

## FOURTH AMENDMENT TO CRUISE FACILITY LEASE AGREEMENT

THIS FOURTH AMENDMENT TO CRUISE FACILITY LEASE AGREEMENT is made as of \_\_\_\_\_, 20\_\_\_\_, by and between the PORT OF SEATTLE, a Washington municipal corporation (“the Port”) and CRUISE TERMINALS OF AMERICA, LLC, a Washington limited liability company (“Tenant”).

WHEREAS, the parties entered into a Cruise Facility Lease Agreement dated December 21, 2005, which was subsequently amended by the First Amendment dated May 17, 2006, the Second Amendment dated September 24, 2012, and the Third Amendment entitled Amended and Restated Cruise Facility Lease Agreement dated August 12, 2015 (together the “Agreement”); and

WHEREAS, the parties now wish to further revise the Agreement as previously amended, by extending the term and making further changes as described below.

NOW THEREFORE, in consideration of their mutual promises, the parties hereby agree as follows:

1. Sections 19.4, 19.5, 23.1, 23.2, 23.4 and 23.5 are deleted in their entirety.
2. Section 1.50 is hereby deleted in its entirety and replaced with the following:

Terminal 91 Preferential Use Area. “Terminal 91 Preferential Use Area” shall mean and refer to that portion of the Port’s Pier 91 consisting of approximately twelve (12) acres, having at least one thousand (1,000) lineal feet of moorage along both the east and west sides of Pier 91, together with all improvements now existing or to be constructed on that portion of the parcel. The legal description and precise area of the Terminal 91 Preferential Use Area are set forth on Exhibit C. The Port reserves the right of secondary use of all or any part of the Terminal 91 Preferential Use Area for berthing of vessels operated by entities other than Tenant, for loading and discharging cargoes of such vessels, for transporting cargo, and for cargo storage and operations incidental thereto, provided that such secondary use of the Terminal 91 Preferential Use Area by the Port shall not interfere with Tenant’s operations as authorized in this Agreement. In the event of such secondary use by the Port, all applicable charges shall accrue to the benefit of and shall be billed and retained by the Port.

3. Section 1.19 is hereby deleted in its entirety and replaced with the following:

Hazardous Substance. “Hazardous Substance” shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect.

4. Section 3.1 is deleted in its entirety and replaced with the following:

Term. The Term of this Amended and Restated Agreement shall continue from the Restatement Date until ten (10) days after the last scheduled ship in 2021, or November 30, 2021, whichever is earlier. Subject to the Port's sole consent and if Tenant is in compliance with the terms and conditions of this Lease, Tenant has the option to request up to two (2) extensions of the Lease term for two (2) additional one (1) year option terms. In the event Tenant wishes to extend the Lease term, Tenant shall provide the Port with written notice of Tenant's request to exercise such option no more than one year and no less than two hundred forty (240) days prior to the expiration of the Agreement term. No later than sixty (60) days after receipt of Tenant's notice, the Port, in its sole discretion, may provide Tenant with written confirmation of the Port's consent to the extension. The Port's failure to provide Tenant with such written notice within the stated sixty (60) day period shall constitute the Port's refusal to consent to the extension.

5. The required Security in Section 5.1 is updated from three hundred thousand dollars (\$300,000.00) to three million five hundred thousand (\$3,500,000), and the following Section 5.1.1 is added:

Conditions of Security. Security provided under Article 5 shall be subject to any conditions included in any approved security instrument.

6. Section 6.2 is deleted in its entirety and replaced with the following:

Alterations Related to Security. Notwithstanding anything to the contrary in Section 6.1, Tenant shall, at its sole cost and expense, be obligated to provide any necessary Alterations required to satisfy any security requirement related to cruise vessel Ship Activities and imposed by the United States Federal Investigative Services, Homeland Security Customs and Boarder Protection CBP, Coast Guard, Transportation Security Administration or any other governmental agency responsible for security, and the Port agrees that it will not unreasonably withhold or condition its consent to such Alterations. In the event that the cost required to satisfy any new security requirement (or integrated group of security requirements imposed as part of a single governmental agency action) is expected to exceed the sum of two hundred thousand dollars (\$200,000.00), the Port and Tenant shall, at Tenant's request, meet to discuss the implementation and funding of such Alteration(s) and if the Port and Tenant, acting in good faith and considering use of the Allowances and application of the rent credits provided under Section 4.3, cannot agree on the implementation and funding of such Alteration(s), Tenant shall have the right to terminate this Amended and Restated Agreement effective at the end of the current Cruise Period, provided such notice is provided prior to October 1<sup>st</sup> of the current Cruise Period.

7. Section 8.1.8 is hereby deleted in its entirety and replaced with the following:

Parking. Tenant shall be responsible for all parking, whether passenger, longshore, guest or

otherwise, associated with cruise Ship Activities at the Terminal 91 Cruise Facility. Tenant is responsible for providing all courtesy shuttling, whether of passengers, longshore or otherwise. Such courtesy shuttling includes transporting passengers on the terminal between passenger parking lots, Ride Share pickup and drop off and the passenger terminal building. Tenant shall provide such services in a manner consistent with the expectations of the cruise lines and cruise passengers at a standard equal to or higher than comparable international cruise terminals and shall endeavor to address any complaints received by the Port or Tenant prior to the next vessel call. If the Port determines at any time that Tenant is consistently failing to meet the foregoing service standards, the Port shall notify Tenant of such failure and the Port and Tenant shall meet as soon as practicable to address the service issues, which may include adding additional shuttles or otherwise increasing shuttle capacity or frequency based on demand.

8. Section 13.4.1 is hereby deleted in its entirety and replaced with the following:

*Maintenance Allowance.* The Port shall provide Tenant with an annual allowance (the “Maintenance Allowance”) valued at one hundred thousand dollars and no cents (\$100,000.00) per calendar year after 2015 for Tenant’s use in meeting the repair and replacement obligations imposed upon it pursuant to Section 13.1. The Maintenance Allowance, however, is not a cash allowance. Instead, it represents an agreement by the Port to provide, through the Port’s Seaport Maintenance Department, up to one hundred thousand dollars (\$100,000.00) worth of repair and maintenance services not otherwise within the scope of the Port’s responsibilities under Section 13.2. In the event that Tenant seeks to access the Maintenance Allowance, it shall provide a description of the services that it seeks to have completed and arrange for the Port, through its Seaport Maintenance Department, to provide such services. Those services will be charged against the Maintenance Allowance for the year in which the services are actually provided at the same rate, and in the same manner, that such services would otherwise be charged against any other department/organization with the Port’s Seaport Division. Any portion of the Maintenance Allowance not used within a calendar year shall be forfeited. In the event that the cost for the services requested by Tenant exceeds the amount of the Maintenance Allowance, Tenant shall promptly (and in no event later than the remittance of the next payment of Rent) reimburse the Port for such amounts following receipt of an invoice from the Port detailing such amounts.

9. Add the following Section 14.7:

Best Management Practices. Tenant shall implement the best management practices (“BMPs”) identified in the May 24, 2016 Agreement to Implement BMPs at Pier 91 (attached as Exhibit D and incorporated herein), as further described in the August 31, 2016 Agreement Regarding Implementation of Best Management Practices at Pier 91 (attached as Exhibit E and incorporated herein).

10. Add the following Section 14.8:

Stormwater Management. Tenant acknowledges that the Premises are subject to the requirements of the City of Seattle (“City”) ordinance regarding stormwater drainage, source control, and other applicable City requirements, as well as the federal Clean Water Act and Washington State Department of Ecology (“Ecology”) stormwater regulations and permits, as applicable. Tenant will comply with all requirements of the City ordinance and Ecology regulations and permits applicable to Tenant. Tenant shall keep onsite a spill kit capable of handling minor spills and/or leaks from parked vehicles. In the event of a spill or leak to a drainage structure, Tenant shall notify the Port’s 24-hour Incident Notification Line at (206) 787-3751.

11. Add the following Section 14.9:

Environmental Covenant. NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON AUGUST 28, 2017 AND RECORDED WITH THE KING COUNTY AUDITOR UNDER RECORDING NUMBER 20170828000574. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT AS EXHIBIT F

12. Exhibits D, E and F are attached hereto and incorporated herein.

13. Tenant shall promptly furnish in a form satisfactory to the Port the security described in Section 5.1 as revised above.

14. Except as expressly amended herein, all provisions of the Agreement (as previously amended) shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment as of the day and year first above written.

LANDLORD  
PORT OF SEATTLE  
LLC  
a municipal corporation

TENANT  
CRUISE TERMINALS OF AMERICA,

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

DRAFT

Notary to Fourth Amendment to Lease

with Cruise Terminals of America.

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the PORT OF SEATTLE, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)  
Notary Public, in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the \_\_\_\_\_, the individual/entity that executed the within and foregoing instrument as Tenant, and acknowledged said instrument to be the free and voluntary act and deed of said individual/entity, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)  
Notary Public, in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

EXHIBIT D

DRAFT

EXHIBIT E

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EXHIBIT F

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