

## MEMORANDUM

Agenda Item No. 8(J)(1)

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**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** July 2, 2013

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

**SUBJECT:** Resolution (1) approving and authorizing the County Mayor to execute a Cruise Terminal Usage and Development Agreement between Miami-Dade County and Bimini SuperFast Operations, LLC; and (2) authorizing the County Mayor to exercise all cancellation, termination, renewal and other rights therein Resolution No. R-520-13

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The accompanying resolution was prepared by the Port of Miami Department and placed on the agenda at the request of Co-Prime Sponsors Vice Chair Lynda Bell and Commissioner Audrey M. Edmonson.



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R. A. Cuevas, Jr.  
County Attorney


RAC/smm

# Memorandum



**Date:** July 2, 2013

**To:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor 

**Subject:** Resolution Authorizing a Cruise Terminal Usage and Development Agreement  
between Miami-Dade County and Bimini SuperFast Operations, LLC

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## RECOMMENDATION

It is recommended that the Board approve the accompanying Resolution approving and authorizing the Mayor or his designee to execute a Cruise Terminal Usage and Development Agreement between Miami-Dade County ("County") and Bimini SuperFast Operations, LLC ("Bimini Superfast" or "Operator"); and authorizing the exercise of cancellation, termination and other provisions contained therein.

## SCOPE

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

## FISCAL IMPACT/FUNDING SOURCE

This Agreement provides Bimini SuperFast with preferential, non-exclusive berthing rights and port incentives while providing the Port with minimum annual guaranteed revenue of approximately \$7 million (plus annual escalation provisions described below). Such Operator guaranteed annual Port revenue streams include approximately \$4.8 million in guaranteed dockage, passenger wharfage and harbor fees throughout the initial ten year term, and another \$2.2 million in annual guaranteed parking revenue during the first six years of the agreement term.

The Agreement commits the County to make certain improvements at Cruise Terminal H in order to accommodate the Operator's passenger and vessel operations. The cost for construction improvements is estimated to be approximately \$10 million and will be advanced by Bimini Superfast to the County. In consideration for advancing the terminal improvement construction costs, the Operator will be eligible to obtain dollar-for-dollar credit offsets against future Port dockage and passenger wharfage fees (up to \$10 million), plus additional credits equal to Operator's advanced payments for tenant relocation costs, not to exceed \$1 million. Any incurred construction costs above \$10 million, but not more than \$11 million, shall also be advanced by the Operator with the Operator receiving offsets for half of such additional amount from the County. The costs paid by the County for the design service contract(s) shall be paid by the Operator with a cap not to exceed \$1.5 million. The Operator shall not be entitled to offsets or credits for any costs associated with design contracts.

Commencing early-October through the time that Terminal H improvements are substantially completed, Bimini SuperFast will operate from a tent annex. The Port will incur all costs associated with the temporary tent facility for approximately 24 months of usage, which is expected to average approximately \$28,000 monthly.

The Operator has no right to terminate the Agreement without cause prior to the later of the second anniversary of this Agreement or attainment of substantial completion of the Terminal H improvements. After such period, Operator's ability to terminate without cause shall be governed by a termination fee

schedule ranging from an estimated \$7 million termination payment in the early years (after the application of offsets), to a \$2 million minimum termination payment toward the conclusion of the initial term of this Agreement.

**TRACK RECORD/MONITOR**

The Seaport Department staff members responsible for monitoring the Agreement and the affiliated contracts are Juan Kuryla, Director Designee, Kevin Lynskey, Assistant Director, Business Initiatives, and Hydi Webb, Manager of Business Development.

**BACKGROUND**

Resorts World Group, owner of the Bimini SuperFast vessel, has a twenty-six year track record of investing in the United States. Its business in Florida started thirteen years ago when it acquired Miami-based Norwegian Cruise Line ("NCL") and spent \$5 billion building eight new ships, which transformed NCL into the youngest and fastest-growing cruise line. Resorts World Group currently owns 44% of NCL. In 2011, Resorts World invested approximately \$500 million in Downtown Miami's Omni District, purchasing 30 acres of waterfront property, with plans to transform the area into a vibrant residential and commercial district. This investment was followed in early 2013 with the purchase of Resorts World Bimini Superfast, a 670 ft ship that is anticipated to make two daily calls from PortMiami to Bimini. The vessel, which may also transport cargo, is capable of carrying 1,600 passengers and will have a travel time from Miami to Bimini of approximately 2 ½ hours. At this time it is anticipated that Bimini SuperFast will operate morning and afternoon/evening sailings, with specific sailing times subject to modification based on customer demand and/or operational needs. Additionally, Bimini SuperFast may also operate cargo operations from Terminal H provided it obtains authorization from U.S. Customs and Border Protection and/or any applicable regulatory agencies.

The Bimini SuperFast vessel arrived at PortMiami on June 17, 2013, and, as of the date of this writing, is anticipated to commence passenger operations on or about June 28, 2013. Initial passenger and vessel operations will take place at Cruise Terminal F through early-October 2013. Thereafter, the vessel will operate from a temporary tent terminal facility located adjacent to Terminal H until the time that Terminal H improvements are completed. The Port will incur all costs associated with the temporary tent facility, which is expected to average approximately \$28,000 (twenty-eight thousand dollars) monthly for approximately twenty-four (24) months. The Port's use of a tent facility is customary when no terminals are available to service a valued cruise customer. Should Terminal H improvements not be ready in 24 months of the County's execution of the principal design contract, tent-related expenses incurred by the County shall be reimbursed by the Operator (for up to six months) and the Operator will receive offset credits on a dollar-for-dollar match. It is worth mentioning that, due to the shorter length of the Terminal H berth, it has been an under-utilized passenger terminal at the Port for a number of years.

Terminal Tariff No. 010 ("Tariff") currently does not provide for daily passenger regulations and rates. Thus, Bimini SuperFast has agreed to pay the County the following negotiated vessel and passenger rates for its high density, single-day cruise passenger vessel:

Passenger Wharfage

Single-day cruise passengers returning same day of departure	\$ 2.15 per embark/debark
Single-day cruise passengers returning on a different day	\$10.00 per embark/debark

Passenger Dockage

*A 20% discount to Tariff rates, which are currently as follows:*

Cruise passenger vessels arriving on Thursday – Monday	\$.32 per each GRT (\$.256 with discount)
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Cruise passenger vessels arriving on Tuesday – Wednesday     \$28 per each GRT (\$.224 with discount)

Harbor Fee

*Per Tariff as follows:*

Passenger vessels making 300 and more sailings per year     \$50.00 per day

Dockage and harbor fees shall be charged only once per 24-hour period for multiple sailings with the same vessel. During the first five years of the Agreement's term, provided the Operator has a minimum of 500 vessel calls per year, the Port shall not eliminate the current "300 and more sailings" Harbor Fee Tariff discount threshold as currently provided for in the Tariff. Annual increases to dockage and passenger rates wharfage will be capped at three percent (3%) per year, which is consistent with other cruise terminal agreements. All other port fees will be charged as per Tariff rates.

Under the initial term of this Agreement, Bimini SuperFast commits annual guaranteed revenues to the County of approximately \$7 million during each of the first six years of the Agreement (based on \$1.9 million in harbor and passenger wharfage fees, \$2.9 in dockage fees, plus \$2.2 million in parking guarantees – plus annual escalations as further described below).

The Port shall guarantee Bimini SuperFast three-hundred (300) parking spaces during peak season (October 15 through April 15) each year as per the long-term Tariff parking rate, which is currently twenty dollars (\$20) per space per day at least during the first six years of the initial term. Should the County increase the long-term parking rate above twenty-five dollars (\$25) per day during the first six years of the initial term, the Operator may unilaterally opt out of its seasonal parking guarantee. If the Operator drops this parking guarantee after year six, the wharfage rate chargeable from the County to Bimini SuperFast will increase by \$ .35 per passenger plus the then-applicable annual escalator.

The Agreement commits the County to make improvements at Cruise Terminal H in order to accommodate the Operator's passenger and vessel operations. These infrastructure improvements, estimated to cost approximately ten million dollars (\$10,000,000), consist of enclosing a currently open-air terminal area, air condition systems, fire and life safety systems, escalators, elevators, new passenger holding areas, luggage laydown area, Customs Border Protection primary and secondary requirements, ticket counters, seating, restrooms, a passenger boarding bridge, way finding, entrance canopy, and intermodal needs, among other enhancements. The facility will need to be modified to code, including ADA requirements. PortMiami and Bimini SuperFast shall adjust the scope to fit within the agreed upon budget. The County will be responsible for the competitive selection of an architect and engineer, and a general contractor via the County's competitive processes.

Under the proposed Agreement, Bimini SuperFast shall pay for the improvements to Cruise Terminal H. The County will credit Bimini SuperFast for construction project costs up to \$10 million via dollar-for-dollar offset credits against future passenger wharfage and dockage fee charges. Such offsets may only be used to pay up to fifty percent (50%) of Port charges for dockage and passenger wharfage fees due in any billing period. Any construction cost incurred above the expected \$10 million, but not more than \$11 million, shall further be paid by the Operator with the Operator receiving half of such amount back from the County via offset credits. For cash flow purposes, Operator agrees to make an initial advance contribution payment of \$2 million upon the County's award of a construction contract. The Operator will also make milestone payments for architectural and engineering services and the passenger boarding bridge.

The costs paid by the County for design services shall be paid by the Operator with a cap not to exceed \$1.5 million, without offsets. PortMiami retains design control of the planned improvements and will work with the Operator to prioritize improvements to align with project credit and cost limits.

To accommodate the Operator's vessel requirements, the Port will need to relocate a few tenants in Terminal H. Bimini SuperFast will advance up to \$1,000,000 to cover the Port's anticipated tenant relocation costs, subject to recouping such advance in the future through dockage and passenger wharfage offsets.

Upon completion, the Operator may lease up to 1,000 square feet of exclusive use space within the facility for its marketing office. The Operator will pay the then-applicable Tariff square footage lease rate per Tariff item #602, which is currently \$23 per square foot. Additionally, should the Operator sell retail within Terminal H (sales of food, beverages, apparel, merchandise or other retail) then the Operator shall pay to the County 7% of all gross revenues collected. The Operator also has expressed interest in electronic signage on the exterior of Terminal H. Should the Port obtain future rights to install electronic signage, the Parties will enter into good faith negotiations as to its design, construction and usage.


As mentioned in the above Fiscal Impact section, the Operator has no right to terminate the Agreement without cause prior to the later of the second anniversary of this Agreement or to substantial completion of the Terminal H improvements. Termination rights from years 3 to year 10 shall be governed by a schedule ranging from a \$7 million terminal fee payment (after the application of offsets) in the earlier years to a \$2 million payments towards the conclusion of the initial term of this Agreement.

The term of the Agreement shall be for an initial period of ten (10) years with two (2) additional renewal terms of five (5) years each upon mutual consent. Should either of these options be exercised, Bimini SuperFast and the County shall negotiate mutually-agreeable terms for the extension periods and such extensions will be brought back to the Board for approval.

Bimini SuperFast will provide residents and tourists a new attraction in Miami-Dade County. Its daily vessel operation will contribute substantial revenue to the County plus create jobs to stimulate our local economy.

**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 those specific in the resolution which include the authority for the Mayor or designee to execute the Agreement and to exercise any cancellation and renewal provisions.



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Jack Osterholt, Deputy Mayor



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** July 2, 2013

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

**SUBJECT:** Agenda Item No. 8(J)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County 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  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(J)(1)  
7-2-13

RESOLUTION NO. R-520-13

RESOLUTION (1) APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE A CRUISE TERMINAL USAGE AND DEVELOPMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND BIMINI SUPERFAST OPERATIONS, LLC; AND (2) AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL CANCELLATION, TERMINATION, RENEWAL 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 Terminal Usage and Development Agreement between Miami-Dade County and Bimini SuperFast Operations, LLC ("Agreement") and authorizes the County Mayor or the County Mayor's Designee to execute same 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, renewal and other rights and provisions contained in the Agreement.

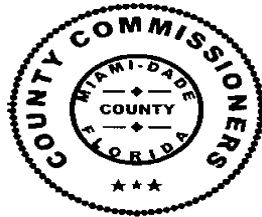
The foregoing resolution was offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Xavier L. Suarez** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 2<sup>nd</sup> day of July, 2013. This resolution shall become effective ten (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.

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

HARVEY RUVIN, CLERK



By: **Christopher Agrippa**  
 Deputy Clerk

Approved by County Attorney as  
 to form and legal sufficiency.

Steven B. Bass



**CRUISE TERMINAL USAGE AND DEVELOPMENT AGREEMENT**

THIS AGREEMENT is entered into on \_\_\_\_\_, 2013, between Bimini SuperFast Operations LLC, a Delaware limited liability company and indirect wholly owned subsidiary of Genting Malaysia Berhad (a Malaysian corporation), (hereinafter, the "Operator") and MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter, the "County").

**W I T N E S S E T H:**

**WHEREAS**, the County operates the Miami-Dade County Seaport Department; and

**WHEREAS**, the County owns certain lands located in Miami-Dade County, Florida, on which the Dante B. Fascell Port of Miami (hereinafter, also referred to as the "Port"), operates through the Miami-Dade County Seaport Department; and

**WHEREAS**, the Operator has acquired and improved a high density cruise passenger vessel known as the M/V Bimini SuperFast (hereafter, the "Vessel"), which the Operator intends to use to transport passengers and cargo between the Port and Bimini with such frequency that Operator has applied to the County to enter into a multi-year cruise terminal usage and development agreement for the Preferential Use (as defined herein) of Cruise Terminal H; and

**WHEREAS**, Operator's proposed operations require that Terminal H be improved and refurbished to add elevators and escalators, augment HVAC capacity, build-out first floor terminal space, bring the terminal up to current codes and ADA requirements, and otherwise enhance the terminal in accordance with the improvements listed in Exhibit A hereto (hereafter, the "Improvements"); and

**WHEREAS**, Operator agrees to pay for the design and construction of the proposed Terminal H improvements, anticipated to cost approximately \$10 million (excluding soft costs), subject to the County having design and budget approval rights over all terminal improvements and subject to Operator's rights to recoup portions of its expended hard costs through offsets against future dockage and passenger wharfage charges due the Port, in accordance with conditions set forth herein; and

**WHEREAS**, to accommodate the proposed Terminal H Improvements, the Port anticipates having to relocate certain Terminal H tenants

and expending funds to provide these tenants with suitable alternate space elsewhere on the Port; and

**WHEREAS**, Operator agrees to pay the County the sum of up to \$1,000,000.00 for reasonably estimated Port tenant relocation costs, provided Operator's payment of such funds may be used to offset future dockage and passenger wharfage charges as set forth herein; and

**WHEREAS**, in consideration of Operator making a substantial financial investment at the Port through Improvements to Port Cruise Terminal H, and making certain minimum annual financial guarantees to the County, the County finds it to be in the best interest of the County to enter into a cruise terminal usage and development agreement with Operator in the form of this Agreement, and Operator wishes to enter into same with the County; and

**WHEREAS**, also in connection with said use of the Terminal Area, the Operator agrees to pay for, on a 6-month seasonal basis (from October 15 through April 15 during the first six years of the Term, or longer period if the Port determines such number of spaces continue to be available), 300 parking spaces on Dodge Island at locations specified herein, for the period specified herein and at the applicable overnight parking rates contained in the Port Tariff; and

**WHEREAS**, to accommodate Operator's immediate passenger and ancillary cargo operation, the County agrees to allow Operator to temporarily utilize Terminal F; and

**WHEREAS**, to accommodate Operator's passenger and ancillary cargo operation from and after October 14, 2013, until the Terminal H Improvements are completed, the County agrees to erect a Tent Annex.

**NOW, THEREFORE**, in consideration of the premises, and of the mutual covenants, terms and conditions, and agreements hereinafter contained, the sufficiency of which are hereby acknowledged, the parties hereto do and hereby mutually agree and bind themselves as follows:

**1. RULES OF CONSTRUCTION**

For all purposes of this Agreement, unless otherwise expressly provided:

- (a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning ordinarily given to it by accountants in accordance with generally accepted accounting principles;

(c) words in the singular include the plural, and words in the plural include the singular;

(d) a pronoun in one gender includes and applies to other genders as well; and

(e) the terms "hereunder," "herein," "hereof," "hereto," and such similar terms shall refer to this Agreement in its entirety and not to individual sections or articles.

(f) the parties hereto agree that this Agreement shall not be more strictly construed against either the County or the Operator.

(g) All Exhibits and appendices attached hereto shall be deemed incorporated herein.

(h) All Recitals set forth above shall be deemed incorporated herein.

## 2. DEFINITIONS

(a) "**Applicable Laws**" means those federal, state or local laws, rules, regulations, codes, ordinances, administrative orders, schedules, permits, decrees, tariffs, and orders which govern, apply to, or relate to construction or design of the Improvements, Operator's operations, or any party's performance hereunder, including, without limitation, applicable portions of all laws, ordinances, resolutions, and administrative orders referenced in Section 25 hereof or Exhibit B hereto.

(b) "**Agreement**" means the subject Cruise Terminal Usage and Development Agreement between Miami-Dade County and the Operator relating to the renovation and Preferential Use (as defined herein) of Cruise Terminal H at the Port of Miami.

(c) "**Approved Improvements**" shall have the meaning set forth in Section 6(a)(i)(B) hereof.

(d) "**Berth**" shall mean the vessel berth behind and west of Terminal H, for which Operator has Preferential Rights to berth its Vessel, subject to all payment and other obligations and conditions of Operator hereunder and subject to Applicable Laws .

(e) **"County"** means Miami-Dade County, a political subdivision of the State of Florida, and all departments, agencies and instrumentalities thereof, including the Miami-Dade County Seaport Department.

(f) **"Construction Contract"** shall have the meaning set forth in Section 6(a)(ii) hereof.

(g) **"Construction Schedule"** shall have the meaning set forth in Section 6(a)(iii) hereof.

(h) **"Design Contract" or "Design Contracts"** shall have the meaning set forth in Section 6(a)(1)(A).

(i) **"Effective Date"** shall have the meaning set forth in Section 4 hereof.

(j) **"Fees"** shall have the meaning set forth in Section 3(b)(ix) hereof.

(k) **"Force Majeure Event"** shall have the meaning set forth in Section 6(f) hereof.

(l) **"Guarantor"** shall mean Resorts World Omni LLC, which has guaranteed Operator's payment and performance obligations arising hereunder by execution of an irrevocable guarantee in favor of the County, a copy of which is attached as Exhibit D hereto.

(m) **"Guaranteed Minimum Annual Passenger Wharfage"** shall have the meaning set forth in Section 11(c) hereof.

(n) **"Guaranteed Minimum Annual Dockage Amount"** shall have the meaning set forth in Section 3(b)(iii).

(o) **"Improvements", "Improvement", or "Cruise Terminal H Improvements"** shall mean all improvements, construction, renovation, repair, equipment and installation thereof, and other work referenced in or arising from Exhibit A hereto.

(p) **"Operator"** shall mean Bimini SuperFast Operations LLC, a Delaware limited liability company and indirect wholly owned subsidiary of Genting Malaysia Berhad (a Malaysian corporation).

(q) **"Operator Dockage and Passenger Wharfage Offset Account"** shall mean a pool of dockage and passenger wharfage offset credits that can be used by Operator to partially satisfy future Operator dockage and passenger wharfage obligations to the County subject to the conditions and limits set forth in Sections 19, 39, and 40

hereof. Once an offset credit contained in this account is used to pay or reduce a Port bill or invoice to Operator, such credit(s) shall be deemed to be used and consumed and may not be used again for any purpose hereunder.

(r) **"Operator Offset Cap"** shall have the meaning set forth in Section 19 hereof.

(s) **"Operator Seasonal Parking Guarantee"** shall have the meaning set forth in Section 3(b)(viii) hereof. **"Operator Seasonal Parking Guarantee Period"** shall have the meaning set forth in Section 3(b)(viii) hereof. **"Operator Off-Season Parking Guarantee"** shall have the meaning set forth in Section 3(b)(viii) hereof.

(t) **"Operator"** or **"OPERATOR"** means Bimini SuperFast Operations LLC, a Delaware limited liability company authorized to do business in the State of Florida and wholly owned subsidiary of Genting Malaysia Berhad (a Malaysian corporation) and the Operator's successors and authorized and permitted assigns.

(u) **"Operator's Tenant Relocation Cost Payment"** shall have the meaning provided in Section 3(b)(i) hereof.

(v) **"Parking Garage"** shall have the meaning set forth in Section 12(a) hereof.

(w) **"Parking Spaces"** shall have the meaning set forth in Section 12(a) hereof.

(x) **"Port"** means the Miami-Dade County Seaport Department, also known as the Seaport, the Dante B. Fascell Port of Miami, and/or Port of Miami

(y) **"Port Director"** means the Director of the Miami-Dade County Seaport Department.

(z) **"Preferential Right(s)"** or **"Preferential Use"** shall mean Operator's preferential, but non-exclusive, right over other vessels to use Terminal H in accordance with the terms, limitations and conditions set forth in this Agreement during the Term, provided Operator's Preferential Use may not block or impair access across or through the Terminal H apron or wharf and may not block or impair access to any other berth, cruise terminal, or Port facility, and further provided the Port at all times retains the right to berth and/or assign vessels at unoccupied Port berths or terminals.

(aa) **"Tariff" or "Port Tariff"** means Port of Miami Tariff No. 010 as it may be revised or amended from time to time. The parties acknowledge and agree that the County may unilaterally revise or amend the terms and rates contained in the Tariff from time to time and at the County's sole discretion.

(bb) **"Tent Annex"** shall have the meaning set forth in Section 5(b) hereof.

(cc) **"Term" and "Initial Term"** shall have the meanings set forth in Section 4 hereof.

(dd) **"Terminal Area" or "Terminal" or "Terminal H"** means Preferential Use of portions of Terminal H, including portions of Terminal H's first and second floors, all or part of which will be subject to renovation as described in Section 6 hereof. The particular portions of Terminal H to be renovated and available for Preferential Use by Operator will be determined in the future by the Port Director following receipt of input from Operator, Operator's selected A/E, Port staff and consultants, current Terminal H tenants, and also taking into consideration Operator's operational requirements, value engineering, and budgetary restraints. Once the Port Director determines the specific portions of Terminal H to be made available for Operator's Preferential Use, Port Engineering will provide a new Exhibit detailing same.

(ee) **"Vessel"** shall have the meaning assigned in the third WHEREAS clause of this Agreement.

(ff) **"Substantial Completion" or "Substantially Complete"** shall mean the later of (i) the Approved Improvements being substantially completed and fully available for their intended uses and (ii) the issuance of a temporary certificate of occupancy and use for Terminal H as improved by all completed elements of the Approved Improvements from the Miami-Dade County building department.

(gg) **"Operator Design Services Soft Cost Cap"** shall have the meaning provided in Section 6(a)(i)(A) hereof.

(hh) **"Operator's Tenant Relocation Cost Initial Payment"** shall have the meaning set forth in section 3(b)(i).

(ii) **"Operator's Tenant Relocation Cost Payment"** shall have the meaning set forth in section 3(b)(i).

### 3. TERMINAL USE; CONSIDERATION

(a) Preferential Rights to Use Terminal H and Berth; Temporary Rights to Use Terminal F and Associated Berth.

(i) Preferential Rights to Use Terminal H. Subject to their compliance with all applicable requirements and payment obligations contained herein, the Operator shall, during the Term hereof, have the Preferential Right to use and occupy Terminal H to conduct its single-day cruise operations (including ancillary cargo operations), subject to Section 6(d) hereof, as well as the Preferential Right to use the Terminal H Berth, apron, and wharf, also subject to Section 6(d) hereof. It is acknowledged and agreed that the Port shall determine which portions of the apron and wharf must be kept clear and free of obstructions and impairments. It is further acknowledged and agreed the County may authorize vessels to use the Berth when (i) Operator's Vessel deployment schedule on file with the Port berthing office shows the Terminal H Berth will be unoccupied by Operator's Vessel and (ii) such use is not precluded by the U.S. Customs and Border Patrol ("CBP") security plan in effect for Terminal H. It is further acknowledged and agreed that the County may use, and allow others to use, portions of the Terminal H wharf and apron during the Term, provided that such use does not block or impair Operator's Vessel operations or operator's access to the Terminal H Berth.

(ii) Temporary Rights to Use Terminal F and Associated Berth. For purposes of this Agreement it is agreed by Operator and the County that Operator shall initially have preferential, non-exclusive use of Terminal F for its operations from the Effective Date until, and no later than, October 14, 2013. As of or prior to October 14, 2013, Operator shall relocate its Vessel to the Berth and move all of its passenger and cargo operations out of Terminal F and the Terminal F berthing area to the Tent Annex and associated Terminal H Berth until such time as the Cruise Terminal H Improvements are complete or the parties mutually agree upon use of an alternate terminal and berth.

(b) Consideration. The Operator shall throughout the Term, as consideration to the County hereunder, pay to the County each of the following amounts, plus sales tax (if applicable), as and when due as set forth herein:

(i) Operator Tenant Relocation Cost Payment. On or prior to the Effective Date, Operator shall pay the County an initial sum of \$250,000.00 in immediately available funds (hereafter, "Operator's Tenant Relocation Cost Initial Payment") as an advance against Terminal H tenant relocation costs anticipated

to be incurred by the County. Thereafter, Operator shall pay the County within thirty (30) days of the Port providing a written planning estimate supporting such incurred and/or anticipated Port costs and expenses relating to or arising from the relocation of any Terminal H tenants, including, without limitation, costs to relocate tenants, evaluate, design, build, and/or renovate alternate space, in the full of amount of the Port's estimate(s), up to \$1,000,000.00 in aggregate total tenant relocation cost payments to the County. The amount of total tenant relocation costs actually paid by Operator to County under this Section shall be deemed the Operator Tenant Relocation Cost Payment." Once Operator pays the Operator Tenant Relocation Cost Payment to the County, it will be treated as a dollar for dollar payment into the Operator Dockage and Wharfage Offset Account and may be used to offset future dockage and passenger wharfage charges due the Port from Operator in accordance with the offset provisions and conditions set forth in Sections 19, 39, and 40 hereof. Operator's payment(s) of the Port estimated relocation costs will be subject to later reconciliation based on the Port's actual expended costs associated with the aforementioned tenant relocations, such that if the amount of actually expended Port costs exceeds the amount of the prior Operator payment(s), Operator, upon request, shall pay the County the difference up to \$1,000,000.00 in total relocation costs.

(ii) Passenger Wharfage Fees. For each passenger embarking or debarking from an Operator affiliated vessel calling the Port, Operator shall pay the Port \$2.15 per single-day passenger (\$4.30 for each passenger embarking and debarking on the same day) and \$10.00 (each way) for each passenger embarking and debarking on a different day (\$20.00 combined for each passenger who embarks and debarks on a different day), provided that a passenger that embarks and debarks within a 24 hour period shall not be deemed an overnight passenger. Operator acknowledges that the Port retains the right to increase these rates annually, and Operator shall be bound by such increases, subject to the annual passenger wharfage and dockage escalation cap set forth in Section 3(c) below. Notwithstanding the foregoing, for any year during the Term in which either the Operator Off-Season Parking Guarantee or Operator Seasonal Parking Guarantee is not extended by Operator or either is not otherwise in effect, then the single-day passenger wharfage embark and debark rates then in effect shall each be increased by the product of \$.35 increased by three percent (3%) per year (compounded) for each of the first six years of the Term plus any other years when both the Operator Seasonal and Off-Season Parking Guarantees were in effect, and, in such event, the amount of Operator's annual Guaranteed Minimum Annual Passenger Wharfage shall be automatically adjusted to reflect such rate increases. By



example, in the event Operator opts not to extend either or both of the Operator Seasonal Parking Guarantee or the Operator Off-Season Parking Guarantee for year seven of the Initial Term, then the applicable single-day passenger wharfage rates for year seven and later years during the Term would be the then-applicable single-day passenger wharfage rates for such year(s) (per passenger embark and per passenger debark) plus \$.4179 per then-applicable rate.

(iii) Dockage Fees and Rate Discount. For Operator's single-day cruise operations, Operator shall pay the daily Port dockage rates set forth in Tariff Item No. 306 (less 20%) multiplied by the number of gross registered tons of the vessel per 24-hour period or fraction thereof. If Operator ever conducts multi-day cruise operations using any Port cruise terminal, the applicable dockage rate for such multi-day cruise calls will be the then-current rates set forth in Port Tariff Item No. 306 without discount. Operator acknowledges that the Port retains the right to increase these dockage rates annually in its sole discretion, and Operator shall be bound by such increases, subject, however, to the passenger wharfage and dockage rate annual escalation cap set forth in Section 3(c) below.

As special consideration for the 20% dockage rate discount referenced above, Operator guarantees the County each year during the Term a minimum amount of annual dockage fees based on a minimum of 365 Vessel calls per year (based on an assumed minimum of one Vessel call per day) (hereafter, the "Guaranteed Minimum Annual Dockage Amount"). Under this minimum annual dockage revenue guarantee, the minimum amount of annual dockage due to Port by Operator during each year of the Term, commencing on the Effective Date, shall be the greater of (i) the number of gross registered tons of the Vessel multiplied by the applicable dockage rate per ton under Port Tariff Item No. 306 or its successor (less 20%) multiplied by 365 (based on one Vessel call per day) or (ii) the number of gross registered tons of the Vessel multiplied by the applicable dockage rate per ton under Port Tariff Item No. 306 or its successor (less 20%) multiplied by the number of actual Vessel calls by Operator, (the "Guaranteed Minimum Annual Dockage Amount"). By example, in year one of the Initial Term, the minimum dockage due by Operator to County under the Guaranteed Minimum Annual Dockage Amount will be \$2,948,138 (calculated as follows: .32 (current Th-Mon dockage rate) less 20% = .256 x 32,728 (Operator reported Vessel GRT) x 260 (# of Th-M annual Vessel calls) = \$2,178,375.68 + .28 (current Tuesday-Wednesday dockage rate) less 20% = .224 x 32,728 (Operator reported Vessel GRT) x 105 (# of T-W annual Vessel calls) = \$769,762.56; \$2,178,375.68 + \$769,762.56 = \$2,948,138.24).

(iv) Harbor Fee. Operator shall pay the Port harbor fees under Tariff Item No. 707. Operator hereby guarantees a minimum of 300 vessel calls per year and, based on this guarantee, agrees to pay the Port the applicable harbor fees due for a minimum of 300 vessel calls per year during the Term, even if Operator's actual number of vessel calls in any given year falls below such minimum (the "Guaranteed Annual Harbor Fee"). As a result of Operator's minimum annual harbor fee guarantee, the County agrees that the applicable harbor fee due by Operator per Vessel call (as of the Effective date) shall be \$50.00 (not to exceed \$50.00 per day). During the first five (5) years of the Initial Term, as long as Operator is performing at least 500 Vessel calls per year the Port agrees not to remove the 300 vessel call per year discount threshold set forth in Tariff Item No. 707.

(v) Cargo Wharfage Fees. Operator shall pay all applicable Port cargo wharfage and freight charges under the Tariff. With respect to the transportation of cars, motorcycles, scooters, boats, and other self-propelled vehicles accompanied by a cruise or ferry passenger, the applicable passenger vehicle wharfage rate is set forth in Tariff Item No. 409 (currently \$6.50 per outbound vehicle and \$6.50 per inbound vehicle; no charge for bicycles or trailers when towed by a self-propelled vehicle). For boats not accompanied by a cruise or ferry passenger, the applicable Tariff rate is governed by Tariff Item No. 406.

(vi) Water Fees. Operator shall pay the Port for water at the prevailing water rates set forth in the Port Tariff, as may be amended in the County's discretion.

(vii) Other Tariff Charges. Operator shall pay any other fees or charges due under the Port Tariff as may be amended from time to time in the Port's discretion.

(viii) Operator Seasonal Parking Guarantee; Operator Off-Season Parking Guarantee. Commencing on the Effective Date and continuing through the first six years of the Initial Term, Operator guarantees minimum annual parking fee payments to the County for the 300 Parking Spaces in the Parking Garage for 182 days per year (183 on leap years) for the annual seasonal period from October 15 through April 15 multiplied by the long term daily parking rate set forth in the Tariff (currently \$20 per space per day) (hereafter, the "Operator Seasonal Parking Guarantee"). Should the County increase the long term Port parking rate set forth in the Tariff, Operator agrees it shall pay such increase and that Operator's Seasonal Parking Guarantee shall automatically increase to reflect such rate increase, provided, however, that should the County increase the long term parking rate in the Tariff

above \$25.00 per space per day during the first six years of the Initial Term, then, and only then, Operator may unilaterally opt out of the Operator Seasonal Parking Guarantee by providing fifteen (15) days notice to the County, provided, in the event of such opt out, Operator's single-day passenger wharfage rates hereunder shall immediately be subject to the adjustment set forth in the last two sentences of Section 3(b)(ii) hereof. Notwithstanding the foregoing, in the event the Port determines that it has 300 parking spaces available beyond the first six years of the Term, and discloses in writing the availability of such spaces to Operator for the entire six-month season of the following year via a Port proposed annual extension of Operator's Seasonal Parking Guarantee no later than ninety (90) calendar days prior to the commencement of year seven or later years of the Initial Term, and Operator accepts the proposed annual extension of the Operator Seasonal Parking Guarantee in writing to the Port Director within thirty (30) calendar days of receipt thereof, then the Operator Seasonal Parking Guarantee shall be mutually deemed extended by an additional year during the Initial Term (as may be so extended by mutual agreement, the "Operator Seasonal Parking Guarantee Period."

Commencing on the Effective Date and continuing through the first six years of the Initial Term, Operator also guarantees minimum annual parking fee payments to the County for the 300 Parking Spaces in the Parking Garage for 183 days per year for the annual off-season period from April 16 through October 14 (the "Operator Off-Season Parking Guarantee Period") multiplied by the long term daily parking rate set forth in the Tariff (currently \$20 per space per day) (hereafter, the "Operator Off-Season Parking Guarantee"). By example, in year one of the Agreement the Operator Off-Season Parking Guarantee would be calculated as follows: 300 spaces multiplied by \$20.00 per space per day (current Tariff long term parking rate) multiplied by 183 days = \$1,098,000.00 per off-season per year, pro-rated monthly over the six-month off-season period = \$183,000.00 due to the Port from Operator each month of the off-season period and payable on the 15 of each month from May through and including October during the Operator Off-Season Parking Guarantee Period. Should the County increase the long term Port parking rate set forth in the Tariff, Operator agrees it shall pay such increase and that Operator's Off-Season Parking Guarantee shall automatically increase to reflect such rate increase, provided, however, that should the County increase the long term parking rate in the Tariff above \$25.00 per space per day during the first six years of the Initial Term, then, and only then, Operator may unilaterally opt out of the Operator Off-Season Parking Guarantee by providing fifteen (15) days notice to the County, provided, in the event of such opt out, Operator's single-day passenger wharfage rates hereunder shall immediately be subject

to the adjustment set forth in the last two sentences of Section 3(b)(ii) hereof. Notwithstanding the foregoing, in the event the Port determines that it has 300 parking spaces available beyond the first six years of the Term, and discloses in writing the availability of such spaces to Operator for the entire six-month off-season of the following year (April 16 through October 14), via a Port proposed annual extension of Operator's Off-Season Parking Guarantee no later than ninety (90) calendar days prior to the commencement of year seven or later years of the Initial Term, and Operator accepts the proposed annual extension of the Operator Off-Season Parking Guarantee in writing to the Port Director within thirty (30) calendar days of receipt thereof, then the Operator Off-Season Parking Guarantee shall be mutually deemed extended by an additional year during the Initial Term (as may be so extended by mutual agreement, the "Operator Off-Season Parking Guarantee Period."

(ix) Fees. The fees and charges due the Port from Operator listed above in subsections 3(b)(ii) through 3(b)(viii) and 3(b)(xi) (collectively referred to as the "Fees") shall be payable to the Port by Operator as set forth in Section 3(d) below, subject to any applicable and authorized dockage and passenger wharfage offsets as authorized and conditioned under Sections 19, 39, and 40 hereof.

(x) Required Billing Information from Operator. On a weekly basis, Operator shall provide the Port finance division with the following information and documentation for billing or other purposes: Passenger Wharfage Information, including, without limitation, passenger manifests and summaries showing the number of embarking and debarking passengers for each of the prior week's cruises, including identifying the number of passengers per cruise that return the same day, the number that return on a different day, and the number of one-way passengers (if any); Cargo Wharfage Information, including, without limitation, for each prior week's cruise, documentation and summaries showing the number of cars, motorcycles, boats, scooters, and other self-propelled vehicles transported per cruise, including identification of which self-propelled vehicles were accompanied by a cruise passenger; documentation identifying the and weight of all non-containerized cargo carried on the vessel, as well as the number, length, and weight of each cargo container carried; identification of any transshipped cargo carried per vessel call; a description (including weight) of all construction materials carried per call; and any other information that may be requested by Port staff for billing or other purposes.

(xi) Square Footage Rent. In consideration of Operator

being able to use 1,000 square feet of interior space inside Terminal H during the Term, for secured marketing or office space, Operator shall pay the Port annual rent at the applicable Tariff Item 602 square footage rate (currently, \$23.00 per square foot), payable monthly in arrears, commencing upon Substantial Completion of the Approved Improvements, which square footage rate is subject to annual escalation by the Port. The precise location of such space within Terminal H shall be subject to the Port Director's prior approval, which shall not be unreasonably withheld. Upon sixty (60) calendar days written notice to the Port Director, Operator may opt out of its commitment under this subsection 3(b)(xi) to use up to 1,000 securable square feet within Terminal H for its own office or marketing use and to pay the Tariff Item 602 square footage rate therefore, provided Operator must pay the County for all square footage rents and other charges due for such space through the effective (post-notice) date of opt out, and further provided that, at the request of the Port, Operator shall either return the secured space to open terminal space on par with the surrounding space, reasonable wear and tear excepted (at Operator's sole cost and without offset credit) or pay the County for the costs the County estimates it will take to return such secured space to open terminal space on par with the surrounding space, reasonable wear and tear excepted. Notwithstanding the foregoing, in the event the County does not execute the County-designated principal Design Contract until after December 31, 2013, then, in such event, for each full month or fraction thereof after December 31, 2013 until such time as the County-designated principal Design Contract is executed, Operator shall be entitled to a pro-rated square footage rent credit for such period against the square footage rents (for up to 1,000 square feet in Terminal H) otherwise due the County under this Section 3(b)(xi).

(c) Rates Subject to Change. The rates set forth in subsections 3(b)(ii) through and including 3(b)(viii) above are subject to change during the Term hereof if and to the extent the applicable rates of general applicability contained in the Port Tariff are amended by the County in the County's sole discretion. Notwithstanding the foregoing, the County shall not increase the dockage or passenger wharfage rates applicable to Operator's single-day cruise operation hereunder by more than 3% per year unless required to do so by (i) increases in Port security costs, (ii) the Port's Bond engineer or due to Port Bond coverage requirements or covenants, (iii) to cover Port pass through costs, or (iv) due to causes beyond the Port's sole or primary control. Further, the County's ability to raise the applicable long term parking rate in the tariff above \$25.00 per space per day during the first six years of the Initial Term shall be subject to the condition and limitation set forth in the last sentence of Section

3(d) (iv) below.

(d) Method of Payment of Fees and Other Amounts to County.

(i) Dockage Fees. Dockage fees shall be payable by the Operator to the Port monthly, in advance, by the first day of each calendar month during the Term commencing on and following the Effective Date. The minimum amount of dockage fees due and payable by Operator to the Port each month during the Term shall be one-twelfth (1/12) of the Guaranteed Minimum Annual Dockage Amount.

(ii) Water, Harbor and Other Port Tariff Fees. Such fees shall be payable by the Operator to the Port monthly, in arrears, within seven (7) calendar days after the end of each month or within seven (7) calendar days after receipt from the Port of invoice(s) therefor, whichever is later.

(iii) Passenger and Cargo Wharfage Fees. Passenger and cargo wharfage fees shall be payable by the Operator to the Port no later than seven (7) calendar days after the end of each calendar month based upon actual passengers and cargo transported during the prior month (less applicable dockage and passenger wharfage offsets that may be available in the Operator Dockage and Passenger Wharfage Offset Account under Sections 19, 39, and 40 hereunder), subject to monthly adjustment to account for the Guaranteed Minimum Annual Passenger Wharfage requirements of Section 11 hereof and further subject to adjustment and reconciliation in furtherance of the County's audit rights hereunder. If, at the end of each Agreement year during the Term, Operator has underpaid or overpaid passenger and/or cargo wharfage fees due hereunder to the Port, taking into account any Operator minimum annual guarantees hereunder, other amounts due hereunder, and actual payments made by Operator to County during the preceding year, the parties shall reconcile same such that any Operator payment deficiencies (or overpayments) are either paid by Operator to the County, or, in the case of Operator overpayments (if applicable), credited in favor of Operator, as the case may be, within forty-five (45) calendar days of the conclusion of the preceding year.

(iv) Parking Space Rental Payments. Each year during the first six years of the Term, as may be extended by the Operator Seasonal Parking Guarantee Period (as defined in Section 3(b)(viii) hereof), Operator shall pay the County the Operator Seasonal Parking Guarantee on a monthly pro rata basis, at the then-applicable long term parking rate set forth in the Tariff (currently \$20 per space per day), multiplied by 300 parking spaces multiplied by 182 days (183 in leap years), in arrears, no later than the fifteen (15th) day of each month (November 15 through and

including April 15). Notwithstanding the foregoing, in the event the County raises the long term parking rate in the Tariff above \$25.00 per space per day during the first six years of the Initial Term, then, and only then, Operator may unilaterally opt out of the Operator Seasonal Parking Guarantee and/or the Operator Off-Season Parking Guarantee by providing fifteen (15) calendar days written notice to the County. Each year during the first six years of the Term, as may be extended by the Operator Off-Season Parking Guarantee Period (as defined in Section 3(b)(viii) hereof), Operator shall pay the County the Operator Off-Season Parking Guarantee at the then-applicable long term parking rate set forth in the Tariff (currently \$20 per space per day) multiplied by 300 parking spaces multiplied by 183 days, which guaranteed parking payments shall be payable by Operator to the Port on a monthly pro rata basis (based on a six month off-season period), in arrears, no later than the fifteenth (15th) day of each month (May 15 through and including October 15).

(v) Percentage of Gross Revenues. Within fifteen (15) days after the end of each calendar quarter throughout the Term, the Operator shall pay to the County seven (7%) percent of all gross revenues collected by the Operator or any of its affiliates from retail and other sales at, or derived from the use of, Terminal H during such calendar quarter, including but not limited to sales of any food, beverages, apparel, merchandise, accessories, and any other retail fees during the calendar quarter.

#### **4. TERM AND EFFECTIVE DATE**

Subject to the terms and conditions contained herein, the initial term of this Agreement shall be for a period of ten (10) years (the "Initial Term"), commencing on the Effective Date. The Operator shall have two five (5) year options to renew the Agreement, provided Operator provides the County with written notice of its intent to exercise such option no later than one year prior to the expiration of the Initial Term, and subject to the negotiation and mutual agreement by the Operator and the County with respect to revised annual minimum passenger counts, revised minimum annual revenue guarantees, and other new and/or modified terms or provisions that the parties may mutually agree upon (subject to the parties' mutual assent in accordance with the last sentence of Section 11(c)) and, as to the County, approval by the Board of County Commissioners (each such conditioned five (5) year extension term is referred to herein as a "Renewal Term"). The Initial Term and the mutually approved (as applicable) Renewal Term are referred to collectively herein as the "Term." The effective date of this Agreement ("Effective Date") shall be the day on which each of the following events has occurred:

- (a) Execution of the Agreement by Operator, including delivery to County of an executed Guarantee from the Guarantor;
- (b) Approval of the Agreement by the Board of Miami-Dade County Commissioners; and
- (c) Execution of the Agreement by the County.

The last day of the Initial Term shall be one day before the tenth anniversary of the Effective Date.

## 5. PERMITTED USE OF TERMINAL

(a) No Unlawful or Unauthorized Use. Operator shall not use the Terminal Area or the facilities located thereon for any unlawful purpose, including, without limitation: any unauthorized use; any use other than as a cruise passenger terminal in support of a single-day high density cruise passenger service (including ancillary cargo operations) to and from Bimini, Bahamas, other Bahamian Islands, or cruises to nowhere; or any use prohibited herein, by Applicable Laws, by any County Code provision, Administrative Order, or duly adopted resolution of the Board of County Commissioners of Miami-Dade County, or by the Port Tariff, as they may be revised from time to time.

(b) Operator's Use of Temporary Tent Annex. Commencing on or after October 14, 2013, Operator shall have preferential, non-exclusive rights to use a temporary tent annex, of approximately 17,000 gross square feet (or such smaller size as may be necessary to meet or accommodate applicable setback, safety, or zoning requirements, or Applicable Laws), to be erected by the County over a portion of the current Terminal H south parking lot (the "Tent Annex"), until such time as the Approved Improvements reach Substantial Completion or the parties mutually agree to use an alternate terminal facility prior to Substantial Completion. The County will cause the Tent Annex to be erected no later than October 9, 2013, and will supply temporary or portable air conditioning equipment to service the Tent Annex during reasonable periods of Vessel operations at the Berth, at the County's cost. . To support its Vessel and temporary terminal operations at the Tent Annex, Operator shall provide security, all necessary security related equipment, and all other staffing needed to support its terminal operations at and associated with the Tent Annex, all at Operator's sole cost, without offset credits. Operator acknowledges and agrees that the temporary Tent Annex is adequate to meet all of its cruise terminal and passenger processing requirements until such time as the County completes the Terminal H Improvements; provided, however, Operator and County shall review and mutually



agree as to the adequacy of the temporary or portable air conditioning equipment and required electrical service prior to Operator commencing operations at the Tent Annex. Notwithstanding the foregoing, if the Terminal H improvements are not Substantially Complete within 24 months of the County's execution of the County-designated principal Design Contract, then all rental, electric, and other Tent Annex related costs incurred by County shall be reimbursed by Operator to County within thirty (30) calendar days of County's written request therefore, which request will be accompanied by a summary of the Tent Annex costs being requested, provided (i) Operator's reimbursement obligations to the County under this subsection shall only pertain to Tent Annex related costs arising during a 180 calendar day period commencing 24 months from the date the County executes the County-designated principal Design Contract, and provided (ii) that any Tent Annex costs so reimbursed by Operator to County under this subsection shall be added as a dollar for dollar offset to the Operator Dockage and Passenger Wharfage Offset Account (the "Operator Tent Annex Contribution"). In addition, the parties agree that upon mutual agreement its Vessel can operate at other Port cruise terminals when available prior to the time the Terminal H Improvements are completed, provided the Port has final approval rights over all vessel berthing assignments.

(c) No Abandonment or Cessation of Service, Exceptions. During the Term following the Effective Date, Operator agrees not to abandon or cease service to the Terminal F or the Terminal Area, as applicable, except for cessation as a result of Vessel maintenance, as a result of force majeure or any other cause outside the control of the Operator or its affiliates, employees, agents, guests, or contractors (including, without limitation, destruction, theft or seizing of the Vessel, but only if such causes are not caused or contributed to by Operator or its agents, employees, contractors, affiliates or guests) or unless expressly permitted to do so by another provision in this Agreement.

(d) Port and Vessel Registration Requirements. Prior to operating any vessel from Terminal H or any other Port terminal, Operator must first register such vessel with the Port of Miami and deliver copies of all required vessel certifications, approvals, and operating permits to the Port. The County agrees to facilitate and expedite said registration process.

(e) Operation of Second Vessel. This Agreement shall not permit Operator to use or operate more than one vessel during the Term utilizing Terminal H, or to operate any vessel other than the Vessel, without (i) Operator first complying with the terms of subpart (d) above, (ii) first obtaining the express written consent

of the Port, which consent shall be granted if the terms in subparts (i) and (iii) of this subpart (e) are satisfied, and (iii) without the Operator and the County agreeing upon an amendment hereto to reasonably increase the minimum annual passenger wharfage and dockage guarantees contained herein for so long as a second vessel is in operation.

(f) Terminal Advertising and Promotions. Notwithstanding any contrary term or implication contained in this Agreement, and subject to Applicable Laws, the Operator and the County acknowledge and agree that the County shall have the right to advertise and/or promote in the interior of the Terminal, at no charge to the County, (i) any County facilities, parks, attractions, or special events, and (ii) any tourism attractions, facilities, or sites, or special events, located, or to be held, within Miami-Dade County, both subject only to Operator's prior reasonable approval with regard to the number, size, and location of such promotions and advertisements and duration (provided the advertisements may be time controlled in any manner), but only when such advertisements and promotions are proposed for the interior of the Terminal, the entrance thereto and the exit therefrom, and further provided that such approval may not be unreasonably withheld, conditioned, or delayed, and provided such promotions and advertisements do not include or directly and primarily promote or advertise any passenger cruise vessel operation other than Operator. With respect to the preceding sentence, the parties agree that the County may place advertisements and/or promotions authorized in this subpart 5(f) in the interior terminal with similar frequency and in similar number, size, duration, and location as promotions and advertisements placed in terminals at Miami International Airport. Subject to the reasonable approval of the Port Director, Operator shall have the right to place temporary and removable promotions of Operator's single-day cruise service to Bimini in the interior of Terminal H. The parties agree to work in good faith to reach agreement on the number, size, locations, and shared use of promotional space in the interior of the Terminal.

(g) Exterior Electronic Terminal Signage. As of the Effective Date, electronic building signage is not permitted on the exterior of County buildings located on the Port. During the Term, should Applicable Laws permit the placement of electronic signage on the exterior of County buildings, the County agrees to: (i) consider the viability, economics, and desirability of placing exterior electronic signage on Terminal H or other County-owned buildings on the Port; and (ii) if the County, in the exercise of its sole discretion, determines that it is in the County's best interests to erect or install, or to allow others to erect or install on the County's behalf, electronic signs on the exterior of

Terminal H, and to the extent not contrary to then-existing Applicable Laws or competitive selection requirements (if applicable), the County agrees to enter into good faith discussions and/or negotiations with Operator regarding the potential joint usage or joint development of a Terminal H exterior electronic sign, which may include discussion or negotiation of potential business terms of a potential joint development and/or usage of such exterior electronic signage, it being understood, however, that any joint usage or development agreement would, on the County's behalf, be subject to approval by the Board of County Commissioners. Notwithstanding and prevailing over the foregoing and any contrary term or implication contained in this Agreement, the County retains sole control and rights to erect or place any type of electronic and/or non-electronic signage on the exterior of any County owned buildings at the Port. In addition, Operator acknowledges that the County has entered or may enter into agreements for commercial signs and advertising both within and outside Port cruise terminals and elsewhere at the Port. Operator agrees that this Agreement shall not preclude or in any way affect or limit such commercial sign and advertising agreements in the future.

## **6. RENOVATION, MAINTENANCE AND REPAIR OF TERMINAL AREA**

### (a) Terminal Improvements.

#### (i) Terminal Improvement Design.

(A) A/E Design Contracts. The design contract(s) and/or purchase order(s) (as the case may be) for architectural and/or engineering services relating to the design, construction document development (including, without limitation, the passenger boarding bridge), surveying, LEED certification, construction oversight of the Improvements, and ultimately, the Approved Improvements, threshold and other owner inspections, and commissioning and testing (collectively, "Design Services"), between the County and its to-be-retained design professional(s) shall be referred to collectively (as applicable) as the "Design Contracts." All costs paid by the County under the Design Contracts relating to or arising from the Design Services relating to the Terminal H Improvements and/or development of and/or oversight over the Approved Improvements, shall be paid by Operator to the County within twenty (20) calendar days from receipt of a written request therefore, which request shall be accompanied by a copy of the County's approved payment request(s), provided the Operator's responsibility hereunder to reimburse the County for all Terminal H Improvement related Design Services shall be capped at \$1,500,000.00 (the "Operator Design Services Soft Cost Cap"),

provided further that in no event shall any Operator reimbursements to the County for any County costs incurred under the Design Contracts be entitled to any dockage or passenger wharfage offset, or any other offsets for any purpose hereunder; it being acknowledged and agreed by Operator that no reimbursements made to the County for any costs incurred under the Design Contracts are eligible for inclusion in the Operator Dockage and Passenger Wharfage Offset Account or otherwise eligible for any offsets or credits; and provided that the County shall not transmit any Design Services related reimbursement requests to Operator until after the County-designated principal Design Contract is executed by the County. The County shall require its principal Terminal H Improvements' design professional to design the contemplated Improvements on par with industry standard seaport passenger terminals.

(B) Terminal H Improvement (including Passenger Boarding Bridge) Design Input. The County and Operator will work in good faith to communicate during the Terminal H Improvement design development process. In furtherance of such communication, it is acknowledged and agreed that the County must submit to the Operator for its review and comments the Improvement drawings, plans and specifications, budgets, and LEED checklist at the 30%, 60%, and 90% construction document completion milestones, which submissions shall include a line item budget for all Improvements; it being understood and agreed by the parties that Operator does not have design or other approval rights over any of such submissions. Upon receipt of such construction development documents and budgets at the 30% and 60% milestones, the Operator shall have ten calendar (10) days in which to review and provide written comments thereon to the Port. Upon receipt of construction development documents and budgets at the 90% milestone, Operator shall have five (5) calendar days in which to review and provide written comments thereon to the Port. The Port shall have five (5) business days after receipt of Operator's written comments to the 30%, 60%, and 90% milestone submissions in which to advise Operator of the proposed outcome of the Port's consideration of Operator's timely submitted comments. If Operator deems it necessary, within three business days of receipt of the Port's notice of outcome of its consideration of Operator's timely submitted comments (if any), it may meet with the Port's design team (upon prior notice) to further discuss its concerns. Notwithstanding and prevailing over any contrary term or implication contained in this Agreement, the County retains final say and approval rights over the design of the Improvements, any other potential modifications to Terminal H, and over the proposed budgets therefore. The 100% construction documents prepared by the County's to-be-retained design professional, which have been approved by the County building

department for permit, shall be deemed the "Approved Improvements."

(C) Should the County wish to make any substantial changes to the Approved Improvements, the County shall provide Operator three (3) business days in which to provide written comments thereto to the Port for its consideration.

(ii) Approved Improvement Construction Cost Deposit and Reimbursement Obligations of Operator; Dockage and Passenger Wharfage Credits. The County shall be responsible to construct the Approved Improvements, provided Operator shall pay the County for the costs of same, up to eleven million dollars (\$11,000,000) (the "Operator Construction Cost Cap"), with the first \$2,000,000 payment being due from Operator to County within twenty (20) calendar days of the County's execution of a written construction contract with the County's to-be-retained primary construction contractor; and subsequent Operator construction payments (to be commensurate with approved contractor(s) and/or vendor(s) monthly payment requests to the County) to be due and payable to the County within twenty (20) calendar days of the County providing Operator with written requests therefore, which payment requests shall include a copy of the applicable County-approved contractor and/or vendor payment request from each applicable retained construction contractor or vendor. In addition, to the extent portions of the Approved Improvements are procured through more than one County vendor or contractor, Operator shall reimburse all costs paid by the County to any of such vendors or contractors within twenty (20) calendar days of written requests for reimbursement, which payment requests shall include a copy of the applicable County-approved contractor or vendor (as the case may be) payment request. Notwithstanding the foregoing, Operator's responsibility to reimburse the County for construction costs associated with the Approved Improvements shall be capped at \$11,000,000, which cap may not be increased without Operator's written consent. The County agrees that the Approved Improvements' construction sums reimbursed by Operator to the County, up to \$10,000,000, shall be treated as an offset credit deposit into the Operator Dockage and Passenger Wharfage Offset Account, and that fifty percent (50%) of any reimbursements made by Operator to County above \$10,000,000.00 up to \$11,000,000.00 shall be treated as offset deposits into the Operator Dockage and Passenger Wharfage Offset Account. In the event the costs of completing the Improvements or the Approved Improvements are at anytime projected to exceed \$10,000,000.00, the parties hereto acknowledge and agree that the County has the unilateral right to reduce the scope of the contemplated Improvements and/or the Approved Improvements (as the case may be).

(iii) Construction Schedule. The parties acknowledge

that time is of the essence regarding the design and construction of the Improvements contemplated herein. The County shall design, construct, and otherwise develop and achieve Substantial Completion sufficient to obtain full beneficial occupancy of the improved terminal, including, without limitation, the fabrication, delivery, and installation of a working passenger boarding bridge, in a professional, diligent, safe, and expeditious manner, no later than the expiration of a twenty-four (24) month period commencing on the execution of the County-designated principal Design Contract with its to-be-retained Terminal H Improvements principal

design professional (the Development Period"), provided however, should County be unable to complete all Approved Improvements within the Development Period through no fault of the Port, or its employees, authorized agents, contractors, subcontractors, designers, or suppliers, it shall not be deemed in default hereof as long as it (i) provides prompt written notice to the Operator detailing the reasons for the Development Period completion slippage and identifying all steps the County construction contractor is taking to mitigate the delay and (ii) County takes all reasonable steps, within budget, to accelerate to eliminate the delay to the extent reasonably practicable. Upon the County's execution of its principal Design Contract, the Port shall provide Operator written notice designating execution of same within five (5) calendar days of the Port's receipt of such fully executed principal Design Contract. Within five (5) calendar days of receiving from its construction contractor a County-approved cost-loaded critical path method ("CPM") construction schedule, the County shall provide a copy of same to Operator.

(iv) This section intentionally deleted.

(v) This section intentionally deleted.

(vi) Access to Terminal During Construction. The Port shall allow the Operator and its agents access to Terminal H during the Term as contemplated by Section 3(a)(i) and other applicable terms of this Agreement, for use as specified in and in accordance with this Agreement, including, without limitation for the following purposes or uses: to allow observation of the work during the prosecution thereof subject to reasonable restrictions imposed by the Port for safety, security or other purposes.

(vii) Ownership of Improvements. The Operator and Port agree that the Terminal, all Improvements to be made thereto and all fixtures erected or installed thereon are, or upon completion or affixation shall immediately become, the sole property of the County, unless rejected by County in its sole discretion. The Operator covenants not to allow any liens or encumbrances of any

kind to arise on the Terminal, the Improvements or on any other property of the County and, if said liens or encumbrances do arise due to Operator's or its employees, agents, contractors, subcontractors, affiliates, partners, invitees or guests actions or omissions, to cause them to be promptly removed upon receipt of notice thereof from any party or non-party, at the Operator's sole expense, and agrees that upon the earlier of the expiration or prior termination of this Agreement, it shall immediately and peaceably yield and relinquish to the Port the Terminal, the Improvements, the Approved Improvements, and any fixtures thereto, all free of liens or any other encumbrances and all in clean condition and in working order. Operator shall provide written notice to County of any lien or encumbrance placed on Terminal F, Terminal H, the Tent Annex, or any other County structure due to Operator's or its employees, agents, contractors, subcontractors, affiliates, partners, invitees or guests actions or omissions within three business days of Operator or any of its agents, employees, affiliates, partners, contractors, or subcontractors receiving actual or constructive notice thereof.

(b) This section intentionally deleted.

(c) Yearly Inspections and Repairs. Within thirty (30) days of each anniversary of the Effective Date, Operator and the Port agree to inspect the Terminal Area and prepare a report indicating the condition of said area and specifying any damages which shall be repaired by Operator and/or the Port; as applicable, under the terms hereof. The party responsible for any such repairs shall see that the necessary repairs are, where reasonably practicable, started within thirty (30) days after the issuance of said report, and completed promptly, such party paying the purveyors of such repairs, except, as to the County, such time period may be extended by the County, in its sole discretion, should the County elect to procure needed repairs using a competitive selection process; provided that the Operator may choose, in its sole discretion, to perform or cause to be performed any repairs for which the County is responsible under this subpart (c) by notice to the Port and any amounts expended by the Operator therefor shall then be offset over the Initial Term against passenger wharfage amounts due or to become due to the Port by the Operator under this Agreement. The terms and conditions of such offset shall be governed by Sections 19, 39 and 40 hereof.

(d) County Rights to Enter Terminal. The Port, its agents and representatives may at all times and without notice, enter the Terminal Area, any portion of Terminal H, and/or the Terminal H berth and surrounding areas to view, inspect, and/or

show the Terminal and surrounding facilities, or for any other purpose, so long as such activities do not unreasonably interfere with the Operator's operations.

(e) Environmental. The Port shall be responsible to promptly correct, at its sole cost and expense to the extent required by Applicable Law or by DERM, any environmental conditions or environmental hazards on the premises to be used hereunder which interfere with the Operator's operations, in the Operator's reasonable discretion, excluding any hazards or environmental conditions caused or contributed to by the Operator or its agents, employees, contractors, subcontractors, affiliates, partners, or guests, or arising from use of Operator's vessel, to the extent of the contribution, which hazards and conditions shall be promptly remediated by the Operator at its sole cost and expense (only to the extent of the contribution, if applicable) to the extent required by Applicable Laws or by DERM. The Operator will reasonably cooperate with the Port in such correction or remediation of any environmental hazards for which the Port is responsible. Similarly, the County will endeavor to reasonably cooperate with the Operator in its remediation of any hazards or conditions for which the Operator is responsible.

(f) Casualty, Force Majeure. In the event that the Terminal Area or the Vessel is damaged or destroyed by fire or other physical casualty or cause or condition beyond the reasonable control of Operator, including without limitation, acts of God, an act of state or war, public emergency, strikes, boycotts, picketing, work stoppages or labor troubles of any other type (whether affecting County, Operator, its contractors or subcontractors) or other cause (including, without limitation, with respect to the Vessel, destruction, theft or seizing of the Vessel), in all case not caused or contributed to by the Operator or its agents, employees, contractors, affiliates, partners, or guests ("Force Majeure Event"), to such an extent as to render the Terminal H Berth, or the Vessel unfit for the Operator's Vessel operations for a period of 180 consecutive days, and such state cannot practicably be cured within such 180 day period, the Operator and the County shall have the mutual right to terminate this Agreement upon 180 days written notice to the other (it being understood that said notice may be given within such 180 day cure period but only if such state cannot practicably be cured within such 180 day cure period) without penalty and without payment of liquidated damages as specified in Section 20 hereof. Operator shall, during the period the Terminal H Berth or Vessel is unfit for Operator's Vessel operations as contemplated herein for reasons not caused or contributed to by the Operator or its agents, employees, contractors, affiliates, partners, or guests, be



entitled to (A) a pro-rata reduction of the Guaranteed Minimum Annual Passenger Wharfage (and the Fees payable under Section 3(b)(ii) hereof, payment for unused Parking Spaces and any other applicable fees or dockage payable under Section 3(b)(iii)), except fees based upon actual usage) during the period the Terminal Area or the Vessel is unfit for Operator's Vessel operations as contemplated herein (said pro-rata reduction shall be calculated based upon the number of days out of a total 365 days during which the unfit condition of the Terminal Area or Vessel materially interferes with the ability to operate the Vessel from the Terminal Area as contemplated herein), provided, with respect to (A) of this Subsection 6(f), the Operator provides the Port Director with detailed written notice of any Force Majeure Event within seven (7) calendar days of its occurrence. Notwithstanding the foregoing, upon the Port receiving notice of an Operator claimed Force Majeure Event involving the Terminal, this subsection shall not be available to the extent the Port is able to provide Operator an alternate berth and passenger terminal (or temporary terminal) within sixty (60) days of receipt of such notice of claimed Force Majeure Event. County and Operator shall not be liable for any failure, delay or interruption in performing their individual operations hereunder due to a Force Majeure Event providing the party claiming the existence of the Force Majeure Event delivers written notice to the other party within fifteen (15) calendar days of the commencement of such event, provided further that the party claiming such relief is taking all reasonable steps to mitigate such event or impairment where reasonably practicable to do, providing, as to an Operator-claimed Force Majeure Event, such relief shall cease upon the earlier of the circumstance giving rise to the Force Majeure Event ceasing or the Port providing Operator with an alternate (which may include temporary) berth and passenger terminal suitable to accommodate Operator's operations.

7. This Section intentionally deleted.

8. This section intentionally deleted.

9. This Section intentionally deleted

10. This Section intentionally deleted.

11. **PORT PERMIT; GUARANTEED MINIMUM ANNUAL PASSENGER WHARFAGE**

(a) Security Device; Consent to Maritime Lien; Payment & Performance Bond. On or prior to the Effective Date, the Operator shall provide the following security device to the County: an immediately effective and irrevocable written guarantee from Resorts World Omni LLC (hereafter, "RW Omni" or "Guarantor") of all

payments due and payable to the County hereunder, in a form approved by the County, which approval shall not be unreasonably withheld (and which shall be in a form substantially similar to Exhibit C).

In addition, to further securitize Operator's payment and other obligations hereunder, the Operator, the Vessel Owner, and charterer of the vessel each expressly and irrevocably consent to the placement of a maritime lien or liens on the Vessel, to the full extent applicable and permitted under Applicable Law. These consents shall be evidenced and memorialized in a written consent of maritime lien form executed by Operator, the Vessel owner, and the Vessel charterer. Such fully executed consent to maritime lien form shall be attached hereto as Exhibit D. It shall be Operator's sole responsibility to provide the unqualified consent to maritime liens on the Vessel from the Vessel owner and Vessel charterer consents. By executing this Agreement, Operator warrants to County that the Vessel owner and Vessel charterer have effectively executed the attached Consent to Maritime Lien, that such consent is valid and effective in accordance with its terms, and, to the best of Operator's knowledge and belief, no further consents or executed documents are necessary to allow any non-payment of Fees hereunder by Operator to automatically give rise to valid and effective maritime lien on the Vessel. Operator further represents to the County that the Vessel owner owns the Vessel free and clear of any debt or mortgage as of the date hereof, and represents that neither it nor the Vessel owner will take any subsequent actions in conflict with the above-referenced consent to maritime liens.

(b) Port Registration/Permit Requirements. Operator shall comply with the Port permit and registration requirements set forth in Section 5(d) hereof and shall comply with all permit requirements for insurance and indemnity of the Seaport.

(c) Guaranteed Minimum Annual Passenger Wharfage. Commencing with the Effective Date and continuing throughout the Term, Operator guarantees a minimum annual passenger wharfage payment to the County in an amount based on an annual minimum of 365,000 passenger embarkations and 365,000 passenger debarkations, 5% of which guaranteed annual passengers must be single-day cruise overnight passengers subject to the current passenger wharfage rates of \$10 per embarkation and \$10 per debarkation (this minimum annual Operator guarantee is estimated to yield, as of the Effective Date, at least \$1,856,025.00 per year (\$4.30 (current combined single-day cruise wharfage embark and (same-day) debark rates) x 346,750 (95% of Operator's guaranteed annual 365,000 passenger embarks and debarks) = \$1,491,025.00 + (18,250 (5% of Operator's minimum annual passenger embarks and debarks) x \$20.00

(combined single-day cruise (overnight) passenger wharfage embark and debark rates, as of the Effective Date) = \$365,000) = \$1,856,025.00) (subject to annual County passenger wharfage rate increases permitted hereunder, the "Guaranteed Minimum Annual Passenger Wharfage"), which guaranteed annual amount shall be prorated and payable monthly, such that Operator shall pay the Port monthly passenger wharfage fees based on the greater of (i) Operator's actual passenger counts for the prior month or (ii) one-twelfth (1/12) of the Guaranteed Minimum Annual Passenger Wharfage, subject to annual reconciliation to adjust for any Operator passenger wharfage overpayments or underpayments during the preceding year as set forth in Section 3(d)(iii) hereof. Operator further agrees the amount of the Guaranteed Minimum Annual Passenger Wharfage shall automatically be adjusted to account for potential rate increases as provided in Section 3(b)(ii) and/or 3(c) hereof.

(d) Payment of Annual Passenger Wharfage Guarantee Shortfall. Operator shall pay the County within thirty (30) days after the end of any such annual period in which Operator should fail to meet the Guaranteed Minimum Annual Passenger Wharfage requirement and, therefore, fail to pay passenger wharfage fees based upon said minimum amount, a shortfall fee in cash equal to the amount due (if any) to the Port to be calculated as follows: the then effective applicable passenger wharfage rate (per the Port Tariff) multiplied by the Guaranteed Minimum Annual Passenger Wharfage less the actual annual passenger count. By example, if in a given year, Operator's actual annual passenger count is only 300,000, Operator's short fall amount due to the County for that year would be the then effective applicable passenger wharfage rates (per the Port Tariff) multiplied by 65,000 (365,000 - 300,000). Notwithstanding Section 29, the obligation stipulated in this Section 11(d) and the enforcement of same pursuant to the terms hereunder (if timely and fully complied with by Operator or Operator's Guarantor, as the case may be), is an exclusive remedy for Operator's failure to meet the Guaranteed Minimum Annual Passenger Wharfage requirement enumerated herein.

## **12. PARKING**

(a) Parking Spaces. As of the Effective Date and continuing through the first six years of the Initial Term (as such period may be extended by mutual agreement of the parties as provided in Section 3(b)(viii) hereof), and subject to Section 6(f) hereof and Operator's compliance with all payment and other obligations hereunder, the Port shall make available to Operator 300 parking spaces ("Parking Spaces") in Port Parking Garage G ("Parking Garage").

(b) Shuttle Service. To the extent not prohibited by Applicable Laws, the Port shall provide Operator with the right to operate (itself or through an affiliate or third party operator) a shuttle service from the Parking Garage (or any other areas on Dodge Island where Parking Spaces are located) to Terminal H or Terminal F to accommodate Operator's passengers. Operator shall be responsible for the creation, operation, security, supervision, and costs associated with such shuttle service. Operator shall be permitted by the Port to provide and install wayfinding signage to identify the Parking Spaces as Operator's Parking Spaces, and such other wayfinding signage as may be necessary to direct Operator's passengers to and from Terminal H or F and the Parking Spaces, provided the size, placement, number, and nature of such signage shall be subject to the County's reasonable approval. Operator shall be responsible for all costs associated with the design, installation, and maintenance of such signage. Such signage shall meet the requirements of Section 14 of this Agreement.

(c) Consideration for Parking Spaces. Subject to the provision of the Parking Spaces in the Parking Garage for Operator's use and subject to Operator's limited right to opt out as set forth in Section 3(b)(viii), Operator agrees to pay the County for the Parking Spaces annually during the first six years of the Initial Term (i) on a seasonal basis (from October 15 through April 15) during each year of the Operator Seasonal Parking Guarantee Period of the Initial Term, at the daily long term parking rate set forth in the Tariff (currently \$20 per day per space) times the number of leased parking spaces (300) times 182 (183 in a leap year) and (ii) on an off-season basis (from April 16 through October 14) during each year of the Operator Off-Season Parking Guarantee Period of the Initial Term, at the daily long term parking rate set forth in the Tariff (currently \$20 per day per space) times the number of leased parking spaces (300) times 183 days. The annual rental fees due for the 300 Parking Spaces rented by Operator during the six-month season (October 15 through April 15) and six-month off-season (April 16 through October 14) shall be due and payable to the County on a monthly pro rata basis in arrears as set forth in Section 3(d) hereof, subject to potential offset as described in Section 12(e) below, provided any parking fee offset permitted under Section 12(e) shall not be included in the Operator Dockage and Passenger Wharfage Account for any purpose.

(d) County's Limited Use of Parking Spaces. Notwithstanding and prevailing over any contrary term or implication contained herein, the County may use portions of the

Parking Spaces to the extent not used by the Operator, or reasonably anticipated to be needed by the Operator, provided (i) the County provides Operator with reasonable prior notice of such requested use, (ii) Operator provides prior approval for such use, provided such approval may not be unreasonably withheld, conditioned or delayed, and (iii) that any revenue received and retained by the County for its use of such Parking Spaces (if any) shall count as an Operator offset under subpart (e) below, except when such spaces are used for charity or fund-raising events held on the Port.

(e) Parking Offsets; Audit Rights of Operator. The County shall offset against the Operator Seasonal Parking Guarantee and the Operator Off-Season Parking Guarantee for the Parking Spaces payable hereunder any and all parking fee amounts collected by the County (if any) for use of the Parking Spaces (or those working on behalf of the County to collect parking fees for the Parking Spaces) directly from the Operator's passengers or other visitors to the Port of Miami upon entry or exit from Parking Spaces during the Operator Seasonal Parking Guarantee Period or the Operator Off-Season Parking Guarantee Period, excluding parking fees and/or guarantees due or collected from Operator. It is acknowledged and agreed that the Operator shall be responsible for arranging for identification of its passengers or other visitors parking in its Parking Spaces to those collecting said fees on behalf of the County and such passenger identification system shall be subject to the Port's reasonable approval. The County shall cooperate with the Operator in implementing and maintaining a system to accurately identify and account for such collections and offsets (if any) and shall have reasonable approval rights over such system. Based upon the approved parking patron identification system referenced above, the County, if undertaking the parking revenue collections hereunder, shall, no later than ten (10) days after the conclusion of each calendar month, provide written notice to the Operator of the offset amount for the prior calendar month (if any), including a statement indicating calculations therefor, so that the Operator and the County may offset said amount (as appropriate) against Operator's Seasonal Parking Guarantee or Operator's Off-Season Parking Guarantee (as the case may be) for Parking Spaces due no later than the fifteenth (15) of the calendar month, as set forth in Section 3(d)(iv) hereof. If any offsets for a calendar month exceed the rental payments due to the County for the calendar month, the excess offsets may be carried over for use during future calendar month(s). Either party shall have the right to dispute said offset amount by written notice to the other within sixty (60) calendar days of

receipt of the offset notice from the other. Such written notice of dispute shall set forth with specificity the bases of such dispute. Any disputes or claims not timely raised within such sixty (60) calendar day period shall be waived. Either party shall have the right to, upon thirty (30) calendar days' notice to the other, during normal business hours and at its cost, audit the books and records of the party doing the parking revenue collections relating to such collections and calculation of such offset amounts (if any); provided that any such audits shall not relate to such collections and calculations with respect to collections more than five (5) years prior to said audit request.

### **13. JANITORIAL SERVICES**

County shall be responsible for the cost of providing janitorial services for the interior Terminal Area, including, without limitation, garbage, trash, waste, and sewage removal as well as the cost of the disposal of any other waste or by-products of or associated with any operations of Operator in the interior of the Terminal Area, including emptying street-side trash bins at Terminal H's east entrance. The County shall pay all costs associated with the provision of such janitorial services to the Terminal Area interior. Operator shall be solely responsible for the cost of providing janitorial services for the exterior Terminal Area, including, without limitation, garbage, trash, waste, and sewage removal as well as the cost of the disposal of any other waste or by-products of or associated with any operations of Operator or its Vessel, including removal of any waste or by-products arising from or associated with Operator's cargo operations, on-dock operations, or the loading or unloading of vessel stores behind or in proximity of the Terminal. The County shall be responsible for providing janitorial services to the Tent Annex, including trash removal, and servicing of the portable restroom facilities to be provided by the County in the vicinity of the Tent Annex.

### **14. WAYFINDING SIGNAGE AT FACILITY**

The Port requires the use of international symbols for all safety and visitor signs (such as elevators, check-in, and safety instructions). As concerns wayfinding signage for the Operator logo or Vessel name, Operator is to comply with all Miami-Dade County Sign Ordinance requirements. In addition, the County shall have reasonable approval rights over all exterior wayfinding signage, including, without limitation, the number, location, and size of such exterior signage. Notwithstanding

the foregoing, Operator may not place, affix, or erect any exterior signage on the Terminal H building or any other County structure on the Port without the Port Director's prior written approval, which consent may be withheld or conditioned in the sole discretion of the Director or County. Operator shall be solely responsible for all costs associated with the design, construction and installation of any permitted signage.

15. This section intentionally deleted.

16. This section intentionally deleted.

**17. POWER AND ENERGY ISSUES**

The Operator hereby acknowledges that they are aware that a generator has been installed at Terminal H. The Operator hereby agrees that this generator shall be left intact during the Term. OPERATOR shall be responsible and shall indemnify the County for any damage, loss, or claims arising from damage to such generator that occurs as a result of any construction or other events in connection with the construction of the Improvements or that arises from Operator's operations during the Term.

18. This section intentionally deleted.

**19. Dockage and Passenger Wharfage Offsets.**

Notwithstanding and prevailing over any contrary term or provision contained herein, the total amount of any offsets arising from the Operator Dockage and Wharfage Offset Account shall be limited to, and may not exceed, the lesser of (i) the sum of \$10,500,000.00 plus the Operator's Tenant Relocation Cost Payment actually paid to the County by Operator and the Operator Tent Annex Contribution actually paid to the County (if any) or (ii) the sum of the actual Approved Improvements' construction costs reimbursed by Operator to County (expressly excluding all costs and expenditures incurred by County under any of the Design Contracts and excluding all other Terminal H Improvement design and project oversight related costs of the County's design professionals and its/their sub-consultants) plus the amount paid by Operator to County as the Operator's Tenant Relocation Cost Payment (if any) plus the Operator Tent Annex Contribution actually paid to the County (if any) (the lesser of (i) and (ii) shall be deemed the "Operator Offset Cap"). The Port hereby agrees that the amount of properly authorized Operator dockage and passenger wharfage offsets in the Operator

Dockage and Wharfage Offset Account up to the Operator Offset Cap may be used by Operator during the Term to pay (or offset) future dockage and passenger wharfage charges due by Operator to the Port subject to the terms and limitations of this Section 19 and Sections 39 and 40 hereof. Once a dockage and passenger wharfage offset credit is used to pay or reduce a Port bill or invoice to Operator hereunder, such credit(s) shall conclusively be deemed used and consumed and may not be used again for any purpose hereunder. Only amounts actually expended by Operator to reimburse the County for items eligible for dockage and passenger wharfage offset credits hereunder shall be eligible for inclusion in the Operator Dockage and Passenger Wharfage Offset Account. Notwithstanding the foregoing, the parties agree that any potential Operator dockage and passenger wharfage offsets or credits permitted hereunder shall be subject to the Operator Offset Cap, shall be applied in accordance to the Offset method set forth in Section 39 hereof, shall be subject to the limits and conditions set forth in Section 40 hereof, and shall expire and become unredeemable upon any force majeure related termination or any other early termination that may be permitted hereunder.

## **20. TERMINATION**

(a) Operator Termination Preconditions. Notwithstanding and prevailing over any contrary term or implication contained herein, the Operator may not exercise any right to prematurely terminate or cancel this Agreement as may exist under Sections 6(f) (force majeure), 20(b) (intervening change in law precluding operation), 20(c) (early termination, or 31(a) (material and uncured County default) hereof, unless and until all dockage, wharfage, harbor and parking guarantees, and all Fees, sums, rents, and other charges due hereunder or to become due or accruing prior to the effective date of such claimed terminations have been paid in full to the County, provided, no termination can be exercised or sought under Section 20(c) until all conditions and requirements set forth in Section 20(c) have first been met. Notwithstanding any early termination or cancellation right that may exist in Sections 6(f), 20(b), 20(c), 31(a,) in this Agreement, all obligations referenced in Section 36 shall survive the early termination or cancellation hereof by any party and shall continue in full force and effect until the expiration of a five year term commencing upon the earlier of (i) the effective date of such early termination (if properly made and allowed hereunder) or (ii) the expiration of the Term.



(b) Intervening Laws Regarding Vessel Operation. In the event that state, federal, Bahamian or local laws, ordinances, or regulations enacted during the Term render operation of a single-day high density passenger service to Bimini illegal, through no fault of the Operator or their agents, employees, contractors, or affiliates, and such legal impairment cannot be cured within 180 calendar days, then the Operator shall have the right to terminate this Agreement, provided all Improvements have been completed or, alternatively, the Operator have first paid the County the cash value of all uncompleted Improvements, and further provided that all Port charges and fees accrued or due hereunder as of the effective date of such proposed early termination are paid to the County prior to such early termination becoming effective, by ninety (90) days' prior written notice to the County and making all payments to the County required hereunder.

(c) Upon satisfaction of all preconditions contained in Sections 20(a) and this Subsection 20(c), Operator shall have the right to terminate this Agreement for any or no reason prior to the expiration of the Initial Term, provided this right may not be exercised prior to the later of (i) the second anniversary of this Agreement, or (ii) the date upon which the County has attained Substantial Completion, and provided further that Operator is required, prior to exercising any early termination rights under this Section 20(c), to first pay the County an early termination fee based on the following early termination fee schedule for years 3-10 of the Term, less any dockage and passenger wharfage offset credits which have been earned but remain unredeemed and unused in the Operator Dockage and Passenger Wharfage Offset Account (the "Early Termination Fee"), provided further, in no event shall the Early Termination Fee ever be less than Two Million and No/Dollars (\$2,000,000.00) (the "Minimum Early Termination Fee") regardless of the amount of available and unredeemed offsets in the Operator Dockage and Passenger Wharfage Offset Account:

Year 3:	\$ 9,000,000.00
Year 4:	\$ 8,000,000.00
Year 5:	\$ 7,000,000.00
Year 6:	\$ 5,000,000.00
Year 7:	\$ 4,000,000.00
Year 8:	\$ 3,000,000.00
Year 9:	\$ 2,000,000.00
Year 10 and after (if applicable):	\$ 2,000,000.00

By example, if Operator seeks to early terminate in year 3 of the Initial Term under this Section 20(c), it could only do so if (x) the Approved Improvements had achieved Substantial Completion, (y) all Operator payment obligations outstanding hereunder and in Subsection 20(a) have first been paid to the County in full, and (z) Operator first pays the year three early termination fee of \$9,000,000.00 less the amount of any unused and unredeemed offsets then remaining in the Operator Dockage and Passenger Wharfage Offset Account (if any), subject to the Minimum Early Termination Fee floor of \$2,000,000.00. In exercising this early termination right, Operator shall provide the County with ninety (90) calendar days prior written notice commencing on the fulfillment of each of the required early termination preconditions, which written notice must be accompanied by payment of all Operator payment obligations and monetary preconditions set forth herein.

If applicable, the County shall reconcile the Early Termination Fee within six (6) months and pay, if applicable, Operator to the extent of any demonstrated Operator overpayment to the County which may have resulted from (i) documented and verifiable under-calculation of the offsets remaining available in the Operator Dockage and Passenger Wharfage Offset Account, but only to the extent Operator pays additional sums to the County after the effective date of early termination (other than the Early Termination Fee or Minimum Early Termination Fee) that were due prior to the effective date of such early termination, due solely to a lack of available information upon which Operator could have timely paid such sums to the County, and further provided such sums, had they been timely paid, would have properly given rise to additional and unused dockage or passenger wharfage offsets in the Operator Dockage and Passenger Wharfage Offset Account as of the time the Early Termination Fee was paid to the County or (ii) documented, verifiable, and uncontested overpayments by Operator to County under this Section 20(c), it being understood no such repayments are required hereunder for alleged overpayments contested by the County. Additionally, if applicable, Operator shall reconcile the Early Termination Fee within six (6) months and pay County for any underpayment of the Early Termination Fee which may have resulted from over-calculation of the offsets remaining available in the Operator Dockage and Passenger Wharfage Offset Account and/or underpayment or non-payment of any payment obligation of Operator under Section 20(c)(y) hereunder. The Early Termination Fee payable to the County under this Section 20(c) shall be due and paid by Operator not as a penalty, but as compensation to the County for damages the County will sustain

as a result of Operator not fulfilling its payment and other obligations hereunder through the end of the Initial Term.

## 21. TERMINAL AGREEMENT

It is agreed that this Agreement is not a lease, and that no interest or estate in real property or the improvements located in or on the Terminal Area is created by this Agreement.

## 22. COMMITMENT ON INDEMNITY AND INSURANCE

(a) Indemnification by Operator. Operator agrees to indemnify, protect and hold harmless the County, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys fees, and costs of every kind or description to which the County, its agents or employees may be subjected which are caused by or arise out of, in whole or in part, the reckless or negligent acts or omissions of either of the Operator or its agents, employees, officers, contractors, subcontractors, partners, affiliates, customers, invitees, or guests, or which otherwise arise from, grow out of, or are connected with either the occupation and use of the Terminal Area or other Port areas by Operator or its agents, employees, contractors, subcontractors, invitees or guests under this Agreement, or a breach of this Agreement by the Operator; except to the extent that such damage, loss or liability is caused by the negligence of, or breach of this Agreement by, the County or its employees, authorized agents or contractors. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs are against or sustained by others to whom the County, its agents or employees may become liable. Upon requests of the County, Operator shall undertake to defend, at its sole cost and expense, any and all suits brought against the County in connection with the matters specified in this Section, in the event such suits is/are solely or predominantly caused by the negligence of, or breach of this Agreement by, the Operator or its agents, employees, officers, contractors, subcontractors, partners, affiliates or guests.

(b) Indemnification by County. Subject to the provisions of and limitations set forth in Florida Statute Section 768.28, the County agrees to indemnify, protect and hold harmless the Operator and its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys fees, and costs of every kind or

description to which the Operator or its agents or employees may be subjected which are caused by or arise out of, in whole or in part, any breach of this Agreement by the County or its employees or authorized agents or by the negligent acts of the County, its employees, or authorized agents or contractors in the common area portions of the Terminal hereof during the Term, Terminal F (but only until October 14, 2013), and the Tent Annex (but only until such time as the Improvements are completed), except to the extent that such damage, loss or liability is caused by the negligence of, or breach of this Agreement by, the Operator or its employees or authorized agents, contractors, subcontractors, partners, affiliates, invitees, or guests. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs are against or sustained by others to whom the Operator or its agents or employees may become liable. Upon requests of the Operator, the County shall undertake to defend, at its sole cost and expense, any and all suits brought against the Operator in connection with the matters specified in this Section, in the event such suit is solely caused by the negligence of, or breach of this Agreement by, the County, its agents, employees, officers or guests. For purposes of this Section 22, neither the Operator nor any of its employees, agents, contractors, subcontractors, partners, affiliates, invitees, or guests shall be deemed agents, contractors, employees, guests, invitees, or affiliates of the County.

(c) No Actions to Invalidate Insurance Policies of County. The Operator covenant that they will not permit to be done on or about or in the proximity of the Terminal Area, improvements, facilities, easements or common areas thereto, anything which shall invalidate the County's fire, casualty, liability or other insurance policies, if any, or violate any terms thereof, or increase the premiums payable therefore.

(d) Indemnification by the Operator, Environmental. The Operator shall comply with all federal, state and local environmental laws and regulations applicable to the use, storage and handling of hazardous substances, hazardous materials, industrial wastes and hazardous wastes in, on, or near the Terminal. The Operator shall indemnify and hold the County, its officers, employees, agents, successors and assigns harmless from, and assume and all liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, costs, charges and expenses (including, but not limited to reasonable attorney's fees, environmental response

and remediation costs and the costs and expenses of appellate action, if any), imposed on, incurred by, or asserted against the County, by any other parties (including, without limitation, a governmental entity), to the extent it arises out of, in connection with, or relates to any environmental condition or contamination caused or created by the Operator or any of its employees, officers, agents, contractors, subcontractors, affiliates, partners, or guests or any violation solely created or caused by the said parties of any federal, state, or local environmental law with respect to the Terminal Area or the Berth, but excluding pre-existing conditions on the Terminal, Terminal F, or the Tent Annex not caused or contributed to by Operator, its affiliates, agents, employees, contractors, partners, or guests. .

(e) Insurance Coverage Required. Operator shall procure and maintain throughout the Term, at its sole cost and expense, insurance coverage as required below. Operator shall furnish to Seaport Department, 1015 North America Way, Miami, Florida 33132-2081, Certificates of Insurance which indicate that the insurance coverage has been obtained which meet the requirements as outlined below:

- i) Workers' Compensation Insurance. Said insurance shall cover all persons employed by Operator (other than crew members of the Operator Vessels) or any Operator affiliate in and about the Terminal Area including coverage required under the United States Longshore and Harborworkers Compensation Act (if applicable) and/or as required by Florida Statute 440 or any successor thereto.
- (ii) Crew Insurance. Said insurance shall cover all persons employed as crew of the Operator Vessels under a Protection and Indemnity Policy or a Marine Employers Liability Policy to provide coverage for liability under 46 USC Section 688, (The Jones Act) and under General Maritime Law.
- (iii) Commercial General Liability Insurance. With respect to the use and activities of Operator and its employees, contractors, agents, customers and guests in and around the Terminal Area, Commercial General Liability Insurance must be in place on a comprehensive basis in an amount not less than \$5,000,000 combined single limits for the death of, or personal injury to one or more persons and for property damage for each occurrence in connection with the use thereof, or the activities of Operator thereon. This coverage must also include but not be limited to embarkation and disembarkation of Operator Vessels. **Miami-Dade County must be shown as an additional named insured with respect to this coverage.**
- (iv) Pollution Liability Coverage. Operator shall maintain at its sole cost and expense for Operator Vessels used in connection with this Agreement,

operation pollution liability coverage sufficient to satisfy all applicable requirements of CERCLA and OPA-90.

(v) Protection and Indemnity Insurance in an amount not less than \$5,000,000 covering 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.**

(vi) Automobile Liability Insurance. Covering all owned, non-owned and hired vehicles used in connection with Operator's operations in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

(f) Insurance Policy Requirements, Generally. Except for Protection and Indemnity Insurance and Hull and Machinery Insurance, all insurance policies required under subpart (e) above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VIII" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division, or Companies holding a valid Florida Certificate,

or

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 which are members of the Florida Guaranty Fund.

Certificates will indicate that no material modification or change in insurance shall be made without thirty (30) days advance notice to the certificate holder.

(g) Injury or Damage, Notification to County. In the event of any injury or damage to persons or property in or around the Terminal(s), Operator shall notify the County in writing as soon as reasonably possible after it becomes aware of such injury or damage and shall promptly thereafter furnish to the County copies of all related reports given to Operator's insurance carrier or carriers.

### 23. EXCLUSIVE VENUE AND CHOICE OF LAW

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue

for any such actions shall lie exclusively and be maintained only in any court of competent jurisdiction in Miami, Miami-Dade County, Florida. This provision shall not apply to matters (if any) in regard to which exclusive jurisdiction is conferred upon by law upon the Federal Maritime Commission.

**24. NO ORAL CHANGE OR TERMINATION**

This Agreement and the Exhibits and appendices appended hereto and incorporated herein by reference constitute the entire Agreement between the parties with respect to the subject matter hereof, supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought, and in the case of the County, such change is approved by the Board of County Commissioners. This Agreement cannot be changed or terminated orally.

**25. COMPLIANCE WITH APPLICABLE LAWS, CODES, ETC.**

Throughout the Term, while conducting any activity in the Terminal Area or on any other County property or waterways contemplated by this Agreement, Operator and its employees, agents, affiliates, contractors, invitees, and guests shall comply with all applicable federal, state, and local laws, codes, rules, ordinances, administrative orders, schedules, permits, decrees, the Port tariff, other applicable tariffs, and orders, including, without limitation, those enumerated in Exhibit B hereto.

**26. TAXES AND OTHER CHARGES**

The Operator shall pay all applicable property, sales, excise, and other taxes and other governmental charges of any kind whatsoever which are at any time lawfully assessed, levied, or imposed with respect to the Terminal Area or any improvements placed thereon by the Operator or their employees, agents, contractors, or affiliates.

**27. NUISANCE**

The Operator shall not commit any nuisance in the Terminal Area or on any other County property or do or permit to be done anything that may result in the creation or commission of a

nuisance in the Terminal Area, any other County property, or on the waterways surrounding, or in close proximity to, the Port.

**28. ENTIRE AGREEMENT; AMENDMENT**

This Agreement, including all exhibits, appendices, codes or tariffs attached hereto or referred to herein, contains the entire agreement between the County and the Operator with respect to the matters stated herein, and may not be modified except by way of a written instrument signed by the parties. Any oral or written representations or agreements regarding the subject matter hereof made prior to the execution of this Agreement are hereby merged into and superseded by this Agreement.

**29. NO EXCLUSIVE REMEDIES**

No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

**30. FAILURE TO EXERCISE RIGHTS NOT A WAIVER**

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein.

**31. REMEDIES IN EVENT OF DEFAULT OR BANKRUPTCY**

(a) Default, Right to Terminate. If either party shall be in material default under any provision of this Agreement and, as to defaults other than those relating to non-compliance with payment obligations hereunder, shall remain so for a period of sixty (60) days after service of a written notice to the defaulting party of such material default (unless the default, other than defaults arising from the non-compliance with any payment obligation, may not be completely cured within sixty (60) days and the defaulting party has commenced to cure the default and is doing so expeditiously; in such case, the sixty (60) day period will be extended only so long as is reasonably necessary to cure the default), the non-defaulting party may terminate this Agreement, provided, where the non-defaulting party is the Operator, the Operator's Termination Preconditions



defined in Section 20(a) hereof have first been satisfied. In the event of material default by Operator resulting in such termination, the Port may re-enter the Terminal Area, expel Operator and remove or retain all property therein, provided, however, Operator shall remain liable for the equivalent of the amount of all charges due at the time of such termination under the terms of this Agreement, and for of any repairs and alterations necessary to prepare the Terminal Area for further Port use to the extent the deficient Terminal condition was caused by Operator or its agents, employees, contractors, subcontractors, partners, affiliates or guests, reasonable wear and tear excepted. For purposes of this Agreement, any party's failure to timely comply with any payment obligation arising hereunder shall be deemed a material default by the non-compliant party after the expiration of thirty (30) days from the due date of such payment obligation.

(b) Bankruptcy, Right to Terminate. If Operator shall be adjudicated bankrupt, or if Operator shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of Operator a receiver of all the property of Operator shall be appointed, then the Port may terminate this Agreement by giving ninety (90) days written notice to Operator of its intentions to do so; provided that this right to terminate shall in no event apply where Company provides reasonably sufficient evidence to the Port that any such bankruptcy proceeding was discontinued, dismissed or otherwise ended within ninety (90) calendar days of the bankruptcy proceeding's filing.

**32. This section intentionally deleted.**

**33. SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

**34. SOLE BENEFIT OF PARTIES; AUTHORITY**

The County and the Operator intend that the mutual covenants contained in this Agreement shall be for their sole benefit and that no other person, corporation or other entity is

intended to be a beneficiary of this Agreement with the exception of Operator' subsidiaries or affiliates. Any other persons, corporations or entities must be approved of in writing by the Port Director or County Manager. The County represents and warrants that it is empowered to enter into this Agreement and to perform any and all of the duties and obligations imposed upon it or assumed by it under the terms and provisions of this Agreement. Similarly, the Operator represent and warrant that each is empowered to enter into this Agreement and to perform any and all of the duties and obligations imposed upon or assumed by each under the terms and provisions of this Agreement.

### **35. ASSIGNMENT**

The term of this Agreement shall inure to the exclusive benefit of and be binding upon the successors and permitted assigns of Operator, provided, however, that Operator may not assign or transfer this Agreement, or any rights hereunder, without the prior written consent of the County. For the purposes of this Agreement, an assignment shall not be deemed to occur merely upon a transfer of stock or limited liability interest in Operator among its affiliates.

### **36. OBLIGATIONS SURVIVING TERMINATION HEREOF**

Notwithstanding and prevailing over any contrary term or provision contained herein, including any early termination rights contained herein, in the event any party hereto exercises any lawful termination rights herein, the following obligations shall survive such termination and continue in full force and effect until the expiration of a five year term following the earlier of the effective date of such termination or the expiration of the Term: (i) any and all outstanding payment obligations hereunder of any party hereto; (ii) any and all indemnity obligations hereunder of any party hereto; and (iii) any and all audit or document inspection rights of any party, hereunder; (iv) the exclusive venue and choice of law provisions contained in Section 23, and (v) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

### **37. LACK OF AGENCY RELATIONSHIP**

Nothing contained herein shall be construed as establishing an agency relationship between the County and the Operator and

neither Operator, nor its employees, agents, contractors, affiliates, partners, or guests shall be deemed agents, instrumentalities, employees, or contractors of the County for any purpose hereunder, notwithstanding that the County shall have certain rights with respect to Operator's contractor for the Improvements, as more particularly set forth in Section 6 hereof, and the County, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of the Operator.

### 38. NOTICES

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing, delivered by personal service, or shall be sent by and deemed delivered when sent by facsimile (with receipt of transmission confirmation), electronic mail (with confirmation of receipt by the other party), United States Registered or Certified Mail (with return receipt requested and postage prepaid), to the parties at the addresses, facsimile numbers and e-mails, as applicable, listed below. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

FOR COUNTY: Miami-Dade Seaport Department  
1015 North America Way  
Miami, Fl 33132-2081  
Attention: Port Director  
Telephone Number: 305-371-7678  
Telecopy Number: 305-347-4852

with a copy to: County Attorney  
R. A. Cuevas, Jr.  
111 Northwest 1st Street  
Suite 2810  
Miami, FL 33128  
Attention: Steve Bass  
Telephone Number: 305-375-5151  
Telecopy Number: 305-375-5634

FOR OPERATOR:/ Bimini SuperFast Operations LLC.  
1501 Biscayne Blvd., Ste. 107  
Miami, FL 33132  
Attention: President and General  
Counsel  
Telephone Number: (305) 374-6664

Telecopy Number: (305) 374-0125  
E-Mail: [jessica.hoppe@rwmiami.com](mailto:jessica.hoppe@rwmiami.com) and  
[dana.leibovitz@rwbimini.com](mailto:dana.leibovitz@rwbimini.com)

**39. METHOD OF OFFSET**

To the extent Operator is entitled to a passenger wharfage and dockage offset pursuant to Sections 6(a)(ii), 6(c), or 19 hereof, and provided all offset requirements contained herein have been met, Operator shall be entitled to redeem such passenger wharfage and dockage offset after Operator supplies the Port with full documentation establishing Operator's entitlement to such offset hereunder and substantiating the amount of such offset and following review and verification by the Port (which review and verification shall take no longer than thirty (30) calendar days following receipt thereof by the Port). Operator may then redeem such passenger wharfage and dockage offsets until fully redeemed except as otherwise provided herein. In the event that the Port does not raise any reasonable objection to the documentation provided to the Port within said thirty (30) day period, the documentation, and passenger wharfage and dockage offset in the amount thereof, shall be deemed approved, provided, however, that nothing contained herein shall be construed as ever requiring the County to pay any passenger wharfage or dockage offsets which, in sum, would exceed the Operator Offset Cap set forth in Section 19. Notwithstanding the foregoing, Operator may not pay for more than 50% of the passenger wharfage or dockage due and owing the Port in any calendar month or other applicable billing period utilizing passenger wharfage and/or dockage credits or offsets and subject to all offset limits and conditions set forth in Sections 19 and 40 hereof.

**40. LIMITATION ON PASSENGER WHARFAGE AND DOCKAGE OFFSET**

Notwithstanding and prevailing over any contrary term or provision contained herein, the County shall have no responsibility for the costs of any Improvements made pursuant to this Agreement by Operator or its agents or contractors except to the extent such costs are recoverable as passenger wharfage or dockage credits as may be expressly authorized pursuant to Sections 6(a)(ii), 6(c), 19, 39 and 40 hereof. In the event any such authorized passenger wharfage or dockage offsets are not fully redeemed or utilized prior to the termination of this Agreement solely as a result of a material and uncured (upon timely notice) County default hereunder, such

unused passenger wharfage and dockage credits will be paid by the County to the Operator within six (6) months of such termination of this Agreement, provided Operator has satisfied all applicable offset requirements contained herein, and further subject to the Operator Offset Cap and any passenger wharfage and dockage offsets to which the County may be entitled due to any sums then owed to the County by Operator. In addition, no passenger wharfage or dockage credits may be redeemed by Operator during any period of the Initial Term when Operator is not in compliance with any material term or provision hereof. In the event any such expressly authorized passenger wharfage or dockage credits are not fully redeemed or utilized prior to the earlier of (i) the expiration of the Initial Term or (ii) the earlier termination of this Agreement for any reason other than a termination solely as a result of a material County default which (upon timely written notice) remains uncured in violation of section 31(a) hereunder, such unused passenger wharfage and dockage credits will be deemed null, void, and ineffective.

**41. AUDIT RIGHTS OF COUNTY; RIGHTS OF OPERATOR TO INSPECT IMPROVEMENT CONSTRUCTION DOCUMENTS.**

The County shall have the right to, upon thirty (30) calendar days' written notice to the Operator, during normal business hours and at its cost, audit, inspect, and copy the books and records of the Operator or any of their affiliates that the County reasonably deems relevant to the payment obligations under Section 3 of this Agreement or to the offsets described in Sections 19, 39 and 40 of this Agreement; provided that any such audits shall relate to payments or offsets made or due and payable no more than five (5) years prior to the request and no disputes by the County may be raised with respect to payments or offsets more than five (5) years after they are made or due and payable hereunder. In addition, the County shall have all auditing and document inspection rights necessary or appropriate to enable the County to comply with the requirements of Fla. Stat. §125.012(24). Pursuant to Florida Statutes Chapter 119, the Operator shall have the right to inspect upon reasonable prior notice any public records of the Port, including, without limitation, documents relating to the construction of the Terminal H Approved Improvements.

#### 42. ACKNOWLEDGMENTS BY THE OPERATOR

(a) Acknowledgement of Suitability of Berth for Vessel's Operations. The Operator acknowledges and agrees that it has inspected the Terminal H Berth, and the surrounding wharf, apron, bulkhead, adjacent terminal facilities, and available vessel draft, and has independently determined that such Berth is suitable for its intended Vessel operations at Terminal H.

(b) Future Improvements Near Terminal H. The Operator acknowledge that capital improvements to areas at or near Terminal H may occur during the Term, including, without limitation, construction of new parking facilities or renovation or modification of existing parking facilities, roadway realignments and construction, renovations of other cruise terminals, and other Port infrastructure improvements or renovations. The Operator acknowledges and agrees that the construction of such improvements or renovations may cause certain interference or inconvenience to the Operator or its passengers which will not constitute a breach hereunder and for which the County shall bear no liability; provided that the method of construction of any such improvements or renovations does not materially and unreasonably interfere with the Operator's operations hereunder.

(c) Automated Teller Machines or "ATMs" and Pay Telephones. The Operator acknowledges that the County is or has been a party to exclusive arrangements for the provision of ATMs and pay telephones at the Port. Accordingly, the Operator shall not, absent the consent of the County and the relevant party with whom the County has so contracted (if applicable), install or cause to be installed ATMs at Terminal H or elsewhere on the Port, nor install, cause to be installed or permit to be installed pay telephones at Terminal H or elsewhere on the Port by any person or entity other than the Port. The County acknowledges that no ATMs are, as of the date hereof, located in Terminal H, and reserves the County's right to install (or to permit others to install on the County's behalf) ATMs in or outside of Terminal H and retain any fees arising from such ATMs. Conversely, it is acknowledged and agreed that the Operator may install or cause to be installed ATMs provided by any bank or banks selected by the Operator, in its sole discretion, on the Vessel. Notwithstanding and prevailing over any contrary term or provision contained herein, the County may install at its expense pay telephones in the Terminal Area, and be entitled to all revenue derived therefrom, provided the number and location of such pay telephones in the interior of

the Terminal shall be subject to the prior approval of the Operator which may be withheld in the Operator's sole discretion. The Operator may remove any existing phones in the interior areas of the Terminal unless such removal is precluded or restricted by existing County agreements with third parties, provided (1) that all costs of such removal, and any Terminal repairs needed as a result of such removal, shall be the sole expense and responsibility of the Operator, and (2) that the phones shall not be damaged in the process of removal and shall be delivered to the Port or the Port's designee in the same condition as originally found immediately upon removal. The Operator shall give the Port twenty (20) calendar days prior written notice of their intent to remove any pay phones in the interior of the Terminal (if not prevented by prior County third party agreements), during which time the Port or its designee may enter the Terminal and remove such pay phones. The Operator shall have no approval rights over the County's ability to place pay telephones in exterior areas of the Terminal and retain all revenues therefrom. The Operator acknowledge and agree that this Agreement does not authorize Operator to place or cause to be placed any pay telephones or ATMs in either the interior or exterior areas of the Terminal without the Port's prior written consent, which may be withheld or conditioned in the Port's sole discretion.

(d) Non-Exclusive Concessions. The Operator acknowledges and agrees that nothing contained in this Agreement confers on the Operator any exclusive right to operate a daily or other cruise service at the Port of Miami, nor any exclusive right to engage in any retail or other sales at the Port of Miami, and that the County is at all times free to allow other cruise services, as well as retail, restaurant, lounge, commercial, cargo, or other operations or services, to operate at the Port.

(e) Anticipated Tariff Changes. The Operator acknowledges that the County has disclosed its intent to in short order increase certain rates under the Tariff including, without limitation, the rates for water, and that the Port anticipates increasing dockage and passenger wharfage rates under the Tariff on an annual basis. The Operator acknowledge and agree that, pursuant to Section 3(c) hereof, such Tariff increases will, upon becoming effective, be applicable to the Operator hereunder and that other Tariff increases may occur during the Term, subject to the annual dockage and passenger wharfage rates applicable to Operator's single-day cruise operation hereunder being subject to the annual increase limits set forth in Section 3(c) hereunder.

(f) Terminal F Construction. Operator acknowledges that during the period that it will be using cruise terminal F, the County will be executing certain improvement projects to that terminal. Actual construction work in furtherance of such terminal F improvements will be limited to time periods when Operator is not conducting Vessel operations in terminal F, with the exception of (i) certain exterior terminal improvement work such as roofing and glazing repairs and/or (ii) interior improvements that will not impair Operator's use of the terminal. With respect to Terminal F maintenance and improvement work needed in the interior of the terminal prior to October 14, 2013, the Port shall use reasonable good faith efforts to schedule such work, where reasonably practicable, after Operator's morning Vessel sailing departs the berth (approximately 9:00 am) and before the Vessel returns (approximately 6:00 pm).

**43. COUNTERPARTS**

This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by all parties hereto, and all such counterparts shall together constitute one and the same agreement. For purposes of the preceding sentence, a legible facsimile, pdf or other electronic copy of a properly executed and delivered counterpart shall be acceptable.

**44. ACKNOWLEDGMENT OF NO NOTICE OR CURE PERIOD REQUIREMENTS FOR NON-COMPLIANCE OF PAYMENT OBLIGATIONS HEREUNDER**

The Parties hereto acknowledge and agree that this Agreement does not require notice or cure periods for or with respect to Operator's failure to comply with any payment obligation hereunder.



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

Signed, sealed and delivered  
presence of:

MIAMI-DADE COUNTY,

By: \_\_\_\_\_  
Deputy Mayor

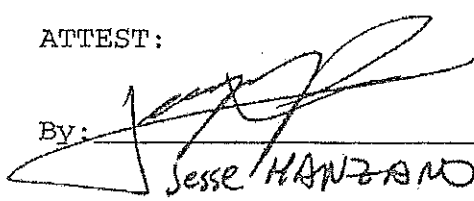
ATTEST:  
CLERK OF THE BOARD

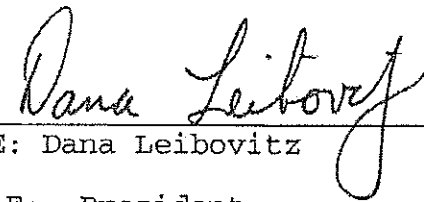
By: \_\_\_\_\_  
Deputy Clerk

Signed, sealed and delivered  
in the presence of:

BIMINI SUPERFAST OPERATIONS,  
LLC

ATTEST:

By:   
Jesse HANZANO

By:   
NAME: Dana Leibovitz  
TITLE: President

ATTEST:

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

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

TITLE:

EXHIBITS

Exhibit A	Terminal H Improvements
Exhibit B	Applicable Laws Supplement
Exhibit C	Guarantee of Resorts World Omni LLC
Exhibit D	Consent to Maritime Liens
Exhibit E	Executed Operator Disclosure Affidavit

EXHIBIT A \*

<b>Port Miami Terminal H General Programmatic Improvements (06-13-13)</b>	
<b>Item No.</b>	<b>General Scope - Subject to budgetary restrictions</b>
1	Entrance Canopy
2	Exterior Seating and Trash Receptacles
3	Bus and Vehicle Passenger Drop Off/Pick Up Area
4	Area for Checked Baggage Screening Machine(s) (Operator Provided Equipment)
5	Area and Queing for Passenger Screening Machines (Operator Provided Equipment)
6	Ticketing Counters with Queing Area
7	Restrooms
8	Seating Area
9	New Elevator(s)
10	New Escalator(s)
11	New Stairs
12	Way finding Signage
13	Fixed Elevated Walkway
14	Passenger Boarding Bridge
15	Debarcation Passenger Holding and Luggage Laydown area
16	CBP Primary
17	CBP Secondary
18	PA System
19	Raised Existing 1st Floor - As Required by Code
20	New Air-conditioning for First Floor and New Construction
21	New Fire Alarm System and BMS for Renovated Areas and New Construction Integrated with Existing Bldg.
22	Hazardous materials/Asbestos survey/abatement
23	ADA Upgrades for entire building and site area
24	Fire Suppression System for entire building
25	Painting entire building Exterior
26	Fenders
27	Open Air Area for Provisions (vessel stores)

\*Subject to Terminal H Improvement Port budget limits. In the event, the items on this list cannot be built complete for no more than \$10,000,000.00, the County retains the right to modify, value engineer, or reduce the scope hereof.

EXHIBIT B

In addition to the Applicable Laws set forth in Section 25 of the Terminal and Development Agreement, Applicable Laws shall also include, without limitation, any applicable law, enactment, statute, code, ordinance, administrative order, charter, tariff, resolution, order, rule, regulation, guideline, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any governmental authority, political subdivision, or any division or department thereof, enacted, adopted, promulgated, entered, or issued. Notwithstanding the foregoing, "Applicable Laws" shall expressly include, without limitation, all applicable zoning, land use, and DRI requirements and regulations, all applicable impact fee requirements, all disclosure requirements imposed by Section 2-8.1 of the Miami-Dade County Code as amended, Miami-Dade, Miami-Dade County Resolution No. R-754-93 (insurance affidavit), Miami-Dade County Ordinance No. 92-15 (drug-free workplace), Miami-Dade County Ordinance No. 91-142 (family leave affidavit), and Miami-Dade County Resolution No. R-1206-97 (welfare-to-work affidavit), execution of the Miami-Dade County public entity crimes disclosure statement, the Miami-Dade County disability non-discrimination affidavit, the Miami-Dade County welfare-to work affidavit, and the Miami-Dade County criminal record affidavit, all applicable requirements of Chapter 33 of the County Code regarding shoreline development, the South Florida Building Code, all applicable requirements of Miami-Dade County Ordinance No. 90-90 as amended by Ordinance No. 90-133 (fair wage ordinance), County Code Section 2-1701 and Admin. Order No. 3-37, Ordinance 01-103 as amended and Admin. Order 3-32, the First Source Hiring ordinance, Community Business Enterprise Requirements applicable to A/E firms, the Miami-Dade County Small Business Enterprise Ordinance, the applicable requirements of the Miami-Dade County Art In Public Places Ordinance, and any other requirements applicable to County construction projects. In addition, the Operator shall

require and cause their agents, contractors, employees, and guests to at all times comply with all Applicable Laws. The Operator shall also execute and deliver to the Port either on or within five days of the Effective Date the attached Miami-Dade County composite affidavit attached hereto, and any other affidavits or disclosures required by the County.

Operator shall comply with the Miami-Dade County Resolution No. R-385-98, which creates a policy of prohibiting contracts with firms violating the Americans with Disabilities Act of 1990, and with other laws prohibiting discrimination on the basis of disability and shall execute a Miami-Dade County Disability Non-Discrimination Affidavit confirming such compliance.

Operator covenants and agrees with the County to comply with Miami-Dade County Ordinance No. 72-82 (conflict of interest), Resolution No. R-1409-93 (Affirmative Action Plan Furtherance and Compliance), and Resolution No. R-185-00 (Domestic Leave Ordinance), and such other requirements that may be enacted by federal, state, and County governmental authorities in the future.

EXHIBIT C

GUARANTEE

THIS GUARANTEE (the "Guarantee") is made and entered into on this 25<sup>th</sup> day of June, 2013, by Resorts World Omni LLC, a Delaware limited liability company (the "Guarantor"), to Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County").

Concurrently with the execution and delivery of this Guarantee, Bimini SuperFast Operations LLC ("Operator") and the County have entered into a Cruise Terminal Usage and Development Agreement (the "Agreement") governing Operator's and non-exclusive use of Terminal H at the Port of Miami. Guarantor and Operator are affiliates. Accordingly, the Guarantor has an economic interest in the consummation of the transactions contemplated by the Agreement.

In order to induce the County to enter into the Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Guarantor hereby provides this Guarantee to the County in accordance with Section 11(a) of the Agreement and agrees as follows:

SECTION 1. Guarantee.

(a) The Guarantor hereby unconditionally, irrevocably, and jointly and severally guarantees, as direct obligor and not merely as surety, to the County the full, complete and punctual payment, fulfillment and performance of all payment and performance obligations of the Operator under the Agreement (the "Guaranteed Obligations").

(b) If at any time there is a failure to properly and timely perform or make payment of any of the Guaranteed Obligations when required or due, whichever applicable, under and in accordance with the terms of the Agreement (following any applicable notice and cure periods, it being acknowledged and agreed that the Agreement does not require notice and cure periods for non-compliance with payment obligations thereunder), the Guarantor shall forthwith pay to the County or perform any Guaranteed Obligations that are so required or due, whichever applicable, in accordance with the Agreement upon written demand by the County to the Guarantor as set forth in Section 8 below; provided that certain payments or performance by the Guarantor may be made subject to offsets, but only to the extent Operator's underlying payment obligations were expressly subject to such offsets under the Agreement and, if so, subject to the applicable offset limits and conditions set forth in the Agreement, and only to the extent such offsets have a reasonable basis in fact under the Agreement.

(c) Without limiting the foregoing, the obligations, covenants, agreements and duties of the Guarantor under this Guarantee shall be absolute, unconditional, irrevocable, and joint and several and shall remain in full force and effect until the Guaranteed Obligations have been paid or performed in full.

(d) This Guarantee is a continuing guaranty with respect to payment and performance. The Guarantor agrees that in the discharge of its obligations hereunder, no judgment, order or exhaustion need be obtained, and no action, suit or proceeding need be brought, and no other remedies need be exhausted against the Operator or any other person prior to the demand by the County for performance hereunder. The Guarantor hereby waives, to the extent permitted by applicable law, any and all rights that either may now have or that at any time hereafter may be conferred upon either, by statute or otherwise, to terminate, cancel, quit or surrender this Guarantee except in accordance with the express terms hereof.

(e) The obligations of the Guarantor set forth herein shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the amounts payable by the Operator under the Agreement and guaranteed hereby is rescinded or must otherwise be returned upon the insolvency, bankruptcy, winding up or reorganization of the Operator or otherwise, all as though such payment had not been made.

(f) Until all Guaranteed Obligations have been paid or performed in full, the Guarantor hereby waives any right of subrogation it may have against the Operator with respect to any amount or obligation guaranteed hereby.

**SECTION 2. Representations and Warranties.** The Guarantor represents and warrants that:

(a) It has the full legal right and power and all authority and approvals necessary to execute, deliver and perform this Guarantee. This Guarantee has been duly executed and delivered by the Guarantor and is the valid and binding obligation of the Guarantor enforceable in accordance with its terms, except insofar as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies.

(b) The execution, delivery and performance of this Guarantee and the consummation of the transactions contemplated hereby does not and will not during the term: (x) conflict with or result in a breach or violation by the Guarantor of, or (y) violate or result in the breach of any of the terms of, result in a material modification of or otherwise give any other contracting party the right to terminate or constitute a default under, or (z) result in the acceleration or any performance or any increase in any payment or benefits required by, any law, judgment, contract arrangement or understanding by which either Guarantor or the Operator or any of its respective assets, shares or business is subject or bound or may be affected. No consents or approvals of any person are required in connection with the execution, delivery and performance of this Guarantee.

**SECTION 3. Covenants and Agreements.** The parties agree as follows:

3.1 Consent to Jurisdiction and Service of Process. Any claim, action, suit or proceedings arising out of or relating to this Guarantee (a "Proceeding") may be instituted only in any state or federal court in Miami-Dade County, Florida and the Guarantor agrees not to assert, by way of motion, as a defense, or otherwise, in any such Proceeding, any claim that it is not subject personally to the jurisdiction of such court, that its property is exempt or immune from attachment or execution, that such Proceeding is brought in an inconvenient forum, that the venue of the Proceeding is improper or that this Guarantee or the subject matter hereof may not be enforced in or by such court. The Guarantor further irrevocably submits to the jurisdiction of any such court in any such Proceeding. Any

and all service of process and any other notice in any such Proceeding shall be effective against the Guarantor or the County if given by registered or certified mail, return receipt requested, or by any other means of mail which requires a signed receipt, postage prepaid.

3.2 Further Assurances. From time to time following the execution and delivery of this Agreement, the Guarantor shall, at its expense, and without further consideration, execute such documents and other papers and perform such further acts as may be reasonably required or desirable to carry out the provisions hereof.

SECTION 4. Forbearance. The County may neglect or forbear to enforce payment or performance hereunder without affecting or impairing the liability of the Guarantor hereunder. The County shall be entitled to grant such extension or extensions of time to either of the Operators to perform any act or acts as may seem advisable to the County at any time and from time to time, without terminating, affecting or impairing the validity of this Guarantee or the obligations of the Guarantor hereunder.

SECTION 5. Continuation and Reinstatement of Guarantee. With the prior written consent of the Guarantor, the liability of the Operator hereby guaranteed may, from time to time, be renewed, extended, modified, compromised, released or discharged by the Operator without terminating, impairing or otherwise affecting the validity of this Guarantee or releasing, discharging or otherwise affecting the obligations of the Guarantor hereunder.

SECTION 6. Severability. If any provisions of this Guarantee or the application of any provision hereof to any party is held invalid, the remainder of this Guarantee and the application of such provision to the other parties shall not be affected, unless the provision held invalid shall substantially impair the benefits of the remaining portions of this Guarantee.

SECTION 7. Governing Law and Exclusive Venue. This Guarantee shall be governed by and construed in accordance with Florida law. The sole and exclusive venue for any suit, action or proceeding to enforce or construe any term of this Guarantee shall lie in Miami-Dade County, Florida.

SECTION 8. Miscellaneous.

8.1 Notices. Any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered as set forth in Section 38 of the Agreement at the addresses for the County and the Operator set forth therein and at the following address for the Guarantor:

FOR GUARANTOR:

Resorts World Omni LLC  
1601 Biscayne Blvd  
Miami, Florida 33132

with a copy to:



(i) the Operator at the addresses set forth in Section 38 of the Agreement.

Any party may by notice given in accordance with this Section to the other designate another address or person for receipt of notices hereunder.

8.2 Entire Agreement; Headings. This Guarantee, together with related terms of the Agreement, contains the entire agreement with respect to the subject matter hereof, and supersedes all prior agreements, written or oral, with respect thereto. The headings in this Guarantee are for reference purposes only and shall not in any way affect the meaning or interpretation of this Guarantee.

8.3 Amendments and Remedies. This Guarantee may not be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions hereof may not be waived, except by a written instrument signed by the Guarantor and a properly authorized representative of the County. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies which any party may otherwise have at law or in equity.

8.4 Binding Effect: No Assignment. This Guarantee shall be binding upon and inure to the benefit of the parties and its successors and legal representatives. Nothing in this Guarantee, express or implied, is intended to confer on any person, other than the Guarantor, the Operator and the County, any rights or remedies under or by reason of this Guarantee. This Guarantee may not be assigned by either party absent the prior written consent of the other party.

8.5 Counterparts. This Guarantee may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by all parties hereto, and all such counterparts shall together constitute one and the same agreement. For purposes of the preceding sentence, a legible facsimile of a properly executed and delivered counterpart shall be acceptable.

IN WITNESS WHEREOF, the Guarantor has caused this Guarantee to be executed on the date first above written.

RESORTS WORLD OMNI LLC

By: J Hoppe

Name: Jessica Hoppe  
Manager + Secretary

Accepted and Agreed To By:

MIAMI-DADE COUNTY, FLORIDA

a political subdivision of  
the State of Florida

By: \_\_\_\_\_  
Deputy Mayor

ATTEST:

CLERK OF THE BOARD

By: \_\_\_\_\_  
Deputy Clerk

EXHIBIT D

CONSENT TO MARITIME LIENS

BIMINI SUPERFAST OPERATIONS LLC (Operator), BIMINI SUPERFAST LIMITED (Vessel Owner), and BIMINI SUPERFAST CHARTER LTD. (the charterer of the Vessel) all hereby fully and irrevocably consent to the placement of a maritime lien or liens on the Vessel M/V Bimini SuperFast, and on any other vessel that calls upon the Port of Miami, to the full extent permitted by Applicable Law. Further, each of the below signed entities hereby acknowledges and agrees that Port fees charged for water, dockage, harbor use, passenger wharfage, cargo wharfage, electricity, and vessel passenger on-port parking are marine necessities and vessel related services, which, if not timely paid for in full, properly and automatically give rise to the placement of a maritime lien or liens on the Vessel. Each of the below signed entities also hereby waives and relinquishes any right to written prior notice of such maritime liens and further acknowledges, in any event, that execution of this maritime lien consent constitutes full, proper, and effective prior written notice and consent to same.

**AGREED TO BY:**

**BIMINI SUPERFAST OPERATIONS LLC (Operator)**

By: J. Hoppe  
Name: Jessica Hoppe  
Title: Secretary & General Counsel  
Date: June 25, 2013

Attest: Jesse W. Langone  
Name: Jesse W. Langone

**BIMINI SUPERFAST CHARTER LTD. (Vessel Charterer from Owner)**

By: Dana Leibowitz  
Name: Dana Leibowitz  
Title: Authorized Representative  
Date: June 25, 2013

Attest: John Zimmerman  
Name: John Zimmerman

**BIMINI SUPERFAST LIMITED (Vessel Owner)**

By: Dana Leibowitz  
Name: Dana Leibowitz  
Title: Authorized Representative  
Date: June 25, 2013

Attest: John Zimmerman  
Name: John Zimmerman

**FIRM'S RESPONSIBILITY AFFIDAVIT**  
**"Combined Affidavit"**

STATE OF FLORIDA                    )  
  )SS:  
COUNTY OF MIAMI-DADE            )

The undersigned, being first duly sworn, states as follows:

**GENERAL**

1. I am a duly authorized representative of the Firm submitting a bid, proposal or other document to Miami-Dade County with the intention of being awarded a contract (referred to in this affidavit as the "Respondent").
2. This Affidavit is made of my personal knowledge. I understand that Miami-Dade County will rely on the representations made in this affidavit in determining my eligibility and responsibility to enter into a contract with Miami-Dade County. By executing this affidavit, the Respondent agrees to provide to Miami-Dade County such documentation or other proof as Miami-Dade County may require verifying the accuracy and completeness of any of the representations.
3. The Respondent is duly authorized to submit this bid or proposal, and if awarded the contract, to enter into the contract and perform the services or supply the goods contemplated in the contract.

**OWNERSHIP DISCLOSURE**

4. That in compliance with Section 2-8.1(d)(1) of the Miami Dade County Code, if the contract or business transaction is with a corporation, the full legal name and business address shall be provided for each officer and director and each stockholder who holds directly or indirectly five percent (5%) or more of the corporation's stock. If the contract or business transaction is with a trust, the full legal name and address shall be provided for each trustee and each beneficiary. (Post Office addresses are not acceptable). The full legal names and business address shall be provided for any other individual (other than subcontractors, material men, suppliers, laborers, or lenders) that have, or will have, any interest (legal, equitable beneficial or otherwise) in the contract or business transaction with Miami-Dade County. (Post Office addresses are not acceptable). This information shall be supplied on the attached Ownership Disclosure form and signed by the Respondent.

**FIRM'S RESPONSIBILITY AFFIDAVIT  
"Combined Affidavit"**

**EMPLOYMENT DISCLOSURE**

5. The following information and attachments are provided and are in compliance with all items in County Ordinance No. 90-133, amending Section 2.8-1; Subsection (d)(2):

a. Does your firm have a collective bargaining agreement with its employees?  
 Yes       No

b. Does your firm provide paid health care benefits for its employees?  
 Yes       No

c. Provide a current breakdown (number of persons) of your firm's work force and ownership as to race, national origin and gender:

White:	_____	Males: <u>  1  </u>	Females: _____
Asian:	_____	Males: _____	Females: _____
Black:	_____	Males: _____	Females: _____
American Indian:	_____	Males: _____	Females: _____
Hispanics:	_____	Males: _____	Females: _____
Aleut (Eskimo):	_____	Males: _____	Females: _____
_____:	_____	Males: _____	Females: _____

**EMPLOYMENT DRUG FREE WORKPLACE**

6. The Respondent provides a drug-free workplace in full compliance with Section 2-8.1.2 of the Code of Miami-Dade County.

**EMPLOYMENT FAMILY LEAVE**

7. That in compliance with Ordinance No. 91-142 of the Code of Miami-Dade County, Florida, the following information is provided and is in compliance with all items in the aforementioned Ordinance:

An employee who has worked for the above firm for at least one (1) year shall be entitled to ninety (90) days of family leave during any twenty-four (24) month period, for medical reasons, for the birth or adoption of a child, or for the care of a child, spouse or other close relative who has a serious health condition without risk of termination of employment or employer retaliation.

**FIRM'S RESPONSIBILITY AFFIDAVIT**  
**"Combined Affidavit"**

**DOMESTIC LEAVE**

8. That in compliance with Ordinance No. 9-5 of the Code of Miami-Dade County, Florida, the following information is provided and is in compliance with all items in the aforementioned Ordinance:

An employee who has worked for the above firm for at least three hundred and eight (308) hours in the previous ninety (90) days shall be entitled to thirty (30) work days of unpaid domestic leave during any twelve (12) month period, for medical or dental reasons, for legal assistance, to attend court appearances, counseling or any reasons necessary to provide for the safety or well being of the employee subjected to domestic or repeat violence, without risk of termination of employment or employer retaliation.

**ARREARS WITH THE COUNTY**

9. That in compliance with Ordinance No. 95-178 and Section 2-8.1(c) of the Code of Miami-Dade County, the Proposer has paid all delinquent and currently due fees or taxes, including but not limited to real estate and personal property taxes, registered in the name of Proposer and which are collected in the normal course by the Miami-Dade County Tax Collector, and that County issued parking tickets for vehicles registered in the name of the above proposer, and which are collected in the normal course by the Miami-Dade Clerk of the Circuit and County Courts, have been paid.

That in compliance with Ordinance No. 99-162 and Section 2-8.1 of the Code of Miami-Dade County, the Proposer is not in arrears in any payment under contract, promissory note or other loan document with Miami-Dade County, or any of its agencies or instrumentalities, including the Public Health Trust, either directly or indirectly through a firm, corporation, partnership or joint venture in which the individual or entity has a controlling financial interest as that term is defined in Section 2-11.1(b)(8) of the Code of Miami-Dade County.

**CODE OF BUSINESS ETHICS**

10. I, being duly sworn, hereby state and certify that this firm has adopted a Code of Business Ethics that is fully compliant with the requirements of Section 2-8.1(i) of the Code of Miami-Dade County as amended. I further acknowledge that failure to comply with the adopted Code of Business Ethics shall render any contract with Miami-Dade County voidable, and subject this firm to debarment from County work pursuant to Section 10-38 (h)(2) of the Code of Miami-Dade County as amended. I further acknowledge that failure to submit this affidavit shall render this firm ineligible for contract award.

**FIRM'S RESPONSIBILITY AFFIDAVIT  
"Combined Affidavit"**

**NO CRIMINAL RECORD**

11. The Respondent has not been convicted of a felony during the past ten (10) years, nor does it, as of the date of the bid or proposal submission, have an officer, director or executive who has been convicted of a felony during the past ten (10) years as defined in Section 2-8.6 of the Code of Miami-Dade County.

**PUBLIC ENTITY CRIME**

12. The respondent has not been convicted of a Public Entity crime as defined in Paragraph 287.133(1)(g) of the Florida Statutes. Violation of any State or Federal law with respect to the transaction of business with any public entity or with an agency or political subdivision of any State.

**DEBARMENT AND SUSPENSION DISCLOSURE**

13. The Respondent, and its officers, principals, stockholders, subcontractors or its affiliates are not debarred or suspended from contracting with Miami-Dade County as regulated by Section 10-38 of the Miami Dade County Code.

**NON -DISCRIMINATION BASED ON DISABILITY**

14. The Respondent is in compliance with and agrees to continue to comply with and assure any subcontractor, or third party contractor under this project complies with all applicable laws forbidding discrimination based on disability including, but not limited to those provisions pertaining to employment, provision of programs and services, transportation, communications. Access to facility, renovations and new construction as set forth in the Americans with Disabilities Act of 1990 (ADA), the Rehabilitation Act of 1973, the Federal Transit Act and the Fair Housing Act.

**FAIR SUBCONTRACTING**

15. Consistent with Section 2-8.8 of the Code of Miami-Dade County, the Respondent has adopted subcontracting policies and procedures which (a) notifies the broadest number of local subcontractors of the opportunity to be awarded a subcontract; (b) invites local subcontractors to submit bids in a practical, expedient way; (c) provides local subcontractors access to information necessary to prepare and formulate a subcontracting bid; (d) allows local subcontractors to meet with appropriate personnel of the Respondent to discuss the Respondent's requirements; and (e) awards subcontracts based on full and complete consideration of all submitted proposals and in accordance with the Respondent's stated objectives.

FIRM'S RESPONSIBILITY AFFIDAVIT  
"Combined Affidavit"

RESPONSIBLE WAGE AND BENEFITS (IF APPLICABLE)

16. If applicable, the Respondent is in full compliance with Section 2-11.16 of the Code of Miami-Dade County, and should he or she be awarded the contract, understands his or her obligation to pay the project minimum wage rates set forth in that Section and the labor provisions of the contract documents.

CLEARINGHOUSE AFFIDAVIT

17. That in compliance with Miami-Dade County Resolution Number R-1395-05, the Respondent agrees to comply with all requirements of the Clearinghouse Resolution and Job Request form for posting job opportunities. Making it a mandatory requirement for Respondents to post notice of job opportunities resulting from the construction of improvements on County property through the County's Clearinghouse process.

I STATE NOTHING FURTHER IN THIS AFFIDAVIT.

Signature:

Dana Leibovitz

Position/Title:

President

Name of Firm:

Bimini Super Fast Operations LLC

The foregoing was sworn and subscribed before me this 10 day of June 2013 by Dana Leibovitz, who is personally known to me or who has produced \_\_\_\_\_ as identification who being duly sworn, deposes and says that the above is true to the best of his knowledge, information and belief.

My Commission expires: Jun 27, 2014

[Signature]  
NOTARY PUBLIC  
STATE OF FLORIDA






COMBINED AFFIDAVIT  
Appendix B

OWNERSHIP DISCLOSURE FORM

Name of Firm: Bimini SuperFast Operations LLC  
 Federal Employer's ID No. 800927495  
 Address of Principal Office: 1501 Biscayne Blvd, Suite 107, Miami, Florida 33132

Managing Miami-Dade County Department: \_\_\_\_\_  
 Project/Contract/Bid Number: \_\_\_\_\_

Position <sup>1</sup>	Name (Last, First Middle Initial)	Address	City, State	Zip	Percentage Ownership
P	Leibovitz, Dana L.	2122 SW 152 Terrace, Mirimar, FL 33027			0
CFO	Goh, Susie E.S.	7751 NW 11 <sup>th</sup> Street, Pembroke Pines, FL 33024			0
SECY/MGR	Hoppe, Jessica S	995 Bennett Road, #201, Orlando, FL 32814			0
MGR	Goode, Christian P	413 Buffalo Street, Gowanda, NY 14070			0
SH	Bimini SuperFast Charter Limited International House, Castle Hill, Victoria Road, Douglas, Ise of Man IM2 4RB				100

Signature of Authorized Representative  Date 6/10/13  
 Print/Type Representative's Name Jessica Hoppe Phone Number: 305-374-6664 ext 160  
 Representative's Position/Title Secretary/Manager Facsimile Number: 305-374-0125  
 Page 1 of 1

<sup>1</sup> Position: P=President, VP=Vice President, TREAS=Treasurer, SECY=Corporate Secretary, D=Director, SH=Shareholder