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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 14(A)(3)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: November 20, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution authorizing Amendment No. 1 to the Cruise Terminal Agreement between Miami-Dade County and Prestige Cruise Holdings
Resolution No. R-988-12

The accompanying resolution was prepared by the Port of Miami Department and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date: November 20, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing Execution of Amendment No. 1 to Cruise Terminal Agreement between Miami-Dade County and Prestige Cruise Holdings

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RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of Amendment No. 1 ("Amendment") to the Cruise Terminal Agreement ("Agreement") between Miami-Dade County ("County") and Prestige Cruise Holdings ("PCH").

SCOPE

PortMiami is located within District 5 – Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide as PortMiami is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

This Amendment continues to provide PCH with preferential berthing rights at PortMiami's Terminal J while providing a minimum annual guarantee of no less than thirty (30) vessel calls per fiscal year (an increase from 12 guaranteed vessel calls in the current agreement). The increase of PCH vessels is due to its commitment to move Regent Seven Seas Cruises to PortMiami from Port Everglades. The Amendment is expected to generate more than $1.7 million of revenue throughout its initial three year term.

PCH revenue to the County in Fiscal Year 2012 was $400,300, which accounted for 13 vessel calls. Anticipated revenue from PCH for FY 2013 is approximately $585,000.

TRACK RECORD/MONITOR

The Seaport Department staff members responsible for monitoring the Amendment and Agreement are Juan Kuryla, Deputy Port Director, Kevin Lynskey, Assistant Port Director, Business Initiatives, and Hydi Webb, Business Development Manager.

BACKGROUND

Prestige Cruise Holdings is a privately-held holding company operating two luxury cruise brands – Oceania Cruises ("Oceania") and Regent Seven Seas Cruises ("Regent"). Headquartered in Miami-Dade County, PCH operates a fleet of 8 vessels between its two cruise brands.

Oceania, an upper-premium cruise brand, has been home porting seasonally from PortMiami since 2003 with a series of 10-, 11-, and 12-day itineraries to the Caribbean and Panama Canal. In February 2011, Oceania inaugurated the company's first newbuild vessel, *Oceania Marina* at PortMiami. Its most recent newbuild vessel,

Oceania Riviera, will be arriving at PortMiami on November 29, 2012 for its Caribbean inaugural season.

Regent is an all-suite, luxury brand which has traditionally home ported seasonally in Port Everglades and offers longer cruises to the Caribbean. After operating its sister company out of PortMiami for nine years, PCH has committed to move its Regent brand to Miami for the first time in company history. Thus, both cruise brands will be Miami-based beginning November 2012, adding passenger choices for luxury and upper premium cruise brands. Additionally, this year PCH moved its Regent office headquarters from Fort Lauderdale to Miami-Dade County.

Oceania has operated from Miami-Dade County with a series of short-term agreements approved by the Board since 2003 as follows:

- October 7, 2003, the Board approved Resolution R-1093-03, which authorized the execution of a Cruise Terminal Agreement ("CTA") between Miami-Dade County and Oceania for a period of two (2) years, from October 1, 2003 through September 30, 2005.
- September 8, 2005, via Resolution R-1042-05, the Board approved Amendment No. 1 to the CTA which authorized an extension of the term for another two (2) years through September 30, 2007.
- January 10, 2008, the Board approved Resolution R-39-08, which approved Amendment No. 2 to the CTA, extending the term for another two (2) years through September 30, 2010.
- November 16, 2010, via Resolution R-1129-10, the Board approved the execution of a new contractual agreement between the County and Prestige Cruise Holdings for a three (3) year term with up to two (2) additional terms of one (1) year at PCH's option (Oceania and Regent were acquired by PCH - a subsidiary of Apollo Management Company - in 2007 and 2008, respectively).

The current Agreement has been beneficial to both parties as it has provided the Port with guaranteed passenger volumes and revenues while granting PCH preferential berthing and incentive rates over the past two years. However, responding to the opportunity to home port Regent in Miami, the proposed Amendment No. 1 to the Agreement is respectfully recommended for approval.

Under the terms of the Amendment, PCH commits to home port PCH vessels at PortMiami a minimum of thirty (30) calls each fiscal year. PCH will further commit to having Miami as the exclusive home port for both Oceania vessels and Regent vessels in South Florida (Palm Beach, Broward, Monroe, Brevard, and Miami-Dade counties). PCH will not home port an Oceania or Regent vessel in another South Florida port throughout the term, unless PortMiami is unable to provide PCH with a suitable terminal for the date(s) requested. The County will continue to give PCH preferential berthing rights at Terminal J.

As an incentive to attract the Regent brand to Miami-Dade County, PCH will pay the County in accordance with new Tariff rates for Small Passenger Vessels. Small Passenger Vessels are defined as multi-day passenger vessels having an overall length of less than 800 feet. This new definition and rate structure for Small

Passenger Vessels is being presented under separate cover for Board consideration. Should the Board approve these items, PCH will pay the new dockage and wharfage rates for Small Passenger Vessels. Such dockage and wharfage fees will continue to increase annually three percent (3%) each fiscal year throughout the term.

The initial term of the Agreement shall be amended by this First Amendment to add an additional two years from the effective date of the Agreement. Thus, the initial term shall now expire three years from the effective date of this Amendment. PCH shall have the option to request an extension of this Agreement for up to two (2) additional terms of one (1) year each. If PCH exercises such option, the County and PCH shall negotiate mutually-agreeable terms of the extension and such extension would be brought back to the Board for its consideration.

PCH's impact to Miami-Dade County has grown significantly due to its commitment to homeport its two cruise brands at PortMiami for ship operations, in addition to consolidating the brands' office headquarters to Miami-Dade County. The presence of Oceania and Regent at the Port will solidify Miami's offering of upper-premium and luxury cruise brands while continuing to support our community with additional revenue.

To accommodate the deadlines and commitments associated with this Amendment, the resolution incorporates language to establish the effective date as the earlier of (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond that specified in the resolution which include the authority for the Mayor or designee to execute the Amendment.

Jack Osterholt, Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: November 20, 2012

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 14(A)(3)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(3)
11-20-12

RESOLUTION NO. R-988-12

RESOLUTION AUTHORIZING AMENDMENT NO. 1 TO THE CRUISE TERMINAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND PRESTIGE CRUISE HOLDINGS; AND AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXECUTE THE AMENDMENT NO. 1 FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Approves Amendment No. 1 to the Cruise Terminal Agreement between Miami-Dade County and Prestige Cruise Holdings ("Amendment No. 1"), in substantially the form attached hereto and made a part hereof; and

Section 2. Authorizes the Mayor or the Mayor's Designee to execute Amendment No. 1 after review and approval by the County Attorney's Office, and to exercise any cancellation and renewal provisions therein.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Vice Chairwoman			**aye**
Bruno A. Barreiro	**aye**	Lynda Bell	**aye**
Esteban L. Bovo, Jr.	**aye**	Jose "Pepe" Diaz	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**aye**	Dennis C. Moss	**absent**
Rebeca Sosa	**aye**	Sen. Javier D. Souto	**aye**
Xavier L. Suarez	**aye**	**Juan C. Zapata**	**aye**

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of November, 2012. This resolution shall become effective upon the earlier of (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Richard Seavey

Amendment No. 1 to the Cruise Terminal Agreement
Between Miami-Dade County and Prestige Cruise Holdings

THIS AMENDMENT ("First Amendment") is made and entered into this 22nd day of OCTOBER, 2012, by and between Miami-Dade County, Florida, a political subdivision of the State of Florida (hereinafter "the County") which owns and operates the Dante B. Fascell Port of Miami-Dade (hereinafter "Port") and Prestige Cruise Holdings (hereinafter "PCH").

WHEREAS, on November 16, 2010 by Resolution No. R-1129-10, the Miami-Dade Board of County Commissioners (the "Board") approved a Cruise Terminal Agreement between the County and PCH ("the Agreement"); and

WHEREAS, the Agreement provided, among other things, that PCH would commit to homeport a minimum of 12 vessel calls at the Port during each Fiscal Year as defined in the Agreement; and

WHEREAS, PCH is the parent company of Oceania Cruises (hereinafter "Oceania") and Regent Seven Seas Cruises (hereinafter "Regent"); and

WHEREAS, in the Agreement, PCH agreed, among other things, that the Port would be the exclusive homeport of Oceania vessels in South Florida; and

WHEREAS, in the past PCH has used Port Everglades as the homeport for Regent vessels; and

WHEREAS, PCH has committed to moving its Regent cruise ship operations from Port Everglades to Miami in November 2012 and, to increase the current PCH Minimum Annual Guarantee; and

WHEREAS, the County and PCH now desire to enter into this First Amendment to the Agreement in order to extend the term of the agreement for another two (2) years and make other changes as set forth below;

NOW, THEREFORE, and in consideration of the mutual covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Sub-Section 3(b)(i) of the Agreement is amended to delete the current sub-section in its entirety and provide instead:

   Wharfage: PCH shall pay wharfage in accordance with the rates set forth in Port of Miami Terminal Tariff No. 010 for Small Passenger Vessels.

2. Sub-Section 3(b)(ii) of the Agreement is amended to delete the current sub-section in its entirety and provide instead:

   Dockage: PCH shall pay dockage in accordance with the rates set forth in Port of Miami Terminal Tariff No. 010 for Small Passenger Vessels.

3. Sub-Section 3(c)(i) of the Agreement is amended to add, after the first sentence of the Section the sentence: "Commencing in Fiscal Year 2013 and continuing over the remaining term of this Agreemen as amended by this First Amendment, PCH shall have a Minimum Annual Guarantee of 30 vessel calls a the Port each Fiscal Year".

4. Sub-Section 3(c)(ii) of the Agreement is amended to delete the Sub-Section in its entirety and to provide instead:

   Upon the Effective Date of the First Amendment, which shall be upon approval of the First Amendment by the Miami-Dade County Board of County Commissioners and the expiration or waiver of any applicable Mayoral veto period, PCH shall cause the Port to be the exclusive Home Port in South Florida (i.e. Palm Beach, Broward, Monroe, Brevard, and Miami-Dade Counties) for all Oceania and Regent vessels. PCH shall not Home Port any Oceania or Regent vessels in another South Florida port from such time until the end of the Initial Term as amended by the First Amendment; provided, however, PCH shall have the right to seek a waiver of the requirement of this subsection, which will be granted upon written request to the Port Director, in the instance that County at the time of PCH's berthing request is unable to provide PCH with a suitable terminal for an Oceania or Regent vessel in the required timeframe. In the instance the County can not comply with such berthing request, PCH, at its sole option may commit the Oceania or Regent vessel to another port until such time as the Port of Miami can accommodate the Oceania or Regent vessel in question. PCH will not be considered to be in breach of this Agreement should it deploy a vessel away from Miami under the terms of this sub-Section.

5. Section 4 of the Agreement is amended to add after the first two sentences of the current Section a sentence reading: "Notwithstanding the previous two sentences, upon the Effective Date of the First Amendment, which shall be upon approval of the First Amendment by the Miami-Dade County Board of County Commissioners and the expiration or waiver of any applicable Mayoral veto period the Initial Term of the Agreement as amended by the First Amendment shall be for a period of five (5) years from the Effective Date."

6. The Agreement, as amended by this First Amendment, and all of the terms, conditions and warranties contained therein, are hereby reaffirmed and shall continue in full force and effect except as specifically modified by this First Amendment.

7. The whereas clauses set for above are incorporated into the body of this First Amendment as if fully set forth herein.

8. This First Amendment shall be governed by Florida Law.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 1 to the Access Agreement to be executed by their duly authorized officers as of the date first written above.

MIAMI-DADE COUNTY, FLORIDA
a political subdivision of the State of Florida

By:_____
Jack Osterholt
Deputy Mayor

Approved as to legal form and sufficiency

ATTEST:
CLERK OF THE BOARD

_____
Assistant County Attorney

By:_____
Deputy Clerk

PRESTIGE CRUISE HOLDINGS, INC.

By: Steve Moeller
Name: STEVE MOELLER
Title: VP PORT & DESTINATION SVCES

ATTEST:

By: Jill A Guidicy, Corporate Counsel

Corporate Seal: