

# MEMORANDUM

Agenda Item No. 8(J)(2)

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**TO:** Honorable Chairman Jose "Pepe" Diaz  
and Members, Board of County Commissioners


**DATE:** July 20, 2021

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Resolution approving First Amendment to the Third Amended and Restated Cruise Terminal Agreement with NCL (Bahamas) Ltd. with an estimated positive fiscal impact to the County of \$109,800,000.00 and authorizing the County Mayor to execute the First Amendment and exercise all rights conferred therein unless reserved to the Board; and authorizing the County Mayor to take all actions necessary to effectuate the First amendment and directing the County Mayor to appoint staff to monitor compliance with the First Amendment

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

  
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Geri Bonzon-Keenan  
County Attorney


GBK/jp

# Memorandum



**Date:** July 20, 2021

**To:** Honorable Chairman Jose "Pepe" Diaz  
and Members, Board of County Commissioners

**From:** Daniella Levine Cava   
Mayor

**Subject:** Resolution Approving Amendment No. 1 to the Third Amended and Restated Cruise Terminal Agreement Between Miami-Dade County and NCL (Bahamas) Ltd., Related to Final Completion and Close Out of Cruise Terminal B Construction.

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## **Recommendation**

It is recommended that the Board of County Commissioners (Board) adopt the accompanying resolution approving Amendment No. 1 to the Third Amended and Restated Cruise Terminal Agreement between Miami-Dade County (County) and NCL (Bahamas), Ltd., (NCLB) (First Amendment) to provide for modifications to the parties' existing agreement related to construction of the New Cruise Terminal B Project (Project), to account for changes between contract cost allocations, to allow the contract to be financially satisfied and closed out, and to incorporate changes necessitated by COVID-19 resulting in the contract time being extended to reach completion.

## **Scope**

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

## **Background**

On September 19, 2019, the Board adopted Resolution No. R-988-19, authorizing the Third Amended and Restated Cruise Terminal Agreement and a Development Rider thereto (collectively, Third Amended Agreement) for the design and construction of New Cruise Terminal B for NCLB. The Maximum Authorized Amount for the project was increased from \$215 million to a not to exceed amount of \$239 million, included anticipated costs for basic construction scope, costs and fees of an Independent Building Expert (IBE) in an amount not to exceed \$250,000, approximately \$2.6 million for Art in Public Places, and a \$31.3 million contingency to address certain costs not covered by the Construction Manager at Risk. NCLB also agreed to extend the term of the agreement to 30 years (an additional five years) increasing NCLB's total revenue obligations to the County by \$326 million.

Under the terms of the Third Amended Agreement, the County agreed to fund the first \$100 million of project costs, and NCLB the remaining \$139 million. The terms also provided for the County to advance the additional project costs over \$100 million, up to an additional \$139 million, including contingency, to be reimbursed by NCLB over 25 years, via a capital recovery surcharge inclusive of 6.5% for interest, costs, and fees.

The Third Amended Agreement also changed the substantial completion date for Terminal B from February 10, 2020 to no later than May 29, 2020 in anticipation of berth and terminal requirements to service NCLB vessel calls. In order to achieve this substantial completion date, it was anticipated acceleration costs could be required. If these acceleration costs had

fully materialized, they would have been funded, with certain exceptions, from the Project’s contingency account.

Prior to achieving substantial completion, the Project encountered delays that NCLB, as the Project developer and manager, determined were both excusable and compensable. These delays included, among others, COVID-19 impacts (such as spacing and social distancing requirements that reduced productivity and required the use of additional equipment). NCLB treated the construction manager’s COVID-19 related delay, and the cost of COVID-19 related equipment and supplies, as compensable force majeure events, which under the Third Amended Agreement are not compensable from the Project’s contingency account and are to be paid by NCLB from its own funds. This recommended First Amendment, if approved, would authorize NCLB’s excusable delays, including COVID-19 impacts, as compensable contingency expenses at a cost of approximately \$2.4 million to be funded from the Project’s available contingency funds, without increasing the \$239 million Maximum Authorized Amount previously approved by the Board.

This First Amendment supports NCLB’s request to descope some remaining items and re-sequence their completion. Among these modified scope items are, installation of trolley rails, and demolition of water stations. The First Amendment also allows for the deletion of a window washing scaffold track system that was to be affixed to the “large pearl” portion of Cruise Terminal B. As a result of the window washing deduction, NCLB shall (i) assume all responsibility and cost for washing the exterior windows of the large pearl through the initial term and extended term, eliminating the County’s obligation to wash the windows and (ii) provide for a Project credit in the amount of \$252,174 for the uninstalled window washing system to be removed, which County credit may be used, in the County’s discretion, for any purpose for which Project contingency funds may be used. Additionally, the Project also has \$132,519.55 of unspent Independent Building Expert (IBE) budgeted funds. This First Amendment shall authorize the unspent IBE budgeted funds to also be credited towards the contingency account, which the County may use in its discretion for any purpose for which Project contingency funds are currently authorized for in the Third Amended Agreement.

NCLB may request additional scope to be removed from the construction management contract. Notwithstanding, NCLB shall be responsible to complete all elements of the Project and permitted to retain qualified subcontractors to perform such unfinished work outside of this contract at NCLB’s cost.

As a result of COVID-19 and the Centers for Disease Control and Prevention’s No Sail Order, all cruise activity was suspended on March 14, 2020. In order to mitigate some of the effects of the suspension of passenger cruise service related to COVID-19, the Board adopted Resolution No. 1116-20, authorizing the execution of a COVID-19 Rider between the County and NCLB. Upon execution of this final close out Amendment, and the COVID-19 Rider, the commencement of NCLB’s repayment obligations to the County (as indicated in Amended Exhibit E) will be extended from May 29, 2020 to the earlier of (i) the date the first NCLB Vessel (with paying passengers) is berthed at or serviced from New Terminal B (anticipated for mid-August 2021), (ii) December 31, 2022, or (iii) if applicable, the date NCLB terminates the COVID-19 Recovery Period under the terms the COVID-19 Recovery Rider.

As consideration for this deferred reimbursement obligation commencement date, NCLB has agreed to both extend the term of the Third Amended Agreement by approximately

three additional years and also extend the duration (end date) of its repayment obligation period to the County, by a similar duration.

NCLB intends to commence passenger sailings in mid-August 2021. Due to COVID-19 delays and other circumstances mentioned above, this First Amendment extends the current Substantial Completion Date to August 3, 2020, the date on which the temporary certificate of occupancy was issued for the new terminal and its associated parking garage, and requires that Final Completion occur not later than September 10, 2021.

Similar to prior approval by the Board for the time extension in the Third Amendment, this recommended Amendment would authorize the Port Director to approve NCLB’s recommended Change Order No. 86 in an amount not to exceed \$1,426,483 for compensable delays, including changes in Project scope arising from U.S. Customs and Border Protection comments and requirements, and NCLB directed resequencing of work. While change orders associated with delayed subcontractor work included mark-ups for Contractor overhead directly associated with the work, the volume and complexity of remaining work, and resequencing of work, required the Contractor to maintain staff, construction trailer, etc. on site to manage the effort. This change order authorizes payment of the construction manager’s demonstrated direct costs for these delays, less a partial credit for prior construction manager markup charged on associated subcontractor delay claims. Such change order must first be approved by NCLB and shall be subject to certain conditions as the Port Director may impose, including ensuring the payment of all Small Business Enterprise Program requirements and subcontractor claims be met.

Toward this end, it is recommended that the Board approve this final close out amendment which maintains the Project’s previously authorized Maximum Authorized Amount at \$239 million, maintains the authorized amount for Project Contingency at \$31.3 million while authorizing the use of certain above-described County credits for contingency fund purposes, allows the County to fund time extensions, contractor mark-ups on change orders and COVID-19 expenditures up to the current authorized amounts, and descope certain non-critical remaining items.

It is important to note that the Miami-Dade County Office of the Inspector General has participated in working sessions with NCLB and provided both oversight and input throughout the negotiation of this First Amendment.

#### **Fiscal Impact/Funding Source**

The current Cruise Terminal Agreement between the County and NCLB for the Cruise Terminal B Project has a Maximum Authorized Amount of \$239 million, which remains the same. This amendment seeks approval to allow the County to pay for some costs not originally contemplated in the current Agreement while maintaining the \$239 million Authorized Maximum Amount. Funds have been adjusted within certain project accounts in order to maximize the use of those funds for completion of the project, however the proposed amendment maintains the Maximum Authorized Amount of \$239 million. While these additional Project costs will be paid from already budgeted contingency funds (or from credits described above that may be used for contingency purposes), these initially-advanced County funds will be recouped from NCLB over time, with interest and other fees and costs, through NCLB’s Reimbursement obligations to the County. In the event Project costs exceed \$239 million, NCLB is still obligated to advance and pay any and all Project costs in excess of \$239 million from NCLB funds.

Though the Maximum Authorized Amount remains consistent with the prior amendment, the operational costs associated with window washing that were previously the responsibility of the County and will now be borne by NCLB. These costs are estimated to save the Port over \$150,000 annually (\$4,800,000 over the term of the Agreement) in operational costs. The additional revenue to the County connected to the extended term of the Agreement and Reimbursement Obligation period is approximately \$105 million over the term of the Agreement.


County advanced funds shall be allocated from the Port's Fiscal Year 2021 and 2022 capital budgets, using available proceeds from the Port's commercial paper program, capital reserves, bond proceeds, grants and/or tenant reimbursements.

**Track Record/Monitor**

The Seaport Department staff members responsible for monitoring the Agreement are Hydi Webb, Deputy Director; Andy Hecker, Managing Port Director, CFO; and Elizabeth Ogden, Assistant Port Director, Capital Development.

**Delegated Authority**

This item authorizes the County Mayor or County Mayor's designee to execute Amendment No. 1 to the Third Amended and Restated Agreement on behalf of Miami-Dade County and to exercise, approve, or deny (as applicable) any cancellation rights, termination rights, and/or other County rights conferred in the Third Amended Agreement as amended by the herein authorized First Amendment. Such delegation includes, among other things, authorizing the Port Director to (1) approve County payment of certain NCLB-approved changes to the work at overhead and profit markup rates in excess of 15% in aggregate (provided such markup increases do not have a financial impact above \$1.7 million), (2) approve NCLB requests to descope from its construction management contract certain unfinished Project elements and to allow NCLB to retain qualified subcontractors to perform such unfinished work, and (3) approve NCLB-recommended construction Change Order No. 86 in an amount not to exceed \$1,426,483, subject to conditions as the Port Director may in his discretion elect to impose including, without limitation, ensuring the payment of any SBE and subcontractor claims. Notwithstanding the above, the Project shall continue to maintain the Maximum Authorized Amount of \$239 million, as previously approved by the Board.



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Jimmy Morales  
Chief Operations Officer



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jose "Pepe" Diaz  
and Members, Board of County Commissioners

**DATE:** July 20, 2021

**FROM:**   
Gen Bonzon-Keenan  
County Attorney

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

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_ 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)(2)  
7-20-21

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING FIRST AMENDMENT TO THE THIRD AMENDED AND RESTATED CRUISE TERMINAL AGREEMENT WITH NCL (BAHAMAS) LTD WITH AN ESTIMATED POSITIVE FISCAL IMPACT TO THE COUNTY OF \$109,800,000.00 AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE FIRST AMENDMENT AND EXERCISE ALL RIGHTS CONFERRED THEREIN UNLESS RESERVED TO THE BOARD; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE THE FIRST AMENDMENT AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO APPOINT STAFF TO MONITOR COMPLIANCE WITH THE FIRST AMENDMENT

**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 First Amendment to the Third Amended and Restated Cruise Terminal Agreement ("First Amendment") with NCL (Bahamas) Ltd., in substantially the form attached hereto, with an estimated positive fiscal impact to the County of \$109,800,000.00. This Board further authorizes the County Mayor or the County Mayor's designee to execute the First Amendment and to exercise all rights therein not reserved to this Board.

**Section 2.** Authorizes the County Mayor or the County Mayor's designee to take all actions necessary to effectuate the First Amendment and further directs the County Mayor or the County Mayor's designee to appoint staff to monitor compliance with the agreements and transactions approved or authorized herein.

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

Jose "Pepe" Diaz, Chairman	
Oliver G. Gilbert, III, Vice-Chairman	
Sen. René García	Keon Hardemon
Sally A. Heyman	Danielle Cohen Higgins
Eileen Higgins	Joe A. Martinez
Kionne L. McGhee	Jean Monestime
Raquel A. Regalado	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared this resolution duly passed and adopted this 20<sup>th</sup> day of July, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

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

Approved by County Attorney as  
to form and legal sufficiency.

SBB

Steven B. Bass



**AMENDMENT NO. 1 TO THE THIRD AMENDED AND RESTATED CRUISE  
TERMINAL AGREEMENT  
BETWEEN MIAMI-DADE COUNTY AND NCL (BAHAMAS) LTD.**

**THIS AMENDMENT NO. 1 TO THE THIRD AMENDED AND RESTATED CRUISE TERMINAL AGREEMENT** (“First Amendment”) is made and entered into this \_\_\_\_ day of July, 2021 (“Effective Date”), by and between NCL (Bahamas) Ltd., d/b/a Norwegian Cruise Line (“NCLB”), a Bermuda company, as agent for certain shipowners, and Miami-Dade County, Florida, a political subdivision of the State of Florida (the “County”). NCLB and the County are collectively referred to as “the Parties.”

**WITNESSETH:**

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

**WHEREAS**, the County operates the Port through the Miami-Dade County Seaport Department, which is a department of the County; and

**WHEREAS** Norwegian Cruise Lines Holdings, Ltd. (“NCLH”) is a leading international cruise company with a number of cruise lines including Norwegian Cruise Line, Regent Seven Seas Cruises, and Oceania Cruises that presently use the Port as a homeport, and NCLH intends to expand its operations at the Port; and

**WHEREAS**, NCLB is a subsidiary of NCLH and the operating entity for NCLH; and

**WHEREAS**, NCLB’s commitments to use the Port as a homeport has a significant economic impact on the County’s economy; and

**WHEREAS**, the County and NCLB entered into a Cruise Terminal Agreement (the “Original Agreement”), which was approved by the Miami-Dade County Board of County Commissioners (“Board”) by Resolution No. R-1442-08 on December 16, 2008; and

**WHEREAS**, the County and NCLB entered into an amendment of the Original Agreement on or about April 20, 2012, pursuant to County Commission Resolution No. R-295-12; and

**WHEREAS**, the County and NCLB entered into a second amendment of the Original Agreement on December 17, 2013, pursuant to County Commission Resolution No. R-1052-13, which, among other things, increased NCLB’s minimum passenger movement guarantees, and provided for the County to make certain marketing incentive payments to NCLB; and

**WHEREAS**, the County and NCLB entered into a non-binding Memorandum of Understanding on May 17, 2017 (“MOU”), pursuant to authorization of the Board of County Commissioners contained in Resolution R-1052-17, which MOU set forth the general intent of the parties to construct a new Cruise Terminal B to the east of existing Cruise Terminals B and C, to serve approximately 5,000 passengers; and

**WHEREAS**, the parties clarified their relationship by merging, restating, and updating the Original Agreement, and the first and second amendments thereto, through the adoption of the Amended and Restated Cruise Terminal Agreement, which was approved by the Board via Board Resolution No. R-291-18 on April 10, 2018 (the “First Amended and Restated Agreement”); and

**WHEREAS**, the Parties entered into the Second Amended and Restated Cruise Terminal Agreement, pursuant to Resolution R-890-18, (the “Second Amended and Restated Agreement”), which, among other things, established the terms and conditions for the development, funding, and use of a new Terminal B, including setting a Maximum Authorized Price of \$215 million, establishing NCLB’s Minimum Annual Guarantee establishing NCLB’s irrevocable and unconditional NCLB Reimbursement Obligations to the County, establishing NCLB’s duty to pay all Excess Costs from NCLB Funds as and when due, and other terms and conditions; and

**WHEREAS**, the Parties entered into a Third Amended and Restated Cruise Terminal Agreement on or about November 22, 2019, pursuant to Board Resolution No. R-988-19, (the “Third Amended and Restated Agreement” or “Agreement”) which, among other things, increased the Maximum Authorized Amount for new Cruise Terminal B by \$24 million, from \$215 million to \$239 million, and also increased NCLB’s Reimbursement Obligations to the County by the amounts set forth in Amended Exhibit E to the Third Amended and Restated Agreement, which exhibit replaced and superseded Exhibit E to the Second Amended and Restated Agreement; and

**WHEREAS**, the parties now wish to enter into this First Amendment to, among other things, extend the Project’s Substantial Completion and Final Completion dates; reaffirm the County’s Maximum Authorized Amount of \$239 million and NCLB’s obligation to pay all Excess Costs from NCLB Funds; modify the commencement date of NCLB’s Repayment Obligations and Exhibit E to the Third Amended and Restated Agreement; authorize the treatment and use of unspent budgeted Independent Building Expert funds in the amount of \$132,519.55 as additional Project Contingency; modify certain changed work markup caps; and authorize the Port Director or his designee to approve Construction Manager change order no. 86 subject to certain conditions set forth herein, all as set forth with greater particularity below;

**NOW, THEREFORE**, in consideration of the premises, and of the mutual covenants, term and conditions, and agreements hereinafter contained, the sufficiency of which are hereby acknowledged, the Parties enter into this First Amendment on the following terms and conditions:

1. **Incorporation of Recitals.** The Parties agree each of the forgoing recitals are true and correct and are hereby incorporated herein.
2. **New Definitions; Modification of Certain Existing Definitions.** Capitalized terms used in this First Amendment shall have the meaning set forth in this First Amendment to the extent defined herein. Any capitalized term used in this First Amendment but not defined herein shall have the meaning set forth in the Third Amended and Restated Agreement. The following are new definitions to the Third Amended and Restated Agreement as amended hereby:
  - (a) The following are new definitions to the Third Amended and Restated Agreement as amended hereby:
    - (1) “COVID-19” shall mean the novel coronavirus disease 2019.
    - (2) “COVID-19 Recovery Period Phase 1” shall mean the period commencing on March 13, 2020 and concluding at 11:59 p.m. EST on December 30, 2020.
    - (3) “COVID-19 Recovery Period Phase 2” shall mean the period commencing at 12:00 a.m. EST on December 31, 2020 and concluding at 11:59 p.m. EST on December 30, 2022.
  - (b) The following definitions hereby modify, replace, and supersede the prior corresponding definitions previously set forth in the Third Amended and Restated Agreement:
    - (1) “Amended Exhibit E” shall mean the revised NCLB Reimbursement Obligation Payment Schedule attached as Exhibit 1 hereto, which schedule replaces and supersedes the schedule attached as Exhibit E to the Third Amended and Restated Agreement as of and following the Effective Date of this First Amendment.
    - (2) “NCLB Reimbursement Obligation Payment Schedule” shall have the meaning set forth in Subsections 4.k and 4.l of the Third Amended and Restated Agreement as amended by this First Amendment.
    - (3) “Repayment Commencement Date” shall mean the earlier of (i) the date the first NCLB Vessel (with paying passengers) is berthed at or serviced from New Terminal B, (ii) December 31, 2022, or (iii) if exercised, the date NCLB terminates the COVID-19 Recovery Period in accordance with the terms and conditions of Section 2.01(b) of the executed (or to-be-executed) COVID-19 Recovery Rider between the Parties (if applicable).
    - (4) “Substantial Completion” means the date of issuance of a temporary

certificate of occupancy for New Terminal B. The Parties acknowledge that a temporary certificate of occupancy was issued for New Cruise Terminal B on August 3, 2020 (the “Substantial Completion Date”).

3. **Modification of Term.** The third sentence of Section 5 of the Third Amended and Restated Agreement is hereby deleted, and, in lieu thereof, is inserted the following sentence:

“Upon the expiration of the Initial Term, this Agreement shall automatically be extended by an Extension Term of 32 years, such that the Extended Term shall commence at 12:00 a.m. EST on October 1, 2021 and expire at 11:59 p.m. EST on September 30, 2053.”

4. **Modification of Subparts 4(k)(i)-(ii) and 4(l)(i)-(ii) of the Third Amended and Restated Agreement Relating to NCLB’s Reimbursement Obligations.**

(a) Subparts 4(k)(i)-(ii) of the Third Amended and Restated Agreement is hereby deleted and, in lieu thereof, is inserted the following new subparts 4(k)(i)-(ii):

“(i) the expiration of a 25 year period commencing on December 31, 2022 (as may be extended under certain circumstances due to a force majeure event as provided in Section 23 of this Agreement), (ii) the first September 30<sup>th</sup> following the expiration of a 25 year period commencing on December 31, 2022, but subject to potential NCLB Reimbursement obligation acceleration in the event of an uncured NCLB Reimbursement payment obligation default as provided in Section 4(l) hereof, or” . . . .

(b) Subparts 4(l)(i)-(ii) of the Third Amended and Restated Agreement is hereby deleted and, in lieu thereof, is inserted the following new subparts 4(l)(i)-(ii):

“(i) the first September 30<sup>th</sup> following the expiration of a 25 year period commencing on December 31, 2022 (unless extended per the terms of Section 23 hereof), (ii) the expiration of a 25 year period commencing on December 31, 2022 (unless extended per the terms of Section 23 hereof), or” . . . .

5. **Deletion of Unconstructed Exterior Window Washing Tracks from Project Scope; NCLB Assumption of Window Washing Obligations on North and South Facades of Large Pearl Element of New Terminal B.**

(a) Commencing on the Effective Date of this First Amendment and continuing throughout the remainder of the Initial Term and throughout the Extended Term, NCLB shall at its cost be responsible for washing all of the exterior windows of the large pearl portion of New Terminal B (both North and South facades), using a qualified, licensed, and insured window washing service provider, at least once per year or at such greater frequency as

NCLB and the Port Director may agree upon. For avoidance of doubt, as of the Effective Date hereof, the County shall have no maintenance or other obligations to wash the aforementioned windows.

- (b) In consideration of NCLB's assumed and accepted window washing obligations as set forth in subsection 5.a above, the Parties hereby delete the remaining unconstructed exterior window washing tracks on the large pearl portion of New Terminal B from the Project Scope. In further consideration of such modified Project scope, NCLB shall credit the Project in the amount of \$252,174, which credit may be used, in the County's discretion, for any of the purposes for which Contingency Account funds may be used as set forth in Section 4(e) of the Third Amended and Restated Agreement.

- 6. **Amendment of Sections 24(c) and 24(u) of the Amended Development Rider to the Third Amended and Restated Agreement.** Notwithstanding the terms of Sections 24(c), 24(u), and Exhibit C-10 of the Development Rider (part of Exhibit C to the Third Amended and Restated Agreement), the Port Director may, in his discretion, approve and authorize County payment of NCLB-approved changes to the work falling under the responsibility of the contractor in conjunction with subcontractors at markup rates (for profit, overhead, general conditions, general requirements, insurance and bond costs) that exceed 15% in aggregate (combined for the contractor and subcontractors), provided such rate increases do not have a financial impact above \$1.7 million (\$1,700,000), and further provided that any potential markup rate increases must first be requested and approved by NCLB in writing as part of an NCLB approved and recommended written proposed change order. In connection herewith, NCLB affirms it remains solely responsible to pay all Excess Costs as and when due from NCLB Funds without any right to County reimbursement.
- 7. **Modification of Section 30(e) of Amended Development Rider.** The first sentence of Section 30(e) of the Development Rider (part of Exhibit C to the Third Amended and Restated Agreement) is hereby deleted and, in lieu thereof, is inserted the following new sentence:

“In the event of a Force Majeure, NCLB shall issue a Change Order as reasonably necessary to address the emergency condition, pay for any increased costs resulting directly from the Force Majeure from NCLB Funds (or from Contingency Account funds if the Force Majeure is COVID-19), and accelerate the Project as reasonably necessary to bring the Project to completion prior to the Substantial Completion Date and Final Completion Date.”

8. **Authorized Use of Unspent Independent Building Expert Budgeted Funds.** Notwithstanding the County's Contingency Account aggregate deposit cap set forth in Section 4(f) of the Third Amended and Restated Agreement, the Parties may treat the \$132,519.55 in unspent Independent Building Expert ("IBE") budgeted funds as additional Contingency Account funds. As of the Effective Date hereof, such unspent IBE budgeted funds may be used by the County for any of the purposes for which Contingency Account funds may be used as set forth in Section 4(e) of the Third Amended and Restated Agreement.
9. **Authority to Approve Construction Change Order 86 Following Written Approval Thereof by NCLB.** Notwithstanding any potentially applicable limits set forth in Development Rider Subsections 24(c) or 24(u), or in Development Rider Exhibit C-10 (Construction Manager fees), the Port Director or his designee are authorized to approve Construction Change Order No. 86 (seeking additional compensation in the amount of \$1,426,483 for alleged compensable delays) once such change order is first approved in writing by NCLB and recommended by the Port Engineer, and subject to any additional conditions as may be imposed by the Port Director in his discretion.
10. **Modification of Final Completion Deadline.** NCLB shall achieve Final Completion of the Project by no later than September 10, 2021.
11. **Modification of Section 24(h) of the Amended Development Rider.** The first sentence of subsection 24(h) of the Development Rider to the Third Amended and Restated Agreement is hereby deleted and, in lieu thereof, is inserted the following new sentence:
- "The Construction Management Agreement shall provide for the Project to be Substantially Complete not later than August 3, 2020 and to be Finally Complete not later than September 10, 2021, subject to customary conditions for excusable delay."
12. **Modification of Section 16 of the Amended Development Rider.** The last sentence of Section 16 of the Development Rider to the Third Amended and Restated Agreement is hereby deleted and, in lieu thereof, is inserted the following new last sentence:
- "NCLB hereby irrevocably assigns all of its rights and claims (but not its obligations or liabilities) under the Construction Management Agreement, any other construction agreement entered into by or on behalf of NCLB in furtherance of construction of the Project or any portion thereof, and each of NCLB's New Terminal B design agreements to Miami-Dade County effective as of the date of Final Completion."

13. **Modification of Subsection 24(a) of the Amended Development Rider.** The penultimate sentence of subsection 24(a) of the Development Rider is hereby deleted and, in lieu thereof, is inserted the following new sentences:

“The Construction Management Agreement shall require that the Construction Manager provide all material, equipment, tools and labor necessary to satisfactorily complete all of the construction work necessary for the Project as provided in the Plans and Specifications, or can be reasonably inferred therefrom, unless the Port Director provides written authorization to NCLB to directly retain one or more qualified, insured, and bonded (if require by applicable law) Construction Manager subcontractors to perform any and all Project scopes or elements either removed from or never included within the Construction Management Agreement as amended. Notwithstanding the forgoing, NCLB shall at all times be responsible to complete all elements of the Project in compliance with all terms, conditions, deadlines, and other requirements set forth in the Third Amended and Restated Agreement (including all exhibits and riders thereto) as amended hereby, and the terms of same shall govern and prevail over any contrary or inconsistent terms that may be contained in any construction, construction management, or subcontract agreement entered into by or on behalf of NCLB. In addition, if such contract is not a stipulated sum contract (with no markup added), the maximum aggregate markup allowed (for overhead, profit, general conditions, and general requirements combined) for any such subcontract may not exceed 10%. Any procurement, insurance, bonding, release, assignment, liquidated damages, reporting, and other construction obligations imposed on NCLB and/or its Construction Manager (or the Construction Manager’s subcontractors) in the Development Rider (as amended hereby), shall apply to each subcontractor and contractor retained by or on behalf of NCLB to perform or complete any element of the Project not completed by the Construction Manager, including, without limitation, all bonding requirements set forth in Development Rider Subsection 24(j), all Small Business Enterprise Program requirements set forth in Subsection 24(k), all workforce and other requirements set forth in Subsections 24(m) and (n), all responsible wage requirements set forth in Subsection 24(p), and all warranty and as-built submission requirements.”

14. **Third Amended and Restated Cruise Terminal Agreement.** Unless expressly amended or modified by this First Amendment, all other terms and conditions of the Third Amended and Restated Cruise Terminal Agreement (and all exhibits thereto) remain in full force and effect.
15. **Counterparts.** This First Amendment 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 First Amendment. For purposes of the preceding sentence, a legible facsimile of a properly executed and delivered counterpart shall be acceptable.

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

Signed, sealed and delivered  
in the presence of:

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

By: \_\_\_\_\_  
Mayor, Miami-Dade County

ATTEST:  
CLERK OF THE BOARD

As to form and legal sufficiency:

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

By: \_\_\_\_\_  
Assistant County Attorney

Signed, sealed and delivered  
company

NCL (BAHAMAS) LTD., a Bermuda

A handwritten signature in black ink, appearing to read 'Frank Del Rio', written over a horizontal line.

By: \_\_\_\_\_  
Frank Del Rio  
Chief Executive Officer



EXHIBIT E REIMBURSEMENT SCHEDULE			
Year*	MAG Pax**	Reimbursement Rate****	Minimum Annual \$
Pre-Commencement	Fiscal Year Pax	\$7.29	Rate times Pax*****
1	1,300,000	\$7.29	\$9,481,907
2	1,300,000	\$7.54	\$9,806,907
3	1,300,000	\$7.79	\$10,131,907
4	1,300,000	\$8.04	\$10,456,907
5***	1,500,000	\$7.84	\$11,756,907
6	1,500,000	\$7.84	\$11,756,907
7	1,500,000	\$7.84	\$11,756,907
8	1,500,000	\$7.84	\$11,756,907
9	1,500,000	\$7.84	\$11,756,907
10	1,500,000	\$7.84	\$11,756,907
11	1,500,000	\$7.84	\$11,756,907
12***	1,800,000	\$7.61	\$13,706,907
13	1,800,000	\$7.61	\$13,706,907
14	1,800,000	\$7.61	\$13,706,907
15	1,800,000	\$7.61	\$13,706,907
16	1,800,000	\$7.61	\$13,706,907
17	1,800,000	\$7.61	\$13,706,907
18	1,800,000	\$7.61	\$13,706,907
19	1,800,000	\$7.61	\$13,706,907
20	1,800,000	\$7.61	\$13,706,907
21	1,800,000	\$7.61	\$13,706,907
22	1,800,000	\$7.61	\$13,706,907
23	1,800,000	\$7.61	\$13,706,907
24	1,800,000	\$7.61	\$13,706,907
25	1,800,000	\$7.36	\$13,256,907
* Year will be pro-rated based on repayment commencement date			
<p>**As set forth in Section 4 of the Agreement, NCLB Reimbursement payments due County will be calculated on an annual basis (per Fiscal Year) by multiplying the then-applicable Reimbursement Rate set forth above (for the given Fiscal Year or portion thereof) by the greater of (i) the actual number of NCLB Vessel Passenger Movements occurring in such Fiscal Year or (ii) the minimum number of Passenger Movements required during such Fiscal Year per NCLB's Minimum Annual Guarantee. Notwithstanding the foregoing NCLB Reimbursement payment obligations, the County shall invoice NCLB for same on a monthly basis, and NCLB shall pay each invoice within 15 days of receipt thereof, based on NCLB's actual number of monthly Passenger Movements, subject to annual Port reconciliations and true ups as set forth in Section 4(k) and 4(l) of the Agreement in the event of any payment shortfalls in any Fiscal Year.</p>			
*** MAG is pro-rated from the Saturday and Sunday Election Dates			
****Reimbursement Rate based on minimum NCL Capital Contribution Reimbursement of \$139 million.			
*****During the COVID-19 Recovery Period Phase 2, the Minimum Annual \$ due County fro NCLB shall be computed by taking the then-applicable reimbursement rate of \$7.29 times the total number of Passenger Movements during said COVID-19 Recovery Period Phase 2, to be paid monthly in arrears (based on actual Passenger Movement number in prior month)			