

## SECOND AMENDMENT TO CRUISE FACILITY LEASE AGREEMENT

THIS SECOND AMENDMENT TO CRUISE FACILITY LEASE AGREEMENT is made as of this \_\_\_\_ day of September 2012, 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").

### Preliminary Statements:

A. The Port and Tenant are parties to that certain Cruise Facility Lease Agreement dated as of December 21, 2005, which Cruise Facility Lease Agreement was amended by that certain First Amendment to Cruise Facility Lease Agreement dated May 17, 2006.

B. The Port and Tenant timely indicated their respective desire to extend the Term of the Agreement as provided Section 3.2, but the Port also indicated its intention to renegotiate the rental amounts set forth in Article 4 of the Agreement.

C. The Port and Tenant have now agreed on a revised rental structure for the Extension Period and desire to amend the Cruise Facility Lease Agreement (as amended) to reflect these revised provisions for the Extension Term.

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

### SECTION 1: DEFINITIONS

All capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Agreement or the First Amendment. In addition, the following additional terms shall be added to the list set forth in the Agreement and shall have the meanings specified in this Article unless otherwise specifically provided:

1.6 Allowances. Effective the first day of the Extension Period, Section 1.6 of the Agreement is hereby deleted in its entirety and replaced with the following:

1.6 Allowances. "Allowances" shall mean and refer to the Capital Allowance, the Maintenance Allowance and the Per Passenger Allowance.

1.16 Event Reimbursement Agreement. Section 1.16 of the Agreement is hereby deleted in its entirety and replaced with the following:

1.6 Event Reimbursement Agreement. “Event Reimbursement Agreement” shall mean and refer to the agreement between Tenant and Columbia Hospitality, Inc., an assignee of the Port under the Event License, by which Columbia Hospitality, Inc. agreed to compensate Tenant for wear and tear on the Pier 66 Cruise Facility and Terminal 30 Cruise Facility, the most recent revision of which agreement was approved by the Port on or about June 29, 2012. Event Reimbursement Agreement shall further refer to any subsequent revision and/or replacement of the agreement applicable to the Extension Term that is approved by the Port under the new management agreement with Columbia Hospitality, Inc., which new management agreement will commence on January 1, 2013.

1.35 Percentage Rent. Effective the first day of the Extension Period, Section 1.35 of the Agreement is hereby deleted in its entirety and replaced with the following:

1.35 Percentage Rent. “Percentage Rent” shall have the meaning set forth in Section 2.3 and Attachment 1 of this Second Amendment.

1.73 Flow-Through Event Revenue. “Flow-Through Event Revenue” shall mean and refer to that portion of Tenant’s Gross Revenues attributable to any amounts paid to Tenant pursuant to Section 2.3 of the Agreement and associated with the Port’s use of the Event License *except* amounts that constitute: (i) a direct, pass-through reimbursement of any utilities costs associated with the actual period of use under the Event License or (ii) a reimbursement for actual, out-of-pocket costs incurred by Tenant to repair any specific damage (i.e. *not* wear and tear) associated with the failure to return the portion of the Premises actually occupied in substantially the same condition in which received. Without limiting the generality of the foregoing, Flow-Through Event Revenue specifically includes any the payment under numbered Paragraphs 2.c. and 17 of the Pier 66 portion of the Current Event Reimbursement Agreement and numbered Paragraph 10 of the Terminal 91 portion of current Event Reimbursement Agreement. It shall likewise include any other/further portion of “room rentals” or “net income” paid to Tenant under the current or any future iteration of the Event Reimbursement Agreement.

1.74 Non-Cruise Dockage Revenue. “Non-Cruise Dockage Revenue” shall mean and refer to that portion of Tenant’s Gross Revenues attributable to the fee for Dockage charged for moorage of vessels at the Pier 66 Cruise Facility for vessels that are *not* passenger vessels or cruise ships subject to, and mooring under, Section Four of Port of Seattle Terminal Tariff No. 5, or any amendment or replacement thereof. In the event that Section 5.1 of the First Amendment is subsequently revised and Tenant is granted any rights related to moorage of vessels that are *not* passenger vessels or cruise ships at the Terminal 91 Cruise Facility, Non-Cruise Dockage Revenue shall also include that portion of Tenant’s Gross Revenues attributable to the fee for Dockage for such use at the Terminal 91 Cruise Facility. In the event that Tenant, pursuant to Section 8.6 of the Agreement charges an amount other than, or in place of, the fee for Dockage set forth in the Port’s current terminal tariff, the

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amount/component of the charge associated with Non-Cruise Dockage Revenue for such moorage shall be as set forth in the required Port approval thereof.

1.75 Per Passenger Allowance. “Per Passenger Allowance” shall have the meaning set forth in Section 4.2 of this Second Amendment.

1.76 Port Directed Cruise Fee Revenue. “Port Directed Cruise Fee Revenue” shall mean and refer to that portion of Tenant’s Gross Revenues attributable to the Dockage Fee and Passenger Fee charged to passenger vessels and cruise ships under Section Four of Port of Seattle Terminal Tariff No. 5, or any amendment or replacement thereof, as the same may be modified or discounted in any written agreement with a cruise line(s) (e.g. the Long Term Preferential Berthing Agreement with Carnival Lines). In the event that the Port substantially revises the way that it charges passenger vessels and cruise ships under its terminal tariffs, “Port Directed Cruise Fee Revenue” shall then mean that portion of Tenant’s Gross Revenues attributable to such other items that are substantially intended to replace the Dockage Fee and/or Passenger Fee. For purposes of Tenant’s Gross Revenues from the Bundled Port Fees set forth in Item 4005 (or any amendment or replacement thereof), the Dockage Fee and Passenger Fee component shall be as itemized and set forth in the final calculation of the Bundled Port Fee prepared for, and documenting the composition of, the most recent update of the Bundled Port Fee in the terminal tariff. Port Directed Cruise Fee Revenue specifically do not include an Gross Revenues associated with (i) the Passenger Vessels Terminal 91 Facility Surcharge, (ii) fees associated with fresh water consumption, specifically including any hook-up fee, (iii) fees associated with security services (whether baseline or otherwise), (iv) fees associated with bunkering permits, (v) fees associated with Memorandum of Understanding with the Department of Ecology or (vi) fees, other than incremental Dockage Fees, associated with any delayed sailings.

1.77 Revenue of Consequence. “Revenue of Consequence” shall mean and refer to that portion of Tenant’s Gross Revenues falling within Flow Through Event Revenue, Non-Cruise Dockage Revenue or Port Directed Cruise Fee Revenue.

1.78 Second Amendment. “Second Amendment” shall mean and refer to this Second Amendment to Cruise Facility Lease Agreement.

## SECTION 2 REVISED RENT TERMS

2.1 Preliminary Explanation. The Port and Tenant have agreed to substantially revise and simplify the provisions of the Agreement related to Rent for the Extension Period. The formulae for Percentage Rent have been completely revised. Savings Rent has been eliminated. All of the rent credits except the Minimum Income Credit (which has been modified) have been eliminated.

2.2 Eliminated Definitions. Effective on the first day of the Extension Period, the following defined terms shall have no prospective application and are hereby deleted from the Agreement: (i) Section 1.3 (Agreed Expense Ratio), (ii) Section 1.18 (Expense Credit), (iii) Section 1.24 (Leasehold Expense Credit), (iv) Section 1.25 (Leasehold Savings Fee), (v) Section 1.43 (Preferential Use Expense

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Credit), (vi) Section 1.44 (Preferential Use Savings Fee), and (vii) Section 1.48 (Savings Rent). Likewise, any reference to Savings Rent in section 1.47 (Rent) shall be eliminated.

2.3 Article 4 Replaced. Effective on the first day of the Extension Period, ARTICLE 4 of the Agreement as modified by the First Amendment shall have no prospective application, is hereby deleted in its entirety, and replaced with a new ARTICLE 4 as set forth on Attachment 1.

2.4 Cap on Markup for Security Services. The Port and Tenant agree that Tenant shall not be permitted to charge a markup on third-party security services (whether included in any bundled rate or charged as a separate line item) in excess of fifteen percent (15%). The Port and Tenant further agree that the charges for security services intended to recover the cost of Port and/or Tenant provided security services (e.g. reimbursement amounts for X-ray machines and magnetometers) shall be reasonable in light of the cost of acquisition, operation, maintenance, repair and replacement. The Port and Tenant agree that compliance with these requirements shall be conclusively determined by the Parties on a year-by-year basis as part of the annual exercise by the Port of establishing the bundled cruise fee amounts.

### SECTION 3: CONFIRMATION OF PREVIOUS LETTER AGREEMENTS

3.1 Understanding Regarding Pass-Through Items in Light of Bundled Fee. As set forth in that certain letter dated March 24, 2009, the Port and Tenant recognize that the Port's shift to "bundled" fees in 2008 made it significantly more difficult to account for those items properly excluded from Allowable Expenses and Gross Revenues under, respectively, Sections 1.5.18 and 1.20.12 as "pass-throughs." Tenant may properly exclude from Allowable Expenses and Gross Revenues the amounts actually paid for those portions of any security services provided by third parties, the fee for fresh water hook-up and fire department fee for bunkering permit, all of which fees would otherwise have been separately stated and paid. This exclusion does not, however, apply to any markup on these items or the collection of any amounts in excess of the actual pass-through expense amount based on the fact that the cruise ships passenger loads frequently exceed one hundred percent of lower berth capacity, on which percentage the per-passenger amount included in the bundled fee is based.

3.2 Understanding Regarding Terminal 91 Facility Surcharge. As set forth in that certain letter dated April 29, 2009, the Port and Tenant agree that Tenant shall be obligated to collect the Passenger Vessel Terminal 91 Surcharge as set forth the Port's Terminal Tariff No. 5 (or any amendment or successor thereto), that this surcharge shall not be included within either Gross Revenues or Allowable Expenses, and that Tenant shall remit the surcharge to the Port without offset, reduction or other handling charge. Furthermore, in the event that the Port in the future implements a similar charge that is intended to defray the cost of specific investments/improvements by the Port and which is imposed in addition to, and not in lieu of, dockage, passenger and/or bundled fees for cruise lines, the same rule shall apply.

3.3 Understanding Regarding Stevedoring Fees. As set forth in that certain letter dated March 29, 2010, the Port and Tenant agree that Tenant may, as a convenience to the cruise lines (including, but not limited to NCL), include the charges billed by the stevedoring services provider selected by a cruise line on Tenant's invoice to the particular cruise line. Any amounts for those stevedoring services shall

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be treated as a pass-through item under Sections 1.5.18 and 1.20.12 of the Agreement; provided, however, any markup or administrative fee shall fall within the definition of Gross Revenues.

3.4 Understanding Regarding Licensee Revenue. As set forth in that certain letter dated May 7, 2012, the Port and Tenant recognize that Tenant regularly grants licenses/permits for third parties to operate from the Pier 66 Cruise Facility and/or Terminal 91 Cruise Facility where the services provided by those vendors are primarily provided as a customer convenience and not to fulfill any of Tenant's basic obligations under the Agreement. As a result, the Port and Tenant expressly agree that any revenues generated by such vendors, as set forth annually on a list submitted by Tenant and approved by the Port shall, notwithstanding Sections 1.20 and 1.20.3 of the Agreement, *not* be included within Tenant's Gross Revenues. Instead, only the license/permit fee paid by such vendors shall be included within Gross Revenues as provided by Section 1.20.2 of the Agreement.

#### SECTION 4 ADDITIONAL ALLOWANCE

4.1 Expiration of Improvement Allowance; Use of Remaining Improvement and Capital Allowance. The Port and Tenant acknowledge and agree that the Improvement Allowance extended, by its terms, only for the initial Term of the Agreement. Likewise, any amounts available under the Capital Allowance during the initial Term of the Agreement do not carry over to the Extension Period. As a result, any amounts remaining in the Capital Allowance and/or Improvement Allowance and unspent as of December 31, 2012 shall expire and no longer available to Tenant. Tenant shall have until February 28, 2013 to submit to the Port a copy of any invoice for the purchase or replacement of any furniture, fixtures, equipment or other capital items purchased under the Capital Allowance or Improvement Allowance. Any such invoice and supporting documentation shall clearly reflect purchase and delivery of the item(s) prior to December 31, 2012.

4.2 Per Passenger Allowance. As an additional Allowance that will be effective over the Extension Term only, the Port will provide Tenant with an annual allowance (the "Per Passenger Allowance") as follows:

4.2.1 The value of the Per Passenger Allowance will be calculated based on the number of cruise passengers (for which the Passenger fee and/or Bundled Fee are payable and actually paid) over the Extension Period. The Per Passenger Allowance will accrue at a rate of Eight Cents (\$0.08) per passenger up to (and including) five million (5,000,000) and at a rate of Five Cents (\$0.05) per passenger for each passenger more than five million over the Extension Term. The Per Passenger Allowance will be earned and available to Tenant only in arrears and shall not be available in advance or otherwise in expectation of future passengers.

4.2.2 The Per Passenger Allowance may be used for the repair or replacement of any furniture, fixtures, equipment or other capital items in, on or about the Pier 66 Cruise Facility or Terminal 91 Cruise Facility. Either party may perform work under the Per Passenger Allowance. As such, whether the Per Passenger Allowance is, in whole or in part, a cash allowance will depend on the party identified to do the particular work to be performed under the Per Passenger Allowance. The parties shall consult with one another regarding potential projects towards which the Per Passenger

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Allowance will be applied; provided, however, the final decisions regarding how the Per Passenger Allowance will be applied and who will undertake the work will be made by the Port. In the event that the Port performs any work, the amount chargeable against the Per Passenger Allowance will be determined from the costs properly charged against the project established by the Port for such work under the Port's system of accounting.

4.2.3 In seeking any payment under the Per Passenger Allowance for any work performed by Tenant, Tenant shall submit to the Port a copy of the invoice for the repair or replacement of such furniture, fixtures, equipment or other capital items together with such other reasonable documentation required by the Port. The Port shall, within thirty (30) days of receipt of such documentation and verification of the eligibility of such expenditure for reimbursement under the Per Passenger Allowance, pay to Tenant the amount of the invoice, not to exceed (in aggregate with all previously requested reimbursements) the then-available total dollar amount of the Per Passenger Allowance. Solely as an accommodation to Tenant, the Port agrees to issue two party checks made payable to Tenant and the supplier/provider retained by or contracted to Tenant for the purposes of facilitating payment by Tenant to such supplier/provider; *provided, however*, nothing in the Port's agreement to issue a two party check shall create or support any liability or responsibility by the Port to such supplier/provider.

## SECTION 5 MISCELLANEOUS.

5.1 No Other Modifications; References to Agreement. Except as specifically amended herein, the Agreement (as amended by the First Amendment) shall continue in full force and effect in accordance with its original terms. Reference to this specific Second Amendment need not be made in the Agreement or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to or with respect to the Agreement, any reference in any of such items to the Agreement being sufficient to refer to the Agreement as amended hereby.

5.2 No Other Agreements. This Second Amendment and the Agreement (as amended by the First Amendment) set forth all covenants, promises, agreements, conditions and understandings between the Port and Tenant, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Port and Tenant other than as set forth in the Agreement and this Second Amendment.

5.3 Severability. If any term, covenant, condition or provision of this Second Amendment, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Second Amendment, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

5.4 Captions and Article Numbers. The captions, article and section numbers appearing in this Second Amendment are inserted only as a matter of convenience and in no way define, limit,

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construe or describe the scope or intent of such sections of this Second Amendment nor in any way affect this Second Amendment.

5.5 Attachments. Attachment 1 is attached to this Second Amendment after the signatures and by this reference incorporated herein.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date first above written.

PORT OF SEATTLE

CRUISE TERMINALS OF AMERICA LLC

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

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

ACKNOWLEDGMENTS

STATE OF WASHINGTON )
) ss
COUNTY OF KING )

On this \_\_\_\_ day of September, 2012 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 September, 2012, before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of CRUISE TERMINALS OF AMERICA, LLC, the corporation that executed the within and foregoing instrument at Tenant, 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: \_\_\_\_\_



ATTACHMENT 1

-- Revised ARTICLE 4 --

ARTICLE 4: RENT

4.1 Percentage Rent. For and in consideration of Tenant’s rights in the Pier 66 Cruise Facility and the Pier 91 Cruise Facility, Tenant shall pay to the Port percentage fees (collectively “Percentage Rent”) as follows:

4.1.1 Percentage of Port Directed Cruise Fee Revenue. Tenant shall pay the Port a portion of the Port Directed Cruise Fee Revenue as set forth below.

For the Tenant’s Rights In	Percentage of Port Directed Cruise Fee Revenue
Pier 66 Lease Area, Terminal 91 Lease Area, and Terminal 91 Parking Area	26.4%
Pier 66 Preferential Use Area, Terminal 91 Preferential Use Area and Pier 66 Parking Area	61.6%

Pursuant to Section 4.4, the amounts associated with the Pier 66 Lease Area, the Terminal 91 Lease Area and the Terminal 91 Parking Area are considered Contract Rent subject to Leasehold Excise Tax and the amounts associated with the Pier 66 Preferential Use Area, the Terminal 91 Preferential Use Area and the Pier 66 Parking Area are not considered Contract Rent subject to Leasehold Excise Tax.

4.1.2 Percentage of Non-Cruise Dockage Revenue. Tenant shall pay the Port fifty percent (50%) of Non-Cruise Dockage Revenue. Pursuant to Section 4.4, this portion of the Percentage Fee is attributable to the Pier 66 Preferential Use Area and is not considered Contract Rent subject to Leasehold Excise Tax.

4.1.3 Percentage of Flow-Through Event Revenue. Tenant shall pay the Port fifty percent (50%) of Flow-Through Event Revenue. Pursuant to Section 4.4, this portion of the Percentage Fee is attributable to the Pier 66 Lease Area and the Terminal 91 Lease Area and is subject to Leasehold Excise Tax.

4.1.4 Payment of Percentage Rent. The Percentage Rent shall be paid monthly, with respect to Revenue of Consequence made during the month, within fifteen (15) days after the end of each calendar month; provided, however, Percentage Rent for the month of May each year shall be due within thirty (30) days (and not fifteen days) after the end of the month of May. Together with remittance of Percentage Rent, Tenant shall submit a written report in a form acceptable to the Port wherein Tenant shall set forth the number of cruise passengers for the month, the Revenue of Consequence for the month and the Percentage Rent, if any, due for such

month. Tenant or an officer of Tenant shall certify that the report is a true and correct statement of the Revenue of Consequence.

4.2 Annual Reconciliation. Within thirty (30) days after the end of each calendar year during the Term of this Agreement or after the expiration of sooner termination thereof, Tenant shall have verified with each cruise line having called at either the Pier 66 Cruise Facility or Terminal 91 Cruise Facility during the year the total number of cruise passengers for the year, broken down by vessel. Tenant shall further, based on that verified figure, compute the total amount of Gross Revenue, Allowable Expenses and Net Operating Income for such calendar year, but Tenant shall specifically *not* be required to report these amounts unless it claims the Minimum Income Credit. Subject to Tenant's potential claim of the Minimum Income Credit, Tenant shall within said thirty-day period, submit to the Port a reconciled report reflecting the total number of cruise passengers for the calendar year, the total Revenue of Consequence for the year, and the total amount of Percentage Rent due for the calendar year, and, if the total amount of Percentage Rent due for such calendar year is less than the total Percentage Rent paid for such year, Tenant shall pay the Port any deficiency. If the total amount of Percentage Rent paid for such calendar year exceeds the total Percentage Rent due for such calendar year and Tenant is not otherwise in default, then the Port shall credit such excess to the payment of any Percentage Rent and or other sums which may thereafter become due to the Port; provided, however, upon expiration or sooner termination of the Agreement, if Tenant has otherwise complied with all other terms and conditions of this Agreement, the Port shall refund such excess to Tenant.

4.3 Contingent Rent Credit for Minimum Income. In the event that Tenant's annual Net Operating Income, as calculated pursuant to Section 4.2, is less than the Minimum Assured Income, Tenant shall be entitled to a credit (the "Minimum Income Credit") as set forth in this Section.

4.3.1 Amount of Credit. The credit shall be equal to the amount by which Tenant's annual Net Operating Income is less than the Minimum Assured Income. If the credit is applicable, thirty percent (30.00%) of the credit amount shall be applied against those items of Rent treated as Contract Rent and seventy percent (70.00%) shall be applied against those items of Rent not treated as Contract Rent.

4.3.2 Audit Required. In the event that Tenant believes it is entitled to take the Minimum Income Credit, it shall promptly (and in no event later than the date for submission of the annual reconciliation under Section 4.2) notify the Port of this fact and the expected amount of the credit. The Port shall then promptly commission an audit of Tenant's books and records to determine whether Tenant's Net Operating Income is below the Minimum Assured Income. The audit may be conducted by the Port's internal audit staff or a third-party certified public accountant contracted to the Port. As part of the audit, the selected auditor will specifically test Tenant's compliance with the terms of this Agreement, specifically including those provisions related to payment to Affiliates and Qualified Persons under Section 1.5.14; provided, however, the parties agree that Tenant shall (notwithstanding Section 1.5.14) only be required to identify those Affiliates or Qualified Persons with whom it intends to contract prior to each cruise season and that determination of whether the amount charged for such services are reasonable shall,

unless Tenant specifically requests otherwise at the time the list of Affiliates and/or Qualified Persons is submitted, be assessed at the time of the audit. Tenant shall reasonably cooperate with the audit and shall be responsible for 50% of the cost of the audit, which amount shall *not* be an Allowable Expense; provided, however, Tenant's share of the cost of the audit shall in no event exceed \$25,000.

4.3.3 Taking Rent Credit. Pending the completion of the audit, and thereafter only to the extent the audit determines that Tenant is entitled to the Minimum Income Credit, Tenant shall be entitled to take the Minimum Income Credit against any additional Percentage Rent due at the time that Tenant submits the Annual Reconciliation required by Section 4.2. In the event that application of the Minimum Income Credit results in Tenant's payment of Percentage Rent for a calendar year in excess of the amount Percentage Rent due for such calendar year, the Port shall, if Tenant is not otherwise in default in any material respect under the terms of this Agreement, credit such excess to the payment of any Percentage Rent which may thereafter become due to the Port; provided, however, upon expiration or sooner termination of the Agreement, if Tenant has otherwise complied in all material respects with all other terms and conditions of this Agreement, the Port shall refund such excess to Tenant.

4.4 Contract Rent. The Port and Tenant agree that the amounts associated with the Pier 66 Lease Area, Terminal 91 Lease Area and Terminal 91 Parking Area shall be "Contract Rent," as that term is defined in Chapter 82.29A of the Revised Code of Washington and Chapter 458-29A of the Washington Administrative Code, for the rights of possession and use of publicly owned real and personal property granted by this Agreement. All amounts associated with the Pier 66 Preferential Use Area, Terminal 91 Preferential Use Area and Pier 66 Parking Area shall be consideration for rights less than possession and/or use of publicly owned real and personal property. By approving the terms of this Agreement in an open public meeting, it is the intention of the Port to declare that the "Contract Rent" as set forth in this Section 4.4 was the maximum amount attainable for the rights and responsibilities set forth in this Agreement, considering alternative uses for the Premises, and considering the condition, and any restrictions on the use, of the Premises. All percentage amounts set forth in Section 4.1 shall be *exclusive* of any Leasehold Excise Tax due on such amounts, even if it may subsequently be determined that any amount excluded from Contract Rent under this Section is, in fact, subject to Leasehold Excise Tax.

4.5 Records. Tenant shall keep true and accurate accounts, records, books and data, which shall show all Gross Revenues and Allowable Expenses from Tenant's Operations. Tenant further agrees to keep in the Seattle area, books and records in accordance with good accounting practice, and such records as the Port may request. The duplicate invoices, any and all other books and records of Tenant as aforesaid, shall be open for inspection by authorized representatives of the Port at all reasonable times during business hours; provided, however, the Port shall have only have the right to inspect those records (i) relevant to the Revenue of Consequence or (ii) necessary to reasonably determine Tenant's compliance with the non-revenue requirements of this Agreement unless, until and for any year in which Tenant claims the Minimum Income Credit. In the event Tenant's records are not kept in the Seattle area, they shall be made available to the Port for inspection within five (5) business days.

4.6 Audit.

4.6.1 Tenant shall maintain during the term of this Agreement all books of account and records customarily used in this type of operation, and as may from time to time be required by the Port, in accordance with generally accepted accounting principles, and for such period of time thereafter as provided herein unless otherwise approved by the Port. The Port shall be permitted to audit and examine all such records and books of account relating to the operation of Tenant's Operations but only to the extent (i) relevant to the Revenue of Consequence or (ii) necessary to reasonably determine Tenant's compliance with the non-revenue requirements of this Agreement unless, until and for any year in which Tenant claims the Minimum Income Credit. Tenant shall not be required to maintain such enumerated records for more than three (3) years after the end of each twelve (12) month period. All such documents shall be made available for audit locally within five (5) business days or Tenant shall pay in full, any travel and related expenses of Port representative(s) to any location out of the Seattle area.

4.6.2 The cost of any audit (other than one under Section 4.3.2) shall be borne by the Port unless the results of such audit reveals an understatement of Percentage Rent of more than two percent (2%), all reported for any twelve (12) month period. In the event of such discrepancy, the full cost of the audit shall be borne by the Tenant, and Tenant shall promptly pay all additional fees owing to the Port. In addition, Tenant shall pay the Port interest on all sums due hereunder at the Default Rate, from the date due until paid. If, through the process of the audit, Tenant has overpaid the Port a credit will be issued after deducting the costs of the audit.

4.7 Annual Plan. Not later than August 1 of each year thereafter (with an initial draft no later than July 1), Tenant shall submit to the Port an annual plan for the Premises for the following calendar year. The annual plan must provide reasonable estimates of Revenue of Consequence. The annual plan will also include a narrative description of the proposed operations and security program. To the extent that Tenant expects to make use of any portion of the Maintenance Allowance, the Capital Allowance or the Per Passenger Allowance during the calendar year, the annual plan must also include a breakdown of all proposed projects/expenditures from the Maintenance Allowance, the Capital Allowance and/or the Per Passenger Allowance (other than for unexpected items arising during the course of the calendar year) for the Port's review and approval. The annual plan will be Tenant's best estimate of operations for the following calendar year and the parties recognize that actual results may vary from the annual plan.

4.8 Additional Responsibility. In addition to the Percentage Rent described in Section 4.1, Tenant covenants and agrees to pay the following: (a) taxes as set forth in ARTICLE 10; (b) insurance costs as set forth in Section 11.2; (c) Operating Expenses as set forth in Section 12.1; (d) utility charges as set forth in Section 12.2.1; (e) maintenance and repair expenses as set forth in ARTICLE 13 and (f) any other cost or expense associated with Tenant's Operations on or occupation of the Premises, of whatever description, and whether imposed in the first instance on the Port or Tenant. In the event that the Port pays any of these amounts in the first instance or provides any services to Tenant for which Tenant is financially

responsible, Tenant shall reimburse the Port for such amounts, and such reimbursement shall become due within thirty (30) days of invoice by the Port unless otherwise provided and shall be paid to the Port without deduction, set-off or abatement whatsoever.

4.9 Remittance Address. Any and all payments due to the Port by Tenant shall be remitted to the following address: Port of Seattle, P. O. Box 34249-1249, Seattle, WA 98124-1249, or at such other place as the Port may direct in writing.

4.10 Late Payment. If any payment of Rent is not received by the Port within ten (10) days of when due, Tenant shall pay to the Port a late payment charge equal to five percent (5%) of the amount of such delinquent payment of Rent in addition to the installment of Rent then owing, regardless of whether or not a Notice of Default has been given by the Port. In addition, if such delinquent payment of Rent and late charge are not received within fifteen (15) days of when such delinquent payment of Rent was originally due, Tenant shall further pay interest on such delinquent payment of Rent and late charge thereafter at the Default Rate. The Port and Tenant recognize that the damages which the Port will suffer as a result of Tenant's failure to timely pay Rent are difficult or impracticable to ascertain, and agree that said interest and late charge are a reasonable approximation of the damages that the Port will suffer in the event of Tenant's late payment. This provision shall not relieve Tenant from payment of Rent at the time and in the manner herein specified. Acceptance by the Port of any such interest and late charge shall not constitute a waiver of Tenant's default with respect to said overdue amount, nor shall it prevent the Port from exercising any other rights or remedies available to the Port.