

TERMINAL OPERATING AGREEMENT

By and Between

BAYONNE LOCAL REDEVELOPMENT AUTHORITY

And

CAPE LIBERTY CRUISE PORT LLC

BAYONNE, NEW JERSEY

Dated as of September 1, 2005

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TERMINAL OPERATING AGREEMENT

THIS TERMINAL OPERATING AGREEMENT is made as of this 1st day of September, 2005, but effective as of the Effective Date, by and between Bayonne Local Redevelopment Authority, a New Jersey statutory municipal entity (the "BLRA") and Cape Liberty Cruise Port LLC, a Delaware limited liability company (the "Port Manager") (the BLRA and Port Manager each, a "Party" and, collectively, the "Parties"). Capitalized terms used herein and not expressly defined in context shall have the meanings prescribed to them in Exhibit A.

WITNESSETH

WHEREAS, the Redevelopment Law provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, the BLRA was established by ordinance number 0-98-26, adopted on June 10, 1998 by the City Council of the City, in the County and State as an instrumentality and agency of the City, pursuant to the provisions of the Redevelopment Law, with responsibility for implementing redevelopment plans and carrying out redevelopment projects within the City; and

WHEREAS, pursuant to a decision by the United States of America to decommission the Peninsula, the Peninsula was transferred to the BLRA pursuant to the Quitclaim Deeds; and

WHEREAS, in accordance with the criteria set forth in the Redevelopment Law, the City identified and designated the Peninsula as an area in need of redevelopment by resolution numbered 99-11-23-078, adopted on November 23, 1999 by the City Council pursuant to the Redevelopment Law; and

WHEREAS, by ordinance numbered 04-11-10-005, adopted on December 16, 2004 by the City Council, the City approved the Redevelopment Plan for the Peninsula; and

WHEREAS, the Redevelopment Law authorizes the BLRA to arrange or contract for the planning, construction or undertaking of any development project or redevelopment work in an area designated as an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-8; and

WHEREAS, the BLRA is the owner of the Redevelopment Area; and

WHEREAS, by resolution numbered 062305-07, adopted on June 24, 2005 by the BLRA, the BLRA designated the Redeveloper and Port Manager, as applicable, as the "redeveloper" of the Redevelopment Area as permitted by the Redevelopment Law and agreed to enter the Transaction Documents, including this Terminal Operating Agreement between BLRA and Port Manager, in order to set forth the respective undertakings, rights and obligations of Redeveloper and the BLRA in connection with the redevelopment and use of the Redevelopment Area, all in accordance with Applicable Law.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, mutually covenant, promise and agree as follows:

ARTICLE 1

DEFINITIONS, INTERPRETATION AND CONSTRUCTION

Section 1.1 Definitions. The capitalized terms used herein shall have the meanings prescribed to them in Exhibit A.

Section 1.2 Interpretation and Construction. In this Terminal Operating Agreement, unless the context expressly otherwise requires:

(1) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Terminal Operating Agreement, refer to this Terminal Operating Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Terminal Operating Agreement.

(2) All references to Articles, Sections, Schedules or Exhibits shall, unless otherwise indicated, refer to the Articles, Sections, Schedules or Exhibits in this Terminal Operating Agreement.

(3) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(4) All notices to be given hereunder and responses thereto shall be given within a reasonable time, unless a certain number of days is specified.

(5) Unless otherwise indicated, any "fees and expenses" shall be required to be customary and reasonable.

(6) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, delayed or conditioned.

(7) The time periods set forth herein are to be strictly complied with, provided, however, that notwithstanding the foregoing, the time periods set forth herein for performance by Port Manager may, in the sole discretion of the BLRA, be extended at the written request of Port Manager. All references to days shall mean calendar days unless the context specifies otherwise.

ARTICLE 2

REPRESENTATIONS

Section 2.1 Representations by the BLRA. The BLRA represents to Port Manager that:

(1) The BLRA is a duly organized and validly existing municipal entity under the Applicable Laws of the State;

(2) Under the laws of the State, the BLRA is duly authorized to enter into, execute and deliver this Terminal Operating Agreement, to undertake the obligations contemplated by this Terminal Operating Agreement and to carry out its obligations hereunder. The execution by the BLRA of and performance by it under this Terminal Operating Agreement will not violate or conflict with any instrument by which the BLRA is bound or its properties are subject. The BLRA has the full power and authority, and holds and will maintain valid and in good standing, all Approvals necessary to grant Port Manager all of the rights and privileges conferred upon and granted to Port Manager under this Terminal Operating Agreement;

(3) By duly adopted resolution, the BLRA's BLRA of Directors has duly authorized the execution and delivery of this Terminal Operating Agreement and this Terminal Operating Agreement constitutes a legal, valid and binding obligation of the BLRA, enforceable against the BLRA in accordance with its terms;

(4) The execution and delivery of this Terminal Operating Agreement by the BLRA does not, and the performance by the BLRA of its obligations under this Terminal Operating Agreement will not:

(a) Conflict with or result in a violation or breach of any of the terms, conditions or provisions of the articles of incorporation, bylaws or other organizational documents of the BLRA;

(b) Conflict with or result in a violation or breach of any term or provision of any Applicable Law;

(c) Result in a breach of, or default (or give rise to a right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other similar instrument or obligation to which the BLRA may be bound, or which are necessary for Port Manager to continue to enjoy the rights and privileges conferred upon and granted to Port Manager under this Terminal Operating Agreement;

(5) No consent, approval or action of, filing with or notice to any Governmental Body, third party or other persons is required in connection with the execution, delivery and performance of this Terminal Operating Agreement by the BLRA or the rights and privileges which, by virtue of this Terminal Operating Agreement, shall be conferred upon and granted to Port Manager;

(6) There exists no requirement or obligation under Applicable Law to submit this Terminal Operating Agreement to public bid, auction or the like; and,

(7) The BLRA covenants and warrants that it is vested with good, valid, marketable and insurable title to the Redevelopment Area, inclusive of the Port which is the subject of this Terminal Operating Agreement, the Improvements and any easements granted to Redeveloper or Port Manager (as

the case may be under the Transaction Documents), and has the full and complete authority to enter into this Terminal Operating Agreement in accordance with its terms.

Section 2.2 Representations by Port Manager. Port Manager represents to the BLRA that:

(1) Port Manager is a duly organized and validly limited liability company in good standing under the laws of Delaware and has all requisite power and authority for the ownership and operations of its properties, and for the carrying on of its business as now conducted and as now proposed to be conducted under the Transaction Documents. Port Manager is duly qualified and is in good standing as a limited liability company and is authorized to do business in all jurisdictions wherein the nature of the activities conducted by it makes such qualification or authorization necessary;

(2) Port Manager has the corporate power to enter into, execute and deliver this Terminal Operating Agreement to undertake the transactions contemplated by this Terminal Operating Agreement and to carry out and perform its obligations hereunder, and the execution by Port Manager of and performance by it under this Terminal Operating Agreement will not violate or conflict with any instrument by which Port Manager is bound or its properties are subject, and this Terminal Operating Agreement constitutes a legal, valid and binding obligation of Port Manager, enforceable against Port Manager in accordance with its terms;

(3) Port Manager has duly authorized the execution, delivery and performance of this Terminal Operating Agreement, and, assuming due authorization, execution and delivery of this Terminal Operating Agreement by the BLRA, this Terminal Operating Agreement will be a valid, binding and enforceable agreement of Port Manager;

(4) The execution and delivery of this Terminal Operating Agreement by Port Manager does not, and the performance by Port Manager of its obligations under this Terminal Operating Agreement will not:

(a) Conflict with or result in a violation or breach of any of the terms, conditions or provisions of the organizational documents of Port Manager;

(b) Conflict with or result in a violation or breach of any term or provision of any Applicable Law; or

(c) Result in a breach of, or default under (or give rise to right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other similar instrument or obligation to which Port Manager may be bound or which are necessary for the BLRA to enforce the terms of this Terminal Operating Agreement against Port Manager; and

(5) No consent, approval or action of, filing with or notice to any Governmental Body, third party or other Persons is required in connection with the execution, delivery and performance of this Terminal Operating Agreement by Port Manager other than as set forth in the Transaction Documents.

ARTICLE 3

DESIGNATION OF PORT MANAGER; USE OF PORT

Section 3.1 Designation of Port Manager. Subject to the provisions of this Terminal Operating Agreement, the BLRA hereby designates Port Manager as the sole and exclusive manager and operator of the Port. The BLRA shall not revoke, cancel, terminate or otherwise change Port Manager's designation under this Section 3.1, except in accordance with the terms of the Transaction Documents.

Section 3.2 Covenants. The Port Manager agrees to the following covenants (hereinafter "Port Manager's Covenants".)

Section 3.2.1 Compliance. Port Manager shall carry out or perform the Terminal Services in accordance with the provisions of the Transaction Documents and Applicable Law. Port Manager shall use reasonable efforts to ensure that all consultants, professionals, employees, agents, contractors engaged by the Port Manager or any of the Port Manager's sublicensees are in and compliance with the terms and conditions of the Transaction Documents and Applicable Law. The Port Manager further covenants that its undertakings pursuant to the Transaction Documents shall be for the purpose of the repair, operation, maintenance and management of the Port.

Section 3.2.2 Performance. Port Manager shall undertake or perform the Terminal Services in accordance with the provisions of the Transaction Documents. All Terminal Services performed by the Port Manager under the Transaction Documents shall be performed in accordance with the level of skill and care ordinarily exercised by managers of first class facilities of the same type and nature as the Port. Except as specifically provided for in the Transaction Documents, the Port Manager shall undertake or perform the Terminal Services as Actual Operating Expenses of the Port, which shall be paid with Actual Operating Revenues.

Section 3.2.3 Suspension of Performance. The Port Manager shall not suspend or discontinue the performance of its obligations under the Transaction Documents (other than in the manner provided for therein).

Section 3.2.4 Non-Discrimination. The Port Manager shall not discriminate against or segregate any Person, or group of Persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or sex in the sublicense, use, occupancy, tenure or enjoyment of the Port, nor shall the Port Manager establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of sublicensees, or vendees on the Port. Matters pertaining to employment in connection with the Port and the Terminal Services shall be governed by Applicable Law which includes, without limitation, N.J.S.A. 40A:12A-22.2 of the Redevelopment Law. This Section shall be subject generally to all Applicable Law.

Section 3.3 Declaration of Covenants. Port Manager shall execute and record one or more declarations of covenants and restrictions, approved by the BLRA and Port Manager (each such document, a "Declaration") imposing the Port Manager's Covenants, and those other matters indicated in this Terminal Operating Agreement, if any, which are to be included in the Declaration. The Port Manager's Covenants shall run with the land as required by Applicable Law (N.J.S.A. 40A:12A-9).

Section 3.4 Effect and Duration of Covenants. It is intended and agreed, and the Declaration shall so expressly provide, that the Port Manager's Covenants set forth in this Article 3 and

those elsewhere in this Terminal Operating Agreement designated for inclusion in the Declaration, if any, shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Transaction Documents, be binding to the fullest extent permitted at law and equity, for the benefit and in favor of, and enforceable by, the BLRA, its successors and assigns, and any successor in interest to the Port or any part thereof, against Port Manager, its success and assigns and every successor in interest therein and any Party in possession or occupancy of the Port or any part thereof. It is further intended and agreed that the Port Manager's Covenants in Section 3.2 shall remain in effect without limitation as to time. However, such Port Manager's Covenants shall be binding on Port Manager, itself, each successor in interest to Port Manager only for such period as Port Manager or such successor or Party shall be in possession or occupancy of the Port, the Improvements thereon or any part thereof.

Section 3.5 Enforcement by BLRA. In amplification, and not in restriction, of the provisions of this Article, it is intended and agreed that the BLRA and its successors and assigns shall be deemed beneficiaries of the Port Manager's Covenants set forth in this Terminal Operating Agreement, both for and in their own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such Port Manager's Covenants have been provided. Such Port Manager's Covenants shall (and the Declaration shall so state) run in favor of the BLRA for the entire period during which such Port Manager's Covenants shall be in force and effect, without regard to whether the BLRA has at any time been, remains, or is an owner of any land or interest therein. The BLRA shall have the right, in the event of any material breach of any such Port Manager's Covenants, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of Port Manager's Covenants, to which it or any other beneficiaries of such Port Manager's Covenants may be entitled.

Section 3.6 Permitted Uses of Port. The Port shall be used by the Port Manager for the management and operation of the Port for Cruise Operations and Permitted Uses. Port Manager also shall have the right, with the prior written consent and approval of the BLRA, to enter into sublicense agreements for the Incidental Uses of the Port, pursuant to an Incidental Usage Agreement to be subsequently executed by the Parties.

Section 3.7 Prohibited Uses of the Port. Port Manager shall not use or permit the Port, or any part thereof, to be used for any purpose contrary to the Transaction Documents or Applicable Law.

Section 3.7.1 Uses Prohibited by Insurance Policies. Port Manager shall not use the Port in any manner that will result in the cancellation of any insurance that the BLRA may have on the Port. Port Manager shall not keep, use or sell on the Port, or permit to be kept, used, or sold thereon, anything prohibited by any applicable BLRA fire insurance policy.

Section 3.7.2 Advertising and Signage. Port Manager shall not erect or display, or permit to be erected or displayed, on the Port or the Improvements thereon, any exterior advertising matter of any kind, including signs, without first obtaining the written consent of the BLRA, excepting only directional signage.

Section 3.7.3 Tents and Temporary Facilities. Port Manager shall not erect tent(s) or analogous, non-permanent structure(s) except if, in the reasonable discretion of the Port Manager, the passenger manifest of a scheduled Vessel exceeds the capacity of the Terminal Improvements, or that multiple Vessels at berth simultaneously require additional terminal service space. In such event, the Port Manager may procure and utilize tent(s) or analogous, non-permanent structure(s), for such purposes, provided that any continuous use thereof for more than 30 consecutive days shall require the advance written approval of BLRA. Prior to the installation of any tent(s) or analogous, non-permanent

structure(s), Port Manager shall obtain all Approvals in accordance with the requirements of Applicable Law.

Section 3.7.4 Hazardous Material. Port Manager may not handle, use, store, transport, transfer, receive or dispose of on the Port (hereinafter sometimes collectively referred to as "Handle"), any substance classified as Hazardous Material in such quantities as would require the reporting of such activity to any Governmental Body having jurisdiction thereof without first receiving written permission of the BLRA. If Port Manager has handled material on the Port classified by Applicable Law as Hazardous Material (Port Manager's attention is particularly called to the Resource Conservation and Recovery Act of 1967 ("RCRA"), 42 U.S.C. Sec. 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. Sec 9601, *et seq.*; the Clean Water Act, 33 U.S.C. Sec 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Sec 7901 *et seq.*; and any amendments to these provisions or successor provisions) and such material has contaminated or threatens to contaminate the Port including Improvements, harbor waters, soil or groundwater, Port Manager, to the extent obligated by Applicable Law, shall at its own expense perform soil and groundwater tests to determine the extent of such Environmental Contamination, and shall immediately remediate any such material from the Port. If in the reasonable determination of the BLRA such Hazardous Material cannot be remediated on site to the reasonable satisfaction of BLRA, Port Manager shall remove and properly dispose of all contaminated soil, material or groundwater and replace such soil or material with clean soil or material suitable to BLRA.

If during Port Manager's occupancy Hazardous Materials brought or permitted to be brought onto the Port by Port Manager contaminate the Port or threaten to contaminate the Port including Improvements, harbor waters, soil or groundwater, Port Manager shall promptly notify the BLRA, and Port Manager, at its sole expense, shall perform such soil and groundwater testing as required by Applicable Law and take immediate steps to remediate the Port to the reasonable satisfaction of BLRA.

If Port Manager disposes of any soil, material or groundwater contaminated with Hazardous Material, Port Manager shall provide the BLRA copies of all material records, including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site and the location of the disposal site. The name of the City shall not appear on any manifest document as a generator of such material.

Any tests required of Port Manager by this Section shall be performed by a State certified testing laboratory reasonably satisfactory to the BLRA. By signing this Terminal Operating Agreement, Port Manager hereby irrevocably directs any such laboratory to provide the BLRA, upon written request from the BLRA, copies of all of its reports, test results, and data gathered.

Upon 60 days' prior written notice by the BLRA to Port Manager, Port Manager shall submit to the BLRA the names and amounts of all Hazardous Materials, or any combination thereof, which were stored, used or disposed of on the Port during the previous year, or which Port Manager intends to store, use or dispose of on the Port in the future.

Specifically excepted from coverage under this Section is Pre-Existing Contamination as defined and set forth in Article 15 of the Redevelopment Agreement, which shall be handled pursuant thereto, provided that no act or omission on the part of the Port Manager has contributed to the disturbance of such Pre-Existing Contamination in which case remediation thereof would be the Port Manager's responsibility hereunder. The Port Manager's obligations to perform environmental testing shall be strictly limited to the requirements of Applicable Law.

Section 3.8 Inspection of Port. BLRA and its duly authorized representatives shall have the right to enter upon the Port at any and all reasonable times during the term of this Terminal Operating Agreement for any reasonable purpose incidental to the rights of the BLRA, provided, however, that the BLRA does not unreasonably interfere with Port operations. The right of inspection reserved hereunder shall impose no obligation upon the BLRA to make inspections to ascertain the condition of the Port, and shall impose no liability upon the BLRA for failure to make such inspections. By reserving the right of inspection, the BLRA assumes no responsibility or liability for loss or damage to the property of Port Manager or property under the control of Port Manager, whether caused by fire, water or other causes, except to the extent caused by the BLRA. Nor does the BLRA assume responsibility for any shortages of cargo handled by Port Manager at the Port.

Section 3.9 Rights-of-Way. This Terminal Operating Agreement and the Port shall be at all times subject to the following:

(1) Rights-of-way for sewers, pipelines, conduits and for telephone, telegraph, light, heat and power lines as may from time to time be determined to be necessary by the BLRA, including the right to enter upon, above, below or through the surface of the or Port to construct, maintain, replace, repair, enlarge or otherwise utilize the Port for such purpose, without compensation, provided the applicable area of the Port shall be substantially restored following any disturbance; and

(2) Rights-of-way for streets, other highways, railroads and other means of transportation which are necessary to the operation of the Port or which shall have been duly established or which are reserved herein.

Section 3.10 Inspection; No Warranty. Port Manager has inspected the Port in contemplation of undertaking the Terminal Services and Permitted Uses and agrees that the Port, including the Existing Improvements, is suitable for its intended uses. No officer or employee of BLRA has made any representation or warranty with respect to the Port, including the Existing Improvements.

ARTICLE 4

ANNUAL OPERATING EXPENSE BUDGET

Section 4.1 Annual Operating Expense Budget. (1) Between July 1 and September 30 of each calendar year, the Port Manager, in consultation with Redeveloper and the BLRA, shall collaborate in good faith to prepare the Annual Operating Expense Budget for the following calendar year. Not later than October 1, 2005, the Port Manager shall provide the BLRA and the Redeveloper with the final Annual Operating Expense Budget for the 2006 calendar year.

(2) The term "Annual Operating Expense Budget" shall mean an expense budget that includes any and all costs, expenses and fees that the BLRA, the Port Manager and the Redeveloper, in good faith, reasonably estimate to be incurred in connection with the operation, maintenance and management of the Port for the applicable calendar year, including, without limitation, (a) all expenses payable pursuant to the Terminal Operating Agreement, (b) assessments and other governmental charges, (c) the Priority Charges, (d) the BLRA Financing Charge, and (e) the Capital Reserve Charge (together the "Annual Operating Expenses").

(3) The term "Priority Charges" shall mean those amounts payable to the BLRA including:

(a) The "Annual Base Charge" for the use of the Redevelopment Area by the Redeveloper shall mean and be as follows:

- (i) January 1, 2005 to December 31, 2005: \$566,500 (the "2005 Base Charge");
- (ii) January 1, 2006 to December 31, 2006: the 2005 Base Charge increased by the greater of 3% or the percentage change in the CPI over the prior calendar year (the "2006 Base Charge");
- (iii) January 1, 2007 to December 31, 2007: the 2006 Base Fee increased by the greater of 3% or the percentage change in the CPI over the prior calendar year (the "2007 Base Charge");
- (iv) January 1, 2008 to December 31, 2008: the 2007 Base Charge increased by the greater of 3% or the percentage change in the CPI over the prior calendar year;
- (v) January 1, 2009 to December 31, 2009: \$1.50 psf of the Redevelopment Area;
- (vi) January 1, 2010 to December 31, 2010: \$1.75 psf of the Redevelopment Area;
- (vii) January 1, 2011 to December 31, 2011: \$2.00 psf of the Redevelopment Area;
- (viii) January 1, 2012 to December 31, 2012: \$2.25 psf of the Redevelopment Area;
- (ix) January 1, 2013 to December 31, 2013: \$2.65 psf of the Redevelopment Area;
- (x) January 1, 2014 to December 31, 2014: \$2.90 psf of the Redevelopment Area;
- (xi) January 1, 2015 to December 31, 2015 and each January 1 to December 31, thereafter until December 31, 2038: the prior year's psf rate (increased by the greater of 3% or the percentage change in the CPI over the prior calendar year) of the Redevelopment Area; and,

- (xii) Should the BLRA provide a Phase II Commencement Notice pursuant to Section 6.2.1 of the Redevelopment Agreement such that Redeveloper is obligated to and does construct the Phase II Improvements in Configuration "B", then Redeveloper shall receive a credit against the payment of the Annual Base Charge equal to 50% of the BLRA Financing Charge associated with the amount by which Redeveloper's Cost of Construction for the Phase II Improvements in Configuration "B" exceeds that which would have been reasonably payable as Redeveloper's Cost of Construction for the Phase II Improvements in Configuration "A";

(b) The "Annual Construction Area Charge" for the use of the Construction Area by the Redeveloper shall mean and be \$.50 psf in each calendar year during the Term;

(c) The "Annual Terminal Improvements Charge," for the use of Building 14 by the Redeveloper shall mean and be as follows:

- (i) January 1, 2005 to December 31, 2008: \$0.00;
- (ii) January 1, 2009 to December 31, 2009 and each January 1 to December 31 thereafter until December 31, 2014: \$2.85 psf of the Terminal Improvements (which is initially stipulated to be 120,000 square feet); and
- (iii) January 1, 2015 to December 31, 2015 and each January 1 to December 31 thereafter until December 31, 2038: the prior calendar year's psf rate (increased by the greater of 3% or the percentage change in the CPI over the prior calendar year) of the Terminal Improvements;

(d) The "Annual BLRA Common Area Charge" for so long as vehicular access to the Redevelopment Area is provided by means of access over property owned by the BLRA and/or street lighting for such access is provided by the BLRA for the Redeveloper, its guests, invitees, employees, vendors and subcontractors, shall mean and shall be as follows:

- (i) January 1, 2005 to December 31, 2005: \$75,000; and
- (ii) January 1, 2006 to December 31, 2006 and each January 1 to December 31 thereafter until December 31, 2038: the prior year's Annual BLRA Common Area Charge increased by the percentage change in the CPI over the prior calendar year;

(e) The "BLRA Supplemental Charge" shall mean and be as follows:

- (i) For the Redevelopment Area (excluding land under water):
 - (I) January 1, 2005 to December 31, 2005: \$.10 psf of the Redevelopment Area (excluding land under water); and
 - (II) January 1, 2006 to December 31, 2006 and each January 1 to December 31 thereafter until December 31, 2038: the prior year's psf rate increased by the percentage change in the CPI over the prior calendar year for the Redevelopment Area, (excluding land underwater);
- (ii) For the Terminal Improvements:

- (I) \$0.60 psf for 120,000 sf from January 1, 2005 to December 31, 2005;
- (II) until the date upon which Building 14 is no longer in use as the Terminal Improvement and has not been subject to Improvements, the Redeveloper's Cost of Construction for which is in excess of \$250,000, the applicable BLRA Supplemental Charge for the Terminal Improvements for each calendar year shall be the prior calendar year's BLRA Supplemental Charge for the Terminal Improvements increased by the percentage change in the CPI over such prior calendar year;
- (III) for so long as Building 14 is still in use as the Terminal Improvement and Improvements have been completed, the Redeveloper's Cost of Construction for which is in excess of \$250,000, the prior calendar year's BLRA Supplemental Charge for the Terminal Improvements increased by the percentage change in the CPI over such prior calendar year, plus 2.4% of said Redeveloper's Cost of Construction, with such increase as a result of Improvements together with the then-current BLRA Supplemental Charge for the Terminal Improvements forming the new base for the BLRA Supplemental Charge for the Terminal Improvements and subject to subsequent annual increases by the CPI over such prior calendar year;
- (IV) for replacement Terminal Improvements completed as Phase IV(a) Improvements or Phase IV(b) Improvements, 2.4% of the Redeveloper's Cost of Construction for such Improvements less any portion thereof attributable to (a) foundation piles in excess of what would otherwise be attributable to a spread footings foundation and (b) Environmental Remediation, such BLRA Supplemental Charge for the Terminal Improvements increasing each year thereafter by the percentage change in the CPI over such prior year and subject to further increases should additional Improvements be undertaken the Construction Cost for which is in excess of \$250,000 (in which case such further increases shall be calculated in the manner described in Section 3(e)(ii)(III) above); and,
- (V) Notwithstanding the above, Redeveloper shall continue to pay full real estate taxes through December 31, 2005 in lieu of the payments required by Section 4.1(e)(I) through (IV);

(f) The "BLRA Volume Charge" shall mean and be as follows: (i) \$1 (as such amount is increased by the percentage change in the CPI from January 1, 2005 to December 31 immediately prior to the applicable calendar year) for each passenger embarkation and debarkation in excess of 207,000 passengers but less than 250,001 per annum, and (ii) \$1.50 (as such amount is increased by the percentage change in the CPI from January 1, 2005 to December 31 immediately prior to the applicable calendar year) for each passenger embarkation and debarkation in excess of 250,000 passengers but less than

300,001 passenger per annum; and (iii) \$2.00 (as such amount is increased by the percentage change in the CPI from January 1, 2005 to December 31 immediately prior to the applicable calendar year) for each passenger embarkation and debarkation in excess of 300,000 passengers per annum, provided however that no BLRA Volume Charge shall be payable for passenger volume occurring in any calendar year prior to 2009;

(g) The "BLRA Administrative Fee," shall initially be \$0 provided, however, that the BLRA reserves the right to impose an administrative fee in connection with direct and indirect expenses and out-of-pocket expenses incurred if the BLRA serves as the Port Manager itself, or if the BLRA shall handle any administrative matters itself in lieu of the Port Manager under the terms of this Terminal Operating Agreement (such fee to be known as the "BLRA Administrative Fee" as provided herein);

(h) The "BLRA Capital Charge" shall mean and be as follows: (i) in the event Redeveloper constructed the Phase III Improvements, \$0 or (ii) in the event Redeveloper did not construct the Phase III Improvements as of January 1, 2019, commencing on January 1, 2019, an amount required to fully amortize, over the remaining Term at 5 percent interest (I) BLRA Share #1 in the event that the Berth N-5 is being used as a Berth for an average of 15 or more Vessel calls per year for the 3 years prior to January 1, 2019; or (II) BLRA Share #2 in the event that the Berth N-5 is being used as a Berth for less than an average of 15 Vessel calls per year for the 3 years prior to January 1, 2019; provided, however, that in the event that surface parking had been replaced with a parking structure before January 1, 2019, then the alternate BLRA Capital Charge(s) referenced in (ii) above will commence on January 1, 2024 and the payment shall equal the amount required to fully amortize the respective sums over the remaining Term. "BLRA Share #1" shall mean and equal \$4,000,000 plus interest accrued and compounded annually at an annual rate of 5.0% from the date of the of substantial completion of the BLRA Bulkhead Improvements to (i) December 31, 2018, or, (ii) in the event surface parking had been replaced with a parking structure before January 1, 2019, December 31, 2023. "BLRA Share #2" shall mean and equal \$2,000,000 plus interest accrued and compounded annual at an annual rate of 5.0% from the date of the of substantial completion of the BLRA Bulkhead Improvements to (i) December 31, 2018, or (ii) in the event surface parking had been replaced with a parking structure before January 1, 2019, December 31, 2023; and,

(i) The BLRA's cost of insurance with respect to Redevelopment Area.

(4) The "BLRA Financing Charge" shall mean and be the amount required in the applicable calendar year to pay the debt service on the Bonds, Redeveloper Loan or Loan (as the case may be) and all related expenses.

(5) The "Capital Reserve Charge" shall mean and be the lesser of (i) 10% of the Annual Operating Expense Budget for purposes of funding (a) future Improvements to the Redevelopment Area and/or (b) Revenue Deficiencies or (ii) such amount that is required to increase the amount in the Capital Reserve Fund to fifty percent (50%) of the applicable Annual Operating Expense Budget.

(6) The Port Manager shall keep the Redeveloper and the BLRA continually informed of its progress during the Budget Process. The Port Manager shall submit the proposed Annual Operating Expense Budget to Redeveloper for its review within 15 days prior to the approval of the Annual Operating Expense Budget. During the Budget Process, the BLRA and the Port Manager shall give due consideration to alternative service providers recommended by Redeveloper.

ARTICLE 5

TERMINAL SERVICES

Section 5.1 Terminal Services Generally. The Port Manager shall operate, maintain, manage and repair the Port as a public facility for Cruise Operations and Permitted Uses and shall provide, or contract with vendors to provide, all of the services as set forth in this Article 5 (hereinafter, "Terminal Services"). Such Terminal Services shall include generally the following:

(1) the establishment, assessment, collection and publication of the Berthing Tariffs and Wharfage Fees in accordance with Section 5.2 and 5.14 of this Terminal Operating Agreement;

(2) participation in the development of the Annual Operating Expense Budget in accordance with Article 4 of this Terminal Operating Agreement;

(3) the collection of Revenues and the maintenance and operation of the Revenue Fund and the payment of any and all Actual Operating Expenses from the Revenue Fund in accordance with Section 5.3 of this Terminal Operating Agreement;

(4) the maintenance and application of the Capital Reserve Fund in accordance with Section 5.4 of this Terminal Operating Agreement;

(5) the scheduling of Vessels and Berths in accordance with Section 5.5 of this Terminal Operating Agreement;

(6) the provision of all security at the Port as needed to ensure the safety of the passengers, visitors, Invitees, employees and vendors in accordance with plans and procedures adopted by the Port Manager (and as required by Homeland Security) with the cooperation of the Redeveloper and/or the BLRA all as provided in Section 5.6 of this Terminal Operating Agreement;

(7) the maintenance of the Port in good, clean and satisfactory repair and operating condition consistent with a first class passenger cruise port and in accordance with all Applicable Law, including but not limited to: the Improvements including the Terminal Improvements and the Bulkhead Improvements, building structural and non-structural elements, building mechanical, electrical, HVAC and plumbing systems, building sprinkler systems, building fire alarm systems, building roofing systems, terminal security alarm systems, internal and external public announcement systems, exterior lighting systems, maritime structures including bulkheads, relieving platforms, bollards and fendering systems, maintenance dredging of berths and approaches to berths to the extent such dredging services are not performed by the Army Corps of Engineers or other Governmental Body, fence/cargo systems, door systems, outdoor fencing, paving and landscaping, interior and exterior telecommunication systems, Redeveloper's Trade Fixtures, equipment employed in the operation of the Port, and emergency generator systems;

(8) the provision of contract services including but not limited to: exterminator services, snow removal services to the extent the Port is in service when it snows, janitorial services, paving services, painting and striping services, for the Terminal Area, transportation services (parking shuttle, taxis, internal bus services, etc.) and solid waste disposal services;

(9) the maintenance of an adequate surety bond, if required by Applicable Law, and insurance in accordance with this Terminal Operating Agreement;

(10) the securing, to the extent made available by the local utility companies, of all utilities required for the operation of the Port, including but not limited to electricity (as of the Direct Service Date), water, communications and sewer;

(11) the coordination of the various Cruise Operations and Permitted Uses at the Port in order to ensure a smooth, efficient and integrated operation of the Port;

(12) the provision of passenger and cargo services to the extent not provided by operators of the Vessels;

(13) the recruitment, employment and supervision of a sufficient number of personnel to provide all of the foregoing Terminal Services in a professional manner and at a standard to be expected from a first-class passenger cruise line; and,

(14) the establishment of rules and regulations to be approved by the BLRA governing the use of the Port including a requirement that the operators of all Vessels maintain insurance that is customary for such operators.

Section 5.2 Establishment of Berthing Tariffs and Wharfage Fees. (1) The BLRA and the Port Manager shall collaborate, in good faith, to establish the Berthing Tariffs and the Wharfage Fees.

(2) Not later than October 1 of each calendar year, the Port Manager shall provide the BLRA with (a) a forecast of the estimated number of passengers that will embark at the Port during the following calendar year (the "Estimated Number of Passengers") (b) a forecast of the estimated aggregate tonnage of visiting cruise ships to the Port (the "Estimated Aggregate Tonnage"); (c) the maximum Berthing Tariff per passenger, as determined by the Port Manager, that can be charged to each cruise passenger based upon market conditions (the "Maximum Market Tariff"); and, (d) the Wharfage Fee that can be assessed against each Vessel as determined by the Port Manager based upon market conditions (the "Maximum Market Wharfage Fee").

(3) Each calendar year, within 5 days following the Port Manager's submission of the Annual Operating Expense Budget and the Estimated Number of Passengers, the Port Manager shall calculate the Breakeven Tariff and the Berthing Tariff and notify the BLRA and Redeveloper of same. In the event the Breakeven Tariff is greater than the Berthing Tariff as defined in this Section, there shall be a "Berthing Tariff Deficiency".

(4) In the event there is a Berthing Tariff Deficiency, the Port Manager shall calculate the Wharfage Fee, which Wharfage Fee shall not exceed a Maximum Market Wharfage Fee.

Section 5.3 Establishment of Revenue Fund; Collection of Revenues and Payment of Actual Operating Expenses. The Port Manager shall establish a Revenue Fund. On a monthly basis, Port Manager shall invoice RCCL Cruise Lines and Other Cruise Lines for the applicable Berthing Tariffs and Wharfage Fees incurred, based on their respective actual Number of Passengers and actual Aggregate Tonnage, for the immediately preceding month, and require payment within 30 calendar days after receipt of such invoices. Port Manager shall collect all Berthing Tariffs and Wharfage Fees and promptly deposit them, as collected, into the Revenue Fund. Port Manager shall incur and pay, or cause to be paid, from the Revenue Fund, to the extent sufficient, the Actual Operating Expenses, including, without limitation, the Priority Charges and Port Management Fees. The Priority Charges shall be payable to the BLRA monthly in advance (each monthly payment equal to one-twelfth of the annual budgeted amount) and pro-rated for any partial year, except that (1) the BLRA Volume Charge shall be payable on January 15 of the next calendar year, and (2) the BLRA Financing Charge shall be payable in accordance with the

applicable bond or debt service payment schedule. Port Manager shall use its best efforts to pay all Actual Operating Expenses on a timely basis so as to avoid the imposition of interest or penalties. In the event the Actual Operating Revenues are insufficient to pay the Actual Operating Expenses in any month(s), Port Manager shall demand, and upon receipt use, a Working Capital Advance from Redeveloper under the Usage Agreement to cover any such deficit(s).

Section 5.4 Establishment of Capital Reserve Fund; Collection of Capital Reserve Charge and Funding of Future Improvements and Revenue Deficiencies. The Port Manager shall establish a Capital Reserve Fund. Upon the completion of the Annual Operating Expense Budget, the Port Manager shall receive, as an Annual Operating Expense, the Capital Reserve Charge and shall immediately deposit the Capital Reserve Charge into the Capital Reserve Fund. Port Manager shall incur and pay, or cause to be paid, from the Capital Reserve Fund, to the extent sufficient and applicable, the costs associated with future Improvements within the Redevelopment Area and, as applicable, Revenue Deficiencies. Port Manager shall use its best efforts to pay any and all Revenue Deficiencies on a timely basis so as to avoid the imposition of interest or penalties.

Section 5.5 Vessel and Berth Scheduling. Port Manager shall coordinate, develop and update quarterly a comprehensive schedule of Vessel and Cruise Operations at the Port, and shall:

- (1) Coordinate Cruise Operations of Vessels, coordinate berthing assignments of Other Cruise Lines with the berthing priority rights of RCCL Cruise Lines set forth in the Agreed Berthing Schedule;
- (2) Develop and maintain a quarterly updated schedule of Vessel arrivals and berthing assignments;
- (3) Ensure the availability of at least 2 functioning passenger gangways for the Primary and Secondary Berths then in use for Cruise Operations at all times;
- (4) Attend all Vessel dockings and undockings at the Berths and, upon Vessel departures, conduct reasonable Berth inspections, as practicable, prepare written reports of any evidence of damage to Bulkhead Improvements, and give immediate notification of such damage to BLRA;
- (5) Coordinate with appropriate Governmental Bodies to maximize rapid, convenient and efficient movement of passengers and handling of baggage;
- (6) Coordinate with the Parking Manager to maximize safe and efficient flow of traffic into and out of the Port;
- (7) Coordinate and cooperate with the U.S. Coast Guard and all Governmental Bodies to provide and ensure safe transit operations, working conditions and emergency services for the protection of all passengers, dockworkers, terminal employees, Invitees and visitors on the Port; and
- (8) Coordinate and cooperate with stevedore companies engaged by RCCL Cruise Lines and Other Cruise Lines.

Section 5.6 Port Security. Port Manager shall provide a United States Coast Guard-examined security plan in compliance with Applicable Law (the "Port Security Plan"), and shall:

- (1) Designate a security officer for the Port and an alternate in compliance with Applicable Law ("Port Security Officer"), provide and implement a security officer training program in

compliance with Applicable Law, provide a manager to train and supervise security personnel (the "Port Security Manager") and provide a sufficient number of trained security officers to assure security for Cruise Operations at one time;

(2) Provide 2 trained, competent and efficient security guards on the Port on a 24-hour basis, one of whom shall be stationed at the Port entry gate and the other shall patrol the Port. Port Manager shall not be responsible to provide security immediately adjacent to any Vessel at berth, but may, upon request of the RCCL Cruise Lines and Other Cruise Lines, provide such additional Vessel security under separate arrangement with RCCL Cruise Lines and Other Cruise Lines at their expense;

(3) Provide and enforce the wearing of identification badges for all of Port Manager's employees on the Port;

(4) Provide sufficient functioning security screening equipment (e.g., x-rays, magnetometers, explosive detectors) to screen 100% of passengers, crews, visitors, Invitees, baggage and stores for Cruise Operations at one time;

(5) Provide sufficient and effective security communications equipment to facilitate security operations for Cruise Operations, in compliance with Applicable Law; and

(6) Provide additional safety and security procedures and equipment as may from time to time be further required by BLRA or Governmental Bodies with jurisdiction over the Port.

Section 5.7 Administrative Services. Port Manager shall provide passenger terminal staff, and related office and other equipment and supplies necessary to facilitate and accomplish all Terminal Services of a management and supervisory nature, to fulfill recording and reporting obligations (including maintenance of the Records), and all other Terminal Services required by this Terminal Operating Agreement, including but not limited to the following:

(1) Maintain coordination and liaison with the BLRA, reporting promptly all pertinent information affecting the functioning of the Port and preparing and providing to BLRA a quarterly, written report on the progress and status of Port business and operations, including all significant events during the reporting period;

(2) Maintain accurate books and records of accounts, including all source documents necessary to support the Records, detailing all information on Actual Operating Revenues, Actual Operating Expenses, Revenue Surpluses and Revenue Deficiencies, Vessel calls and passenger manifests for each Vessel, Port incidents, and other reports and records as required by this Terminal Operating Agreement, and submission of such records and reports to the BLRA quarterly and make the foregoing available to BLRA for the BLRA Audit; and

(3) Collect Actual Operating Revenues and remit the Priority Charges to the BLRA in accordance with this Terminal Operating Agreement, maintain and submit to BLRA accurate Records thereof, and provide to BLRA a written quarterly report showing the status of all billings, collections, accounts receivable and accounts payable.

Section 5.8 Promotion of Cape Liberty Cruise Port. Port Manager shall use commercially reasonable efforts to promote the use of the Port.

Section 5.9 Notice of Personal Injury or Property Damage. Port Manager shall notify the BLRA promptly after receipt of knowledge thereof of the occurrence of any personal injury or property

damage on the Port, provided the failure to give such Notice shall not be deemed a default under this Terminal Operating Agreement unless the BLRA suffers prejudice as a result of the failure to give such Notice.

Section 5.10 Consultation and Recommendations. Port Manager shall consult with Redeveloper and/or the BLRA from time to time as and when reasonably requested by the BLRA and/or the Redeveloper on matters related to the orderly and efficient operation of the Port, and make recommendations to the BLRA and/or the Redeveloper, as appropriate and necessary, on matters related to the safety and security of the Port as a whole, and of users of the Port.

Section 5.11 Supervision of Business Practices. The nature and manner of Port Manager's conducting of the Terminal Services on the Port shall be subject to reasonable regulation by BLRA. In the event such business is not conducted in a reasonable manner as reasonably determined by BLRA, it may direct that corrective action be taken by Port Manager to remedy such practices. Failure to comply therewith within 30 days of Port Manager receiving such written Notice shall constitute an Event of Default, which, if not cured in accordance with Article 9 herein, shall permit the BLRA to terminate this Terminal Operating Agreement or otherwise exercise any remedies available to it under Article 9.

Section 5.12 Internal Controls, Accounting System. (1) Port Manager shall implement and maintain an accurate and efficient system of internal controls recording the receipt of Actual Operating Revenues and disbursement of Actual Operating Expenses (such documentation hereinafter referred to as the "Records"). Upon 10 days written Notice to Port Manager, the BLRA and any other Person or entity authorized to conduct an audit of the Records (the "BLRA Audit") shall have access to the Records during normal business hours at the office of the Port Manager or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the purpose of inspection and the BLRA Audit.

(2) All Records pertaining to the receipt of Actual Operating Revenues and payment of Actual Operating Expenses, including, without limitation, monthly Berthing Tariffs and Wharfage Fee records, daily reports, bank statements, deposit slips invoices, and invoices and cancelled checks shall be retained by the Port Manager and made available to the BLRA for the purpose of the BLRA Audit for a period of 2 years. Such right to perform the BLRA Audit shall survive the expiration of the Term for a period of 2 years.

(3) The Port Manager, as part of its system of internal controls, shall perform periodic random audits of transactions (the "Port Manager's Audit"), and shall make the Port Manager's Audit available to the BLRA for inspection.

(4) The Port Manager shall provide an itemized quarterly and year to date statement to the BLRA, on or before the 15th day of each January, April, July and October, stating the Actual Operating Revenues, the Actual Operating Expenses and the beginning and ending cash balances with respect to such three month period ending on the last day of the month immediately preceding such date. Such monthly report shall be prepared in a manner that tracks Actual Operating Expenses to the Annual Operating Expense Budget.

Section 5.13 Public Records Act. Records provided to BLRA by Port Manager pursuant to this Terminal Operating Agreement are generally considered public records and are subject to disclosure upon request for such records. If BLRA receives a request for disclosure of such records in accordance with Applicable Law, BLRA shall promptly notify Port Manager of such request. In the event that the BLRA may request Port Manager to provide records and information deemed by Port Manager to be confidential or proprietary, Port Manager shall clearly mark such documents confidential, and advise BLRA of the

basis for such claim on confidentiality. BLRA shall handle such records in confidence to the extent permitted by Applicable Law.

Section 5.14 Discount for Increased Passenger Volumes. In order to provide the RCCL Cruise Lines and Other Cruise Lines an incentive to increase their annual passenger volumes to the Port, the BLRA and the Port Manager, considering information provided to the Port Manager by the Redeveloper on behalf of RCCL Cruise Lines, may from time to time establish certain formulas to create different categories of applicable Berthing Tariffs based on minimum annual passenger volumes (the "Discounting Formulas"). Any such Discounting Formulas established from time to time will be published as part of the public berthing tariffs of the Port, provided that the Discounting Formulas shall have no effect on the determination of the BLRA Volume Charge.

ARTICLE 6

MAINTENANCE AND REPAIR SERVICES

Section 6.1 Maintenance and Repair Services. The Port Manager shall maintain and/or repair the Port as and when necessary in accordance with generally acceptable industry standards, in order to ensure smooth and efficient operation of the Port. Without limiting the specific performance requirements of the Terminal Services, the Port Manager is responsible for all repair and maintenance services not performed by Redeveloper pursuant to the Redevelopment Agreement. If the BLRA inspects any work performed by Port Manager and finds it unsatisfactory in accordance with acceptable industry standards, Port Manager shall be obligated to correct the work to the BLRA's reasonable satisfaction. The Port Manager shall not be responsible for the design and/or construction of any Improvements.

Section 6.2 Maintenance and Repair.

Section 6.2.1 Maintenance and Repair Costs. The costs of all maintenance and repairs required to be performed hereunder shall be an Actual Operating Expense.

Section 6.2.2 Port Manager's Responsibility for Damage. Notwithstanding the foregoing, if damage to the Port or Improvements thereon is caused by the acts or failure to act of Port Manager, its officers, agents, employees or its Invitees, Port Manager shall be responsible for all reasonable costs, direct or indirect, associated with repairing the damage (which costs and expenses shall not be a Actual Operating Expense) and the BLRA shall have the option of requiring Port Manager to make the repairs or itself make the repairs. If the BLRA makes the repairs, Port Manager agrees to reimburse the BLRA for the BLRA's cost of repair.

Pursuant to the Agreed Upon Berthing Schedule, damage occurring at a Vessel's assigned Berth during its use of such Berth is presumed to be the responsibility of such Vessel. Otherwise, Port Manager shall be responsible for repairing all damage to the Port or Improvements thereon using Actual Operating Revenues unless Port Manager can demonstrate to the reasonable satisfaction of the BLRA that someone other than Port Manager's officers, agents, employees, or Invitees caused the damage.

Section 6.3 Inspection of Port and Port Manager Repairs. Port Manager shall be responsible for inspecting the Port and the Improvements thereon and at all times maintaining the Port in a safe condition. The BLRA shall have the right to enter upon the Port at all reasonable times for the purpose of determining compliance with the terms and conditions of this Terminal Operating Agreement or for any other purpose incidental to the rights of the BLRA. This right of inspection imposes no obligation upon the BLRA to make inspections nor liability for failure to make such inspections. By reserving the right of inspection, the BLRA assumes no responsibility or liability for loss or damages to the property of Port Manager or property under the control of Port Manager, whether caused by fire, water or other casualty except to the extent such losses or damages are caused by the BLRA. If the BLRA requests drawings and/or specifications showing the location and nature of repairs to be made or previously made by Port Manager, Port Manager agrees to provide to the BLRA the material requested in writing with 10 calendar days of request by the BLRA.

Section 6.4 BLRA's Option to Perform Repair or Maintenance. If Port Manager fails to repair, maintain and keep the Port and Improvements thereon as required hereunder, the BLRA may give 30 days' written Notice to Port Manager to correct such default, except that no Notice shall be required where, in the opinion of the BLRA, the failure creates a hazard to Persons or property. If Port Manager fails to cure such default within the time specified in such Notice, or if the BLRA reasonably determines that a hazard to Persons or property exists due to such failure, the BLRA may, but is not required to, enter

upon the Port and cause such repair or maintenance to be made. During all such times, the duty shall be on Port Manager to assure the Port is safe and Port Manager shall erect barricades and warning signs to assure workers and the public are protected from any unsafe condition. None of the BLRA's remedies described above shall preclude the BLRA from terminating this Terminal Operating Agreement or otherwise exercising any legal or equitable remedy due to an Event of Default pursuant to Article 9.

Section 6.5 BLRA's Access to Maintain and Repair Port. If the BLRA deems it necessary to maintain or repair the Port, Port Manager shall cooperate fully with the BLRA to assure that the work can be performed timely, during the BLRA's normal working hours and that appropriate access is provided to the Port and Improvements thereon.

Section 6.6 Emergency Work. The Port Manager may immediately undertake repair work without any prior approval, if in the reasonable opinion of the Port Manager such work is required immediately to ensure the health or safety of any Person or Vessel on the Port. Notwithstanding anything herein to the contrary, Port Manager shall inform Redeveloper and/or the BLRA of such emergency work as soon as reasonably possible upon notice of the need for same.

ARTICLE 7

PORT MANAGEMENT FEE

In consideration for the Terminal Services provided by Port Manager under this Terminal Operating Agreement, Port Manager shall be paid the Port Management Fee. The Port Management Fee shall be paid from the Revenue Fund on the first day of each month in twelve equal monthly installments beginning on the Effective Date and pro-rated for any partial calendar year.

ARTICLE 8

INSURANCE

Section 8.1 Insurance Requirements for Port Manager. (1) At all times during the Term of this Terminal Operating Agreement, the Port Manager shall carry and maintain, at its expense, policies written by underwriters with an "A-8" or better rating from AM Best or as otherwise approved by the BLRA covering:

(a) Commercial general liability insurance in the form of a terminal and marine operator's policy including wharfingers liability (or the equivalent thereof) and stevedores liability, if applicable, and including insurance against assumed or contractual obligations under the Terminal Operating Agreement against any liability arising out of the use of the Port, the Improvements thereon and all areas appurtenant thereto, to afford provision with limits of not less than \$10,000,000 per occurrence/aggregate with respect to personal injury, bodily injury, death and property damage. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from Port operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract);

(b) If and to the extent required by Applicable Law, worker's compensation, employer's liability and disability benefits as required by the State. If employees will be working on, near or over navigable waters, US Longshoremen's and Harbor Workers' Compensation Act endorsement must be included, and any other coverage (if applicable) or similar insurance in form and amounts required by Applicable Law;

(c) Comprehensive business automobile liability insurance of not less than \$10,000,000 for each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles including the transport or towing of vehicles of others;

(d) Legal Liability insurance insuring against damage to property in the care of Port Manager; and,

(e) All-risk property insurance, including builder's risk, theft and flood coverage (if available), written at replacement cost value and with replacement cost endorsement, covering the Improvements on the Port until such time as such Improvements are sold to the BLRA.

(2) Port Manager shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the BLRA, or, if such waiver is unobtainable (a) an express agreement that such policy shall not be invalidated if Port Manager waives or has waived before the casualty, the right of recovery against the BLRA or (b) any other form of permission for the release of the BLRA.

(3) Upon 10 Business Days notice, copies of certificates evidencing the insurance required herein, and rating information, shall be furnished to the BLRA at no cost. Such policies shall be subject to the approval of the BLRA for adequacy and form of protection. The BLRA shall have the right upon 30 days written notice from time to time to cause the Port Manager to increase liability limits or modify coverages.

(4) The Port Manager shall deliver to the BLRA one certificate of insurance evidencing each required insurance coverage upon the execution of this Terminal Operating Agreement.

(5) Not less than 30 days prior to the expiration date or renewal date, the Port Manager shall supply the BLRA updated replacement certificates of insurance, and amendatory endorsements.

(6) The liability policies required herein shall be endorsed to include provisions that:

(a) require the insurer to provide 60 days prior written notice to all additional insureds, before the policy is canceled, terminated, changed or modified by the insurance company;

(b) confirm that the presence of the BLRA's personnel at the Port shall not invalidate its insurance policy; and

(c) confirm that a violation of any of the terms of any other policy issued by the insurer to Port Manager shall not invalidate the policy.

(7) Upon request, the Port Manager shall promptly furnish copies of the above endorsements to the BLRA. Acceptance of such copies by the BLRA does not and shall not be construed to relieve the Port Manager of any obligations, responsibilities or liabilities under this Terminal Operating Agreement.

(8) Notwithstanding the foregoing provisions of this Section, an appropriate umbrella policy is acceptable in the event that the full limits of any of the foregoing coverages are not available on a primary basis.

(9) For purposes of this Terminal Operating Agreement, notice of an accident from the BLRA to the Port Manager shall constitute notice to the applicable insurer.

Section 8.2 BLRA as Additional Insured. All insurance policies evidencing the foregoing insurance in Section 8.1 shall name the BLRA and/or its designee(s) as additional insured (except worker's compensation insurance), shall be primary and non-contributory with respect to the Port Manager's undertaking of the Terminal Services, excepting workers compensation. If Port Manager shall fail to perform any of its obligations under this Article 8, the BLRA may perform the same and the cost of same shall be payable upon the BLRA's demand.

Section 8.3 BLRA's Liability. The BLRA shall not be responsible or liable to Port Manager, or to those claiming by, through or under Port Manager, for any loss or damage resulting to Port Manager, or those claiming by, through or under Port Manager, or its or their property, from the breaking, bursting, stoppage or leaking of electrical cable and wires, or water, gas, fuel oil, sewer or steam pipes so long as such loss or damage is not occasioned by the BLRA's intentional act or omission or the BLRA's gross negligence. To the maximum extent permitted by Applicable Law, Port Manager agrees to use the Port, as Port Manager is herein given the right to use, at Port Manager's own risk.

Section 8.4 Restriction on Use. Port Manager shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Port which will violate Port Manager's policies of hazard or liability insurance or which will prevent Port Manager from procuring such policies in companies acceptable to the BLRA.

Section 8.5 No Double Recovery. Neither the BLRA nor Port Manager shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income or losses under worker's compensation laws and benefits even though such loss or damage might have been occasioned by the negligence of such Party, its agents or employees if, and to the extent, that any such loss or damage is covered by insurance benefiting the Party suffering such loss or damage or was required to be covered by insurance pursuant to this Terminal Operating Agreement.

Section 8.6 Insurance Requirements for Contractors of Port Manager. Port Manager shall require any contractor of Port Manager performing work on the Port to carry and maintain, at no expense to the BLRA policies written by underwriters with an A or better rating from AM Best or as otherwise approved by the BLRA:

(1) Commercial general liability insurance, including contractor's liability coverage, contractual liability coverage, products/completed operations coverage and broad form property damage endorsement, to afford protection of not less than \$2,000,000 per occurrence/aggregate with respect to personal injury, bodily injury, death and property damage;

(2) Comprehensive automobile liability insurance with limits for each occurrence, combined single limit coverage, of not less than \$2,000,000 with respect to personal injury, death and property damage;

(3) Stevedore's liability insurance with limits of not less than \$2,000,000 per occurrence/aggregate; and,

(4) If and to the extent required by Applicable Law, worker's compensation coverage, employers liability and disability benefits as required by the State. If employees will be working on, near or over navigable waters in connection with their work on or about the Port, US Longshoremen's and Harbor Workers' Compensation Act endorsement must be included, and any other coverage (if applicable) or similar insurance in form and amounts required by Applicable Law.

Section 8.6.1 BLRA as Additional Insured. All insurance policies of contractors of the Port Manager evidencing the foregoing insurance shall name the BLRA and/or its designee(s) as additional insured (except worker's compensation insurance), shall be primary and non-contributory with respect to the Port Manager's undertaking of the Terminal Services, and shall also contain a provision by which the insurer agrees that such policy shall not be cancelled, materially changed or not renewed without at least 60 days' advance notice to the BLRA, or their designee(s). A certificate evidencing such insurance shall be deposited with the BLRA by Port Manager promptly upon commencement of Port Manager's contractor's obligation to procure the same. If Port Manager shall fail to cause its contractors to perform any of the obligations under this Article 8, the BLRA may perform the same and the cost of same shall be payable upon the BLRA's demand.

Section 8.7 Insurance Requirements of the BLRA. The BLRA covenants that it will maintain property insurance coverage on the Port and Improvements thereon against loss or damage by fire, hurricane and windstorm, and all other risk with "all risks" endorsement or its equivalent and such other additional insurance coverage on the BLRA's operations as may be reasonably required. The insurance must be paid for by the BLRA or the Port Manager and must be in amounts not less than the replacement cost for the Improvements owned by the BLRA.. Premiums for such insurance shall be provided for as a Priority Charge in the Annual Operating Expense Budget.

ARTICLE 9

TERM, DEFAULT AND REMEDIES

Section 9.1 Term. (1) The Term of this Terminal Operating Agreement shall commence on the Effective Date and end on December 31, 2038, unless sooner terminated or extended pursuant to the provisions of this Terminal Operating Agreement.

(2) This Terminal Operating Agreement shall terminate upon the termination of the Redevelopment Agreement in accordance with its terms provided, however, that such termination shall not relieve the BLRA of its continuing obligations under Section 6.6 of the Usage Agreement and Section 8.1.3 of the Redevelopment Agreement.

Section 9.2 Events of Default by Port Manager. With regard to Port Manager, the following shall be "Events of Default" under this Terminal Operating Agreement:

(1) Failure by Port Manager to observe or perform any material covenant, condition or agreement on its part to be observed or performed hereunder, which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Port Manager by the BLRA, unless the BLRA shall agree in writing to an extension of such time prior to its expiration; provided, however, that if such failure cannot be corrected within such 30 day period, it shall not constitute an Event of Default if effective corrective action is instituted by Port Manager within such period and diligently pursued until such failure is corrected; and/or

(2) The commencement by Port Manager of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or its consent to the entry of an order for relief in an involuntary case under any such law, or its consent to the appointment of or taking possession by a receiver, custodian, liquidator, assignee, trustee or sequestrator (or other similar official) of itself or of any substantial part of its property, or shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due; and/or

(3) A court having jurisdiction shall enter a decree or order for relief in respect of Port Manager in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, custodian, liquidator, assignee, trustee, sequestrator (or other similar official) of Port Manager or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of such decree or order unstayed and in effect for a period of 90 consecutive days; and/or

(4) The occurrence of an Event of Default by Port Manager under any Transaction Document.

Section 9.3 The BLRA's Remedies. Whenever any Event of Default hereunder by Port Manager shall have happened and be continuing without cure, the BLRA may terminate this Terminal Operating Agreement by providing written notice to Port Manager, and (1) re-enter and take possession of the Port and the Improvements thereon to the extent they have been already sold to the BLRA or (2) re-enter, take possession and take title to the Port and the Improvements thereon to the extent they have not been sold to the BLRA and in each case the Redeveloper shall vacate and surrender title (if applicable) and possession to the same, without the BLRA having any further obligation except as set forth in the Transaction Documents including, but not limited to, Section 6.6 of the Usage Agreement or Section 8.1.3 of the Redevelopment Agreement, or (3) utilize any available remedies at law or in equity to which BLRA may be entitled. The BLRA may pursue its rights and remedies under the Transaction Documents

in whatever order, or collectively, and shall not be required to exhaust any right or remedy or proceed in any order against Redeveloper.

Section 9.4 Events of Default by the BLRA. With regards to the BLRA, the following shall be “Events of Default” under this Terminal Operating Agreement:

(1) Failure by the BLRA to observe or perform any covenant, condition or agreement on its part to be observed or performed hereunder or under the Transaction Documents, and such failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the BLRA by Port Manager, unless Port Manager shall agree in writing to an extension of such time prior to its expiration; provided, however, that if such failure cannot be corrected within such 30 day period, it shall not constitute an Event of Default if corrective effective action is instituted by the BLRA within such period and diligently pursued until such failure is corrected; and/or

(2) The occurrence of an Event of Default by the BLRA under any Transaction Document.

(3) The BLRA transfers a controlling interest in the Port to any other party for any reason and such successor does not completely and unconditionally assume the rights and obligations of the BLRA under this Terminal Operating Agreement; and/or

(4) The BLRA transfers a controlling interest in the Port to a nongovernmental entity, without Redeveloper’s prior written consent, which shall not be unreasonably withheld.

Section 9.5 Port Manager’s Remedies. Whenever any Event of Default by the BLRA hereunder shall have happened and be continuing, any one or more of the following remedial steps may be taken by Port Manager:

(1) Terminate this Terminal Operating Agreement by providing written notice to the BLRA; and/or

(2) Seek against the BLRA all remedies, in law or in equity, as Redeveloper may deem appropriate, including, without limitation, specific performance and injunctive relief.

Section 9.6 Force Majeure; Termination. Force Majeure shall be governed separately pursuant to the Article pertaining thereto and set forth herein. Either the BLRA or the Port Manager may terminate this Terminal Operating Agreement upon the occurrence of an event of Force Majeure that prohibits use of the Port and Improvements thereon as contemplated herein for a period of more than 24 months.

Section 9.7 Cumulative Remedies; Delay or Omission – No Waiver. The remedies conferred upon or reserved to the BLRA or Port Manager pursuant to this Terminal Operating Agreement, including, without limitation, those set forth in this Article 9, are demonstrative only, and are not exclusive of any other available remedy or remedies provided for at law or in equity, or under any Applicable Law now existing or hereinafter provided, but each and every remedy shall be cumulative and shall be in addition to every other remedy either given under this Terminal Operating Agreement or at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as it may be deemed expedient. In order to entitle the BLRA or

Port Manager to exercise any remedy reserved to it in this Article 9, it shall not be necessary to give any Notice, other than such Notice as may be herein expressly required.

Section 9.8 Specific Performance. If an Event of Default occurs, or a Party hereto threatens to take an action that will result in the occurrence of an Event of Default, the non-defaulting (or non-threatening) Party shall have the right and remedy, without posting bond or other security, to have the provisions of this Terminal Operating Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to the BLRA or Port Manager and that money damages may not provide an adequate remedy for such injury.

Section 9.9 Continuance of Obligation. The occurrence of an Event of Default shall not relieve the defaulting Party of its obligations under this Terminal Operating Agreement or the Transaction Documents. Such defaulting Party's obligations shall survive the termination of the other Transaction Documents in accordance with the terms thereof.

Section 9.10 Mitigation. The Parties shall act reasonably to mitigate any damages incurred as the result of an Event of Default or, to the degree possible, in the event of a Force Majeure under this Terminal Operating Agreement.

Section 9.11 Survival of Termination. The provisions of this Article shall survive the termination of this Terminal Operating Agreement as a result of an Event of Default.

Section 9.12 No Consequential Damages. Notwithstanding anything to the contrary contained herein, each Party hereby waives and releases the other from any other claim of consequential or other type of damages, whether based on contract, warranty, negligence (including sole, joint, or comparative), strict liability or otherwise, and whether special, consequential, indirect, incidental, punitive damages of any kind of character, including but not limited to, loss of profits or revenues, loss of product, cost of capital, and the like arising directly or indirectly from or out of any wrongful act, negligence or willful misconduct on the part of the other Party or its Affiliates, agents, representatives, employees, contractors or Invitees, and any failure of the other Party or its Affiliates, officers, directors, employees, agents or representatives to comply with any Applicable Law or with the directive of any Governmental Body.

ARTICLE 10

FORCE MAJEURE

Section 10.1 Force Majeure. Performance by any Party under this Terminal Operating Agreement or the Transaction Documents shall not be deemed to be in default where delays or failure to perform are the result of the following Force Majeure acts, events or conditions or any combination thereof that has had or may be reasonably expected to have a direct, material, adverse effect on the rights or obligations of the Parties to this Terminal Operating Agreement; provided, however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the terms of this Terminal Operating Agreement (collectively, "Force Majeure Events").

Section 10.2 Force Majeure Events. The following shall constitute "Force Majeure Events":

(1) An act of God, lightning, blizzard, hurricane, tornado, earthquake, acts of a public enemy, war, terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence (such events being required to physically affect a Party's ability to fulfill its obligations hereunder; the consequential effect of such events (e.g., impact on market conditions) shall not be considered a Force Majeure Event); and/or

(2) A landslide, fire, explosion, flood or release or discovery in the Redevelopment Area of unexploded ordnance, nuclear, biological or radiological compounds not created or released by an act or omission of either Party hereto; and/or

(3) The order, judgment, action or inaction and/or determination of any court jurisdiction or a Governmental Body (other than the BLRA when acting in conformance with this Terminal Operating Agreement) with jurisdiction over the BLRA or the Redevelopment Area, excepting decisions interpreting Federal, State and local tax laws generally applicable to all business taxpayers, adversely affecting the Construction of any Improvement or Port Manager's performance under this Terminal Operating Agreement; provided, however, that such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the Party to this Terminal Operating Agreement relying thereon and that neither the contesting of any such order, judgment, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party; and/or

(4) The suspension, termination, interruption, denial, failure of, or delay in renewal or issuance of any Approval required pursuant to Applicable Law, provided, however, that such suspension, termination, interruption, denial, failure of, or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial, failure of, or delay in renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party. Delay in issuance of an Approval resulting from Port Manager's failure to make an administratively complete submission for an Approval shall not be an event of Force Majeure; and/or

(5) Lawsuits or other legal actions taken by any Person challenging the transactions contemplated by this Terminal Operating Agreement, or any other regulatory or administrative delay, except that any lawsuit or other legal action initiated by Redeveloper, an Affiliate of Redeveloper, and any Person with an equity interest therein, an employee, agent, vendor or contractor of the aforementioned entities, shall not be an event of Force Majeure; and/or

(6) The failure or inability on the part of the BLRA to remediate any Pre-Existing Contamination or obtain the NFA/CNS to the extent such failure or inability entails a delay in the ability of the Redeveloper to undertake the Construction of any Improvements.

Section 10.3 Notice of Force Majeure. Notwithstanding the foregoing, unless the Party entitled to an extension under this Article gives written Notice to the other Party hereto of its claim to such extension within 10 days after such Party obtains actual knowledge of the event giving rise to such claim, there shall be excluded in computing the number of days by which the time for performance of the act in question shall be extended, the number of days which shall have elapsed between the occurrence of such event and the actual giving of such Notice, provided that failure to provide such Notice shall not prevent the Party claiming a Force Majeure Event from exercising its rights and enjoying the protections afforded under such claim and provided further that in the event the Party entitled to receive such Notice has actual knowledge of such a Force Majeure Event, the penalty for failure to provide Notice pursuant hereto shall not apply.

Section 10.4 Procedure. The Parties acknowledge that the acts, events or conditions set forth in this Article are intended to be the only acts, events or conditions that may (upon satisfaction of the conditions specified herein) constitute a Force Majeure Event. Notice by the Party claiming such extension due to Force Majeure shall be sent to the other Party within 30 calendar days of the commencement of the cause. During any Force Majeure Event that affects part of the Redevelopment Project or performance under this Terminal Operating Agreement, Redeveloper and/or Port Manager shall continue to perform its obligations for the remainder of the Term of the Redevelopment Project or the remainder of the term of the Transaction Documents. The existence of a Force Majeure Event shall not prevent a Party from declaring the occurrence of an Event of Default Event by the Party relying on such Force Majeure Event provided that the event that is the basis of the Event of Default is not a result of the Force Majeure Event. Notwithstanding anything contained herein to the contrary, in the case of a Force Majeure Event described in this Article, the Party claiming such extension shall have an ongoing obligation to contest such lawsuit or other legal action, regulatory or administrative delay, to the extent applicable, and shall perform all acts necessary to terminate such Force Majeure Event.

ARTICLE 11

DISPUTE RESOLUTION

Any Dispute, controversy or claim of one Party against the other Party arising out of, relating to or in connection with this Terminal Operating Agreement, including any question regarding its existence, validity or termination, or regarding a breach thereof shall be resolved pursuant to the following procedures:

Section 11.1 Dispute Notice. Any Party wishing to initiate consideration of a Dispute hereunder shall give a Dispute Notice to the other Party of the existence of such Dispute and of the Party's desire to have the other Party consider the Dispute. Such notice shall set forth in reasonable detail the nature of the Dispute to be considered and shall be accompanied by a full disclosure of all factual evidence and a statement of the applicable legal basis of the Dispute; provided, however, that (1) failure to provide any such disclosure or to state any such legal basis shall not operate as a waiver of such legal basis or operate to preclude the presentation or introduction of such factual evidence in any subsequent arbitration or proceeding or otherwise constitute a waiver of any right which a Party may then or thereafter possess and (2) any settlement proposal made or provided shall be deemed to have been made or provided as part of a settlement discussion and may not be introduced in any arbitration or proceeding without the prior written consent of the Party making such disclosure and/or statement.

Section 11.2 Negotiating Team. Upon giving and receipt of a Dispute Notice, each Party shall appoint a Negotiating Team consisting of not less than one and not more than three representatives.

Section 11.3 Negotiation Meetings. The Negotiating Teams shall commence meeting within 30 days of receipt of the Dispute Notice and shall, during and up to such 30 day period, meet and negotiate in good faith for a period of up to 30 days to attempt to resolve the Dispute. During such negotiation period, a Party asserting a claim for damages or equitable relief or any defense thereto against any other Party shall disclose to the other Party all previously undisclosed factual evidence and legal basis of such claim or defense; provided, however, that (1) failure to provide any such disclosure or to state any such legal basis shall not operate as a waiver of such legal basis or operate to preclude the presentation or introduction of such factual evidence in any subsequent arbitration or proceeding or otherwise constitute a waiver of any right which a Party may then or thereafter possess and (2) any settlement proposal made or provided shall be deemed to have been made or provided as part of a settlement discussion and may not be introduced in any arbitration or legal proceeding without the prior written consent of the Party making such disclosure and/or statement.

Section 11.4 Final Dispute Notice. If the Negotiating Teams fail to resolve the Dispute within the negotiation period set forth in Section 11.3 above, any Party may notify the other Party of such failure by delivery of a Final Dispute Notice.

Section 11.5 Arbitration. Upon the giving or receipt of a Final Dispute Notice, any disagreement within the scope of this Article 11 shall be determined by final and binding arbitration pursuant to the then current Commercial Arbitration Rules of the American Arbitration Association ("AAA"), in existence at the time of the execution of this Terminal Operating Agreement. The arbitration shall be conducted in Newark, New Jersey, USA. The arbitration shall be before a panel of three arbitrators. One arbitrator shall be selected by each of the Parties and the third arbitrator shall be selected by the two arbitrators designated by the Parties. Each Party shall bear its own costs and expenses in preparing for and participating in the arbitration hearing except that each Party shall pay one-half of the compensation payable to the arbitrators, one-half of any fees to the AAA and one-half of any other costs related to the hearing proceedings. The arbitration award may provide for either damages or other

equitable relief, including, but not limited to, injunctive relief, and shall be final and binding on the Parties, and judgment on the award may be entered in any court having jurisdiction, including resort to the relief granted in the Federal Arbitration Act or Applicable Law.

Section 11.6 Commencement of Arbitration. It is explicitly agreed by each of the Parties hereto that no such arbitration shall be commenced except in conformity with this Article 11.

Section 11.7 Prevailing Party Award of Attorneys' Fees. In the event either Party brings an arbitration proceeding against the other arising out of the terms or provisions of this Terminal Operating Agreement and the other Party employs an attorney in connection therewith, the prevailing Party (whether such prevailing Party has been awarded a money judgment or not) may be awarded by the arbitrators and entitled to receive from the other Party full reimbursement of such prevailing Party's reasonable attorneys' and para-professionals' fees (excluding in-house counsel and para-professional fees) and costs incurred therewith (including costs to enforce arbitration), whether such fees are incurred by the prevailing Party before, during, or after any arbitration, trial or administrative proceeding or on appeal.

Section 11.8 No Abrogation of Right to Seek Emergent Equitable Relief. Nothing in this Article 11 shall be construed to deprive any Party, or to abrogate any Party's right, to seek emergent, equitable relief, if necessary, in any court of competent jurisdiction and in accordance with Applicable Law, as any such court may adjudge, order or decree under the pertinent circumstances.

ARTICLE 12

INDEMNIFICATION

Section 12.1 Indemnification. Each Party covenants and agrees, at its sole expense, to pay and to indemnify, protect, defend and hold the BLRA Indemnified Parties or the Port Manager Indemnified Parties, as the case may be, harmless from and against all liability, losses, damages, demands, costs, claims, actions, or expenses (including attorneys' fees, disbursements, and court costs) of every kind, character and nature arising out of, resulting from or in any way connected with this Terminal Operating Agreement, or the acquisition, condemnation, condition, use, possession, conduct, management, planning, design, construction, installation, financing, marketing, leasing or sale of the Redevelopment Area, including but not limited to, the death of any Person or any accident, injury, loss, and damage whatsoever caused to any Person or to the property of any Person that shall occur on the Redevelopment Area and that, with respect to any of the foregoing, are related to or resulting from any negligence or willful misconduct of Port Manager or the BLRA, as the case may be, its agents, servants, employees, or contractors.

Section 12.2 Environmental Indemnification. For purposes of this Article 12 and this Terminal Operating Agreement, the Environmental Indemnification set forth in Article 15 of the Redevelopment Agreement shall govern and be applicable to the Parties.

Section 12.3 Interest in the Redevelopment Area, Including Port. (1) With respect to any interest in the Redevelopment Area, inclusive of the Port, acquired or accessed by Port Manager, Port Manager shall defend, protect, indemnify and hold harmless the BLRA Indemnified Parties, from any claim, liability, injury and expense (including, without limiting the generality of the foregoing, the cost of any required investigation and remediation of any environmental conditions, and the cost of attorneys' fees) which may be sustained as the result of any environmental conditions on, in, under or migrating to or from the Redevelopment Area acquired or accessed by Port Manager, to the extent any such liability attaches to the BLRA Indemnified Parties as a direct result of activities performed by Redeveloper, Port Manager or its contractors pursuant to this Terminal Operating Agreement, including without limitation claims against the BLRA Indemnified Parties by any third party.

(2) Except as set forth in Article 15 of the Redevelopment Agreement, neither Party has granted any release, indemnity and/or other forbearance in favor of the other with respect to any claim, liability, injury, damage, cost or action and/or expense relating to the environmental condition of the Peninsula (specifically including, without limitation, any Parcel(s) to be developed by Redeveloper), and no provision of this Terminal Operating Agreement shall in any manner be argued and/or construed to constitute a waiver or limitation of any right or claim that either Party may assert against the other under Applicable Law respecting such matters.

Section 12.4 Notification of Indemnification. In any situation in which the BLRA Indemnified Parties or Port Manager Indemnified Parties, as the case may be, are entitled to receive and desire defense and/or indemnification pursuant to this Article 12, the BLRA Indemnified Parties or Port Manager Indemnified Parties, as the case may be, shall give Notice of such situation to the Indemnifying Party within 30 days after the Indemnified Party has actual knowledge of any claim as to which indemnity may be sought hereunder. Failure to provide timely Notice to the Indemnifying Party shall not relieve the Indemnifying Party of any liability to indemnify the BLRA Indemnified Parties or Port Manager Indemnified Parties, as the case may be, unless such failure to provide timely Notice materially impairs the Indemnifying Party's ability to defend. Upon receipt of such Notice, the Indemnifying Party shall resist and defend any action or proceeding on behalf of the BLRA Indemnified Parties or Port Manager Indemnified Parties, as the case may be, including the employment of counsel reasonably acceptable to

the BLRA Indemnified Parties or Port Manager Indemnified Parties, as the case may be, the payment of all expenses and the right to negotiate and consent to settlement. All of the BLRA Indemnified Parties or Port Manager Indemnified Parties, as the case may be shall have the right to employ separate counsel at the expense of the Indemnifying Party. The Indemnifying Party shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Indemnified Party or if there is a final judgment against the Indemnified Party in any such action, the Indemnifying Party shall indemnify and hold harmless the BLRA Indemnified Parties or Port Manager Indemnified Parties, as the case may be from and against any loss or liability by reason of such settlement or judgment for which the BLRA Indemnified Parties or Port Manager Indemnified Parties, as the case may be, are entitled to indemnification hereunder.

Section 12.5 Survival of Indemnity. The provisions of this Article 12 shall survive the termination of this Terminal Operating Agreement due to an Event of Default.

Section 12.6 Limitation of Damages. Notwithstanding anything else provided herein, in the event an Indemnified Party seeks an indemnity under this Article 12 from the Indemnifying Party, the only damages Indemnified Party may collect from the Indemnifying Party are the actual non-consequential, direct, damages suffered by the Indemnified Party.

ARTICLE 13

MISCELLANEOUS

Section 13.1 Provisions Not Merged. None of the provisions of this Terminal Operating Agreement are intended to or shall be merged by reason of any prior agreement, lease or other contract between the BLRA and Port Manager.

Section 13.2 Non-Liability of Officials, Employees and Agents of the BLRA or the City. No member, official, employee or agent of the BLRA, its Affiliates or the City shall be personally liable to Port Manager, or any successor in interest, in the event of any default or breach by the BLRA, or for any amount which may become due to Port Manager or its successor, or on any obligation under the terms of this Terminal Operating Agreement.

Section 13.3 Non-Liability of Officials and Employees of Port Manager. No member, officer, shareholder, director, partner or employee of Port Manager shall be personally liable to the BLRA, or any successor in interest, in the event of any default or breach by Port Manager or for any amount which may become due to the BLRA, or its successor, on any obligation under the terms of this Terminal Operating Agreement.

Section 13.4 No Brokerage Commissions. The BLRA and Port Manager each represent one to the other that no broker initiated, assisted, negotiated or consummated this Terminal Operating Agreement as broker, agent, or otherwise acting on behalf of either the BLRA or Port Manager, and the BLRA and Port Manager shall indemnify each other with respect to any claims made by any Person, firm or organization claiming to have been so employed by the Indemnified Party.

Section 13.5 No Partnership; Relationship of the Parties. Neither party shall be deemed, in any way or for any purpose, to have become, by the execution of this Terminal Operating Agreement or any action taken under this Terminal Operating Agreement, a partner or agent of the other party in its business or otherwise, or a member of any joint enterprise nor to have any authority to bind the other party.

Section 13.6 Enforcement by the BLRA. It is intended and agreed that the BLRA and its successors and assigns shall be deemed beneficiaries of this Terminal Operating Agreement and covenants set forth herein, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit this Terminal Operating Agreement and the covenants set forth herein have been provided. This Terminal Operating Agreement and the covenants set forth herein shall run in favor of the BLRA for the entire period during which this Terminal Operating Agreement and covenants set forth herein shall be in force and effect. The BLRA shall have the right, in the event of any breach of this Terminal Operating Agreement or the covenants set forth herein, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which they and their successors and assigns may be entitled, provided, however, that at all times this Section shall be subject to the provisions of Articles 9 and 11 respectively.

Section 13.7 Enforcement by Port Manager. It is intended and agreed that Port Manager and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Terminal Operating Agreement. Such agreements and covenants shall run in favor of Port Manager for the entire period during which such agreements and covenants shall be in force and effect. Port Manager shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to

enforce the curing of such breach of agreement or covenant, to which they and their successors and assigns may be entitled, provided, however, that at all times this Section shall be subject to the provisions of Articles 9 and 11 respectively.

Section 13.8 Notices. Any notice, demand, election, payment, or other communication, which the BLRA or Port Manager shall desire or be required to give pursuant to the provisions of this Terminal Operating Agreement (each a "Notice"), shall be sent by registered or certified mail, return receipt requested, and the giving of such Notice shall be deemed complete on the third (3rd) business day after the same is deposited in a United States Post Office with postage charges prepaid, enclosed in a securely sealed envelope addressed to the Person intended to be given such Notice at the respective addresses set forth below or to such other address as such Party may theretofore have designated by Notice pursuant to this Section 13.8:

BLRA: Bayonne Local Redevelopment Authority
51 Port Terminal Boulevard
Suite 21
Bayonne, New Jersey 07002
Attention: Nancy A. Kist, BLRA

With copy to: John F. Coffey, II, Esq.
Bayonne Municipal Building
630 Avenue C
Bayonne, NJ 07002-3898

Joseph P. Baumann, Jr., Esq.
McManimon & Scotland, L.L.C.
One Riverfront Plaza, 4th Floor
Newark, NJ 07102

Port Manager: Cape Liberty Cruise Port, L.L.C., c/o
Royal Caribbean Cruises, Ltd.
1050 Caribbean Way
Miami, Florida 33132
Attention: Vice President, New
Business Development

With a copy to: Royal Caribbean Cruises, Ltd.
1050 Caribbean Way
Miami, Florida 33132
Attention: Vice President and
General Counsel

All Notices to be given under this Terminal Operating Agreement shall be given in writing in conformance with this Section 13.8 and, unless a certain number of days is specified, within a reasonable time.

Section 13.9 Waivers; Amendments; Requirement of a Writing. All waivers of the provisions of this Terminal Operating Agreement must be in writing and signed by the appropriate representatives of the BLRA and Port Manager, and all amendments hereto must be in writing and signed by the appropriate representatives of the BLRA and Port Manager. The waiver by either Party of a default or of a breach of any provision of this Terminal Operating Agreement by the other Party shall not

operate or be construed to operate as a waiver of any subsequent default or breach. The failure of the BLRA or Port Manager to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Terminal Operating Agreement or to exercise any election contained in this Terminal Operating Agreement shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. In the event that any contractual provisions that are required by Applicable Law have been omitted, then the BLRA and Port Manager agree that this Terminal Operating Agreement shall be deemed amended to incorporate all such clauses by reference and such requirements shall become a part of this Terminal Operating Agreement. If such incorporation occurs and results in a change in the obligations or benefits of one of the Parties, the Parties agree to act in good faith to mitigate such changes in position.

Section 13.10 Conflict of Interest. No member, official or employee of the BLRA shall have any direct or indirect interest in this Terminal Operating Agreement, nor participate in any decision relating to this Terminal Operating Agreement which is prohibited by Applicable Law.

Section 13.11 No Consideration for Agreement. Port Manager warrants it has not paid or given, and will not pay or give, any third Person any money or other consideration for obtaining this Terminal Operating Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Port Manager further warrants it has not paid or incurred any obligation to pay any officer or official of the BLRA or City, any money or other consideration for or in connection with this Terminal Operating Agreement.

Section 13.12 Approvals by the BLRA and Port Manager. Wherever this Terminal Operating Agreement requires the approval of the BLRA or Port Manager, or any officers, agents or employees of either the BLRA or Port Manager, such approval or disapproval shall be given within the time set forth in this Terminal Operating Agreement, or, if no time is given, within a reasonable time. All approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld or delayed unless specifically stated otherwise.

Section 13.13 No Third Party Beneficiaries. The provisions of this Terminal Operating Agreement are for the exclusive benefit of the Parties and not for the benefit of any third Person, nor shall this Terminal Operating Agreement be deemed to have conferred any rights, express or implied, upon any third Person, other than the Redeveloper.

Section 13.14 Consents. Unless otherwise specifically provided herein, no consent or approval by the BLRA or Port Manager permitted or required under the terms of this Terminal Operating Agreement shall be valid or be of any force whatsoever unless the same shall be in writing and signed by an authorized representative of the Party by or on whose behalf such consent is given.

Section 13.15 Captions. The captions of the Articles, Sections, and Subsections, the Table of Contents, and Schedule of Exhibits of this Terminal Operating Agreement are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of the Articles, Sections, Exhibits or other provisions hereof.

Section 13.16 Governing Law. This Terminal Operating Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to choice of laws principles.

Section 13.17 Severability. If any Article, Section, Subsection, term or provision of this Terminal Operating Agreement or the application thereof to any Party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Terminal Operating Agreement or the

application of same to Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining Article, Section, Subsection, term or provision of this Terminal Operating Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law, provided that no such severance shall serve to deprive any Party of the enjoyment of its substantial benefits under this Terminal Operating Agreement.

Section 13.18 Assignment by Port Manager. Port Manager may, with the prior written consent of the BLRA (which shall be given in the BLRA's sole discretion) assign this Terminal Operating Agreement, or any portion thereof, to any Person. Port Manager may, without the prior written consent of the BLRA, assign this Terminal Operating Agreement, or any portion thereof, to any Affiliate, provided that Port Manager, remains primarily obligated hereunder and guarantees such Affiliate's obligations hereunder.

Section 13.19 Successors and Assigns. This Terminal Operating Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto and their heirs, executors and administrators.

Section 13.20 Exhibits. All Exhibits referred to herein shall be considered a part of this Terminal Operating Agreement with the same force and effect as if such Exhibits had been included fully within the text of this Terminal Operating Agreement.

Section 13.21 Review by Counsel; Construction and Interpretation. The Parties acknowledge that this Terminal Operating Agreement has been extensively negotiated with the assistance of competent counsel for each Party and agree that no provision of this Terminal Operating Agreement shall be construed in favor of or against any Party by virtue of the fact that such Party or its counsel have provided an initial or any subsequent draft of this Terminal Operating Agreement or of any portion of this Terminal Operating Agreement. The Agreement shall be construed and enforced in accordance with the laws of the State and no presumption as to authorship shall be presumed.

Section 13.22 Recording of Agreement. Upon written request of any Party, the Parties agree to execute an agreement, declaration or other document suitable for recording in the public records, setting forth the names of the Parties and the term thereof, identifying the Improvements and including such other clauses therein as either Party may reasonably request.

Section 13.23 Expenses. Each Party hereto shall bear its own expenses, including legal fees and costs, in connection with the preparation and negotiation of this Terminal Operating Agreement and any additional documentation required to formalize the arrangement contemplated hereby, unless specifically provided elsewhere in the Transaction Documents to the contrary.

Section 13.24 Counting of Days; Saturday, Sunday or Holiday. If the final date of any period provided in this Terminal Operating Agreement for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day.

Section 13.25 Counterparts. This Terminal Operating Agreement may be executed in two or more counterparts (including by means of telecopied signature pages), each of which shall be deemed an original, but all of which together shall constitute one and the same fully executed Terminal Operating Agreement. Counterpart signatures need not be on the same page and shall be deemed effective upon receipt.

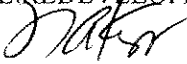
Section 13.26 Entire Agreement. The Transaction Documents constitute the entire agreement between the Parties and supersede all prior oral and written agreements between the Parties with respect to the subject matter thereof. The Transaction Documents supersede any prior understanding or written or oral agreements (express or implied) between the Parties.

[Remainder of Page Intentionally Left Blank]

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

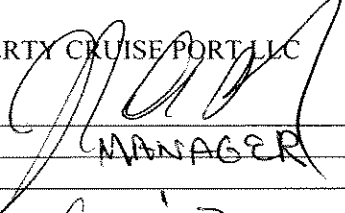
BLRA:


BAYONNE LOCAL REDEVELOPMENT BLRA

By: 
Nancy A. Kist,
Executive Director

PORT MANAGER:

CAPE LIBERTY CRUISE PORT LLC

By: 
Name: MANAGER
Title: _____


MANAGER

Approved: 