minimum Rent shall be in the initial amount of Three Hundred Thousand Dollars (\$300,000) per annum.

1.86. Minor Changes.

The term "**Minor Changes**" shall have the meaning described in Section 6.7.

1.87. Minor Subleases.

The term "**Minor Subleases**" shall have the meaning described in Section 9.2.3.

1.88. Monetary Default.

The term "**Monetary Default**" shall have the meaning described in Section 8.5.

1.89. Mortgage.

The term "**Mortgage**" shall mean and include any mortgage, deed of trust, financing conveyance or other means of financing real estate ownership, operation, construction and/or development, including a sale and leaseback.

1.90. Natural Person.

The term "**Natural Person**" shall have the meaning described in Section 16.12.

1.91. Net Capital Proceeds.

The term "**Net Capital Proceeds**" shall have the meaning described in Section 4.2.2(b).

1.92. Net Proceeds Share.

The term "**Net Proceeds Share**" shall have the meaning described in Section 4.2.1(i).

1.93. Net Site Revenues.

The term "**Net Site Revenues**" shall have the meaning described in Section 4.1.3.

1.94. Non-Monetary Default.

The term "**Non-Monetary Default**" shall have the meaning described in Section 8.5.

1.95. Notice of Default.

The term "**Notice of Default**" shall have the meaning described in Section 14.2.

1.96. Notice of Election to Terminate.

The term "**Notice of Election to Terminate**" shall have the meaning described in Section 7.5.

1.97. Notice of Intended Taking.

The term "**Notice of Intended Taking**" shall have the meaning described in Section 13.1(g).

1.98. Operate.

The term "**Operate**" shall have the meaning described in Section 5.2.

1.99. Operation Period.

The term "**Operation Period**" shall mean and refer to the period commencing upon the first day following the expiration of the Construction Period under any Development Lease and continuing until the expiration or earlier termination of that Development Lease.

1.100. Ownership and/or Control.

The term "**Ownership and/or Control**" shall have the meaning described in Section 9.2.2.1.

1.101. Partial Taking.

The term "**Partial Taking**" shall have the meaning described in Section 13.1(f).

1.102. Parties or Party.

The term "**Parties**" or "**Party**" shall refer to Landlord and/or Tenant, and their successors in interest, who are parties to this Lease.

1.103. Pass Through Rent.

The term "**Pass Through Rent**" shall mean the subrent received by Tenant from the Catalina Channel Express tenancy and passed through to Landlord pursuant to Section 4.1.2.

1.104. Passenger Fee Rent.

The term "**Passenger Fee Rent**" shall have the meaning described in Section 4.1.4.

1.105. Payment Bond.

The term "**Payment Bond**" shall have the meaning described in Section 6.2.2.4.

1.106. Percentage Rent.

The term "**Percentage Rent**" shall mean and refer to that percentage rent payable under this Lease as provided in Section 4.1.3.

1.107. Performance Bond.

The term "**Performance Bond**" shall have the meaning described in Section 6.2.2.4.

1.108. Permitted Expenditures.

The term "**Permitted Expenditures**" shall have the meaning described in Section 7.3.1.

1.109. Permitted HPCIP Expenditures.

The term "**Permitted HPCIP Expenditures**" shall have the meaning described in Section 7.3.3.5.

1.110. Person.

The term "**Person**" shall have the meaning described in Section 16.12.



1.111. Plans.

The term "**Plans**" shall mean and include preliminary and final drawings, grading plans, site development plans, architectural plans, specifications, elevations, renderings, landscape plans, parking plans and all other development plans for the Improvements at issue.

1.112. Plan Disapproval Notice.

The term "**Plan Disapproval Notice**" shall have the meaning described in Section 6.2.1.

1.113. Priority Return.

The term "**Priority Return**" shall have the meaning described in Section 4.1.3.1.

1.114. Previous Net Proceeds Amounts.

The term "**Previous Net Proceeds Amounts**" shall have the meaning described in Section 4.2.2(b)(iv).

1.115. Project.

The term "**Project**" shall mean the Queen Mary, Dome and other Improvements and activities conducted on or in connection with the Leased Premises in accordance with the terms of this Lease, including all Improvements which may be now or hereafter located on the Leased Premises or a Development Lease Parcel.

1.116. Property.

The term "**Property**" shall have the meaning described in Section 2.1.

1.117. Public Company.

The term "**Public company**" shall have the meaning described in Section 4.2.2(c)(vi).

1.118. Purchase Money Note.

The term "**Purchase Money Note**" shall have the meaning described in Section 4.2.2(f).

1.119. QSDI.

The term "**QSDI**" shall mean and refer Queens Seaport Development, Inc., a California corporation.

1.120. Qualified Capital Expenditures.

The term "**Qualified Capital Expenditures**" shall have the meaning described in Section 4.1.3.1.

1.121. Queen Mary.

The term "**Queen Mary**" shall refer to the RMS Queen Mary, which was purchased by Landlord and is anchored within the Leased Premises and forms a portion thereof.

1.122. Queen Mary Improvements.

The term "**Queen Mary Improvements**" shall have the meaning described in Section 7.3.1.

1.123. Queen Mary Lease Area.

The term "**Queen Mary Lease Area**" shall mean the approximately 9.29 acre water area surrounding the Queen Mary and enclosed by the enrockment, which area is depicted on the Site Plan.

1.124. REA.

The term "**REA**" shall have the meaning described in Section 6.1.3.

1.125. Records.

The term "**Records**" shall have the meaning described in Section 4.3.

1.126. REMIC.

The term "**REMIC**" shall have the meaning described in Section 8.1(a).

1.127. Rental Increase Notice.

The term "**Rental Increase Notice**" shall have the meaning described in Section 4.1.1.2.

1.128. Representatives.

The term "**Representatives**" shall mean the officers, directors, managers, shareholders, council members, board members, staff, committee members, officials, employees, members, agents, principals, affiliates, partners, independent contractors, attorneys, accountants and representatives of the referenced entity and the predecessors, heirs, successors and assigns of all such persons.

1.129. STQ.

The term "**STQ**" shall mean and refer to Save the Queen, LLC, a Delaware limited liability company.

1.130. Schedule of Performance.

The term "**Schedule of Performance**" shall mean and refer to the Schedule of Performance to be attached to any Development Lease created pursuant to the terms of this Lease, as it may be amended from time to time.

1.131. Scope of Development.

The term "**Scope of Development**" shall mean and refer to the Scope of Development to be attached to any Development Lease created pursuant to the terms of the Lease, as it may be amended from time to time in accordance with the terms of this Lease.

1.132. Settlement Agreement.

The term "**Settlement Agreement**" shall mean and refer to that certain Settlement Agreement and Mutual General Release of Claims dated as of November 21, 2006 by and between the Trustee and the City.

1.133. Site Plan.

The "**Site Plan**" shall mean and refer to the Site Plan attached hereto as **Exhibit "B"**.

1.134. Site Revenues.

The term "**Site Revenues**" shall have the meaning described in Section 4.1.3.1.

1.135. Special Events Park.

The term "**Special Events Park**" shall mean and refer to that area designated as the "special events park" on the Site Plan.

1.136. Stipulated Investment Basis.

The term "**Stipulated Investment Basis**" shall have the meaning described in Section 4.1.3.1.

1.137. Stipulated Return.

The term "**Stipulated Return**" shall have the meaning described in Section 4.2.1(k).

1.138. Sublease(s); Subtenant; Sublessee.

The term "**Sublease(s)**" shall mean licenses, subleases, concession or permit agreements, and any other like agreements. The term "**Subtenant**" or "**Sublessee**" shall mean the subtenant, licensee, concessionaire or other corresponding party under any Sublease.

1.139. Subsidiary.

The term "**Subsidiary**" shall have the meaning described in Section 4.2.2(c)(xii).

1.140. Substantial Taking.

The term "**Substantial Taking**" shall have the meaning described in Section 13.1(e).

1.141. Submerged Land and Water Area Lease.

The term "**Submerged Land and Water Area Lease**" shall mean and refer to that certain Submerged Land and Water Area Lease dated January 22, 2001, as amended by that certain First Amendment to Submerged Land and Water Area Lease dated as of November 19, 2002, that certain Second Amendment to Submerged Land and Water Area Lease dated as of November 30, 2006, as disclosed by a Memorandum of Lease, recorded March 22, 2001 as Instrument No. 01-458472, in the Official Records, and that certain Rental Agreement for Submerged Land and Water Area Lease and Termination of Revocable Permit dated as of April 14, 2016.

1.142. Taking.

The term "**Taking**" shall have the meaning described in Section 13.1(b).

1.143. Taking Date.

The term "**Taking Date**" shall have the meaning described in Section 13.1(c).

1.144. Tenant.

The term "**Tenant**" shall mean Urban Commons Queensway, LLC, a California limited liability company, and its permitted successors and assigns hereunder.

1.145. Term.

The term "**Term**" shall mean the term of this Lease as described in Section 3.1.

1.146. Third Party.

The term "**Third Party**" shall have the meaning described in Section 9.2.2.1.

1.147. Total Taking.

The term "**Total Taking**" shall have the meaning described in Section 13.1(d).

1.148. Transfer Documents.

The term "**Transfer Documents**" shall have the meaning described in Section 9.2.

1.149. Transfer Sublease.

The term "**Transfer Sublease**" shall have the meaning described in Section 4.2.1(l).

1.150. Transfer/Transferee.

The term "**Transfer**" shall mean and include any direct or indirect conveyance, transfer, sale, assignment, lease, sublease, license, concession, franchise, gift, hypothecation, Mortgage, pledge, encumbrance, or the like, to any person or entity. The person or entity receiving such Transfer is referred to herein as the "**Transferee**".

1.151. Trustee.

The term "**Trustee**" shall have the meaning described in Recital B.

1.152. Uncured Default(s).

The term "**Uncured Default(s)**" shall have the meaning described in Section 14.6.1.

1.153. Urban Commons.

The term "**Urban Commons**" shall mean and refer to Urban Commons Queensway, LLC, a California limited liability company.

1.154. Worth at the Time of Award.

The term "**worth at the time of award**" shall have the meaning described in Section 14.6.1.

## ARTICLE 2 LEASED PREMISES

2.1. Leased Premises.

The premises demised and leased hereunder ("**Leased Premises**") consist of the real property ("**Property**") located in the City of Long Beach, County of Los Angeles, State of California, and more particularly described in the legal description attached hereto as Exhibit "B", together with all improvements now existing or hereafter erected thereon, including, without limitation, the Queen Mary. The Leased Premises are shown on the Site Plan attached hereto as Exhibit "C". The Leased Premises include the Queen Mary; the water surrounding it within the enrockment consisting of approximately 9.29 acres; the approximately 43 acres of land area adjacent to the Queen Mary and the Improvements on that land owned by Landlord, including the Dome; and certain additional water rights of approximately 11.55 acres adjacent to the Queen Mary and the Catalina Channel Express facilities.

Notwithstanding anything to the contrary in this Lease, it is the intent of the Landlord to reserve (and Landlord does hereby reserve) from the estate and rights conveyed with this Lease, the sole and exclusive right to all water rights, coal, oil, gas, and other hydrocarbons, geothermal resources, precious metal ore, base metal ore, industrial-grade silicates and carbonates, and other like materials and minerals of every kind and character, metallic or otherwise, whether or not presently known of science or industry, now known to exist or hereafter discovered on, within, or underlying the surface of the Leased Premises regardless of the depth below the surface at which such substance may be found; provided, that Landlord, and its successors and assigns, shall not have the right to enter through the surface or the first five hundred (500) feet of the subsurface of the Leased Premises for the extraction of such materials or minerals.

## ARTICLE 3 TERM

3.1. Term.

The term of this Lease ("**Term**") shall begin on the Effective Date and shall end at midnight on the sixty-sixth (66th) anniversary of the Effective Date, unless the Term is sooner terminated.

3.2. Possession; Risk of Loss; Covenant of Quiet Enjoyment; Condition of Title.

Possession of the Leased Premises shall be delivered to Tenant on the Effective Date and Tenant shall take possession as of that date.


Landlord covenants that, subject to the limitations expressly set forth herein, Tenant, upon Tenant's timely payment of the Rent and performance of Tenant's covenants and obligations under this Lease, may quietly have, hold, and enjoy the Leased Premises during the Term, without hindrance or interruption by Landlord or anyone claiming by or through Landlord, subject to Landlord's right to enter upon the Leased Premises as expressly provided herein.

Except as expressly provided herein, Landlord has made no representations or warranties, express or implied, with respect to the Leased Premises and Tenant shall acquire no rights, easements or licenses in or to the Leased Premises by implication or otherwise except as expressly set forth herein. Without limitation of the foregoing, Tenant expressly acknowledges and agrees that this Lease creates no rights in Tenant to any minerals, or proceeds from mineral production, including but not limited to oil or proceeds from oil production, which may lie below the Leased Premises, including but not limited to, any unitized oil; provided that Landlord agrees that neither Landlord nor any person, firm, or corporation claiming mineral rights from or through Landlord shall have any right of surface entry to the Leased Premises for extraction of minerals or access to the soil below the ground up to a depth of five hundred (500) feet (other than for maintenance or repair to those pipelines or other equipment owned or operated by companies operating under an existing contractual agreement regarding the production of crude oil, including THUMS, and their successors and assigns. Landlord shall not be responsible for any latent or patent defect in, or the existence of any condition on, the Leased Premises, and the Rent hereunder shall in no case be withheld or diminished on account of any defect in the Leased Premises or because of the existence of any condition in, on or under the same, or for any damage occurring thereto.

Subject only to the obligations of Landlord under this Lease with respect to the HPCIP Funds described in Section 7.3.2, and the representations and warranties of Landlord set forth in Section 16.3, Tenant hereby accepts the Leased Premises in an "As Is/Where Is" condition without warranty of any kind, express or implied, including, without limitation, any express or implied warranty of merchantability or fitness for any intended purpose or any warranty as to title, physical condition or the existence or absence of Hazardous Materials on the Leased Premises, and, thereafter, if the Leased Premises are not in all respects entirely suitable for the use or uses to which the Leased Premises or any part thereof will be put, then it is the sole responsibility and obligation of Tenant to take such action as may be necessary to place the Leased Premises in a condition entirely suitable for such use or uses. Without limitation of the foregoing, Tenant is not relying on any representation or warranty of any kind whatsoever, express or implied, from Landlord or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Leased Premises and/or any Improvements located or to be located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Leased Premises and/or any such Improvements, including, but not limited to, the structural elements, foundation, roof, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the Leased Premises, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Leased Premises and/or any Improvements located or to be located thereon, (iv) the development potential of the Leased Premises, and the use, habitability, merchantability or fitness, or the

suitability, value or adequacy of the Leased Premises and/or any Improvements located or to be located thereon for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Leased Premises or any other public or private restrictions on use of the Leased Premises, with respect to which matters Tenant has performed to its own due diligence and for which Landlord shall not have any liability or responsibility notwithstanding anything in this Lease to the contrary, including any representations or warranties of Landlord, (vi) the compliance of the Leased Premises and/or any Improvements located or to be located thereon with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of the County, City, State, the United States of America, and/or any other governmental or quasi-governmental entity or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act ("ADA")), (vii) the presence of any underground storage tank or Hazardous Materials on, under or about the Leased Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used or to be used in any Improvements, (ix) the condition of title to the Leased Premises, and (x) the economics of the operation of the Leased Premises and/or any Improvements located or to be located thereon. In connection with the above, Tenant hereby acknowledges and represents to Landlord that Tenant has had ample opportunity to inspect and evaluate the Leased Premises and the feasibility of the uses and activities Tenant is entitled to conduct thereon; that Tenant is experienced in real estate development; that Tenant will rely entirely on Tenant's experience, expertise and its own inspection of the Leased Premises in its current state in proceeding with this Lease; that Tenant will accept the Leased Premises in its present condition; and that, to the extent that Tenant's own expertise with respect to any of the foregoing is insufficient to enable Tenant to reach an informed conclusion, Tenant has engaged the services of persons qualified to advise Tenant with respect to such matters. Tenant is not relying on any express or implied, oral or written representations or warranties made by Landlord or its representatives, other than those expressly set forth in this Lease.

Without limitation of the foregoing, Tenant acknowledges that it has been informed that the land area comprised within the Leased Premises consists of reclaimed, submerged lands created by hydraulic filling and Tenant has expressly agreed that it will be responsible for dealing with the remediation, compaction, stabilization or other resolution of such matters in connection with development of a portion of the Leased Premises in a manner satisfactory to Landlord and in compliance with all applicable Governmental Requirements.

  
\_\_\_\_\_  
Tenant's Initials

#### **ARTICLE 4 RENT PAYMENTS**

##### **4.1. Annual Rent.**

Commencing as of the Effective Date, Tenant shall pay to Landlord an Annual Rent consisting of (i) the Minimum Rent described in Section 4.1.1, (ii) the Pass Through Rent described in Section 4.1.2, (iii) the Percentage Rent described in Section 4.1.3 below, and (iv) the Passenger Fee Rent described in Section 4.1.4 below.

#### 4.1.1 Minimum Rent: Increases to Minimum Rent.

The minimum annual rent payable for each Lease Year, or portion thereof, from the Effective Date through the end of the Term shall be Three Hundred Thousand Dollars (\$300,000) per year, subject to further increase as hereinafter provided. Such amount is referred to herein as the "**Minimum Rent**".

The Minimum Rent shall be paid in advance in twelve (12) equal monthly installments payable on or before the first day of each calendar month during the Term. Minimum Rent for the first month or portion thereof during the Term shall be paid upon the Effective Date. Minimum Rent payable for any partial month or partial Lease Year during the Term shall be prorated based on a 365 day year and the actual number of days in the month or the Lease Year, as applicable.

4.1.1.1 CPI Increases to Minimum Rent. As of the commencement of the tenth (10th) Lease Year following the Effective Date and as of the commencement of each tenth (10th) Lease Year thereafter (the "**Adjustment Date(s)**"), the Minimum Rent then in effect shall be increased (the "**Increase(s)**") as provided for below.

The Minimum Rent as of the first Adjustment Date shall be calculated by multiplying the Minimum Rent in effect prior to such Adjustment Date by a fraction, the numerator of which is the CPI published for the third month prior to the first Adjustment Date and the denominator of which is the CPI published for the third month prior to the Effective Date; provided, however, that, regardless of the actual change in the CPI, the increase in the Minimum Rent pursuant to this paragraph shall, in any event, not exceed forty percent (40%) of the Minimum Rent that was in effect immediately prior to the first Adjustment Date; and provided, further, that in no event shall the Minimum Rent following the first Adjustment Date decrease from that in effect prior to the first Adjustment Date.

In calculating the Minimum Rent as of the second Adjustment Date and each Adjustment Date thereafter, the increased Minimum Rent shall be the amount determined by multiplying the Minimum Rent in effect prior to the applicable Adjustment Date by a fraction, the numerator of which is the CPI published for the third month prior to the current Adjustment Date and the denominator of which is the CPI published for the third month prior to the most recent prior Adjustment Date (e.g., for the second Adjustment Date the numerator shall be the CPI published for the third month prior to the second Adjustment Date and the denominator shall be the CPI published for the third month prior to the first Adjustment Date); provided, however, that, regardless of the actual change in the CPI, the new Minimum Rent shall, in any event, not exceed forty percent (40%) of the Minimum Rent that was in effect immediately prior to such Adjustment Date; and provided, further, that in no event shall the Minimum Rent following any Adjustment Date be less than the Minimum Rent in effect prior to such Adjustment Date.

4.1.1.2 Rental Increase Notice. Upon the calculation of an Increase in Minimum Rent pursuant to Section 4.1.1.1, Landlord shall deliver to Tenant written notice at the address set forth in Section 16.5 of the adjusted Minimum Rent for the ensuing Lease Year (the "**Rental Increase Notice**"). The Rental Increase Notice may be tendered at any time by Landlord following the calculation thereof and shall be effective as of the first day of the Lease Year to which it relates even if tendered after that date, and with respect to any then accrued but unpaid rent, Tenant shall pay to Landlord all additional accrued but unpaid Minimum Rent due as a result of the Increase within thirty (30) days of delivery to Tenant of such Rental Increase Notice. Until receipt of the Rental Increase Notice, Tenant shall continue to



pay Minimum Rent at the rate in effect prior to receipt of the Rental Increase Note, subject to retroactive adjustment as provided in the preceding sentence.

#### 4.1.2 Pass Through Rent.

For each Lease Year or portion thereof during the Term, Tenant shall also pay to Landlord, as additional rent hereunder and in addition to the Minimum Rent paid pursuant to Section 4.1.1, an amount (the "**Pass Through Rent**") equal to all payments, rent or other compensation (other than payments from the permittee or any customer of the permittee for the right to park on the Leased Premises in connection with the Catalina Channel Express Operations) received by Tenant under or through the Catalina Channel Express Permit, or any successor lease, license, permit or other like document entered into by Tenant with a Sublessee for all or a portion of the property now subject to the Catalina Channel Express Permit; provided, however, such Pass-Through Rent shall not, in any event, be less than five percent (5%) of the Gross Revenues (as defined in Section 3.3 of that Catalina Channel Express Permit) of the Sublessee under the Catalina Channel Express Permit or any successor permit. In connection with such payment, Tenant shall furnish a copy of all supporting documents provided by such Sublessee to Tenant with respect to each remittance received by Tenant from that Sublessee. Any payments received by Tenant under or through the Catalina Channel Express Permit or such successor which are not paid to Landlord as Pass Through Rent (including all parking revenues received by Tenant from the Sublessee or its customers or invitees) shall constitute Site Revenues and will be included in Tenant revenues reported for purposes of measuring Tenant's Percentage Rent. Tenant shall not take any action with respect to the Catalina Channel Express Operations or the Catalina Channel Express Permit that would adversely impact the Pass Through Rent payable to Landlord as provided above, including increase of parking rates and revenues retained by Tenant or adjustment of parking areas available for use in connection with the operation of the Catalina Channel Express Operations which is in exchange for a reduction of the Pass Through Rent or would have the effect of adversely impacting the Pass Through Rent, without the prior written authorization of the Landlord which shall not be unreasonably withheld. In addition, as set forth in more detail in Section 9.2.3, Tenant shall not amend, modify, alter or otherwise change the Catalina Channel Express Permit without Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant also covenants and agrees to strictly enforce and to diligently pursue all commercially reasonable steps necessary to cause performance of the obligations of the Sublessee under the Catalina Channel Express Permit so that Landlord receives the contemplated benefits of the Pass Through Rent payments, and, in the event of Tenant's failure to do so or if it is determined that Tenant has negligently, willfully or repeatedly (for three (3) or more consecutive years) understated the Pass Through Rent due to Landlord by more than five percent (5%) with respect to any Lease Year, Landlord shall have the right to take such actions on behalf of Tenant and at its expense and/or to collect the Pass Through Rent directly from the Sublessee, and Tenant shall cooperate therewith, including taking such actions and executing such documents as reasonably requested by Landlord to facilitate such action. Tenant's reimbursement to Landlord of any costs incurred by Landlord shall be due upon demand and shall be treated as additional rent payable hereunder. If it is determined that Tenant has understated Pass Through Rent for any reason, the amount of such understatement shall be immediately paid to Landlord, together with interest thereon at the Agreed Rate accruing from the date such payment was originally due until the date paid. If such understatement equals or exceeds five percent (5%) of the amount that was originally paid to Landlord, then, in addition to compensating Landlord for such shortfall as provided above, Tenant shall also reimburse Landlord for all costs incurred in the audit or other review by which such determination of underpayment was made.

#### 4.1.3 Percentage Rent.

For each Lease Year or portion thereof during the Term, Tenant shall also pay to Landlord, as additional rent hereunder and in addition to the Minimum Rent paid pursuant to Section 4.1.1 and the Pass Through Rent paid pursuant to Section 4.1.2, an amount ("**Percentage Rent**") equal to the excess of (i) ten percent (10%) of the sum of (A) the "**Net Site Revenues**" (as hereinafter defined) for that Lease Year, minus (B) the Priority Return (as hereinafter defined) for that Lease Year, over (ii) the Minimum Rent for that Lease Year. Percentage Rent for each Lease Year shall be due and payable by Tenant not later than seventy-five (75) days after the expiration of that Lease Year; provided that, upon the expiration or earlier termination of this Lease, such Percentage Rent shall be due within seventy-five (75) days after such expiration or earlier termination. Concurrent with the payment of Percentage Rent to Landlord, Tenant shall provide Landlord with a statement, certified by Tenant's chief financial officer or other qualified financial officer of Tenant, setting forth the Percentage Rent due with respect to the applicable Lease Year (the "**Annual Statement**"). The Annual Statement shall separately set forth aggregate "**Site Revenues**", "**Operating Expenses**" and "**Exclusions**" (as such terms are hereinafter defined) during the previous Lease Year. The following is an example of a Percentage Rent calculation.

Reporting Period: January 1, 2016-December 31, 2016

<u>#1 Site Revenues:</u>	\$60,000,000
<u>#2 Operating Expenses and Exclusions:</u>	\$40,000,000
<u>#3 Net Site Revenues (#1 less #2):</u>	\$20,000,000
<u>#4 Eligible Basis:</u>	\$35,000,000
<u>#5 Priority Return @ 9% of Eligible Basis (#4 times 9%):</u>	\$3,150,000
<u>#6 Net Site Revenues minus Priority Return (#3 less #5)</u>	\$16,850,000
<u>#7 10% of Remaining Net Site Revenue (10% of #6)</u>	\$1,685,000
<u>#8 Minimum Rent:</u>	\$300,000
<u>#9 Percentage Rent (#7 less #8):</u>	\$1,385,000

##### 4.1.3.1 Priority Returns; Site Revenues and Operating Expenses.

The "**Priority Return**" shall mean an amount equal to nine percent (9%) multiplied by Tenant's "**Eligible Basis**". Tenant's "**Eligible Basis**" shall mean the sum of (i) Seventy Million Two Hundred and Thirteen Thousand Four Hundred and Eleven Dollars (\$70,213,411) (the "**Stipulated Investment Basis**"), plus (ii) unaffiliated third party capital expenditures by Tenant with respect to the Queen Mary made (a) by Urban Commons before the Effective Date in the amount of One Million Sixty Six Thousand Four Hundred and Twelve Dollars (\$1,066,412), and (b) by Tenant after the Effective Date, including expenditures from the BMRP Fund following acquisition of the Leased Premises by Urban Commons but excluding expenditures to the extent funded from the HPCIP Fund or otherwise funded directly or indirectly by Landlord (unless such expenditure from the HPCIP Fund is traceable to a

contribution made to the HPCIP Fund by Tenant and used to fund a qualifying capital expenditure) and including hard and soft development and construction costs (e.g., soft costs of processing, entitlement and design, costs of site preparation, construction costs, general conditions, labor costs contractor profit and other similar hard and soft development and construction costs which are in each case directly related to the improvement to the Queen Mary which is at issue, which (x) are intended to result in a material increase in the value, efficiency or utility of the Leased Premises or the Improvements or systems located on the Leased Premises (as opposed to normal, customary or necessary maintenance or repair of existing systems that does not constitute a capital repair for accounting purposes), (y) are for work which has been fully completed, and is operational, and (z) (A) were identified on a then effective and Landlord approved capital improvement program, (B) were submitted for Landlord's approval in advance of such expenditure and were subsequently approved by Landlord as qualifying capital expenditures in accordance with the terms of this Lease, or (C) if approval for such capital expenditures was not required under the terms of this Lease prior to commencing such work, were approved by Landlord in its reasonable discretion as qualifying expenditures following completion of the work and prior to the later of (i) the end of the Lease Year during which such completion occurs, or (ii) sixty (60) days after the completion of such work (expenditures meeting the foregoing requirements are referred to as "**Qualified Capital Expenditures**"). If Tenant requests Landlord's approval for a Qualified Capital Expenditure under subsections (B) or (C) above and provides sufficient information regarding the proposed or completed capital improvements to allow Landlord to make a determination, Landlord shall notify Tenant in writing within (20) Business Days after receipt of such information as to Landlord's agreement or disagreement with Tenant's determination of the Qualified Capital Expenditure. If Landlord objects to Tenant's determination of the Qualified Capital Expenditure, Landlord shall provide sufficient detail with Landlord's objection to reasonably justify such objection. If the Parties fail to agree upon the Qualified Capital Expenditure within fifteen (15) Business Days after Landlord's disapproval of Tenant's determination, or if there is a dispute as the amount or documentation of any proposed Qualified Capital Expenditure, the dispute shall be resolved by binding arbitration. Within ten (10) Business Days after the end of the foregoing fifteen (15) Business Day period, the Parties shall agree upon an individual who shall act as an arbiter of such dispute in accordance with the commercial arbitration rules of the Judicial Arbitration and Mediation Service ("**JAMS**"). If the Parties fail to agree upon such an arbiter within said ten (10) Business Day period, then the same shall be designated in accordance with the procedures provided by JAMS or by application to the Superior Court. Unless the parties otherwise agree, the arbiter shall be a retired judge of the Superior or Appellate Courts of the State of California. The arbiter shall render his decision within thirty (30) days of his appointment. The fees of the arbiter shall be paid equally by the Parties.

For the first Lease Year following the Effective Date, the "**Priority Return**" shall be an amount equal to nine percent (9%) of the sum of the Stipulated Investment Basis plus any Qualified Capital Expenditures completed by Tenant during such Lease Year multiplied by a fraction, the numerator of which is the number of days between the Effective Date and the next January 1, and the denominator of which is 365. For any partial calendar year in the last year of the Term, the "**Priority Return**" shall be an amount equal to nine percent (9%) of the sum of the Stipulated Investment Basis plus any Qualified Capital Expenditures that have previously been completed by Tenant prior to the end of the Term multiplied by a fraction, the numerator of which is the number of days between the commencement of the final calendar year of the Term and the expiration or earlier termination of the Lease, and the denominator of which is 365.

"**Site Revenues**" shall mean all gross income, rentals, revenues, payments and consideration, of whatever form or nature, whether direct or indirect, received by or paid to or for the

account or benefit of Tenant from any and all sources, resulting from or attributable to the ownership, operation, leasing or occupancy of the Leased Premises, determined on the basis of sound cash basis accounting practices applied on a consistent basis, and shall include, but not be limited to, any and all of the following (but without duplication of any item): (i) gross fixed, minimum and guaranteed rentals paid by occupancy tenants of the Leased Premises under occupancy leases, any similar rentals paid by occupancy tenants under occupancy leases, licenses or concession agreements, and any similar rentals paid under the Carnival Subleases for the Leased Premises and the adjacent areas subject to the Submerged Land and Water Area Lease, and any successor or replacement lease to those Carnival Subleases; (ii) receipts, revenues, rents, income or similar revenues (from both cash and credit transactions) received for the use of guest rooms, banquet rooms, and meeting rooms and all other income attributable to use or occupancy of any portion of the Leased Premises, calculated on a cash basis (whether in cash or on credit); (iii) all receipts, revenues, income, proceeds of sale and compensation for services of every kind or similar revenues (from both cash and credit transactions) received from food and beverage room service, from the operation of all restaurants, banquet facilities and/or vending machines and/or food or beverage concessions on the Leased Premises, and from the operation of all bars and/or lounges, and all other income attributable to the sale of any food and beverages on the Leased Premises, calculated on a cash basis (whether in cash or on credit), including any insurance proceeds and/or any amount recovered in any legal action or proceeding or settlement thereof that represents compensation for the loss or reduction of revenues; (iv) overage, additional, participation, percentage and similar rentals paid by occupancy tenants under occupancy leases, licenses or concession agreements and any similar rentals paid under the Carnival Subleases for the Leased Premises and the adjacent areas subject to the Submerged Land and Water Area Lease, and any successor or replacement lease to those Carnival Subleases; (v) amounts paid as a result of provisions in occupancy leases, licenses or concession agreements permitting the landlord thereunder to receive or share in receipts from the subleasing of space or assignment of such occupancy lease, license or concession agreement; (vi) rents and receipts from licenses, concessions, vending machines and similar items; (vii) other fees, charges or payments not denominated as rental but payable for or in connection with the rental or use of office, retail, storage, parking, or other space in the Leased Premises, including any cost reimbursements or pass through reimbursements or triple net charges received from any Sublessees or other users of the Property; (viii) consideration received in whole or in part for the cancellation, modification, extension or renewal of an occupancy lease, license or concession agreement; (ix) proceeds of any rental or business interruption insurance or compensation for a Partial Taking or temporary Taking of the Leased Premises (to the extent such compensation is attributable to lost Site Revenues); (x) trademark revenues, licensing fees, and intellectual property revenues due to use of the name, likeness or other intangible rights associated with the Queen Mary; (xi) revenues generated by special events on the Leased Premises, including, without limitation, revenues generated from events or activities in the Special Events Park; and (xii) any other revenues or proceeds of a similar nature or character to the revenues described above or otherwise attributable to ownership, use, operation or occupancy of the Property or the Carnival Subleases. Any payments in the nature of Site Revenues from the Leased Premises made to or for the benefit of any Affiliate, agent, representative or employee of Tenant for the purpose of understating or which has the effect of understating Site Revenues which would otherwise be payable to Tenant, shall be considered Site Revenues for purposes of this Lease.

If Tenant or any Affiliate of Tenant is occupying or using the Leased Premises or a portion thereof, other than in connection with the provision of leasing, management, janitorial or other services to the Leased Premises and/ or the Improvements, without payment of rent or at a rate less than the fair market rental for the space at issue, then the rents received by Tenant from that space shall, for purposes of determining Site Revenues, be deemed to be an amount equal to the average rent for

comparable space on the Leased Premises. In the event that Landlord and Tenant are unable to agree on the fair market rental of the space at issue, or the average rent for comparable space, within twenty (20) days of Landlord and Tenant first meeting to determine such fair market rental value, then the matter shall be resolved by an appraisal conducted in accordance with the procedure set forth in Section 6.1.3 or in accordance with such other valuation procedure as the Parties may then approve.

Any non-cash consideration received for or on account of any of the foregoing (except for promissory notes, installment sales contracts or other like forms of payment that occur over an extended period of time (collectively, "**Installment Agreements**")) shall, for the purposes hereof, be valued at its fair market value when received and included in Site Revenues at the time it is received. If Landlord and Tenant are unable to agree on the fair market value of such non-cash consideration within twenty (20) days of Landlord and Tenant first meeting to determine such fair market value, then the matter shall be resolved by an appraisal conducted in accordance with the procedure set forth in Section 6.1.3 or in accordance with such other valuation procedure as the Parties may then approve.. Any payments under or with respect to any Installment Agreement or an assignment thereof (including without limitation assignments for security purposes) shall be included in Site Revenues at the time received. With respect to any lease made between Tenant, as lessor, and any Affiliate of Tenant, as lessee, if the lessee thereunder does not itself occupy or use all such leased property but instead assigns or subleases all or any portion of those leased premises, then any rental or other consideration derived from such sublease or assignment in excess of the rental payable by such lessee to Tenant (which shall be allocated to such subleased space, if applicable, on a square footage basis) shall be included within "**Site Revenues**" in addition to all rental payable by such Affiliate as lessee under its lease.

"**Operating Expenses**" shall mean those ordinary and necessary expenses incurred in the operation of the Leased Premises determined in accordance with generally accepted accounting principles and the 11<sup>th</sup> Revised Edition (2014) of the Uniform System of Accounts for the Lodging Industry as it may be amended or updated and the rent payments made by Tenant under the Submerged Land and Water Area Lease; provided, that, notwithstanding anything herein to the contrary, the following items shall not constitute operating expenses: rent or other payments made to Landlord under this Lease, principal and interest payments on debt, capital expenditures, depreciation, income taxes, amortization of loan points, reserves for replacement, including any deposits to the BRMP Fund (unless and until allied to an otherwise qualifying Operating Expense), any expenditures from the HPCIP Fund, and those matters expressly excluded from the Operating Expenses under Section 4.1.3.2.

#### 4.1.3.2 Exclusions From Site Revenues and Operating Expenses.

Notwithstanding anything included in the above definition of "**Site Revenues**" or "**Operating Expenses**" that is or appears to be to the contrary, there shall be excluded (the "**Exclusions**") from Site Revenues and/or Operating Expenses, as further described below:

4.1.3.2.1 Any security or other like deposits of Tenant's sublessees shall be excluded from Site Revenues unless and until they are actually applied to rental owed.

4.1.3.2.2 Tips and service charges collected for payment to employees shall be excluded from Site Revenues and Operating Expenses.

4.1.3.2.3 All sums collected for sales taxes, transient occupancy taxes, luxury taxes, consumers' excise taxes, gross receipt taxes and similar taxes required by law, whether now or hereafter in force, to be collected from customers, patrons or guests of the Leased Premises with respect to any business conducted on the Leased Premises by Tenant shall be excluded from Site Revenues and Operating Expenses.

4.1.3.2.4 Proceeds from the sale, financing or refinancing of the Improvements and/or Leased Premises or any interest therein shall be excluded from Site Revenues.

4.1.3.2.5 Proceeds from a Taking of the Leased Premises shall be excluded from Site Revenues (other than the proceeds from a Partial Taking or a Taking for temporary use which are attributable to lost Site Revenues).

4.1.3.2.6 Proceeds from any policies of insurance maintained by Tenant with respect to the Leased Premises shall be excluded from Site Revenues (other than proceeds from any rental interruption insurance or proceeds to the extent the same are in reimbursement of or applied to Operating Expenses, which proceeds shall be included in Site Revenues).

4.1.3.2.7 Bona fide late charges and interest payable by Sublessees and interest accruing on the investment of funds by Tenant shall be excluded from Site Revenues.

4.1.3.2.8 Any and all settlements or awards for damages, costs of collection or suit, and attorneys' fees recovered by Tenant for breach of any Sublease shall be excluded from Site Revenues; provided, however, that there shall be included in Site Revenues the portion of any such settlement or award which is attributable to damages for nonpayment of rent or other amounts that, if paid to Tenant under the Sublease, would have constituted Site Revenues as defined above and any portion of the award to Tenant to the extent it reflects recovery or payment of funds applied or to be applied to Operating Expenses recognized or to be recognized by Tenant.

4.1.3.2.9 The selling price of all merchandise returned by customers and accepted for full credit, or the amount of discounts, refunds and allowances made on such merchandise to the extent such amount was previously included in Site Revenues shall be excluded from Site Revenues.

4.1.3.2.10 Sums and credits received in the settlement of claims for loss of or damage to merchandise to the extent applied to replacement thereof shall be excluded from Site Revenues and such replacement costs shall be excluded from Operating Expenses.

4.1.3.2.11 Any sums retained or received by third parties (not owned by or affiliated with Tenant), for use or rental of pay telephones, stamp machines, music machines or amusement machines shall be excluded from Site Revenues, provided, that any rents, fees, commissions or other like compensation received by Tenant or its affiliates are included in Site Revenues.

4.1.3.2.12 Gift certificates or similar vouchers, until such time as they shall have been converted into a sale by redemption, shall be excluded from Site Revenues.

4.1.3.2.13 Any sums retained or received by third parties (not owned by or affiliated with Tenant) (i) as commissions and/or fees in connection with ticket sales for events held on

the Leased Premises and/or (ii) as discounts, fees, and/or commissions in connection with credit card transactions shall be excluded from Site Revenues and Operating Expenses.

4.1.3.2.14 Any sums received from the conduct of any Lotto activity shall be excluded from Site Revenues, except to the extent retained or received for the rendition of services.

4.1.3.2.15 The rent received by Tenant under the Carnival Dome Sublease which is paid to Landlord as Passenger Fee Rent under Section 4.1.4 shall be excluded from Site Revenues to the extent of such Passenger Fee Rent payments; provided that all revenues or payments received under the Carnival Subleases which are retained by Tenant and not paid to Landlord as Passenger Fee Rent shall be included in Site Revenues.

4.1.3.2.16 The value of free rent or rental abatements granted or allowed to unaffiliated Sublessees shall be excluded from Site Revenues and Operating Expenses.

4.1.3.2.17 The rent received by Tenant under the Catalina Channel Express Permit which is paid to Landlord as Pass Through Rent under Section 4.1.2 shall be excluded from Site Revenues; provided that all revenues or payments received under the Catalina Channel Express Permit which are retained by Tenant and not directly passed through to Landlord, including parking revenue, shall be included in Site Revenues.

Notwithstanding anything herein to the contrary, if Tenant structures the terms or administration of any Subleases for the purpose or with the intent or effect of understating the Net Site Revenues that would otherwise result from normal, customary and commercially reasonable practices, then Landlord shall have the right to challenge such practice or procedure, including any resulting claimed Exclusion, by a judicial reference proceeding, and such understatement of Net Site Revenues, including any improper or misleading Exclusion claimed in connection therewith, shall be disallowed if it was created for the purpose or has the effect of understating Net Site Revenues in a manner that does not reflect normal, customary and commercially reasonable practices.

#### 4.1.4 Passenger Fee Rent.

For each Lease year or portion thereof during the Term, Tenant shall also pay to Landlord, as additional rent hereunder and in addition to the Minimum Rent paid pursuant to Section 4.1.1, and the Pass Through Rent paid pursuant to Section 4.1.2, and the Percentage Rent paid pursuant to Section 4.1.3, the amount (the "**Passenger Fee Rent**") set forth below. Not later than thirty (30) days after the end of each of the first five (5) Lease Years during the Term, Tenant shall pay to Landlord, as the initial Passenger Fee Rent payable hereunder, an amount equal to One Hundred Percent (100%) of the passenger fees paid by the Sublessee under Section 4(b) of the Carnival Sublease during the prior Lease Year (without any reduction therein or offset thereto) up to the maximum amount of Two Million One Hundred and Fifty Thousand Dollars (\$2,150,000) ("**\$2.15M**"). Not later than thirty (30) days after the end of the sixth (6<sup>th</sup>) Lease Year, and not later than thirty (30) days after the end of each Lease Year thereafter during the Term, Tenant shall pay to Landlord, as the on-going Passenger Fee Rent payable hereunder, an amount equal to Fifty Percent (50%) of all passenger fees paid by the Sublessee under Section 4(b) of the Carnival Sublease during the prior Lease Year (the "**Prior Year Sublease Passenger Fees**"); provided, that, except as provided in the last sentence of this paragraph, such Passenger Fee Rent payment shall in no event be less than the "**Passenger Fee Rent Baseline**" (as hereinafter defined). The "Passenger Fee

Rent Baseline" shall mean the following amounts: (i) for Lease Years Six (6) through Fifteen (15), the Passenger Fee Rent Baseline shall be One Million Five Hundred Thousand Dollars (\$1,500,000), (ii) for Lease Year Sixteen (16) the Passenger Fee Rent Baseline shall be an amount equal to the sum of \$2.15M, plus an amount equal to \$2.15M times a fraction, the numerator of which is the CPI for the third month prior to the end of the 16<sup>th</sup> Lease Year and the denominator of which is the CPI for the third month prior to the Effective Date, provided that the increase in the Passenger Fee Rent Baseline in the Sixteenth (16<sup>th</sup>) Lease Year shall not exceed three percent (3%) per annum for each Lease Year commencing with the Effective Date and continuing through the Sixteenth (16<sup>th</sup>) Lease Year (i.e., not more than a cumulative increase of 48% over such 16 year period), and (iii) for each subsequent Lease Year, the Passenger Fee Rent Baseline shall be an amount equal to the sum of the Passenger Fee Rent Baseline in effect for the prior Lease Year plus an amount equal to such Passenger Fee Rent Baseline for the prior Lease Year multiplied by a fraction, the numerator of which is the CPI for the third month prior to the end of the current Lease Year and the denominator of which is the CPI for the third month prior to the end of the prior Lease Year; provided, that the increase in the Passenger Fee Rent Baseline in the Seventeenth (17<sup>th</sup>) Lease Year and in each Lease Year thereafter shall not exceed three percent (3%) per annum. As set forth above, if it is necessary in any Lease Year to allocate more than Fifty Percent (50%) of the Prior Year Sublease Passenger Fees to Landlord in order for Landlord to receive the applicable Passenger Fee Rent Baseline amount, then such excess allocation shall be made to Landlord and Landlord's right to receive the applicable Passenger Fee Rent Baseline shall control over the otherwise applicable Fifty/Fifty allocation contemplated by the Parties; provided, that, notwithstanding anything above to the contrary, in no event shall Tenant have an obligation to pay Landlord more than 100% of the Prior Year Sublease Passenger Fees received even if those Prior Year Sublease Passenger Fees are less than the applicable Passenger Fee Rent Baseline. In connection with each payment of Passenger Fee Rent to Landlord, Tenant shall provide Landlord with a copy of all supporting documents received by Tenant from its Sublessee with respect to the amount and calculation of passenger fees paid by that Sublessee to Tenant.

The above 50/50 allocation of Prior Year Sublease Passenger Fees differs from the allocation originally contemplated by Landlord and Tenant and reflects Landlord's additional assistance to Tenant to support Tenant's construction of a new cruise line passenger terminal facility to service Carnival's passenger service requirements outside of the Dome in accordance with the provisions, requirements and terms of the Carnival Dome Sublease (the "**Replacement Passenger Facility**"). The original allocation of Prior Year Sublease Passenger Fees contemplated by Landlord and Tenant provided that Landlord would receive an amount equal to the sum of (i) One Hundred Percent (100%) of all Prior Year Sublease Passenger Fees each Lease Year up to the maximum amount of \$2.15 per passenger embarking, disembarking or transiting through the Carnival facility during that prior Lease Year (such determination to be made on a per passenger basis and not on an assumed collection of \$2.15 (or any other specific amount) per passenger), plus (ii) Fifty Percent (50%) of all Prior Year Sublease Passenger Fees which are in excess of that base payment to Landlord (the foregoing is referred to as the "**Original Planned Allocation**"). Tenant hereby covenants to Landlord, that in consideration for this revised allocation of Prior Year Sublease Passenger Fees, Tenant will construct and open the Replacement Passenger Facility within ten (10) Lease Years after the Effective Date. If Tenant fails to complete the Replacement Passenger Facility and obtain Carnival's approval for opening and operation of such Replacement Passenger Facility within said ten (10) Lease Year period, then, as Landlord's sole and exclusive remedy for that breach, Tenant shall pay to Landlord an amount equal to the greater of (i) the Original Planned Allocation, or (ii) the applicable passenger fees payable to Landlord under the prior paragraph of this Section 4.1.4 (the "**Alternate Formula**") for each Lease Year beginning with the Sixth Lease Year and continuing for each Lease Year thereafter until the Replacement Passenger Facility has been completed and has been



accepted by Carnival and opened for operation. Such payments shall be made to Landlord not less than sixty (60) days after the end of the Lease Year to which they apply. If, for any reason, the payment required by this paragraph is required to be calculated and paid with respect to more than one Lease Year prior to the current Lease Year, such catch up payments shall be made concurrent with the current Lease Year payment, and, with respect to any payments attributable to any prior Lease Years, such payment shall include interest at the Agreed Rate from the date such amount would have originally been payable in the absence of a change to the passenger fee rent formula and the date such payment is actually made pursuant to this sentence. Any payment required under this paragraph shall constitute additional rent payable by Tenant, and the failure to pay any such amount when due shall constitute a material breach of this Lease for failure to pay Rent. Notwithstanding anything above to the contrary, Tenant shall have the ability to substitute the construction of a replacement public improvement to the Project in lieu of the Replacement Passenger Facility described above (the "**Replacement Public Improvement**") and, upon timely construction of such Replacement Public Improvement in lieu of the Replacement Passenger Facility, the Tenant shall be treated as though it had timely completed the Replacement Passenger Facility and the provisions of this paragraph shall not apply to impose any additional Passenger Fee Rent payment obligation upon Tenant; provided, that to receive the benefit of this sentence, (i) Tenant shall complete such Replacement Public Improvement within the same time frame as required with respect to the Replacement Passenger Facility (i.e., within ten (10) Lease Years after the Effective Date), (ii) such Replacement Public Improvement shall have been approved by Landlord, acting in its sole but good faith discretion, as a qualifying replacement improvement in terms of its comparability to the Replacement Passenger Facility with respect to the direct and indirect public benefits of such improvement and the absence of further incremental revenue generated to Tenant from such improvement (provided that to the extent such proposed Replacement Public Improvement would have a construction cost greater than the projected cost of the Replacement Passenger Facility, the fact that such proposed Replacement Public Improvement is expected to generate revenues sufficient to support such excess costs over and above the cost of the Replacement Passenger Facility shall not in itself disqualify such proposed replacement facility as a qualifying Replacement Public Improvement), (iii) such Replacement Public Improvement shall be comparable in its cost of construction to the projected cost of constructing the Replacement Passenger Facility of which it is in lieu; (iv) such Replacement Public Improvement must be a Project improvement that was not contemplated in the original Project scope contemplated by the Parties as of the Effective Date; and (v) Tenant shall have demonstrated to Landlord, acting in its sole but good faith discretion, that construction of the Replacement Passenger Facility has been rendered infeasible due to design or operational requirements for such facility being demanded by the tenant under the Carnival Dome Sublease consistent with such tenant's rights under that Carnival Dome Sublease.

Any passenger fees or other revenue received by Tenant under the Carnival Sublease and not required to be paid to Landlord as Passenger Fee Rent will be retained by Tenant but will constitute Site Revenues and will be included in Tenant revenues reported for purposes of measuring Tenant's Percentage Rent. The Passenger Fee Rent received by Landlord will be deposited in the HPCIP Fund further described in Section 7.3.1; provided, that Landlord may retain from the amounts deposited to the HPCIP Fund (i) those amounts paid to City as "**Debt Service Reimbursements**" under Section 7.3.1 and (ii) an amount equal to up to ten percent (10%) of the cumulative amount of those Passenger Fee Rent deposits to the HPCIP Fund during the Term which ten percent amount may be applied to offset and fund Landlord's administrative and operating costs of this Lease and the implementation thereof. If and to the extent Tenant fails to timely make any required Passenger Fee Rent payment more than two (2) times during any five (5) year period which failure is not cured within any applicable cure period or if it is determined that Tenant has negligently, willfully or repeatedly (for three (3) or more consecutive years)

understated the Passenger Fee Rent due to Landlord by more than five percent (5%) with respect to any Lease Year, Landlord shall have the right, upon written notice to the Sublessee under the Carnival Dome Sublease and without any further consent or approval of Tenant, to direct that all future passenger fee payments by the Sublessee under the Carnival Dome Sublease be made directly to Landlord, and, without limitation of the foregoing, Tenant shall promptly take any steps and execute and deliver any documents required to confirm or facilitate such direct payment and shall promptly and fully cooperate therewith. Tenant shall not take any action with respect to the Carnival Subleases or the Submerged Land and Water Area Lease that would adversely impact the Passenger Fee Rent payable to Landlord as provided above, including any reduction, waiver or limitation of the passenger fees now payable under the Carnival Dome Sublease, without the prior written authorization of the Landlord which authorization shall not be unreasonably withheld, conditioned or delayed, and, as set forth in more detail in Section 9.2.3, shall not amend, modify, alter or otherwise change the Carnival Subleases without Landlord's prior written approval, which shall not be unreasonably withheld. Tenant also covenants and agrees to strictly enforce and diligently pursue all steps necessary to cause performance of the obligations of the Sublessee under the Carnival Subleases so that Landlord receives the contemplated benefits of the Passenger Fee Rent payments, and, as set forth above, in the event of Tenant's failure to do so, Landlord shall have the right to take such actions on behalf of Tenant and at its expense, and Tenant shall cooperate therewith, including taking such actions and executing such documents as reasonably requested by Landlord to facilitate such action. Tenant's reimbursement to Landlord of any costs incurred by Landlord shall be due upon demand and shall be treated as additional rent payable hereunder.

#### 4.2. Change of Ownership and Financing Events

In addition to the Annual Rental to be paid by Tenant pursuant to this Article 4, upon each Change of Ownership or Financing Event (each as hereinafter defined), Tenant shall pay to Landlord the applicable "**Net Proceeds Share**" as more particularly described. All Encumbrances and Transfers are further subject to certain restrictions and Landlord approvals as provided in Articles 8 and 9.

##### 4.2.1 Definitions.

As used in this Section 4.2, the following terms have the meanings set forth below:

(a) "**Aggregate Transfer**" means the total percentage of the shares of stock, partnership interests, membership interests, or any other equity interest (which constitute beneficial interests in Tenant, this Lease or a "**Transfer Sublease**" (as defined below), as appropriate) transferred in all transactions (other than "**Excluded Transfers**" (as hereinafter defined) and without double counting of successive transfers of the same interest) occurring since the later of (a) the Effective Date, or (b) the most recent Change of Ownership.

(b) "**Base Value**" means the Eligible Basis of the Leased Premises.

(c) "**beneficial interest**", "**beneficial interest in this Lease**", or "**beneficial interest in a Transfer Sublease**" mean the interests of the natural persons who comprise the ultimate owner or owners of Tenant's interest in this Lease, or a sublessee's interest in a Transfer Sublease, whichever is appropriate, regardless of the form of such ownership and regardless of whether such interests are owned through corporations, trusts, partnerships, limited liability companies or layers thereof; provided, however, that if an entity with an ownership interest in this Lease or a Transfer Sublease is a

partnership, corporation or limited liability entity (a) whose beneficial interest in this Lease or a Transfer Sublease, whichever is appropriate, comprises less than thirty percent (30%) of its total assets, or (b) in which no five (5) shareholders, partners or members together own more than fifty percent (50%) of the partnership interests, shares, membership interests or other equity interests in the entity, then for the purposes of this Section 3.2 hereof, the entity itself shall be deemed to be the ultimate owner of the beneficial interest in this Lease or a Transfer Sublease, as appropriate, and the owners of such entity shall not be treated as the ultimate owners of such beneficial interest.

(d) **"Capital Event"** means a Change of Ownership or a Financing Event.

(e) **"Change of Ownership"** means (i) any sale, assignment, or transfer of this Lease or any Transfer Sublease (it being understood that the granting of a security interest in connection with the creation of a Leasehold Mortgage does not constitute such a Change of Ownership), (ii) Tenant's entry into of a Transfer Sublease, or (iii) any transaction or series of related transactions not described in the immediately preceding clauses (i) or (ii) which constitute an Aggregate Transfer of more than fifty percent (50%) of the beneficial interests in, or a Change of Control of, Tenant, this Lease or a Transfer Sublease (it being understood that the granting of a security interest in connection with the creation of a Leasehold Mortgage does not constitute such an Aggregate Transfer or Change of Control). For purposes of this Lease, **"Change of Control"** shall refer to a transaction whereby the transferee acquires a beneficial interest in Tenant, this Lease or a Transfer Sublease which brings its cumulative beneficial interest in Tenant, this Lease or a Transfer Sublease, as appropriate, to over fifty percent (50%).

(f) **"Documented Transaction Costs"** means all brokerage commissions, consultant fees, title and escrow costs, documentary transfer taxes, recording fees, attorneys' fees, lender fees, lender prepayment fees and other bona fide closing or transaction costs actually paid by Tenant to unrelated third parties (or to Affiliates, but only to the extent that the amounts paid to Affiliates are not in excess of the amounts that would be paid for the same or equivalent services in an arm's length transaction between unrelated parties acting reasonably, in which case only such excess amount shall be excluded) and documented to the reasonable satisfaction of Landlord, which costs are directly attributable to the referenced transaction.

(g) **"Financing Event"** means the making of any loan secured by a Leasehold Mortgage. The term Financing Event shall not include the execution of the first Leasehold Mortgage following Tenant's acquisition of the Leased Premises or the refinancing of such first Leasehold Mortgage; provided that, to qualify for such exclusion, that first Leasehold Mortgage or refinancing thereof, as applicable, must occur within eighteen (18) months of Tenant's acquisition of the Leased Premises.

(h) **"Gross Proceeds"** means (i) the gross principal amount of the loan or other encumbrance creating the Financing Event or (ii) the gross sale or transfer proceeds or other consideration given for the interests transferred in a Change of Ownership, including, without limitation, cash, the outstanding balance of any Leasehold Mortgage that is assumed or taken subject to by the transferee, the outstanding balance of any Leasehold Mortgage that is repaid by the transferee in connection with such Change of Ownership (but without double counting of any consideration already accounted for in the form of cash), and the fair market value in cash of any noncash consideration (including the present value of any Purchase Money Note, as described in Section 4.2.2(f)).

(i) **"Net Proceeds Share"** means the portion of any Net Capital Proceeds to be paid to Landlord.

(j) **"Net Site Revenues"** means the Site Revenues less the Exclusions.

(k) **"Stipulated Return"** means an aggregate return to Tenant from all Capital Events occurring after the Effective Date that is equal to or greater than (i) two times the Base Value for any Capital Events that occur prior to the fifth (5<sup>th</sup>) anniversary of the Commencement Date; (ii) two and one-half (2½) times the Base Value for any Capital Events occurring on or after the fifth (5<sup>th</sup>) anniversary of the Commencement Date and prior to the tenth (10<sup>th</sup>) anniversary of the Commencement Date; and (iii) three (3) times the Base Value for any Capital Events occurring on or after the tenth (10<sup>th</sup>) anniversary of the Commencement Date.

(l) **"Transfer Sublease"** means a sublease or other like conveyance to a transferee of the right to use or possession of all or substantially all of the Leased Premises for a period, including options, of more than thirty-five (35) years or the remaining period of the Term, whichever is less; provided, that, in any event, a lease of less than ten (10) years shall not constitute a Transfer Sublease.

#### 4.2.2 Capital Event.

(a) Net Proceeds Share; Net Capital Proceeds. For any Capital Event, the Net Proceeds Share shall be an amount equal to twenty-five percent (25%) of the Net Capital Proceeds of such Capital Event.

(b) **"Net Capital Proceeds"** means the sum of the Gross Proceeds from all Capital Events less the sum of the following:

(i) Base Value;

(ii) The Stipulated Return;

(iii) The Documented Transaction Costs for the subject Capital Event, plus the sum of the amount of any previous Documented Transaction Costs paid in connection with any previous Capital Events; and

(iv) The sum of the amount of any previous Net Capital Proceeds (collectively, the **"Previous Net Proceeds Amounts"**) with respect to which a Net Proceeds Share amount was paid to Landlord pursuant to this Section 4.2.2.

Notwithstanding anything which is or appears to be to the contrary above, the permissible deductions from Gross Proceeds under Section 4.2.2 shall not include any foreign, U.S., state or local income taxes, franchise taxes, or other taxes based on income, nor any payments to an Affiliate of Tenant made in connection with the Change of Ownership which are in excess of the amounts that would be paid for the same or equivalent services in an arm's length transaction between unrelated parties acting reasonably in which event only such excess amount shall be excluded.

(c) Excluded Transfers.

Notwithstanding anything to the contrary contained in this Lease, no obligation to pay Landlord a Net Proceeds Share from a Capital Event shall arise on account of, or be created by, a Change of Ownership which results from any of the following transfers ("**Excluded Transfers**):

(i) a transfer by a direct or indirect partner, member, shareholder or other equity holder of Tenant, who was a direct or indirect partner, member, shareholder, or equity holder as of the Effective Date, to any other direct or indirect partner, member, shareholder or equity holder of Tenant, who was a direct or indirect partner, member, shareholder or equity holder as of the Effective Date (or, following the most recent Change of Ownership, a transfer by a direct or indirect partner, member, shareholder or other equity holder of Tenant, who was a direct or indirect partner, member, shareholder, or equity holder as of the date of such Change of Ownership which triggered an obligation to pay a Net Proceeds Share, to any other direct or indirect partner, member, shareholder or other equity holder of Tenant, who was a direct or indirect partner, member, shareholder, or equity holder as of the date of such Change of Ownership);

(ii) a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation;

(iii) a transfer for estate planning purposes of ownership interests in Tenant or in constituent entities of Tenant to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings, aunts, uncles, nieces, nephews, grandchildren and great grandchildren), or to a trust for the benefit of a member or members of the immediate family of the transferor, whether such transfer is the result of gift, devise, intestate succession or operation of law;

(iv) a transfer to a family member as a result of death;

(vi) a transfer of a beneficial interest resulting from trading in the stock or securities of an entity (a "**Public company**"), where such entity is a corporation or other entity whose stock (or similar security) is traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

(vii) a mere change in the form, method or status of ownership that does not result in any transfer of beneficial interests between or among individuals and/or entities;

(viii) any transfer resulting from a Taking by Landlord and/or City;

(ix) a transfer to an Affiliate without consideration;

(x) a transfer resulting from a foreclosure or deed or assignment in lieu of foreclosure of a permitted Leasehold Mortgage or a UCC sale in connection with enforcement of remedies under such a permitted Leasehold Mortgage (it being understood and agreed that, notwithstanding any provisions of Section 4.2.2 to the contrary, the indebtedness owed to the lender on the date of the foreclosure or deed in lieu of foreclosure (including late charges, penalties or default interest) shall, to the extent it exceeds the otherwise applicable deduction from Gross Proceeds under

Section 4.2.2(b)(i)-(iv), be deducted from the Gross Proceeds received by such lender in a subsequent sale of the Leased Premises for purposes of calculating the Net Capital Proceeds received by such lender);

(xi) a transfer which is a bona fide gift without consideration;

(xii) Any assignment of Tenant's interest under this Lease (and/or as lessor or lessee under any sublease) to either a wholly owned subsidiary of Tenant or a limited liability company in which Tenant is the sole member ("**Subsidiary**"), where the assignee assumes in writing all of Tenant's obligations under this Lease and/or where such assignment is pursuant to the requirement of a Lender in connection with a Leasehold Mortgage and/or the reassignment of such interest to Tenant by the Subsidiary;

(xiii) Any assignment of direct or indirect ownership interests in Tenant held by a partner, member, shareholder or other equity holder to a Lender as additional consideration for a loan to Tenant and/or a Subsidiary; and

(xiv) Any assignment of direct or indirect ownership interests in Tenant held by a partner, member, shareholder or other equity holder to employees of, consultants to, and/or any other persons who, directly or indirectly furnish services to, or for the benefit of, Tenant in consideration for those services.

(d) Interests Held by Entities. Except as otherwise provided herein, an interest in Tenant, this Lease or a Transfer Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Tenant or the sublessee under a Transfer Sublessee, as appropriate, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Tenant, this Lease or a Transfer Sublease, as appropriate, and any transfers thereof.

(e) Ownership of Multiple Assets. The proceeds of any event constituting or giving rise to a Change of Ownership shall be apportioned to this Lease or a Transfer Sublease, whichever is appropriate, and to any other assets transferred in the same transaction in proportion to the relative fair market values of the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to this Lease, a Transfer Sublease or the beneficial interests therein, whichever is appropriate. Notwithstanding anything herein to the contrary, in the event of a concurrent sale or transfer or other Capital Event involving both this Lease and the Submerged Land and Water Area Lease, all gain or proceeds in excess of basis from such Capital Event shall be allocated to this Lease, and, in no event, shall any portion of the gain (or any portion of the Net Capital Proceeds in excess of the Tenant's basis in the improvements on the Submerged Land and Water Area Lease) be allocated to the Submerged Land and Water Area Lease or any improvements thereon.

(f) Purchase Money Notes/Stock Consideration. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "**Purchase Money Note**"), the applicable portion of the Net Proceeds Share, if any, shall be payable by Tenant in cash at the time Tenant receives payment under the Purchase Money Note;

provided, however, that in no event shall the maturity date of such Purchase Money Note be later than five (5) years following the closing of the applicable Change of Ownership. If the transferor of an interest accepts stock or other non-cash consideration in payment of all or a portion of the acquisition cost, the fair market value of the stock or other non-cash consideration shall be treated as having been received in the form of cash.

(g) Obligation to Pay Net Proceeds Share. With respect to a Change of Ownership giving rise to the payment of a Net Proceeds Share, the obligation to pay the Net Proceeds Share shall be the joint and several obligation of the transferor and transferee. In the event that the Net Proceeds Share is not paid when due, then such amount shall bear interest at the Agreed Rate from the date due until the date paid and, in the event such Net Proceeds Share and any interest and late fees thereon is not paid when due (which shall be the date of closing for any undisputed amount and thirty (30) days after the arbitrator's determination of the amount owed for any disputed amount), Landlord shall have the remedies set forth in Section 14.6.

(h) Application of Section 4.2.2. The provisions of Section 4.2.2 hereof shall apply to all transfers of beneficial interests in this Lease or a Transfer Sublease which constitute a Change of Ownership, unless such transfers are otherwise expressly excluded pursuant to this Lease. Furthermore, the provisions of Section 4.2.2, and the principles set forth therein, shall apply to any transfer, or series of transfers, which is structured for the purpose of avoiding the obligation to pay the Net Proceeds Share set forth in Section 4.2.2 and which, viewed in totality, would otherwise constitute a Change of Ownership. The parties acknowledge the technical nature of the provisions of this Section 4.2 and confirm their intent that, in the event of an ambiguity or uncertainty of application, the provisions shall be applied consistent with their overall intent to provide for the payment of the applicable Net Proceeds Share upon transactions effecting a Capital Event.

Notwithstanding any contrary provision in Section 4.2.2, if, in connection with any Capital Event, both a Change of Ownership and a Financing Event occurs, the Net Capital Proceeds resulting from the Financing Event shall be ignored and the Net Capital Proceeds of the Change in Ownership shall be controlling for purposes of determining whether there is a Net Proceeds Share to be paid to Landlord.

#### 4.2.3 Intentionally Omitted.

#### 4.2.4 Payment.

Subject to Section 4.2.2(f), the Net Proceeds Share shall be due and payable concurrently with the consummation of the transfer giving rise to the obligation to pay such amount (e.g., on the date of the close of escrow or transfer for a Change in Ownership or on the date of recording of a deed of trust and the funding of the applicable loan in the case of a Financing Event, as applicable) and shall be the joint and several obligations of the transferee and transferor but not of the Lender funding the applicable loan in the case of a Financing Event. Any Net Proceeds Share not paid when due shall be subject to interest on such Net Proceeds Share at the Agreed Rate from the date due until the date paid. In the event that the proceeds of the transaction giving rise to the obligation to pay the Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership. Notwithstanding the foregoing, in the case of a Change of Ownership resulting from Tenant's granting of a Transfer

Sublease, the Net Proceeds Share shall be payable to Landlord as and when the applicable Net Transfer Proceeds are received, with the Net Proceeds Share being equitably apportioned to the payments derived by Tenant from said Change of Ownership.

Not later than twenty (20) Business Days prior to the consummation of a Capital Event, Tenant shall provide to Landlord its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom ("**Calculation Notice**"), which Calculation Notice shall contain such detail as may be reasonably requested by Landlord to verify the calculation of the Net Proceeds Share. Within ten (10) Business Days after receipt of the Calculation Notice, Landlord shall notify Tenant in writing as to Landlord's agreement or disagreement with the amount of the Net Proceeds Share set forth therein. If Landlord objects to the amount of such Net Proceeds in the Calculation Notice, Landlord shall provide sufficient detail with Landlord's objection to reasonably justify such objection to the Calculation Notice. Failure of Landlord to approve the Calculation Notice within such ten (10) Business Day period shall be deemed to constitute Landlord's disapproval thereof. If the Parties fail to agree upon the Net Proceeds Share within five (5) Business Days after Landlord's disapproval of the Calculation Notice, the dispute shall be resolved by binding arbitration. Within ten (10) Business Days after the end of the foregoing five (5) Business Day period, the Parties shall agree upon an individual who shall act as an arbiter of such dispute in accordance with the commercial arbitration rules of JAMS. If the Parties fail to agree upon such an arbiter within said ten (10) Business Day period, then the same shall be designated in accordance with the procedures provided by JAMS or by application to the Superior Court. Unless the parties otherwise agree, the arbiter shall be a retired judge of the Superior or Appellate Courts of the State of California. The arbiter shall render his decision within thirty (30) days of his appointment. The fees of the arbiter shall be paid equally by the Parties. In the event a dispute regarding the Net Proceeds Share exists at the time of the consummation of a transfer giving rise to the obligation to pay such amount, the transaction may still be consummated, provided that all of the other requirements with respect to its consummation as set forth in this Lease are satisfied, and provided further that Tenant timely pays to Landlord the undisputed portion of the Net Proceeds Share at the closing of the transaction. In the event of any such dispute, the former and current Tenant shall remain jointly and severally liable for payment of the disputed amount to Landlord within ten (10) Business Days after the determination thereof. Such unpaid amount shall bear interest from the date it should have originally been paid until the date paid and the failure to timely pay such amounts following the arbitrator's determination shall constitute a breach of this Lease for which Landlord shall have all of the remedies provided by Section 14.6. Landlord's failure to contest the amount of the payment of any Net Proceeds Share or to contest any Calculation Notice or Landlord's approval of a Calculation Notice shall not, in any event, constitute a waiver of Landlord's rights with respect to any underpayment that may thereafter be discovered as a result of an audit of Tenant's Records by Landlord, or otherwise; provided that, if Landlord has approved a Calculation Notice, no late fee or interest shall be imposed upon any unpaid Net Proceeds Share unless and until Tenant fails to pay such additional amount within twenty (20) Business Days after written notice of the amount subsequently determined to be due and such amount has been mutually agreed upon by Landlord and Tenant or otherwise established by arbitration.

#### 4.2.5 Shareholder, Partner, Member, Trustee and Beneficiary List.

Prior to the Effective Date, promptly after each subsequent Capital Event, and upon the request of Landlord from time to time (which requests shall be no more frequent than once per year unless Landlord is required by applicable law to make such request more frequently), Tenant shall provide Landlord with an updated schedule listing the names and mailing addresses, to Tenant's knowledge, of all holders of more than ten percent (10%) of the direct or indirect beneficial interests in Tenant, this Lease or



the sublessee under any Transfer Sublease. In the event that such beneficial interest holder is a trust, Tenant shall use reasonable efforts to obtain and to include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust; provided, however, that to the extent that Tenant is prevented by Governmental Restrictions from obtaining such information regarding the beneficiaries of said trust(s), Tenant shall have complied with this provision if Tenant uses its reasonable efforts to obtain such information voluntarily and provides Landlord with the opportunity to review any such information so obtained. Tenant agrees to use its reasonable efforts to provide Landlord with any additional information reasonably requested by Landlord in order to determine the identities of the holders of any beneficial interests in Tenant (or its constituent shareholders, partners, members or other interest holders), this Lease or a Transfer Sublease. Notwithstanding the foregoing, Tenant shall not be required to provide any information beyond the entity level necessary for administration of the foregoing provisions consistent with the provisions and limitations of Section 4.2.1(c).

#### 4.3. Maintenance of Books and Records: Inspection and Audit.

Tenant shall keep full, true and correct records of all Site Revenues and Exclusions and all Sublease payments or receipts (including all payments under the Catalina Express Permit and all passenger fees under the Carnival Dome Sublease), all other records necessary to accurately and fully verify the Base Value, Changes in Ownership, Documented Transaction Costs, Gross Proceeds, Net Capital Proceeds, Stipulated Return or otherwise relating to the amount or timing of any Net Proceeds Share payable to Landlord, and such other records as Landlord may reasonably request from time to time (the "Records"). The Records to be kept shall include but not be limited to all unbilled accounting documents, ledgers, bank deposit receipts, bank books, bank statements, federal, state and local tax returns, and other records reasonably necessary to verify the above matters for each calendar year. All Records shall be kept at Tenant's principal place of business for not less than four (4) years after the close of the calendar year to which they relate; provided, that Tenant may at reasonable times remove any or all Records or permit or cause them to be removed for legal or accounting purposes or for other purposes consistent with these provisions and this Lease. Without limitation of the foregoing, Tenant shall insure that all revenues and other income which is used to calculate or is related to the Rent payable hereunder is reported to and accounted for through the audited financial statements of Tenant, and no sources of income, including any special events income or Sublessee operations, are reported in a manner that would result in an "off the books" treatment of such revenues for purposes of Tenant's financial statements. Tenant shall, within a reasonable time after any requests by Landlord (which requests shall be made not more often than once every twelve (12) months unless Landlord is required by applicable law to make such request more frequently), furnish or cause to be furnished to Landlord, at Tenant's expense, such other financial information and reports with respect to the Leased Premises, including balance sheets, cash flow statements and reports of operations, all certified as to accuracy by an officer or manager of Tenant's, as Landlord may, from time to time, reasonably request and in a format and detail level acceptable to Landlord.

Landlord shall have the right (which right may not be exercised more than once during any twelve (12) months unless Landlord is required by applicable law to make such request more frequently), during regular business hours and from time to time after giving reasonable notice, to do any or all of the following: to audit the Records; to cause an audit of the Records to be made; to make copies of any and all of the Records; to examine any or all Subleases; and to make copies of any or all Subleases. Tenant shall deliver to Landlord, upon Landlord's request (which requests shall be made not more often than once every twelve (12) months unless Landlord is required by applicable law to make such request more frequently), a

true and complete copy of any Subleases and any rent rolls or other like financial records maintained with respect thereto. Tenant shall make all Records specified in the notice available at the time specified in the notice, if reasonable, and at the place where the Records are to be kept. Tenant agrees that it will, within a reasonable time after any requests by Landlord, furnish or cause to be furnished to Landlord, such other information with respect to the Leased Premises as Landlord may, from time to time, reasonably request (which requests shall be made not more often than once every twelve (12) months as to any particular lease or sublease unless Landlord is required by applicable law to make such request more frequently). All information so obtained by Landlord, its agents, consultants or employees shall be treated as confidential, except in any litigation or arbitration proceedings between the Parties or in any tax proceeding, and except, further, that Landlord may divulge the information to a prospective buyer or encumbrancer of Landlord's interest in the Lease or to a person or entity properly demanding the information and legally entitled thereto under applicable law. If requested in writing by Tenant, Landlord shall require its employees and agents reviewing any confidential records to sign an acknowledgement of their confidentiality obligations under the above provisions.

If an audit discloses that the Rent at issue (including the Net Proceeds Share payable to Landlord, if applicable) was understated by more than five percent (5%) or One Hundred Thousand Dollars (\$100,000); whichever is less, of their actual amount, Tenant shall pay the actual cost of that audit and investigation; otherwise, Landlord shall bear the cost of such audit and investigation. If an audit or investigation reveals that the applicable Rent amount has been miscalculated for any reason, the amount due shall be adjusted as appropriate, and the Party indebted, if any, shall, promptly after the correction, pay any difference for the period affected by said adjustment, together with interest thereon at the Agreed Rate from the date such payment was originally due until the date actually paid.

Notwithstanding the foregoing, (i) Landlord may not commence an inspection or audit of the Records with respect to any calendar year after the date that is four (4) years following Landlord's receipt of the Annual Statement with respect to such calendar year and (ii) if Tenant gives Landlord written notice of its disagreement with the results of Landlord's inspection or audit within thirty (30) days following receipt of such results, and if the Parties are unable to resolve such disagreement within thirty (30) days thereafter, such disagreement shall be resolved in accordance with the judicial reference provisions in Section 14.5, in which event reference to the term "**audit**" in the preceding paragraph shall refer to the final decision rendered in such judicial reference proceedings. Without limitation of the foregoing, or any other requirements or provisions of this Lease, Tenant shall also comply with those financial reporting and related requirements set forth on Schedule 1 attached hereto. In the event of any conflict between the provisions of this Lease and the requirements set forth on said Schedule 1, the more restrictive of those requirements shall prevail unless otherwise approved by Landlord in writing.

4.4. Late Charge; Interest; Miscellaneous.

Notwithstanding anything herein to the contrary, if Tenant fails to make any Rent payment due under this Lease within ten (10) Business Days after the same is due, then Tenant shall pay to Landlord a late charge equal to an additional five percent (5%) of the amount of such rent due as liquidated damages, it being agreed that such amount represents a reasonable estimate of the losses, costs and expenses (other than Landlord's foregone interest on the rent due) that Landlord will suffer in such circumstances. Notwithstanding the foregoing, if Tenant has not been more than ten (10) Business Days late in the payment of any of its Rent payments required during the prior twelve (12) month period, then the foregoing late charge shall not be payable with respect to the first late payment of Rent following such

twelve (12) month period unless such Rent payment is not made within five (5) Business Days following written notice of such delinquency to Tenant.

Acceptance of the Rent without the late charge will not constitute a waiver of Tenant's default with respect to such nonpayment of the late charge by Tenant, nor prevent Landlord from exercising any other rights and remedies available under this Lease. Landlord's failure to require or collect the late charge in any one or more instances shall not constitute a waiver of the right to collect subsequent late charges. In addition to the late charge described above, interest shall accrue at the Agreed Rate on all Rent which is not paid when due. Tenant acknowledges that such interest shall be applicable to all identified deficiencies in payment of Rent under this Lease, whether identified by audit or otherwise, and that interest on such amount shall accrue from and after the date when such amounts were originally due and payable as provided herein (as opposed to the date when such deficiencies are identified by Landlord). With respect to any deficiencies identified by audit, such deficiencies shall not incur a late charge unless Tenant fails to pay such deficiency within ten (10) Business Days after written notice thereof. All Rent shall be paid without deduction, abatement, offset, credit, withholding, prior notice or demand, except as otherwise expressly provided herein. The parties acknowledge that the payments to be made by Tenant under this Lease are unsubordinated and that all Rent is intended to be absolutely net to Landlord.

All payments of Rent shall be made to Landlord as they become due in lawful money of the United States of America by wire transfer or corporate check drawn on sufficient available funds, at such place as is designated herein by Landlord for the receipt of notices or such other place as shall be designated to Tenant by Landlord in writing from time to time.

#### 4.5. Negation of Partnership.

Nothing in this Lease shall be construed to render Landlord a partner, joint venturer, or associate in any relationship or for any purpose with Tenant, other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other.

### ARTICLE 5 USES

#### 5.1. Use of the Leased Premises.

Tenant covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Tenant, that during development and throughout use of the Leased Premises pursuant to this Lease, the Leased Premises shall not be improved, used or occupied in violation of any Governmental Restrictions. Furthermore, neither Tenant nor its successors or assigns shall maintain, commit, or permit the maintenance or commission on the Leased Premises, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Leased Premises, or any portion thereof.

Notwithstanding anything to the contrary in this Lease, including the general provisions of this Section 5.1 and the provisions of Sections 5.2 and 5.3, Tenant hereby covenants on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Tenant, that Tenant and such successors and assigns shall use the Leased Premises solely for the purpose of (i) operating the Queen Mary, including the Hotel operations therein in accordance with the requirements of and of the quality prescribed by this Lease, (ii) subleasing the Dome to Carnival Corporation in accordance with the terms of this Lease and the Carnival Dome Sublease, (iii) pursuing

development of the Development Lease Area pursuant to one or more Development Leases meeting the requirements and terms of this Lease, and (iv) pursuing such other legal uses properly permitted through the City of Long Beach consistent with other existing or contemplated uses of the Leased Premises, including, but not limited, public events, concerts and shows; provided, that the foregoing use restriction shall not be construed or understood to limit or restrict in any manner public access to and use of the Leased Premises as contemplated and required by Section 5.5 or to waive or limit any other governmental or legal requirements applicable to the use of the Leased Premises or any limitations on use set forth in this Lease. Tenant hereby agrees that all such uses shall be conducted in compliance with all requirements of and conditions imposed by this Lease, all Governmental Restrictions applicable to the Property and any approvals and permits issued by City in connection with approval of the Improvements, including, without limitation, all conditions of approval or mitigation measures adopted or imposed by City in connection with approval of the Improvements, which conditions and requirements are hereby incorporated by reference. Except as specifically provided herein, the Leased Premises shall be used for no other purpose without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

5.2. Active Public Use.

The Parties acknowledge that the ultimate objective of this Lease is the continuous use of the facilities and amenities located on the Leased Premises without discrimination as to race, gender, national origin, or religion, for the generation and realization of revenue therefrom. Accordingly, Tenant agrees and covenants that, subject to Force Majeure Delays described in Section 14.9, it will operate the Leased Premises continuously (subject to temporary, partial interruptions reasonably required for periodic maintenance, repair and necessary replacements or for the purposes of further developing the Queen Mary, the Dome, and the Development Lease Area) in light of these objectives, consistent with the operation of the project for its permitted uses, and that it will use commercially reasonable efforts so that Tenant and Landlord may obtain maximum direct and indirect revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives. The term "**Operate**" means Tenant will diligently and continuously pursue all commercially reasonable efforts necessary to maximize the effective use of all available commercial space within the Leased Premises.

5.3. Grants of Easements.

Tenant may enter into agreements granting easements over the Leased Premises provided they are limited to the expiration or sooner termination of this Lease, are subordinate to Landlord's fee interest, and will not interfere with any rights and remedies of Landlord hereunder. Tenant must obtain Landlord's prior written consent to any agreement that would grant an easement extending beyond the Term, or that would interfere with any of Landlord's rights and remedies hereunder; provided, however, that Landlord agrees not to unreasonably withhold, condition or delay consent to such Tenant request, including a request concerning public or private utility easements over the Leased Premises of the type that is customarily requested by a public or private utility in connection with development or use of property including any such easement that would extend beyond the Term. A grant of easement made in accordance with this Section 5.3 shall not be deemed a "**Transfer**" within the meaning of Section 9.2. Landlord further agrees that its consent shall not be required for and it will join in the execution of any easements over the Leased Premises which are limited to the Term and which are necessary to provide utilities to the Leased Premises; provided, Landlord shall not be obligated to incur any cost or expense in

connection with such an easement and Tenant shall indemnify, defend and hold Landlord and Landlord's Representatives harmless from any Losses and Liabilities arising from the creation or use of such easements during the Term, except to the extent arising from the active negligence or willful misconduct of Landlord or its employees, agents or contractors. Tenant expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record. This Lease is also subject to the reserved rights of Landlord to grant, install, construct, maintain, service and operate sanitary sewers, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Leased Premises, together with the right of Landlord to transfer or assign such rights to other public agencies as long as such actions do not unreasonably interfere with Tenant's access to, use of or further development of the Leased Premises.

5.4. Non-Discrimination.

Tenant, for itself and its successors, covenants that neither Tenant nor any of its successors shall discriminate against or segregate any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the development, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Leased Premises, nor shall Tenant or any of its successors, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, licensees, employees or vendees in the Leased Premises or the improvements thereon. The foregoing covenants shall run with the land.

5.5. Public Access; Reservation of Governmental Access.

Tenant hereby covenants to provide reasonable on-going access over and through the Leased Premises as necessary or appropriate to access any public improvements located adjacent or proximate to the Leased Premises, provided that such access shall be coordinated with Tenant to minimize, so far as possible, any interference with Tenant's access to, use of or further development of the Leased Premises. Without limitation of the foregoing, Tenant specifically acknowledges that Landlord hereby reserves from the estate leased to Tenant a non-exclusive easement and right of access over and across the existing pedestrian and vehicular access roads and sidewalks providing access from the public right of way to the fire station located adjacent to the southeast boundary of the Leased Premises. In connection with the foregoing, Landlord and Tenant hereby terminate that certain Sublease dated as of January 1, 2000, between QSDI and Landlord (the "**Fire Station Sublease**"), and, following the Effective Date of this Lease, neither Landlord or Tenant shall have any further rights or obligations to each other under such Fire Station Sublease. Without limitation of the foregoing, Landlord and Tenant acknowledge and agree that the termination of the Fire Station Sublease is in connection with the removal of the premises subject to that Fire Station Sublease, including the fire station improvements now located thereon, from the Leased Premises subject to this Lease. Upon request by Landlord, Tenant shall promptly execute, acknowledge and deliver such further instruments or documents as are necessarily or desirable to confirm the removal of the land and improvements subject to the Fire Station Sublease from the Leased Premises subject to this Lease and to confirm that Landlord's interest in the land and improvements formerly subject to the Fire Station Sublease are not subject to this Lease.

**ARTICLE 6 DEVELOPMENT LEASES; ALTERATION OF IMPROVEMENTS AND CONSTRUCTION ON LEASED PREMISES**

6.1. Creation of Development Leases.

Landlord and Tenant agree that, subject to the terms and conditions set forth below, Landlord and Tenant may, from time to time during the Term, enter into one or more separate leases (each a "**Development Lease**" and collectively the "**Development Leases**") for separate improvement of one or more portions of that portion of the Property depicted on Exhibit C attached hereto and identified thereon and herein as the "**Development Lease Area**".

6.1.1 Notice of Request for Development Lease

If, at any time during the Term, Tenant wishes to obtain a Development Lease for all or a portion of the Development Lease Area, it shall provide a written notice to Landlord of that request which shall identify, in reasonable detail: (i) the portions of the Development Lease Area that would be covered by that Development Lease, (ii) the intended improvements to be constructed on that Development Lease parcel, (iii) a pro forma for the proposed improvements in a form reasonably acceptable to Landlord and showing development costs, sources and uses of development financing, operating revenues and other customary metrics, (iv) a proposed schedule of performance setting forth projected dates for entitlement, financing, commencement and completion of the proposed Development Lease Improvements and the proposed outside date for termination of the Construction Period and commencement of Rent, (v) a proposed reasonable and proportional allocation of site wide infrastructure costs, including shared roadways, parking area and parking structure costs and the costs of construction of the replacement passenger terminal facility to be constructed by Tenant as described in Section 4.1.4 for purposes of establishing the separate initial Eligible Basis applicable to each such Development Lease, and (vi) such other information as Landlord may reasonably require.

6.1.2 Review of Request for Development Lease.

Within thirty (30) days after receipt of all such required information, Landlord, acting solely in its proprietary capacity as Landlord under this Lease, shall respond to Tenant with its approval or disapproval of the proposed development of the identified portion(s) of the Development Lease Area and the request for Development Lease (the "**Development Request**"), which approval shall not be unreasonably withheld, conditioned or delayed. In reviewing such proposal, Landlord may consider the consistency of the proposed use with other existing and proposed uses for the Leased Premises and any existing or contemplated master planning of the area, the direct and indirect economic benefits to Landlord and other users of the Leased Premises resulting from such development, the economic feasibility and market demand for the proposed use or uses, and the architectural integration of the proposed uses with any existing Improvements on the Leased Premises. Such approval from Landlord, if provided, shall not be construed as a discretionary approval under CEQA or the City's municipal code, or constitute the satisfaction or waiver of any other governmental approval that may be required. In the event of any disapproval, Landlord shall, concurrently with the delivery of notice of such disapproval, inform Tenant in reasonable written detail of the reasons for disapproval of the Development Request and, if applicable, the conditions upon which Landlord may approve the Development Request.

### 6.1.3 Form and Term of Development Lease; Conditions to Execution.

Each Development Lease shall be upon such terms and in such form as the Parties, each acting in their good faith discretion may determine acceptable; provided, that once the Parties have agreed upon the form of the first Development Lease, neither Party shall unreasonably withhold, condition or delay its consent to the form of a subsequent Development Lease to the extent it is in the same form as the previously approved Development Lease. Notwithstanding anything herein to the contrary, the stated term of each Development Lease shall provide for its expiration concurrent with the Term. Each Development Lease shall include a scope of development describing the permitted improvements to be constructed on the Development Lease Parcel and a schedule of performance setting forth the dates for commencement and completion of those improvements and any phasing thereof. Each Development Lease shall be supported by a completion guaranty from each person or entity guaranteeing in any manner to the Construction Lender (as defined below) completion of all or part of the Improvements funded thereby or guaranteeing repayment of all or part of the Construction Loan (as defined below) to the Construction Lender, and which completion guarantee shall be in a form and substance similar to the completion guaranty provided to the Construction Lender (or, in the event of a payment guaranty to the Construction Lender, in a form and substance reasonably acceptable to Landlord). If any portion of the Leased Premises is hereafter proposed to be developed as a hotel (a "Hotel"), then the tenant of those leased premises to be developed for such Hotel use agrees to participate, and to cause the Hotel operator or management company for such Hotel, as applicable, to participate in a card check neutrality agreement and to confirm and evidence such participation to Landlord's reasonable satisfaction within 3 months of receipt of site plan approval for that Hotel; provided that, by way of clarification, no such card check neutrality agreement shall be required from any restaurant operator, other retailer or other occupant or tenant located or to be located on any portion of the leased premises containing such Hotel operation.

Concurrently with the execution of each Development Lease, the portion of the Leased Premises subject to such Development Lease shall be removed from the Leased Premises subject to this Lease, and all rights, obligations and interests in such previous portion of the Leased Premises shall thereafter be governed solely by the terms and provisions of any Development Lease, and thereafter there shall be no cross-default between this Lease and the applicable Development Lease. Prior to execution of any Development Lease, and as a condition thereto, all of the requirements set forth in Section 6.2 shall be satisfied. Ground rent will begin under each Development Lease upon the first generation of revenue from all or a portion of the Development Lease, subject to an outside date for commencement of rent that will be established for each Development Lease in connection with the City's approval of that Development Lease. Ground Rent under the Development Leases will begin at three percent (3%) of the Land Value (as defined below) of the applicable portion of the Development Lease Area subject to that Development Lease determined at the time of approval of each Development Lease and as a condition precedent to the execution thereof. Such initial ground rent (equal to three percent (3%) of Land Value) shall continue for the first eleven (11) full months and any partial month following commencement of ground rent, and will thereafter increase by an additional one percent (1%) of the Land Value each year thereafter until the ground rent is seven percent (7%) of the Land Value. Thus, for the first eleven (11) months and any partial month following the rent commencement date, the Ground Rent will be three percent (3%) of Land Value; for the next twelve (12) months the Ground Rent will be four percent (4%) of Land Value; for the next twelve (12) months the Ground Rent will be five percent (5%) of the Land Value; etc., until Ground Rent reaches seven percent (7%) of Land Value. In addition, such Development Lease rent shall be increased on each ten (10) year anniversary of the rent commencement date (i.e., the date on which rent is first paid at the rate of three percent (3%) of Land Value) by the percentage increase in the consumer price index

over the prior ten year period, beginning with the tenth anniversary of the rent commencement date and continuing every ten (10) years thereafter; provided that such CPI adjustment during each ten (10) year period shall not exceed forty percent (40%) of the ground rent in effect immediately prior to such adjustment. In no event shall any rents paid under any Development Lease reduce or offset any rents payable under this Lease. The Parties further acknowledge and agree that, in connection with execution of the first Development Lease, a reciprocal easement agreement ("REA") in form and content acceptable to the Parties shall be recorded in a position prior to any Development Leases. The REA shall govern provisions for common access, shared costs of operation and maintenance of any shared parking areas or structure, provisions for public access to the Queen Mary and the Dome, standards for maintenance of common areas shared by this Lease and one or more of the Development Leases, and other like matters. Preparation, approval and recordation of such REA shall be a condition precedent to execution of the first Development Lease.

If it becomes necessary to determine the fair market value of a portion of the Development Lease Area in connection with creation of a Development Lease (the "**Land Value**"), Landlord and Tenant shall first attempt to agree on the Land Value. If Landlord and Tenant are unable to so agree within a reasonable period of time not to exceed forty-five (45) Business Days, then Landlord and Tenant shall have twenty (20) days thereafter to attempt to agree upon a single Appraiser to make such determination. If the parties so agree upon a single Appraiser, such Appraiser shall, within forty-five (45) Business Days of being engaged, determine the Land Value as of the anticipated commencement date of the applicable Development Lease, and such determination shall be final and binding upon the parties.

If Landlord and Tenant are unable to agree upon a single Appraiser within such twenty (20) days, then each party shall have ten (10) Business Days in which to provide the other with the name of a person selected to act as Appraiser on its behalf. Each such Appraiser shall, within forty-five (45) Business Days of being engaged, determine the Land Value as of the anticipated commencement date of the applicable Development Lease. The two appraisals shall be exchanged simultaneously by the Parties. If the difference between the amounts so determined does not exceed ten percent (10%) of the lesser of such amounts, then the Land Value shall be the average of the amounts so determined, and such average shall be final and binding upon the parties. If the difference between the amounts so determined exceeds ten percent (10%) of the lesser of such amounts, then such two Appraisers shall have twenty (20) days to appoint a third Appraiser. If the first Appraisers fail to appoint a third Appraiser within such twenty (20) days, either Landlord or Tenant may apply to any court having jurisdiction to have such appointment made by such court. Such third Appraiser, shall, within forty-five (45) Business Days of being selected or appointed, determine the Land Value as of the anticipated commencement date of the applicable Development Lease. The determination of the Appraiser which differs most in terms of dollar amount from the determinations of the other two Appraisers shall be excluded, and the Land Value shall be the average of the amounts of the two remaining determinations, and such average shall be final and binding upon the parties.

If either party fails to select an Appraiser within such ten (10) Business Days or a selected Appraiser fails to make its determination of value within such forty-five (45) Business Days, the Appraiser timely selected by the other party or the Appraiser that makes its determination within such forty-five (45) Business Days, as applicable, shall alone determine the Land Value as of the anticipated commencement date of the applicable Development Lease and such determination shall be final and binding upon the parties.



Landlord and Tenant shall each pay the fees and expenses of the Appraiser appointed by it and each shall pay one-half (½) of the fees and expenses of the third Appraiser.

For purposes of determining the Land Value, the portion of the Development Lease Area being appraised shall be valued as undeveloped and based upon its highest and best use given the rights to development which are in place for such Development Lease Parcel as of the Effective Date.

As used herein, "**Appraiser**" means an appraiser licensed or otherwise qualified to do business in the State of California and who has substantial experience in performing appraisals of land in the Southern California area similar to the Development Lease Parcel and holds the Appraisal Institute's MAI designation, or, if such organization no longer exists or certifies appraisers, such successor organization or such other comparable organization as is approved by Landlord and Tenant.

## 6.2. Conditions to Execution of Development Lease.

Prior to execution of each Development Lease, and as a condition thereto, Tenant shall have complied with all of the conditions set forth in this Section 6.2 with respect to such Development Lease and the portion of the Leased Premises to be subject thereto.

For all submissions identified in this Article 6 with respect to which Landlord is required to provide its approval or disapproval within a specified time period, Landlord's consent shall not be unreasonably withheld, conditioned or delayed. No approval by Landlord in its proprietary capacity pursuant to this Lease shall limit in any way the requirement for separate approval by City of Long Beach or any other governmental entity with jurisdiction over the affected property of all Improvements to be constructed on the subject property and any such municipal or other governmental approval and review requirements shall independently apply to the proposed Improvements. Tenant shall remain responsible for obtaining any such municipal or other governmental approval, consent or permit in addition to the approvals obtained by Tenant from Landlord pursuant to the provisions of this Lease or any Development Lease, and Tenant shall be solely responsible for meeting all conditions and requirements resulting therefrom. Without limitation of the foregoing, Landlord, acting in its proprietary capacity, shall reasonably cooperate, at no out of pocket cost to Landlord, in processing of such entitlements, including signing any necessary submissions Tenant is required to make in connection with obtaining governmental approvals.

### 6.2.1 Submission and Approval of Plans and Specifications.

Tenant shall have submitted to Landlord and obtained its approval of all Plans for the proposed Improvements. The scope, design, density, site coverage, layout, access routes, pedestrian and vehicular circulation, parking areas, applicable view corridors, building height, construction materials, elevations, landscaping, hardscaping and other improvement specifications pertaining to the proposed Improvements shall be shown in the approved Plans.

Any material changes to any previously approved Plans for any Improvements which Tenant proposes must be acceptable to and approved by Landlord (such approval in Landlord's proprietary capacity not to be unreasonably withheld, conditioned or delayed), and must meet Landlord's architectural review requirements relating to the appearance of the proposed Improvements and all public spaces constructed in connection with those Improvements and the integration of such Improvements with any existing or planned Improvements.

Landlord shall approve or disapprove any proposed Plan changes delivered to Landlord by Tenant prior to the commencement of construction of the Improvements affected by such changes as promptly as possible and, in any event, not later than fifteen (15) Business Days after their submission. Changes to the Plans submitted by Tenant to Landlord after the commencement of construction of the Improvements affected by such changes shall be approved or disapproved by Landlord not later than ten (10) Business Days after their submission. If, after commencement of construction, Landlord fails to approve or disapprove (with Landlord's reasons therefor as required below) such Plans within such 10 Business Day period, then Tenant may deliver to Landlord written notice specifying the Plans previously submitted, the date of such submission, the approval or other action requested, the fact that such notice constitutes a "second notice" under this Section, and a statement that the failure of Landlord to approve or disapprove (with Landlord's reasons therefor as required below) such Plans within five (5) Business Days after delivery of such second notice will result in a deemed approval of such Plans. Landlord shall approve or disapprove (with Landlord's reasons therefor as required below) of the proposed Plans within five (5) Business Days after its receipt of such second notice from Tenant. If Landlord fails to notify Tenant of its approval or disapproval (with Landlord's reasons therefor as required below) within such 5-Business Day period, then Landlord shall be deemed to have approved of such Plans. In the event of any disapproval, Landlord shall, concurrently with the delivery of notice of such disapproval, inform Tenant in reasonable written detail of the reasons for disapproval of the proposed Plans and, if applicable, the conditions upon which Landlord may approve such Plans. Any approvals (or deemed approvals) obtained from Landlord under this Section 6.2.1 shall not be considered to be discretionary in nature and Tenant shall still be required to pursue, and shall separately pursue, any other approvals required under CEQA or the City's Municipal Code.

Concurrent with any disapproval, Landlord shall inform Tenant in reasonable written detail (the "**Plan Disapproval Notice**") of the reasons for disapproval and the required changes to the Plans. Tenant shall have ten (10) Business Days from receipt of any Plan Disapproval Notice within which to notify Landlord that Tenant agrees to make such changes or objects to any required changes. If Tenant does not notify Landlord in writing within such 10-Business Day period of its objections to the required changes, Tenant shall be deemed to have approved of all such required changes. If Tenant notifies Landlord within said 10-day period of its objections to the required changes, then Landlord and Tenant agree to meet to discuss their differences within ten (10) Business Days after Tenant gives such notice. Following such meeting, Tenant shall revise such Plans and resubmit them to Landlord by the later of (i) thirty (30) days after receipt of the Plan Disapproval Notice, or (ii) ten (10) days after such meeting, unless the nature of such changes requires a longer period of time, in which case Tenant shall resubmit Plans or other submissions as soon as possible, and, in any case, no later than seventy-five (75) days after receipt of the Plan Disapproval Notice. Any resubmissions by Tenant shall be approved or disapproved and revised within the times set forth herein with respect to the initial submission. Notwithstanding the above time periods, if Landlord deems it necessary under applicable law to hold a community or public meeting before the action specified is to be taken, the period for such action by Landlord shall be extended by a reasonable amount of time, not to exceed thirty (30) days, in each case, for the holding of such other public meeting; provided, that, the period of delay attributable to the other public meeting shall extend the Schedule of Performance, if any, applicable to such Improvements by a period of time equal to the period of delay caused by that community or other public meeting.

During the preparation of any revisions to the Plans or the preparation of any other submissions, Landlord's staff and Tenant shall hold progress meetings to coordinate the preparation, submission and review thereof. The meetings shall be held as often as reasonably necessary to facilitate

the expeditious processing of Tenant's Plans and other submissions. Landlord and Tenant shall also communicate and consult informally as frequently as is necessary to ensure that the formal submission of all documents and Plans to Landlord shall receive reasonably prompt and speedy consideration.

6.2.2 Submission of Evidence of Financing; Submission of Evidence of Construction Contract; Submission of Performance and Payment Bonds.

6.2.2.1 Construction Loan.

Prior to execution of a Development Lease, and as a condition thereto, Tenant shall deliver to Landlord, for its written approval which approval shall not be unreasonably withheld, conditioned or delayed, a written commitment(s) ("**Construction Commitment**"), from an institutional lender (licensed to do business in California if legally required) that is financially secure and possesses a sound credit rating ("**Construction Lender**") by which the Construction Lender shall agree, subject to customary closing conditions and final loan documentation consistent with the terms of said written commitment(s), to make a construction loan to Tenant (the Construction Commitment and loan are sometimes referred to collectively as the "**Construction Loan**") for the development and construction of the proposed Improvements on the Development Lease Parcel in accordance with the terms of the proposed Development Lease. Such construction Loan shall provide for a minimum loan term of three (3) years, including by right extension periods provided for therein. Landlord's review and approval or disapproval of said written commitments shall be for the purpose of confirming the consistency of said written commitments with the terms and conditions of this Lease, and the assurance that the proposed Improvements will have adequate funding to assure completion. Landlord shall approve or disapprove the Construction Commitment within ten (10) Business Days of its submission. In the event Landlord fails to approve or disapprove (with Landlord's reasons therefor as required above) such Construction Commitment within such 10 Business Day period, then Tenant may deliver to Landlord written notice specifying the Construction Commitment previously submitted, the date of such submission, the approval or other action requested, the fact that such notice constitutes a "second notice" under this Section, and a statement that the failure of Landlord to approve or disapprove (with Landlord's reasons therefor as required above) such Construction Commitment within five (5) Business Days after delivery of such second notice will result in a deemed approval of such Construction Commitment. Landlord shall approve or disapprove (with Landlord's reasons therefor as required above) of the proposed Construction Commitment within five (5) Business Days after its receipt of such second notice from Tenant. If Landlord fails to notify Tenant of its approval or disapproval (with Landlord's reasons therefor as required above) within such 5-Business Day period, then Landlord shall be deemed to have approved of such Construction Commitment. In the event of any disapproval, Landlord shall, concurrently with the delivery of notice of such disapproval, inform Tenant in reasonable written detail of the reasons for disapproval of the proposed Construction Commitment and, if applicable, the conditions upon which Landlord may approve such Construction Commitment.

The amount of the Construction Commitment shall not be less than (i) the amount of the Construction Contract for the Improvements to which it relates, plus (ii) an amount equal to all consultant and loan fees, "points," commissions, charges, construction period interest, start-up costs, and other costs and expenses of developing and completing those Improvements (the costs listed in clauses (i) and (ii) of this Section 6.2.2.1 are sometimes referred to collectively as "**Development Costs**"), less (iii) the amount of Tenant's documented and committed equity contribution to the cost of constructing those Improvements.

In the event Tenant will finance a portion of the Development Costs by means of an equity contribution to the cost of construction, Tenant agrees to provide documentation demonstrating, to Landlord's reasonable satisfaction, the source of the funds providing the equity contribution and that (i) such funds are unqualifiedly available and irrevocably committed to funding the Development Costs, and (ii) the amount of funds committed is sufficient to cover all contemplated Development Costs (other than those financed by the Construction Loan) necessary to fully complete the Improvements.

Tenant shall use reasonable efforts to ensure that the Construction Loan(s) for the Improvements provide that any proceeds from fire or extended coverage insurance shall be used for repair or rebuilding of the applicable Improvements, and not to repay the outstanding balance of the Construction Loan. Each Construction Loan shall be consistent with the terms and provisions of this Lease. Prior to execution of any final Construction Loan documents by Tenant, Tenant shall deliver copies of the Construction Loan documents to Landlord for its review solely to confirm that such Construction Loan documents comply with the requirements of this Section 6.2.2.1 and the previously approved Construction Commitment. Landlord shall approve or disapprove the Construction Loan documents within ten (10) Business Days of their submission. Concurrent with any disapproval, Landlord shall inform Tenant of which provisions in such Loan Documents do not in Landlord's reasonable determination comply with the requirements of this Section 6.2.2.1. Each Construction Loan shall be secured only by Tenant's leasehold interest in the applicable Development Lease and the Improvements to be constructed thereon and such other letter of credit, cash deposit or other like credit enhancement as the Construction Commitment may require. In no event shall any such Construction Loan be cross-defaulted with any other loan of Tenant or any loan encumbering any property other than the leasehold interest on which the Improvements will be located (except with respect to another Leasehold Mortgage encumbering the same site), and neither Landlord's fee title to the site nor its interest in the Development Lease shall be subordinated to the Construction Loan. Tenant shall draw upon and utilize the Construction Loan only for financing the Development Costs for the proposed Improvements. In the event Landlord fails to approve or disapprove (with Landlord's reasons therefor as required above) such Construction Loan documents within such 10 Business Day period, then Tenant may deliver to Landlord written notice specifying the Construction Loan documents previously submitted, the date of such submission, the approval or other action requested, the fact that such notice constitutes a "second notice" under this Section, and a statement that the failure of Landlord to approve or disapprove (with Landlord's reasons therefor as required below) such Construction Loan documents within five (5) Business Days after delivery of such second notice will result in a deemed approval of such Construction Loan documents. Landlord shall approve or disapprove (with Landlord's reasons therefor as required above) of the proposed Construction Loan documents within five (5) Business Days after its receipt of such second notice from Tenant. If Landlord fails to notify Tenant of its approval or disapproval (with Landlord's reasons therefor as required above) within such 5-Business Day period, then Landlord shall be deemed to have approved of such Construction Loan documents. In the event of any disapproval, Landlord shall, concurrently with the delivery of notice of such disapproval, inform Tenant in reasonable written detail of the reasons for disapproval of the proposed Construction Loan documents and, if applicable, the conditions upon which Landlord may approve such Construction Loan documents.

Landlord review or approval and/or any deemed approval of the terms of any Construction Loan shall not constitute a waiver by Landlord of any breach or violation of this Lease that is a result of acts that are or purport to be in compliance with or in furtherance of the Construction Loan. The Construction Loan for each Development Lease shall record concurrently with the effective date of that Development Lease, and Landlord shall not be obligated to proceed with execution and delivery of the

Development Lease unless it has received written confirmation from the Construction Lender that the Construction Loan for the proposed Improvements is in a position to be recorded concurrently therewith.

6.2.2.2 Intentionally Omitted.

6.2.2.3 Architectural and Construction Contracts.

Prior to execution of each Development Lease, Tenant shall submit to Landlord copies of the architectural and Construction Contracts and any amendments thereto for all the proposed Improvements to be constructed on the applicable Development Lease Parcel. Tenant shall also submit to Landlord all material amendments to either the architectural or Construction Contracts occurring after the effective date of the related Development Lease. So long as the proposed architectural or Construction Contract, or the proposed amendment thereto, has been approved in writing by Tenant's Construction Lender and evidence of such approval has been provided to Landlord, Landlord shall not have the right to separately approve the form of the proposed contract or the amendment thereto; otherwise each architectural and Construction Contract, and any material amendment thereto, shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. In any case, all contracts between Tenant and any architect, design professional or licensed contractor in connection with the construction of the proposed Improvements shall provide, in form and content reasonably satisfactory to Landlord, for the assignment thereof to Landlord as security to Landlord for Tenant's performance under the applicable Development Lease, and Landlord shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto. Such assignment shall provide that if the Development Lease is terminated by Landlord due to Tenant's default, Landlord may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract, and may elect to assume Tenant's rights and obligations under the applicable construction or other contract arising from and after the date of such election; provided, however, that any such right in favor of Landlord shall be expressly subordinate to the rights of any construction lender in such plans, specifications and contracts. Landlord shall be furnished with a copy of any such executed construction contract and assignment. Landlord's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trademarks, trade names or logos of any such architect, design professional or contractor. The provisions of the fourth and fifth paragraphs of Section 6.2.2.1 concerning the submission and approval of changes to the Plans shall apply to the submissions and approvals required under this Section 6.2.2.3.

6.2.2.4 Performance and Payment Bonds.

Prior to execution of the Development Lease, Tenant shall, at its own cost and expense, have furnished Landlord with the following separate corporate surety bonds with respect to the proposed Improvements to be constructed on such Development Lease, which bonds must be in form and content reasonably satisfactory to Landlord:

6.2.2.4.1 A corporate surety performance bond ("**Performance Bond**") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the amount of all hard construction costs approved by Landlord in conjunction with the approved work. The Performance Bond and its issuer shall be in all material respects reasonably satisfactory to Landlord. It shall name Tenant as principal and said issuer as surety, and Landlord as obligee, assuring full and satisfactory performance by Tenant of Tenant's

obligations to build, construct and otherwise complete the Improvements described in the approved final plans and specifications for the applicable Development Lease Improvements.

6.2.2.4.2 A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Tenant as principal, said company as surety and Landlord as obligee, in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with the approved work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting Landlord from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "**Payment Bond**"). The Payment Bond shall be in form and content reasonably satisfactory to Landlord.

In the event that construction is performed by a licensed general contractor on behalf of Tenant, provided that such contractor provides Landlord with a bond or bonds compliant with this subsection, including identification of Landlord as the obligee thereunder, and in all material respects reasonably satisfactory to Landlord and otherwise complying with this Lease, Landlord will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Tenant required by this subsection 6.2.2.4.2. Upon request, Landlord will not unreasonably withhold consent to reduction in the above bond amounts by 50% upon 50% completion of and payment for any Improvements which has been documented and established to Landlord's reasonable satisfaction.

6.2.2.4.3 Alternative Security. In lieu of providing the Payment and Performance Bonds, Tenant may provide any of the following alternative security: (i) a certificate of deposit, cash or United States governmental security, or (ii) a letter of credit. The foregoing security shall be in an amount equal to one hundred percent (100%) of the construction contract price, and shall permit Landlord to draw thereon to complete the construction of the Improvements if an Event of Default has occurred under the Development Lease with respect to the completion of the construction of the Improvements. Tenant shall have the right to reduce such alternative security proportionately with the progress of construction of Improvements which has been documented and established to Landlord's reasonable satisfaction.

#### 6.2.2.5 Entitlements, Permits and Pre-Closing Requirements.

Prior to execution of the Development Lease, Tenant shall also have obtained "**Final Approval**" of all entitlements and other planning or discretionary approvals required for the development of the Improvements proposed for the property subject to the Development Lease. "**Final Approval**" shall mean receipt of final administrative approval of applicable entitlements and the expiration of any period for appeal thereof with no appeal being filed (or, if such an appeal is filed, the final resolution of such appeal in a manner that is not subject to further appeal and which provides for the construction of the Improvements without further condition or restriction except as approved by Landlord). Tenant shall also have received approval of all permits and approvals such that all required grading and building permits are in a ready to issue condition subject only to payment of any applicable fees, which fees shall be paid and permits pulled concurrent with the effective date of the Development Lease, so that Tenant is in a position to proceed promptly thereafter with the construction of the Improvements contemplated for the property subject to the Development Lease. Prior to execution of the Development Lease, Tenant shall also have obtained any other approvals, agreements or documents reasonably required by Landlord as a condition to Landlord's approval and execution of the proposed Development Lease under Section 6.1.2,

including, without limitation, any franchising, pre-leasing or other third party requirements that were required by Landlord in connection with its approval of the proposed Development Lease under Section 6.1.2.

6.3. Duty to Construct Improvements.

Within not more than one (1) year following the Effective Date, Tenant shall submit to the City of Long Beach (acting in its municipal capacity) a complete application for its master development plan for the Development Lease Area and, following such submission, Tenant shall thereafter diligently and continuously pursue Final Approval of that master development plan and the proposed Improvements to be constructed on the Development Lease Area pursuant thereto, financing for construction of such Improvements, and execution of Development Leases with Landlord for the development and construction of those Improvements within the Development Lease Area. Landlord and Tenant agree that Tenant shall be entitled to develop the Development Lease Area in stages provided that Tenant complies with the entitlement, development and construction milestones described in this Section 6.3. Within twelve (12) months after Tenant obtains Final Approval for Tenant's master development plan for the Development Lease Area, Tenant shall submit a proposal to Landlord for entering into the first Development Lease for the portion of the Development Lease Area on which the first stage of the Improvements will be constructed and, following such submission, shall diligently and continuously pursue that Development Lease proposal. Within not more than four (4) years following Tenant's submittal of its proposal for the first Development Lease, Tenant shall enter into such Development Lease with Landlord for development and construction of the first stage of Improvements within the Development Lease Area. Tenant shall also enter into the final Development Lease(s) for construction of the last stage of the Improvements in accordance with Tenant's master plan for development of the Development Lease Area not later than fifteen (15) years following the Effective Date. Notwithstanding the foregoing, Tenant shall be entitled to extend such final date for execution of the final Development Lease(s), for up to five (5) years so long as Tenant commences paying minimum rent according to the terms incorporated or to be incorporated into the final Development Lease(s) on the fifteenth (15<sup>th</sup>) anniversary of the Effective Date and continuing until the final Development Leases(s) are executed; provided, that, (i) upon execution of such final Development Lease(s), the terms of the Development Lease(s) shall be controlling and no further in lieu minimum rent payments shall be required under this Section 6.3 with respect to those portions of the Leased Premises now subject to the final Development Lease(s), and (ii) so long as Tenant continues to make the required in lieu minimum rent payments provided for above, the maximum five (5) year extension to the outside date for execution of the Development Lease(s) may be extended for the period of any Force Majeure Delays applicable to Tenant as of the expiration of that five (5) year extension period so long as such Force Majeure Delays continue. If Tenant fails to meet any of the entitlement and development deadlines set forth above, or to meet its obligations with respect to diligent and continuous pursuant of each development milestone, then, without limiting any other rights of Landlord hereunder, all portions of the Development Lease Area which are not already subject to a Development Lease as of the date of such failure (the "**Removed Development Lease Area**") shall be deemed removed from the Development Lease Area and the Leased Premises without any compensation or consideration to Tenant, Landlord shall regain sole and absolute control over further development or disposition of such Removed Development Lease Area and the terms and timing thereof, and Landlord shall thereafter be free to deal with such third parties as it determines necessary or appropriate with respect to the Removed Development Lease Area without restriction or limitation in any respect arising from this Lease or any rights of Tenant arising hereunder or related thereto.

Following execution of each Development Lease, subject only to excuse for Force Majeure Delays as provided in Section 14.9, the applicable Improvements shall be commenced, constructed and completed within the applicable time periods set forth in the applicable Development Lease and the Schedule of Performance that will be attached thereto, including commencement of construction within forty-five (45) days after the effective date of the Development Lease, and completion of the Project within the time frames set forth in the Development Lease. All such Improvements shall be constructed and completed in all material respects in accordance with the terms and provisions of all Governmental Restrictions, any applicable Scope of Development, the terms of the applicable Development Lease or other governing ground lease, and all final approved Plans for the applicable Improvements.

Once Tenant commences the construction of any Improvements (or any portion thereof), Tenant shall diligently prosecute the same to completion without substantial interruption, except as excused by the provisions of Section 14.9. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that the substantial cessation of construction for forty-five (45) consecutive days shall, unless excused by the provisions of Section 14.9, be deemed a failure by Tenant to diligently prosecute the construction of the applicable Improvements to completion and shall constitute a Default under the Development Lease.

Tenant shall be responsible for obtaining, at its sole expense, all required governmental planning and entitlement approvals applicable to any Improvements. Tenant shall be solely responsible for all costs and expenses incurred in connection with the financing of the Improvements, site preparation, and the financing, development, design, entitlement and construction of the Improvements. Notwithstanding anything to the contrary herein, upon Landlord's request, whether in connection with approval of any Plans, or in connection with the construction or operation of any Improvements, Tenant shall plan and coordinate its development of the property subject to each Development Lease and construction of the Improvements provided for therein in a manner that facilitates Landlord's connection to common utility lines or installation of new or additional utility lines or services and rights of ingress and egress benefitting the Leased Premises or its redevelopment or the redevelopment of any surrounding City property, including, without limitation, cooperating with Landlord in the granting, modification and/or relocation of utility easements or access roads servicing the Leased Premises or other City property; provided, however that if Tenant is required to incur any out-of-pocket costs or expenses for such cooperation that does not result in a direct benefit to the Leased Premises, then Landlord shall reimburse Tenant for such costs and expenses reasonably incurred within thirty (30) days following receipt of notice and supporting documentation from Tenant regarding the amount of such costs and expenses incurred by Tenant at Landlord's request provided that Tenant has provided written notice to Landlord prior to Landlord's final authorization of the work that Landlord will be responsible for reimbursement of the cost thereof to Tenant.

#### 6.4. Other Construction Requirements.

##### 6.4.1 Builder's Risk and Other Insurance.

Prior to commencing construction of any Improvements under any Development Lease or this Lease, Tenant shall have obtained (and delivered insurance certificates therefor to Landlord) all insurance coverage required under Article 12, including the "builder's risk" and worker's compensation insurance prescribed by Section 12.3 in connection with any work on the Leased Premises.



#### 6.4.2 No Construction Before Notice; Notice of Nonresponsibility.

Prior to commencing construction of any Improvements under any Development Lease or this Lease, Tenant shall provide Landlord with written notice of the intended commencement of construction of any improvements or delivery of building materials to the Leased Premises at least ten (10) days prior to the earlier of commencement of construction of those improvements or commencement of the delivery of those building materials to the Leased Premises. Landlord shall, at any and all times during the Term, have the right to post and maintain on the Leased Premises and to record as required by law any notice or notices of non-responsibility provided for by the mechanics' lien laws of the State of California. The work for which said ten (10) days written notice is required shall include, in addition to actual construction work, any site preparation work, installation of utilities, street construction or improvement, and any grading or filling of the Leased Premises.

#### 6.4.3 Permits and Other Approvals.

Tenant shall have received and furnished to Landlord copies of all permits, licenses, and other governmental approvals necessary for commencement of the Improvements. As provided above, following the Effective Date, Tenant shall diligently pursue and pay for all necessary permits, licenses, and other governmental approvals necessary for commencement of the Improvements on the Development Lease Area.

#### 6.5. Completion of Improvements and Other Work; Compliance with Law And Quality.

Tenant covenants that the foregoing Improvements, and all other construction on the Leased Premises or under the Development Leases, when undertaken, while in progress and as completed: (i) will comply in all material respects with all Governmental Restrictions, including, without limitation, all laws and ordinances necessary to permit the development, completion and lease of the affected property; (ii) will be entirely on the property being leased and, except as authorized by the necessary parties, will not encroach upon the land of others or any easement or right-of-way; (iii) unless appropriate variances, conditional use permits or development approvals are obtained, will be wholly within any enforceable building restriction lines, however established, and will not violate any enforceable use restriction or any applicable easement, license, covenant, condition or restriction of record; and (iv) will comply in all material respects with all Plans approved for such improvements, and all provisions of the applicable lease. All work performed pursuant to any Development Lease or this Lease, or authorized by this Lease, shall be done in a good workmanlike manner and only with materials of high quality. The Improvements undertaken by Tenant shall be completed by the applicable deadlines established therefor and all other construction work undertaken on or in connection with development of the Leased Premises or any Development Lease property shall be completed promptly and without delay, subject to Section 14.9. Without limitation of the foregoing, Tenant shall, at its sole expense, cause all improvements constructed on any Development Lease Parcel or the Leased Premises to comply with all requirements arising from any flood plain designation or restrictions applicable to the subject premises, including, if necessary, flood proofing of those improvements in accordance with all applicable standards and requirements. Notwithstanding anything herein to the contrary, if, following execution of a Development Lease, that Development Lease is terminated as a result of a material uncured default by the tenant under that Development Lease, Tenant and the tenant under the Development Lease shall have no further interest in or rights to the Development Lease Parcel and Landlord shall thereafter be free to deal with any Person that Landlord, in its sole discretion, elects to deal with concerning the further leasing or other transfer and the further development

or operation of such Development Lease Parcel; provided, that the termination of Tenant's rights with respect to that Development Lease Parcel shall not affect Tenant's remaining development rights with respect to the remaining Development Lease Areas that have not been the subject of such a prior lease termination.

6.6. Mechanic's, Materialman's, Contractor's, or Sub-contractor's Liens.

Subject to Tenant's right to contest as hereinafter provided, at all times during the Term, Tenant shall keep the Leased Premises, including all buildings and improvements now or hereafter located on the Leased Premises, free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Leased Premises. Tenant shall (i) promptly pay and discharge, or cause the Leased Premises to be released from, any such lien or claim of lien, or, (ii) if Tenant decides to contest said lien, furnish Landlord such bond as may be required by California Civil Code Section 3143, or successor statute, to free the Leased Premises from the effect of such a lien and to secure Landlord against payment of such lien, or provide Landlord with other assurances with respect thereto which are satisfactory to Landlord, in its sole discretion.

Should Tenant fail to pay and discharge, or cause the Leased Premises to be released from any such lien or claim of lien or to provide a bond or other assurance as permitted hereunder within the earlier of sixty (60) days after service on Tenant by Landlord of a written request to do so or thirty (30) days after commencement of any action or proceeding for foreclosure of that lien, Landlord may pay, adjust, compromise and discharge any such lien or claim of lien on such terms and in such manner as Landlord may deem appropriate. In such event, Tenant shall, on or before the date that is thirty (30) days following any such payment by Landlord, reimburse Landlord for the full amount so paid by Landlord, together with any reasonable attorneys' fees or other reasonable costs expended by Landlord, including interest on all of the foregoing at the Agreed Rate from the date of payment by Landlord to the date of Tenant's reimbursement of Landlord, and such amount shall constitute additional Rent and become a part of Tenant's obligation to pay Rent hereunder.

On completion of any additional Improvements constructed on the Leased Premises, Tenant shall file or cause to be filed a notice of completion for those Improvements. Tenant hereby appoints Landlord as Tenant's attorney-in-fact to file the notice of completion after the applicable Improvements have been completed upon Tenant's failure to do so within ten (10) days of notice from Landlord; provided, that Landlord shall not be obligated to file such a notice of completion and the failure of Landlord to file that notice shall not excuse the failure of Tenant to discharge its obligation to file said notice of completion.

6.7. Alterations, Modifications or Replacements of Improvements; All Work on Written Contract; Approval of General Contractor; Performance and Payment Bond.

Tenant shall not cause a Major Change (as herein defined) to any of the Improvements located on the Leased Premises during the Term unless Tenant secures the prior written approval of Landlord to such Major Change and the Plans therefor, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that with respect to any Major Changes to the Queen Mary, Landlord's approval may be granted or withheld in Landlord's good faith discretion. Landlord shall approve or disapprove (with Landlord's reasons therefor as required below) a Major Change within fifteen (15) Business Days of Landlord's receipt of Tenant's request for approval. For purposes of this Section 6.7, a "Major Change" is defined as the demolition, removal, alteration, modification, replacement or addition to

any Improvements located on the Leased Premises during the Term ("**Changes**"), excepting therefrom (a) Changes to Improvements that involve only interior maintenance, repairs, replacements or alterations that do not materially affect the historical character of the Queen Mary or any furniture, fixtures and equipment located therein and that do not require structural alterations or work on the Queen Mary, or (b) exterior maintenance and repairs, (i) which does not alter or change the originally prescribed elevations, appearance or exterior construction materials of the Improvements, and (ii) except with respect to roof repairs or replacements, the cost of which does not exceed \$500,000 (the Changes described in (a) and (b) are hereinafter referred to as "**Minor Changes**"); provided however, that any such Minor Changes pursuant to this sentence shall comply with all Governmental Restrictions, including all building and safety rules and codes. Any subtenant signage (provided such signage is consistent with the City's sign ordinance requirements and is consistent with the historical character of the Queen Mary) shall also constitute a Minor Change. Landlord shall approve or disapprove any proposed Major Change to the Improvements submitted to Landlord by Tenant as promptly as reasonably possible and, in any event, within fifteen (15) Business Days of Tenant submitting such proposed Major Change to Landlord.

Concurrent with any disapproval, Landlord shall inform Tenant in reasonable written detail of the reasons for such disapproval and, if such Major Change can be altered in a manner that would render it acceptable to Landlord, a general description of the required changes to the Major Change which would result in Landlord's approval of the same. Tenant shall have ten (10) Business Days from receipt of any such notice within which to notify Landlord that Tenant agrees to make such changes or objects to any requested changes. If Tenant does not notify Landlord in writing within such 10-Business Day period of its objections to the requested changes, Tenant shall be deemed to have withdrawn its request to make the proposed Major Change. If Tenant notifies Landlord within said 10-Business Day period of its objections to the requested changes, then Landlord and Tenant agree to meet to discuss their differences within ten (10) Business Days after Tenant gives such notice. Following such meeting, Tenant may revise such Major Change and resubmit it to Landlord. Any resubmissions by Tenant shall be approved or disapproved and revised within the times set forth herein with respect to the initial submission. Notwithstanding the above time periods, if Landlord deems it necessary under applicable law to hold a community or public meeting of Landlord before the action specified is to be taken, the period for such action by Landlord shall be extended by a reasonable amount of time. In the event Landlord fails to approve or disapprove (with Landlord's reasons therefor as required below) such Major Change within such 15 Business Day period, then Tenant may deliver to Landlord written notice specifying the Major Change previously submitted, the date of such submission, the approval or other action requested, the fact that such notice constitutes a "second notice" under this Section, and a statement that the failure of Landlord to approve or disapprove (with Landlord's reasons therefor as required below) such Major Change within five (5) Business Days after delivery of such second notice will result in a deemed approval of such Major Change. Landlord shall approve or disapprove (with Landlord's reasons therefor as required below) of the proposed Major Change within five (5) Business Days after its receipt of such second notice from Tenant. If Landlord fails to notify Tenant of its approval or disapproval (with Landlord's reasons therefor as required below) within such 5-Business Day period, then Landlord shall be deemed to have approved of such Major Change. In the event of any disapproval, Landlord shall, concurrently with the delivery of notice of such disapproval, inform Tenant in reasonable written detail of the reasons for disapproval of the proposed Major Change and, if applicable, the conditions upon which Landlord may approve such Major Change.

In the case of a Major Change, it shall not be unreasonable for Landlord to withhold its approval if the proposed Major Change will, in Landlord's reasonable discretion, (i) result in a reduction in the value of the Leased Premises or Landlord's interest therein, or (ii) result in a reduction of the revenues derived,

directly or indirectly, by Landlord from the Leased Premises, or (iii) involve a change in the use of the Leased Premises not permitted hereunder, or (iv) adversely impact the historical character or nature of the Improvements or be inconsistent with the historical identity of the Leased Premises. Any such approved Major Change shall, if commenced, be completed in accordance with all of the requirements applicable to construction of Improvements in Sections 6.2 through and 6.6, and any references therein to the Development Lease shall be understood, for such purpose to also refer to this Lease and such provisions shall be construed and applied to provide corresponding assurances to Landlord with respect to construction on the Leased Premises. Any Change shall be commenced and completed in substantial compliance with the Plans approved therefor, and without substantial interruption as provided above. Any Minor Change shall also comply with the requirements applicable to construction of Improvements in Sections 6.3 through 6.6.

All work required in connection with any Changes to the Improvements, including any site preparation, landscaping or utility installation, as well as actual construction work on the Improvements, or any other construction work performed at any time on the Leased Premises, shall be performed only by competent and financially responsible contractors, duly licensed as such under the laws of the State of California, and shall be performed pursuant to written contracts with such contractors.

For all Major Changes to be performed on the Leased Premises, Tenant shall furnish Landlord with a true copy of Tenant's contract with the general contractor performing such Changes and obtain Landlord's approval of the general contractor which approval shall not be unreasonably withheld, conditioned or delayed and which approval shall be deemed to be provided if Landlord fails to approve or disapprove the general contractor within ten (10) Business Days following receipt of Tenant's written request for approval. The construction contract shall obligate a reputable and financially responsible contractor, who is bondable and licensed in California, and who has experience in completing the type of improvements contemplated by the Changes, to commence and complete the Changes. Said contract shall give Landlord the right, but not the obligation, to cure defaults thereunder and, upon termination of this Lease, to assume Tenant's obligations and rights under that contract arising from and after the date of such assumption; provided, that such right to cure and assume that contract shall be subject to the rights, if any, of a Lender under a Leasehold Mortgage with respect to said contract. Prior to the commencement of any Major Change to be performed on the Leased Premises, Tenant shall furnish Landlord, for its reasonable review and approval, either (i) evidence of the source and unqualified availability of the funds necessary to complete the Major Change without financing, or (ii) a true copy of the Leasehold Mortgage financing the construction of such Changes, which shall comply with Article 8, and which shall provide for funding of construction costs in an amount not less than (aa) the estimated budget for all hard and soft costs of constructing such Changes, plus (bb) an amount equal to all furnishings, fixtures, taxes, interest, start-up and other costs and expenses of developing and completing such Changes, less (cc) the amount of Tenant's equity contribution to the cost of constructing such Changes, provided that the source and unqualified availability and commitment of such contribution shall be demonstrated to Landlord's reasonable satisfaction.

In connection with any Major Change having a projected cost of greater than \$500,000, Tenant shall furnish Landlord with a performance bond in an amount not less than one hundred percent (100%) of the anticipated cost of such construction work on the Leased Premises, and a payment bond guaranteeing the completion of the improvements free from liens of materialmen, contractors, subcontractors, mechanics, laborers, and other similar liens in the same amount. Said bonds shall be bonds of a responsible surety company, licensed to do business in California, with a financial strength and credit rating

reasonably acceptable to Landlord, and shall remain in effect until the entire cost of the work has been paid in full and the new improvements have been insured as provided in this Lease. Any such bonds shall be in a form reasonably satisfactory to Landlord. Landlord shall accept alternate security for such bonds of the form specified in Section 6.2.2.4.3.

The \$500,000 cost threshold specified in the first and sixth paragraphs of this Section 6.7 shall be increased upon the commencement of each Lease Year by the percentage increase, if any, in the CPI between the Effective Date and the commencement of the applicable Lease Year.

#### 6.8. Hazardous Materials.

In the event that Tenant discovers the presence of Hazardous Materials (as defined in this Section 6.8) on or under the Leased Premises in a quantity that would require removal or remediation pursuant to Governmental Restrictions or require a report to a governmental entity or agency, Tenant shall, within ten (10) days of such discovery, notify Landlord in writing of such discovery and shall promptly thereafter provide a reasonably detailed description of the location, extent and nature of the Hazardous Materials discovered. Regardless of whether such Hazardous Materials were generated, brought or placed upon the Leased Premises by Tenant or its Representatives, unless such Hazardous Materials have been generated, brought or placed on or under the Leased Premises by Landlord, Tenant shall be obligated to fully remediate such Hazardous Materials to the extent required by, and in accordance with, all Governmental Restrictions, at Tenant's sole cost and expense. Tenant shall notify Landlord in writing within ten (10) days of Tenant's determination of the remediation procedures and the estimated remediation cost. Tenant's remediation of such Hazardous Materials as required by this Lease shall not constitute a waiver of or be in limitation of any rights Tenant may have against any adjacent landowners other than Landlord if such Hazardous Materials remediated by Tenant originated on such adjacent landowner's property and migrated onto Tenant's Leased Premises from that adjacent property; provided that the foregoing shall not limit Landlord's liability for any release by Landlord on an adjacent property owned by Landlord after the Effective Date.

Without limiting the foregoing, unless such Hazardous Materials have been generated, brought or placed on or under the Leased Premises by Landlord, Landlord shall not have any liability to Tenant on account of the presence of any Hazardous Materials on, under or about the Leased Premises. Except for any Hazardous Materials which have been (or in the future are) generated, brought or placed on or under the Leased Premises by Landlord, Tenant, on behalf of itself and each successor, assign or sublessee acquiring any interest in the Leased Premises by or through Tenant, hereby releases Landlord and its respective Representatives from all present and future claims, demands, suits, legal and administrative proceedings and from all Losses and Liabilities arising out of or in any way connected with any condition of environmental contamination on or under the Leased Premises or the existence of Hazardous Materials in any state on or under the Leased Premises.

Tenant, and all successors, assigns and sublessees acquiring an interest in the Leased Premises by or through Tenant, acknowledge that they are aware of and familiar with Section 1542 of the California Civil Code which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Tenant, and each successor, assign and sublessee acquiring an interest in the Leased Premises by or through Tenant, hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code with respect to the foregoing release. All persons or entities acquiring any interest in the Leased Premises by or through Tenant, by accepting such interest in the Leased Premises, and in consideration of Landlord entering into this Lease and thereby allowing such interest to be created, hereby irrevocably agree to the waiver and release provisions set forth above and acknowledge that their interest in the Leased Premises is subject thereto.

For purposes of this Lease, the term “**Hazardous Materials**” means, without limitation, gasoline, petroleum products, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, polychlorinated biphenyls or related or similar materials, asbestos or any other substance or material as may now or hereafter be defined as a hazardous or toxic substance by any federal, state or local environmental law, ordinance, rule or regulation, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. Section 6901 et seq.), (ii) the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), (iii) the Clean Air Act (42 U.S.C. Section 7401 et seq.), (iv) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. Section 6902 et seq.), (v) the Toxic Substances Control Act (15 U.S.C. Sections 2601-2629), (vi) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), (vii) the Carpenter-Presley Tanner Hazardous Substance Account Act (CA Health & Safety Code Section 25300 et seq.), (viii) the Hazardous Materials Control Law (CA Health & Safety Code Section 25100, et seq.), (ix) the Porter-Cologne Water Quality Control Act (CA Water Code Section 13000 et seq.), (x) the Safe Drinking Water and Toxic Enforcement Act of 1986, (xi) the Hazardous Materials Release Response Plans and Inventory (CA Health & Safety Code Section 25500 et seq.), (xii) the Air Resources Law (CA Health & Safety Code Section 39000 et seq.), or (xiii) in any of the regulations adopted and publications promulgated pursuant to the foregoing.

#### 6.9. Ownership of Improvements.

Notwithstanding anything that is or appears to be to the contrary herein, except for any Improvements funded directly or indirectly by Landlord's funds, including Improvements funded from the HPCIP Fund (which publicly funded Improvements shall remain the property of Landlord) any and all Improvements hereafter erected on the Leased Premises by Tenant as permitted by this Lease with private funds, as well as any and all alterations or additions thereto or any other improvements or fixtures on the Leased Premises installed by Tenant, shall be owned by Tenant until the expiration of the Term or sooner termination of this Lease; provided that Tenant shall not waste or destroy any of the above improvements or remove, alter or modify any improvements on the Leased Premises, except as permitted or contemplated by this Lease. All existing Improvements on the Leased Premises are the property of Landlord and shall remain so notwithstanding the execution of this Lease. Upon the expiration or sooner termination of this Lease, all improvements and all alterations, additions or improvements thereto that are made to or placed on the Leased Premises by Tenant or any other person shall be considered part of the real property of the Leased Premises and shall remain on the Leased Premises and become the property of Landlord without compensation therefor to Tenant; provided that Tenant shall retain ownership of and shall be entitled to remove removable personal property which has been funded by Tenant from private

funds (specifically excluding any improvements funded from the HPCIP Fund) ("FF&E") as long as Tenant repairs any damage to the Leased Premises caused by such removal. Notwithstanding anything herein to the contrary, the FF&E shall expressly exclude, and Tenant shall not have any right to remove, any wall coverings, floor coverings, ceiling or light fixtures, electronic, telephone or computer systems incorporated into the structure of the Leased Premises, security systems and video surveillance systems, heating, ventilation or air conditioning systems servicing the Leased Premises, any specifically designed FF&E that constitutes an historical recreation and replacement of any original FF&E located on the Queen Mary, or any FF&E which has been installed in such a manner as to physically integrate it into the Leased Premises as a component thereof with a permanent or indefinite life, and all such property, whether real or personal in nature, shall remain in the Leased Premises surrendered to Landlord. Except as otherwise expressly provided in any non-disturbance agreement approved by Landlord, any easement approved by Landlord, or any written instrument executed by Landlord which expressly states that Landlord is waiving its rights under this Section 6.9 to receive such improvements free and clear of all other claims or any claims existing prior to the Effective Date, said improvements shall become Landlord's property free and clear of any and all rights to possession and all claims to or against them by Tenant or any third person or entity claiming through or under Tenant, and Tenant shall defend and indemnify Landlord and its Representatives against any and all Losses and Liabilities arising from such claims. Upon the expiration or earlier termination of the Lease, Tenant shall turn over the Improvements to Landlord in first-class condition and repair, considering the age of the Improvements and reasonable wear and tear excepted, and, except as otherwise expressly provided in Section 7.5. Landlord agrees to execute and deliver to Tenant, for the benefit of Tenant, any Lender, any Subtenant or any Person providing financing to Tenant or a Subtenant a commercially reasonable waiver of any interest that Landlord may have in the FF&E promptly following request therefor; provided such waiver shall indemnify and hold Landlord and the Leased Premises harmless from any loss, expense or damage resulting from removal of the FF&E from the Leased Premises.

## **ARTICLE 7     REPAIRS AND MAINTENANCE**

### **7.1.     Landlord's Nonresponsibility.**

Except as expressly provided in Section 7.3.2, during the Term, Landlord shall not be required to maintain or make any repairs or replacements of any nature or description whatsoever to the Leased Premises or the improvements thereon. Tenant hereby expressly waives the right to make repairs at the expense of Landlord as provided for in any statute or law in effect at the time of execution of this Lease, or in any other statute or law which may hereafter be enacted.

### **7.2.     Tenant's Duty to Maintain Premises.**

Throughout the Term, Tenant shall, at Tenant's sole cost and expense, maintain or cause to be maintained the Leased Premises (including the Improvements) and the improvements now or hereafter located on the Leased Premises in first class condition and repair. Such improvements shall be maintained and operated in material compliance with all Governmental Restrictions and Tenant shall make or cause to be made whatever repairs and replacements are required by any Governmental Restrictions or this Lease.

### **7.3.     Capital Improvement Funds.**

Throughout the Term, Tenant and Landlord shall establish and maintain two reserve funds to be applied to capital improvements to the Queen Mary and its related facilities: (i) the Base Maintenance and

Replacement Plan Fund ("**BMRP Fund**") described in Section 7.3.1, and (ii) the Historic Preservation and Capital Investment Plan ("**HPCIP**") Fund described in Section 7.3.2.

7.3.1 BMRP Fund. Commencing upon the Effective Date, and continuing until the expiration of the Term of the Lease, Tenant shall establish and maintain a reserve fund, the BMRP Fund, in accordance with the provisions of this Section 7.3.1 for the cost of Permitted Expenditures (as defined below) for the Queen Mary, including all hotel, special event and public attraction facilities located therein (collectively, the "**Queen Mary Improvements**"). Tenant and Landlord agree and acknowledge that the purpose of the BMRP Fund shall be to provide funds for the costs of improvements, additions, replacements, renovations or upgrades of or to the Queen Mary, including ship exterior and structure, furniture, fixtures, equipment, the parking areas, the landscaping and major building systems (such as, but without limitation, HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural, deck, roof or life safety systems) that increase the capacity, efficiency, useful life, quality, condition or economy of operation of the Queen Mary Improvements or their major systems, improve the guest experience on the Queen Mary, result in the addition of new Improvements or building systems or constitute a replacement of furniture, fixtures, bedding linens, pillows, draperies, towels, cutlery and other similar items provided that, except as expressly provided in this Section 7.3.1 or as otherwise approved in writing by Landlord, all items funded by the BMRP Fund shall be capital in nature. All items funded from the BMRP Fund shall be qualified expenditures under the then operative Base Maintenance and Replacement Plan approved by Landlord ("**Permitted Expenditures**"). Notwithstanding any contrary provision herein, the BMRP Fund shall not be used to fund any portion of the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the Queen Mary or its major systems in an ordinarily efficient operating condition, but which do not materially add to their value, increase their ability to provide service, result in the replacement of furniture, fixtures, equipment or other items expressly described above in this Section 7.3.1 as permitted expenditures, or appreciably prolong their useful life. Permitted Expenditures shall also mean and refer to installation of significant public art elements and modification of design elements of the Queen Mary Improvements that are, in each case, intended to add to the then existing value, economic viability, guest experience and/or market acceptance of the Queen Mary and are shown in the approved Base Maintenance and Replacement Plan or are otherwise approved by Landlord which approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall approve or disapprove of any such request for approval within ten (10) Business Days of its submission.

The BMRP Fund shall be held in an account established with a reputable financial institution (including Tenant's Lender) reasonably acceptable to Landlord into which deposits shall be made by Tenant pursuant to this Section 7.3.1 and which shall be accessible to Landlord and Tenant. Tenant shall have the right to partly or fully satisfy the BMRP obligations of this Section 7.3.1 with capital improvement reserves required by Tenant's Lender, as long as such capital improvement reserves are in all material respects held and administered in accordance, and otherwise comply, with the terms, provisions and requirements of this Section 7.3.1, including the requirement that such reserves be held in immediately available funds.

Commencing on the twentieth (20th) day of the first full month following the Effective Date and continuing on or before the twentieth (20th) day of each month thereafter until the expiration of the Term, Tenant shall make a monthly deposit to the BMRP Fund in the following amounts: (i) for the first and second Lease Years of the Lease, an amount equal to One Percent (1%) of the Site Revenues for the prior month; (ii) for the third and fourth Lease Years of the Lease, an amount equal to Two Percent (2%) of the Site Revenues for the prior month; and (iii) for all subsequent Lease Years, an amount equal to Three



Percent (3%) of the Site Revenues for the prior month. All interest and earnings on the BMRP Fund shall be added to the BMRP Fund, but shall not be treated as a credit against the BMRP Fund deposits required to be made by Tenant pursuant to this Section 7.3.1

Disbursements shall be made from the BMRP Fund only for costs which have been approved by Landlord and which satisfy the requirements of this Section 7.3.1. For the purpose of obtaining Landlord's prior approval of any BMRP Fund disbursements, Tenant shall submit to Landlord for its approval, within 60 days after the Effective Date and on an annual calendar year basis thereafter, an expenditure plan for the upcoming year which details the amount and purpose of anticipated BMRP Fund expenditures for which Tenant requests Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed (such plan is referred to herein as the "**Base Maintenance and Replacement Plan**" or the "**BMRP Plan**"). Landlord shall approve or disapprove of any such request for approval within ten (10) Business Days of its submission. Any anticipated expenditure set forth in such BMRP Plan which is approved by Landlord as an acceptable BMRP Fund disbursement shall be an authorized expenditure (but only up to one hundred ten percent (110%) of the amount of such expenditure set forth in the approved BMRP Plan) for the duration of the upcoming year. During the course of each year, Tenant may also submit to Landlord for Landlord's approval, which approval shall be in Landlord's reasonable discretion, revisions to the then current BMRP Plan in effect for such year, or proposed individual expenditures not noted on the previously approved BMRP Plan. Landlord shall approve or disapprove of any such request for approval within ten (10) Business Days of its submission. Prior to the disbursement of any amounts from the BMRP Fund, Tenant shall furnish to Landlord either applicable invoices for work to be paid from the BMRP Fund or evidence of payment if Tenant is to be reimbursed from the BMRP Fund and other back-up materials reasonably acceptable to Landlord concerning the use of amounts from the BMRP Fund. Subject to compliance with Landlord's customary disbursement requirements, including certified invoices, owner affidavit, lien releases and other like matters, disbursements from the BMRP Fund can be made on an installment basis as work progresses for projects with a projected scope of work that exceeds Two Hundred and Fifty Thousand Dollars (\$250,000).

All amounts then-existing in the BMRP Fund which are not expended for Permitted Capital Expenditures prior to the expiration or earlier termination of the Term shall be transferred to Landlord and become the property of Landlord upon the expiration or earlier termination of the Lease.

Notwithstanding anything above to the contrary, if Tenant incurs expenditures that constitute Permitted Expenditures but which are not funded out of the BMRP Fund because sufficient funds are not then available in such fund, then Tenant may credit the Permitted Expenditures so funded by Tenant out of its own funds against future BMRP Fund contribution obligations of Tenant; provided, that such credit must be applied, if at all, within four (4) years after such Permitted Expenditure is incurred by Tenant (i.e., if Tenant funds a Permitted Expenditure from its own funds, it may credit that amount against future monthly obligations to contribute Site Revenues to the BMRP Fund provided that such offset must be credited, if at all, within not more than four (4) years after the date on which Tenant incurs such self-funded Permitted Expenditure).

7.3.2 HPCIP Fund. Landlord shall establish and maintain an account that is accessible to both Landlord and, with Landlord's consent which consent shall not be unreasonably withheld, conditioned or delayed, Tenant (the "**HPCIP Fund**") to be used as a reserve for making necessary repairs, replacements and improvements to the Queen Mary. Landlord shall approve or disapprove of any such request for consent within ten (10) Business Days of its submission. Such funds shall be applied towards

costs incurred by Tenant in connection with the following; provided that, in each case, such expenditure must be approved in advance by Landlord as described herein and must be in furtherance of the preservation, conservation and/or restoration of the special historic status of the Queen Mary or the maintenance, repair and replacement of specific elements of the Queen Mary directly related to the maritime nature of the ship:

7.3.2.1 The repairs, replacements, preservation, conservation and restoration associated with the physical condition of the Queen Mary, including, but not limited to, the cost of obtaining property condition reports related to the condition of the Queen Mary;

7.3.2.2 Obtaining marine surveys or similar studies and the maintenance, repair or replacement of specific elements identified in such marine surveys or similar studies (i.e., the ship's hull and structural system, decking, bilge tanks and ballast system, lifeboats, etc.) and for facilities unique to the maritime nature of the ship (e.g., wharf and camels, shoreside utility support facilities serving the ship, etc.) which have no natural or analogous counterpart in operating and maintaining a conventional hotel;

7.3.2.3 The increased cost for special maintenance and replacement standards of otherwise normal capital replacement expenditures (e.g., teak rather than a lower cost material that is more appropriately used for general hotel operations);

7.3.2.4 Removal and disposal of Hazardous Materials located in, on, under or about the Queen Mary and the costs of obtaining hazardous material reports related to Hazardous Materials located on the Queen Mary, except to the extent caused by Tenant or anybody acting under or through Tenant;

7.3.2.5 Any other capital investments on the Queen Mary that Landlord and Tenant mutually agree upon.

7.3.3 Monies credited to the HPCIP Fund shall include:

7.3.3.1 Those funds currently held by Landlord in the Queen Mary Reserve Fund within the Tidelands Operating Fund in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) as of the Effective Date.

7.3.3.2 The Passenger Fee Rent (excluding any portion retained by Landlord to pay Landlord's administrative and operating costs of this Lease and the implementation thereof in accordance with Section 4.1.4 and any amounts paid to or retained by City as Debt Service Reimbursements).

7.3.3.3 The remaining Rent paid to Landlord under this Lease (excluding the Pass-Through Rent and any revenues paid to Landlord from special events).

7.3.3.4 Any grant funds or other special source funds (including, in Landlord's sole discretion, the allocation of any Tideland funds) Landlord is able to obtain for the preservation of the Queen Mary.

7.3.3.5 Any funds contributed by Tenant, in its sole discretion, to the HPCIP Fund prior to expenditure, which contributed funds, as and when expended and applied to authorized HPCIP

Fund expenditures, shall be added to the Stipulated Investment Basis for purposes of determining Tenant's Priority Return.

Disbursements shall be made from the HPCIP Fund only for costs which have been approved by Landlord and which satisfy the requirements of Section 7.3.2. For the purpose of obtaining Landlord's prior approval of any HPCIP Fund disbursements, Tenant shall submit to Landlord for its approval, within 60 days after the Effective Date and on an annual calendar year basis thereafter, an expenditure plan for the upcoming year which details the amount and purpose of anticipated HPCIP Fund expenditures for which Tenant requests Landlord's reasonable discretionary approval (such plan is referred to herein as the "HPCIP Plan"). Landlord shall approve or disapprove of any such request for approval within ten (10) Business Days of its submission. Any anticipated expenditure set forth in such HPCIP Plan which is approved by Landlord as an acceptable HPCIP Fund disbursement shall be an authorized expenditure (but only up to one hundred ten percent (110%) of the amount of such expenditure set forth in the approved HPCIP Plan) for the duration of the upcoming year. During the course of each year, Tenant may also submit to Landlord for Landlord's reasonable discretionary approval revisions to the then current HPCIP Plan in effect for such year, or proposed individual expenditures not noted on the previously approved HPCIP Plan. Landlord shall approve or disapprove of any such request for approval within ten (10) Business Days of its submission. Prior to the disbursement of any amounts from the HPCIP Fund, Tenant shall furnish to Landlord either applicable invoices for work to be paid from the HPCIP Fund or evidence of payment if Tenant is to be reimbursed from the HPCIP Fund and other back-up materials reasonably acceptable to Landlord concerning the use of amounts from the HPCIP Fund. Subject to compliance with Landlord's customary disbursement requirements, including certified invoices, owner affidavit, lien releases and other like matters, disbursements from the BMRP Fund can be made on an installment basis as work progresses for projects with a projected scope of work that exceeds Two Hundred and Fifty Thousand Dollars (\$250,000).

Notwithstanding anything above to the contrary, if Tenant incurs expenditures that satisfy the requirements of Section 7.3.2 ("**Permitted HPCIP Expenditures**") but which are not funded out of the HPCIP Fund because sufficient funds are not then available in such fund, then Tenant may be reimbursed for the Permitted HPCIP Expenditures so funded by Tenant out of its own funds from future amounts within the HPCIP Fund; provided, that such reimbursement must be made, if at all, within four (4) years after such Permitted HPCIP Expenditure is incurred by Tenant (i.e., if Tenant funds a Permitted HPCIP Expenditure from its own funds, it may be reimbursed for that amount from future amounts within the HPCIP Fund provided that such reimbursement must be made, if at all, within not more than four (4) years after the date on which Tenant incurs such self-funded Permitted HPCIP Expenditures). Any amounts so reimbursed by Landlord to Tenant from the HPCIP Fund shall not be added to the Stipulated Investment Basis for purposes of determining Tenant's Priority Return.

Notwithstanding the foregoing, in addition to disbursements from the HPCIP Fund on annual basis based upon the available and uncommitted funds then on deposit in the HPCIP Fund as provided above, Landlord further agrees to exercise commercially reasonable efforts, at no unreimbursed out-of-pocket expense to Landlord, to cause the HPCIP Fund revenues described in Section 7.3.2 which are projected for receipt following the Effective Date and within the first seven (7) Lease Years and certain projected revenues to be received by Tenant under Section 4(b) of the Carnival Dome Sublease for Lease Years 6 through 10, inclusive, to be capitalized through a financing providing Tenant with a lump sum amount to apply to Permitted HPCIP Expenditures approved by Landlord and which have accrued as a backlog due to deferred maintenance by the prior lessee(s) of the Leased Premises and which need to be

addressed promptly following the Effective Date. The proposed financing is contemplated to provide up to \$19 million in capitalized revenues for application to Permitted HPCIP Expenditures. As indicated above, the purpose of this financing and the capitalized fund it would create is to accelerate capital repairs, improvements and replacements that have been identified by Tenant since its acquisition of the Project, which are urgent, and which would otherwise be spread over many years. Those urgent improvements include repairs to the hull and structural system and the infrastructure systems of the Queen Mary, including certain urgent repairs which have been identified in a Marine Survey Report of the Queen Mary prepared by the Wyn Davies Consulting Group. The specific items to be addressed with these capitalized funds, and the priority of those expenditures, shall be identified in a capitalized funds project list to be submitted to Landlord for its written approval, in Landlord's reasonable discretion, within sixty (60) days after the Effective Date. The Tenant's submission of these proposed projects shall also identify the estimated cost of each proposed project or repair and the expected time frame to commence and complete such repairs. No projects shall be funded from these capitalized HPCIP Fund revenues other than those which have been shown on this list and have received the Landlord's written approval. Subject to the foregoing, Landlord and Tenant shall reasonably cooperate with each other to allow these lump sum funds to be available for use within 180 days after the Effective Date and to cause all work to be performed with these funds to be promptly commenced and diligently pursued to completion within not more than three (3) years after the Effective Date. In order to provide a source for debt service on the proposed financing and/or reimbursement to City of any funds advanced by City for payment of debt service, costs of issuance and other costs of such financing, the Parties agree that, notwithstanding anything herein to the contrary, following completion and funding of such financing, (i) all funds that would otherwise be deposited into the HPCIP Fund for the next seven (7) full Lease Years following completion of the financing shall instead be paid to the City, and (2) commencing with the beginning of the Sixth (6th) Lease Year and continuing until the end of the Tenth (10th) Lease Year, in addition to all other amounts payable by Tenant hereunder and without reduction or offset to any other rent payable hereunder, one-fourth (25%) of the rents received by Tenant under Section 4(b) of the Carnival Dome Sublease shall be paid to City within ten (10) Business Days after receipt by Tenant (that is, for purposes of clarity, one-half of those rents received by Tenant under Section 4(b) of the Carnival Dome Sublease will be paid to Landlord as Passenger Fee Rent under Section 4.1.4 and one-half of the Section 4(b) Carnival Dome Sublease rents retained by Tenant will be paid to City under this Section as additional rent during said Lease Years 6 through 10). Such payments to City required by this Section shall be treated as additional rent hereunder, and the failure to timely make any required payment to the City shall (subject to any applicable cure rights provided to Tenant in this Lease) constitute a material default under this Lease.

#### 7.4. Repair; Destruction.

Except as otherwise expressly provided in this Lease, Tenant shall promptly and diligently repair, replace or restore all damage to or destruction of all or any part of the improvements (including the Improvements) on the Leased Premises resulting from any cause. Said repair, replacement or restoration shall be commenced as soon as reasonably possible, and shall thereafter be pursued to completion with diligence. Tenant's failure to timely commence or diligently pursue each such repair, replacement or restoration shall constitute a Default under this Lease following delivery of a Notice of Default with respect thereto. Unless prohibited by a Governmental Restriction (and then, only to the extent so prohibited), the completed work of repair, restoration, or replacement shall be equal, in all material respects, in value, quality, and use to the condition of the improvements before the event giving rise to such work, except as

may be expressly provided to the contrary in this Lease. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Leased Premises in connection with such work by Tenant. Landlord may elect to perform any obligation of Tenant under this Section upon Tenant's failure or refusal to do so in accordance with the provisions of Section 14.3. All such work of repair, replacement or restoration performed by Tenant shall comply with all of the requirements imposed with respect to Changes to the Improvements set forth in Section 6.7; provided that no Landlord approvals shall be required under this Lease in connection with any repair, replacement or restoration work which constitutes a Minor Change or that merely repairs, replaces or restores to its original condition any of the Improvements damaged by a casualty or other like event outside the reasonable control of Tenant.

Except as expressly provided in this Lease, no deprivation, impairment, or limitation of use resulting from any damage or destruction or event or work contemplated by this Section shall entitle Tenant to any offset, abatement, or reduction in rent, nor to any termination or extension of the Term.

7.5. Damage or Destruction During Last Part of Term; Uninsured Damage; Legal Restriction on Reconstruction of Improvement.

Notwithstanding anything to the contrary contained in this Lease, if (i) there is damage to or destruction of the Leased Premises other than the Queen Mary during the last seven (7) years of the Term and the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining improvements on the Leased Premises (in accordance with the scope of the demolition and removal obligation imposed on Tenant pursuant to Section 16.1), or (ii) there is damage to or destruction of the Leased Premises which (aa) arises from a cause which is not required to be insured against under any provision of this Lease and was not in fact insured against, or (bb) arises from a cause which is in fact insured against, but for which the recoverable proceeds of such insurance (excluding any proceeds which are applied by the lender under a Leasehold Mortgage to reduction of its Leasehold Mortgage in accordance with the rights of the lender thereunder and are unavailable for application to reconstruction notwithstanding Tenant's exercise of commercially reasonable efforts to obtain same) are less than the cost to repair said damage or destruction, and (cc) the cost to Tenant (which is not covered by insurance proceeds) of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining improvements on the Leased Premises (in accordance with the scope of the demolition and removal obligation imposed on Tenant pursuant to Section 16.1), or (iii) there is damage to or destruction of the Leased Premises and the Governmental Restrictions then in effect with respect to the Leased Premises prohibit the construction of economically viable replacement improvements with respect to a use which Tenant either has the right to engage in under this Lease or which Landlord will permit to be engaged in, then Tenant shall have the option to terminate this Lease, subject to Tenant's satisfaction of all of the following requirements: (a) Tenant shall, within one hundred twenty (120) days after the event giving rise to such right to terminate, give Landlord written notice of its election to terminate ("**Notice of Election to Terminate**"); (b) Tenant shall, at the election of Landlord (which election shall be communicated in writing to Tenant ("**Demolition Notice**") within thirty (30) days of Landlord's receipt of the Notice of Election to Terminate), raze and remove the damaged or destroyed improvements or any specified portion thereof; provided, however, in no event shall Tenant be required to raze and remove the Queen Mary, and shall complete said demolition and removal and shall vacate the Leased Premises within one hundred twenty (120) days of Landlord's delivery of the Demolition Notice (which vacation date shall fix the termination date of this Lease); and (c) Tenant shall comply with all provisions of Article 16 consistent with this Section 7.5 prior to or concurrent with Tenant's vacation of the Leased Premises. Any and all property damage insurance proceeds (exclusive of any proceeds applicable to Tenant's personal property that would, in any

event, be retained by Tenant at the end of the Term) paid as a result of the damage or destruction giving rise to the termination, shall be distributed in accordance with the following order of priority: first, to repayment of any outstanding Leasehold Mortgage, if required by the terms of said encumbrance; second, to the demolition and removal costs, if any, incurred by Tenant at Landlord's direction pursuant to this Section; and third, to Landlord all remaining insurance proceeds. Damage to or destruction of the improvements on the Leased Premises shall not cause an abatement or reduction of Rent. The Parties' rights shall be governed by this Lease in the event of damage or destruction. The Parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for contrary or additional rights.

## ARTICLE 8 LEASEHOLD FINANCING

### 8.1. Conditions To Obtaining Leasehold Mortgage.

Notwithstanding anything which is or appears to be to the contrary in this Lease, Tenant shall not encumber the estate created by this Lease or the ownership interests in Tenant, except as expressly provided in this Article 8.

Tenant may encumber Tenant's estate created by this Lease and the ownership interests in Tenant with Leasehold Mortgages; provided, that Tenant has demonstrated to Landlord's reasonable satisfaction that each such Leasehold Mortgage meets each of the following terms, conditions and requirements:

(a) The loan secured by the Leasehold Mortgage shall be made by (i) a state or federal bank, savings and loan, pension or retirement fund, life insurance company, investment banking firm, private equity fund or other like institutional lender which, together with its parent, subsidiary and Affiliate entities, has a net worth of at least One Hundred Million Dollars (\$100,000,000), (ii) a group, pool or association of participating lenders which collectively have a combined net worth of at least One Hundred Million Dollars (\$100,000,000) provided that the lead lender (i.e., the lender in such pool with primary responsibility for administering such loan) is a state or federal bank, savings and loan, pension or retirement fund, life insurance company, investment banking firm, private equity fund or other like institutional lender, or (iii) a mortgagee who is a trustee of a trust consisting of a pool of mortgages pursuant to a pooling and servicing agreement for commercial mortgage backed securities (commonly referred to as a "CMBS") that qualifies as a real estate mortgage investment conduit (commonly referred to as a "REMIC") established pursuant to Section 860D of the Internal Revenue Code of 1986, as amended from time to time, or any similar mortgage investment vehicle, and in which trust the bondholders or investors under the pooling and servicing agreement are the ultimate beneficiaries;

(b) The loan to value ratio shall not exceed eighty percent (80%) when measured with respect to the cumulative debt of all Leasehold Mortgages that would encumber the Leased Premises following recordation of the proposed Leasehold Mortgage at issue; provided, that the foregoing requirement shall not limit the refinancing of any existing loan by a replacement loan not in excess of the then outstanding balance of the loan replaced, plus all consultant and loan fees, "points", commissions and other costs incurred in making the new loan, so long as such original loan met the above debt service coverage ratio requirement on the date it was originally made.

(c) Promptly upon the recording of the Leasehold Mortgage, Tenant or the holder of the Leasehold Mortgage shall, at its own expense, cause a copy of the Leasehold Mortgage to be

delivered to Landlord and shall cause the Leasehold Mortgage to be recorded in the Official Records together with a written request executed and acknowledged by Landlord for a copy of all notices of default and all notices of sale under the Leasehold Mortgage as provided by applicable law. Inclusion of a request for notice having the effect described above in the body of the recorded Leasehold Mortgage shall constitute compliance with this provision;

(d) The Leasehold Mortgage shall be subordinate to Landlord's fee interest in the Leased Premises, shall not be cross-defaulted with any other loans to Tenant (other than a loan secured by another Leasehold Mortgage), and shall not cover any interest in real property other than the leasehold estate created by this Lease with respect to the Leased Premises and any easements or reciprocal easement agreements, to the extent they benefit the Leased Premises;

(e) The Leasehold Mortgage shall not permit or authorize, or be construed to permit or authorize, any Lender to devote the Leased Premises to any uses, or to construct any improvements thereon, other than those uses and improvements provided for and authorized by this Lease; and

(f) As long as possible prior to the recordation of the Leasehold Mortgage, or any material modification or amendment thereto, Tenant shall provide Landlord with a true and accurate copy of the documentation creating and evidencing the Leasehold Mortgage and the loan evidenced thereby and Tenant hereby acknowledges and agrees that Landlord shall have the right to provide written and oral comments to the proposed Lender if Landlord determines that the Leasehold Mortgage is not consistent with the terms, provisions and requirements of this Lease. Landlord hereby agrees to notify Tenant concurrently therewith with respect to the nature of any comments delivered to such proposed Lender and provide Tenant a copy of any written documents or communications (including copies of fax and e-mail transmissions) sent to such proposed Lender.

Landlord shall give Tenant written notice of the giving or withholding of its consent to any proposed Leasehold Mortgage within twenty (20) days after Tenant's delivery of such request and all supporting information and documentation reasonably necessary to address such request. If Landlord fails to give such written consent within such twenty (20) day period, Tenant may deliver a second request to Landlord requesting that Landlord give or withhold its consent to the proposed Leasehold Mortgage within ten (10) days after delivery of such second request. Such second request shall specify the date of submission of the prior request for consent and the proposed Leasehold Mortgage for which Tenant seeks consent, and shall state that such second notice constitutes a second request for consent. Such second notice shall be delivered in the manner provided by Section 16.5 for delivery of notices to Landlord and shall state, in bold face type, as follows: "LANDLORD'S FAILURE TO GIVE TENANT WRITTEN NOTICE OF WHETHER OR NOT LANDLORD CONSENTS TO SUCH LEASEHOLD MORTGAGE DESCRIBED IN THIS REQUEST WITHIN TEN (10) DAYS AFTER DELIVERY OF THIS SECOND NOTICE WILL RESULT IN A DEEMED CONSENT TO SUCH LEASEHOLD MORTGAGE". If, following receipt of such second notice, Landlord fails to give Tenant written notice of whether it consents or withholds its consent to such Leasehold Mortgage within ten (10) days thereafter, such Leasehold Mortgage shall be deemed approved; provided that such Leasehold Mortgage shall comply with the requirements of Section 8.1 (c)-(e) in any event and the failure of Landlord to respond to such request for approval or disapproval shall not result in a waiver of those requirements; and

(g) The Leasehold Mortgage shall secure a bona fide extension of credit to Tenant and shall not be for the purpose of avoiding or extending any obligations of or restrictions on Tenant under this Lease, including restrictions on Transfer or periods for curing of Defaults.

The application of insurance proceeds resulting from damage to the Leased Premises shall be governed by the terms of Tenant's Leasehold Mortgage; provided, that, in negotiation of such Leasehold Mortgage, Tenant shall use commercially reasonable efforts to cause the Leasehold Mortgage to provide that any proceeds from fire and extended coverage insurance shall be first used for repair or reconstruction of the leasehold improvements and not to repay all or a part of the Leasehold Mortgage unless additional insurance proceeds remain available for such use.

#### 8.2. Lender's Rights.

During the continuance of any Leasehold Mortgage permitted by this Lease, and until such time as the lien of any Leasehold Mortgage has been extinguished:

(a) Landlord shall not agree to any mutual termination, nor accept any voluntary surrender or termination of this Lease, nor shall Landlord consent to any material amendment or modification of this Lease without the prior written consent of Lender; provided, that any rejection, termination, cancellation or surrender by Tenant or its trustee in bankruptcy occurring without Landlord's consent pursuant to the provisions of the United States Bankruptcy Code, 11 U.S.C. §101, et seq. (the "**Bankruptcy Code**") is not a violation of this provision; and, provided, further, that the provisions of this Subsection shall not apply to any termination resulting from Tenant's breach of this Lease, but any such termination shall not occur so long as Lender has timely exercised its cure rights to which it is entitled under this Article 8 and is the process of curing such default in accordance with its rights under said Article 8; and

(b) Following Lender's or Lender's Affiliate designee's acquisition of Tenant's interest in this Lease pursuant to a foreclosure or an assignment or deed in lieu of foreclosure, the Lender or its Affiliate designee shall be entitled to assign its interest in this Lease without Landlord's prior consent (including in connection with an acquisition by a third party purchaser from the Lender or Lender's Affiliate designee, as the case may be, following such foreclosure or assignment in lieu of foreclosure to Lender or Lender's Affiliate designee), subject to compliance with Sections 8.3 and 8.6. All subsequent Transfers by the Transferee of Lender or Lender's Affiliate designee shall comply with the provisions of this Lease, including all restrictions on Transfer set forth in Article 9.

#### 8.3. Default Notice.

Landlord, upon providing Tenant with any Notice of Default (as defined below) under this Lease, shall, at the same time, provide a copy of such notice to each Lender then holding a Leasehold Mortgage encumbering the Leased Premises at its notice address previously provided to Landlord, provided such Lender has requested such notice, in writing, from Landlord. From and after such notice has been given to a Lender, such Lender shall have the same period for remedying the Default complained of as the cure period provided to Tenant pursuant to Section 14.2, plus the additional period provided to such Lender as specified in Section 8.4. Landlord shall accept performance by or at the instigation of such Lender as if the same had been done by Tenant.



#### 8.4. Lender Cure Rights.

Notwithstanding anything to the contrary contained in this Lease, Landlord shall have no right to terminate this Lease on account of an Uncured Default of Tenant unless, following expiration of Tenant's applicable cure period, Landlord first provides each Lender (a) not less than thirty (30) days' written notice of its intent to so terminate this Lease if Tenant's Default can be cured by the payment of money (a "**Monetary Default**"), and (b) not less than sixty (60) days' written notice of its intent to so terminate this Lease if Tenant's Default is of any other type (a "**Non-Monetary Default**"), and Lender fails to cure any Monetary Default within thirty (30) days after receipt of such notice or fails to cure or, in good faith and with reasonable diligence and continuity, commence to cure any such Non-Monetary Default (except for those Non-Monetary Defaults which, by their nature, are not susceptible of cure by such Lender) within said sixty (60) day period. If any such Non-Monetary Default cannot reasonably be cured within said sixty (60) day period or is such that possession of the Leased Premises is necessary to cure the Default, Landlord shall have no right to terminate this Lease on account of such Non-Monetary Default if (i) Lender has cured any Monetary Default within thirty (30) days after its receipt of written notice of Landlord's intent to terminate, (ii) Lender continues to pay or cause to be paid such monetary obligations as and when the same are due (subject to the notice and cure periods for Tenant's payment of such monetary obligation set forth in this Lease), and (iii) Lender continues its good faith and diligent efforts to remedy such Non-Monetary Default (including diligently and continuously pursuing its acquisition of possession of the Leased Premises if necessary to the cure of such Default). Nothing in this Section 8.5 shall be construed to require a Lender to continue any foreclosure proceeding it may have commenced against Tenant after all Defaults have been cured by Lender, and if such Defaults shall be cured and the Lender shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease. Nothing herein shall require a Lender who has acquired Tenant's leasehold interest and has taken possession of the Leased Premises to cure any Non-Monetary Default which is not capable of being cured by such Lender, and such Default shall be deemed to be waived following Lender's acquisition of Tenant's leasehold interest and such Lender's timely cure of all Monetary Defaults and all Non-Monetary Defaults which are capable of cure by such Lender in accordance with the foregoing provisions.

#### 8.5. Obligations of Lender and Purchaser.

No Lender, acting in such capacity, shall be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Lender, in that capacity, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder, unless and until it or its Affiliate designee acquires the interest of Tenant hereunder. Upon acquiring Tenant's leasehold, Lender or its Affiliate designee may, without the consent of Landlord, sell and assign the leasehold estate on such terms and to such persons and entities as are acceptable to such Lender or its designee and thereafter be relieved of all obligations of Tenant first arising under this Lease after the date of such sale or assignment; provided, that such assignee of the Lender or its designee shall have delivered to Landlord an assumption agreement as provided by Section 9.2. Any such assignee of Lender or its designee or any other assignee of this Lease or of the leasehold estate created hereby by a conveyance in lieu of foreclosure or any purchaser at any foreclosure sale of this Lease or of the leasehold estate hereby created (other than the Lender or its designee), shall be deemed to be a Transferee of this Lease, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment and, from and after such date, shall be subject to all the terms of this Lease, including all restrictions on further Transfer set forth in Article 9.

Notwithstanding any other provision of this Lease, any bona fide sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage or a bona fide assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of foreclosure of a Leasehold Mortgage shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the leasehold estate hereby created so long as such Transfer has not been undertaken for the purpose or with the intent of circumventing any otherwise applicable restrictions upon Transfers of Tenant's interest under this Lease.

8.6. New Lease.

Except as expressly provided in the last sentence of this Section, in the event of a termination of this Lease by reason of a surrender, cancellation, or termination by Tenant, or as a result of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditor's rights, Landlord shall give prompt notice thereof to any Lenders who have requested notice from Landlord in writing and furnished their names and addresses to Landlord. Landlord shall, on written request of any such Lender or any purchaser (including Lender or an Affiliate of Lender) in any proceedings for the foreclosure of any Leasehold Mortgage or any assignee (including Lender or an Affiliate of Lender) of a bona fide assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of foreclosure of a Leasehold Mortgage, made at any time within thirty (30) days after the giving of such notice by Landlord, enter into a new lease of the Leased Premises with such Lender or other third-party within twenty (20) days after the receipt of such request, which new lease shall be effective as of the date of such termination of this Lease, and shall be for the remainder of the Term, at the rent provided for herein, and upon the same terms, covenants, conditions and agreements as are herein contained; provided that such Lender or other third-party shall: (a) contemporaneously with the delivery of such request pay to Landlord all the installments of Rent payable by Tenant hereunder which are then due; (b) pay to Landlord at the time of the execution and delivery of said new lease any and all sums for Rent payable by Tenant hereunder to and including the date thereof, less the net amount of all sums received by Landlord from any sublessees in occupancy of any part or parts of the Leased Premises and/or Improvements up to the date of commencement of such new lease; (c) pay all reasonable costs resulting from the preparation and execution of such new Lease; and (d) on or prior to the execution and delivery of said new lease, agree in writing that promptly following the delivery of such new lease, such Lender or other third party will perform or cause to be performed all of the other covenants and agreements herein contained on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of the new lease, except where such failure to perform by Tenant is, by its nature, a Non-Monetary Default not susceptible of cure by such Lender or other third-party. Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Leased Premises to such Lender or other third-party unless Landlord at the time of the execution and delivery of such new lease shall have obtained physical possession thereof.

8.7. Multiple Lenders.

If more than one Lender shall make written request upon Landlord for a new lease in accordance with the provisions of Section 8.6, then such new lease shall be entered into pursuant to the request of the Lender whose Leasehold Mortgage shall be junior in lien provided: (a) all Lenders senior in lien shall have been paid all installments of interest and amortization of principal then due and owing to such Lenders plus all expenses, including reasonable attorneys' fees, incurred by such senior Lenders in connection with the termination of this Lease and with the execution and delivery of such new lease; (b) the new lessee will

assume, in writing, all of the covenants, agreements and obligations on the part of the mortgagor under such senior Leasehold Mortgages to be kept, observed and performed on the part of such mortgagor; (c) such new lease shall contain all of the same provisions and rights in favor of and for the benefit of Lenders holding leasehold mortgages thereon as are contained in this Lease, including but not limited to the right to obtain a new lease in the event of the termination of said lease, and the right to receive notices of default, and to cure the same, in the same manner as provided in this Lease; and (d) the senior Lenders shall have received from the respective title insurance companies insuring the respective senior Leasehold Mortgages assurances satisfactory to such senior Lenders that said senior Leasehold Mortgages and any assignment of rents and other security instruments executed in connection therewith will continue, with respect to such new lease, in the same manner and order of priority of lien as was in existence with respect to this Lease; and thereupon the leasehold estate of the new lessee created by such new lease shall be subject to the lien of the senior Leasehold Mortgages in the same manner and order of priority of lien as was in existence with respect to this Lease. In the event not all of the foregoing provisos shall have been satisfied by or with respect to any such junior Lender, the Lender immediately senior in lien to such junior Lender shall have paramount rights to the benefits set forth in Section 8.6, subject nevertheless to the provisions hereof respecting the senior Lenders, if any. In the event of any dispute as to the respective senior and junior priorities of any such Leasehold Mortgages, the certification of such priorities by a title company doing business in California, satisfactory to Landlord, shall be conclusively binding on all Parties concerned. Should there be a dispute among Lenders as to compliance with the foregoing provisions, Landlord may rely on the affidavit of the most senior Lender as to compliance by any junior Lender. Landlord's obligation to enter into a new lease with any junior Lender shall be subject to the receipt by Landlord of evidence reasonably satisfactory to it that the conditions of (a), (b) and (d) above have been satisfied with respect to each senior Lender.

(a) The right of a senior Lender under Section 8.6, to request a new lease may, notwithstanding any limitation of time set forth in Section 8.6 or in this Section 8.7, be exercised by the senior Lender within twenty (20) days following the failure of the junior Lender to have exercised such right within the time provided by Section 8.6.

(b) If a junior Lender shall fail or refuse to exercise the rights set forth in this Section, said senior Lenders, in the inverse order of the seniority of their respective liens, shall have the right to exercise such rights subject to the provisions of this Lease.

#### 8.8. New Lease Priority.

It is the intent of the Parties that any new lease made pursuant to Section 8.6 shall have the same priority with respect to any lien, charge or encumbrance on the fee of the Leased Premises as did this Lease and that Tenant under such new lease shall have the same right, title and interest in and to the Leased Premises as Tenant had under this Lease.

The provisions of this Section 8.8 and Sections 8.6 and 8.7 shall survive the termination, rejection or disaffirmance of this Lease pursuant to the Bankruptcy Code and shall continue in full force and effect thereafter to the same extent as if Sections 8.6 and 8.7 and this Section 8.8 were a separate and independent contract made by Landlord, Tenant and such Lender.

8.9. Liability of New Tenant.

The Lender which becomes Tenant under any such new lease made pursuant to Section 8.6 shall be liable to perform the obligations imposed on Tenant by such new lease as well as those arising under Section 8.6 to the same extent as a Lender which acquires Tenant's estate under this Lease by the foreclosure thereof.

8.10. Sublease and Rents.

After the termination of this Lease and during the period thereafter during which any Lender is entitled to enter into a new lease of the Leased Premises, Landlord will not voluntarily terminate any Sublease or the rights of the subtenant thereunder (provided such Sublease is a permissible Sublease under this Lease), unless such subtenant is in default under such Sublease and has failed to cure same within the time provided under such Sublease. During such periods Landlord shall deposit such rents and payments in a separate and segregated account, but may withdraw and pay to Landlord such sums as are required or were required to be paid to Landlord under this Lease, at the time and in the amounts due hereunder, and may withdraw and expend such amounts as are necessary for the maintenance, operation, and management of the Leased Premises in accordance with the requirements of this Lease; and, upon the execution and delivery of such new lease, Landlord shall account to the lessee under the said new lease for the balance, if any (after application as aforesaid), of the rent and other payments made under said subleases. The collection of rent by Landlord pursuant to this Section shall not be deemed an acceptance by Landlord for its own account of the attornment of any subtenant unless Landlord shall have agreed in writing with such subtenant that its tenancy shall be continued following the expiration of any period during which a Lender may be granted a new lease, in which case such attornment shall take place upon such expiration but not before. If the Lender fails to exercise its right to enter into a new lease or fails to timely execute such new lease, all rents collected by Landlord pursuant to this Section shall become Landlord's property free and clear of any claim by such Lender and such Lender shall have no further rights with respect thereto.

8.11. Reference and Legal Proceedings.

Landlord shall give each Lender who has given written notice of its interest in the leasehold estate to Landlord prompt notice of legal proceedings between Landlord and Tenant involving obligations under this Lease. Such notice shall be delivered to the Lender at the address provided by such Lender to Landlord in connection with such Lender's request for notice. Each Lender shall have the right to intervene in any such proceeding to protect its interest and be made a party thereto, and the Parties hereto do hereby consent to such intervention. In the event that any such Lender shall not elect to intervene or become a party to any such proceedings, Landlord shall give such Lender notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Lenders not intervening after receipt of notice of the legal proceeding.

8.12. Notices.

Notices from Landlord to any Lender shall be delivered to the address of the Lender set forth in the Leasehold Mortgage furnished to Landlord or at such other address as may have been furnished to Landlord by such Lender. All notices from the Lender to Landlord shall be delivered to the address designated pursuant to the provisions of Section 17.5 or such other address as Landlord may designate in

writing from time to time. Such notices shall be given in the manner described in Section 17.5 and shall in all respects be governed by the provisions of such Section.

## ARTICLE 9 ASSIGNMENT AND TRANSFER

### 9.1. Assignment of Landlord's Interest in Lease or the Leased Premises.

#### 9.1.1 Transfer of Landlord Interest.

Landlord may Transfer the Leased Premises, this Lease, all or a portion of its interest thereunder, and/or all or a portion of the payments that are payable to it by Tenant pursuant to this Lease. Tenant hereby consents and agrees to any such Transfer which Landlord considers necessary or proper, regardless of the reason or reasons for which Landlord makes such Transfer and regardless of the entity that is the Transferee thereunder, provided that the Transferee assumes the obligations of Landlord hereunder first arising from and after such Transfer. Upon any Transfer that involves conveyance of Landlord's fee interest in the Leased Premises and assignment of Landlord's interest in the Lease, the Transferring Landlord shall be released from all obligations and liabilities under this Lease arising from and after such Transfer.

#### 9.1.2 Fee Mortgage.

Landlord shall have the right to encumber its fee interest in the Leased Premises with a mortgage, deed of trust, assignment and leaseback for financing purposes, or other established method of securing real property financing (a "**Fee Mortgage**") from time to time. If requested by Landlord or the holder of a Fee Mortgage, Tenant will either (i) subordinate its interest in this Lease to any Fee Mortgage and to any and all advances made thereunder, all interest and other charges thereunder and all renewals, replacements, supplements, amendments and extensions thereof, or (ii) make Tenant's rights and interests in this Lease superior to any Fee Mortgage; and Tenant will execute and deliver such agreement or agreements, in form and substance as may be reasonably acceptable to Tenant, all Lenders, Landlord and such mortgagee; provided that in connection with Tenant's subordination of its interest in this Lease, Tenant (as a condition to Tenant's agreement to subordinate its interest in this Lease), any Lender or such Landlord mortgagee may require that the parties enter into a subordination, non-disturbance and attornment agreement, in form and substance reasonably acceptable to Tenant, Landlord and such mortgagee, providing that notwithstanding any default by Landlord under the Fee Mortgage, or any foreclosure or deed in lieu thereof, Tenant's rights under this Lease and the Lender's rights under its Leasehold Mortgage shall continue in full force and effect and its possession of the Leased Premises remain undisturbed, except as otherwise provided under the provisions of this Lease in the event of a Default or the expiration of the Term, and that Tenant will attorn to such mortgagee or purchaser at a foreclosure sale or grantee of a deed in lieu of foreclosure, and that such mortgagee, purchaser or grantee shall assume the obligations of Landlord under this Lease from and after the date of its acquisition of Landlord's interest in this Lease. Tenant agrees that a subordination, non-disturbance and attornment agreement substantially in the form attached hereto as Exhibit "D" is acceptable to Tenant.

#### 9.1.3 Fee Mortgage Foreclosure.

Tenant further agrees that if any Fee Mortgage is foreclosed or a deed in lieu thereof is given, the mortgagee, purchaser at a foreclosure sale or grantee of a deed in lieu of foreclosure, as the case may be, and their respective successors and assigns shall not be (i) liable for any act or omission of

any prior Landlord; provided, however, nothing herein shall be deemed to be a waiver of Tenant's rights or remedies in the event such act or omission is of a continuing nature; (ii) bound by any obligation to perform any work or make any improvements to the Leased Premises or any portion thereof; (iii) bound by any amendment or modification to this Lease to which the mortgagee under the Fee Mortgage did not consent which consent shall not be unreasonably withheld, conditioned or delayed; (iv) bound by any prepayment of Monthly Rent for more than one (1) month in advance unless expressly required by the terms of this Lease; or (v) liable for any obligations or liabilities of Landlord under this Lease arising from and after such mortgagee, purchaser or grantee has transferred its interest under this Lease. Tenant also agrees that this Lease shall not be modified or amended or cancelled or surrendered, without the prior written consent of the mortgagee under any Fee Mortgage in each instance.

9.2. Transfer of Tenant's Interest in Lease and Tenant's Ownership; Subleases, Licenses and Concession Agreements.

The restrictions contained in this Section 9.2 upon any Transfer to any Transferee are imposed because Tenant's qualifications are of particular concern to Landlord, and Landlord has entered into this Lease in reliance upon Tenant's qualifications, skill, reputation and experience. Any purported Transfer which is prohibited by this Section 9.2 shall be ipso facto null and void, and no voluntary or involuntary successor to any interest of Tenant under such a Transfer shall acquire any rights pursuant to this Lease. These restrictions on Transfer shall be binding on any successors, heirs or permitted Transferees of Tenant.

At any time Tenant desires to effect a Transfer under any provision of this Lease, Tenant shall, except as expressly provided below in this Section 9.2, request consent from Landlord in writing and shall submit to Landlord in connection with such request all proposed agreements and documents (collectively, the "**Transfer Documents**") memorializing, facilitating and/or evidencing such proposed Transfer. Landlord agrees to advise Tenant in writing of its decision on Tenant's request for consent to such Transfer, as promptly as possible, and, in any event, not later than thirty (30) days after Landlord receives all of the items required by the preceding sentence. In the event Landlord fails to so notify Tenant within such 30-day period, Landlord shall be deemed to have decided not to consent to the proposed Transfer. In the event Landlord consents to a proposed Transfer pursuant to this Section 9.2, Tenant and the Transferee shall deliver to Landlord promptly following the effective date thereof copies of all executed and binding Transfer Documents, which Transfer Documents shall conform in all material respects with the proposed Transfer Documents originally submitted by Tenant to Landlord, and a certificate, addressed to Landlord, setting forth the representation of Tenant, and, in the case of an assignment of Tenant's interest under this Lease, the Transferee, stating that all requirements of this Section 9.2 applicable to such Transfer have been met in all material respects. Failure to promptly provide such Transfer Documents in the required form or to provide the required certificate shall constitute a Default under this Lease after delivery of a Notice of Default with respect thereto and Tenant's failure to cure such Default within any applicable cure period.

Notwithstanding anything in this Lease to the contrary, Tenant agrees that, in addition to all other Landlord rights with respect to Transfers subject to Landlord approval under this Lease, Landlord shall have the right to refuse to consent to any Transfer pursuant to Section 9.2.1 or 9.2.2, if an Uncured Default of any of Tenant's monetary obligations under this Lease, or of any material non-monetary obligations under this Lease, exists unless Tenant gives Landlord adequate assurances acceptable to Landlord that the Transferee will cure such Uncured Default on or prior to the effective date of the Transfer. In the event

that a Default exists as of the date of any Transfer (but such Default has not yet become an Uncured Default as a result of the expiration of the cure period applicable thereto) such Transfer shall not extend the applicable cure period or otherwise limit or waive any rights of Landlord hereunder with respect thereto.

The provisions of this Section 9.2 shall apply to each successive Transfer and Transferee in the same manner as initially applicable to Tenant under the terms set forth herein.

9.2.1 Transfer of the Lease, the Leased Premises, or the Improvements to be Constructed Thereon.

9.2.1.1 Except as otherwise expressly provided in this Lease, Tenant shall not Transfer all or any part of its interest in or rights under this Lease and/or any part of its interest in or rights to the Leased Premises and/or any of the improvements constructed thereon, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Without limitation of the foregoing Landlord's refusal to consent to a proposed Transfer shall be considered reasonable if such refusal is because (i) the proposed Transfer would, in Landlord's good faith judgment, result in a material reduction of the revenues received directly or indirectly by Landlord from the operation of the Leased Premises or (ii) the proposed Transferee (a) does not have sufficient net worth or liquidity to comply with its obligations under this Lease, or (b) is not able to demonstrate the capability to manage or provide for the management of developments of the size and character of the Improvements located on the Leased Premises, or (c) cannot demonstrate a history of ownership and operation of comparable projects or hotels operating at a qualify level at least equal to the requirements for the Leased Premises.

9.2.1.2 Notwithstanding anything herein to the contrary, Landlord consent shall not be required for a Transfer referred to in Section 9.2.1.1 to an Affiliate of Tenant; provided, however, that (aa) any assignee pursuant to this paragraph shall expressly assume liability with Tenant under this Lease to the extent of said assignee's interest; (bb) such assignment shall not relieve Tenant of day-to-day control of and responsibility for development, construction and/or management of the Leased Premises or any of its obligations hereunder; (cc) Tenant shall remain fully responsible to Landlord in accordance with the terms and provisions of this Lease; and (dd) Tenant (or the person(s) or entity(ies) that have a majority ownership interest in Tenant) shall retain majority beneficial ownership and control of the Affiliate taking an assignment hereunder.

9.2.1.3 From and after the effective date of an assignment of all of Tenant's rights and obligations hereunder to a party (other than an Affiliate of Tenant) which has been approved by Landlord, and provided the assignee thereof has assumed all of Tenant's obligations under this Lease first arising from and after the effective date of such assignment, Tenant shall be released from all obligations hereunder first arising from and after the effective date of such assignment; provided, however, that in no event shall Tenant be released from any obligations arising prior to the effective date of such assignment.

9.2.2 Transfer of Ownership and/or Control of Tenant.

9.2.2.1 For purposes of this Section 9.2.2, the term "**Ownership and/or Control**" means and includes, without limitation, all voting rights and direct and indirect beneficial ownership with respect to all classes of stock, interests in partnerships or limited liability companies and/or beneficial interests under a trust, as may be applicable to the type of entity which is prohibited from making the particular Transfer in question. The term "**Third Party**" shall mean and include any person or entity that

has acquired or hereafter acquires any interest in Tenant, or any person or entity that is a joint venturer or Affiliate of Tenant with respect to all or any portion of the Leased Premises and/or this Lease, or any person or entity that is or becomes a limited and/or general partner or a member and/or manager of any such joint venturer or Affiliate of Tenant with respect to all or any portion of the Leased Premises and/or this Lease. The provisions of this Section 9.2.2 shall not apply to (a) the granting of a security interest in connection with the creation of a Leasehold Mortgage, or (b) a Transfer resulting from a foreclosure or deed in lieu of foreclosure of, or other sale pursuant to, a permitted Leasehold Mortgage, and such Transfer shall be governed by the applicable provisions of Article 8.

9.2.2.2 Except as otherwise provided herein and subject to Tenant's right to pledge or assign for collateral purposes the ownership interests in Tenant in connection with obtaining financing from a Lender for a Leasehold Mortgage meeting the requirements of this Lease, Tenant shall not suffer or permit the Transfer of more than forty-nine percent (49%) of its present Ownership and/or Control, in the aggregate taking all Transfers into account on a cumulative basis (but without double counting of successive Transfers by Third Parties of the same interest in the Ownership and/or Control of Tenant), without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Any Transfer of Tenant's Ownership and/or Control which, measured on the aggregate, cumulative basis provided above, does not exceed the forty-nine percent (49%) threshold specified in the preceding sentence, shall not require Landlord's consent.

Without limitation of the foregoing, Landlord's refusal to consent to any proposed Transfer of the Ownership and/or Control of Tenant shall be deemed to be reasonable if the proposed Transfer would, in Landlord's good faith judgment, (i) result in a reduction of the revenues received directly or indirectly by Landlord from the operation of the Leased Premises, or (ii) would cause the resulting Tenant entity under this Lease to be an entity which (a) does not have sufficient net worth or liquidity to comply with its obligations under this Lease, or (b) would result in an entity which is subject to control by owners who are not able to demonstrate the capability to manage or provide for the management of developments containing the size and character of the improvements located on the Leased Premises or who cannot demonstrate ownership and operation of other comparable assets operated at a quality level at least equal to the quality level required for the Leased Premises.

Notwithstanding anything that is or appears to be to the contrary herein, the provisions of subsection 9.2.2.2 shall not apply to and Landlord's consent shall not be required in connection with public trading (including original issuance) of any stock or securities in any corporation, limited liability company, or partnership if the stock or securities of such party are (or will be, in the case of an original issuance) traded publicly on a national stock exchange or in the over-the-counter market and the price of such stock or securities are (or will be, in the case of an original issuance) regularly quoted in a recognized national quotation service.

Notwithstanding any other provision of this Lease, in the event of the death or incapacity of (i) any person having an Ownership and/or Control interest in Tenant or (ii) any person who is a trustor of a revocable inter vivos trust that has any such interest, the interest held by such person or held in such trust may be transferred to such person's legal representatives, estate, heirs or a testamentary trust established for the sole and exclusive benefit of one (1) or more of the members of such person's family that are related to such person (which members shall include, without limitation, the spouse, children, adopted children, step-children and other lineal descendants of such Member) (such persons being



referred to as "**Family Members**"), without Landlord's prior written consent; provided that Landlord shall be provided with written notice of such Transfer of Ownership and/or Control.

Notwithstanding any other provision of this Lease, any person having an Ownership and/or Control interest in Tenant (whether directly or through any such interest held in a trust) may transfer such Ownership and/or Control interest to a trust for estate planning purposes so long as such person serves as the sole trustee (or, if such person is married, either such person serves as sole trustee or both such person and his or her spouse serve as the sole trustees) of that trust until such person's death or incapacity, without Landlord's prior written consent.

Notwithstanding any other provision of this Lease, any person having an Ownership interest but not a Control interest in Tenant (whether directly or through any such interest held in a trust) may transfer such Ownership interest to one or more Family Members, without Landlord's prior written consent; provided that Landlord shall be provided with written notice of such Transfer.

### 9.2.3 Subleases.

Notwithstanding anything above which is or appears to be to the contrary, including any restrictions on Transfer contained in Section 9.2, but subject to the terms and conditions of this Section 9.2.3, Tenant shall be entitled to enter into Subleases of the Leased Premises. A "**Major Sublease**" shall mean a Sublease which concerns a gross leasable area in excess of twenty thousand (20,000) square feet or a sublease of a separate pad or parcel for development by the Sublessee. For purposes of applying the twenty thousand (20,000) square foot threshold set forth above, all Subleases between Tenant and any one Sublessee, or any Affiliate thereof, shall be aggregated, regardless of when the Subleases were executed, and regardless of whether the Subleases concern contiguous areas; provided, that only the Sublease(s) which, when aggregated with all prior Subleases, exceeds the twenty thousand (20,000) square foot threshold shall be considered Major Sublease(s). Subleases which do not meet the test of a "**Major Sublease**" are hereinafter referred to as "**Minor Subleases**". The term "**Subleases**" shall be understood to refer to both the Major Subleases and the Minor Subleases.

Tenant shall secure Landlord's prior written approval of all Major Subleases. Such approval shall be secured prior to the entry of the affected Sublessee on the Leased Premises and such approval shall be a condition precedent to the effectiveness of that Sublease. Landlord may only refuse to consent to a proposed Major Sublease or the Sublessee thereunder if Landlord determines in its reasonable discretion that:

(a) The proposed licensee, concessionaire or sublessee is not acceptable to Landlord based upon prior history or experience of Landlord with the proposed licensee, concessionaire or sublessee.

(b) The term of the Sublease would extend beyond the Term, or the Sublease would otherwise limit, restrict or impede in any material respect Landlord's exercise of any of its rights and remedies hereunder, other than such rights and remedies that would be necessarily limited by terms of a non-disturbance agreement entered into between Landlord and the Sublessee;

(c) If the proposed Sublessee is granted non-disturbance protection with respect to its Sublease, the proposed Sublease fails to contain a provision satisfactory to Landlord in its reasonable discretion requiring the Sublessee, in the event of a termination of this Lease following an

Uncured Default by Tenant, to attorn to Landlord or Landlord's successors or assigns, or, in the event of a foreclosure of a Leasehold Mortgage, to the Lender holding such Leasehold Mortgage;

(d) The execution of or operation under the proposed Sublease would result in the violation of any Governmental Restrictions;

(e) The proposed Sublease is not in writing;

(f) The proposed Sublease fails to prohibit Tenant from accepting, directly or indirectly, more than three (3) months prepaid rent from the Sublessee, not including any good faith bona fide security deposit or other security deposited with Tenant at the time of the execution of such Sublease, without the prior written consent of Landlord;

(g) The proposed Sublease fails to include provisions, reasonably acceptable to Landlord and for Landlord's benefit, prohibiting the Transfer of more than 49% cumulatively of the Ownership and/or Control of such subtenant or the premises subject thereto without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that subject to Landlord's approval of such provisions, which approval shall not be unreasonably withheld, conditioned or delayed, such Sublease may allow for certain Transfers without Landlord's consent pursuant to commercially reasonable industry standard "permitted transfer" provisions customarily required by sophisticated retail operators;

The proposed Sublease fails to explicitly provide that it shall not be amended or altered with respect to any matters for which Landlord's approval was originally required under this Lease, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed;

(h) The proposed Sublease or the Sublessee thereunder would have a material adverse impact on or be inconsistent with the historical quality, theme or environment of the Queen Mary;

(i) The proposed Sublessee would, in Landlord's good faith judgment, have a material adverse economic impact on the Project or the direct and indirect revenues received therefrom by Landlord;

(j) The Sublease fails to expressly prohibit the following prohibited uses and activities without the prior written approval of Landlord and Tenant: Any indecent or pornographic use, massage parlor, adult book or video store, peepshow store, or any other similar store or club; or any business devoted to the sale of articles and merchandise normally used or associated with illegal or unlawful activities, including, without limitation, the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances; any mortuary, funeral parlor, or similar establishment; any animal raising facility; any junk yard or stock yard; any distillation, refining, smelting, agricultural, manufacturing, or industrial operations; any medical facility, clinic or office providing inpatient treatment for substance abuse or operating as a substance abuse treatment facility; any drilling for and/or removal of subsurface substances, or any dumping, disposal, incineration or reduction of garbage, other than in

enclosed receptacles intended for such purpose; any flea market, swap meet, pawn shop, secondhand store, or auction operation; off-track betting parlors, casinos or other gambling or bingo establishments; places of religious worship; any school, training or educational facility, including, but not limited to, beauty schools, barber colleges, nursery schools, libraries, reading rooms, places of instruction, or other operations catering primarily to students or trainees rather than to customers; provided that this prohibition shall not be applicable to onsite employee training by a Sublessee incidental to the conduct of its business at the Project; any warehouse or public storage facility (excluding storage that is incidental to the operation of any permitted use); any use or activity involving fire arm sales, shows, exchanges or convention, or promoting the use or sale of such firearms; any use not allowed by any applicable Governmental Restrictions; or any use that constitutes a public or private nuisance; or

(k) The Sublease is otherwise inconsistent with the requirements and provisions of this Lease, including those requirements set forth in Section 9.2.4.

In the event that Tenant submits a written request to Landlord for its approval of (i) a Major Sublease, or (ii) a Transfer pursuant to Section 9.2.3(g), Landlord shall approve or disapprove the Sublease or Transfer, and the proposed Sublessee thereunder, in writing within ten (10) Business Days after Landlord's receipt of Tenant's written request and all materials required by this Lease or otherwise reasonably requested by Landlord in order to enable it to act thereon. In the event Landlord fails to approve or disapprove (with Landlord's reasons therefor as required below) a proposed Sublease and Sublessee within such 10 Business Day period, then Tenant may deliver to Landlord written notice specifying the Sublease previously submitted, the date of such submission, the approval or other action requested, the fact that such notice constitutes a "second notice" under this Section, and a statement that the failure of Landlord to approve or disapprove (with Landlord's reasons therefor as required below) such Sublease and Sublessee within five (5) Business Days after delivery of such second notice will result in a deemed approval of such Sublease and Sublessee. Landlord shall approve or disapprove (with Landlord's reasons therefor as required below) of the proposed Sublease and the proposed Sublessee within five (5) Business Days after its receipt of such second notice from Tenant. If Landlord fails to notify Tenant of its approval or disapproval (with Landlord's reasons therefor as required below) within such 5-Business Day period, then Landlord shall be deemed to have approved of such Sublease and proposed Sublessee. In the event of any disapproval, Landlord shall, concurrently with the delivery of notice of such disapproval, inform Tenant in reasonable written detail of the reasons for disapproval of the proposed Sublease or Transfer and, if applicable, the conditions upon which Landlord may approve such Transfer or Sublease.

Landlord's approval of any Minor Subleases shall not be required and Tenant may enter into such Subleases without Landlord's consent; provided, however, that such Subleases shall (i) comply with the requirements, restrictions and limitations set forth in Section 9.2.3(b), (c), (d), (e), (f), (i), (k), and (l), and (ii) comply with the requirements of Section 9.2.4, to the extent the same are applicable. Promptly following execution of a Minor Sublease by Tenant, a copy thereof shall be delivered to Landlord. All Subleases delivered to Landlord shall be treated as confidential except (i) in any litigation or arbitration proceedings between the Parties or in any tax proceeding involving such materials, (ii) to the extent that Landlord is required by Governmental Restrictions to disclose or divulge such materials, and (iii) to the extent Landlord determines it is necessary or appropriate to divulge such information to a prospective buyer or encumbrancer of Landlord's interest in this Lease; provided, that, with respect to (iii) above, Landlord shall direct such person to whom it has divulged the information to maintain the confidentiality thereof to the extent provided for above; provided, that such potential buyer or lender shall also have the right to provide those materials to its partners, employees, lawyers, consultants, lenders, proposed partners or proposed

lenders, as needed to facilitate the prospective buyer's or lender's due diligence or completion of its proposed transaction.

Each Sublease, regardless of whether it is a Major or Minor Sublease, shall explicitly provide that it is subject and subordinate to the provisions of this Lease; provided that, with respect to a Major Sublease meeting the requirements of this Lease Landlord agrees to enter into a Subordination, Nondisturbance and Attornment Agreement, in the form of **Exhibit "F"** attached hereto, which grants such Sublessee the rights therein provided, subject to the terms and conditions set forth therein. Landlord agrees to reasonably consider any Sublessee requests for modification of the standard Subordination, Nondisturbance and Attornment Agreement provided that such modifications do not have a material, adverse effect upon Landlord's rights, the value of the Leased Premises or Landlord's interest under this Lease, or the revenues received directly or indirectly by Landlord as a result thereof, and do not increase Landlord's obligations hereunder in any material respect.

Notwithstanding anything herein to the contrary, (i) the Catalina Channel Express Permit and the Carnival Subleases are deemed to be Major Subleases, and (ii) Tenant shall not modify, alter, supplement, replace, terminate or otherwise impact those Major Subleases without first consulting with and obtaining Landlord's written consent to the action proposed to be taken, which consent shall not be unreasonably withheld, conditioned or delayed so long as such action does not have a material adverse impact on Landlord's rights, responsibilities or contemplated revenues hereunder.

In connection with the foregoing, Landlord acknowledges that, prior to the Effective Date of this Lease, Tenant entered in a Second Amendment to Sublease dated as of October 17, 2016, pursuant to which the Carnival Dome Sublease was amended to provide for, among other matters, (i) expansion of the premises subject to that sublease to include an additional area in the Dome and an area intended for the installation of an electrical substation which will provide shore power to the subtenant's cruise vessels, and (ii) additional options to extend the term of the Carnival Dome Sublease upon execution of this Lease to reflect the extended term provided for herein. By execution of this Lease, Landlord hereby acknowledges and confirms that (i) Landlord hereby approves the Second Amendment and agrees to recognize and be bound by the terms thereof in the event of a termination of this Lease as provided and upon the terms set forth in that certain Consent to Sublease and Recognition Agreement executed with respect to the Carnival Dome Sublease and dated as of May 4, 2001, (ii) Landlord has approved the expansion of the premises subject to the Carnival Dome Sublease as set forth in the Second Amendment, (iii) Landlord further agrees to recognize and be bound by the additional options to extend as set forth in Second Amendment in the event of a termination of this Lease, and (iv) Landlord agrees to reasonably cooperate with Tenant and Carnival Corporation, and its affiliated entity, GIBS, Inc., in implementing similar provisions and non-disturbance protections as they may apply to the adjacent premises which are subject to the Carnival Parking Sublease upon terms which are mutually acceptable to the Landlord, Tenant and GIBS, Inc.

#### 9.2.4 Investigation of Proposed Transferee: Costs.

In the event that Tenant requests Landlord's written consent to a proposed Transfer of Tenant's interest in this Lease pursuant to this Section 9.2, Tenant agrees to provide Landlord with such information, including financial statements and tax returns, as Landlord may reasonably require in order to evaluate the solvency, financial responsibility and relevant business acumen and experience of any proposed Transferee.

Except as otherwise provided in this Section 9.2, if Landlord consents to any Transfer of Tenant's interest in this Lease pursuant to this Section, such consent shall not be effective unless and until any such Transferee assumes all of the obligations and liabilities of Tenant arising under this Lease, from and after the date of the Transfer to the extent of its interest. Landlord's consent to any one Transfer pursuant to this Section 9.2 shall not constitute a waiver or relinquishment of Landlord's right to approve any other Transfer and each such other Transfer shall remain subject to the provisions of this Lease.

## **ARTICLE 10 TAXES AND IMPOSITIONS**

### **10.1. Tenant To Pay Impositions.**

In addition to the Rent and other payments required to be paid under this Lease, Tenant shall pay any and all taxes, assessments, and other charges of any description including, without limitation, the possessory interest tax (collectively, "**Impositions**") levied or assessed from the Effective Date until the termination of this Lease by any governmental agency or entity on or against the Leased Premises or any portion thereof, or on or against any interest in the Leased Premises (including the leasehold interest created by this Lease), or any improvements or other property in or on the Leased Premises. The timely payment as described below in Section 10.3 of the above referenced assessments or other charges is a material term of this Lease, and, to the extent the above-referenced items are payable to Landlord or its successors, they shall constitute additional Rent hereunder.

If, by law, any such Imposition is payable, or may, at the option of Tenant be paid, in installments, Tenant may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in such installments as those installments respectively become due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

Tenant expressly acknowledges that the property interest created by this Lease is subject to property taxation, and that Tenant, being the party in whom the possessory interest is vested, will be subject to the payment of property taxes levied on that property interest.

### **10.2. Proration of Impositions.**

All Impositions levied or assessed on or against the Leased Premises shall be prorated, based on a 365-day year, between Landlord and Tenant as if Landlord were a private party as of the Effective Date, and as of the expiration or earlier termination of this Lease. On service of written request by Landlord, Tenant shall promptly pay to Landlord Tenant's share of such Impositions paid by Landlord on Tenant's behalf and, on service of written request by Tenant, Landlord shall promptly pay to Tenant Landlord's share of such Impositions paid by Tenant on Landlord's behalf.

### **10.3. Payment Before Delinquency.**

Subject to Tenant's right to contest under Section 10.4, any and all Impositions and installments of Impositions required to be paid by Tenant under this Lease shall be paid by Tenant prior to delinquency, and copies of the original receipt for the payment of each such Imposition or installment thereof or other reasonably satisfactory evidence of payment shall promptly be given to Landlord upon Landlord's written request.

#### 10.4. Contest of Imposition.

Tenant shall have the right to contest, oppose, or object to the amount or validity of any Imposition levied on or assessed against the Leased Premises or any portion thereof and may in good faith diligently conduct any necessary proceeding to prevent or void or reduce the same; provided, however, that the contest, opposition, or objection must be filed before the Imposition at which it is directed becomes delinquent if such contest, opposition or objection is required to be made or filed prior to payment of the Imposition being challenged, and written notice of the contest, opposition, or objection must be given to Landlord at least ten (10) days before the date the Imposition becomes delinquent. No such contest, opposition, or objection shall be continued or maintained after the date on which the Imposition at which it is directed becomes delinquent unless Tenant has met one of the following conditions:

- (a) Paid such Imposition under protest prior to its becoming delinquent; or
- (b) Posted such bond or other security, reasonably satisfactory to Landlord, as is necessary to protect Landlord and the Leased Premises from any lien arising from such Imposition.

Landlord shall not be required to join in any proceeding or contest brought by Tenant unless the provisions of any law require that the proceeding or contest be brought by or in the name of Landlord or any owner of the Leased Premises. In that case, Landlord shall join in the proceeding or contest or permit it to be brought in Landlord's name, but such action shall be without cost to Landlord and Tenant shall reimburse Landlord upon demand for any reasonable attorneys' fees and costs incurred therein.

#### 10.5. Tax Returns And Statements.

During the Term, Tenant shall, as between Landlord and Tenant, have the duty of attending to, preparing, making, and filing any statement, return, report, or other instrument required by law in connection with the determination, equalization, reduction, or payment of any Imposition that is or may be levied on or assessed against the Leased Premises, or any portion thereof, or any interest therein, or any improvements or other property on the Leased Premises.

#### 10.6. Indemnification.

Tenant shall indemnify, defend and hold Landlord and its Representatives, and Landlord's property (including the Leased Premises and any improvements now or hereafter located on the Leased Premises) free and harmless from any Losses and Liabilities resulting from any Impositions required by this Article to be paid by Tenant, and from all interest, penalties, and other sums imposed thereon, and from any sale or other proceeding to enforce collection of any such Imposition.

#### 10.7. Payment By Landlord.

Should Tenant fail to pay within the time specified in this Article any Impositions required by this Article to be paid by Tenant, other than any Imposition(s) properly contested by Tenant pursuant to Section 10.4, Landlord may, upon ten (10) Business Days' notice to or demand on Tenant, pay, discharge, or adjust such Imposition for the benefit of Tenant. In such event, Tenant shall, on or before the first day of the next calendar month following any such payment by Landlord which in no event shall be less than twenty (20) days, reimburse Landlord for the full amount incurred by Landlord in so paying, discharging, or adjusting such Imposition, together with interest thereon at the Agreed Rate from the date of payment by

Landlord until the date of repayment by Tenant, and the above obligation of Tenant to reimburse Landlord shall be treated as additional Rent under this Lease.

## **ARTICLE 11 UTILITY SERVICES**

### **11.1. Tenant's Responsibility.**

During the Term, Tenant shall pay, or cause to be paid, and shall indemnify, defend and hold Landlord and the property of Landlord harmless from all charges for water, sewage, gas, heat, air conditioning, light, power, steam, telephone service and all other services and utilities used, rendered or supplied to, on or in the Leased Premises.

### **11.2. Landlord Has No Responsibility.**

Landlord shall not be required to furnish to Tenant or any other occupant of the Leased Premises during the Term, any water, sewage, gas, heat, air conditioning, light, power, steam, telephone, or any other utilities, equipment, labor, materials or services of any kind whatsoever.

## **ARTICLE 12 INDEMNIFICATION AND INSURANCE**

### **12.1. Indemnification.**

To the maximum extent permitted by California law, Tenant shall indemnify, defend and hold Landlord, the Board of Harbor Commissioners (individually and collectively), and their Representatives, officers, and employees, and the property of Landlord, including the Leased Premises and any improvements thereon, free and harmless from any and all injury, loss, claims, causes of action, demands or damages to any person or property while on the Premises or in connection with the operations conducted by Tenant or its servants, subtenants, agents, or employees pursuant to the terms of this lease or loss, injury, damages, claims or causes of action to or of any person or property anywhere occasioned by the wrongful omission, neglect or fault of Tenant, its servants, subtenants, agents, employees, contractors or invitees (excluding acts by the Landlord and its agents), which loss, claim, cause of action or damage occurred on or after the commencement date of the term of this Lease.. The above indemnification includes, without limitation, but is not limited to, any Losses and Liabilities arising by reason of:

(a) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, arising from any cause whatsoever while such person or property is in or on the Leased Premises;

(b) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by either (i) the condition of the Leased Premises or some improvement on said premises, or (ii) some act or omission on the Leased Premises by Tenant or any person in, on, or about the Leased Premises with the permission and consent of Tenant;

(c) Any work performed on the Leased Premises or materials furnished to the Leased Premises at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant;

(d) Tenant's failure to perform any provision of this Lease or to comply with any Governmental Restriction; or

(e) Any Hazardous Materials placed or discovered on or under the Leased Premises.

However, the foregoing indemnification shall not extend to any Losses or Liabilities to the extent (i) it arises out of the negligence or intentional misconduct of Landlord or any Landlord Representative acting on behalf of Landlord, or (ii) it arises from a breach of any representation or covenant of Landlord under the terms of this Lease. This indemnification shall survive the expiration or termination of this Lease.

#### 12.2. Property Insurance.

For the duration of this Lease (including any extensions, renewals, or holding over thereof), at Tenant's sole expense, Tenant, at no cost or expense to Landlord, shall procure and maintain or cause to be procured and maintained the following insurance from insurance carriers having at least a rating of and or equivalent to A-:VIII by A.M. Best Company and admitted to write insurance in California: Property insurance for the mutual benefit of Landlord and Tenant as follows:

(a) Special perils property insurance excluding Earthquake, Flood, Neglect, War, Nuclear Hazard, and Intentional Acts and including debris removal, in an amount to cover the full replacement value of the Queen Mary and the Leased Premises. Landlord shall be named as an additional insured under a standard loss payable endorsement.

(b) "Special perils property insurance excluding Earthquake, Flood, Neglect, War, Nuclear Hazard, and Intentional Acts and including debris removal and builders risk coverage during the course of construction in an amount sufficient to cover the full replacement value of buildings and structural improvements constructed or erected on or about the Leased Premises. Landlord shall be named as an additional insured under a standard loss payable endorsement.

(d) Special perils property insurance excluding Earthquake, Flood, Neglect, War, Nuclear Hazard, and Intentional Acts and including debris removal in an amount sufficient to cover the full replacement value of Tenant's personal property and equipment on the Leased Premises and of Landlord's personal property and equipment on the Leased Premises including but not limited to furnishings, fine arts, and equipment contained in the Queen Mary. Landlord shall be named as an additional insured under a standard loss payable endorsement as its interests may appear.

(e) Business interruption insurance providing that the rent due Landlord shall be paid for a period up to twelve (12) months if the Leased Premises are destroyed or rendered inaccessible by a covered peril. The Annual Rent in coverage may be based upon the Annual Rent paid for the most recent full Lease Year, or, for the first Lease Year, a reasonable estimate of the Annual Rent to be paid during the first full Lease Year. Tenant shall not be obligated to obtain earthquake or flood insurance as part of the extended coverage required hereunder, but if Tenant does at any time obtain or carry such insurance for



the Leased Premises, such insurance shall name Landlord and any "**Insurance Trustee**" (as defined in Section 12.3) as a loss payee thereunder pursuant to an endorsement meeting the requirements of Section 12.7 and as their interests may appear.

12.3. Cooperation in Obtaining Proceeds of Property Insurance Coverage.

Landlord shall, at no out-of-pocket cost or expense to Landlord, cooperate fully with Tenant to obtain the largest possible recovery under all policies described by Section 12.2. All such proceeds in excess of Five Hundred Thousand Dollars (\$500,000) shall be paid to an "**Insurance Trustee**" (as defined in this Section 12.3) who shall apply the proceeds as required by this Lease. Insurance proceeds not exceeding Five Hundred Thousand Dollars (\$500,000) shall be paid to Tenant or as required by any Leasehold Mortgage, who shall apply the proceeds as required by this Lease or, to the extent this Lease does not contain an applicable requirement, as required by the Leasehold Mortgage. The term "**Insurance Trustee**" shall mean the most senior institutional Lender holding a Leasehold Mortgage on the Leased Premises and not an Affiliate of Tenant, or, if there is no such Lender or such Lender is unwilling or unable to serve as the Insurance Trustee, then a responsible, independent and established insurance trustee reasonably approved by Landlord, Tenant and any Lender. The Five Hundred Thousand Dollar (\$500,000) threshold specified in this Section 12.3 shall be increased upon the commencement of each Lease Year by the percentage increase, if any, in the CPI for All Urban Consumers between the Effective Date and the commencement of the applicable Lease Year.

12.4. Public Liability Insurance.

Tenant, commencing on the Effective Date and continuing throughout the Term, shall maintain or cause to be maintained, at no cost or expense to Landlord, for the mutual benefit of Landlord and Tenant, comprehensive general liability insurance, including, as may be applicable to the Tenant and its subtenants' operations, commercial general liability, commercial auto liability, liquor liability, garagekeepers' liability, marine liability, pyrotechnic liability, sudden and accidental pollution liability, products and completed operations, innkeepers' liability, and fire legal liability against claims and liability for personal injury, death, or property damage arising from the use, occupancy or condition of the Leased Premises or the improvements thereon, which insurance shall provide at least Ten Million Dollars (\$10,000,000) per occurrence; provided, that, on the fifth anniversary of the Effective Date and every five (5) years thereafter ("**Insurance Coverage Adjustment Dates**"), the above prescribed minimum coverages shall be increased by the percentage increase, if any, in the CPI between the Effective Date and the date of such adjustment. Provided it meets all applicable requirements set forth in this Section, a portion of such coverage may be provided by an umbrella liability policy applicable to the Leased Premises. The Landlord and its officials, employees, and agents shall be named as additional insureds on additional insured endorsements equivalent to ISO CG 20 26 11 85 in scope which shall protect Landlord and its officials, employees, and agents from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the Tenant. Said insurance shall be primary insurance with respect to Landlord and shall include cross liability protection. The liability policy shall provide that it may not be cancelled or materially modified without at least thirty (30) days prior written notice to City.

12.5 Workers' Compensation and Employer's Liability Insurance

Tenant, commencing on the Effective Date and continuing throughout the Term, shall maintain or cause to be maintained, at no cost or expense to Landlord, Workers' Compensation Insurance as required by the Labor Code of the State of California and any other applicable laws, and employer's liability insurance with minimum limits of One Million Dollars (US \$1,000,000) per injury or occupational illness.

#### 12.6 Commercial Automobile Liability Insurance

Tenant, commencing on the Effective Date and continuing throughout the Term, shall maintain or cause to be maintained, at no cost or expense to Landlord, Commercial Automobile Liability Insurance, including Garagekeepers Liability, in an amount not less than Two Million Dollars (US \$2,000,000) combined single limit per accident for bodily injury and property damage covering Symbol 1 ("all autos") operated under this Lease.

#### 12.7. Policy Form, Content And Insurer.

All such policies required by the provisions of this Lease shall be nonassessable and shall contain language to the effect that (i) any loss shall be payable notwithstanding any act or negligence of Landlord that might otherwise result in a forfeiture of the insurance, (ii) the policies are primary and noncontributing with any insurance that may be carried by Landlord, (iii) to the extent commercially available, the policies cannot be canceled or materially changed except after thirty (30) days' notice by the insurer to Landlord and (iv) Landlord shall not be liable for any premiums or assessments. If such waivers are available, the insurers shall also waive their rights of subrogation against Landlord and against Landlord's Representatives.

Upon Tenant's execution and delivery of this Lease, Tenant shall deliver to Landlord certificates of insurance evidencing the insurance coverages specified in this Article. Tenant shall thereafter deliver to Landlord certificates of insurance evidencing the insurance coverages required by this Article upon renewal of any insurance policy. Tenant may provide any insurance required under this Lease by blanket insurance covering the Leased Premises and any other location or locations, provided that the specific policy of blanket insurance proposed by Tenant provides the coverages required by this Lease taking into account the other properties, persons and risks covered by such blanket policy. All liability policies shall name Landlord and its board members, officers and employees as additional insureds as their interests may appear. All insurance policies required hereunder shall have deductibles of not more than One Hundred Thousand Dollars (\$100,000) unless otherwise agreed in writing in advance with the Landlord.

#### 12.8 Emendation of Requirements

Not more frequently than every five (5) years, if in the reasonable opinion of Landlord's Risk Manager or designee, the amount, scope, or types of coverages specified herein are not adequate, Tenant shall amend its insurances as required by Landlord's Risk Manager or designee. Such amendment(s) may include, but is not limited to, coverage for earthquake and flood if available from responsible insurance companies at reasonable cost. Determination of "responsible insurance companies" and "reasonable cost" are at the reasonable discretion of Landlord's Risk Manager or designee.

#### 12.9 No Limitation of Liability

Such insurance as required herein shall not be deemed to limit Tenant's liability relating to performance under this Lease. Landlord reserves the right to require complete certified copies of all said

policies annually, and Tenant shall provide Landlord copies of certificates of insurance and applicable policy endorsements annually. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Lease. Tenant understands and agrees that, notwithstanding any insurance, Tenant's obligation is to defend, indemnify, and hold Landlord and the Board of Harbor Commissioners and their officials, employees, and agents harmless hereunder to the extent described in Section 12.1.

#### 12.10 Waiver of Requirements

Modification of Waiver of Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the Landlord's Risk Manager or designee.

#### 12.11 Maintenance of Required Insurance

If Tenant fails to procure and/or maintain any of the insurance required herein and fails to cure such failure within ten (10) days following written notice from Landlord, Landlord may, at its election, procure and maintain such insurance on behalf of Tenant and Landlord, at Tenant's sole expense. "Failure to procure and/or maintain" shall be determined by Landlord's Risk Manager or designee at Landlord's reasonable discretion.

#### 12.12 Purchase of Insurance by Landlord

If Landlord exercises its election under Section 12.11, pursuant to the terms of this Lease, to purchase any of the insurance coverages herein, Tenant shall reimburse Landlord for the cost of insurance procured by Landlord on Tenant's behalf no later than fifteen (15) calendar days of the date of Landlord's invoice therefor. Any such invoiced amount not received by Landlord within fifteen (15) calendar days of the date of Landlord's invoice is subject to interest of 2% per month accruing from the sixteenth calendar day after the invoice date, compounded monthly.

#### 12.13 Purchase of Insurance by Tenant

If Landlord does not exercise its election to purchase any of the insurance required herein, Tenant shall have the responsibility for procuring and maintaining such insurance.

When Tenant is responsible for procuring and maintaining any of the insurance required herein, Tenant agrees to provide Landlord with any policy information reasonably requested by Landlord and to make available to Landlord all books, records and other information relating to such insurance during normal business hours upon reasonable advance notice.

### **ARTICLE 13 CONDEMNATION**

#### 13.1. Definitions.

As used in this Article, the following words have the following meanings:

(a) **"Award"**: means the compensation paid for the Taking, whether by judgment, agreement or otherwise.

(b) **"Taking"**: means the taking or damaging of the Leased Premises or any portion thereof as the result of the exercise of the power of eminent domain, or for any public or quasi-public use under any statute. Taking also includes a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending.

(c) **"Taking Date"**: means the date on which the condemning authority takes actual physical possession of the Leased Premises or any portion thereof, as the case may be.

(d) **"Total Taking"**: means the taking of the title to all of the Leased Premises and the improvements thereon.

(e) **"Substantial Taking"**: means the taking of so much of the Leased Premises or improvements thereon or access thereto or a combination of the foregoing that the conduct of Tenant's business on the Leased Premises would be rendered economically impracticable.

(f) **"Partial Taking"**: means any Taking of title that is not either a Total or a Substantial Taking.

(g) **"Notice of Intended Taking"**: means any notice or notification on which a prudent person would rely as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to the service of a condemnation summons and complaint on a party to this Lease.

### 13.2. Total or Substantial Taking of Leased Premises.

In the event of a Total Taking, except for a Taking for temporary use, Tenant's obligation to pay rent shall terminate on, and Tenant's interest in the Leased Premises shall terminate on, the Taking Date. In the event of a Taking, except for a Taking for temporary use, which Tenant considers to be a Substantial Taking, Tenant may, provided that all Lender(s) consent in writing thereto, deliver written notice to Landlord within sixty (60) days after Tenant receives Notice of Intended Taking, notifying Landlord of the Substantial Taking. If Tenant does not so notify Landlord, or any of Tenant's Lenders refuse to consent thereto, the Taking shall be deemed a Partial Taking. If Landlord does not dispute Tenant's contention that there has been a Substantial Taking within ten (10) days of Landlord's receipt of Tenant's written notice, or if it is determined, by order of the judicial referee, that there has been a Substantial Taking, then the Taking shall be considered a Substantial Taking, and Tenant shall be entitled to terminate this Lease effective as of the Taking Date. Upon determination that a Substantial Taking has occurred, Tenant shall be required to (i) deliver possession of the Leased Premises to Landlord within sixty (60) days after determination that the Taking was a Substantial Taking, (ii) comply with all Lease provisions concerning apportionment of the Award and (iii) comply with all Lease provisions concerning surrender of the Leased Premises, including, without limitation, all applicable provisions concerning removal of improvements.

### 13.3. Apportionment And Distribution of Total Taking and Substantial Taking.

In the event of a Total Taking or Substantial Taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be distributed and disbursed first for the payment of all unpaid real and personal property taxes payable with respect to the Leased Premises or the improvements thereon for the period prior to the Taking (unless the amount of the Award has already been reduced by the

amount of such taxes), and the remainder apportioned between Landlord and Tenant (including any permitted Subtenants claiming under or through Tenant) in proportion to their respective interests as follows:

(i) Tenant's portion of the Award shall be the amount remaining after deduction of Landlord's portion of the Award as provided in clause (ii).

(ii) Landlord's portion of the Award shall be based upon the sum of (aa) the present value at the Taking Date of all rents to accrue to Landlord under this Lease during the Term, including any exercised option terms, and (bb) the present value at the Taking Date of Landlord's reversionary interest in the Leased Premises, including all improvements or alterations thereon.

#### 13.4. Partial Taking; Abatement and Restoration.

If there is a Partial Taking of the Leased Premises, except for a Taking for temporary use, the following shall apply. This Lease shall remain in full force and effect on the portion of the Leased Premises not Taken, except that, notwithstanding anything in this Lease which is or appears to be to the contrary, the Annual Rent due under this Lease shall be reduced in the same ratio that the market value of Tenant's interest in the Leased Premises as improved immediately prior to the Taking is reduced by the Taking. The reduction in market value of the Leased Premises shall take into account and shall be determined subject to any permitted Sublease then in effect, and shall be determined upon completion of any repairs, modifications, or alterations to the Improvements on the Leased Premises to be made hereunder following the Partial Taking. Notwithstanding anything contained herein to the contrary, if any portion of the rent payable under this Lease is computed solely on the basis of a percentage or participation rental or is a pass through rent or payment, there shall be no abatement of such percentage or participation rental because any necessary abatement shall have already been effected by the reduced percentage, participation or pass through rental payable to Landlord. Within a reasonable time period after a Partial Taking, at Tenant's expense and in the manner specified in the provisions of this Lease relating to construction, maintenance, repairs, and alterations, Tenant shall reconstruct, repair, alter, or modify the improvements on the Leased Premises so as to make them an operable whole to the extent allowed by Governmental Restrictions. If Tenant does not repair, alter, modify, or reconstruct as required above, such failure shall, following written notice thereof to Tenant, constitute a Default by Tenant under this Lease and the portion of the Award necessary for the repair, modification or reconstruction shall be promptly applied by the Insurance Trustee as described in Section 13.5 to the reconstruction of the improvements on the Leased Premises as provided in Section 13.5. Any such construction, repairs, alterations or modifications shall be undertaken and completed in compliance with all of the provisions of Section 6.7 applicable to Changes to the Improvements, including all provisions contained therein relating to consent of or approval by Landlord.

#### 13.5. Apportionment and Distribution of Award for Partial Taking.

On a Partial Taking, all sums, including damages and interest, awarded for the fee title or the leasehold or both, shall be distributed and disbursed to the Insurance Trustee and are to be disbursed by the Insurance Trustee, first, as necessary to cover the cost of restoring the improvements on the Leased Premises to a complete architectural unit of a quality equal to or greater than such improvements before the Taking (to the extent allowed by Governmental Restrictions), and, thereafter, for apportionment between Landlord and Tenant based upon the formula set forth in Section 13.3.

13.6. Taking for Temporary Use.

If there is a Taking of the Leased Premises for temporary use for a period equal to or less than six (6) months, this Lease shall continue in full force and effect, Tenant shall continue to comply with Tenant's obligations under this Lease not rendered physically impossible by such Taking, neither the Term nor the Rent shall be reduced or affected in any way, but the Annual Rent shall continue at the level of the last Annual Rent (regardless of whether computed on a fixed or percentage basis) paid prior to the Taking (including any subsequent increases in such Annual Rent provided for under this Lease), and Tenant shall be entitled to any Award for the use or estate taken. If any such Taking is for a period extending beyond such six (6) month period, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings, as appropriate.

13.7. Waiver of Code of Civil Procedure Section 1265.130.

Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a Partial Taking of the Premises.

**ARTICLE 14 DEFAULT**

14.1. Default.

The occurrence of any one or more of the following events shall, after the giving of the Notice of Default required by Section 14.2 or Section 14.4, constitute a default ("**Default(s)**") under this Lease by Tenant or Landlord, as applicable:

(a) any failure by Tenant to pay the Annual Rent or make any other payment required to be made by Tenant hereunder, including, without limitation, failure to pay any amount payable as additional rent under the terms of this Lease or failure to pay any Impositions payable hereunder on the date the payment of such amount is required to be paid hereunder;

(b) a failure by Tenant or Landlord to observe and perform any other material condition, restriction, covenant, obligation or provision of this Lease to be observed or performed by Tenant or Landlord, as applicable, including the material inaccuracy of any material representation or warranty set forth herein, and a failure by Tenant to perform any of its material obligations under or to observe the restrictions of Article 9 with respect to Transfer; or

(c) the abandonment, vacation or discontinuance of use of a substantial portion of the Leased Premises for a period of thirty (30) days after written notice of such abandonment, vacation or discontinuance, except when such cessation of use or operation is caused by the force majeure events described in Section 14.9 and Tenant has timely invoked that provision and except when such cessation is due to closure of the Project for the performance of scheduled renovations or repairs required or permitted to be made under this Lease, provided such closure for renovations or repairs shall, once such repairs are commenced, be continuously and diligently pursued to completion, subject only to delays caused by force majeure events described in Section 14.9.

14.2. Notice of Default: Tenant's Right to Cure.

If Tenant is in breach of this Lease as described in Section 14.1, Landlord may give notice of said breach ("**Notice of Default**") to Tenant. Each such Notice of Default shall specify the alleged Default. As provided in Section 14.1, following the giving of such notice, the nonperformance which is complained of shall constitute a Default by Tenant under this Lease.

If the alleged Default is nonpayment of Rent, Impositions or other sums to be paid by Tenant as provided in this Lease, or is a failure to maintain the insurance coverages required by this Lease, Tenant shall have fifteen (15) days after the Notice of Default is given to cure the Default; provided, however, that Tenant shall have thirty (30) days after the Notice of Default is given to cure a Default in the payment of Rent if such Notice of Default is the first Notice of Default for nonpayment of Rent given during any twelve (12) month period during the Term. For any other Default, Tenant shall, after the Notice of Default, promptly and diligently commence curing the Default and shall have sixty (60) days after the Notice of Default to complete the cure of the Default; provided, however, that if the nature of the Default is such that the same cannot reasonably be cured within said sixty (60) day period, Tenant shall have such additional time as is reasonably necessary to cure such Default, provided that Tenant is diligently and continuously pursuing the cure of such Default.

14.3. Landlord's Right to Cure Tenant's Defaults.

After expiration of the applicable time for curing a particular Default and if such Default remains uncured, Landlord may, at Landlord's election, make any payment required of Tenant under this Lease or perform or comply with any covenant or condition imposed on Tenant under this Lease, and the amount so paid, plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Agreed Rate, from the date of payment, performance, or compliance until the date of repayment by Tenant, shall be due and payable by Tenant as additional Rent hereunder on the first day of the next calendar month following any such payment, performance or compliance by Landlord. No such act shall constitute a waiver of any Default or of any remedy for Default or render Landlord liable for any loss or damage resulting from any such act (except to the extent such loss or damage arises from Landlord's negligence or intentional misconduct).

14.4. Notice of Landlord's Default: Tenant Waiver.

If Landlord is in breach of this Lease, as described in Section 14.1, Tenant may deliver a Notice of Default to Landlord. Each such Notice of Default shall specify the alleged Default. As provided in Section 14.1, following the giving of such notice, the non-performance which is complained of shall constitute a Default by Landlord under this Lease.

If the Default is the non-payment of sums to be paid by Landlord to Tenant hereunder, Landlord shall have fifteen (15) days after the Notice of Default is given to cure the Default. For any other Default, Landlord shall, after notice, promptly and diligently commence curing the Default and shall have sixty (60) days after notice is given to complete the cure of the Default; provided, however, that if the nature of the Default is such that the same cannot reasonably be cured within said sixty (60) day period, Landlord shall have such additional time as is reasonably necessary to complete the cure of the Default so long as it continuously and diligently pursues such cure. Tenant hereby waives the protections of California Civil Code Sections 1932 and 1933, or any other successor statute containing like protections.

14.5. Judicial Reference.

Except with respect to an action for injunctive relief commenced by a Party in order to protect against irreparable injury hereunder, and except as expressly provided below, all disputes and claims arising under this Lease, whether relating to its interpretation, application, enforcement or breach, shall be heard by a referee of the Los Angeles Superior Court pursuant to California Code of Civil Procedure Section 638, et seq. The Parties shall have all of the discovery rights that they would have in an action filed in a California Superior Court of unlimited jurisdiction and all rights of appeal provided by California Code of Civil Procedure Section 645. Notwithstanding anything in this Lease to the contrary, nothing herein shall restrict or limit in any manner Landlord's unlawful detainer remedies for a breach of this Lease or require any judicial reference action to be commenced or completed prior to Landlord's pursuit of those remedies in the event of an Uncured Default. With respect to all judicial reference proceedings under this Lease, Landlord and Tenant shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before him or her. If Landlord and Tenant are unable to agree on a referee within ten (10) days of a written request to do so by either Party hereto, either Party may seek to have one appointed pursuant to California Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the Parties, but shall ultimately be borne by the Party who does not prevail. Any referee selected pursuant to this Section shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED WITHIN THE SCOPE OF THE JUDICIAL REFERENCE PROVISION ABOVE DECIDED BY NEUTRAL REFEREE AS PROVIDED BY CALIFORNIA LAW AND, EXCEPT AS PROVIDED ABOVE WITH RESPECT TO INJUNCTIVE RELIEF AND LANDLORD'S UNLAWFUL DETAINER REMEDIES, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. IF YOU REFUSE TO SUBMIT TO JUDICIAL REFERENCE AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO SUBMIT UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS JUDICIAL REFERENCE PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE, EXCEPT AS PROVIDED ABOVE WITH RESPECT TO INJUNCTIVE RELIEF AND LANDLORD'S UNLAWFUL DETAINER REMEDIES, TO

SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE JUDICIAL REFERENCE PROVISION TO A NEUTRAL REFEREE.

  
\_\_\_\_\_  
Landlord's Initials

  
\_\_\_\_\_  
Tenant's Initials

14.6. Landlord's Remedies.

14.6.1 Right to Terminate.

If any Default by Tenant shall continue uncured, following the giving of a Notice of Default as required by this Lease, for the cure period applicable to that Default under the provisions of this Lease ("**Uncured Default(s)**"), then Landlord shall have the immediate option to terminate this Lease and all



rights of Tenant hereunder by giving written notice of such termination. In the event that Landlord shall so elect to terminate this Lease then, Landlord may recover from Tenant:

(a) The worth at the time of award of any unpaid Annual Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Annual Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Annual Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

As used in sub-Sections (a) and (b) above, the "**worth at the time of award**" is computed by allowing interest at the Agreed Rate. As used in subparagraph (c) above, the "**worth at the time of award**" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

Alternatively, after the Initial Improvements Completion, if an Uncured Default exists, Landlord shall also have the remedy described in California Civil Code Section 1951.4 (Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublease or assign, subject only to reasonable limitations). Any election by Landlord to utilize the remedy in California Civil Code Section 1951.4 shall not preclude Landlord from at any later time deciding to utilize the termination and recovery of damages remedy first provided above.

#### 14.7. Tenant Remedies: Remedies Cumulative.

Except as otherwise expressly provided in this Lease, Tenant shall have all rights and remedies at law or equity upon the occurrence of an Uncured Default by Landlord hereunder. Notwithstanding anything herein to the contrary, Landlord's liability to Tenant for damages arising out of or in connection with Landlord's breach of any provision or provisions of this Lease shall not exceed the value of Landlord's equity interest in the Leased Premises. Each right and remedy of Landlord and Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease except as otherwise limited by this Lease, and the exercise or the beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease, except as otherwise limited by this Lease, shall not preclude the simultaneous or later exercise by Landlord or Tenant of any or all other rights or remedies provided for in this Lease, except as otherwise limited by this Lease.

#### 14.8. No Waiver.

Landlord's or Tenant's failure to enforce any provision of this Lease with respect to a Default hereunder shall not constitute a waiver of Landlord's or Tenant's right to enforce such provision or any other provision with respect to any future Default. The acceptance of Rent by Landlord shall not be

deemed a waiver of Landlord's right to enforce any term or provision hereof except for any claim for Default with respect to the Rent actually accepted by Landlord. The waiver of any term or condition of this Lease shall not be deemed to be a waiver of any other term or condition hereof or of any subsequent failure of any term or condition hereof.

#### 14.9. Delays in Performance.

The time within which the Parties hereto shall be required to perform any act under this Lease (other than the payment of Annual Rent, any amount payable as additional rent under the terms of this Lease, Impositions, taxes, insurance, or other obligations that may be discharged by the payment of money or relate to a payment of money that is treated as Rent) shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to an act of God, supernatural causes, strikes, lockouts, fire, earthquake, flood, explosion, war, terrorism, invasion, insurrection, riot, mob violence, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, application of governmental restrictions, regulations or controls not contemplated by this Lease or otherwise reasonably foreseeable, court order, delays or inaction of independent contractors, delays suffered by a Party as a result of a breach by the other Party of its material obligations under this Lease, delays in the issuance of any governmental approvals or authorizations necessary to proceed with development or operation of the Improvements (provided that the party asserting such delay as an excuse for performance has filed all applications, submitted all required documents and fees and taken all other actions reasonably necessary to obtain such governmental approvals or authorizations and that Party is not responsible in any material way for the delay in the issuance of such governmental approvals or authorizations), remediation of Hazardous Materials located upon the Leased Premises, litigation brought against the Leased Premises or a Party without that Party's consent, or other like events which are beyond a Party's reasonable control (collectively, "**Force Majeure Events**"). A Party wishing to invoke this Section with respect to a specified cause of delay shall notify in writing the other Party to this Lease within thirty (30) days of the date on which the event causing such delay occurs and shall, at that time, specify the cause of the delay, the specific provision of this Lease which will be delayed as a result, and the period of such extension, if known, or if not known, a reasonable estimate thereof. If a Party timely gives such notice, such extension shall run from the occurrence of such event causing the delay until the cessation of that cause of delay. If a Party fails to timely give notice of such delay, such extension shall run only from the date such Party gives notice of such delay until the cessation of that cause of delay. Any Party is also entitled, as often as reasonably required, to request in writing any other Party to confirm the then applicable deadlines for performance of each Party's obligations or the exercise of each Party's rights under this Lease, and each Party shall within twenty (20) days after receipt of such a written request, respond thereto. The failure of a Party to respond to a request from another Party under this Section as required above (provided the request informed the Party of such 20-day time requirement and the consequences of a failure to respond) shall constitute a waiver of any right to later rely on any asserted extension(s) of any deadlines inconsistent with any earlier deadlines set forth in such written request.

### ARTICLE 15 EXPIRATION; TERMINATION

#### 15.1. Tenant's Duty To Surrender.

At the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord possession of the Leased Premises free and clear of all liens, encumbrances and Leasehold Mortgages other than those, if any, created by Landlord. Surrender or removal of improvements, fixtures and trade fixtures shall

be as directed in the provisions of this Lease on ownership of improvements at termination or expiration of the Term. Subject to the specific provisions of this Lease in Section 7.5, concerning surrender of the Premises due to events of damage or destruction, Tenant shall leave the Leased Premises and any other property surrendered in first-class condition and repair, given due consideration to the age of the Improvements and reasonable wear and tear excepted. All property that Tenant is required to surrender shall become Landlord's property at termination or expiration of this Lease. All property that Tenant is not required to surrender but that Tenant does abandon by failure to remove said property upon the expiration or earlier termination of this Lease shall, at Landlord's election, become Landlord's property.

Subject to the rights, if any, of a Subtenant under a nondisturbance agreement entered into by Landlord, upon the expiration or earlier termination of this Lease, Landlord shall have the right to demand the removal, at Tenant's sole cost and expense, from the Leased Premises of any improvements or certain specified improvements, if such improvements are not at that time, in the first-class condition described above as required under this Lease. A demand for the removal of said improvement(s) shall be made by Landlord giving notice to Tenant within the last six (6) months before the expiration, or at the time of the earlier termination, of this Lease. For removal of improvements at the expiration of the Term, Tenant shall comply with said notice not later than the later of (i) the expiration of this Lease, or (ii) ninety (90) days after Landlord gives Tenant written notice of Landlord's election to have the improvements removed. For removal of improvements in the event of earlier termination, such removal shall be completed not later than ninety (90) days after such earlier termination of this Lease. Such deadlines shall be extended for any period of delay in issuance of the necessary demolition permits which occurs notwithstanding Tenant's diligent effort to obtain such permits and Tenant's satisfaction of all requirements applicable thereto. Tenant shall demolish and remove all such buildings in compliance with applicable demolition permits.

If Tenant holds over after the expiration of the Term for any cause, with or without the express or implied consent of Landlord, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Annual Rent (including Minimum Monthly Rent, Pass Through Rent, Passenger Fee Rent and Percentage Rent) in effect at the end of the Term shall be increased to One Hundred and Fifty percent (150%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Tenant to remove machines, appliances and other equipment during the time periods herein provided for such removal. Nothing contained herein shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.1 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided at law or in equity.

If requested to do so, Tenant shall, upon the expiration or earlier termination of this Lease, execute, acknowledge and deliver to Landlord such instruments of further assurance as are necessary or reasonably requested by Landlord to confirm or perfect Landlord's right, title and interest in and to the Leased Premises, and any other property surrendered to Landlord pursuant to this Lease, free and clear of any claim by Tenant.

## ARTICLE 16 MISCELLANEOUS

### 16.1. Tenant's Representations and Warranties.

Tenant covenants, represents and warrants to Landlord, as of the date of execution of this Lease, as follows:

(a) Tenant is a limited liability company duly organized, qualified and validly existing and in good standing under the laws of California, and has all requisite power and authority to enter into and perform its obligations under this Lease.

(b) The execution, delivery and performance of this Lease is consistent with the Articles of Organization and Operating Agreement of Tenant and has been duly authorized by all necessary action of Tenant's members. All consents or approvals of Tenant's members required in connection with the execution, delivery and performance by Tenant of this Lease have been obtained and delivered to Landlord on or before the Effective Date. This Lease has been duly and validly executed by Tenant and, subject to applicable laws concerning bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws) and to general principles of equity, is enforceable against Tenant in accordance with its terms.

(c) Tenant shall obtain and maintain, or cause to be obtained and maintained, all material licenses, permits, consents and approvals required by all applicable governmental authorities to own and operate the Leased Premises and the Improvements thereon.

(d) With respect to the financial condition of Tenant:

(1) Tenant has furnished Landlord with true and correct copies of Tenant's Balance Sheet and the related Statement of Income (Loss) which are accurate in all material respects (collectively, the "**Financial Statements**").

(2) The Balance Sheet fairly presents Tenant's financial condition as of the date indicated, and the Statement of Income (Loss) fairly presents, in accordance with such accounting principles, the results of operations, the application of funds, and the changes in member's equity for the respective periods indicated.

(3) There have been no changes in the assets, liabilities, financial condition or affairs of Tenant set forth or reflected in the Financial Statements supplied to Landlord by Tenant, which either in any one case or in the aggregate, would have a material adverse effect on Tenant's ability to perform its obligations hereunder.

(e) All material filings, reports and tax returns of Tenant which are required to be made or filed with any governmental authority with respect to the Leased Premises have been and will continue to be duly made and filed, and all taxes, assessments, fees and other governmental charges upon Tenant, which are due and payable by Tenant, have been, and will continue to be, paid when due, other than those which are presently payable without penalty or interest, or which Tenant is contesting in good faith.

(f) To Tenant's actual knowledge, there are no suits, other proceedings or investigations pending or threatened against, or affecting the business or the properties of Tenant, or any of Tenant's members, which could materially impair Tenant's ability to perform under this Lease, nor is Tenant or any of Tenant's members in violation of any laws or ordinances which could materially impair Tenant's performance of its obligations under this Lease.

(g) To Tenant's actual knowledge, there are no facts now in existence which would, with the giving of notice or the lapse of time, or both, constitute a "Default" hereunder.

(h) To Tenant's actual knowledge, Tenant has not received any notice from any governing jurisdiction of any violation of laws or ordinances with respect to any existing or to-be-constructed improvements on the Leased Premises.

(i) To Tenant's actual knowledge, there is no existing adverse condition, circumstance, pending or threatened litigation, governmental action, or other existing condition which could prevent or materially impair Tenant's ability to operate or develop the Leased Premises as contemplated by the terms of this Lease.

(j) Tenant has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease, other than the normal cost of conducting business and the costs of professional services such as architects, engineers and attorneys, and brokers' commissions payable in connection with this Lease, the Development Lease and/or the Subleases.

The term "**actual knowledge**", as used with reference to Tenant, shall mean the actual knowledge then possessed, without duty of inquiry, investigation or research, of Taylor Woods and/or Howard Wu. The fact that such individuals are used for purposes of establishing the actual knowledge of Tenant shall not create any personal liability to such individuals under this Lease for the representations and warranties set forth herein, except for such liability as may arise from any separate guarantees provided pursuant hereto or in connection with the implementation hereof.

#### 16.2. Queen Mary Heritage Foundation.

As a material covenant and requirement of this Lease, concurrent with the execution of this Lease and on each of the first four anniversaries of the Effective Date, Tenant shall make a Twenty-Five Thousand Dollar (\$25,000) support payment to the Queen Mary Heritage Foundation ("**Foundation**"). Tenant shall promptly confirm the delivery of such amounts to the Foundation and provide the City with written confirmation thereof. To the extent the foregoing payments are made to the Foundation as required, such payments shall be credited to the contemporaneous Passenger Fee Rent obligation that would otherwise be payable by Tenant to Landlord.

#### 16.3. Landlord's Representations and Warranties.

Landlord covenants, represents and warrants to Tenant, as of the date of execution of this Lease, as follows:

(a) The persons executing this Lease on behalf of Landlord are duly authorized to do so, and by their execution bind Landlord hereto.

(b) Landlord owns the entire fee simple interest in the Leased Premises and has all requisite power and authority and has taken all actions necessary to authorize it to enter into and perform its obligations to Tenant under this Lease.

(c) This Lease has been duly and validly executed by Landlord and, subject to applicable laws concerning bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws) and to general principles of equity, is enforceable against Landlord in accordance with its terms.

(d) To Landlord's actual knowledge, the execution, delivery and performance of this Lease by Landlord does not result in a violation of, or constitute a default under, any provision of any existing agreement, judgment, court order or Governmental Restriction concerning the Leased Premises.

(e) To Landlord's actual knowledge, the Leased Premises are free and clear of, and are not subject to, any laborer, mechanic's or materialman's liens (either perfected or unperfected) resulting from any work thereon performed by or on behalf of Landlord (except those liens, if any, resulting from entry on or actions on the Leased Premises by Tenant or its predecessors in interest).

(f) To Landlord's actual knowledge, there are no suits, other proceedings or investigations pending or threatened against, or affecting the operations or the properties of Landlord which could materially impair Landlord's ability to perform under this Lease.

(g) To Landlord's actual knowledge, there are no facts now in existence which would, with the giving of notice or the lapse of time, or both, constitute a Default by Landlord hereunder.

(h) To Landlord's actual knowledge, Landlord has not received any written notice from any governing jurisdiction of any violation of laws or ordinances that would result from construction of the contemplated Improvements on the Leased Premises.

The term "**actual knowledge**", as used with reference to Landlord, shall mean the actual knowledge then possessed, without further investigation, inquiry or research, of the Director of the Economic Development Department of Landlord. The fact that such individuals are used for purposes of establishing the actual knowledge of Landlord shall not create any personal liability to such individuals under this Lease for the representations and warranties set forth herein.

#### 16.4. Estoppel Certificate.

Within ten (10) days after request by Landlord or Tenant (which request may be from time to time as often as reasonably required by Landlord or Tenant) Landlord or Tenant shall execute and deliver to the other, without charge, a statement in the form of **Exhibit "E"** attached hereto or in such other similar form as Landlord or Tenant may reasonably request. Any such statement may be conclusively relied upon by any prospective purchaser, tenant, subtenant or encumbrancer of the Leased Premises.

#### 16.5. Notices.

All notices, requests, demands and other communications under this Lease shall be in writing and shall be deemed to have been given on (i) the date of service if served personally on the Party to whom notice is to be given, (ii) the date of actual or attempted delivery provided such attempted delivery is made

on a Business Day, if sent by Federal Express, Express Mail or another like overnight delivery service, (iii) the date of delivery, if sent by fax or electronic mail; provided that, if such fax or electronic transmission is sent on a weekend or after 5:00 p.m. on a Business Day, then it shall be deemed sent on the next Business Day, and provided that any notice sent by fax or electronic mail shall also be sent by one of the other modes of permissible delivery, which alternate method of delivery shall be initiated not more than one (1) Business Day after such transmission by fax or electronic mail, or (iv) the date of actual delivery (or refusal) as shown by the addressee's registry or certification of receipt, if mailed to the person to whom notice is to be given, by first class U.S. mail, registered or certified, postage prepaid, return receipt requested and properly addressed as follows (or to such other address as either Party may from time to time direct by written notice given in the manner herein prescribed) :

If to Landlord:

City of Long Beach  
333 West Ocean Boulevard, \_\_\_ Floor  
Long Beach, CA 90802  
Attn: Patrick H. West, City Manager  
Email: Patrick.West@longbeach.gov

with a copy to:

City of Long Beach  
Long Beach City Attorney's Office  
333 West Ocean Boulevard, 11<sup>th</sup> Floor  
Long Beach, CA 90802  
Attn: City Attorney  
Email: Michael.Mais@longbeach.gov

with a copy to:

Abram Roy LLP  
21550 Oxnard Street, Suite 570  
Woodland Hills, California 91367  
Attn: Dennis S. Roy, Esq.  
Email: droym@abramroylaw.com

and, if to Tenant:

Urban Commons Queensway, LLC  
3334 East Coast Highway, #350  
Corona del Mar, CA 92625  
Attn: Taylor Woods  
Email: taylorwoods23@gmail.com

with copies to:

Urban Commons Queensway, LLC  
777 South Figueroa Street, Suite 2850  
Los Angeles, CA 90017  
Attn: Howard Wu  
Email: hwu410@gmail.com

Sherry Meyerhoff Hanson & Crance LLP  
610 Newport Center Drive, Suite 1200

Newport Beach, CA 92660  
Attn: Andrew P. Hanson, Esq.  
Email: ahanson@calawyers.com

16.6. Attorneys' Fees.

In the event that either Party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Lease or as a consequence of any breach by the other Party of its obligations under this Lease, the prevailing Party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing Party. The attorneys' fees so recovered shall include fees for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party in any lawsuit on this Lease shall be entitled to its attorneys' fees incurred in any post judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Lease into any judgment on this Lease.

16.7. Headings.

The headings used in this Lease are inserted for reference purposes only and do not affect the interpretation of the terms and conditions hereof.

16.8. Rights of Successors.

All of the rights and obligations of the Parties under this Lease shall bind and inure to the benefit of their respective heirs, successors and assigns; provided, however, that nothing in this Section 16.8 shall be construed to limit or waive the provisions concerning restrictions on Transfer set forth in Article 9.

16.9. Amendments in Writing.

This Lease cannot be orally amended or modified. Any modification or amendment hereof must be in writing and signed by the Party to be charged.

16.10. No Brokers.

Each Party shall defend, indemnify, and hold the other harmless from all costs and expenses, including attorneys' fees, arising out of any and all claims for broker's, agent's or finder's fees or commissions in connection with the negotiation, execution or consummation of this transaction incurred as a result of any statement, representation or agreement alleged to have been made or entered into by the indemnifying Party. Neither Tenant nor Landlord is entitled to receive any brokerage commission as a consequence of this transaction.

16.11. Time of Essence.

Time is of the essence of each provision in this Lease, and applies to all terms, restrictions, conditions and limitations contained herein.



16.12. Interpretation.

When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The term "**Person**" as used in this Lease means a natural person, corporation, association, partnership, organization, business, trust, individual, or a governmental authority, agency, instrumentality or political subdivision, and the term "**Natural Person**" as used in this Lease means and refers only to a natural person. Whenever the word "**day**" or "**days**" is used herein, such term shall refer to calendar day or days, unless otherwise specifically provided herein. Whenever a reference is made herein to a particular Section of this Lease, it shall mean and include all sub-Sections and subparts thereof. The word "include" or "including" shall describe examples of the antecedent clause, shall mean "including without limitation", and shall not be construed to limit the scope of such clause. The word "or" is inclusive and means "and/or" unless the context expressly indicates otherwise. "**Business Day**" or "**Business Days**" shall mean and refer to any day other than a Saturday, Sunday, or a day which is a legal holiday for national banks in California.

16.13. Applicable Law: Severability.

The interpretation and enforcement of this Lease shall be governed by the laws of the State of California, regardless of any laws on choice of law or conflicts of laws of any jurisdiction. Should any part, term, portion or provision of this Lease, or the application thereof to any person or circumstances be held to be illegal or in conflict with any Governmental Restrictions, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

16.14. Exhibits.

All exhibits referred to in this Lease are attached hereto and incorporated herein by reference.

16.15. Waiver of Subrogation.

Landlord and Tenant hereby release the others and their Representatives from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to the Leased Premises, any improvements thereon, or any of Tenant's personal property thereon caused by or arising from a fire or any other event with respect to which insurance is required to be carried pursuant to Article 12 or with respect to which insurance is actually carried, to the extent such loss is insured against or required to be insured against hereunder, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided, that the above provision does not limit or waive, in any way, Tenant's repair and reconstruction obligations set forth in this Lease.

16.16. Attornment by Tenant.

In the event that Landlord assigns its interest in the Leased Premises and this Lease, Tenant shall attorn to the assignee of Landlord, provided such assignee agrees to assume in writing all of Landlord's obligations under this Lease, and shall recognize same as Landlord under this Lease from and after the date of such assignment.

16.17. Memorandum of Lease.

Concurrently with the execution of this Lease, the Parties shall execute and thereafter record in the Official Records a memorandum of this Lease, substantially in the form attached hereto as Exhibit "F", giving notice of the existence of this Lease and the Term. Tenant shall pay any and all fees or taxes associated with recording said memorandum of this Lease.

16.18. Landlord's Rights of Inspection.

Landlord and its authorized agents and representatives shall have the right during business hours, upon not less than 48 hours' oral or written notice to Tenant (except that in the case of an emergency, the existence of which shall be determined by Landlord in its reasonable discretion, no advance notice shall be required) to enter upon the Leased Premises for purposes of inspecting the same and exercising its rights under this Lease, provided that such inspections shall not unreasonably interfere with Tenant's construction or business activities or any normal and customary use of the Leased Premises by guests or invitees. If any work or materials are not in conformity in all material respects with any Plans approved pursuant to this Lease, any Governmental Restrictions, or any other provisions of this Lease, Landlord may, upon five (5) Business Days' notice to Tenant, order correction of any such work or materials, subject to the right of Tenant to dispute any finding by Landlord regarding the conformity of such work or materials. Inspection by Landlord of the Leased Premises or any improvements thereon is for the sole purpose of protecting the rights of Landlord and is not to be construed as an acknowledgment, acceptance or representation by Landlord that there has been compliance with any Plans, the Schedule of Performance, or any terms or provisions of this Lease, or that the Leased Premises or any Improvements thereon will be free of faulty materials or workmanship. Any holder of any encumbrance on any portion of the Leased Premises shall make or cause to be made such other independent inspections as it deems necessary for its own protection, and nothing contained herein shall be construed as requiring Landlord to construct or supervise construction of any improvements on the Leased Premises or any portion thereof.

16.19. Nonmerger of Fee and Leasehold Estates.

If both Landlord's and Tenant's estates in the Leased Premises become vested in the same owner (other than by termination of this Lease following an Uncured Default hereunder), this Lease shall not be terminated by application of the doctrine of merger except at the express election of Landlord and with the consent of any Lender(s) on a Leasehold Mortgage.

16.20. Nonliability of Landlord and Tenant Representatives

No Landlord Representatives shall be personally liable to Tenant, or any successor in interest, in the event of any Default or breach by Landlord, or for any amount which may become due to Tenant or successor, or on any obligation under the terms of this Lease. Except as may apply to any alternate security provided under Section 6.2.2.4.3, no Tenant Representative shall be personally liable to Landlord, or any successor in interest, in the event of any Default or breach by Tenant, or for any amount which may become due to Landlord, or any successor, or on any obligation under the terms of this Lease.

16.21. Counterparts.

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

16.22. Landlord Disclosure and Tenant's Waiver.

16.22.1 Disclosures and Waiver.

16.22.1.1 "AS IS". Tenant accepts the Leased Premises in their present condition notwithstanding the fact that there may be certain defects in the Leased Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by Tenant, and Tenant hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

16.22.1.2 Tenant acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Lease at the time of the execution hereof and Tenant agrees that it will make no demands upon Landlord for any construction, alterations, or any kind of labor that may be necessitated in connection therewith.

16.22.1.3 Tenant hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against Landlord, its officers, agents, employees or volunteers which Tenant now has or may have or assert in the future which are based upon any defects in the physical condition of the Leased Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument.

16.22.1.4 California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Tenant acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of subsection 16.22.1.

  
\_\_\_\_\_  
Tenant's Initials

Notwithstanding anything contained in this Section 16.22 to the contrary, the waivers and releases of Tenant under this Section 16.22 shall not apply to limit Landlord's responsibility for a breach of Landlord's representations, warranties and covenants set forth in this Lease or intentional fraudulent conduct by Landlord.

16.23. No Rights Of Third Parties Other Than Lender.

None of the promises or undertakings made herein are for the benefit of any Person which is not a party to this Lease, except (i) with respect to a Lender owning or holding a Leasehold Mortgage encumbering the Leased Premises, such Lender shall be entitled to the benefit of the Lender protection rights included herein expressly for its benefit, (ii) with respect to the estoppel certificate provisions set forth in Section 16.4, and (iii) with respect to the subordination, non-disturbance and attornment agreement

provisions set forth in Section 9.2.3, the Sublessees described therein shall be entitled to rely upon the provisions expressly provided for their benefit in that Section.

16.24. No Deemed Approvals.

Notwithstanding anything to the contrary in this Lease, except as expressly and affirmatively set forth in this Lease, under no circumstance shall any consent and/or approval of a Party required under this Lease be deemed to have been rendered absent the written consent or approval of the Party providing such consent. Except as expressly and affirmatively set forth in this Lease, in no event shall the failure to approve or disapprove any submission within the time provided by this Lease result in a deemed approval of such submission.

Except as otherwise provided herein, the time within which Landlord or Tenant has to respond to a request for any consent or approval under this Lease shall be ten (10) Business Days following receipt of the other Party's written request and all materials required by this Lease or otherwise reasonably requested by the Party receiving such request in order to enable it to act thereon. With respect to any such additional matters that the Party receiving such request may reasonably require, such Party shall notify the other Party of such request within five (5) Business Days of its receipt of the request for consent or approval and all materials expressly required to be provided to the Party receiving such request by this Lease in connection with such request. In the event of any disapproval, the Party receiving such request shall, concurrently with the delivery of notice of such disapproval, inform the other Party in writing of the reasons for disapproval and, if applicable, the conditions upon which the Party receiving such request may approve such request. The provisions of this paragraph shall not apply to the provisions of this Lease that expressly set forth the procedure for submission and processing of any requests for approval (and the specific timeframes applicable thereto), as those Sections already specify the procedure to obtain Landlord's consent or approval and the remedy for Landlord's failure to timely respond.

16.25. Reasonableness Standard.

Except as otherwise expressly provided herein, any time the consent of Landlord or Tenant is required by this Lease, such consent shall not be unreasonably withheld, conditioned or delayed. Except as otherwise expressly provided herein, whenever this Lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, Landlord and Tenant shall act reasonably.


[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date first above written.

TENANT:

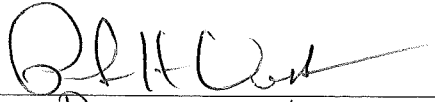
URBAN COMMONS QUEENSWAY, LLC,  
a California limited liability company

By: Urban Commons, LLC,  
a Delaware limited liability company,  
Its Manager

By:   
Name: TAYLOR WOODS  
Title: Authorized Signer

LANDLORD:

CITY OF LONG BEACH,  
a California chartered city and municipal corporation

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

ATTEST:

APPROVED AS TO FORM:

Liner LLP  
Landlord's Special Counsel

By: \_\_\_\_\_

APPROVED AS TO FORM

11.2.2016

  
CHARLES PARKIN, City Attorney

By:   
RICHARD ANTHONY  
DEPUTY CITY ATTORNEY

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date first above written.

TENANT:

URBAN COMMONS QUEENSWAY, LLC,  
a California limited liability company

By: Urban Commons, LLC,  
a Delaware limited liability company,  
Its Manager

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

LANDLORD:

CITY OF LONG BEACH,  
a California chartered city and municipal corporation

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

ATTEST:

APPROVED AS TO FORM:

Liner LLP  
Landlord's Special Counsel

By: *J. Roy, Partner Abraham Roy LLP*

EXHIBIT "A-1"

Ordinance No. HD-1605 of Board of Harbor Commissioners

[See Attached]





1 for such purposes; and

2           WHEREAS, the City Charter of the City of Long Beach  
3 Section 1203(n) provides:

4           "Whenever the [Harbor] Commission determines that any  
5 lands owned by the City within its jurisdiction have  
6 become unnecessary for port purposes or harbor  
7 development, it may by ordinance, transfer such land to  
8 the control of the City Council, free from all  
9 restrictions, other than trust restrictions, if any."

10           NOW, THEREFORE, the Board of Harbor Commissioners of the  
11 City of Long Beach ordains as follows:

12           Section 1. The Board hereby finds and determines that the  
13 tide and reclaimed submerged lands within the Harbor District of the  
14 City of Long Beach (the "Lands") shown on the drawing attached  
15 hereto marked Exhibit "A", are not necessary for port purposes or  
16 harbor development. Exhibit "A" is by this reference incorporated  
17 herein.

18           Sec. 2. The Board hereby transfers control of the Lands  
19 to the City Council together with all City owned improvements  
20 situated on, under and above the Lands and all leases, franchises,  
21 permits, licenses, contracts, and agreements (the "Agreements")  
22 affecting said Lands to which the Board is a party or which  
23 otherwise encumber the Lands; subject however to the restrictions  
24 and limitations on use imposed by the legislative grants of tide and  
25 submerged land by the State of California to City, Sections 1205,  
26 1215 and 1216 of the City Charter and the federal navigational  
27 servitude.

28           2.1 The Agreements include but are not limited to

1 the leases and permits granted by the Board to Long Beach  
2 Cannons, Inc. (Harbor Department Document No. HD-4284), Point  
3 Pacific Corporation (Harbor Department Document No. HD-2828),  
4 Forte Hotels International, Inc. (Harbor Department Document  
5 No. HD-4436), Island Express Helicopters, Inc. (Harbor  
6 Department Document No. HD-4770), and Catalina Channel Express,  
7 Inc. (Harbor Department Document No. HD-5096). Upon the  
8 effective date of this Ordinance, the City Council and the City  
9 Manager shall have and exercise all powers, rights, duties and  
10 obligations reserved to the Board and the Executive Director  
11 of the Long Beach Harbor Department in all such Agreements.

12 2.2 The transfer of control of the Lands to the City  
13 Council under this Ordinance shall not include the lands upon  
14 which the energy plant currently servicing the RMS Queen Mary  
15 is now situated but shall include the right of the City Council  
16 and its designees to use, occupy, operate and maintain the  
17 energy plant and related equipment, pipelines and  
18 appurtenances. The Board reserves the right to direct the  
19 relocation of the energy plant at any time in which event the  
20 Board shall reimburse the City Council for all costs incurred  
21 in the relocation.

22 Sec. 3. The Board hereby directs and orders the transfer  
23 of Six Million Five Hundred Thousand Dollars (\$6,500,000.00) from  
24 the Harbor Revenue Fund to the Tideland Operating Fund to be held  
25 and disbursed for the purpose of making those repairs and  
26 improvements to the RMS Queen Mary and the Dome (the "Repairs")  
27 listed on Exhibit "B" attached hereto and by this reference made a  
28 part hereof and such other purposes as are authorized by Section

1 1710 of the City Charter. The costs of Repairs shall include direct  
2 and allocated costs for labor, materials, supervision, supplies,  
3 equipment, tools, taxes, transportation, storage, administrative and  
4 general expenses.


5           **Sec. 4.** The costs of the defense and payment of any  
6 claims for damages arising out of or related to the Lands occurring  
7 prior to the effective date of this Ordinance and the duty to obtain  
8 full compliance with the provisions of the Management Agreement  
9 dated July 23, 1992 (Harbor Department Document No. HD-5074) shall  
10 be the responsibility of the Board. The costs of defense and  
11 payment of any claims arising after the effective date of this  
12 Ordinance with respect to the Lands and after the transfer and  
13 assumption by the City Council of the Leases shall be the  
14 responsibility of the City Council. Except as expressly provided  
15 in this Ordinance the Board shall not be responsible for or be  
16 obligated to pay any debt, liability, claim, cost or expense  
17 including without limitation charges for City services related or  
18 attributable to the Lands or the improvements situated thereon.

19           **Sec. 5.** Upon the effective date of this Ordinance, the  
20 Board shall have fully discharged and performed all of its  
21 obligations, duties and powers conferred upon it by Ordinance No.  
22 C-5395.

23           **Sec. 6.** This ordinance shall be signed by the President  
24 or Vice President of the Board of Harbor Commissioners and attested  
25 to by the Secretary. The Secretary shall certify to the passage of  
26 this ordinance by the Board of Harbor Commissioners of the City of  
27 Long Beach, shall cause the same to be posted in three (3)  
28 conspicuous places in the City of Long Beach, and shall cause a

1 certified copy of this ordinance to be filed forthwith with the City  
2 Clerk of the City of Long Beach. This ordinance shall take effect  
3 on the 31st day after its final passage or upon the date the City  
4 Council accepts the transfer of control of the Lands and Agreements  
5 as provided herein, whichever is later.

6   
7 \_\_\_\_\_  
8 Vice President

8 ATTEST:  
9   
10 \_\_\_\_\_  
11 Secretary

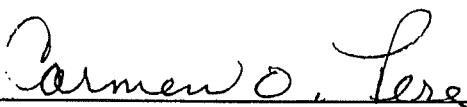
11 I hereby certify that the foregoing ordinance was adopted  
12 by the Board of Harbor Commissioners of the City of Long Beach at  
13 its meeting of November 30, 1992 by the following vote:

14 Ayes: Commissioners: Friedland, Perez, Bellehumeur

15 \_\_\_\_\_  
16 \_\_\_\_\_

17 Noes: Commissioners: None

18 Absent: Commissioners: Hearrean, Hauser

19   
20 \_\_\_\_\_  
21 Secretary

22  
23  
24  
25  
26  
27  
28

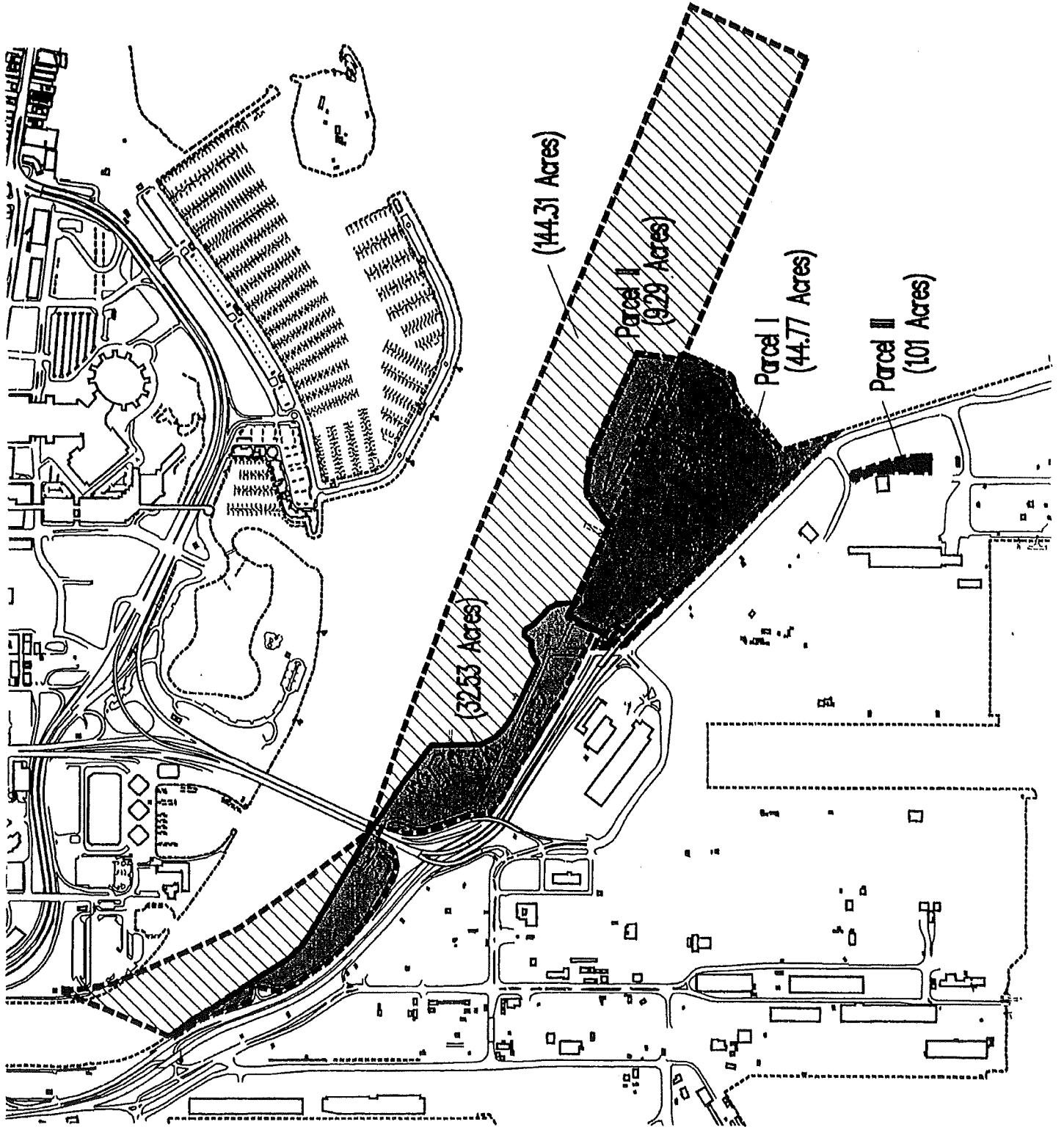


Exhibit B...

REPAIRS TO QUEEN MARY

HULL AND STRUCTURE

Description

Underwater Hull Condition Survey

Engineering Study & Preparation  
of Specifications

Deck Buckling "A" Deck  
Install Stanchion

Breasting Structure  
Sandblast & Re-coat

Hull Bilges  
ACM Removal  
Clean, Sandblast & Paint

Watertight Bulkheads  
Repair & Replace

Handicap Accessibility  
Modifications

Occupant Egress  
Signage

Replace & Install Sacrificial  
Anodes

MACHINERY

Heating Ventilation and  
Air Conditioning

Firemain & Sprinkling System

Firemain Detection System

Public Address System

EXHIBIT B  
(Continued)

REPAIRS TO QUEEN MARY

ELECTRICAL

Substation & Connected  
Auxiliaries

Emergency Generator Repair  
& Service

OTHER

Dome Repairs

EXHIBIT "A-2"

Minute Order of City Council

[See Attached]





OFFICE OF THE CITY ATTORNEY  
Long Beach, California

CHARLES PARKIN  
City Attorney

MICHAEL J. MAIS  
Assistant City Attorney

MONTE H. MACHIT  
Assistant City Attorney

PRINCIPAL DEPUTIES

Dominic Holzhaus  
Anne C. Lattine

CLERKS

C. Geoffrey Allred  
Gary J. Anderson  
Richard E. Anthony  
William R. Baerg  
Kendra L. Corney  
LaTasha N. Corry  
Charles M. Gale  
Haleh R. Jenkins  
Michele L. Levinson  
Barbara J. McVigue  
Howard D. Russell  
Arturo D. Sanchez  
Tiffani L. Shin  
Linda T. Vu  
Amy R. Webber  
Theodore B. Zinger

January 5, 2016

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

RECOMMENDATION:

Rescind and Reconsider an Amended and Restated Lease and Operations Agreement No. 22697 and concurrent assignment to Urban Commons, LLC, as Successor Lessee to Garrison Investment Group, LLC, previously approved by the City Council on November 17, 2015; and

Authorize the City Manager, or designee, to execute any and all documents necessary for an Amended and Restated Lease and Operations Agreement No. 22697 for the Queen Mary and adjacent properties, and concurrent assignment to Urban Commons, LLC, as Successor Lessee to Garrison Investment Group, LLC. (District 2)

DISCUSSION

On November 17, 2015, the City Council approved an Amended and Restated Lease and Operations Agreement No. 22697 and concurrent assignment to Urban Commons, LLC, as Successor Lessee to Garrison Investment Group, LLC.

On December 16, 2015, the City received a letter (Attachment "A") alleging that such action was a violation of the Ralph M. Brown Act ("Brown Act") as follows:

On or about November 17, 2015 the City Council considered a recommendation to adopt an amended and restated lease and operations agreement and concurrent assignment with regard to the Queen Mary, a City-owned asset. The agenda item was identified on the November 17, 2015 as Item No. 14. The specific description given to this item is as follows: "Recommendation to authorize City

*Manager, or designee, to execute any and all documents necessary for an amended and restated lease and operations agreement No. 22697 and concurrent assignment to Urban Commons, LLC, as successor lessee to Garrison Investment Group, LLC (District 2)."* Significantly, no reference was made in the agenda description to the Queen Mary.

While the City Attorney does not believe the City Council's action violates the Brown Act as discussed below, to conserve public resources and avoid unnecessary litigation, the City Attorney recommends reconsidering the item by first rescinding the November 17, 2015 action approving an Amended and Restated Lease and Operations Agreement No. 22697 and concurrent assignment to Urban Commons, LLC, as Successor Lessee to Garrison Investment Group, LLC, and then considering the request for a new approval pursuant to this revised agenda description that specifically references the "Queen Mary".

It is the City Attorney's opinion that this item was sufficiently identified on the November 17, 2015 meeting agenda. Government Code section 54954.2 states:

(a)(1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.

We believe the description of the item in this case meets the statutory mandate of the Brown Act to include a "brief general description" of the matter, such that a member of the public could attend if he or she desired to observe or comment upon the matter before action was taken.

The Brown Act allows, after receipt of a written demand to cure, the City Council to reconsider the challenged item and cure the alleged defect. Importantly, doing so is specifically not an admission of wrongdoing by the public agency. (Government Code section 54960.1(f) states: "The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter").

Thus, to avoid the possibility of unnecessary litigation, the City Council may first rescind the prior action taken on November 17, 2015 and then consider the item anew, with the revised agenda description specifically referencing the "Queen Mary".

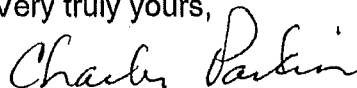
Rather than restating the prior staff discussion, if the City Council rescinds the prior action, the November 17, 2015 Staff Report is attached (Attachment "B") for reference in considering the newly revised request.

HONORABLE MAYOR AND CITY COUNCIL  
January 5, 2016  
Page 3

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,



CHARLES PARKIN  
City Attorney

Attachments:

- (A) December 16, 2015 Demand Letter
- (B) November 17, 2015 Staff Report
- (C) November 17, 2015 PowerPoint Presentation

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## Channel Law Group, LLP

8200 Wilshire Blvd.  
Suite 300  
Beverly Hills, CA 90211

Phone: (310) 347-0050  
Fax: (323) 723-3960  
www.channelawgroup.com

ROBERT JYSTAD\*  
JULIAN K. QUATTLEBAUM, III \*\*  
JAMIE T. HALL \*\*\*  
CHARLES J. McLURKIN

Writer's Direct Line: (310) 982-1760  
jamie.hall@channelawgroup.com

\*Of Counsel  
\*\*ALSO Admitted in Colorado  
\*\*\*ALSO Admitted in Texas

December 16, 2015

**VIA U.S. MAIL AND FACSIMILE**  
**(562-570-6789)**

Maria De La Lus Garcia  
City Clerk  
City of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802  
[cityclerk@longbeach.gov](mailto:cityclerk@longbeach.gov)

**Re: Demand to Cure And/or Correct Action in Violation of Brown Act**

Dear Ms. Garcia:

I am writing on behalf of my client to call the attention of the City Council to a past violation of the Ralph M. Brown Act by the City Council concerning action taken on or about November 17, 2015 concerning a new lease for the use of and operation of the Queen Mary and related assets.

The nature of the violation is as follows: On or about November 17, 2015 the City Council considered a recommendation to adopt an amended and restated lease and operations agreement and concurrent assignment with regard to the Queen Mary, a city-owned asset. The agenda item was identified on the November 17, 2015 as Item No. 14. The specific description given to this item is as follows: *"Recommendation to authorize city manager, or designee, to execute any and all documents necessary for an amended and restated lease and operations agreement No. 22697 and concurrent assignment to Urban Commons, LLC, as successor lessee to Garrison Investment Group, LLC. (District 2)."* Significantly, no reference was made in the agenda description to the Queen Mary.

As you are aware the Brown Act creates specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon and also creates a

legal remedy for illegally taken actions, namely in this instance, a determination that a past action taken by the City Council violated the Act.

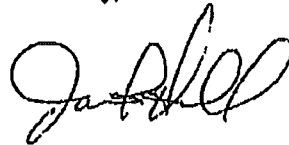
Pursuant to Government Code § 54960.1, and on behalf of my client as an interested person alleging a violation of the Act, my client demands that the City Council cure or correct the action.

As provided by Government Code § 54960.1(c)(2) the City Council may respond to this demand within 30 days of receiving the letter by curing and/or correcting the action and informing my office in writing of its actions to that end. My client contends that the City would be required to re-agendize this item with a description that references the Queen Mary and take a new vote in accordance with the Brown Act.

If the City Council does not cure and/or correct this action, my client intends to commence an action seeking a judicial determination regarding whether the challenged action violated the Brown Act. Such an action would include a request to the court for payment of costs and reasonable attorneys' fees pursuant to Government Code § 54960.5.

I may be contacted at 310-982-1760 or at [jamie.hall@channellawgroup.com](mailto:jamie.hall@channellawgroup.com) if you have any questions, comments or concerns.

Sincerely,



Jamie T. Hall



# CITY OF LONG BEACH

DEPARTMENT OF ECONOMIC AND PROPERTY DEVELOPMENT

333 West Ocean Boulevard 3<sup>rd</sup> Floor • Long Beach, CA 90802 • (562) 570-6099 • Fax (562) 570-6380

~~R-14~~

November 17, 2015

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Authorize the City Manager, or designee, to execute any and all documents necessary for an Amended and Restated Lease and Operations Agreement No. 22697 and concurrent assignment to Urban Commons, LLC, as Successor Lessee to Garrison Investment Group, LLC. (District 2)

## DISCUSSION

The Queen Mary is a City-owned asset operated under Lease and Operations Agreement No. 22697 (Lease) with Save the Queen, LLC (STQ). In late 2007, STQ assumed control over Queen's Seaport Development, Inc., and the Lease through bankruptcy proceedings of the ship's prior operator. Subsequently, Garrison Investment Group, LLC (Garrison) foreclosed on STQ and assumed ownership and control of the Leasehold interest. Since that time, Garrison has been an excellent steward of the Queen Mary. Garrison has spent over \$13 million dollars on preservation and renovation, and exceeded capital improvement requirements established during bankruptcy proceedings. Additionally, Garrison and their management company, Evolution Hospitality, have modernized operations, improved retail and restaurant offerings, and brought new and exciting events and exhibits to the ship.

Garrison has done a tremendous job of managing the Queen Mary hotel, attractions and events; however, as an investor, they did not intend to operate the Queen Mary in the long-run or develop the adjacent shoreside property. Consequently, Garrison has conducted an exhaustive search to identify a successor lessee (Successor Lessee) who will maintain excellent stewardship; continue to preserve, restore and maintain the ship; and demonstrate sufficient capitalization and experience to promptly proceed with shore-side development. Urban Commons, LLC, (Urban Commons) was selected by Garrison as their preferred Successor Lessee. Urban Commons is a Los Angeles based real estate investment and development firm specializing in innovative hospitality and entertainment destination developments. Urban Commons has development experience, not only in the Los Angeles area, but also in the Bay Area, Silicon Valley, Central Coast, Pasadena, Palm Desert, and Miami.

City staff have spent considerable time reviewing the financial stability of Urban Commons, their familiarity with the constraints of site development, and their ability to manage an extensive outreach, entitlement and development process. Urban Commons has demonstrated the necessary experience and financial capacity to operate a combined historic hotel and event/attraction facility, and the ability to undertake new development on the unimproved portions of the leasehold area.

The challenging structure of the existing lease has served to be an impediment to investment into preservation, restoration and shore side development. As a result, City staff, Garrison and Urban Commons propose a number of modifications that serve to address these issues. City staff have worked diligently to craft an agreement that would promote shore side development, while also strengthening the capital and preservation support for the Queen Mary. To this end, City staff have negotiated the proposed Amended and Restated Lease No. 22697 containing the following major terms and provisions:

- **Lessor:** City of Long Beach
- **Current Lessee:** Save the Queen, LLC, a wholly owned subsidiary of Garrison Investment Group, LLC
- **Successor Lessee:** Urban Commons, LLC
- **Leased Premises:** 64.22 Acres (43.38 acres land area/20.84 acres water area)
- **Lease Term:** 66 years from execution of Amended and Restated Lease.
- **Minimum Rent:** \$300,000 annually, payable monthly in advance. CPI adjustment on each 10-year anniversary of commencement date, not to exceed 40% in any 10-year period. This reflects an annualized increase of approximately 3.4%.
- **Priority Return:** Priority Return on initial Stipulated Investment Basis (purchase price for the leasehold interest) and eligible capital investments, to the extent it is available from Operating Revenue, shall be paid to the Successor Lessee on an annual basis at a rate of 9%. Priority Return shall not be cumulative.
- **Percentage Rent:** Percentage Rent will be calculated at 10% of Operating Revenue after Successor Lessee achieves its Priority Return, and payable to the extent it exceeds annual Minimum Rent.
- **Land Rent:** The Amended Lease will provide flexibility for the Successor Lessee to terminate the Amended Lease as to individual development parcels, subject to receipt of applicable entitlements, and for Successor Lessee (or its assignee) to enter into new, financeable ground leases for development purposes, not to exceed the term of the underlying 66-year lease.

Land rent shall be based on appraised value to be established at the time of execution of the Amended Lease, with payments beginning when the land included in financeable ground leases generates revenue, either directly or indirectly. Land values shall increase by CPI adjustment on each 10-year anniversary of commencement date, not to exceed 40% in any 10-year period.

- **Participation in Sales and Refinance:** The City shall be entitled to participate in any net profits from either the sale or refinance of the entire leasehold generally at the level of 25% of net proceeds after transaction costs and Successor Lessee's required return.
- **Base Maintenance and Replacement Plan:** Successor Lessee shall be required to establish a new Base Maintenance and Replacement Plan (BMRP) fund. Successor Lessee shall set aside a percentage of Gross Revenues, to fund the capital investment required for continued first class operation of the hotel, event and attraction facilities as follows: 1% during the first and second years; 2% during the third and fourth years; and 3% each year thereafter.
- **Historic Preservation and Capital Investment Plan:** Successor Lessee shall prepare a Historic Preservation and Capital Investment Plan (HPCIP) for preservation, conservation and restoration associated with the special historic status of the ship; and maintenance, repair or replacement of specific elements associated with the maritime nature of the ship.

Funding for the HPCIP will be provided by all or a portion of revenues received from Carnival Passenger Fees; all or a portion of the Minimum Rent paid to the City (excluding the Catalina Express pass-through rent and rent from special events); and any grant funds or other special source funds the City is able to obtain for this purpose. Successor Lessee may contribute additional funds needed to complete the projects on the approved HPCIP, which shall be eligible capital investments and added to the Stipulated Investment Basis for the purpose of calculating Preferred Return.

- **Compliance with Applicable Laws:** Successor Lessee shall comply with all requirements that may be reasonably imposed on the Queen Mary to comply with laws, including compliance with the Americans with Disabilities Act (ADA). These improvements will be considered as eligible capital investments and added to the Stipulated Investment Basis for the purpose of calculating Preferred Return.
- **Financial Reporting:** Financial reporting practices are to be modified to conform to the changes recommended in the City Auditor's Report of September 12, 2012 (including flow of all revenue to a single entity and associated auditing requirements, financial reporting and formatting requirements, etc.).
- **Queen Mary Heritage Foundation:** The Current Lessee has assisted in the establishment of the non-profit Queen Mary Heritage Foundation (QMHF), whose mission and purpose is to support historic preservation, conservation and restoration improvements pertaining to the ship, its historic artifacts and ephemera, and to serve as a vehicle to educate and disseminate information concerning the ship's history. Successor Lessee shall support and participate on the governing board of the Queen Mary Heritage Foundation (QMHF), and the City shall have ex-officio representation on the governing board.



HONORABLE MAYOR AND CITY COUNCIL

November 17, 2015

Page 4

Any and all funds raised by the Foundation and used in support of improvements to the ship shall be not added to the Stipulated Investment Basis for the purposes of calculating Priority Return, and said funds shall be subject to financial reporting requirements and auditing by the City.

- **Restructuring of Carnival Dome Lease:** At a time of mutual agreement between Successor Lessee and Carnival Corporation (Carnival), Successor Lessee shall sub-lease the entire Carnival Dome to Carnival for expanded terminal operations. Each year of the first five years of the Amended Lease term, Successor Lessee shall pay to City an amount equal to the passenger fees received by Successor Lessee from Carnival for the prior year up to a maximum of \$2,150,000 (the "Base Dome Payment"). City shall deposit the Base Dome Payment into an account to which both City and Successor Lessee have mutual access (the "HPCIP Account") for the purpose of capital projects and historic restoration. During the first five years of the Amended Lease term, all passenger fees received by Successor Lessee from Carnival in excess of the Base Dome Payment shall be retained by Successor Lessee. City shall have the right to collect passenger fees directly from Carnival if and to the extent Successor Lessee fails to make the Base Dome Payment.

Beginning in the sixth year of the Amended Lease term and each year thereafter, Successor Lessee shall pay to City all passenger fees received by Successor Lessee from Carnival up to \$2.15 per passenger. Successor Lessee shall further pay to the City 50% of passenger fees generated in excess of \$2.15 per passenger. The other 50% shall be retained by the Successor Lessee and included as revenue for financial reporting purposes. City revenue derived from passenger fees shall be deposited into the HPCIP Account and may be used only to fund HPCIPs as provided above.

The proposed Amended and Restated Lease No. 22697 will facilitate and encourage innovative shore side development, and provide a secure funding source for the historic preservation of, and capital investment into the Queen Mary. Additionally, the Current Lessee and Successor Lessee have expressed keen interest in working cooperatively with the Queen Mary Task Force in connection with outreach, entitlement and development of the leasehold area.

This matter was reviewed by City Attorney Charles Parkin on November 5, 2015 and by Assistant Finance Director Lea Eriksen on November 4, 2015.

TIMING CONSIDERATIONS

City Council action on this matter is requested on November 17, 2015 in order to ensure that the Amended Lease can be executed before the end of the year.

HONORABLE MAYOR AND CITY COUNCIL

November 17, 2015

Page 5

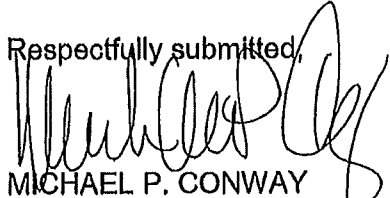
FISCAL IMPACT

Annual rent revenue of approximately \$300,000 will be redirected from the Tidelands Operating Fund (TF 401), which is currently used to support general Tidelands Operations, to the Queen Mary Fund (TF 410) in the Department of Public Works (PW), where it is restricted for capital expenses and investments for the Queen Mary. These funds and the Carnival Passenger Fees will be available to fund the Historic Preservation and Capital Investment Plan for the Queen Mary and will be managed by the Department of Economic and Property Development. Approval of this recommendation will provide continued support to the local economy.

**SUGGESTED ACTION:**

Approve recommendation.

Respectfully submitted,



MICHAEL P. CONWAY  
DIRECTOR OF ECONOMIC &  
PROPERTY DEVELOPMENT

MPC:JMV

APPROVED:

  
PATRICK H. WEST  
CITY MANAGER

EXHIBIT "B"

Legal Description of the Leased Premises

[See Attached]

Those portions of the artificially created land within the tidelands and submerged lands conveyed to the City of Long Beach by the State of California under an act of May 1, 1911, Chapter 676, Page 1304, as amended, lying in both said City and the Harbor District of said City, County of Los Angeles, said State, more particularly those portions of the Queen Mary property transfer to the City of Long Beach, as shown on official drawing HD4-98 on file in the office of the Executive Director of the Port of Long Beach of said City, described as follows:

#### QUEEN MARY SITE - LAND AREA

Beginning at monument A-8 as shown on maps recorded in Book 81, page 50 and Book 84, pages 91 to 93 inclusive, of Record of Surveys of said County; thence North 89.82 feet; thence East 1,538.32 feet to the TRUE POINT OF BEGINNING, said TRUE POINT OF BEGINNING having coordinates North 4,022,788.63, East 4,228,926.06 of Zone 7 of the California Coordinate System, said TRUE POINT OF BEGINNING being also a point in the North line of Parcel 2 as shown on said map recorded in Book 84, pages 91 to 93 inclusive, said point being the northerly terminus of that certain course having a bearing of North and length of 167.84 feet on said map; thence South 66° 20' 56" East 134.66 feet; thence North 23° 39' 04" East 54.03 feet; thence South 66° 20' 56" East 272.57 feet; thence North 23° 39' 04" East 221.94 feet; thence South 66° 20' 56" East 882.72 feet; thence North 23° 39' 04" East 46.00 feet; thence South 66° 20' 56" East 768.00 feet; thence South 23° 39' 04" West 46.00 feet thence South 66° 20' 56" East 82.32 feet; thence North 65° 03' 39" East 40.00 feet; thence South 66° 20' 56" East 200.00 feet to the beginning of a tangent curve concave southwesterly and having a radius of 50.00 feet; thence southerly along said curve an arc distance of 78.54 feet; thence tangent to said curve South 23° 39' 04" West 370.85 feet to the beginning of a tangent curve concave northwesterly and having a radius of 50.00 feet; thence westerly along said curve an arc distance of 52.78 feet; thence tangent to said curve South 84° 08' 10" West 170.85 feet; thence South 45° 00' 00" West 540.99 feet; thence South 17° 02' 09" East 443.04 feet; thence North 45° 00' 00" West 2,354.26 feet to the beginning of a tangent curve concave northeasterly and having a radius of 135.00 feet; thence northerly along said curve an arc distance of 74.38 feet to the beginning of a non-tangent curve concave southwesterly and having a radius of 2,451.00 feet; thence southerly along said curve an arc distance of 278.68 feet; thence tangent to said curve South 43° 40' 32" East 245.00 feet; thence North 46° 19' 28" East 67.50 feet; thence North 46° 14' 35" West 357.57 feet to the beginning of a tangent curve concave southwesterly and having a radius of 2,505.00 feet; thence northerly along said curve an arc distance of 221.99 feet; thence along a non-tangent line North 14.36 feet; thence South 77° 34' 28" East 71.16 feet to the beginning of a tangent curve concave southwesterly and having a radius of 70.00 feet; thence southeasterly along said curve an arc distance of 44.01 feet; thence tangent to said curve South 41° 32' 57" East 97.78 feet; thence North 52° 00' 00" East 44.08 feet; thence North 38° 00' 00" West 93.26 feet to the beginning of a tangent curve concave southwesterly and having a radius of 120.00 feet; thence northerly along said curve an arc distance of 108.91 feet; thence tangent to said curve West 54.43 feet; thence North 75.76 feet to the TRUE POINT OF BEGINNING.

Said described land parcel contains 43.38 acres.

### QUEEN MARY SITE - WATER AREA

Beginning at a point on the northerly line of Parcel 1 of said official drawing HD-4-98, said point being the True Point of Beginning of Parcel 2, also as shown on said official drawing, and having coordinates of North 4,022,667.65 feet and East 4,229,890.23 feet, Zone 7 of the California Coordinate System of 1927; thence North 53° 39' 04" East 265.66 feet to a tangent curve concave to the south and having a radius of 145.00 feet; thence northeasterly and easterly 113.88 feet along said curve through a central angle of 45° 00' 01" to a tangent line; thence South 81° 20' 55" East 221.68 feet; thence South 66° 20' 56" East 900.00 feet; thence South 8° 10' 21" West 337.23 feet; thence North 66° 20' 56" West 190.00 feet; thence South 65° 03' 39" West 40.00 feet; thence North 66° 20' 56" West 82.32 feet; thence North 23° 39' 04" East 46.00 feet; thence North 66° 20' 56" West 768.00 feet; thence South 23° 39' 04" West 46.00 feet; thence North 66° 20' 56" West 358.23 feet to the point of beginning.

Said described water parcel contains 9.29 Acres.

### DEVELOPMENT SITE - WATER AREA

Beginning at a point on the northerly line of Parcel 1 of said official drawing HD4-98 said point being the True Point of Beginning of Parcel 2, also as shown on said official drawing, and having coordinates of North 4,022,667.65 feet and East 4,229,890.23 feet, Zone 7 of the California Coordinate System of 1927; thence North 66° 20' 56" West 710.77 feet; thence North 10° 04' 19" West 167.95 feet; thence North 42° 51' 56" West 210.93 feet to the beginning of a tangent curve concave to the south and having a radius of 70.00 feet; thence northwesterly, westerly and southwesterly 86.56 feet along said curve through a central angle of 70° 51' 08" to a non-tangent line; thence North 50.00 feet; thence East 1000.00 feet; thence South 24° 47' 01" East 537.01 feet to the beginning of a non-tangent curve concave to the south and having a radius of 145.00 feet and to which beginning a radial line bears North 8° 39' 05" East; thence westerly 113.88 feet along said curve through a central angle of 45° 00' 01" to a tangent line; thence South 53° 39' 04" West 265.66 feet to the point of beginning.

Said described water parcel contains 11.55 Acres.

Total Lease Area contains 64.22 Acres

BUT EXCLUDING from the above legal description the fire station property as depicted below:



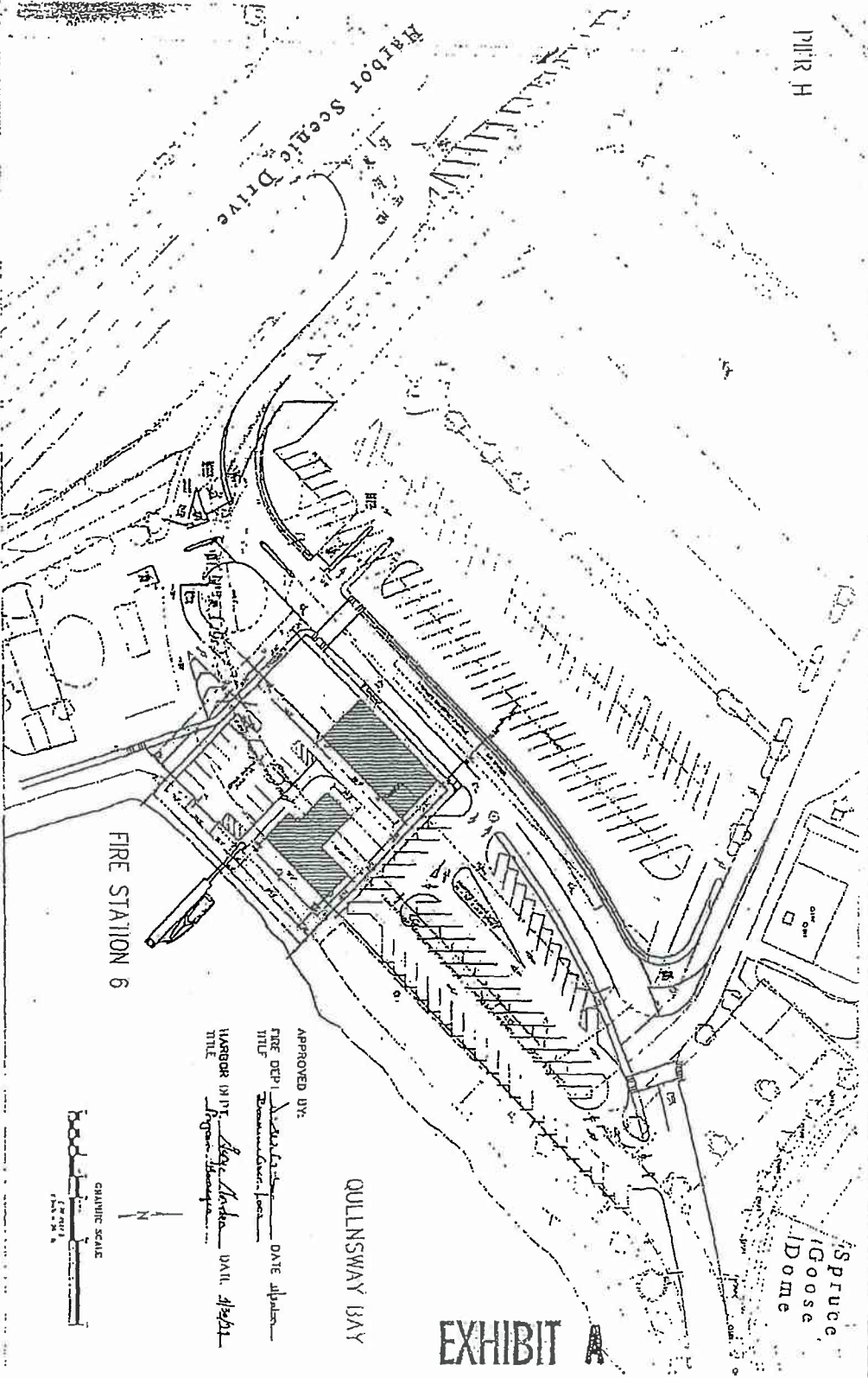
\* Boundaries are Approximate.

# Queen Mary Leasehold



PLR H

Harbor Scenic Drive



Spruce  
Goose  
IDome

EXHIBIT A

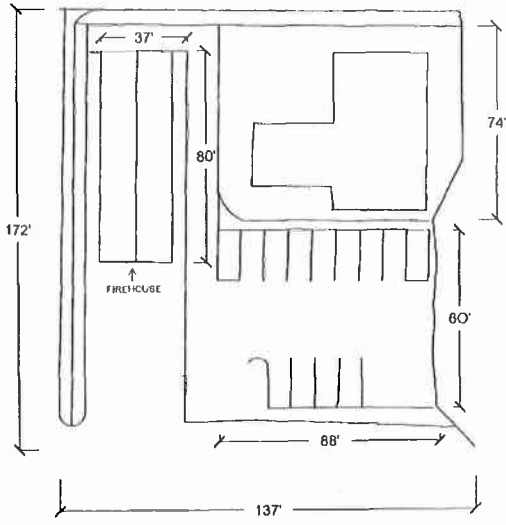
CULLNSWAY BAY

FIRE STATION 6

APPROVED BY: \_\_\_\_\_ DATE: 4/15/21  
 FIRE DEPT: \_\_\_\_\_  
 TITLE: \_\_\_\_\_  
 HARBOR DIST: \_\_\_\_\_  
 TITLE: \_\_\_\_\_



<p><b>THE PORT OF LONG BEACH</b>  <small>100 Harbor Drive, P.O. Box 350000, Long Beach, CA 90803-3500</small></p>		<p>DATE: 4/15/21          TIME: 10:50 AM          BY: JH</p>
<p>HARBOR DISTRICT THE STATION          PER H. THE STATION          SEE PLAN</p>	<p>SCALE: 1" = 20'</p>	



NOTES:  
 TOTAL SQ. FOOTAGE OF THE FIREHOUSE - 2,960  
 TOTAL SQ FOOTAGE OF THE PARKING LOT - 5,280  
 TOTAL SQ. FOOTAGE OF THE BACK HOUSE AREA - 6,512  
 TOTAL SQ. FOOTAGE OF ENTIRE LAND - 23,564

LONG BEACH FIRE STATION



EXHIBIT "C"

Site Plan



\* Boundaries are Approximate.

# Queen Mary Leasehold



EXHIBIT "D"

Form of Subordination Nondisturbance and Attornment Agreement

Recording requested by )  
and after recording mail to: )  
 )  
Liner LLP )  
1100 Glendon Avenue, 14<sup>th</sup> Floor )  
Los Angeles, California 90024 )  
Attn: Dennis S. Roy, Esq. )

(SPACE ABOVE LINE FOR RECORDER'S USE)

SUBLEASE RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBLEASE RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ (hereinafter referred to as "Ground Lessor"), \_\_\_\_\_ (hereinafter referred to as "Ground Lessee"), and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter referred to as "Tenant")

WITNESSETH:

A. Ground Lessor and Ground Lessee entered into that certain ground lease dated as of \_\_\_\_\_, 20\_\_ (said ground lease, as it may have previously been amended or as hereafter amended is referred to as the "Ground Lease") covering certain real property (the "Ground Lease Parcel"), located in the City of Long Beach, and more particularly described in Exhibit "A" attached hereto. A memorandum of the Ground Lease was recorded on \_\_\_\_\_, 20\_\_, as Instrument No. \_\_\_\_\_ of Official Records of Los Angeles County, California. Reference is hereby made to said Ground Lease for the particular terms and conditions therein contained.

B. On \_\_\_\_\_, 20\_\_, Ground Lessee, as sublessor, entered into a lease (hereinafter referred to as "Tenant's Lease") with Tenant, as sublessee, for a portion of the Ground Lease Parcel and/or the improvements thereon (hereinafter referred to as "Demised Premises"). A copy of Tenant's Lease is attached hereto as Exhibit "B" (the parties agree that Tenant's Lease will be removed from the original of this Agreement for purposes of, but only for purposes of, recordation). A pictorial description of the Ground Lease Parcel, with the Demised Premises identified thereon, is attached as Exhibit "C" hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other valuable consideration exchanged by and between the parties hereto, Ground Lessor, Ground Lessee and Tenant hereby agree as follows:

1. Nondisturbance. In accordance with Section 9.2.4 of the Ground Lease, so long as Tenant's Lease is in full force and effect and Tenant is not in default (beyond any period given Tenant under Tenant's Lease to cure such default) in payment of rent or in the performance of any other obligation required under Tenant's Lease, Ground Lessor agrees that, notwithstanding a termination of the Ground Lease because of Ground Lessee's default thereunder, Tenant's rights and privileges under Tenant's Lease, or any extensions or renewals thereof provided for in Tenant's Lease, shall not be diminished or interfered with by the Ground Lessor, and Tenant's occupancy of the Demised Premises shall not be disturbed by the Ground Lessor during the term of Tenant's Lease and any extensions or renewals thereof.

2. Attornment; Limitations on Sublessor's Obligations.

2.1. Upon the cancellation or termination, for any reason whatsoever, of the Ground Lease, or the surrender thereof, whether voluntary, involuntary or by operation of law, prior to the expiration date of Tenant's Lease, including any extensions and renewals of Tenant's Lease provided for therein (in any event not to exceed the present termination date of the Ground Lease), Ground Lessor shall automatically, without the execution of further instruments by Ground Lessor or Tenant succeed to the interest of Ground Lessee under Tenant's Lease and Tenant shall be bound to Ground Lessor under all of the terms of Tenant's Lease for the balance of the term thereof, including any extensions or renewals thereof provided for in Tenant's Lease, with the same force and effect as if Tenant's Lease was originally entered into directly by Ground Lessor and Tenant, and Tenant hereby agrees to attorn to Ground Lessor, as its landlord, such attornment to be effective and self-operative immediately upon Ground Lessor succeeding to the interest of Ground Lessee under Tenant's Lease. The rights and obligations of Tenant and Ground Lessor respectively, upon such attornment shall, to the extent of the then remaining balance of the term of Tenant's Lease, including any renewals or extensions thereof provided for in Tenant's Lease, be the same as now set forth in Tenant's Lease, and by this reference Tenant's Lease is incorporated herein as part of this Agreement; provided, however, that Ground Lessor shall not, in any case or under any event, be:

(1) Liable for any act or omission of the Ground Lessee under Tenant's Lease, or for any obligations first arising or attributable to any act or event occurring prior to Ground Lessor's succession to the interest of Ground Lessee under Tenant's Lease; provided, however, nothing herein shall be deemed to be a waiver of Tenant's rights or remedies in the event such act or omission is of a continuing nature;

(2) Bound by any terms or conditions of Tenant's Lease which are inconsistent with the terms and conditions of the Ground Lease, and if the economic terms of Tenant's Lease (as between the Ground Lessee and Tenant on a per rentable square foot basis) are less favorable to the Ground Lessee (as the sublessor) than those economic terms set forth in the Ground Lease, then, as between Ground Lessor and Tenant, the economic terms shall be adjusted to those set forth in the Ground Lease (on a per rentable square foot basis); provided, however, that if the economic terms of Tenant's Lease (as between Tenant and the Ground Lessee on a per rentable square foot basis) are equal to or more favorable than those set forth in the Ground Lease, such more favorable economic terms shall continue to apply upon the date that the Ground Lease is terminated and Ground Lessor recognizes Tenant's Lease as a direct lease between Ground Lessor and Tenant;

(3) Subject to any offsets or defenses which Tenant might have against Ground Lessee under Tenant's Lease or to any claims for damages by Tenant against Ground Lessee,

except for offsets (i) which are expressly provided for under Tenant's Lease, (ii) which were asserted in writing and in fact commenced prior to the date of termination of Ground Lessee's interest in the Ground Lease, and (iii) which do not, in the aggregate, cause an offset following Landlord's succession to Ground Lessee's interest in Tenant's Lease which exceeds a cumulative total equal to three (3) months of the Base Rent otherwise payable under Tenant's Lease;

(4) Charged with or required to recognize payment of any rent, additional rent or other lease charges which Tenant may have paid to Ground Lessee under Tenant's Lease which is applicable to any month other than the current month in which Ground Lessor succeeds to the interest of Ground Lessee unless such payment is expressly required under the terms of Tenant's Lease and such amount does not exceed three (3) months' of the minimum or base rent payable by the Tenant under Tenant's Lease;

(5) Liable for (i) the refund of any security deposits, or payments of estimated taxes, assessments, common area maintenance fees, insurance or similar payments, except to the extent Ground Lessor has actually received such monies from Ground Lessee, or (ii) expending funds for the repair of any damage to or destruction of the Demised Premises which is in excess of any available insurance or condemnation proceeds, as applicable;

(6) Bound by any waiver or forbearance by Ground Lessee or bound by any material amendment or modification of Tenant's Lease made without Ground Lessor's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed; provided that such amendment or modification shall be binding on Ground Lessor, without Ground Lessor's consent, if it involves a Minor Sublease (as defined in the Ground Lease) and the amendment or modification is not modifying the Minor Sublease in a way that would violate the requirements in Section 9.2.4 of the Ground Lease with respect to Minor Subleases or otherwise trigger a requirement for Ground Lessor approval under the Ground Lease.

(7) Bound by any warranties or indemnities given or required to be given by Ground Lessee to Tenant under the terms of Tenant's Lease;

(8) Liable for constructing or causing the construction of any improvements on the Ground Lease Parcel or for funding any obligation of Ground Lessee to Tenant for payment or reimbursement of any expenses incurred by Tenant in connection with construction of such improvements; or

(9) Liable for any act or omission of any successor or assign following Ground Lessor's transfer of its interest under Tenant's Lease and following such transfer, Ground Lessor shall be relieved of and released from any further obligations or liability under Tenant's Lease, unless such obligation or liability has accrued as of the date of the Ground Lessor's transfer to such successor and such accrued obligation is not expressly assumed in writing by the Ground Lessor's successor.

3. Recognition of Sublease Interest; No Waiver of Ground Lessee Obligations. Without limiting in any manner the rights granted to Tenant above, the parties agree that Tenant's Lease and the interests of the parties thereunder shall be subject and subordinate at all times to the Ground Lease. Ground Lessee acknowledges and agrees that Ground Lessor's agreement to the non-disturbance protections set forth in this Agreement shall not be construed or deemed to constitute a waiver by Ground Lessor of any breach or violation of the Ground Lease by the Ground Lessee that is a result of acts by the

Ground Lessee that are or purport to be in compliance with or furtherance of Tenant's Lease and the Ground Lessee shall, during the term of the Ground Lease, be obligated to perform its obligations under the Ground Lease in accordance with the terms thereof. Notwithstanding anything in this Agreement which is or appears to be to the contrary, following termination of the Ground Lease and Ground Lessor's succession to Ground Lessee's interest under Tenant's Lease, Ground Lessor shall have no obligation with respect to Hazardous Materials in the Project beyond that expressly provided for by the Ground Lease (and, notwithstanding such termination, the waiver in Section 6.6 of the Ground Lease shall remain operative with respect to Tenant in accordance with its terms).

4. Nondisturbance; Joinder in Lawsuit. So long as Tenant's Lease is in full force and effect and Tenant is not in default (beyond any period given Tenant under Tenant's Lease to cure such default), in the payment of rent or in the performance of any other obligation required under Tenant's Lease, Ground Lessor will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under Tenant's Lease because of any default under the aforementioned Ground Lease.

5. Modification. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. All of the provisions of this Agreement shall be covenants running with the land pursuant to applicable law. It is expressly agreed that each covenant to do or refrain from doing some act on the Ground Lease Parcel (described in Exhibit "A") or any part thereof as the covenantor:

5.1. is for the benefit of the land of the covenantee,

5.2. runs with both the land owned or leased by the covenantor and the land owned or leased by the covenantee, and

5.3. shall benefit or be binding upon each successive owner, or lessee during that owner's or lessee's ownership of a fee or leasehold interest in any portion of the land affected hereby and benefit or be binding upon each person having any interest therein derived through any owner of the land affected hereby.

6. Notice. Any notification required to be given Tenant shall be sent to the following address, or to such other address as Tenant may from time to time notify the Ground Lessor or its successors in interest in writing:

If to Ground Lessor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to:

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile: \_\_\_\_\_

If to Ground Lessee:

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile: \_\_\_\_\_

with a copy to:

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile: \_\_\_\_\_

If to Tenant:

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile: \_\_\_\_\_

with a copy to:

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile: \_\_\_\_\_

7. Amendment to Tenant's Lease. Any amendment to Tenant's Lease made subsequent to the date of this Agreement shall require the written consent of Ground Lessor, which consent shall not be unreasonably withheld, conditioned or delayed or withheld for the purpose of effectuating a change in the terms of the Ground Lease; provided, that the foregoing shall not require Ground Lessor approval of an amendment to a Minor Sublease so long as the amendment is not modifying the Minor Sublease in a way that would violate the requirements in Section 9.2.4 of the Ground Lease with respect to Minor Subleases or otherwise trigger a requirement for Ground Lessor approval under the Ground Lease. Ground Lessee and Tenant agree to supply Ground Lessor with a current, true, full and correct copy of Tenant's Lease, including any amendments thereto, upon Ground Lessor's request from time to time.

8. Further Instruments. Upon Ground Lessor's written request given at any time after termination of the Ground Lease, Tenant shall execute a new lease for the Demised Premises upon the same terms and conditions as set forth in Tenant's Lease, modified as necessary to reflect the terms and conditions provided for in this Agreement for Tenant's occupancy of those Demised Premises.

9. Attorneys' Fees. In the event that any action at law, proceeding, or suit in equity is brought to interpret or enforce any of the provisions of this Agreement, or as a result of a breach thereof, the

prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

10. Governing Law. This Agreement shall be governed and construed under the laws of the State of California applicable to agreements executed and to be performed within the State of California.

11. Transfer. Tenant agrees that Tenant shall not directly or indirectly transfer, assign, sell, lease, sublease, license, franchise, give, hypothecate, mortgage, pledge or encumber ("Transfer") all or any portion of its interest in Tenant's Lease or the Demised Premises without the prior written consent of Ground Lessor, which consent shall not be unreasonably withheld or delayed. Reasonable grounds for withholding consent shall include those matters set forth in Section 9.2.4 of the Ground Lease. Tenant further agrees that it shall not Transfer more than forty-nine percent (49%) of its "Ownership and/or Control" (as such term is defined in the Ground Lease) without the prior written consent of Ground Lessor, which consent shall not be unreasonably withheld or delayed. [MODIFY FOR CONSISTENCY WITH RESTRICTION IN INDIVIDUALLY APPROVED SUBLEASES, IF APPLICABLE]

12. General. The captions of the paragraphs of this Agreement are for convenience only and shall have no affect upon the interpretation of this Agreement. Wherever the context so requires, the singular number shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter genders and vice versa. If any provision of this Agreement shall be held to be invalid by a court, the remaining provisions shall remain in effect and shall in no way be impaired thereby. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

"GROUND LESSOR"

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

"GROUND LESSEE"

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



"TENANT"

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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 \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_

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 \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_

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State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_

EXHIBIT "A"

LEGAL DESCRIPTION OF THE GROUND LEASE PARCEL

EXHIBIT "B"  
TENANT'S LEASE

EXHIBIT "C"

PICTORIAL DESCRIPTION OF THE GROUND LEASE PARCEL

EXHIBIT "E"

Form of Estoppel Certificate

The undersigned, as \_\_\_\_\_, under that ground lease dated \_\_\_\_\_, 20\_\_ made by \_\_\_\_\_, as Landlord, and \_\_\_\_\_, as Tenant, hereby certifies as follows:

- (1) That Tenant has entered into occupancy of the premises described in said ground lease;
- (2) That said ground lease is in full force and effect and, to the knowledge of the undersigned, has not been assigned, modified, supplemented or amended in any way, except as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (3) That the Effective Date of said ground lease is \_\_\_\_\_;
- (4) That there is an unexpired initial term thereunder of \_\_\_\_\_ years.
- (5) That, to the knowledge of the undersigned, all conditions of said ground lease to be performed by Landlord and Tenant and necessary to the enforceability of said ground lease have been satisfied;
- (6) That, to the knowledge of the undersigned, there are no defaults by either Tenant or Landlord thereunder and said ground lease is in full force and effect;
- (7) That, to the knowledge of the undersigned, the premises described in said ground lease is not subject to any current or pending condemnation proceeding. The undersigned has not received notice that it is in violation of any governmental law or regulation applicable to its fee interest in the premises and its operation thereof, including without limitation any environmental laws or the Americans with Disabilities Act, which has not been cured or otherwise address to the satisfaction of the applicable governmental agency.
- (8) That the undersigned has no knowledge of the occurrence of any event that with the passage of time or notice, or both, would constitute a default under said ground lease by either Tenant or Landlord thereunder or would result in any claim against Tenant or Landlord for breach of said ground lease.
- (9) That no rents have been prepaid, other than as provided in said ground lease; and
- (10) That on this date, to the knowledge of the undersigned, there are no existing defenses or offsets which the undersigned has against the enforcement of said ground lease.

(11) Pursuant to Section 7.3.2 of the ground lease, the undersigned has established and maintains the HPCIP Fund as a reserve for the making of necessary qualified improvements to the Queen Mary. To the knowledge of the undersigned, the balance of funds in the HPCIP Fund was \$\_\_\_\_\_

as of \_\_\_\_\_. The undersigned has paid and contributed all sums required pursuant to the terms and provisions of the ground lease governing the HPCIP Fund, and has otherwise complied with its obligations with respect to the HPCIP Fund under the ground lease.

(12) The undersigned agrees that this Estoppel Certificate is being executed by the undersigned for the benefit of \_\_\_\_\_, and their respective successors and assigns, and further agrees that \_\_\_\_\_ and their respective successors and assigns **[ONLY FOR LENDER ESTOPPEL]**, may rely on and are intended third party beneficiaries of this Estoppel Certificate.

(13) To the knowledge of the undersigned means the actual knowledge then possessed by \_\_\_\_\_, without further investigation or inquiry. In no event shall the undersigned have any affirmative liability under and this Estoppel may only be used to estop the undersigned from subsequently asserting a contrary position. Any estoppel by Landlord is solely in its propriety capacity under the ground lease, and does not limit any requirements, provisions or rights of Landlord acting in its governmental capacity. The undersigned shall have no obligation to update this Estoppel for changes in condition or discovery of new facts first arising after the date of this Estoppel.



EXECUTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT "F"

Form of Memorandum of Lease

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Liner LLP  
1100 Glendon Avenue, 14<sup>th</sup> Floor  
Los Angeles, California 90024  
Attn: Dennis S. Roy, Esq.

MEMORANDUM OF LEASE

This Memorandum of Lease, dated for identification purposes only as of \_\_\_\_\_, 20\_\_\_\_, is entered into by \_\_\_\_\_, ("Landlord") and \_\_\_\_\_ ("Tenant").

1. Grant of Lease; Term. For good and valuable consideration received, Landlord leases to Tenant, and Tenant leases from Landlord, that certain real property (the "Property") located in the City of Long Beach, County of Los Angeles, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference, together with all buildings, structures, improvements and fixtures now or hereafter erected thereon during the term of the Lease, commencing on the Effective Date (as defined in the Lease) and ending on the sixty-sixth (66<sup>th</sup>) anniversary of the Effective Date (currently anticipated to be \_\_\_\_\_), subject to the terms, conditions, provisions and covenants of that certain Ground Lease (the "Lease") between the Parties hereto, dated for identification purposes only as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. All of the terms, provisions and covenants of the Lease are incorporated in this Memorandum of Lease by reference as though written out at length herein, and the Lease and this Memorandum of Lease shall be deemed to constitute a single instrument or document.

2. Purpose of Memorandum of Lease. This Memorandum of Lease is prepared for recordation purposes only, and it in no way modifies the terms, conditions, provisions and covenants of the Lease. In the event of any inconsistency between the terms, conditions, provisions and covenants of this Memorandum of Lease and the Lease, the terms, conditions, provisions, and covenants of the Lease shall prevail.

3. Counterparts. This Memorandum of Lease may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

The Parties hereto have executed this Memorandum of Lease at the place and on the dates specified immediately adjacent to their respective signatures.

TENANT:

URBAN COMMONS QUEENSWAY, LLC,  
a California limited liability company

By: Urban Commons, LLC,  
a Delaware limited liability company,  
Its Manager

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

LANDLORD:

CITY OF LONG BEACH,  
a California chartered city and municipal corporation

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

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 \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_

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 \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, 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 \_\_\_\_\_



Schedule 1

**Additional Financial Reporting and Related Requirements**

[To be provided separately]

### Provision of Financial Reports to Landlord

Notwithstanding anything to the contrary in the Lease and without limitation of any other requirements set forth therein, Tenant shall prepare or cause to be prepared and deliver to Landlord within 30 days after the end of each quarter of the Tenant's fiscal year an interim financial statement showing in reasonable detail the results of business operations in, on or from the Queen Mary and other areas under Tenant's control for the fiscal year to date. The interim financial statements shall be in the general form set forth in the "Uniform System of Accounts for the Lodging Industry" as it may be amended or updated, or such other form, consistent with the capabilities of the Tenant's financial system, as may be adopted by Tenant consistent with any revisions made to the Uniform System and approved by Landlord. The interim financial statements shall include detailed special financial information or reports as necessary to calculate percentage rent. The purpose of these reports is to allow the Landlord to appropriately record and/or accrue the Landlord's revenue and expense activities that result from this agreement.

Within ninety (90) days after the end of the Tenant's fiscal year and within ninety (90) days after the expiration or termination of this lease, Tenant shall prepare or cause to be prepared and delivered to Landlord a complete annual financial statement prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant showing the results of operations for such fiscal year or partial fiscal year. The annual financial statement shall also include schedules for the calculation of Site Revenues, Operating Expenses and Exclusions, Net Site Revenues, Eligible Basis, Priority Return, Minimum Rent, and Percentage Rent. In addition, a listing of significant maintenance and capital expenditure information and any allowed capital expenditure credits shall be disclosed within the financial statements. The financial statements shall include appropriate notes and supplemental schedules.

### Special Audit

Notwithstanding anything to the contrary in the Lease and without limitation of any other requirements set forth therein, Landlord shall be entitled within a period of six (6) months of the end of each fiscal year of Tenant and following the expiration or termination of this Lease to commence a special audit of Tenant's records and books of account by Landlord's City Auditor. Notice of intent to conduct such audit shall be provided in writing at least thirty (30) days before the audit is to commence.

### Accountability for and Inventory of City Historical Assets Displayed as Part of the Queen Mary.

Landlord and Tenant shall reasonably cooperate in creation of a list of City-owned assets of historical or cultural significance that are displayed or maintained on the Queen Mary within thirty (30) days after the Effective Date. Within ninety (90) days after the Effective Date, Landlord and Tenant shall conduct, or cause to be conducted,



a physical inventory of the items contained on the list to reconcile such list and inventory and to establish a base line for Tenant's responsibility for those items.

Tenant shall act as the custodian for City-owned assets of historical or cultural significance that are displayed or maintained with the Queen Mary and, in that capacity, shall manage and oversee the display, inventory and safekeeping of those City-owned assets of historical or cultural significance. As such, Tenant is responsible for safeguarding the City's assets under their purview and following agreed procedures to protect those assets from theft or damage. Tenant shall maintain proper records to document the assets' location and condition as well as providing ongoing care and maintenance to enhance and preserve each asset. During the third fiscal quarter of each fiscal year of Tenant, Tenant shall inventory or cause to be inventoried, all City assets of historical or cultural significance that are displayed or maintained on the Queen Mary. Tenant shall submit a statement of accountability accompanied by the inventory of City items under their control to the Landlord within thirty (30) days of the conclusion of the each such inventory at following each third fiscal quarter of Tenant. The statement of accountability shall set forth the current condition of the City assets, current procedures to safeguard those assets from theft and damage, the date of the inventory and the party conducting that inventory.

Tenant shall notify the Landlord immediately of any loss, theft, damage, or impairment to any City-owner assets under Tenant's responsibility or control. Tenant is solely responsible for performing any repair required because of damage not due to normal wear and tear of the asset.

Upon providing at least sixty (60) days' notice, the City Auditor may arrange to observe the Tenant's physical inventory of City-owned assets within the scope of this section.