Memorandum

MIAMI-DADE COUNTY

Date:	October 7, 2008
To:	Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners
From:	George M. Burgess County Manager
Subject:	Resolution Authorizing the Execution of Office Space Lease Agreement between Miami-Dade County and Carnival Corporation for Office Space Located at Terminal 10

Agenda Item No. 8(Q)(1)(B)

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of an Office Space Lease Agreement ("Agreement") between Miami-Dade County ("County") and Carnival Corporation ("Carnival") for office space located at Terminal 10.

SCOPE

The Port of Miami ("Port") is located within Commission District 5. The impact of this agenda item is countywide as the Port of Miami is a regional asset and generates employment for residents throughout Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

Carnival shall pay the County $2,717 of annual rent for office space located in Terminal 10 (1303 North Cruise Boulevard). This revenue is based on Carnival's office space rental rate of $11 per square foot per year in accordance with the Port of Miami Terminal Tariff No. 010 - Item 602. The office space lease rate will be subject to review pursuant to Port-directed appraisals to be conducted every two (2) or three (3) years and adjusted accordingly should the Board approve such rate changes.

TRACK RECORD/MONITOR

Carnival is one of the Port's largest customers and has been an outstanding tenant at the Port of Miami since 1972. Presently, Carnival has settled all related outstanding business issues at the Port and no arrearages exist. Based on the Port's Economic Impact Study, Carnival's business activity is estimated to have contributed approximately $1.3 billion to the local economy in 2007. In addition, Carnival maintains its headquarters in Miami-Dade County and currently employs more than 2,400 employees locally.

The Seaport Department staff members responsible for monitoring the Agreement are Juan Kuryla, Assistant Port Director, Maritime Services, and Oregena Jones, Acting Seaport Property Manager.

BACKGROUND

The Port of Miami and Carnival have enjoyed a long business relationship for the past 36 years. Carnival operates the largest cruise line in the world and is a leader in the cruise industry. Carnival has played a significant role in making the Port of Miami the "Cruise Capital of the World"; recently homeporting several of its new class vessels in Miami, such as the Valor in 2004, the Liberty in 2005, and the Freedom in 2007. During the last five years, almost 8.4 million Carnival passengers have used the Port's facilities and have generated in excess of $65 million in revenues to the Port.

Under the terms of the Agreement, Carnival shall use the office space for the purposes of conducting normal business activities related to the processing of passengers as well as for other operations related to waterborne commerce and support functions. The duration of this Agreement shall run co-terminus with the term of the cruise terminal agreement between the County and Carnival (October

1, 1998 – September 30, 2013), with one (1) five (5) year renewal option at Carnival's sole discretion, approved by the Board via Resolution No. R-1194-98.

Carnival shall pay the County $2,717 annual rent ($11 per square foot), plus annual sales tax ($190.20), upon the effective date of this Agreement and continuing throughout the length of the Agreement for the use of 247 square feet of office space in Terminal 10 (Waterside East Office). The rental rate is inclusive of electricity, water and sewer, maintenance and janitorial services including trash collection and disposal.

The rental rate above shall be subject to adjustments, pursuant to either biennial or triennial appraisals directed by the Port. Any new rate shall be approved by the Board. In the event that the annual rent increase applicable to Carnival under the Agreement is not acceptable to Carnival, at its sole discretion Carnival may terminate the Agreement within thirty (30) days notice to the County after the effective date of the rental rate increase.

On July 8, 2003, the Board approved Resolution No. R-777-03, authorizing the County Manager to execute standard form lease agreements for Port properties at Tariff rates. However, Carnival has requested that some of the standard language contained in the Board-approved boilerplate agreement be modified. Towards this end, we are bringing this lease for the Board's consideration. These modifications are listed below.

1. Article 1, Section 1.01 – Term: The term of this Agreement shall run co-terminus with the cruise terminal agreement between the County and Carnival, approved by the Board via R-1194-98; whereas, the standard form agreement has a minimum term of month to month up to a maximum of five (5) years.
2. Article 1, Section 1.03 – Relocation of Premises: The Premises are subject to relocation to a mutually agreeable location, upon forty-five (45) days written notice to the Lessee by the County. The standard form agreement states that the premises are subject to relocation, modification, or deletion, at the sole discretion of the Seaport Department, upon thirty (30) days written notice to the Lessee by the Department.
3. Article 3, Section 3.01 – Rental: The standard agreement states that the rental rate is full service and inclusive of electric, water and sewer, maintenance, and janitorial services. Additional language was included clarifying that the County will be responsible for trash collection and disposal.
4. Article 3, Section 3.02 – Rental Rate Review: Under the proposed agreement, payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within thirty (30) calendar days of same, while the standard form agreement states ten (10) calendar days. Furthermore, additional language has been added allowing the Lessee to terminate the Agreement in the event that the annual increase is not acceptable.
5. Article 4, Section 4.02 – Removal of Trash: Under the proposed Agreement, the County is responsible for trash collection and removal that is accumulated in the Premises on a daily basis within trash receptacles. Any excessive amount of trash shall be the Lessee's responsibility to remove from the Premises. The standard form agreement states the Lessee shall, at its sole cost and expense, remove from the Premises all trash and refuse which might accumulate and arise from its use of the Premises and its business operations.
6. Article 6, Section 6.02 Environmental Protection – Lessee's Obligations (A)(3) Monitoring Equipment: This section has been removed since the office space will have no environmental equipment which will require monitoring.

7. Article 7, Section 7.02 – Signage: The standard agreement states that the Lessee shall not erect, maintain, or display any identifying signs or any advertising matter of any type or kind that is visible to the public without Port approval. Additional language has been added on the proposed Agreement, to allow the Lessee to hang or display posters, pictures, and other items and articles containing its marketing materials within the interior of the Premises.
8. Article 12, Section 12.01 – Payment Defaults: The standard form agreement states that the County may terminate this agreement after seven (7) calendar days notice in writing if the Lessee defaults by failing to make any payments on the required rental, fees, or charges. The proposed Agreement provides for thirty (30) calendar days notice in writing.
9. Article 12, Section 12.02 – Insurance Defaults: The standard form agreement states that the County shall have the right to terminate the Agreement, upon seven (7) calendar days written notice if Lessee fails to provide evidence of insurance coverage prior to the commencement of its operations or fails to provide a renewal of insurance upon its expiration. The proposed Agreement provides for thirty (30) calendar days notice in writing.
10. Article 18, Section 18.21- Cruise Terminal Agreement: This section was added to ensure nothing herein is intended nor shall be interpreted to amend, modify condition or otherwise affect any of the terms or provisions set forth in the cruise terminal agreement.

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 Agreement, exercise the additional one (1) five (5) year renewal option and to exercise any cancellation provision.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: October 7, 2008

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

SUBJECT: Agenda Item No. 8(Q)(1)(B)

Please note any items checked.

_____ **"4-Day Rule" ("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**

_____ **Bid waiver requiring County Manager's written recommendation**

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

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(Q)(1)(B)
10-7-08

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF AN OFFICE SPACE LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CARNIVAL CORPORATION FOR OFFICE SPACE LOCATED AT TERMINAL 10; AND AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE THE AGREEMENT 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 the execution of an Office Space Lease Agreement between Miami-Dade County and Carnival Corporation for office space located at Terminal 10, in the form attached hereto and made a part hereof.

Section 2. Authorizes the County Mayor or County Mayor's designee to execute the Office Space Lease Agreement 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 ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of October, 2008. This resolution shall become effective 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.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. JMM

Jess M. McCarty

Customer No. 0005

OFFICE SPACE LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA, AS LESSOR, AND CARNIVAL CORPORATION, AS LESSEE, AT PORT OF MIAMI

THIS LEASE AGREEMENT (Agreement), is made and entered into as of _____ by and between MIAMI-DADE COUNTY (County), a political subdivision of the State of Florida, pursuant to the provisions of Chapter 125.35, Florida Statutes, 2007, as amended, hereinafter sometimes designated or referred to as the "Lessor", and, CARNIVAL CORPORATION, a CORPORATION, authorized to do business in the State of Florida, hereinafter sometimes designated or referred to as the "Company" or "Lessee".

W I T N E S S E T H:

WHEREAS, THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA (Board), owns and operates the Miami-Dade Dante B. Fascell Port of Miami-Dade, also known as the Seaport Department (Port); and

WHEREAS, the County, owns certain lands located in Miami-Dade County, Florida, on which the Port is located; and

WHEREAS, CARNIVAL CORPORATION has applied to the County for the leasing of OFFICE SPACE at the Port; and

WHEREAS, the County desires to enter into a lease agreement with CARNIVAL CORPORATION

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto do and hereby mutually covenant, agree and bind themselves as follows:

ARTICLE 1
Term and Premises

1.01 Term: The County hereby leases to the Lessee, and the Lessee hereby leases from the County, for a term commencing on _____, and terminating on September 30, 2013, with one (1) five (5) year renewal option at Carnival's sole discretion, as approved by the Board via Resolution No. R-1194-98, (lease should be co-terminus with cruise terminal agreement), the premises described in Article 1.02 (Premises) hereof, on an exclusive basis and for the purposes and uses set forth in Article 2 (Use of Premises) hereof.

1.02 Premises: The premises leased herein is located in TERMINAL 10, (1303 NORTH CRUISE BOULEVARD) at the Port and as shown on Exhibit A, attached hereto and made a part hereof (Premises)

1.03 Relocation of Premises: The Premises are subject to relocation to a mutually agreeable location, and this Agreement may be administratively revised to reflect such relocation, upon 45 days prior written notice to the Lessee by the Department. Relocated space shall be similar in size and configuration, to the Premises leased herein.

ARTICLE 2
Use of Premises

The Lessee shall use the Premises for the purpose of conducting normal business activities and operations concerned with waterborne commerce and transportation at the Port.

ARTICLE 3
Rentals and Payments

3.01 Rental: For annual rental for the lease of the Premises, the Lessee shall pay to the County, commencing on _____ the sum of $226.42, in U.S. funds, plus, if applicable, sales tax and extra charges as described, on the first day of each and every month in advance and without billing, at the offices of the Port, as set forth in Article 3.05 (Address for Payments). Said rental is computed as follows:

DESCRIPTION:	SQ.FT.	RATE	ANNUAL	MONTHLY
TERMINAL 10 WATERSIDE EAST OFFICE	247	$11.00	$2,717.00	$226.42
Plus State Sales Tax if applicable				$15.85
				$242.27

Note: Rental rate is full service and shall include electric, water and sewer, maintenance, and janitorial services (including trash collection and disposal). Sweeper services (extra charges) are provided by Seaport Facilities Maintenance and charged to Lessee at the hourly rates published in the Port of Miami Terminal Tariff No.10 (Tariff). N/A will be entered for sales tax for exempt Lessee – proof of same to be attached.

3.02 Rental Rate Review: In the event the Lessee is in possession of the Premises by virtue of this Agreement on October 1, 2008 (or any annual anniversary thereafter), the rental rates stated in Article 3.01 (Rental) above shall be subject to review and adjustment as set forth hereafter. When such rental rate adjustments are approved by the Board of County Commissioners, and new or revised rental rates applicable in whole or in part to the Premises are established by said Board, the Department shall notify the Lessee in writing of such rates and this Agreement shall be considered and deemed to have been administratively amended to incorporate the revised rental rates effective as of such October 1 date. Payments for any retroactive rental adjustments shall be due upon billing by the Department and payable within thirty (30) calendar days of same. In the event the annual increase is not acceptable to Lessee, Lessee may, at its sole option, terminate this lease within 30 days notice to the County after the effective date of such increase in rent.

3.03 Double Rental and Possession Beyond Term: In the event that the Lessee remains in possession of the Premises beyond the expiration or termination of the Agreement, the Lessee shall be bound by all of the terms and conditions of this Agreement to the same extent as if this Agreement were in full force and effect during the time beyond the expiration date of this Agreement. However, during any such possession of the Premises as a holdover tenant after the County has demanded the return of the Premises, the Lessee shall be liable for double rentals for so long as the Lessee remains in possession after such demand, such

rentals to be based upon the rental rates applicable from time to time in whole or in part to the Premises.

3.04 Address for Payments: The Lessee shall pay, by mail, all rentals, fees and charges required by this Agreement to the following:

Port of Miami
Miami-Dade Seaport Department
1015 North America Way, Suite 200
Miami, Florida 33132

Payments may be made by hand-delivery to the Port of Miami offices during normal working hours.

3.05 Late Payment Charge: In the event the Lessee fails to make any payments, as required to be paid under the provisions of this Agreement, within ten (10) days after same shall become due, a late payment penalty as specified in Item 218 of the Tariff (currently set at 1-1/2% per month), shall accrue against the delinquent payment(s) from the original due date until the Port actually receives payment. The right of the County to require payment of such fee and the obligation of the Lessee to pay same shall be in addition to and not in lieu of the rights of the County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.

3.06 Dishonored Check or Draft: In the event that the Lessee delivers a dishonored check or draft to the County in payment of any obligation arising under the terms of this Agreement, the Lessee shall incur and pay a service fee according to the rate structure established by Miami-Dade County. The rate currently established by Administrative Order 4-86, and subject to change, is $15 per dishonored item or 5%, whichever is greater. Further, in such event, the County may require that future payments required pursuant to this Agreement be made by cashi' 's check or other means acceptable to the Port.

3.07 Utilities: Unless the Premises are separately metered and billed directly to the Lessee by the utility company or included in the rental rates and noted in Article 3.01, the Lessee hereby agrees to pay monthly, upon billing by the Department, for utility consumption in the Premises. This monthly charge will be based on a survey conducted by or on behalf of the department of the utility consumption by the Lessee and/or current nondiscriminatory rates charged others at the Port. This monthly charge may also be adjusted and billed retroactively, from time to time, based on changes in consumption and rates. The Lessee shall pay for all utilities used by it. In the event the premises are metered and billed to the Department, the Lessee shall pay for utility consumption based on the metered charge. The County shall have no obligation to provide utilities to the Premises other than those existing as of the effective date of this Agreement.

ARTICLE 4
Maintenance and Repair by Lessee

4.01 Cleaning: The Lessee shall, at its sole cost and expense, perform or cause to be performed, services which will at all times keep the Premises clean, neat, orderly, sanitary, and presentable subject to County's obligations to provide maintenance and janitorial services as set forth herein.

4.02 Removal of Trash: The County is responsible for trash collection and removal that has accumulated in the Premises on a daily basis within trash receptacles. Any excessive amount of trash shall be the Lessee's responsibility to remove from the Premises. Lessee is obligated to keep premises in clean, neat condition as per 4.01 above

4.03 Maintenance and Repairs: The Lessee shall repair all damage caused by the Lessee and its employees, agents, independent contractors, patrons, servants, or invitees. Prior to or at termination of this Agreement, injury done by the installation or removal of equipment and personal property of the Lessee shall be repaired so as to restore the Premises to its original state, except as the Premises may have been altered by the Lessee with the approval of the Port pursuant to Article 7.01 (Alteration), and to quit and surrender up the Premises in the same good order and condition as it was at the commencement of this Agreement, reasonable wear and tear and damage caused by an Act of God excepted; provided however, that such return of the Premises under this Article 4.03 shall not relieve the Lessee of its obligations for damages to the Premises that may be specifically provided elsewhere in this Agreement.

4.04 Modifications or Access to Roof: The Lessee covenants that it shall not install, attach, suspend or in any manner modify the roof, when applicable, its members or structures nor shall it permit any person to walk on the roof or its members without the prior consent of the Port. In the event Lessee violates this covenant, the duty of the County to pay for maintaining, repairing or replacing the roof or any portion thereof shall be null and void, and any expense for such maintenance, repair or replacement shall be the sole and exclusive obligation of the Lessee.

4.05 Inspections: The Port and/or its designated representatives shall have the right to inspect the Premises to identify those items of operation, maintenance, repair, replacement, modification and refurbishment required of the Lessee or the County, pursuant to Article 5 (Maintenance by County), to keep the Premises in good order and condition. The Lessee shall perform all corrective work required of it, identified in such inspection(s) within 30 calendar days of receipt of written or verbal notice from the Port. Trash and debris problems shall be corrected within twenty-four (24) hours following receipt of either oral or written notice from the Port.

4.06 Failure to Maintain: Should it be determined by the Port that the Lessee has failed to properly operate, clean, remove excessive trash and refuse, maintain, repair, replace, and refurbish the Premises as required by this Article 4 (Maintenance and Repair by Lessee), the Department shall provide to the Lessee a list of deficiencies, reflecting the amount of time to be reasonably allowed for the Lessee to correct same. If the Lessee fails to correct such deficiencies within the time allowed, the Port, following ten (10) days further notice to the

Lessee, may enter upon the Premises and perform all work, which, in the judgment of the Port, may be necessary and the County shall add the cost of such work, plus twenty-five percent (25%) for administrative costs, to the rent due hereunder on the first day of the month following the date of such work, and such cost shall be and constitute a part of the rent. Subsequent to receipt of the further notice of intent to perform repairs or cleanup from the Port, the Lessee shall not undertake

performance of such repairs or cleanup without specific prior written authorization from the Department.

ARTICLE 5
Maintenance by County

5.01 County Maintenance: The Lessor will provide maintenance of the building's wiring systems. Any improvements and/or additions, or interior partitions that may be desired by the Lessee must have written approval of the Director, or his designee, before being made and will be made according to the existing Building Code at the expense of the Lessee. Maintenance and repairs shall be in quality and class equal to or better than the original work to preserve the Premises in good order and condition. The County shall operate and maintain in good condition all components of the existing water, sanitary sewerage and storm water drainage facilities that lie outside the boundaries of the Premises. The County shall maintain the roof, its structural supports and exterior walls of the building. The County shall maintain all common areas including parking areas, hallways, restrooms, elevators, landscaping, irrigation system, and the building's central air system. If any of such facilities are damaged or destroyed by the operations of the Lessee, the Department shall make the necessary repairs or replacements and shall bill the Lessee for the costs of same, plus 25% for administrative costs, in the manner specified in Article 4.06 (Failure to Maintain) hereof.

5.02 County Maintenance Subject to Certain Conditions: Such maintenance by the County may be subject to interruption caused by repairs, strikes, lockouts, labor controversies, inability to obtain fuel, power, or parts, accidents, breakdowns, catastrophes, national or local emergencies, acts of God, and other conditions beyond the control of the County. Upon any such happening, the Lessee shall have no claim for damages for the County's failure to furnish or to furnish in a timely manner any such maintenance; provided, however, that the department, in its sole discretion, may provide a rent abatement for that portion of the Premises rendered unusable for the period of time that the County is unable to make the repairs required by Article 5.01 (County Maintenance). The County shall exercise reasonable diligence to remedy and/or cure any such interruptions are within the County's control.

ARTICLE 6
Regulation, Licenses, and Permits

6.01 Rules and Regulations – General:

(A) The Lessee shall abide by the terms and conditions as contained in the Port of Miami Tariff No. 010 (Tariff), and subsequent tariffs or amendatory provisions, if not contradictory with the terms of this Agreement.

(B) The Lessee shall comply with all Ordinances of the County, including the Rules and regulation of the Department, Chapter 28A, Code of Metropolitan Miami-Dade County, Florida, as the same may be amended from time to time, Operational Directives issued thereunder, all additional laws, statutes, ordinances, regulations, and rules of the Federal, State, and County Governments, and any and all plans and programs developed in compliance therewith, which may be applicable to its operations or activities under this Agreement, specifically including, without limiting the generality hereof, federal, State, and County environmental laws.

(C) The Lessee agrees to permit the entity, at all reasonable times, of inspectors of the Departments, the County's Department of Environmental Resources Management (DERM), or any Federal, State, or County agency having jurisdiction over any law or requirements referenced in Article 6.01(A) (Rules and Regulations – General) above, to make inspections of the Premises to determine the Lessee's compliance therewith.

(D) Permits and Licenses:

(1) The Lessee, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, maintaining on a current basis, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required, at any time throughout the entire term of this Agreement, by any Federal, State, or County governmental entity or any judicial body having jurisdiction over the Lessee or the Lessee's operations and activities, for any activity of the Lessee conducted on the Premises and for any and all operations conducted by the Lessee therein, including insuring that all requirements, permits, and licenses necessary for or resulting, directly or indirectly, from the Lessee's operations and activities on the Premises have been obtained and are being fully complied with.

(2) Such permits and licenses shall include, but not be limited to, a Certificate of use and Occupancy. Prior to occupancy of the Premises and commencement of operations under this Agreement, the Lessee shall provide to the Department evidence that it has obtained the Certificate of Use and Occupancy. Upon written request of the Department, the Lessee shall provide to the Department copies of any applicable permits and licenses, and applications therefor, which the Department may request

(E) Violations of Rules and Regulations
Subject to the provisions of Article 6.02(D)(1) the Lessee agrees to pay on behalf of the County any penalty, assessment or fine issued against the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the Federal, State, or County governments, based in whole or substantial part upon a claim or allegation that the Lessee, its agents, employees, invitees, or trespassers have violated any law, ordinance, regulation, rule, or directive described in Article 6.01 (Rules and Regulations – General) above or any plan pr program developed in compliance therewith. The Lessee further agrees that the substance of this Article 6.01 (Rules and Regulations – General) above shall be included in every sublease, contract, and other agreement, which the Lessee may enter into related to its operation and activities under this Agreement and that any such sublease, contract, and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions". This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting, or subcontracting.

6.02 Environmental Protection:

(A) Lessee's Obligations: At all times during the term of this Agreement, the Lessee shall comply with the following with respect to its activities within the Premises:

(1) Disposal of Wastes: The Lessee shall dispose of all industrial, domestic, hazardous, and solid wastes in accordance with applicable Federal, State and local laws, rules, and regulations. It is the responsibility of the Lessee to determine the approved method of disposal of its wastes and take action accordingly.

(2) Records: The Lessee shall maintain such records as are necessary to adequately assess environmental compliance in accordance with Federal, State, and County laws, rules and regulations.

(B) Lessee's Failure to Comply with Environmental Laws: The Lessee acknowledges that non-compliance with its obligations under Article 6.02 (Regulatory Compliance - Environmental Protection) constitutes a material breach of this Agreement, and that illegal discharges and violations of Chapter 24, Code of Metropolitan Miami-Dade County, Florida, may result in penalties, issuance of civil violation notices and penalty orders, which non-compliance and violations are also subject to Article 6.01(E) (Regulatory Compliance - Violations of Rules and Regulations) above, and termination of this Agreement, pursuant to Article 12.03 (Termination - Other Defaults) hereof.

(C) County Responsibility for Pre-Occupancy Environmental Events:

(1) Responsibility: The County shall be responsible for any illegal discharge or other violations of said Chapter 24 or any other violation of law, regulation or ordinance (a) which results from any environmental condition which existed prior to the commencement date of this Agreement, and (b) which is caused by any environmental condition which has its origins outside of the leased Premises and, in the case of (a) or (b), was not caused by any action or inaction of the Lessee.

(2) Remediation: The County, through the Department, agrees that it will take appropriate steps to cause the remediation required by law of all pre-occupancy events on or beneath the premises which is not caused by the Lessee, its agents, employees, contractors, invitees, or trespassers.

(3) Lessee's Obligations During Pre-Occupancy Remediation Efforts by County: The Lessee agrees to cooperate with the County in such remediation steps by: (a) assigning appropriate personnel of Lessee to coordinate the remediation steps with the party or parties actually performing the remediation, provided the foregoing shall not entail any additional expense to the Lessee except as to such personnel; and (b) permitting the County personnel and personnel of such party or parties performing the remediation access to and use of the portion of the Premises involved in such remediation steps.

(4) No Liability to Lessee: The Lessee acknowledges that remediation steps taken to correct any environmental contamination may extend over a number of years and may cause inconvenience and business interruption to the Lessee. The County shall not be liable to the Lessee in any manner for such inconveniences and disruption, but will exercise reasonable efforts to minimize them to the extent reasonably possible.

(D) Environmental Indemnities:

(1) The County agrees that the Lessee shall have no liability for, and provided the Lessee demonstrates that an event was a pre-occupancy event for which Lessee is not liable hereunder, that the County will indemnify and hold the Lessee

harmless from, all costs and expenses (including, without limitation, all attorney's fees and costs) associated with any environmental contamination of the premises arising out of a pre-occupancy event which was not caused by the Lessee.

(2) Notwithstanding the foregoing, such environmental indemnity shall not extend to, and the Lessee shall be solely responsible for all such costs and expenses which arise out of environmental contamination for which County may be held liable caused by the Lessee, the Lessee's agents, employees, contractors, invitees, or trespassers during any prior or current tenancy or occupancy of the Premises or any portion thereof.

(3) The parties' responsibilities, obligations, and liabilities pursuant to this Article 6.02(D) (Environmental Indemnities) shall survive the expiration or early termination of this Agreement.

(E) No Waiver by County: Nothing in this Agreement or otherwise shall be deemed to be a waiver of the County's right to take action against responsible parties for remediation of or payment for environmental deficiencies on the premises, nor be deemed to be an assumption by the County of the responsibility for such remediation or payment, except as may be imposed on the County as a matter of law.

ARTICLE 7
Alteration of Premises and Erection of Signs

7.01 Alteration: The Lessee shall not alter the Premises in any manner whatsoever without the prior written approval of the Port. In the event the Lessee is given approval to make alterations to the Premises, the Lessee shall comply with the terms and conditions of such approval, as contained in the Port's approval letter, and a failure to do so shall constitute a default pursuant to Article 12.03 (Termination - Other Defaults) hereof.

7.02 Signage: The Lessee shall not erect, maintain, or display on the Premises any identifying signs or any advertising matter of any type or kind which is visible to the public without Port approval provided, however, that Lessee may hang or otherwise display posters, pictures, and other items and articles containing its marketing materials within the interior of the Premises.

ARTICLE 8
Assignment and Subletting

The Lessee shall not assign, transfer any rights or privileges granted, pledge or otherwise encumber any of the terms and conditions of this Agreement, nor shall Lessee of Port facilities enter into a contract with a third party involving the Port without the written approval of the Director and/or his designee. Further, the Lessee shall not sublet all or any portion of the Premises, or allow others to use the Premises without the express prior written consent of the port, which content shall be based on the management guidelines established by the Department for subleasing and/or policy set by the Board of County Commissioners.

ARTICLE 9
Indemnification

Lessee shall indemnify and hold harmless the County and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys fees and costs of defense, which the County or its officers, employees, agents, or instrumentalities may incur as a result of any nature arising out of, relating to or resulting from the performance of this Agreement by the Lessee or its employees, agents, servants, partners, principals, or subcontractors. Lessee shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay costs, judgments and attorneys fees which may issue thereon. Lessee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Lessee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents, and instrumentalities as herein provided.

ARTICLE 10
Insurance

10.01 Insurance Required: In addition to such insurance as may be required by Federal, State or local law, Lessee shall furnish to Miami-Dade County, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

(A) Public Liability Insurance on a comprehensive basis in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.

(B) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used by the Lessee in connection with its operations under this Agreement in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

All insurance policies required pursuant to the terms of this Agreement shall be issued in companies approved to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to Management, and no less than "Class V" as to Strength in accordance with the latest edition of "Best's Insurance Guide", published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and must be members of the Florida Guaranty Fund.

10.02 Insurance Certificates Required: Prior to the commencement of operations hereunder and annually thereafter, the Lessee shall furnish or cause to be furnished Certificates of Insurance to the Port which certificates shall clearly indicate that:

(A) The Lessee has obtained insurance in the types, amounts and classifications as required for strict compliance with this Article;

(B) The policy cancellation notification provisions specify at least thirty (30) days advance written notice of cancellation to the County; and

(C) The County is named as "additional insured" with respect to the Lessee's public liability policies.

On said insurance certificates, unless specifically shown to be excluded thereon, comprehensive public liability coverage shall include contractual liability, and notification of cancellation shall include notification of material changes in the policies. Certificates will indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

The County reserves the right to require the Lessee to provide such reasonably amended insurance coverage as it deems necessary or desirable, upon issuance of notice in writing to the Lessee, which notice shall automatically amend this Agreement effective thirty (30) days after such notice.

10.03 Compliance: Compliance with the requirements of this Article shall not relieve the Lessee of its liability under any other portion of this Agreement or any other agreement between the County and the Lessee.

10.04 Right to Examine: The Department reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including but not limited to binders, amendments, exclusions, riders, and applications) to determine the true extent of coverage. The Lessee agrees to permit such inspection at the offices of the Port.

10.05 Personal Property: Any personal property of the Lessee or of others placed in the Premises shall be at the sole risk of the Lessee or the owners thereof, and the County shall not be liable for any loss or damage, except to the extent such loss or damage was caused by the sole active negligence of the County, as limited by Section 768.28, Florida Statutes.

ARTICLE 11
Use of Public Facilities

The County grants to the Lessee, in common with all others desiring to use the Port, and only to the extent necessary and consistent with applicable security policies and procedures, so long as such use does not conflict with the County's operation of the Port, to carry out the rights granted the Lessee hereunder, the nonexclusive privilege to use the roads of egress and ingress, service roads and such other applicable facilities and improvements as may be now in existence or hereafter constructed at the Port; provided, however, that such usage shall be subject to the payment of nondiscriminatory fees and other charges established by the County. Nothing herein contained shall grant to the Lessee the right to use any

leasable space or area improved or unimproved which is leased to a third party, or which the County has not leased herein.

ARTICLE 12
Termination

12.01 Payment Defaults: Failure of the Lessee to make any payments of rentals, fees, or charges required to be paid herein when due shall constitute a default, and the County may, at its option terminate this Agreement after thirty (30) calendar days notice in writing to the Lessee unless the default is cured within the notice period.

12.02 Insurance Defaults: The County shall have the right, upon thirty (30) calendar days written notice to the Lessee, to terminate this Agreement if the Lessee fails to provide evidence of insurance coverage in strict compliance with Article 10 (Insurance) hereof prior to commencement of operations, or fails to provide a renewal of said evidence upon its expiration; provided, however, that such termination shall not be effective if the Lessee provides the required evidence of insurance coverage within the notice period.

12.03 Other Defaults: The County shall have the right, upon thirty (30) calendar days written notice to the Lessee, to terminate this Agreement upon the occurrence of any one or more of the following, unless the same shall have been corrected within such period, or, if correction cannot reasonably be completed within such thirty (30) day period, in the sole discretion of the Port, the Lessee has commenced substantial corrective steps within such thirty (30) day period and diligently pursues same to completion:

(A) Failure of the Lessee to comply with any covenants of this Agreement and the covenants to provide required evidence of insurance coverage, which are addressed above.

(B) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein, by the Lessee.

12.04 Habitual Default: Notwithstanding the foregoing, in the event that the Lessee has frequently, regularly or repetitively defaulted in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Lessee, in the sole opinion of the County and regardless of whether the Lessee has cured each individual condition of breach or default as provided in Articles 12.01 (Termination - Payment Defaults), 12.02 (Termination - Insurance Defaults) and 12.03 (Termination - Other Defaults) hereinabove, the Lessee shall be determined by the Director to be an "habitual violator". At the time that such determination is made, the Port shall issue to the Lessee a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise the Lessee that there shall be no further notice or grace periods to correct any subsequent breach(es) or default(s) and that any subsequent breach(es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may cancel this Agreement upon the giving of written notice of termination to the Lessee, such

termination to be effective upon the tenth (10th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Lessee shall have no further rights hereunder.

12.05 Termination by Abandonment: This Agreement shall be automatically terminated upon the abandonment by the Lessee of the Premises or the voluntary discontinuance of operations at the Port for any period of time exceeding fifteen (15) consecutive calendar days, unless such abandonment or discontinuance has been caused by strike, labor disturbance, acts of God, civil disturbance, or governmental order that prevents the Lessee's use of the Premises for the purposes authorized in Article 2 (Use of Premise) hereof.

12.06 Actions at Termination: The Lessee shall vacate, quit, surrender up and deliver the Premises to the County on or before the termination date of this Agreement, whether by lapse of time or otherwise. The Lessee shall surrender the Premises in the condition required under Article 4.03 (Maintenance and Repair by Lessee - Maintenance and Repairs) herein. All repairs for which the Lessee is responsible shall be completed prior to surrender. The Lessee shall deliver to the Port all keys to the Premises upon surrender. On or before the termination date of this Agreement, except in the instance of termination pursuant to Article 12.05 (Termination - Termination by Abandonment), in which event the Lessee shall be allowed up to five (5) calendar days from date of termination, and provided that the Lessee is not in default in the payment of any rentals, fees, or charges required to be paid herein, the Lessee shall remove all of its personal property from the Premises. Any personal property of the Lessee not removed in accordance with this Article may be removed by the Port for storage at the cost of the Lessee. Failure on the part of the Lessee to reclaim its personal property within thirty (30) days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interest of the County.

The Lessee shall, at its sole cost and expense, take all actions required by Federal, State and local laws, regulations or codes to remove from the Premises any hazardous substance or environmental contaminant, whether stored in drums, or found in vats, containers, distribution pipe lines, or the like. All such substances and contaminants shall be removed by the Lessee in a manner approved and authorized by such Federal, State or local laws, regulations or codes.

If the County advises the Lessee that it has reasonable grounds to believe that any hazardous substance or environmental contaminant has been released within the Premises or into the ground under the Premises, during the term of this Agreement or during the terms of any prior leases between the Lessee and the County for the same or substantially the same Premises, then the Lessee at its sole cost and expense shall retain an approved environmental consultant to perform whatever environmental assessment may be required to determine the extent of such release. The Lessee shall comply with the recommendations and conclusions, contingent upon County approval, of such consultant regarding environmental clean up efforts that may be required, and shall comply with any other clean up requirements imposed on the Lessee by Federal, State or local law, regulations, or codes.

Notwithstanding any other provisions of this Agreement, the Lessee shall have no liability to the Port for any violation of environmental law which is attributable to the acts or omissions of any person other than the Lessee, its agents, employees, invitees, contractors, or trespassers (nor shall such violations

constitute a default or breach of this Agreement). Nothing in this Article or Agreement shall affect the Lessee's liability for environmental violations as separately provided for in any Federal, State, or local law.

12.07 Lien Upon Personal Property: In the event of termination for default or upon termination of this Agreement by its term, the County shall have a lien upon all personal property of the Lessee located within the Premises to secure the payment of any unpaid rentals, fees, and charges accruing under the terms of this Agreement.

12.08 Right to Show Premises: At any time after the Lessee has been given notice of termination or default, pursuant to Article 12 (Termination) hereof, the County shall have the right to enter on the Premises for the purpose of showing the Premises to prospective tenants or users.

12.09 County Defaults: This Agreement shall be subject to termination by the Lessee in the event of a default by the County in the performance of any covenant or agreement herein required to be performed by the County and the failure of the County to remedy same within a reasonable period of time following receipt of written notice from the Lessee of such default.

12.10 Other Terminations: This Agreement shall be subject to termination by the County or the Lessee in the event of any one or more of the following:

(A) The permanent abandonment of the Port of Miami.

(B) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Port, or any substantial part or parts thereof, in such a manner as to substantially restrict the Lessee from operating therefrom for a period in excess of ninety (90) consecutive days, provided that nothing contained herein shall be deemed to constitute a waiver by the Lessee of any right it may have against the United States to just compensation in the event of any such assumption.

(C) The issuance by any court of competent jurisdiction of any injunction in any way substantially preventing or restraining the use of the Port, and the remaining in force of such injunction for a period in excess of ninety (90) days.

ARTICLE 13
Special Conditions

13.01 Quality of Service: The Lessee shall furnish the service required and authorized, pursuant to Article 2 (Use of Premises) hereof, on a good, prompt, and efficient basis and on a fair, equal, and not unjustly discriminatory basis to all users thereof.

13.02 Nondiscriminatory Prices: The Lessee shall charge fair, reasonable, customary and not unjustly discriminatory prices for each unit of sale or service provided at the Premises; provided, however, that the Lessee may make reasonable, customary, and nondiscriminatory discounts, rebates, or similar types of price reductions to volume purchasers of the Lessee's services.

ARTICLE 14
Nondiscrimination

14.01 Employment Discrimination: The Lessee shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex, race, color, religion, national origin, ancestry, or disability. The Lessee shall comply with applicable provisions of the Americans with Disabilities Act, including, but not limited to, provisions pertaining to employment.

14.02 Nondiscriminatory Access to Premises and Services: The Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, sex, national origin, or ancestry, shall be executed from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) that in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the grounds of race, color, sex, national origin, or ancestry, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the improvements; and (3) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to then enforceable regulations of the Department of Transportation, as amended from time to time.

14.03 Breach of Nondiscrimination Covenants: In the event it has been determined that the Lessee has breached any enforceable nondiscrimination covenants contained in this Agreement applicable to Lessee operations conducted on the Premises, pursuant to the complaint procedures contained in the applicable Federal Regulations, and the Lessee fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to Article 12.03 (Termination - Other Defaults) hereof.

14.04 Affirmative Action and Disadvantaged Business Enterprise Programs: The Lessee agrees that in the event the provisions of 49 CFR Part 23, Disadvantaged Business Enterprises (DBE) and 14 CFR Part 152, Affirmative Action Employment Programs, are applicable to the Lessee operations conducted on the Premises under this Agreement, it shall comply with all requirements of the local, State and Federal agencies. These requirements may include, but be not limited to, the compliance with DBE and/or Employment Affirmative Action participation goals, keeping of certain records of good faith compliance efforts, and the submission of various reports, including, if directed by the Department, the contracting of specified percentages of goods and services contracts to DBE. Failure to comply with these requirements shall constitute a default hereunder and be grounds for termination of this Agreement. In the event it has been determined, in accordance with applicable regulations, that the Lessee has defaulted in the requirement to comply with this section, and the Lessee thereafter fails to comply with the sanctions and/or remedies then prescribed, the County shall have the right, upon written notice to the Lessee to terminate this Agreement pursuant to Article 12.03 (Termination - Other Defaults) hereof.

ARTICLE 15
Security and Special Provisions

15.01 Security: The Lessee acknowledges and accepts full responsibility for the security and protection of the Premises, any improvements thereon, its equipment and property on the Port. The Lessee fully understands and acknowledges that any security measures deemed necessary by the Lessee for the protection of said Premises, equipment and property and access through the Premises shall be the sole responsibility of the Lessee and shall involve no cost to the County. All such security measures by the Lessee shall be in accordance with Section 311.12, Florida Statutes (2002), Chapter 28A of the Miami-Dade County Code, the Tariff, and any applicable administrative orders promulgated thereunder. Tenant must comply with all Seaport Security Policies, including utilizing locks and keys provided only by the Port. Security policies may include access during non-office hours, proper identification badges, and/or background investigation of employees.

15.02 Security Identification Display Area Access - Identification Badges: The Lessee, as provided for in the Tariff, shall be responsible for requesting the Port to issue Identification (ID) badges to all employees who are authorized access to restricted areas or areas of cargo operations (ACO) of the Port, designated in the Seaport Security Program and shall be further responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel transferred from the Port assignment or terminated from the employ of the Lessee or upon termination of this Agreement. The Lessee shall pay, or cause to be paid, to the Port such nondiscriminatory charges, as may be established from time to time, for the issuance or for lost or stolen ID badges and those not returned to the Port in accordance with this Article.

15.03 Drug-Free Workplace Default: The Lessee acknowledges it has provided to the County a Drug-Free Workplace Affidavit certifying that it is providing a drug-free workplace for its employees at the Premises, as required by County Ordinance No. 92-15, adopted on March 17, 1992, as may be amended from time to time (Ordinance). Based on the provisions of said Ordinance, the County shall have the right, upon thirty (30) days written notice to the Lessee, to terminate this Agreement in the event the Lessee fails to provide, as of each anniversary of the effective date of this Agreement, the annual re-certification affidavit as required by the Ordinance; provided, however, that such termination shall not be effective if the Lessee submits the required Affidavit within the notice period.

Further, this Agreement shall be terminated upon not less than fifteen (15) calendar days written notice to the Lessee and without liability to the County, if the Department or the County Manager determines any of the following:

(A) That the Lessee has made a false certification in its execution of the Affidavit submitted or in its annual re-certification as required by the Ordinance.

(B) That the Lessee has violated its original or renewal certification by failing to carry out any of the specific requirements of the Ordinance, other than the annual re-certification; or

(C) That such a number of employees of the Lessee have been convicted of violations occurring in its workplace(s) as to indicate that the Lessee has failed to make a good faith effort to provide a drug-free workplace as required by the Ordinance.

15.04 Right to Search: The Lessee agrees that its vehicles, cargo, goods, and other personal property are subject to being searched when attempting to enter or leave and while on the Port.

It is further agreed that the Port has the right to prohibit an individual, agent, or employee of the Lessee from entering the Port, based upon facts which would lead a person in his or her reasonable judgment to believe that such individual might be inclined to engage in theft, cargo tampering, sabotage, or other unlawful activities. Any person denied access to the Port or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a hearing before the Director or his authorized designee.

The Lessee acknowledges and understands that these provisions are for the protection of all users of the Port and are intended to reduce the incidence of thefts, cargo tampering, sabotage, and other unlawful activities at the Port.

ARTICLE 16
Control of Employees

The Lessee shall properly control the actions of its employees at all times that said employees are working at the Port, ensuring that they present a neat appearance and discharge their duties in a courteous and efficient manner and that they maintain a high standard of service to the public.

ARTICLE 17
Civil Actions

17.01 Governing Law; Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The venue of any action on this Agreement shall be laid in Miami-Dade County, Florida, and any action to determine the rights or obligations of the parties hereto shall be brought in the courts of the State of Florida.

17.02 Notice of Commencement of Civil Action: In the event that the County or the Lessee commence a civil action where such action is based in whole or in part on an alleged breach of this Agreement, the County and the Lessee agree to waive the procedure for initial service of process. The County and the Lessee agree to submit themselves to the jurisdiction of the court in which the action has been filed whenever service has been made in the following manner:

(A) Upon the County: by Certified Mail, Return Receipt Requested, sent to (i) the party indicated in Article 18.07 (Other Provisions - Notices) on behalf of the County and (ii) with a copy to the County Attorney, 111 NW First Street, 28th Floor, Miami, FL 33130.

(B) Upon the Lessee: by personal service or by Certified Mail, Return Receipt Requested, upon the party indicated in Article 18.07 (Other

Provisions - Notices) on behalf of the Lessee, with a copy to whatever attorney the Lessee has designated in writing, if any.

In the event that the County and/or the Lessee raise an objection to service of initial pleading as provided for herein, and the trial court overrules such objection, the objecting party shall pay liquidated damages (attorney's fees) in the amount of $250.00 to the plaintiff in such action, prior to answering the complaint.

17.03 Registered Office/Agent; Jurisdiction: Notwithstanding the provisions of Article 17.02 (Civil Actions - Notice of Commencement of Civil Action), and in addition thereto, the Lessee, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If the Lessee is a natural person, he and his personal representative hereby submit themselves to the jurisdiction of the Courts of this State for any cause of action based in whole or in part on an alleged breach of this Agreement.

ARTICLE 18
Other Provisions

18.01 No Representation: The County makes no representation, warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises, and it is agreed that County will not be responsible for any loss, damage, or costs which may be incurred by the Lessee by reason of any such physical condition.

18.02 Heading: Any headings preceding the text of any articles, paragraphs, or sections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

18.03 Interference: The Lessee further expressly agrees to prevent any use of the Premises that would interfere with or adversely affect the operation or maintenance of the Port or otherwise constitute a hazard.

18.04 Authorized Uses Only: The Lessee shall not use or permit the use of the Premises for any illegal or unauthorized purpose or for any purpose which would increase the premium rates paid by the County on, or invalidate, any insurance policies of the County or any policies of insurance written on behalf of the Lessee under this Agreement.

18.05 Binding Effect: The terms, conditions, and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

18.06 Federal Subordination: This Agreement shall be subordinate to the provisions of any existing or future agreements between the County and the United States of America relative to the operation and maintenance of the Port. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Port, or any part thereof, during time of war or national emergency for military or naval use and any

provisions of this Agreement inconsistent with the provisions of such lease to, or assumption of control by, the United States of America shall be suspended.

18.07 Notices: All notices required or permitted to be given under the terms ad provisions of this Agreement by either party to the other shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, to the parties as follows:

As to the County or Seaport Department:

Port Director
Miami-Dade County Seaport Department
1015 North America Way, Suite 200
Miami, Florida 33132

As to the Lessee:

CARNIVAL CORPORATION
Attn: Paul Zacharski
3655 N.W. 87TH AVENUE
MIAMI, FLORIDA 33178

or to such other address as may hereafter be provided by the parties in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt. Hand delivered notices shall be deemed received by the Lessee when presented to the local management representative of the Lessee.

18.08 Rights Reserved: Rights not specifically granted the Lessee by this Agreement are reserved to the County.

18.09 Rights of County: The County shall have the absolute right, without limitation, to make any repairs, alterations, and additions to any structures and facilities at the Port. The County shall, in the exercise of such right, be free from any and all liability to the Lessee for business damages occasioned during the making of such repairs, alterations, and additions, except those occasioned by the sole active negligence of the County, its employees, or agents.

18.10 Rights to be Exercised by Department: Wherever in this Agreement rights are reserved to the County, the Port may exercise such rights.

18.11 No Waiver: There shall be no waiver of the right of either party to demand strict performance of any of the provisions, terms, and covenants of this Agreement nor shall there be any waiver of any breach, default, or non-performance hereof by either party, unless such waiver is explicitly made in writing by the other party. Any previous waiver or course of dealing shall not affect the right of either party to demand strict performance of the provisions, terms, and covenants of this Agreement with respect to any subsequent event or occurrence of any subsequent breach, default, or non-performance hereof by the other party.

18.12 Right to Regulate: Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Lessee or its operations.

18.13 Severability: If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement are severable.

18.14 Inspections: The authorized employees and representatives of the County and of any applicable Federal, State, or State agency having jurisdiction hereof shall have the right of access to the premises at all reasonable times for the purposes of inspection and testing to determine compliance with the provisions of this Agreement. This right of inspection and testing shall impose no duty on the County to inspect and shall impart no liability upon the County should it not make any such inspections.

18.15 Payment of Taxes: The Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interests in the Premises, its improvements and its operations under this Agreement; provided, however, the Lessee shall not be deemed to be in default of its obligations hereunder for failure to pay such taxes pending the outcome of any legal proceedings instituted to determine the validity of such taxes. Failure to pay the taxes upon the adverse ultimate conclusion of such legal proceedings against the Lessee shall constitute a default.

18.16 Quiet Enjoyment of Others: The Lessee shall control the actions of its employees, agents, invitees, and those doing business with it, so as to not annoy, disturb, or be offensive to others and to provide the service hereunder so as to not unreasonably create a nuisance or thing which may disturb the quiet enjoyment of any other users of the Port.

18.17 Destruction of Premises: In the event the Premises shall be destroyed or so damaged or injured by fire, windstorm, flood, or other casualty (and in each such event the Lessee was not at fault in whole or in part) during the life of this Agreement that the Premises or any portion thereof are rendered untenantable, the County shall have the right, but not the obligation, to render said Premises or damaged portion thereof tenantable by repairs completed within a reasonable period of time.

(A) Total Destruction: In the event the County elects not to render the Premises tenantable, if destroyed or damaged in their entirety, the Lessee shall be so notified in writing by the Department, and this Agreement shall be deemed terminated as of the date of the casualty, with the Lessee being liable only for payment of rentals on a prorata basis as to whatever portion(s) of the Premises which were tenantable and used by the Lessee following the casualty. In such event, the Department shall endeavor to find adequate replacement premises for the Lessee in existing facilities on the Port.

(B) If the damaged portion of the Premises is not rendered tenantable by the County within a reasonable period of time, and the Lessee shall determine that: 1) the loss of the damaged portion of the Premises shall have a materially adverse impact on the ability of the Lessee to utilize the Premises for the purposes described in Article 2 (Use of Premises); or 2) would require the Lessee to obtain other space off the Premises in order to substantially conduct the operations of the Lessee originally conducted within the Premises, then, in either such event, upon written notice to the County, the Lessee may cancel this Agreement as of a date which shall be not later than three (3) months

from the giving of such notice, if the repairs are not completed within ninety (90) days following such written notice of the intent to cancel, or if the County has not commenced repairs within such notice period for repairs which cannot be reasonably completed within such 90-day period. In the event of cancellation, the rent for the untenantable portion of the Premises shall be paid only to the date of such fire, windstorm, flood, or other casualty. If the Agreement is not cancelled following any such casualty, the rent shall be abated as to the portion of the Premises rendered untenantable.

The remedies provided to Lessee in this Article are exclusive, and Lessee shall be entitled to no other remedies in the event of a complete or partial destruction of or damage to the Premises.

If the casualty was caused in whole or in part by the Lessee, its officers, employees, agents, contractors, or trespassers, then the Lessee shall not have the right to terminate this Agreement and shall be responsible under other provisions of this Agreement for payment to the County for all damage to the Premises, plus the loss of rentals attributable to the damaged or destroyed premises.

18.18 Quiet Enjoyment: Subject to the terms of this Agreement, specifically including but not limited to the environmental remediation steps to be taken under Article 6 (Regulations, Licenses, and Permits), the County's right and obligation to make certain repairs, alterations, and additions under Articles 5 (Maintenance by County), which, for purposes of this clause include any and all demolition, in whole or in part, of buildings and runways, and roadway systems on or off the Port, all of which provisions and others in the Agreement the Lessee acknowledges may cause disruption and disturbance to the Lessee, and upon the observance by the Lessee of all the terms, provisions, covenants, and conditions imposed upon the Lessee hereunder, the Lessee shall peaceably and quietly hold and enjoy the Premises for the term of this Agreement; provided, however, that the County shall not be liable for any violation of this clause or for any disturbance or disruption in or to the Lessee's business, for acts or omissions of tenants, users of the Port, third parties, or when any department or agency of the County is acting in its governmental capacity, or by Acts of God.

18.19 Interpretation of Agreement: This Agreement is the result of negotiation between the parties hereto and has been typed/printed by one party for the convenience of both parties, and the parties covenant that this Agreement shall not be construed in favor of or against any of the parties hereto.

18.20 Entirety of Agreement: The parties hereto agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.

18.21 Cruise Terminal Agreement: Nothing herein is intended nor shall be interpreted to amend, modify condition or otherwise affect any of the terms or provisions set forth in the Cruise Terminal Agreement dated October 20, 1998, executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

BOARD OF COUNTY COMMISSIONERS
OF MIAMI-DADE COUNTY, FLORIDA

CARNIVAL CORPORATION
LESSEE

By: [signature]

Print Name: PAUL ZACHARSKI

Title: SVP- FINANCE

By:_____
County Manager

ATTEST

By: [signature]

Print Name: ENRIQUE MIGUEZ

Title: VICE PRESIDENT

(Affix Corporate Seal)

ATTEST
CLERK OF THE BOARD

By:_____
Deputy Clerk

(Seal)

Approved by Assistant County Attorney
as to form and legal sufficiency:_____

CARNIVAL LEGAL

TERMINAL 10

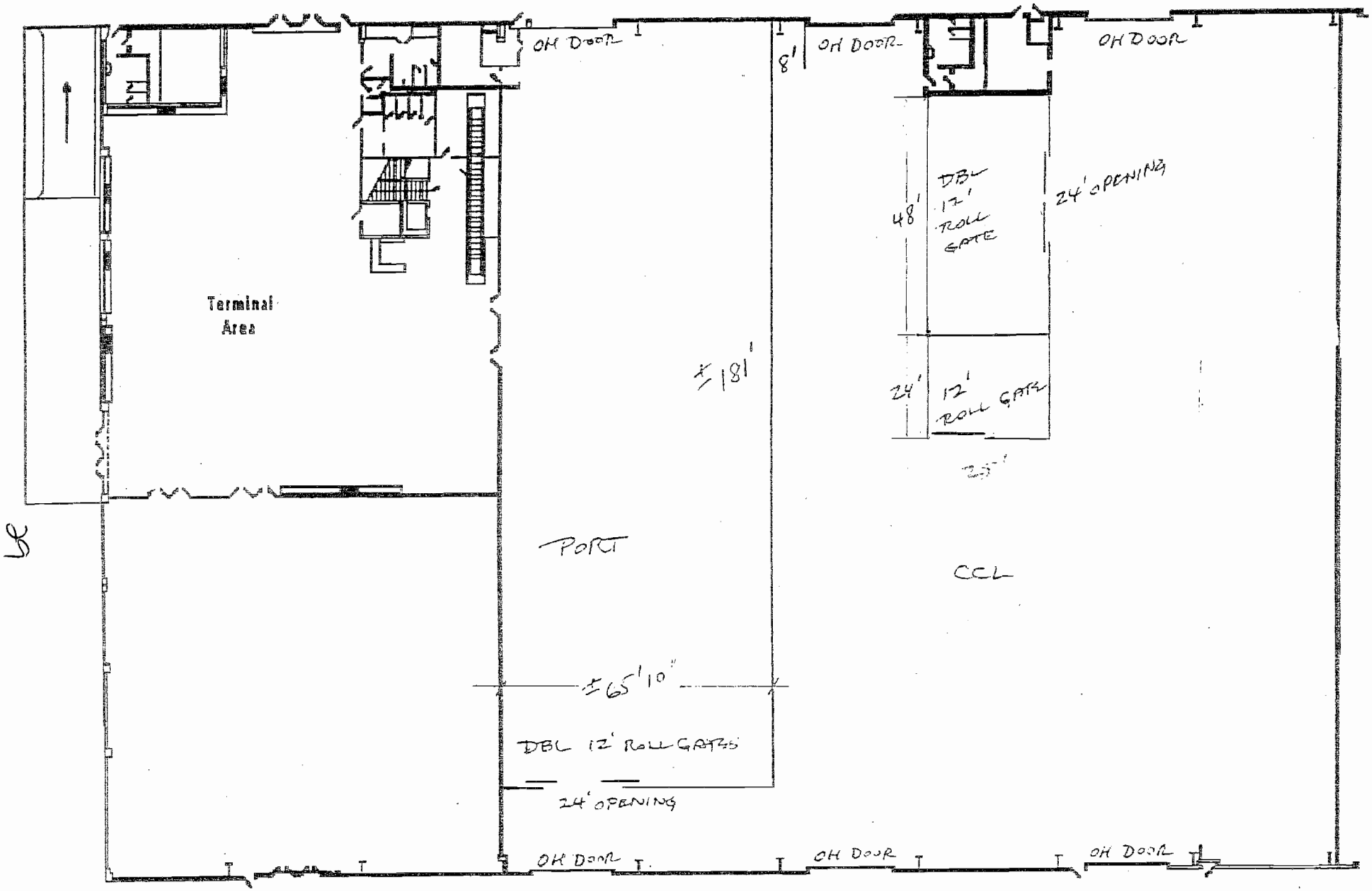

EXHIBIT "A"