

**PORT OF BREMERTON**  
**BOARD OF COMMISSIONERS**  
**REGULAR BUSINESS MEETING**

**A G E N D A**

April 14, 2026  
10:00 AM

Bill Mahan Conference Room  
Port Administration Offices  
Bremerton Nat'l Airport Terminal Bldg  
8850 SW State Hwy 3, Bremerton

The Port of Bremerton Board of Commissioners regular business meetings are open to the public and are conducted using a hybrid format. The public is invited to view and/or participate in the hybrid meeting by attending in person or through one of the following options:

- To stream online only (via BKAT feed, with no interaction possible):  
<https://bremerton.vod.castus.tv/vod/?live=ch1&nav=live>
- To join the online Zoom meeting: <https://us02web.zoom.us/j/85467322251>
- For audio only; dial 1.253.215.8782; Meeting ID: 854 6732 2251

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**Call to Order**

**Pledge of Allegiance**

**Approval of Agenda**

**Consent Items**

All matters listed under Consent Items have been distributed to each member of the Commission for reading and study, are considered to be routine, and will be enacted by one motion of the Commission with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Items and placed under Action Items by request.

- A. Minutes of the regular business meeting of March 10, 2026.
- B. Payment of checks #903253 through #90254 and #903255 through #903260 and #87414 through #87423 and #E03172 through #E03179 and #903261 through #903264 and #903265 through #903272 and #903273 and #87424 through #87440 and #E03180 through #E03197 and #903274 through #903279 and #903280 and #903281 and #903282 through #903285 and #903286 through #903289 and #87441 through #87463 and #E03198 through #E03218 and #903290 through #903293 and #903294 through #903295 and #903296 through #903297 and #903298 through #903301 and #903302 through #903316 and #87464 through #87480 and #E03219 through #E03237 and #E03238 from the General Fund for \$773,096.66. VOID check #E03206.
- C. Acceptance and Ratification of Release Received from Travyn Schiffner

**Information Items**

1. Economic Impact Study Update – Madalina Calen, Project Manager, Berk Consulting

**Public Comment**

*Open to the public for comment. Speakers are asked to keep their comments to less than 3 minutes. Please feel free to submit further comments in writing to the Clerk of the Board (gingerw@portofbremerton.org)*

**Action Items**

1. Bid Authorization for Hangars 5 & 6 and Airport Maintenance Shop Roof Overlays
2. Dock Usage Agreement with American Cruise Lines, Inc.

**Staff Reports**

**Commission Reports / New Business**

**Executive Session** *(if necessary)*

**Adjournment**

*Regular business and other meetings that may be attended by members of the Board*

<u><i>Date</i></u>	<u><i>Time</i></u>	<u><i>Meeting</i></u>
<i>04/14</i>	<i>10:00 am</i>	<i>*Commission Regular Business Meeting - Hybrid</i>
<i>04/23</i>	<i>10:00 am</i>	<i>Puget Sound Regional Council (PSRC) Executive Board</i>
<i>04/27</i>	<i>6:30 pm</i>	<i>Kitsap All-Ports – Port of Brownsville</i>
<i>04/28</i>	<i>10:00 am</i>	<i>*Commission Regular Business Meeting – Hybrid</i>

*Meetings are subject to change or cancellation*

*\*Denotes events in which two (2) or more Commissioners may attend*

**PORT OF BREMERTON**  
**BOARD OF COMMISSIONERS**  
**REGULAR BUSINESS MEETING**

**M I N U T E S**

March 10, 2026  
10:00 AM

Bill Mahan Conference Room  
Port Administration Offices  
Bremerton Nat'l Airport Terminal Bldg  
8850 SW State Hwy 3, Bremerton  
Remote Option via Zoom

**Commissioners and Staff Present**

Commissioners

Cary Bozeman  
Axel Strakeljahn  
Gary Anderson

Staff Members

Jim Rothlin  
Arne Bakker  
Aaron Schielke  
Tim Petrick  
Cole Barnes  
Kathy Garcia  
Erica Filler  
Ginger Waye  
Stephanie Frame  
Anne Montgomery, Atty

**Call to Order**

President Bozeman called the meeting to order at 10:00 a.m. and led the Pledge of Allegiance.

**Approval of Agenda**

**It was moved by STRAKELJAHN, seconded by BOZEMAN to:**

Approve the Agenda as presented.

**MOTION CARRIES, 3-0**

**Consent Items**

- A. Minutes of the regular business meeting and executive session of February 24, 2026.
- B. Payment of checks #903238 and #903239 and #903240 and #903241 through #903244 and #903245 through #903248 and #903249 and #903250 through #903252 and #87388 through #87413 and #E03152 through #E03171 from the General Fund for \$231,759.12.

**It was moved by BOZEMAN, seconded by ANDERSON to:**

Approve the Consent Items as presented.

**MOTION CARRIES, 3-0**

## Information Items

1. Downtown Bremerton Association (DBA) Presentation – Jessica Combs, Executive Director

Jessica introduced Emily Ferrer, DBA Communications & Marketing Director and Dina Liberatore, Events Coordinator & Website Manager who joined in the presentation.

The discussion focused on the Main Street Tax Credit Incentive Program (MSTCIP), which allows organizations to receive a B&O or Public Utility tax credit for private contributions to designated Washington Main Street Communities. DBA feels this creates a unique opportunity for the Port to support DBA by redirecting state B&O taxes directly into the downtown district. To qualify for the credit, an investment must be made within the current quarter.

Participating in the program supports DBA's broader revitalization efforts. Once funding is secured, the DBA plans to launch a grant program for local businesses to assist with beautification projects.

Additional updates included:

- Annual events and the new Summer in the Square series (Dina).
- Details on the FIFA Fan Zone schedule and experience which LTAC funds were received for. (Jessica).
- Highlights of DBA programming and community engagement initiatives (Dina).
- Reminder that the DBA is the contracted manager for Quincy Square, handling all rental and event activity.
- Overview of marketing efforts (Emily).
- Ongoing work with Mobility for All to improve transportation connections between ferry terminals, the boardwalk, the marina, and Quincy Square—including a shuttle planned for the six-week fan zone, with hopes to continue it afterward.

The Board's questions and comments were addressed during the meeting. CEO Rothlin inquired about the DBA's connection to the waterfront. It was clarified that the organization is approaching the waterfront from a different angle, as other groups are already actively engaged in that area. The primary focus is on maintaining the cleanliness of the waterfront and ensuring accessible routes to Quincy Square.

The group also discussed destination marketing for Bremerton, noting that the waterfront would be included in any such efforts.

A brief discussion on event security followed. Jessica will provide additional information at a later time regarding the security provider DBA currently uses.

2. 2025 Year-End Financial Review – Aaron Schielke, Chief Financial Officer

CFO Schielke presented the 2025 financial review summarizing results of operations:

- Revenues and expenses for the Port's three core businesses: Airport, Industrial Park, and Marinas

- General and Administrative (G&A) expenses.
- Non-operating revenues.
- Cash and investment reserves analysis.
- Statutory debt limitation/capacity.

Questions and comments were addressed throughout the presentation.

3. 2026 Seattle Boat Show Review – Kathy Garcia, Marina Operations Manager

Kathy began by expressing appreciation to the marina team, administrative staff, and Commissioner Anderson for their support and efforts leading up to and during the Seattle Boat Show.

She continued with discussion on the following:

- Fun facts about the event, including the number of exhibitors, dealers, and overall attendance.
- The added excitement surrounding the Seahawks’ Super Bowl appearance and how it contributed to the event atmosphere.
- An overview of the various features and attractions included within the show.
- Details about the Port’s booth setup, key features, and promotional items used to engage visitors.
- The benefits of the Port’s participation, emphasizing visibility, community engagement, and industry presence.
- This year’s involvement being highly successful and the positive outcomes resulting from the Port’s presence at the show.
- Planning for the 2027 Seattle Boat Show has already begun, with discussions underway on opportunities for improvements and enhancements.

Questions and comments were addressed throughout the presentation.

4. 2026 Northwest Aviation Conference (NWAC) Review – Cole Barnes, Airport Manager

Cole mentioned he attended the boat show and shared a lighthearted note that he attempted to win a trip to Mexico; however, Kathy ended up winning the prize.

He detailed the following related to NWAC:

- Participation numbers and event details from the show were provided.
- Photos of the booth were shared; attendees complimented the booth again this year. Giveaways were also distributed.
- Information presented to booth visitors, including:
  - Airport Feasibility Study
  - Amelia’s Hangar Restaurant
  - 2026 Airshow scheduled for July 11–12

- Environmental Assessment
- South Hangar Project Phase II (design phase)
- The participating team members were discussed: Jenifer, Kristie, and Jessica, with CEO Rothlin joining for a few hours.

Questions and comments were addressed throughout the presentation.

**Public Comment** - None

### **Action Items**

1. Resolution 2026-02 Supporting a Washington State Department of Transportation (WSDOT) Aviation Division Airport Aid Application for a Runway and Taxiway Reseal (design) Project  
*Presented by Cole Barnes, Airport Manager*

Following presentation and after questions and comments were addressed:

**It was moved by BOZEMAN, seconded by STRAKELJAHN to:**

Approve Resolution 2026-02 supporting a Washington State Department of Transportation (WSDOT) Aviation Division Airport Aid Application for design of a Runway and Taxiway Reseal Project

**MOTION CARRIES, 3-0**

### **Staff Reports**

*Jim Rothlin, Chief Executive Officer:*

- Cole and Kathy were thanked for their leadership in coordinating the Port's participation in the Aviation Conference and Boat Show.
- Employee Milestones:
  - Lee Howell, Marina Port Attendant, reached his 4<sup>th</sup> anniversary in February.
  - Kristina Hedrick, Accounts Payable Specialist, celebrates her 11<sup>th</sup> anniversary this month.
  - Jessica Laur, Airport/Industrial Port Maintenance I, will mark her 1<sup>st</sup> anniversary with the Port at the end of March.
- The Director of Facilities search is ongoing with second-round interviews being held this week.
- Cole provided an educational airport tour for Fairview Middle School students. These outreach efforts continue to strengthen community connections and support workforce development.
- Port staff are partnering with Collins Historical Aircraft Foundation on the upcoming Airshow.

- Marinas are conducting facility upkeep and maintenance projects in preparation for FIFA-related activities.
- Current advertising initiatives are being led by Erica Filler, Marketing & Communication Manager.
- Contract Administrator Ellen Ataie successfully secured a \$25K Department of Commerce electrification planning grant to support design and engineering of future vehicle charging stations.
- Provided a status update for the Bay Street properties project.

### **Commission Reports / New Business**

#### *Commissioner Anderson*

- Toured Port Orchard Marina properties with CEO Rothlin, Director of Marinas Tim Petrick, and Port Maintenance Lead Brian Robinson to look at what needs refreshing.

#### *Commissioner Strakeljahn*

- Reported on recent Puget Sound Regional Council (PSRC) Executive Board and Economic Development District Board meetings.

#### *Commissioner Bozeman*

- Reported on the Kitsap Regional Coordinating Council (KRCC) Executive Board meeting.

### **Executive Session - None**

### **Adjournment**

There being no further business before the Board, the meeting was adjourned at 12:15 p.m.

Submitted,

Approved,

Jim Rothlin  
Chief Executive Officer  
April 9, 2026

Gary Anderson  
Commission Secretary  
April 14, 2026

**PORT OF BREMERTON**  
**AGENDA SUMMARY**

Agenda Item No: Action Item 1  
Subject: Bid Authorization for Maintenance Building, Hangars 5&6 Roof Overlay  
Exhibits: None  
Prepared By: Cole Barnes, Airport Manager  
Meeting Date: April 14, 2026

Summary:

The roofs on the port-owned hangars and maintenance building have reached the end of their useful life and now require replacement to maintain safe and reliable operations. Deterioration of the existing roofing systems has increased the risk of leaks, structural damage, and operational disruptions.

This project will include the installation of new roof overlay systems on Hangars 5 and 6, as well as the maintenance building, to extend the service life of these facilities and improve weather protection. In addition, new gutter systems will be installed on each structure to ensure proper drainage and prevent water-related damage to the buildings and surrounding areas.

The proposed improvements are intended to enhance the longevity, functionality, and resilience of these port-owned assets while minimizing future maintenance needs. The project will be completed within a defined construction window following procurement of materials, with efforts made to limit impacts to ongoing airport operations.

Fiscal Impact:

**Approved 2026 Capital Budget**

Airport Hangar Roofs	\$400,000
Maintenance Roof Overlay	\$200,000

Strategic Purpose:

This action conforms with the Port's strategic plan Goal 6, which is to develop and fund a 20-year asset replacement/major maintenance schedule.

Recommendation:

Authorize staff to proceed with the bid call for the Maintenance Building and Hangars 5&6 Roof Overlay Project in accordance with approved contracting guidelines.

Motion for Consideration:

**Move to authorize Port staff to proceed with the bid call for the Maintenance Building and Hangars 5&6 Roof Overlay Project in accordance with approved contracting guidelines.**

# **PORT OF BREMERTON**

## **AGENDA SUMMARY**

Agenda Item No: Action Item 2  
Subject: Dock Usage Agreement with American Cruise Lines (ACL)  
Exhibits: ACL Agreement  
Prepared By: Tim Petrick, Director of Marinas  
Meeting Date: April 14, 2026

### Summary:

Following the COVID-19 pandemic, American Cruise Lines (ACL) initiated service in Bremerton after a labor dispute in another port created an opportunity for the Port to accommodate vessels on short notice. Port staff quickly coordinated moorage, passenger access, and operational logistics, demonstrating the Port's flexibility and capability to support cruise operations with minimal lead time.

What began as a short-term solution has since evolved into a strong and ongoing partnership. Over the past several seasons, calls have steadily increased as Bremerton has proven to be a reliable and attractive port of call for both the cruise line and its passengers. The program has now grown to more than 40 vessel visits per season, with continued interest in expansion.

The economic benefits to the community have been significant and continue to grow. With more than 3,000 anticipated passengers annually, each visit brings spending at local restaurants, shops, transportation services, and tourism-related businesses. In addition to direct visitor spending, the regular presence of cruise vessels supports local jobs, increases visibility for the waterfront, and strengthens Bremerton's position as a regional destination.

This sustained growth reflects both the success of the initial partnership and the Port's ability to leverage opportunity into long-term economic activity, with ACL expressing ongoing interest in maintaining and expanding their presence in Bremerton.

Both parties agree that a long-term agreement which partners the responsibility of maintenance to the breakwater mooring area would be accountable and equitable for both the Port and ACL.

### Fiscal Impact:

The agreement with ACL provides a base moorage revenue of \$52,500 annually for up to 40 vessel calls, with additional revenue generated under the Port's tariff for any visits beyond that threshold. The structure is net to the Port, with ACL responsible for utilities,

maintenance, insurance, and other operational costs, which keeps our expenses and risk low. With current activity already exceeding 40 visits per year, this creates a reliable baseline revenue stream with added upside as the program continues to grow.

Strategic Purpose:

Strategy 1.b. Understand and monitor the Port's impact on the local economy.

Strategy 1.c. Proactively participate in and fund regional economic development efforts and initiatives to expand the local job base.

Recommendation:

Staff recommends the Commission authorize the CEO to execute the agreement with American Cruise Lines, as it formalizes a growing partnership, provides stable baseline revenue with additional upside, and supports continued economic activity on the Bremerton waterfront.

Motion for Consideration:

**Move to approve the Dock Usage Agreement with American Cruise Lines and authorize the CEO to execute the agreement.**

**DOCK USAGE AGREEMENT**

By and Between

**PORT OF BREMERTON**

(Port)

And

**AMERICAN CRUISE LINES, INC.**

(Dock User)

**Effective date:** \_\_\_\_\_, 2026

## TABLE OF CONTENTS

1.	PURPOSE .....	3
2.	TERM .....	3
3.	CONSTRUCTION, MAINTENANCE AND OPERATION OF THE DOCK .....	4
4.	CAPITAL CONTRIBUTION .....	5
5.	MOORAGE FEES.....	5
6.	PAYMENTS OTHER THAN MOORAGE FEES .....	7
7.	POSSESSION.....	7
8.	UTILITIES .....	8
9.	ENVIRONMENTALPROVISIONS .....	8
10.	GENERAL INDEMNITY .....	9
11.	MAINTENANCE AND CONDITIONS OF PREMISES AND DOCK .....	10
12.	IMPROVEMENTS .....	10
13.	PORT'S RIGHT OF ENTRY .....	11
14.	LIENS.....	11
15.	HAZARDS .....	12
16.	COMPLIANCE WITH LAWS AND REGULATIONS .....	12
17.	FIXTURES AND EQUIPMENT .....	13
18.	INSURANCE .....	14
19.	DAMAGE OR DESTRUCTION.....	16
20.	CONDEMNATION.....	17
21.	DEFAULT.....	18
22.	PORT'SESTATE .....	19
23.	SUCCESSORS AND ASSIGNS.....	20
24.	CONSTRUCTION OVER UTILITIES.....	20
25.	TERMINATION OF AGREEMENT/MONTH TO MONTH TENANCY .....	21

26.	<b>COSTS AND ATTORNEY FEES</b> .....	21
27.	<b>NOISE CONTROL</b> .....	21
28.	<b>MUTUAL COOPERATION</b> .....	21
29.	<b>HEADINGS</b> .....	22
30.	<b>WAIVERS</b> .....	22
31.	<b>NOTICES</b> .....	22
33.	<b>FORCE MAJEURE</b> .....	22
34.	<b>BROK.ERAGE</b> .....	23
35.	<b>SEVERABILITY</b> .....	23
36.	<b>QUIET ENJOYMENT</b> .....	23
37.	<b>BOND OR SECURITY</b> .....	23
38.	<b>EXHIBITS</b> .....	23
39.	<b>CHOICE OF LAWS/INTERPRETATION</b> .....	24
40.	<b>ENTIRE AGREEMENT</b> .....	24

**EXHIBIT**

**Exhibit A: Depiction of Premises**

## DOCK USAGE AGREEMENT

THIS DOCK USAGE AGREEMENT ("Agreement") is effective as of , 2026 ("Effective Date") by and between the PORT OF BREMERTON, a municipal corporation organized under the laws of the State of Washington, hereinafter referred to as "Port" and AMERICAN CRUISE LINES, INC., a Delaware corporation, qualified to do business in the State of Washington, hereinafter referred to as "Dock User."

In consideration of the moorage fees to be paid, and the covenants and agreements herein contained to be performed, by Dock User, Port hereby grants to Dock User, and Dock User hereby accepts from Port, a non-exclusive license to use that certain 350' portion (the "**Premises**") of the larger Bremerton Marina Outside North Breakwater ( the "**Dock**"), which Premises are depicted on Exhibit A hereto and located along Sinclair Inlet, a waterway with Puget Sound, located within the County of Kitsap, State of Washington, and ingress and egress thereto, commonly known as 160 Washington Beach Avenue, Bremerton, Washington 98337, and Dock User does hereby accept such license, to have and to hold for the Dock Usage Term. The Premises are further described and depicted in **Exhibit A** attached to this Agreement.

### SUMMARY OF DOCK USE PROVISIONS

The following Summary of Dock Use Provisions are hereby incorporated herewith as part of this Agreement:

A. Effective Date:	_____, 2026
B. Licensor:	PORT of BREMERTON, a Washington municipal corporation
C. Dock User	American Cruise Lines, a Delaware corporation
D. Premises:	The Premises shall mean that certain 350' portion of the Dock, as depicted on Exhibit "A" attached hereto and incorporated herein by reference
E. Permitted Use:	Dock User shall use the Premises for the purposes of mooring vessels and loading and off- loading of passengers and vessel operations, and for no other purpose without the Port's prior written consent.
F. Term	Ten (10) years commencing on the Commencement Date.
G. Options to Extend Term	Three (3) consecutive five (5) year Extension Options( each referred to as an "Extension Term").
H. Annual Moorage Fees (not including LET)	\$4,375 per month (\$ 52,500 annual) for the first 40 vessels owned and operated by Dock User mooring at the Premises in any given License Year, subject to adjustment as set forth herein.

I. Excess Moorage Fees – Additional Dock User Vessel’s	Following the first 40 vessels owned and operated by Dock User mooring at the Premises in any given License Year, moorage fees shall be paid pursuant to the Port’s then-current Tariff on a monthly basis.
J. Intentionally Omitted	
K. Monthly Utilities:	The Premises shall have access to potable water. Dock User shall pay monthly utility bills for water. Dock User shall not be permitted to offload or dispose of garbage or wastewater at the Premises. The Port shall not provide shore power for Dock User’s vessels.
L. Access:	Port shall provide paved or concrete or similar walkways suitable for pedestrian and golf cart access between the nearest public street and the Dock. Port shall provide storage location within reasonable distance of the Dock for two golf carts to be stored. Dock User shall have 24/7 access to golf carts.
M. Moorage Fees Due Date:	Moorage Fees shall commence on the “Commencement Date”. Moorage Fees shall be due thereafter on the first day of each month.
N. Port’s Address Information for Notices and Moorage Fees Payments:	Port of Bremerton 8850 SW Highway 3 Bremerton, WA 98312
O. Dock User’s Address Information for Notices:	American Cruise Lines 741 Boston Post Road Suite 200 Guilford, CT 06437
P. Exhibits:	Exhibit A: Depiction of the Premises

## 1. PURPOSE

1.1. Use. During the Term of this Agreement, Port grants to Dock User a non-exclusive license over and across the Dock and the Premises as set forth in this Agreement. Dock User shall have the right to use the Premises for the purpose of mooring and docking for loading and off-loading of passengers and vessel operations (the "Authorized Use"). Notwithstanding the foregoing, the Dock User shall not moor multiple vessels at the same time or moor any vessels larger than the American Constitution at the Premises unless authorized by the Port pursuant to Article 4, below. Dock User shall not use the Premises for any purpose other than the Authorized Use, without first obtaining the Port's prior written consent which consent can deny in its sole and absolute discretion. Dock User shall have the right of preferential berthing at the Premises. "Preferential berthing" is agreed to mean that any of Dock User's vessels laden with passengers destined for, or to be laden with passengers originating from, the Premises, shall be berthed at the Premises immediately upon arrival at the Dock subject to the terms and conditions of this Agreement.

1.1.1. Use by the Port and Public. The Port and the public at-large shall have a right to enter and use the Premises for vessel berthing so long as the Port and public's use does not unreasonably interfere with the Dock User's use of the Premises. The Dock adjacent to the Premises shall be open to pedestrian uses by the public at all times, and nothing herein permits Dock User to restrict pedestrian access to the Dock adjacent to the Premises except as otherwise required by United States Coast Guard Regulations. The Port shall control or limit public access as it sees fit, so long as the Dock remains a "Public Access Facility" under Homeland Security Requirements.

1.2. Port Management Agreement. The license and rights granted to Dock User under this Agreement are subject to the terms and conditions of the Port Management Agreement, a copy of which has been provided to Dock User. Dock User shall comply with the provisions of the Port Management Agreement in connection with its operations in, on, or about the Dock or the Premises during the Term. The Port represents and warrants to the Dock User that it has sufficient rights under the Port Management Agreement to grant to Dock User the rights contemplated by this Dock Usage Agreement.

1.3. Third Party Interests. This Agreement is also subject to all valid interests of third parties noted in the records of Kitsap County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington, in each case as they exist as of the date of this Dock Usage Agreement; matters that would be disclosed by an accurate survey or inspection of the Dock as of the date of this Dock Usage Agreement; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.

## 2. TERM

2.1. Commencement Date. The Agreement shall commence on \_\_\_\_\_, 2026 (the "Commencement Date").

2.2. Initial Term. The initial term of the Agreement will commence on the Commencement Date and, unless extended pursuant to Article 2.3 (Option to Extend) below, shall expire on the last

day of the tenth (10<sup>th</sup>) License Year following the Commencement Date, unless sooner terminated pursuant to the provisions of this Agreement. A license year ("License Year") will commence on the annual anniversary of the Commencement Date and end the day before the succeeding anniversary.

2.3. Option to Extend. At the end of the ten-year Initial Term of this Agreement, Dock User shall have three (3) Extension Options. Each Extension Option shall extend the term of this Agreement for an additional five (5) year term (each of the three shall be referred to as an "Extension Term").

2.3.1. Exercise of Option. In the event Dock User wishes to exercise its option to extend the term of this Agreement, Dock User shall notify Port in writing no later than one hundred eighty (180) days before the expiration of the Initial Term or the Extension Term of this Agreement then in effect. Failure of Dock User to exercise its option for any Extension Term in a timely manner, time being of the essence, shall terminate such option and any remaining Extension Options. Dock User shall not be entitled to renew this Agreement unless the Agreement is in good standing at the time of renewal and the Dock User is not in default under the terms of this Agreement or any other lease or agreement with the Port.

2.3.2. Moorage Fees During Extension Term. Upon Dock User timely exercising its option to extend the term of this Agreement, the term of this Agreement shall be extended on the same terms and conditions of this Agreement, except that at the beginning of such Extension the Base Moorage Fees shall be adjusted in accordance with Article 5.

### **3. CONSTRUCTION, MAINTENANCE AND OPERATION OF THE DOCK**

3.1. Port's Annual Inspection and Repair. The Port shall perform an annual maintenance inspection of the Dock, including the Premises, and provide a copy of the same to the Dock User. With the exception of the Premises, the Port shall repair and maintain the Dock in a condition reasonably suited to serve its intended purposes, but in all cases in at least as good of condition as existed on the Commencement Date, reasonable wear and tear excepted. Except for damages caused by the Port or its agents, the Port shall have no obligation to maintain, improve, or alter the Premises.

3.2. Port's Termination Right. Notwithstanding any provision to the contrary herein, Port shall have the right to terminate the Agreement with three hundred sixty-five (365) days' notice.

3.3. Maintenance and Dredging.

3.3.1. The Dock User shall maintain or cause to be maintained, at its sole cost and expense, the Premises in a condition reasonably suitable to serve its intended purpose and as reasonably necessary for the Authorized Use of the Premises, but in all cases in at least as good of condition as existed on the Commencement Date, reasonable wear and tear excepted. Notwithstanding the foregoing, the Dock User shall not be responsible for repairing damages caused to the Premises by the Port or its agents.

3.3.2. The Dock User shall be responsible, at its sole cost and expense, for any necessary dredging in the Sinclair Inlet channel to maintain access to the Premises by Dock User's vessels,

in its sole discretion. Dock User shall not be compelled to dredge and shall choose to do so in its sole discretion. If the Port desires to ensure that a deeper draft vessel can access the Dock, the Port shall be responsible, at its sole cost and expense, for any additional dredging in the Sinclair Inlet channel to maintain such deep draft access to the Dock.

3.4. Port Owns the Dock. The Port shall at all times be the sole owner of the Dock. The Port, on behalf of itself and others permitted to use the Dock, reserves all rights with respect to the Dock, subject to the non-exclusive license rights granted to the Dock User pursuant to this Agreement.

3.4.1. Prior to executing this Agreement, Dock User has fully and carefully inspected the Dock and the Premises. Dock User accepts the Dock and the Premises, including all existing improvements thereon, "as is", without further maintenance liability on the part of the Port, except as specifically set forth in this Agreement. Dock User is not relying on any representations of Port as to the Dock's or Premises' condition, suitability, zoning restrictions, or usability, except Port's right to license the Premises to Dock User.

#### **4. ENGINEERING STUDY CONTRIBUTION**

4.1. Dock User's Engineering Study Contribution: Dock User would like to moor vessels larger than the American Constitution and/or moor two (2) vessels at the Premises at the same time; however, the Port will only authorize moorage of vessels larger than the American Constitution or moorage of two vessels at the same time if such use is approved by an independent engineering analysis approved by the Port, which approval shall not be unreasonably withheld, conditioned, or delayed, and Dock User complies with all terms and conditions of such engineering analysis at Dock User's sole cost and expense. Accordingly, before moor vessels larger than the American Constitution and/or moor two (2) vessels at the Premises at the same time the Dock User shall retain an engineer approved by the Port, which approval shall not be unreasonably withheld, conditioned, or delayed, to produce an engineering report of the feasibility of Dock User mooring vessels larger than the American Constitution or mooring two vessels at the Premises at the same time (the "Report"). Dock User shall pay all costs and expenses of the Report. The Dock User will provide a copy of the Report to the Port upon receipt of the final Report for the Port's review and potential approval. The Port has the right, at its sole and absolute discretion, to retain an independent engineer to review the Report and/or conduct its own engineering analysis of the Premises in response to the Report.

4.2. Compliance with Report. Dock User shall be permitted to moor a vessel larger than the American Constitution and/or moor two (2) vessels at the Premises at the same time only if: (i) such uses are approved by a Report approved by the Port and (ii) Dock User complies, at its sole cost and expense, with any and all requirements set forth in the Report for mooring vessels larger than the American Constitution and/or mooring two (2) vessels at the Premises at the same time including, but not limited to, paying for any and all repairs and/or upgrades to the Premises and/or the Dock required by the Report. Notwithstanding the foregoing, and without limiting the applicability of any other provision of this Agreement, Dock User shall comply with Article 12 before making any repairs or improvements to the Premises or Dock.

4.2.1. In the event that the Engineering Study determines that the dock is not suitable for Dock User's Intended Use, either Party shall be entitled to terminate this Agreement upon thirty (30) days

prior written notice to the other Party.

## 5. BASE MOORAGE FEES / EXCESS MOORAGE FEES

5.1. Base Moorage Fees: The monthly Base Moorage Fees shall be Four Thousand Three Hundred Seventy-Five and 00/100 Dollars (\$4,375.00) per month, subject to the Moorage Fees adjustments set forth in Article 5.5.

5.2. Excess Moorage Fees. In addition to the Base Moorage Fees, the Dock User shall pay the following Excess Moorage Fees to the Port for vessels owned and operated by the Dock User berthing at the Premises. In each and every License Year, following the berthing by forty (40) vessels owned and operated by the Dock user at the Premises, the Dock User shall pay to Port moorage fees pursuant to the Port's then-current Tariff.

The Excess Moorage Fees shall be paid by Dock User to Port each month and shall be calculated by the actual vessel berthings by the Dock User exceeding forty (40) berthings per year. The Excess Moorage Fees shall be paid by Dock User by the tenth (10<sup>th</sup>) day of the month following the month in which such vessel berthings occurred. In the event that Dock User exceeds the forty (40) berthings, the Port will invoice Dock User for any additional fees incurred.

5.2.1. Port's Right to Audit the Excess Moorage Fees. Upon request, the Port shall be entitled to review Dock User's records, documents and files related to vessels berthing at the Premises and the Excess Moorage Fees incurred and paid by the Dock User to Port.

5.3. Moorage Fees Payment. The Base Moorage Fees shall be paid in monthly installments in advance, on or within the first ten (10) days of the month in which payment is due; and all other charges payable to Port under the terms of this Agreement (except Excess Moorage Fees) shall be paid within thirty (30) days of the date that Port delivers the invoice for such charge to Dock User. Excess Moorage Fees shall be paid in arrears as set forth in Paragraphs 5.2 and 5.3, above. Dock User shall be liable for, and shall pay upon demand, any and all taxes, assessments, and other charges which may be levied or imposed upon the Port as a result of payments made by the Dock User to the Port hereunder including, but not limited to, any leasehold excise tax.

5.4. CPI Adjustments. Beginning on the third anniversary of the Commencement Date and continuing every year thereafter until expiration or earlier termination of this Agreement, the Base Moorage Fees shall be adjusted to reflect the cumulative increases in the Consumer Price Index ("CPI") as follows.

5.4.1. Definitions:

"**Adjustment Date**" means the date of the applicable adjustment as set forth above.

"**Prior Index**" shall mean the CPI published on or most recently prior to the date of the last CPI adjustment or market rate adjustment under this Agreement.

"**CPI**" means the Consumer Price Index for All Urban Customers-Western Region All Items, 1982-84=100 Published by the Bureau of Labor Statistics of the United States Department of Labor. In the event the CPI is discontinued, any official consumer price

index that supplants the CPI, whether so named or designated or not, issued by any authorized agency of the United States shall be used. If no such official consumer price index supplants the CPI, the Port shall select a reasonably comparable index.

**"Current Index"** shall mean the CPI published on or most recently prior to the Adjustment Date.

The Base Moorage Fees shall be increased to reflect the increase, if any, in the CPI between the Adjustment Date and the date on which the Base Moorage Fees was last adjusted (the "Comparison Date"). For the purpose of adjusting Base Moorage Fees on the first Adjustment Date, the Comparison Date will be the Commencement Date. On each Adjustment Date, the Base Moorage Fees then in effect will be increased, but not decreased, by multiplying the Base Moorage Fees by a fraction, the numerator of which is the Current Index, and the denominator of which is the Prior Index. Notwithstanding the foregoing provisions of this Article 5.5, in no event shall any adjustment result in a reduction of the Base Moorage Fees.

5.6 Late Charges. Simple interest at the rate of one percent (1%) per month will be assessed against amounts past due and owing hereunder including, but not limited to, the Base Moorage Fees, Excess Moorage Fees, or Third-Party Excess Moorage Fees. Additionally, if any amount due is not received timely, Dock User shall pay Port a late charge of One Hundred Dollars (\$100.00) or five percent (5%) of the delinquent payment, whichever is greater. All accrued interest and late charges shall be paid no later than the first (1<sup>st</sup>) day of the subsequent month.

## **6. PAYMENTS OTHER THAN MOORAGE FEES**

6.1. Licenses, Fees and Taxes. Dock User shall be liable for, and shall pay throughout the term of this Agreement in addition to the moorage fees, all licenses, fees and taxes covering the business conducted on the Premises, together with all taxes, assessments and other charges which may be levied or imposed upon the Premises or any part thereof or on property of Dock User on the Premises and any taxes on the Dock Usage rights created by this Agreement, whether they be assessed against the Port or Dock User.

6.2. Port's Property Insurance. Port shall pay all premiums for and keep in force property insurance and liability insurance for general public use. Dock User shall pay all premiums for and maintain its own liability insurance for its use.

6.3. Moorage Fees is Net to Port. It is the purpose and intent of the parties hereto that the moorage fees payable hereunder shall be absolutely net to Port so that this Agreement shall yield, net, to Port the moorage fees as herein provided, free of any charges, assessments or impositions of any kind charged or assessed, or imposed on or against the moorage fees, Premises, and without abatement, deduction or setoff by Dock User, and Port shall not be expected or required to pay any such charge, assessment or imposition therefore, or be under any obligation or liability hereunder except as herein expressly set forth.

## **7. POSSESSION**

Prior to taking possession of the Premises, Dock User shall examine the Premises and, by taking possession of the Premises, accepts them in their condition, and acknowledges that Port has not made any further promises for improvements .

## **8. UTILITIES, FACILITIES, AND ACCESS**

8.1 Port shall make potable water available on the Premises. Upon Commencement of the Agreement, Dock User shall be solely responsible for the costs associated with its usage of potable water service to the Premises. Port shall not be liable or otherwise responsible for any failure or interruption of any utility service, and no failure or interruption of utility service shall entitle Dock User to abate Moorage Fees or terminate this Agreement.

8.2 Port shall provide a monthly billing identifying such services or utilities to be paid for by Dock User.

8.3 Port shall also provide access to paved or concrete or similar walkways between the nearest public road at 2<sup>nd</sup> Avenue, Bremerton Washington and the Dock suitable for pedestrian and golf cart access.

### **8.4 GOLF CART USAGE**

8.4.1 Golf Cart Access. The Port shall provide access to two (2) Port-owned golf carts exclusively for use by Dock Users staff to facilitate passenger movement between designated areas. Golf carts may be operated by Dock User staff only on dock areas and landside routes expressly permitted by the Port. Notwithstanding the foregoing, Dock User shall not have any claim against the Port if the Port-owned golf carts are unavailable while undergoing maintenance, repair, or replacement.

8.4.2 Operation and Liability. Dock User is solely responsible for ensuring all golf cart operators are properly trained and licensed, if required by applicable law. Dock User shall assume full responsibility for the conduct of its operators and any incidents, injuries, or damages caused during golf cart use, including but not limited to conflicts with pedestrians, Port tenants, Port staff, or the general public.

8.4.3 Maintenance and Damage Responsibility. The Port shall be responsible for regular maintenance and standard repairs of the golf carts required due to ordinary wear and tear. Dock User shall immediately notify the Port of any damage to the carts. If damage is caused by Dock User or its personnel, the Port will carry out the repairs and invoice Dock User for the actual cost of such repairs, which Dock User shall pay no later than ten (10) days after receipt of such invoice.

8.4.4 Storage and Availability. Golf carts shall be stored in a secure and accessible location, mutually agreed upon by the Port and Dock User. The carts shall be made available to Dock User during docking periods.

## **9. ENVIRONMENTAL PROVISIONS**

9.1. Undertaking by Dock User. Dock User covenants to comply with all requirements of any

federal, state, or local law, regulation, order, or any judgment or decree regarding the environment or land use applicable to the Premises or Dock User's operations at the Premises during the term of this Agreement.

9.2. Environmental Indemnification. Dock User shall defend (with legal counsel reasonably suitable to Port) , indemnify, and hold Port harmless, including legal fees and costs, from any and all claims, demands, judgments, orders or damages resulting from Hazardous Substances on the Premises, Dock or Port's property to the proportionate extent caused by the activity of the Dock User, and/or its agents, subtenants, or any other person or entity (i) at the Premises as a result of, arising out of, or relating to Dock User's operations under this Agreement or any previous agreement between Dock User and Port; or (ii) at the dock or the Port's property as a result of, arising out of, or relating to Dock User's operations during any period of time that Dock User has occupied all or a portion of the Dock during the Term of this Agreement or any previous agreement between Port and Dock User. It is the intent of the Parties that Dock User shall be responsible and shall defend and hold Port harmless from any Hazardous Substances that have or may occur on the Premises, Dock or Port's property as a result of, arising out of, or relating to Dock User's operations since Dock User first occupied the Premises, or other portion of the Port's property, through this Agreement, or any previous agreement between Port and Dock User. The term "Hazardous Substances" as used herein shall mean any substance heretofore or hereafter designated as hazardous or deleterious under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sec. 1251 et seq.; the Washington Water Pollution Control Act, RCW 90.48 et seq.; the Clean Air Act, 42 USC Sec. 7401 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxics Control Act ("MTCA"), RCW 70A.305 et seq., all as amended and subject to all regulations promulgated thereunder.

9.3. Unconditional Environmental Obligations. Dock User's defense and indemnity obligations under this paragraph are unconditional, shall not be discharged or satisfied by Port's re-entry of the Premises or exercise of any other remedy for Dock User's default under this Agreement, shall continue in effect after any assignment or sublease of this Agreement, and shall continue in effect after the expiration or earlier termination of this Agreement.

9.4. Environmental Investigations. Although Dock User shall not be liable for any Hazardous Substances on the Premises, Dock, or Port's property that were not caused, in whole or in part, by the activity of the Dock User, and its agents, subtenants, or any other person or entity on the Premises, Dock, or Port's property as a result of, arising out of, or relating to Dock User's operations under this Agreement, or any previous agreement between Dock User and Port, Dock User shall be responsible for the costs of any environmental investigations or remediation arising from the development or use of the Premises by Dock User or any of its agents, subtenants, or any other person or entity on the Premises, Dock, or Port's property as a result of, arising out of, or related to Dock User's operations under this Agreement, and Dock User hereby releases the Port from any contribution claim for those costs. .By way of example only, if the Dock User excavates soil at the Premises which contains Hazardous Substances that existed prior to Dock User executing this Agreement, then the Dock User will be responsible for the cost associated with disposing of those soils regardless of when or how the Hazardous Substances were released into those soils.

9.5. Current Conditions and Duty of Dock User. Unless otherwise specifically set forth in this Agreement, Port makes no representation about the condition of the Premises, except that Port is not aware of any Hazardous Substances in, on, under, or above the Premises as of the Commencement Date. Hazardous Substances may exist in, on, under, or above the Premises. Dock User may conduct environmental assessments or investigations of the Premises prior to or during this Agreement to determine the existence, scope, and location of any Hazardous Substances. If any Hazardous Substances are discovered in, on, under, or above the Premises for which Dock User is not responsible under Article 9, Dock User shall exercise the utmost care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions.

9.6. Prior Notice of Environmental Investigation. In the event Dock User decides in its sole discretion to perform an environmental investigation it shall prior to conducting any environmental investigation of the subsurface of the Premises, the Dock User shall provide prior written notice to the Port. Dock User shall provide the Port with the results of all such investigations.

9.7. Notification and Reporting. Dock User shall immediately notify Port if Dock User becomes aware of any of the following:

a. A release or threatened release of Hazardous Substances in, on, under, or above the Premises, any adjoining property, or any other property subject to use by Dock User in conjunction with its use of the Premises;

b. Any problem or liability related to or derived from the presence of any Hazardous Substance in, on, under, or above the Premises, any adjoining property, or any other property subject to use by Dock User in conjunction with its use of the Premises;

c. Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Premises, any adjoining property, or any other property subject to use by Dock User in conjunction with its use of the Premises; or

d. Any lien or action with respect to any of the foregoing

9.8. Copies of All Environmental Reports. Dock User shall, at Port's request, provide Port with copies of any and all reports, studies, or audits which pertain to environmental issues or concerns with the Premises, and which are or were prepared by or for Dock User and submitted to any federal, state, or local authorities pursuant to any federal, state, or local permit, license, or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

## **10. GENERAL INDEMNITY**

10.1. Dock User's Indemnity to Port. Dock User shall defend, with legal counsel reasonably acceptable to Port) indemnify, and hold harmless the Port, and its officers, employees, and/or agents, from any and all demands, claims, judgments, or liability including legal fees and costs, for

loss or damage arising as a result of accidents, injuries, or other occurrences on the Premises or on Port's other property to the extent, (i) occasioned by either the negligent or willful conduct of the Dock User and/or its agents; or (ii) made by any person or entity holding under the Dock User, or any person or entity on the Premises or Port's other property as a result of Dock User's Authorized Use, regardless of who the injured party may be. This indemnification and hold harmless shall not apply to the extent the damages were caused by the negligence or willful misconduct of the Port. This defense indemnification obligation shall survive termination or expiration of this Agreement.

**10.2. LIMITED WAIVER OF IMMUNITY UNDER WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW AND OTHER SIMILAR INDUSTRIAL INSURANCE SCHEMES.** For purposes of the foregoing indemnification provision, and only to the extent of claims against Dock User by Port under such indemnification provision, Dock User specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, The United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the Parties hereto.

10.3. Limitation of Port's Liability. Notwithstanding anything in this Agreement to the contrary, Port shall not be responsible or liable to Dock User, or to those claiming by, through or under Dock User, for (i) any loss or damage which may be occasioned by or through the acts or omissions of persons (other than Port) occupying Premises adjacent to or connecting with the Premises or any other part of Port property, (ii) any loss or damage resulting to Dock User, or those claiming by, through or under Dock User, or its or their property, from the breaking, bursting, stoppage or leaking of electrical cable or wires, or water, gas, sewer or steam pipes, or (iii) any special, indirect, consequential or punitive damages or lost profits suffered by Dock User or those claiming by, through or under Dock User. To the maximum extent permitted by law, Dock User agrees to occupy the Premises, and to use such other portions of the Port property as Dock User is herein given the right to use, at Dock User's own risk.

## 11. MAINTENANCE AND CONDITIONS OF PREMISES AND DOCK

11.1. Maintenance and Repair. Dock User shall be responsible for the maintenance and repair of the Premises in a condition reasonably suitable to serve Dock User's intended purpose and as reasonably necessary for the Authorized Use of the Premises, but in all cases in at least as good of condition as existed on the Commencement Date, reasonable wear and tear excepted. Notwithstanding the foregoing, the Dock User shall not be responsible for repairing damages caused to the Premises by the Port, its agents, or invitees.

11.2. Pallet Jack Usage: Pallet Jacks, motorized pallet jacks, or other commercial motorized cargo movement systems servicing vessels are prohibited on the Port of Bremerton docks and gangways. Only hand carts shall be used for movement of goods or provisions on the Premises or Dock.

11.3. Waste and Refuse. Dock User agrees not to allow conditions of waste and refuse to exist on the Premises, and to keep the Premises in a neat, clean and orderly condition.

11.3.1.1. Waste Disposal: Vessel waste disposal including, but not limited to, garbage and/or wastewater, shall not occur at the Bremerton Marina. The recreational marina cannot accommodate commercial wastewater and/or garbage disposal or recycling.

11.4. Repairs and Damage: Damage to the Dock and/or its gangways, or marine infrastructure caused by Dock User or its agents or invitees including, but not limited to, employees, passengers, or contractors shall be the sole and exclusive responsibility of Dock User.

11.4.1. Notice: The Port shall be provide Dock User notice of any damage for which Dock User is responsible hereunder.

11.4.2. Repairs: The Port will proceed to repair any such damage caused as referenced in Section 11.4, and invoice the Dock User for the same.

11.4.3. Payment: Payment of repairs shall be provided to the Port within 30 days of dock User's receipt of invoice.

11.5. Premises upon Termination. Dock User shall keep and turn over at the termination of this Agreement the Premises in the same condition as received from Port, or better, usual wear and tear and damage by the elements excepted.

## 12. IMPROVEMENTS

12.1. Improvements by Dock User. Dock User shall receive prior written approval from Port for any improvements or alterations to the Premises, or any part thereof ("Improvements"), which consent shall not be unreasonably withheld or conditioned. Port shall have right to withhold its consent for any reasonable basis including, but not limited to, that Dock User's proposed Improvements are inconsistent with Port's business objectives or other uses within the Port property, or that such Improvements conflict with any agreement or lease entered into by Port and other tenants within the Port property. Improvements shall be at the Dock User's sole cost and expense. Dock User's contractor, if any, shall be subject to Port's prior approval, not to be unreasonably withheld. Port reserves the right to condition its approval upon the Dock User providing payment and/or performance bonds satisfactory to the Port. All Improvements by Dock User shall conform to the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq. (the "ADA"). Dock User shall supply Port with a copy of "as-built" drawings and the location of all such Improvements no later than thirty (30) days after completion of any Improvements.

12.2. Title to Improvements. Title to Improvements shall vest in the party who provides them at such party's expense; provided, however, that title to Dock User's Improvements shall revert to Port free and clear of any lien or encumbrance created by Dock User or anyone acting by, through or under Dock User immediately upon termination of the Agreement, whether effected by expiration of the Agreement or by virtue of an Event of Default. Further, the Port, at its option, may require Dock User to remove, in whole or in part, any Improvements that Dock User has made to the Premises or other real property owned by the Port and to repair any damage to the real property caused by such removal prior to the expiration or earlier termination of this Agreement.

12.3. Definition of improvement. As used herein, the term "Improvement" means a modification to real property, resulting in an actual change in the nature of the property or an increase in the value of the property. It is distinguishable from routine repair and maintenance, which are activities resulting from normal wear and tear associated with the use of property, and which do not result in a change in the nature or value of the property itself.

## 13. PORT'S RIGHT OF ENTRY

The, Port, its employees, agents and contractors shall have the right to enter all parts of the Premises to utilize the Premises, maintain or inspect the Premises, to provide public access to the Premises, or to enforce or carry out any provision of this Agreement, including, without limitation, any access necessary for the making of any repairs which are Port's obligation hereunder. Port, upon reasonable request by Dock User, will comply with the reasonable security and safety regulations of Dock User in exercising its rights under this Article. Notwithstanding the foregoing, in the event of an emergency, Port may enter the Premises for such purposes at any time, upon such notice to Dock User, if any, as the Port shall in good faith determine to be feasible under the circumstances.

## 14. LIENS

14.1. Liens, Encumbrances. Dock User shall not create or permit to be created or to remain, and within ten (10) days of the creation of the same will discharge, any lien or encumbrance or other charge upon the Dock and any portion thereof caused by reason of any action or omission of Dock User or anyone acting by, through or under Dock User. Dock User shall promptly notify the Port in writing in the event Dock User becomes aware that any such lien, encumbrance or other charge is being claimed.

14.2. Right to Contest Taxes, Assessments, etc. If Dock User desires to contest any tax, assessment, reassessment, charge or other item to be paid by it to any governmental authority under this Agreement, whether payable in the name of Port, Dock User or both, Dock User shall notify Port of its intention to do so at least sixty (60) days prior to the delinquency of such tax, assessment, charge or other item. In either case, Dock User shall not be in default under this Agreement. Dock User may not withhold payment of such tax, assessment, charge or other item without Port's prior written consent, which may be withheld or conditioned at Port's sole and absolute discretion. Payment may be made under protest and with full reservation of the right to a refund. If Port's consent is granted, then within thirty (30) days after the final determination of the validity of such tax, assessment, charge or other item, Dock User shall pay and discharge such tax, assessment, charge or other item, to the extent held valid, and all penalties, interest and costs in connection therewith. Dock User shall indemnify, defend and hold Port harmless against any liability, obligation, damage, loss, cost or expense, resulting from any such contest.

## **15. HAZARDS**

Dock User agrees that if, as a result of its use, occupancy or operations on the Premises, or because of any action of its sublicensees, agents, invitees, employees, contractors or others (except Port), any environmental, fire or health hazard occurs on the Premises, Dock User shall take all necessary remedial action to bring the Premises and operations or activities conducted thereon into full compliance with applicable federal, state and local laws and regulations.

## **16. COMPLIANCE WITH LAWS AND REGULATIONS**

16.1. Dock User, at its cost and expense, shall obtain all necessary permits and licenses required by federal, state and local authorities, and shall comply and shall cause the Premises to comply, with (a) all federal, state and local laws, regulations, ordinances, orders, and rules affecting any part of the Premises, or the use thereof, the construction of any Improvements and the conduct of business thereon (including, without limitation, those that require payment of prevailing wages or compliance with competitive bidding requirements and, to the extent that the same apply to Dock User's particular manner of use of the Premises as opposed to laws of general applicability, those that require the making of any structural, unforeseen or extraordinary changes), whether or not any such statutes, laws, rules, orders regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same, (b) all applicable rules, regulations, tariffs and policies adopted by the Port from time to time, (c) all rules, orders and regulations of the National Fire Protection Association, Port's casualty insurer(s) and other applicable insurance rating organizations or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions which apply to the Premises and (d) all federal, state and local laws, regulations, ordinances, orders, and rules applying to or regulating the Authorized Use at the Premises.

Dock Usage Agreement

Port of Bremerton/ American Cruise

Lines Page 19 of 31

16.2. Dock User shall provide to Port for Port's review and approval, which approval shall not be unreasonably withheld, all draft applications prepared by or for Dock User for submittal to any federal, state or local authorities pursuant to any federal, state or local permit or license. These applications include, but are not limited to, any building or development permit, NPDES permit, Army Corps of Engineers permit, State Hydraulics permit, State Water Quality certification, or Substantial Development permit. Port reserves the right to condition its approval upon the Dock User providing payment and/or performance bonds satisfactory to the Port. . Port will have thirty (30) days from Dock User's delivery of the application to Port to approve, condition approval or deny the permit application. Port may charge Dock User a reasonable fee for staff, consultant or attorney time required to review the applications. Port's approval or conditional approval may not be construed as approval by the responsible jurisdiction issuing the permit.

16.3. Dock User reserves the right to contest by appropriate legal proceedings conducted in good faith and with due diligence, any Port regulation adopted after the execution of this Agreement on the ground that said regulation materially impairs its rights under this Agreement; providing, however, that Dock User shall comply with any such Port regulation pending the outcome of the contest. Dock User's sole and exclusive remedy in the event said regulation materially impairs its rights under this Agreement shall be an injunction preventing the Port from enforcing such regulation against Dock User and Dock User expressly waives any claim for damages related to or arising out of same. Notwithstanding anything to the contrary contained in this Article 16, Dock User's waiver of any claim for damages as set forth in this Article 16.3 (the "Waiver") shall not apply if either (i) a court, arbitrator, or other judicial or quasi-judicial body determines that the Waiver bars Dock User from pursuing injunctive relief for any reason, or (ii) Port takes the position that the Waiver bars Dock User from pursuing injunctive relief for any reason, including, without limitation, that Dock User has an adequate remedy at law.

## **17. FIXTURES AND EQUIPMENT**

Dock User, for its own use, shall have the right to place in and on the Premises Dock User's Personal Property as defined herein.

17.1. Dock User's Personal Property. Dock User's Personal Property shall mean all of Dock User's trade fixtures, equipment, supplies and other personal property as may be situated on the Premises from time to time during the term of this Agreement and that may be removed without significant damage to the Premises.

17.2. Duty to Remove. Upon expiration or earlier termination of this Agreement for any reason, Dock User shall remove Dock User's Personal Property and repair any damage caused by such removal. Dock User shall remove Dock User's Personal Property not later than the expiration or earlier termination of the Agreement. After removal of the Dock User's Personal Property the Premises shall be returned to Port by Dock User in the condition set forth in Article 17.3 below.

17.3. Surrender of Premises. Upon expiration or earlier termination of this Agreement for any reason, Dock User agrees to turn the Premises over to Port in as good of condition as it was in as of the Commencement Date, in a neat and clean condition, in a good state of maintenance and repair, reasonable wear and tear excepted.

## 18. INSURANCE

Port and Dock User shall obtain and maintain the following insurance during the term of this Agreement:

18.1. Port's Property Insurance. Port shall carry property insurance upon the Dock, except for Improvements made by Dock User, with coverage for perils as set forth on the Causes of Loss Special Form, which may in Port's discretion include a coverage extension for the perils of flood and earthquake, and in an amount equal to full replacement cost. Such insurance shall contain a valuation provision in lieu of any coinsurance clause, an increased cost of construction endorsement, debris removal coverage, and any insurance carried by Dock User shall include a waiver of subrogation endorsement in favor of Port.

18.1.1. The insurable value under the policy may be redetermined annually during the term of the Agreement.

18.1.2. The Port shall be the loss payee under such property insurance policy.

18.1.3. In the event of a casualty, all proceeds from said property insurance shall be the property of the Port as its interests may appear to be used in accordance with Article 19 DAMAGE OR DESTRUCTION.

18.1.4. Dock User shall not use the Premises in such a manner as to increase the rates of insurance to the Premises or any adjacent premises, without prior written approval of Port, and if so approved, Port may add to the agreed fees the full amount of any resulting premium increases incurred by Port or any of its adjacent tenants, chargeable to Dock User beginning with the next monthly Base Moorage Fees payment.

### 18.2. Dock User's Insurance Coverages

18.2.1. General Liability Insurance. Dock User, at its sole cost and expense, shall carry at all times while this Agreement is in effect Commercial General Liability (CGL) insurance or Marine General Liability (MGL) insurance covering bodily injury and property damage liability on the Landing and arising out of Dock User's use, occupation or control of the Landing, in an amount not less than twenty-five million dollars (\$25,000,000) in any one occurrence and in the aggregate. Port may impose commercially reasonable changes in the limits of liability consistent with industry standards (i) as a condition of approval of assignment or sublease of this Agreement; (ii) upon any breach of the environmental liability provision herein; (iii) upon a material change in the condition of any of Dock User's Improvements; (iv) upon a change in the Authorized Use, or (v) upon the commencement of any renewal term. If the liability limits are changed, Dock User shall obtain new or modified insurance coverage within thirty (30) days after changes in the limits of liability are required by Port. A lapse in coverage shall be considered a default. Any deductible shall be no greater than Ten Thousand Dollars (\$10,000.00) and defense costs shall satisfy the deductible. All deductibles are the responsibility of Dock User. In the event Port pays a deductible, Dock User shall reimburse

Port no later than thirty (30) days after invoice for the same. No self-insured retentions shall be allowed unless approved by Port in writing. The CGL policy shall provide coverage for damage to Port's property caused by Dock User.

18.2.2.

18.2.2.1. CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.

18.2.2.2. MGL insurance must have no exclusions for non-owned watercraft.

18.3. Worker's Compensation. If required by law, Dock User, at its sole cost and expense, shall carry at all times while this Agreement is in effect, Workers' Compensation Insurance providing statutory benefits to employees of Dock User in the State of Washington, United States Longshore and Harbor Workers ("USL&H") coverage for all of Lessee's employees, and any subcontractor employees, with statutory limits, and Employer's Liability Insurance with limits of not less than \$100,000 per accident or disease and \$500,000 aggregate by disease and a waiver of subrogation in favor of Port.

18.4. Protection and Indemnity Insurance (P&I) and Vessel Pollution Liability. Dock User shall procure and maintain P&I insurance including hull coverage. This insurance must cover all claims with respect to injuries or damages to persons or property, including nets and fishing lines, sustained in, on, or about the Premises, including while at a dock, marina and in transit, with limits of liability not less than Twenty-Five Million Dollars (\$25,000,000). Dock User shall be the loss payee for any damage other than damage to property owned by the Port. Dock User shall also procure Vessel Pollution Liability with limits equal to the P&I coverage

18.5. Property Insurance. Property Insurance against all risk of loss to any of Dock User's Improvements or personal property at full replacement cost with no coinsurance penalty provision. The property policy is to be endorsed to include Legal Liability Coverage using ISO Form CP 00 40 04 02 or equivalent, with a limit equal to the replacement cost of the Improvements or personal property.

18.5.1. Dock User's Casualty Loss Waiver. Port, and its commissioners, employees, insurance carriers, and insurance policies, shall not be responsible to Dock User for any loss, damage, or impairment to Dock User's property, whether real, personal or mixed, occasioned by reason of any fire, storm, or other occurrence or event whatsoever. It shall be Dock User's sole responsibility to provide its own protection against losses, damage, and impairment of whatsoever kind or nature, regardless of whether or not such loss, damage, or impairment is occasioned by the acts or omissions of Port, Dock User, or a third party, or an act of nature. Dock User hereby releases and discharges Port, and its

commissioners, employees, insurance carriers, and insurance policies, from any claims for loss or damage to Dock User's property.

18.6. Excess or Umbrella Insurance. If any Excess or Umbrella Insurance policies are used to meet the limits of liability required herein, said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions, and shall meet all of the liability insurance requirements stated herein, as evidenced by a Following Form Endorsement. Such excess or umbrella carrier shall have a duty to defend Port outside of the policy limits. No insurance policies maintained by the additional insureds, whether primary or excess, shall be called upon to contribute to a loss until Dock User's primary and excess liability policies are exhausted

18.7. General Requirements.

18.7.1. Endorsements. Port shall be named as primary and non-contributing additional insured and Dock User shall furnish to Port an endorsement or endorsements, including any workers compensation insurance required under Article 18.3 above, to such effect in a form acceptable to Port, for all insurance required to be provided by Dock User hereunder. Dock User's insurance coverage under this Agreement shall not be changed or canceled without at least forty five (45) days' prior written notice to Port. The defense and indemnification of the Port as an "additional insured" will not be affected by any act or omission by Dock User which might otherwise result in a forfeiture of said insurance.

18.7.2. If Dock User elects to purchase insurance hereunder with voluntary deductible amounts or self-insured retention, Dock User shall be responsible for payment of costs not covered because of such deductibles or self-insured retention. Any such deductible or self-insured retention shall be subject to the Port's prior written approval, and in no event shall exceed \$10,000.

18.6.3. Selection of Insurance Carrier. Dock User shall have the right to select the insurance carrier(s) of its choice, provided that such carriers are acceptable to Port, which acceptance shall not be withheld so long as said carriers (i) are authorized to transact the business of insurance in the State of Washington, and (ii) maintain a rating at or better than A by Standard and Poor's Rating Service, A(VIII) by A.M Best Co., or A3 by Moody's Investor's Service.

18.6.4. If Dock User elects to cover multiple locations under a blanket insurance policy, such insurance shall include a per location endorsement that extends separate liability limits for each location as opposed to sharing one limit.

18.6.5. Higher Insurance Limits. If Dock User maintains broader coverage and/or higher limits than the minimums required above, Port requires, and shall be entitled to, the broader coverage and/or higher limits maintained by Dock User.

18.6.6. Primary Coverage. For claims related to or arising from this Agreement, Dock User's

coverage shall be primary and non-contributory, and at least as broad as ISO CG 20 01 04 13 as respects to Port, and its elected officials, employees, or agents.

18.6.7. Waiver of Subrogation. Dock User grants Port, and its elected officials, employees, and agents, a waiver of any right to subrogation which any insurer of Dock User may acquire against Port by virtue of the payment of any loss under such insurance. Dock User shall obtain any endorsement(s) that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether Port has received such an endorsement from the insurer.

18.6.8. Separation of Insureds. The CGL policy shall contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit. The CGL policy shall not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another.

18.6.9. Certificates and Policy Documents. Dock User shall provide certificates of insurance, policy declarations, and endorsement pages, and, if requested, copies of any policy to Port evidencing insurance compliant with this Article 14. Receipt of such documents by Port does not constitute approval by Port of the terms of such policy.

18.8. Alternative Insurance Coverage. In the event that the precise insurance coverage denominated in this Article 18 ceases to be commercially available during the term of this Agreement, Dock User shall purchase and maintain alternative insurance coverage as similar as possible to those so denominated, and shall consult with and obtain the concurrence of the Port, which concurrence shall not be unreasonably withheld, before choosing such alternative.

## 19. DAMAGE OR DESTRUCTION

19.1. Reconstruction Obligation. In the event the Premises are damaged or destroyed as a result of a fire or other casualty, then, unless this Agreement is terminated in accordance with Article 19.2, Port shall commence repair, reconstruction and restoration of the Premises to its condition immediately prior to the casualty as soon as reasonably possible and prosecute the same diligently to completion within one hundred eighty (180) days after damage (or, if Port is unable to complete the same within 180 days, then as soon as practicable in the exercise of reasonable diligence), and this Agreement shall remain in full force and effect. In such event Port shall restore the Premises promptly, efficiently, competently, and in a good and workmanlike manner by duly qualified and licensed persons or entities, using first grade materials, without unreasonable interference with or disruption to the operations of Dock User or other occupants of Port property; provided, that Port shall have no obligation to repair, reconstruct or restore Dock User's Improvements. All such work shall comply with all applicable codes, rules, regulations and ordinances.

19.2. Option to Terminate. In the event the Premises are damaged or destroyed due to fire or other casualty: (i) during the last year of the term of this Agreement, then either party, at its option within sixty (60) days of the date of such damage, may terminate this Agreement by written notice to the other, in which event Dock User shall have no claim to any of Port's insurance proceeds or (ii) at any time during the Term hereof and the proceeds of the Port's insurance will be insufficient to reconstruct the Premises, then the Port may, at its option, terminate this Agreement by written notice to Dock User, in which event Dock User shall have no claim to any of Port's insurance proceeds. Notice of exercise of the option, to be effective, must be given within sixty (60) days of the date of casualty. Port and Dock User shall fully cooperate, both before and after the termination of the Agreement, with any reasonable request by the other party in connection with the collection of any insurance proceeds not yet paid.

19.3. Termination. Upon any termination pursuant to the terms of this Article 19 DAMAGE OR DESTRUCTION, the parties shall be released without further obligation to the other from the date possession of the Premises is surrendered to Port except for sums and duties which have accrued and are then unpaid or unperformed, including, but not limited to, indemnification obligations under this Agreement.

19.4. No Abatement of Moorage Fees. In the event of repair, reconstruction and/or restoration as provided in Article 19.1 above, the Moorage Fees payable under this Agreement shall not be abated.

## 20. CONDEMNATION

20.1. Option to Terminate. If all or a material part of the Premises, or a necessary means of access to the Premises without a suitable replacement provided by the Port, shall be lawfully condemned or taken in any manner for any public or quasi-public use, then the term of this Agreement shall, at the option of Dock User, cease and terminate. Such option to terminate shall be exercisable by Dock User giving written notice to Port within thirty (30) days after the date possession of the Premises or other action specified hereinabove shall be taken by the acting governmental or quasi-governmental authority. All awards arising from a total or partial taking of

the Premises, of Dock User's license rights herein, or a taking from temporary use shall belong to and be the property of the Port without any participation by Dock User; providing, that Dock User shall have the right to make a separate claim in condemnation proceedings for the value of its Improvements, trade fixtures, removal expenses, unamortized capital contribution, and relocation expenses as long as any award granted to Dock User does not reduce the award to which Port would otherwise have been entitled. Both parties, in cooperation with the other, shall have the right to participate in any condemnation proceedings and be represented by counsel for the purpose of protecting their respective interests hereunder.

20.2. Moorage Fees Reduction. If Dock User does not terminate this Agreement as a result of said condemnation, this Agreement will continue and the Moorage Fees payable hereunder shall be reduced by a fair and just proportion attributable to the portion of the Premises so taken by condemnation.

## 21. DEFAULT

21.1. Event of Default. Each of the following shall be deemed an "**Event of Default**":

21.1.1. Failure to Pay Moorage Fees. If Dock User fails to pay Moorage Fees or any other monetary sum set forth herein when payment is due; providing, however, that Port may not terminate this Agreement on account of such failure unless such failure remains uncured ten (10) days after written notice of such default is given by Port to Dock User.

21.1.2. Breach of Covenants. If Dock User neglects or fails to perform or observe any of the covenants, terms and conditions in this Agreement on its part to be observed, other than those pertaining to Article 21.1.1, and such failure remains uncured thirty (30) days after written notice from Port to Dock User; provided, however, that if such cure, through no fault of Dock User, cannot be completed within such thirty (30) day period, Dock User shall have such additional time as is reasonably necessary to complete the cure, provided Dock User must have undertaken procedures to cure the default within such thirty (30) day period and thereafter diligently pursue such efforts to cure to completion, but in no case shall such cure take longer than one hundred twenty (120) days.

21.1.3. Insolvency. If Dock User shall make an assignment for the benefit of its creditors, or if a petition in bankruptcy or for composition, reorganization or arrangement shall be filed by or against Dock User under any bankruptcy law, or if a receiver of the property of Dock User shall be lawfully appointed in any action, suit, or proceedings by or against Dock User or if the interest of Dock User to this Agreement shall be sold or assigned upon execution or other legal process, then, if any such event of default is not cured, set aside, or vacated within sixty (60) days after written notice from Port to Dock User, Port may at its option terminate this Agreement without prejudice to any other remedies it might have otherwise and take such other action as may be available to it under the law.

21.2. Remedies. Upon the occurrence of an Event of Default, Port may exercise any remedies or rights under the laws of the State of Washington, including, but not limited to, recovering damages for past due fees, future fees, costs to re-let the Premises, , , and costs to restore the Premises to its

prior condition (reasonable wear and tear excepted). Under no circumstances shall Port be held liable for damages or otherwise by reason of any lawful re-entry or eviction. Port shall not, by any re-entry or other act, be deemed to have accepted any surrender by Dock User of the Premises or be deemed to have otherwise terminated this Agreement or to have relieved Dock User of any obligation hereunder. Port shall be under no obligation to observe or perform any covenant of this Agreement after the date of any material default by Dock User unless and until Dock User cures such default. A fee of Five Hundred Dollars (\$500.00) shall be assessed to Dock User for each default notice issued to Dock User to defray the costs associated with preparing, issuing, and serving such notice. This fee shall be payable on the first (1<sup>st</sup>) day of the month following the issuance of the default notice. Upon entry without terminating this Agreement, Port may relet the Premises for the account of Dock User. In such event, Dock User shall be entitled to a credit against its fee obligations hereunder in the amount of fees or Moorage Fees received by Port from any such relicensing or leasing of the Premises applicable to the unexpired term of the Agreement, less any reasonable costs incurred by Port (not previously reimbursed by Dock User) in connection with the repossessing and relicensing or leasing of the Premises, including, but not limited to, reasonable attorney fees, brokerage commissions, and any costs of repairs or alterations to the Premises.

21.3. Termination. Port shall be entitled to terminate this Agreement for default if Dock User fails to timely cure any default within the time provided for herein. Upon termination of this Agreement, or any extension thereof, whether by expiration of Term or sooner termination, Dock User shall surrender the Premises peaceably and quietly. Dock User shall restore the Premises to the condition existing at the Commencement Date, except for (i) normal wear and tear; and (ii) any Improvements Port permits to remain on the Premises. Re-entry or taking possession of the Premise by Port pursuant to this subparagraph shall not be construed as an election to terminate this Agreement unless a written notice of such intention be given by Port to User. Re-entry or taking possession of the Premises by Port pursuant to this Article shall not be construed as an election to terminate this Agreement unless a written notice of such intention be given by Port to Dock User.

21.4. Removal of Property. In the event of Dock User's default and failure to timely cure, Port shall also have the right to remove all Dock User's property from the Dock and store the same in a public warehouse or elsewhere at the cost of and for the account of Dock User. Such property shall be deemed abandoned unless claimed within thirty (30) days after written notice with payment of all transportation and storage fees.

21.5. Remedies are Cumulative. The Port's remedies set forth in this Agreement are cumulative and not exclusive. The Port shall also have any other remedies permitted by law or in equity.

## 22. PORT'S ESTATE

Port covenants that it has good right to execute this Agreement for said Premises and warrants and agrees to defend its right and to reimburse and hold Dock User harmless from all damages and expenses which Dock User may suffer by reason of Port's inability or lack of authority to enter into this Agreement for the Premises.

Port does not warrant that the Premises may be used as intended by Dock User. This Agreement is subject to the easements, covenants, conditions and restrictions of record and the land use and environmental restrictions of the United States, the state of Washington, Kitsap County, and City of Bremerton if the Premises is within the Bremerton City limits.

## 23. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

23.1. Assignment. Dock User shall not voluntarily or involuntarily assign or otherwise transfer (collectively referred as a "Transfer") its interest in this Agreement, without first obtaining Port's prior written consent, which consent shall not be unreasonably withheld. The assignee shall assume all obligations of the Dock User under this Agreement, and the Port may require that the assignee provide such security under RCW 53.08.085 as the Port may deem appropriate. No Transfer shall relieve Dock User of any liability or obligation under this Agreement.

23.2. Sublicense. In addition to its rights under Sections 1.1.2 and 1.1.3, Dock User may sublicense individual berthing slips on the Dock to vessels seeking short-term or long-term berthing, subject to the Port not objecting to such sublicensee due to the nature of their vessel operations. Dock User shall be responsible for ensuring that any vessels on the Dock comply with the rules, covenants and conditions set forth in this Agreement.

23.3. Change of Control. The prohibitions contained in this Article include, without limitation, any sublicensing or assignment which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Dock User's corporate, partnership or proprietary structure, except that Port shall not unreasonably withhold its consent to any of the foregoing that does not result in a change in the beneficial ownership, present control or financial condition of Dock User.

## 24. CONSTRUCTION OVER UTILITIES

Dock User agrees that no improvements shall be constructed upon, over, or across utilities

(collectively "Utilities") on the Premises used by Port to serve other Port properties. This Agreement is subject to the right of Port, or its permittees, to have reasonable and necessary access to the Premises to construct, relocate, operate, repair, replace and maintain any existing or future Utilities; provided, Port shall not unreasonably interfere with Dock User's business operation and shall restore Dock User's Improvements on the Premises to its original condition, reasonable wear and tear excepted, promptly after completion of such work. Port shall identify the location of said Utilities to Dock User and memorialize their location in whatever reasonable form Dock User shall request.

## **25. TERMINATION OF AGREEMENT/MONTH TO MONTH TENANCY**

If the User remains in possession of said Dock after the Term without Port's prior written consent, such holding over shall constitute and be construed as a month-to-month management agreement only, at a monthly fee equal to one hundred fifty percent (150%) of the fees owed during the final month of the Term of this Agreement and otherwise upon the terms and conditions in this Agreement. If User holds over with Port's prior written consent, then User shall continue to make payments to Port on a month-to-month basis as provided for in this Agreement. Such authorized holdover may be terminated by either Party at the end of any such monthly period by sending written notice not less than thirty (30) days before the end of such period. Such authorized holdover shall be subject to all terms and conditions contained herein.

## **26. COSTS AND ATTORNEY FEES / DISPUTES**

If by reason of default on the part of either party to this Agreement it becomes necessary to employ an attorney to recover any payments due hereunder or to enforce any provision of this Agreement, the substantially prevailing party, whether such party be the successful claimant or the party who successfully defended against the claim of the other party, shall be entitled to recover reasonable attorneys' fees and costs at trial and on appeal, and to be reimbursed for such costs and expenses as may have been incurred by such prevailing party. The Parties agree that in any such action, jurisdiction and venue shall lie solely and exclusively in Kitsap County, Washington. The Parties expressly and irrevocably waive their rights to federal court jurisdiction and trial by jury.

## **27. NOISE CONTROL**

27.1. Quiet Enjoyment of other Port Tenants. Dock User acknowledges Port's covenant of quiet enjoyment to other tenants and licensees on the Port's property. Dock User shall utilize noise control techniques on all devices to reduce noise emission beyond the perimeter boundary of the Premises and to not cause unreasonable interference with other Port tenants' and licensees' right to quiet enjoyment.

## **28. MUTUAL COOPERATION**

Each party, upon request and without liability or expense except as otherwise provided herein will reasonably cooperate with and assist the other in obtaining such permits, licenses, approvals, easements, access rights and rights-of-way from other persons, entities and governmental units and agencies as may be necessary for the requesting party to carry out the purposes of this Agreement.

**29. HEADINGS**

Headings of paragraphs are for reference only and are not to be construed so as to limit the content of the subject paragraphs.

**30. WAIVERS**

Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver or prejudice the party's right to require strict performance of the same or any other provision in the future. Waivers must be express and in writing signed by the waiving party to be enforceable.

**31. NOTICES**

All notices required by law or by this Agreement shall be in writing and may be personally served or sent by registered or certified mail, return receipt requested. If such notice is served personally, service shall be conclusively deemed made at the time of service. If service by registered or certified mail, return receipt requested, service shall be conclusively deemed made seventy-two (72) hours after the deposit thereof in the United States mail, postage prepaid, addressed to the party to whom such notice is to be given. Any notice may be given at the following address (or such other address as either party may notify the other, in writing):

DOCK USER: American Cruise Lines, Inc.  
Attn: Eric Dussault, Director of Port Development & Construction  
741 Boston Post Road, Suite 200  
Guilford, CT 06437

PORT: PORT OF BREMERTON  
8850 SW Highway 3  
Bremerton, WA98312

**32. AUTHORITY TO BIND**

Each party represents and warrants that it has the full right and authority to execute this Agreement and carry out the terms thereof and no other authority is necessary to enter into this Agreement.

**33. FORCE MAJEURE**

Except for the payment of money when due, which is not excused, the time period for the performance of any obligation under this Agreement shall be extended by the period of any delay in performance caused by a Force Majeure. The term "Force Majeure," as used herein, means any circumstance (other than financial) beyond the reasonable control of a party (including, but not limited to, war or other hostilities, riot, revolution, civil commotion, sabotage, epidemic, embargo, labor dispute, major accident, fire, explosion, flood, earthquake, storm, loss of essential services or

utilities supplied by others, or action or inaction of a Government or Governmental agency having or claiming to have jurisdiction at the site), which causes a delay of seven (7) days or more in such party's ability to perform the obligation in question.

#### **34. BROKERAGE**

Each party represents and warrants to the other that it has not incurred any brokerage or commission obligation to any third party with respect to this Agreement and agrees to hold harmless and indemnify the other party for any such obligation asserted against the other party arising out of actions of the warranting party who dealt with such third party.

#### **35. SEVERABILITY**

Any provision of this Agreement which shall prove to be invalid, void or illegal in no way affects, impairs or invalidates any other provision hereof, and such other provisions shall remain in full force and effect.

#### **36. QUIET ENJOYMENT**

Port covenants and agrees with Dock User that upon Dock User's paying the Moorage Fees required under this Agreement and paying all other charges, and performing all of the covenants and provisions aforesaid on Dock User's part to be observed and performed under this Agreement, Dock User shall, subject to the rights of the Port under this Agreement, peaceably and quietly have, hold, and enjoy the Premises in accordance with this Agreement.

#### **37. BOND OR SECURITY**

Dock User shall, upon execution of this Agreement, file with Port insurance, surety bond or such other security as may be reasonably acceptable to Port, all in accordance with RCW 53.08.085, as amended. The form and term of the bond or security shall be subject to the approval of Port. Failure to provide such security or to maintain it throughout the term of this Agreement shall cause this Agreement to be in default.

#### **38. EXHIBITS**

The following documents are attached as Exhibits to this Agreement and by this reference are

#### **39. CHOICE OF LAWS/INTERPRETATION**

This Agreement shall be construed and governed by the laws of the state of Washington pertaining to contracts made and to be performed in the state of Washington.

#### **40. SURVIVAL**

All obligations of the Dock User and Port, as provided for in the Agreement, shall not cease upon the termination of this Agreement only if fully performed, and shall otherwise continue as obligations until fully performed. All clauses of this Agreement which require performance beyond the termination date shall

survive the termination date of this Agreement.

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**41. ENTIRE AGREEMENT**

This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, understandings or communications with respect thereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first hereinabove written.

*II*

*II*

*[signatures on pages to follow]*

PORT:

PORT OF BREMERTON, a  
municipal corporation of the State of  
Washington

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

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

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

DOCK USER:

AMERICAN CRUISE LINES, INC.

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

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