

**SECOND AMENDMENT TO
LEASE No. L-16547
Golden Gate Scenic Steamship Corporation,
a California corporation**

This Second Amendment to Lease No. L-16547 (“**Second Amendment**”) is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), operating through the SAN FRANCISCO PORT COMMISSION (“**Port**”), as landlord, and Golden Gate Scenic Steamship Company, a California corporation, as tenant (“**Tenant**”) and is dated for reference purposes only as of July 25, 2022.

RECITALS

A. Port and Tenant entered Lease No. L-16547 dated for reference purposes only as of May 31, 2021 for use of that certain real property located at Pier 43½ in the City and County of San Francisco, as amended by the First Amendment dated June 1, 2021 for reference purposes (the “**Original Lease**”). The Original Lease commenced on August 9, 2021 and will expire on August 8, 2034 (“**Expiration Date**”).

B. Consistent with Port Commission Resolution 20-41, the Port and Tenant entered into that First Amendment to forgive certain rent payments due to Port in order to address the devastating financial impacts of the COVID-19 pandemic on Tenant’s business. Despite Tenant’s participation in Port’s rent forgiveness program, there are concerns that Tenant will not be able to generate sufficient revenues to support payment of Base Rent and meet the deadlines outlined in the Lease requiring investment of \$4.6 million in capital investments until tourism recovers.

C. As an additional relief measure, the parties wish to temporarily reduce Tenant’s monthly Base Rent during the off-season for tourism at Fisherman’s Wharf for two six-month periods in exchange for increased capital investment contributions and increased marketing to local residents. The parties also wish to adjust certain construction deadlines in order to allow Tenant additional time to complete required capital improvements hampered by financial and operational impacts of the COVID-19 pandemic on Tenant’s business. Amending the Original Lease is of considerable value to both parties and is intended to improve the financial feasibility of the Lease and preserve Tenant’s ability to continue operations at the Port, while at the same time meeting the Port’s own goals, including protecting its revenue streams and assets; supporting the Port’s maritime mission and its small local business tenants and aligning Port’s and Tenant’s interest in promoting a shared prosperity partnership, and is in the best interests of the Port’s long-term financial health.

D. As a material consideration for this Second Amendment, Tenant must comply with all Lease provisions as modified by this Second Amendment. This Second Amendment is narrowly tailored to address the matters referenced in this Second Amendment only and is not intended to excuse, waive, suspend or modify any other provision or obligation of either party under the Lease. Except as explicitly provided in this Second Amendment, nothing in this Second Amendment is intended or should be construed to omit, bar or otherwise impede the enforcement of any term or condition of the Lease. The parties agree that each of the terms in this Second Amendment are material and that Port would not have agreed to this Second Amendment absent such terms.

E. The Original Lease and this Second Amendment shall collectively be referred to as the “**Lease**”. All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Original Lease.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, Port and Tenant hereby amend the Original Lease as follows:

AGREEMENT

- 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
- 2. Changes to Lease.**

2.1.The BLI Section entitled “Monthly Base Rent” shall be amended and restated in its entirety, as set forth below:

<p><i>Monthly Base Rent:</i></p>	<p>Monthly Base Rent is Forty-Two Thousand Seven Hundred Sixty Eight dollars (\$42,768). The parties agree that this amount is equal to the average of the reported monthly percentage rent for the 1st quarter of the three calendar years 2016-18 under the Prior Lease.</p> <p>During the Months of November 2021 through April 2022 and November 2022 through April 2023 (each a “Low-Season Rent Period” and, collectively, the “Low-Season Rent Periods”, Monthly Base Rent due shall be reduced to to Twenty-Five Thousand Six Hundred Sixty Dollars (\$25,660) (the “Reduced Base Rent”), provided, however, for each month in the Low-Season Rent Periods that the total Rent paid (Base Rent plus Percentage Rent) is less than Forty-Two Thousand Seven Hundred Sixty Eight dollars (\$42,768) (“Capital Investment Threshold”), Tenant shall be required to increase its capital contribution for the Initial Tenant Improvements dollar-for-dollar by the difference between the total Rent paid for the month (Reduced Base Rent and Percentage Rent) and the Capital Investment Threshold. The additional capital contribution resulting from any such Rent reduction shall be referred to in this Lease as the “Rent Reduction/CI Increase.”</p> <p>(eg. If during the month of November 2021, Tenant reports a total Rent balance due of \$35,768 based on its sales during that month, Tenant would pay \$25,660 in Base Rent, in addition to \$10,108 in Percentage Rent for the Total Rent due of \$35,768. As this amount is \$10,000 below the \$42,768 Capital Investment Threshold, Tenant’s Rent Reduction/CI Increase would be \$10,000, and Tenant would be obligated to increase its capital contribution for the Initial Tenant Improvements by \$10,000, resulting in an increase in the Minimum Required Investment (defined in Section 3.1 of the Second Amendment.)</p>
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2.2. The BLI Section entitled “Initial Tenant Improvements; Rent Commencement Date” shall be amended to change the definition of “Phase I Initial Tenant Improvements Completion Date” and “Phase II Initial Tenant Improvements Completion Date”, each as set forth below:

(a) “**Phase I Initial Tenant Improvements Completion Date**” shall be defined as “January 31, 2025”.

(b) “**Phase II Initial Tenant Improvements Completion Date**” shall be defined as “no later than the last day of the forty-second (42nd) month after the completion of the sediment remediation activities performed and completed by Pacific Gas & Electric Company (“PG&E”) and its contractors, but in no event earlier than June 30, 2023.”

3. Tenant Obligations. Tenant shall comply with the following terms as material consideration for this Second Amendment:

3.1. Minimum Required Investment; Additional Initial Tenant Improvements. In lieu of Port’s remedy for Tenant’s failure to timely complete construction as authorized by *Section 4.3 of Exhibit C* (Work Letter), Tenant must increase its capital contribution for the Initial Tenant Improvements by \$50,000, to an estimated cost of \$4.65 million in hard and soft construction costs (the “**Minimum Required Investment**”). The Minimum Required Investment will also be increased by the cumulative Rent Reduction/CI Increase accrued during the Low Season Rent Periods. Tenant is solely responsible for contributing no less than amount of the Minimum Required Investment, as it may be increased as provided for herein, for construction of the Initial Tenant Improvements. Additional tenant improvements may be made in public realm improvements, habitat enhancements, or other scopes to be mutually agreed upon by Port and Tenant, which additional scopes will be additional Initial Tenant Improvements and will be included in the Scope of Development attached as Attachment 1 to Exhibit C (Work Letter) prior to commencement of construction of Phase I of the Initial Tenant Improvements.

3.2. Port Waterfront Resilience Project. Tenant shall at all times during the Term of the Lease coordinate with the Seawall Improvement Project (as identified in BLI Section “Development Project”) to ensure all contemplated Initial Tenant Improvements are constructed in coordination, and not in conflict, with sea-level rise adaptation plans under consideration by the Port.

3.3. Marketing and Promotions. During the eighteen (18)-month period between November 2021 through April 2023, Tenant will increase its marketing and promotions to local residents in order to bring different customer bases to its business by, among other things:

- (i) Providing special access and pricing to SFUSD and local school groups;
- (ii) Cross-promoting with other San Francisco Heritage Legacy Businesses to promote the Legacy Business program and SF Heritage;

(a) “**Legacy Business Program**” shall mean the City & County of San Francisco’s Legacy Business Registry as defined by Section 2A.242 of the San Francisco Administrative code and administrated by the City & County of San Francisco’s Office of Small Business.

(b) “**SF Heritage**” shall mean the San Francisco Architectural Heritage Charitable Trust, Operating as SF Heritage, a California Charitable Trust.

(c) “**San Francisco Heritage Legacy Business**” shall mean any business included on the San Francisco Legacy Business Registry as maintained by the City & County of San Francisco’s Small Business Commission.

(iii) Partnering with educational, nonprofit, or disadvantaged community organizations to diversify the Fisherman’s Wharf customer base.

Beginning with the quarter inclusive of the Second Amendment Effective Date (defined in *Section 10* below) and ending the quarter inclusive of May 2023, Tenant shall provide by the 10th of the month (April 10th, July 10th, October 10th and January 10th) cross-promotional and local discounts reporting including, at a minimum, the following information: (1) a brief narrative on any activities during the preceding month; (2) the number of discounted tickets and narrative description of categories of ticket-recipients; and (3) the number of cross-promotional activities, names of entities participating, indication of whether participating entities are San Francisco Heritage Legacy Businesses, and medium for the cross-promotion.

3.4. Failure to Comply. If Tenant fails to comply with any part of Section 3 of this Second Amendment within three (3) days after written notice from Port, such failure shall be an Event of Default under Section 21 of the Lease, and Port shall have all the remedies set forth in the Lease and allowed by Law or in equity.

4. Lease Updates

4.1. The following is added as Section 12.4:

“12.4. Energy Consumption Disclosure. Tenant consents to Tenant’s utility service providers disclosing energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as each may be amended from time to time (“**Energy Consumption Reporting Laws**”), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.”

4.2. The following is added as Section 16.1(r):

“(r) Personal Property Insurance. Tenant, at its sole cost and expense, shall procure and maintain on all of Tenant’s Property and Alterations, in, on, or about the Premises, personal property insurance on all risk form, excluding earthquake and flood, in an amount not less than full replacement value or a stated value, at Tenant’s sole discretion, for the replacement of Tenant’s Property. In addition to the foregoing, Port may, in its sole discretion, insure any personal property leased to Tenant by Port pursuant to this Lease in such amounts as Port deems reasonably appropriate and Tenant shall have no interest in the proceeds of such personal property insurance. Port shall have no responsibility or obligation to maintain insurance or replace Tenant’s Property, Alterations, or any Improvements regardless of cause of loss.”

4.3. Section 32.1 of the Lease is hereby deleted and replaced with the following:

“32.1. California Law; Venue. This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.”

5. City and Port Requirements

5.1. Section 28.6 of the Lease is hereby deleted and replaced with the following:

“28.6. Prohibition Against Tobacco Advertising; Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.”

5.2. The following is added as Section 28.27:

“28.27. Consideration of Salary History. Tenant shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." For each employment application to Tenant for work that relates to this Lease or for work to be performed in the City or on City property, Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant. Tenant shall not (1) ask such applicants about their current or past salary or (2) disclose a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.”

6. Disclosures. Tenant has received and reviewed the disclosures included in this Second Amendment.

6.1. Schedule 3 of the Lease is hereby deleted and replaced with *Schedule 3A* attached hereto.

6.2. *Schedule 4A* is added to the Lease and attached hereto.

7. Entire Agreement. This Second Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Second Amendment. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Second Amendment are superseded in their entirety by this Amendment. No prior drafts of this Second Amendment or changes between those drafts and the executed version of this Second Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Second Amendment.

8. Authority. Each of the persons executing this Second Amendment on behalf of Tenant hereby covenants and warrants that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Second Amendment, and that each and all of the persons signing on behalf of Tenant are authorized to do so.

9. Miscellaneous. This Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment will be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Second Amendment. The terms of this Second Amendment are contractual and not a mere recital. The liability of and all rights, powers, and remedies of the parties under this Second Amendment shall be cumulative and not alternative. Each party acknowledges that the other party has made no representations, express or implied, to induce that party to enter into this

Second Amendment, other than as expressly set forth herein. This Second Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary or otherwise. This Second Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Second Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Second Amendment. This Second Amendment shall be governed by the laws of the State of California. Neither this Second Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

10. Effective Date. This Second Amendment is effective upon the date of Port's execution as indicated below (the "**Second Amendment Effective Date**").

Schedules

Schedule 3A FEMA Disclosure Notice

Schedule 4A Hazardous Materials Notice

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IN WITNESS WHEREOF, Port and Tenant execute this Amendment at San Francisco, California, as of the last date set forth below.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Rebecca Benassini
Deputy Director, Real Estate and Development

Date Signed: _____

TENANT: **GOLDEN GATE SCENIC STEAMSHIP COMPANY,**
A California Corporation

By: _____
Name: _____
Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____
Name: A. Mathai-Jackson
Deputy City Attorney

Amendment Prepared By: Demetri Amaro, Maritime Marketing Manager _____(initial)

Port Commission Reso. No. 22-__

SCHEDULE 3A

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:
<https://onesanfrancisco.orgisan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:
<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:
www.FloodSmart.gov.

SCHEDULE 4A

HAZARDOUS MATERIAL DISCLOSURE