

MEMORANDUM

Agenda Item No. 8(J)(2)


TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: March 7, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving and authorizing the County Mayor to execute an early termination and buyout agreement among Miami-Dade County, Bimini Superfast Operations LLC, and Resorts World Omni LLC; and authorizing the County Mayor to exercise all cancellation, termination, extension, release, and other rights therein

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



Abigail Price-Williams
County Attorney

APW/smm

Memorandum



Date: March 7, 2017

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

Subject: Resolution Approving and Authorizing Execution of an Early Termination and Buyout Agreement Among Miami-Dade County, Bimini Superfast Operations LLC, and Resorts World Omni LLC

Recommendation

It is recommended the Board of County Commissioners ("Board") approve the accompanying resolution approving and authorizing the County Mayor or County Mayor's designee to execute an Early Termination and Buyout Agreement ("Buyout") among Miami-Dade County ("County"), Bimini Superfast Operations LLC ("BSO"), and Resorts World Omni LLC ("RWO").

Scope

The Port is located within District 5, which is represented by Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide, as the Port is a regional asset and generates employment for residents throughout Miami-Dade County.

Fiscal Impact/Funding Source

This Agreement commits BSO to make two payments to the County. The first is an Early-Termination Buyout Payment ("Buyout Payment") in a lump sum of twenty million dollars (\$20,000,000). This payment was a negotiated number by the parties taking into consideration BSO's annual guarantees, its early termination rights under the current Cruise Terminal Usage and Development Agreement with Bimini Superfast Operations LLC. ("Terminal Agreement") and the Port's desire to regain berthing rights at Terminal H and its pier.

The second payment is BSO's Pre-Termination Payment Obligation to cover all fees and charges accruing under the current Terminal Agreement through March 15, 2017 amounting to an additional lump sum of \$1,099,606.11. Thus, the Buyout Sum, total of the above obligations, is \$21,099,606.10 payable to the County no later than three (3) Business Days from the Effective Date of this Buyout Agreement.

If the contract were to run out its full 10-year term (through 2023), BSO would be responsible to pay the County approximately forty-seven million dollars (\$47,000,000). However, as further described in the background section of this memorandum below, BSO had certain conditional early termination rights.

BSO is current with its financial obligations to the Port and their account is in good standing.

Track Record/Monitor

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

Background

On July 2, 2013, the Board approved Resolution R-520-13, approving and authorizing the execution of a Cruise Terminal Usage and Development Agreement between Miami-Dade County and Bimini Superfast Operations LLC ("Terminal Agreement"). Under the Terminal Agreement, BSO committed to make certain guaranteed minimum payments to the County for a term of ten (10) years, including dockage, wharfage, harbor fees, and parking fee payments. In return, the County granted BSO preferential berthing rights at Terminal H, and its related tent annex. The County also committed to making improvements to Terminal H estimated to be \$10 million (excluding design costs), but no more than \$11 million, which construction costs were to be advanced by BSO to the County. Upon advancing terminal construction costs, BSO was to be eligible to obtain credit offsets against future Port dockage and wharfage fees.

Under the initial Term of this Terminal Agreement, BSO committed annual guaranteed revenues to the County ranging from \$7 million to \$7.8 million during the first six years of the Agreement (based on \$1.9 million in passenger and harbor fees, \$2.9 million in dockage fees, and approximately \$2.2 million in parking guarantees, plus annual escalators) and ranging from \$5.8 million to \$6.3 million in years seven through ten (when parking fees were no longer guaranteed).

The Terminal Agreement contained certain conditioned early termination rights from year three to year ten of the Term, in which BSO could elect to early terminate upon certain required prior notice and payment of an early termination fee set forth in a stepped early termination fee schedule, ranging from \$9 million in year three and ultimately dropping to \$2 million in year 9, but subject to a required pre-condition that the BSO-funded terminal improvements were substantially completed.

The M/V Bimini Superfast, with a capacity to hold 1,600 passengers, arrived to Miami on June 17, 2013. BSO intended to provide two daily cruises from PortMiami to Bimini, Bahamas onboard the 670-foot vessel. However, after the Bimini cruise service did not meet BSO's anticipated projections, BSO ultimately made a business decision in early 2016 to exit the cruise vessel operation business and sell the M/V Bimini SuperFast. Consequently, BSO ceased vessel operations from PortMiami in March 2016 and, since then, has no longer needed a dedicated cruise terminal. Shortly thereafter, the County was approached by BSO to discuss a potential buyout of the remaining 6 ½ years of its ten-year Terminal Agreement.

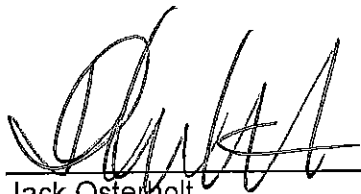
After much negotiating, the Parties have agreed to the attached recommended Early Termination and Buyout Agreement, under which BSO shall pay the County a buyout lump sum of twenty million dollars (\$20,000,000) payable within three business days of the Effective Date of the agreement. Port staff agreed to this payment amount taking into consideration BSO's annual guarantees, its conditional early termination rights, and the Port's desire to gain control of Terminal H for future potential business opportunities.

Under the remaining years of the Terminal Agreement (2017 through 2023), BSO would be responsible for approximately \$47 million in minimum payments to the County. However, as stated above, the Terminal Agreement contained early termination rights exercisable by BSO providing certain preconditions were met. One of the preconditions for early termination – the construction of an estimated \$10 million terminal improvement – has not been satisfied. If it had been satisfied, the early termination payment to the County for the current year would be \$8 million.

The Port's financial analysis indicated that if BSO were to direct the Port to promptly construct the previously mentioned terminal improvements, the Port would receive approximately \$28 million in value from minimum guarantees, construction, design, and termination payments. BSO believed that the Port shared some responsibility for not previously constructing the terminal improvements which could have provided them early termination privileges. Ultimately, the Parties agreed on a Buyout Payment of \$20 million as a fair resolution of these issues. Importantly, the Port will regain control of the terminal and will start pursuing other revenue generating opportunities for this facility.

As indicated in the Fiscal Impact section of this memorandum, BSO shall be responsible to continue to pay the County for all fees due under the current Terminal Agreement through March 15, 2017. This Pre-Termination Payment Obligation adds up to an additional lump sum of \$1,099,606.11, which must be paid no later than three business days from the agreement becoming effective. Thus, the total Buyout Sum payable to the County shall be \$21,099, 606.11.

It is important to note that despite BSO not meeting its Minimum Annual (throughput) Guarantees – as BSO's actual passenger throughput never met its projections – BSO has continued to pay the minimum annual guaranteed dockage, wharfage, harbor and parking fees required in its Terminal Agreement, and is current with its monthly payment obligations to the County.



Jack Osterholt
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: March 7, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(J)(2)

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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor'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

Agenda Item No. 8(J)(2)

Veto _____

3-7-17

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR’S DESIGNEE TO EXECUTE AN EARLY TERMINATION AND BUYOUT AGREEMENT AMONG MIAMI-DADE COUNTY, BIMINI SUPERFAST OPERATIONS LLC, AND RESORTS WORLD OMNI LLC; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR’S DESIGNEE TO EXERCISE ALL CANCELLATION, TERMINATION, EXTENSION, RELEASE, AND OTHER RIGHTS 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 Early Termination and Buyout Agreement among Miami-Dade County, Bimini Superfast Operations LLC, and Resorts World Omni LLC (“Buyout Agreement”) under which, in consideration of the County receiving, among other things, approximately \$21,100,000.00 in buyout and other payments, authorizes the early termination of the remaining six and one-half years of a ten-year Cruise Terminal Usage and Development Agreement entered into between Miami-Dade County and Bimini Superfast Operations LLC in July of 2013; and authorizes the County Mayor or the County Mayor’s designee to execute the Buyout Agreement on behalf of Miami-Dade County, in substantially the form attached hereto and made a part hereof.

Section 2. Authorizes the County Mayor or the County Mayor's designee to exercise any cancellation, termination, extension, release, and other County rights and provisions contained in the Buyout Agreement.

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:

Esteban L. Bovo, Jr., Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of March, 2017. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County 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: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SB

Steven B. Bass

**EARLY TERMINATION AND BUYOUT AGREEMENT AMONG
MIAMI-DADE COUNTY, BIMINI SUPERFAST OPERATIONS
LLC, AND RESORTS WORLD OMNI LLC**

This Early Termination and Buyout Agreement (“Agreement”) is made and entered into this ___ day of 2017, by and among Bimini SuperFast Operations LLC (hereafter, “BSO”), a Delaware limited liability company and indirect wholly owned subsidiary of Genting Malaysia Berhad (a Malaysian corporation), Resorts World Omni LLC, a Delaware limited liability company and BSO’s guarantor (hereafter, “RWO” or the “BSO Guarantor”), and Miami-Dade County, a political sub-division of the State of Florida (hereafter, the “County”).

WITNESSETH:

WHEREAS, the County owns certain lands in Miami-Dade County on which the Dante B. Fascell Port of Miami-Dade (hereafter, “PortMiami”) is located; and

WHEREAS, the County operates PortMiami through the Miami-Dade County Seaport Department (the “Seaport Department”), a non-*sui juris* department of the County; and

WHEREAS, the County currently has a ten-year cruise terminal usage and development agreement with BSO, which terminal agreement was approved by the Board of County Commissioners on or about July 2, 2013, via Resolution R-520-13, and entered into on or about July 17, 2013 (hereafter, the “Terminal Agreement”); and

WHEREAS, under the Terminal Agreement, BSO committed, among other things, to make certain guaranteed minimum annual payments to the County for a term of ten (10) years, including minimum dockage, wharfage, harbor, and parking fee payments (payable monthly), in consideration for the County granting BSO certain preferential berthing and parking rights (relating to PortMiami cruise terminal H and adjacent tent annex), with which BSO intended to provide daily cruise vessel service to and from Bimini in the Bahamas; and

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WHEREAS, BSO's payment and other obligations to the County were guaranteed by a written guarantee executed by the BSO Guarantor (RWO) in favor of the County, which guarantee (the "RWO Guaranty") irrevocably and unconditionally guarantees to the County the full, complete, and punctual payment and performance of all BSO payment and performance obligations arising under the Terminal Agreement; and

WHEREAS, during the first 3 ½ years of the Terminal Agreement BSO has paid the Seaport Department approximately \$25 million in guaranteed port fees and parking and other charges; and

WHEREAS, in early 2016, BSO elected to exit the cruise vessel operating business and sell its only cruise vessel, the M/V Bimini Superfast; and

WHEREAS, after exiting the cruise business and no longer needing a dedicated cruise terminal, BSO initiated discussions with PortMiami staff to buy-out the remaining 6 ½ years of its ten-year Terminal Agreement, which discussions culminated in this buyout agreement with the County, under which BSO shall pay the County all obligations under the Terminal Agreement accruing through and including March 15, 2017, BSO shall pay the County an additional lump sum "buyout" payment of twenty million dollars (\$20,000,000.00) (U.S.) in immediately available and indefeasible funds (the "Buyout Payment"), and BSO and RWO shall further provide the County with certain written certifications required herein, and thereafter BSO would be relieved of its remaining (post-March 15, 2017) port fee and parking payment obligations under the Terminal Agreement, subject to the terms and conditions set forth herein; and

WHEREAS, BSO is presently current with its various Port fee and parking payment obligations to the County under the Terminal Agreement;

NOW, THEREFORE, in consideration of (i) BSO's herein-required full and timely payments to the County of all fees and charges due or accruing under the Terminal Agreement through and including March 15, 2017, (ii) BSO's herein-required full and timely payment to the County of the Buyout Payment, (iii) RWO's responsibility hereunder for any BSO payment obligation deficiency hereunder, and (iv) in consideration of all other agreements, terms, and conditions set forth herein, the sufficiency of which are hereby acknowledged, the County,

BSO, and RWO hereby agree to enter into the Agreement in accordance with the terms and conditions set forth below:

1. RULES OF CONSTRUCTION

1.1 Rules of Construction. Unless the context clearly indicates otherwise:

- (a) words in the singular include the plural, and words in the plural include the singular;
- (b) a pronoun in one gender includes and applies to the other gender as well;
- (c) all references to Sections shall refer to this Agreement, unless clearly stated otherwise; and
- (d) the terms "hereof", "hereto", "herein", "hereunder" and comparable terms refer to this entire Agreement and not to any particular article, section or other subdivision thereof unless expressly provided otherwise.

1.2 The recitals at the beginning of this Agreement are hereby ratified and incorporated by reference herein.

2. DEFINITIONS

Except as specifically provided elsewhere herein, capitalized terms used herein shall have the meaning set forth below:

2.1 "Business Days" shall mean calendar days other than Saturdays, Sundays, and federally-recognized holidays when the banks in in the United States are closed.

2.2 "Buyout Payment" shall have the meaning set forth in the eighth (8th) recital clause hereinabove. The \$20,000,000.00 Buyout Payment shall be



paid by BSO to the County in accordance with the requirements of Sections 3.2 and 5.1 hereof.

2.3 “Buyout Sum” shall mean the sum of (i) the Pre-termination Payment BSO is required to pay the County under Section 3.1 hereof (\$1,099,606.11) plus (ii) the Buyout Payment that BSO is required to pay the County under Section 3.2 hereof (\$20,000,000.00) = \$21,099,606.11 (hereafter, the “Buyout Sum”).

2.4 “Buyout Sum Availability Date” shall mean the date by which all funds due to be paid to the County under the requirements of Sections 3.1, 3.2, and, if applicable, 3.4 hereof have been received by the County, have fully cleared and are immediately available for use or withdrawal by the County, and are no longer subject to any holds imposed by any of the sending or receiving banks.

2.5 “Buyout Sum Payment Date” shall mean the date by which all funds required to be paid to the County under Sections 3.1, 3.2, and, if applicable, 3.4 hereof are timely received by the County via separate wire transfers to a County account designated by the Assistant PortMiami Director for Finance.

2.6 “Certification Date” shall mean the date by which all written certifications required by Section 6.4 hereof are timely delivered to the Port Director and the Miami-Dade County Attorney’s Office (“CAO”), or such later delivery date as may be agreed to in writing by the Port Director in accordance with Section 3.3 hereof.

2.7 “Early-termination Date” shall have the meaning provided in Section 5.1 hereof.

2.8 “Effective Date of this Agreement” or “Effective Date” shall mean the date on which this Buyout Agreement has been fully executed by all the respective parties hereto, which, as to the County, must be on or after the date by which a duly passed resolution of the Board of County Commissioners approving the instant agreement becomes effective.



2.9 “Pre-termination Payment” shall have the meaning set forth in Section 3.1 hereof.

2.10 “Surviving Obligations” shall mean those BSO obligations arising under the Terminal Agreement that survive the expiration or early termination thereof in accordance with Section 36(ii), (iii), (iv), and (v) thereof, and which the parties hereto agree shall survive any early termination of the Terminal Agreement hereunder.

3. PAYMENT OBLIGATIONS TO COUNTY

3.1 BSO Pre-Termination Payment Obligations. BSO shall pay the County for all fees and charges due, arising, or accruing under the Terminal Agreement through and including March 15, 2017 (even if payment to the County for such pre-termination fees and charges would not be due and payable to the County until or after March 15, 2017), which the parties agree is \$1,099,606.11 (“the “Pre-termination Payment”), and such Pre-termination Payment must be made to the County by BSO in full and in immediately available funds no later than three Business Days from the Effective Date hereof.

3.2 BSO Early-Termination Buyout Payment to County. BSO shall pay the County (via wire transfer to a County account designated by the Assistant PortMiami Director for Finance and in immediately available funds) the Buyout Payment (\$20,000,000.00) within three (3) Business Days of the Effective Date hereof.

3.3 Deferral of Post-Effective Date Port Fees and Charges. Upon the Buyout Sum Availability Date, BSO’s payment obligations to the County for Port fees and charges arising or accruing under the Terminal Agreement as of and after March 15, 2017 shall be deferred for 120 calendar days from the Buyout Sum Payment Date. In the event the Certification Date occurs between 110 and 120 calendar days following the Buyout Sum Payment Date, and after the Buyout Sum Availability Date, then the above-deferred post-Effective Date BSO payment obligations shall be deemed extinguished and released, expressly excluding the Surviving Obligations, and subject to

the terms of Section 5.2 below. In the event the Certification Date does not occur between 110 and 120 days following the Buyout Sum Payment Date, then BSO and RWO shall provide a full written disclosure to the County detailing all reasons for BSO's and/or RWO's failure or inability to comply with the certification requirements set forth in Section 6.4 hereof and detail what steps BSO and RWO are taking to remedy such circumstances. In the event BSO and RWO demonstrate they are taking all available and diligent steps to remove and respond to the conditions preventing provision of the certification required herein, then the Port Director shall extend the deferral of post-March 15, 2017 BSO payment obligations under the Terminal Agreement for up to an additional twelve (12) months. If RWO and BSO provide the certifications required in Section 6.4 hereof within twelve months following the original certification submittal deadline (120 days following the Buyout Sum Payment date) and after the Buyout Sum Availability Date, then, in such event, the above-deferred post-March 15, 2017 Terminal Agreement payment obligations of BSO shall be deemed extinguished and released, expressly excluding the Surviving Obligations, and subject to the terms of Sections 5.1 and 5.2 below.

3.4 Conditional RWO Payment Obligation to County. In the event BSO fails to fully and timely satisfy any or all payment obligations to County arising under Sections 3.1 or 3.2 hereof, RWO shall be fully responsible for all such payment deficiencies and shall pay the County for same, in immediately available funds, within three Business Days of the County's written demand therefore.

4. BSO's General Release in Favor of County

As of the Effective Date, BSO hereby permanently, fully, and irrevocably relinquishes, waives, and releases: (a) all of BSO's prior, current, and future contractual and other rights to use or occupy PortMiami Cruise Terminal H ("CTH"), the tent annex adjacent to CTH, any and all PortMiami parking spaces and facilities, and any other PortMiami berth or facility, including, without limitation, all usage, development, and other rights in, associated with, or arising from the Terminal Agreement; and (b) all prior, current, and future actions, claims, demands, rights, and causes of action against the



County or any County agent or employee, of any kind or nature, at law or equity, whether arising from, relating to, or associated with the Terminal Agreement or otherwise, except and excluding those claims that may arise solely from this Agreement.

5. Early-Termination of the Terminal Agreement

5.1 Conditional Early-Termination of Terminal Agreement. BSO and the County hereby mutually agree that the Terminal Agreement shall be deemed early-terminated upon the day following the date of the last of the following to occur: (a) BSO's full and timely payment to the County of the Pre-termination Payment in immediately available and indefeasible funds (as required under Section 3.1 hereof); (b) BSO's full and timely payment to the County of the Buyout Payment (\$20,000,000.00) in immediately available and indefeasible funds (as required under Section 3.2 hereof); and (c) the proper and timely receipt by the County of all written certifications required of BSO and RWO under and in compliance with the requirements of Section 6.4 hereof. For purposes of the foregoing, no payment to the County will be deemed to have been made or completed until all fund transfers have fully cleared, all holds placed have expired or been removed, and all transferred funds are fully available for withdrawal or use by the County without delay, condition, or restriction (excluding delays, conditions, or use-of-fund restrictions that the County may impose upon itself). The transferred funds will not be deemed indefeasible unless and until the Certification Date. The early-termination of the Terminal Agreement contemplated herein will only become effective upon the full and complete satisfaction of all BSO and RWO requirements set forth in Sections 5.1(a), 5.1(b), and 5.1(c) above (the day following the date when the last of all such listed BSO and RWO obligations are fully satisfied shall be deemed the "Early-termination Date"). As of and following the Early-termination Date, neither party shall have any further post-March 15, 2017 obligations to the other under or arising from the Terminal Agreement, provided, however, (x) that such early-termination shall neither extinguish nor release any current or former BSO Terminal Agreement obligations that survive or which would have survived an early termination of said agreement under the terms of Section 36(ii), (iii), (iv)

and (v) of said Terminal Agreement (“Surviving Obligations”), and (y) that the early-termination of the Terminal Agreement contemplated herein shall be subject to the terms of Section 5.2 below.

5.2 Potential Revival of Post-termination BSO Obligations under Terminal Agreement and RWO’s Guarantee thereof. Notwithstanding and prevailing over the foregoing, in the event any preference, claw-back or other claim, action, or demand is made on the County for the return of all or any portion of (i) any payments made under Section 3.1 hereof or (ii) any payments made to the County under Section 3.2 hereof, regardless of whether such claim, action and/or demand relates to or arises under federal bankruptcy laws, state receivership laws, any other laws concerning creditor rights or remedies, or otherwise, then such claim(s), action(s), and/or demand(s) shall constitute a preserved and surviving pre-termination default by BSO of both this Buyout Agreement and the Terminal Agreement as well as a preserved and surviving default by RWO hereunder, which BSO defaults and the RWO default hereunder the parties hereto (expressly including the RWO Guarantor) all agree (x) shall **not** be deemed released by the County or by any early-termination authorized hereunder, and, if previously released, such defaults shall be deemed fully revived *ab initio*, (y) shall survive such early-termination, and (z) which claims, actions, and demands shall, if ultimately successful, in whole or in part, automatically nullify *ab initio* any and all extinguishments, terminations, and releases hereunder of BSO post-Effective Date payment and other obligations to the County under the Terminal Agreement, but only to the extent of the aggregate amount of all such claims and demands. In addition, to the extent any actions, claims, or demands are asserted or made against the County to return or recover all or any portion of any payments received by the County hereunder, then BSO and the RWO Guarantor shall jointly and severally indemnify, hold harmless, and defend the County for, from, and against same, including, without limitation, paying the County for all resulting County damages, losses, returned or disgorged funds, legal fees, and costs (at all levels including appellate). The County shall reasonably cooperate with BSO and RWO, at no expense to the County, in legal proceedings in

which BSO and RWO seek to defend the County pursuant to BSO's and RWO's above-referenced joint and several duty-to-defend obligations.

5.3 County Limited and Conditional Release. The County shall release BSO, as of and following the Early-termination date, of its pre-Early Termination Date obligations under the Terminal Agreement, except and excluding the Surviving Obligations and subject to the terms and potential exceptions set forth in Section 5.2 hereof.

6. **Representations, Warranties, and Duties to Disclose**

6.1 BSO Representations and Warranties. BSO hereby represents and warranties to the County that: (i) it is currently solvent; (ii) none of the payments required herein will cause BSO to become insolvent or adversely affect BSO's solvency; (iii) BSO is presently current in its Terminal Agreement payment obligations to the County; and (iv) BSO is not the subject of any voluntary or involuntary bankruptcy petition or proceeding, receivership, assignment for the benefit of creditors nor any other type of creditor relief action or proceeding.

6.2 RWO Representations and Warranties. RWO hereby represents and warranties to the County that: (i) it is currently solvent; (ii) none of the payments required herein will cause RWO to become insolvent or adversely affect its solvency; (iii) RWO is not the subject of any voluntary or involuntary bankruptcy petition or proceeding, receivership, assignment for the benefit of creditors nor any other type of creditor relief action or proceeding; and (iv) no portion of any payments required (or conditionally required) to be made to the County by RWO hereunder will come or be derived from any funds or property of BSO.

6.3 BSO and RWO Duties to Notify County. BSO and RWO shall immediately notify the County in writing (via written notice to the Port Director, with a copy to the CAO (attention: Steven B. Bass), of (i) the filing of any voluntary or involuntary petition or proceeding under U.S. bankruptcy laws naming either BSO or RWO as debtor, (ii) any asserted or pending receivership or assignment for the benefit of creditors proceeding

involving either BSO or RWO, (iii) the initiation or maintenance of any conservatorship action or proceeding involving either BSO or RWO, and (iv) any other type of creditor relief that may be filed, initiated, asserted or otherwise maintained against either BSO or RWO. For purposes of the preceding sentence, "immediate" notice shall be deemed satisfied if (x) emails transmitting required notice are sent to and received by the Port Director and the CAO within 24 hours of the earlier of BSO or RWO first receiving notice of the action or event, and (y) color PDFs and copies of the actual source documents giving rise to the such required disclosures (e.g., petitions, complaints, actions, motions, demands, letters and the like) are transmitted and delivered to the Port Director and CAO within 72 hours of the earlier of BSO or RWO first receiving notice of such actions or events.

6.4 BSO and RWO Joint Certification Requirement. No sooner than 110 days following the Buyout Sum Payment Date, and after the Buyout Sum Availability Date and satisfaction of all payment obligations set forth in Sections 3.1 and 3.2 above, BSO and RWO shall each provide the County a signed, sworn, and notarized document certifying that as of the transmission date of same (i) neither BSO nor RWO, nor any person or entity that contributed any portion of the funds used to satisfy any or all of the payment obligations hereunder has been the subject of a voluntary or involuntary bankruptcy petition, filing, or proceeding, nor has been placed into receivership or been the subject of a receivership proceeding or any assignment for the benefit of creditors or any other proceeding or action seeking creditor relief against RWO, BSO, or any person or entity that contributed any portion of the funds used to satisfy any or all of the payment obligations hereunder that could give rise to any claim or demand against the County for return or disgorgement of any funds paid to County hereunder, and (ii) neither BSO nor RWO nor any of either's officers or other executive employees or legal counsel has or have any knowledge of any fact or circumstance that would give rise to any claim for preference, disgorgement, claw-back, or return of any of the funds transferred to the County in satisfaction of any or all of the payment obligations hereunder (hereafter, the "BSO and RWO Joint Certification").

7. Miscellaneous

7.1 Amendments. No change, amendment or modification of this Agreement shall be valid or binding upon the parties hereto unless such change, amendment or modification shall be in writing and duly executed by the parties hereto and, in the case of the County, be approved by the Board of County Commissioners.

7.2 Governing Law. This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Florida.

7.3 Exclusive Venue/Enforcement. Venue for any court action arising from, relating to, or to enforce or construe any term or provision hereof, shall lie exclusively in Miami, Dade County, Florida. This Agreement may be enforced in the Dade County Circuit Court.

7.4 Severability. In case anyone or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereby.

7.5 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors and permitted assigns.

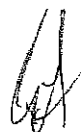
7.6 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original and all of which shall represent but one agreement.

7.7 Entire Agreement. Except as otherwise stated herein, this Agreement constitutes the entire agreement among the parties with the respect to the subject matter addressed herein, other than Sections 5.1 and 5.2 hereof, both of which reference and incorporate the Terminal Agreement and the RWO Guarantee.

7.8 Construction. As all parties to this agreement were represented by counsel, and as the language contained herein was the product of negotiation by all such represented parties, this Agreement shall not be deemed or treated as a

contract of adhesion, nor shall any of its terms be construed against the drafter thereof.

7.9 Legal Fees and Cost Entitlement. In any action or suit to enforce and/or construe any term, obligation, or provision hereunder, the prevailing party shall be entitled to recover legal fees and costs from the non-prevailing party(ies), including appellate fees and costs.



IN WITNESS WHEREOF, the parties hereto have caused this document to be executed by its duly authorized officers.

Attest:

MIAMI-DADE COUNTY

By: _____

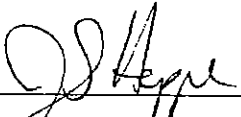
Deputy Clerk

By: _____

Deputy Mayor

Attest:

BIMINI SUPERFAST OPERATIONS, LLC

By:  _____

Jessica Hoppe, Esq.

By:  _____

Name: Edward Farrell, President

Attest:

RESORTS WORLD OMNI LLC

By:  _____

Jessica Hoppe, Esq.

By:  _____

Name: Edward Farrell, President