

## MEMORANDUM

Agenda Item No. 8(J)(1)

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

**DATE:** February 17, 2021

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

**SUBJECT:** Resolution approving and authorizing the execution of an Amended and Restated Development, Management, and Lease Agreement ("Lease") with MSC Miami Cruise Terminal LLC ("MMCT") with a term of 62 years generating \$2,030,000,000.00 in rental payments to the County less guaranteed dockage and operating expenses payments of \$183,800,000.00 and obligating MMCT to design, construct, finance, operate, and maintain County-owned berths and a shared terminal complex with MMCT bearing approximately \$400,000,000.00 in construction costs and the County contributing approximately \$177,200,000.00 plus 50 percent of unforeseen site condition costs exceeding \$5,000,000.00 and the estimated \$20,000,000.00 cost of the shared segment of the berth 10 concourse attributable to the County; approving and authorizing the execution of an Amended and Restated Amendment No. 3 to Preferential Berthing Agreement with MSC Cruises S.A.; authorizing and approving, by a majority of the entire membership of the Board, MMCT'S construction, operation, and maintenance of port facilities as provided in section 2-11.6 of the Code of Miami-Dade County; waiving the property appraisal and market value disclosure requirements of section 2-10.4.2 of the Code of Miami-Dade County and County Resolution R- 333-15; authorizing the County Mayor to exercise all delegated authorities in the accompanying memorandum subject to considerations regarding the approval of the alternative form of security; finding that the project in the Lease is a qualifying project under sections 125.012(2) and 125.012(24), Florida Statutes; waiving Resolution No. R-130-06; and directing the appointment of staff to monitor compliance

Resolution No. R-103-21

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



Geri Bonzon-Keenan  
Successor County Attorney

GBK/jp

# Memorandum



**Date:** February 17, 2021

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

**From:** Daniella Levine Cava  
County Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

**Subject:** Resolution Approving and Authorizing the Execution of an Amended and Restated Terminal Development Management and Lease Agreement between Miami-Dade County and MSC Miami Cruise Terminal LLC and an Amended and Restated Amendment No. 3 to the Preferential Berthing Agreement between Miami-Dade County and MSC Cruises, S.A.

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## Recommendation

It is recommended that the Board of County Commissioners ("Board") approve the accompanying resolution that, among other things:

- a) Approves and authorizes the execution of an Amended and Restated Terminal Development Management and Lease Agreement ("Lease") between Miami-Dade County ("County") and MSC Miami Cruise Terminal LLC ("MMCT"), a subsidiary of MSC Cruises S.A. ("MSC"), in substantially the form attached to accompanying resolution as Exhibit 1. The Lease shall establish the terms for a re-designed MSC cruise terminal project ("Shared Terminal") at PortMiami ("Port"). MMCT will design, build, finance (with certain County contributions), operate, and maintain Berths 8 and 9 (with certain County maintenance obligations) a terminal complex that can service three cruise vessels simultaneously with a total capacity of up to 18,000 embarking and 18,000 disembarking cruise passengers in a single daily turn (including passengers from future Berth 10 for which the County will be responsible). The Shared Terminal will incorporate infrastructure such as expanded ground transportation areas, additional parking, passenger screening, processing and seating, luggage sorting, screening and laydown, office space, and U.S. Customs and Border Protection ("CBP") areas to accommodate the additional volumes of a primary third-party cruise line;
- b) Approves and authorizes the execution of an Amended and Restated Amendment No. 3 to the Preferential Berthing Agreement between the County and MSC, in substantially the form attached to accompanying resolution as Exhibit 2, which establishes MSC's preferential berthing rights at the Port until the substantial completion of the Shared Terminal;
- c) Approves and authorizes, by a majority of the entire membership of the Board, MMCT and its successors and assigns to construct, operate, and maintain port facilities as provided in Section 2-11.6 of the Code of Miami-Dade County, all in strict accordance with the provisions of the Lease;

- d) Waives the property appraisal and market value disclosure requirements of Section 2-10.4.2 of the Code of Miami-Dade County and County Resolution No. R-333-15. The rent payable to the County is either in excess of current rent, in accordance with port tariff rates, or offset by nonmonetary consideration, and therefore, such waiver is in the best interests of the County;
- e) Authorizes the County Mayor or County Mayor's designee to take such further actions as necessary to give effect to the transactions set forth in the resolution, as more particularly set forth below;
- f) Finds that the project described herein is a qualifying project under Section 125.012(2) and 125.012(24), Florida Statutes, and that the contractual obligations contemplated herein are undertaken by tenants or other users of the project or providers of service in, on, or in connection with such qualifying projects and as such, the County is authorized to enter into these contracts without competitive bidding; and
- g) Directs the County Mayor or County Mayor's designee to appoint staff to monitor compliance with the agreements and transactions described herein.

It is also recommended that the Board waive the requirements of Resolution No. R-130-06. Waiver of this requirement is in the best interest of the County in order to meet project financing and construction milestones; the documents recommended to be approved hereby are fully negotiated and pending only execution.

### **Scope**

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

### **Background**

On September 19, 2019, the Board approved Resolution No. R-993-19, authorizing the ground lease between the County and MMCT for the design, construction, finance, operation, and maintenance of a new cruise terminal for Berths 8 and 9 at the Port. MMCT's design and construction investment in the project was anticipated to be approximately \$300,000,000 for a complex including two berths that accommodate vessels with a capacity of up to 7,000 passengers during each embarkation and disembarkation; parking, intermodal areas, and roadway infrastructure; provisioning and ground transportation facilities; and MSC offices.

Upon its development of the terminal, MMCT was to pay the County land lease rent of \$15,200,000 increasing by 1.5 percent annually the first 20 years, then increasing at 3 percent each year for the next 20 years, and then increasing at a price index calculation for the remainder of the term, years 41 to 62. The County was obligated to make a capital contribution of \$15,200,000 after substantial completion, as well as additional contributions estimated at \$35,000,000 to support this project becoming fully operational, including \$26,000,000 for

environmental mitigation, utilities, unforeseen conditions, and other potential costs such as liquidated damages for County-caused delays. An additional estimate used for financial planning of up to \$9,000,000 was budgeted for the provision of temporary processing facilities for MMCT, if needed as a result of County-caused delays, and 75 percent of additional delay costs that exceed the County's committed amounts.

On March 14, 2020, the U.S. Centers for Disease Control and Prevention ("CDC") issued a "No Sail Order" due to the ongoing COVID-19 pandemic, ceasing all cruise operations in the United States. On March 26, 2020, the County and MMCT entered into a Standstill Agreement so that the parties could consider the effects of the COVID-19 pandemic on the project while preserving any force majeure rights. As part of the Standstill Agreement, the County and MMCT agreed in principle to negotiate both a revised schedule for the project given pandemic-related delays and an amendment to the Ground Lease to avoid any further disruptions to the project.

On July 21, 2020, the Board approved Resolution No. R-728-20, authorizing Amendment No. 1 to the Ground Lease between the County and MMCT. This amendment allowed both parties to move forward with the project on an adjusted timeline by extending the County's deadline for delivering a clean site from October 15, 2020, to no earlier than April 15, 2021, but not later than May 15, 2021, and giving the County Mayor or County Mayor's designee the authority to extend the financing period for MMCT through and including February 15, 2021. The amendment also directed the County Mayor or County Mayor's designee to negotiate a further amendment to the Ground Lease and explore whether it would be beneficial to all parties and feasible to incorporate facilities within the Shared Terminal for Magical Cruise Line Ltd. (d/b/a Disney Cruise Line) ("Disney").

Notably, both before and after the COVID-19 pandemic MSC has grown in prominence in the cruise industry and made significant investments in the future of cruising. MSC became the first major cruise line to restart operations in Europe in August 2020, swiftly establishing safety protocols onboard and onshore in response to the COVID-19 pandemic, and has since hosted over 30,000 guests. MSC is also the fastest-expanding cruise line in the world, with 12 new ships on order from 2021 through 2027, several of which are LNG-powered vessels, representing an investment of \$11.3 billion. This includes the MSC *Seashore*, one of the company's newest and most innovative ships with the latest environmental technology, which is scheduled to begin sailing out of the Port in Winter 2021. It is important to note that MSC is owned by Mediterranean Shipping Company S.A., the second largest shipping company in the world. In the last five years, Mediterranean Shipping Company S.A. increased their TEUs from 81,000 to 151,000 TEUs and now generates approximately \$8 million in annual cargo revenue for PortMiami.

The resulting negotiations between the County and MSC transformed the original project scope from a terminal for MSC's sole use at Berths 8 and 9 to an innovative, first-of-its-kind terminal complex that has the capacity and functionality to be utilized by 3 cruise vessels and more than one cruise line simultaneously, including the vessels calling at Berth 10, which will be developed by the County in subsequent years.

A multi-berth Shared Terminal for use by MSC and other cruise lines has several advantages for the County. The main advantage being the ability to service Berth 10 from one centralized location. Because of the shape and size of Berth 10, the alternative operation would have required a landside processing center located 1.5 miles from the Berth 10 waterside landing station (the "Split Terminal Design"). This type of operation would have required an elevated, secure and sterile roadway connecting the landside and waterside facilities to safely process passengers after clearance by CBP and costly shuttling services for crew, passengers and luggage required between the facilities. The alternative operation would have also required the relocation of the harbor pilots from the northeast corner of the port to another location onsite and building them a new facility; by allowing the harbor pilots to remain in their current location, the County is saving approximately \$10,000,000.

Under the proposed Lease, the County's contribution for the Shared Terminal will be funded over a 13-year period; in contrast, the landside and waterside facility would have been funded over 3 years. The Shared Terminal allows the County to defer its capital contribution towards the Shared Terminal-related projects through FY 2034.

Under a future capital project not directly connected to the proposed Shared Terminal, the County is planning to replace the Port's north bulkheads that are more than 50 years old. To the extent that project causes disruptions to other cruise lines' operations, the County may be able to utilize Berths 8, 9, and 10, as alternate berths for displaced vessels. This could provide cost savings to the bulkhead project and help keep cruise business at the Port that may otherwise have had to call at other ports because of the bulkhead construction.

The long-term merging of the MSC and Split Terminal Design projects will also have environmental benefits. Passengers and crew will now access Berth 10 via electric-powered moving walkways, instead of gasoline and diesel-powered vehicles. This is estimated to eliminate approximately 25 million vehicle miles and associated emissions over a 30-year period. The multi-berth Shared Terminal will also help streamline traffic flows at the Port and create logistical efficiencies for the cruise lines as their passenger flows increase.

## **I. Updated Terms of the Lease**

### **A. Project Description**

Under the Lease, the County will lease to MMCT approximately 17.59 acres of land located along the northeast quadrant of the Port for a term of 62 years, running from the date of substantial completion of the Shared Terminal. Substantial completion will be extended to November 15, 2023, from the original date of October 15, 2022.

Under the Lease, MMCT will design, construct, operate and maintain a LEED Silver certified Shared Terminal, multi-level parking garage and intermodal facility to service 3 cruise vessels simultaneously with a total capacity of up to 18,000 embarking and 18,000 disembarking cruise passengers in a single daily turn. The project will also include the development of two new

cruise berths (Berths 8 and 9) consisting of a new bulkhead system, mooring and wind bollards, fenders, four Passenger Boarding Bridges ("PBBs") and supporting runways, provisioning facilities to support Berths 8 and 9, other site and waterside improvements, and connection to Port roadways.

The project will connect to the future County-developed Berth 10 concourse through an elevated concourse. MMCT, however, will provide in the Shared Terminal the seating areas, furniture, fixtures, and equipment ("FFE") for passengers using Berths 8, 9, and 10. In addition, the Shared Terminal will house facilities for all 3 berths in terms of passenger processing areas, CBP sites, and other infrastructure changes necessary to accommodate 3 cruise ships.

MMCT is expected to spend \$400,000,000 (including hard and soft costs and other professional fees) to develop the project. This represents an approximate increase of \$100,000,000 from the concept approved by the Board through Resolution No. R-993-19.

Once substantially completed, MMCT will convey to the County all rights, title and interest to the Shared Terminal, free and clear of any liens or encumbrances. MMCT will then operate the Shared Terminal on behalf of the County.

As the demand for the future Berth 10 project arises, the future Berth 10 project will be operated and maintained by the County. That project will include the construction of Berth 10, a portion of the concourse extension from the Shared Terminal to Berth 10, Berth 10 provisioning, a PBB for use at Berth 10, and ancillary work. As part of the Lease, the County will be required to construct or fund MMCT's construction of the portion of the Berth 10 concourse that commences at the Shared Terminal and is stacked on the concourse that MMCT will be constructing for Berth 9.

#### B. Base Rent

The base rent payable to the county remains \$15,200,000 per year, beginning on the rent commencement date, which is the earlier of (a) the date the first ship berths at one of either Berth 8 or 9 or (b) November 15, 2023. Increases to the base rent will continue annually according to the schedule set out in the September 19, 2019 agreement. The Port estimates that MMCT will pay the County approximately \$2,030,000,000 over the entire operating term in Base Rent. In addition to Base Rent, MMCT shall also pay additional rent on each passenger move above 4.5 million per year at the rate of \$5.83 per passenger movement (effective rate as of FY 2020/21, increasing at 3% per year, compounding annually, from the effective date of this Lease).

#### C. County Obligations

Under the lease approved through Resolution No. R-993-19, the County agreed to certain obligations associated with the development of the project. As in the former lease, the County will be required to make a one-time capital contribution of \$15,200,000 at the end of the first

lease year. Additional obligations, some with slight modifications, have been exported into the Lease under the Board's consideration as follows:

1. Land Turnover

Under the proposed Lease, the County will turn over the Demised Premises to MMCT no earlier than April 15, 2021, but not later than May 15, 2021. This extends the previous land turnover date of October 15, 2020. This extension of the land turnover date gives the County additional time to complete pre-turnover obligations regarding the site condition of the Demised Premises, including obligations to the cargo partner neighboring the Demised Premises. The extension of the turnover date mitigates County exposures to MMCT for delay damages under the previous lease.

2. Additional Contributions for Shared Terminal Project

Given the changed scope of the project, and specifically the expansion of the scope of the project to encompass a shared facility at which the County will have significantly enhanced preferential usage rights, the County will make additional contributions to the project that were not required under the former lease.

The County will provide up to \$136,000,000 toward the MSC-funded contributions as follows:

- \$91,000,000 toward the terminal components of the project that were adapted for the increased capacity of an additional cruise line, such as expanded ground transportation areas, additional parking, passenger screening, processing and seating, luggage sorting, screening and laydown, and office space.
- \$15,000,000 (out of an estimated \$100,000,000 MSC funded total) toward the cost of marine works at Berths 8 and 9, including berthing analysis, wind bollards, and other items necessary to incorporate an additional cruise line, and four PBBs that MMCT is providing for shared use.
- \$30,000,000 for the portion of the garage constructed to provide non-MSC cruise passengers and staff with sufficient parking and the garage's expanded ground transportation area.

At the conclusion of the project, MMCT will be required to certify its construction expenses so that the County can confirm its proportionate share of capital contributions towards the project.

The County will provide \$60,000,000 of its contribution to MMCT over a 30-month construction period estimated to begin in May 2021. The remaining \$76,000,000 will be funded over a ten-year period from County issued debt, subject to interest at a rate to be agreed by the Parties but not to exceed 6.5 percent per annum.

### 3. County's Construction-Related Obligations

The County's commitment for certain construction-related obligations remains approximately \$26,000,000 as in the previous lease, though the allocation has changed.

*Environmental Conditions and Remediation.* The County's environmental remediation obligations remain as described in the memorandum accompanying Resolution No. R-993-19. However, since the approval of that item, the County has completed phase 1 and phase 2 testing within the Demised Premises and considers that there is a low likelihood of environmental contamination within the Demised Premises. The estimated cost of environmental remediation is \$6,000,000, which will be funded by proceeds of the Harbor Maintenance Tax Fund ("HMTF") collected by the federal government as authorized by Resolution No. R-923-19.

*Utilities.* The County's obligations regarding utilities are the same as in the memorandum accompanying Resolution No. R-993-19. The County anticipates that Port-wide utility enhancements will be necessary, and such upgrades have been contemplated in the Port's capital development program and are necessary to accommodate the Port's rapid expansion. The estimated cost of utilities work is \$9,000,000.

*Alternative Berthing Rights.* The County has committed to provide MMCT, up to April 2024, with up to 2 berths elsewhere on the Port should construction of the project be delayed, regardless of the cause of the delay. The risk of costs associated with alternative berthing rights is mitigated from the former lease insofar as MMCT is required to construct, within the Demised Premises, the first berth that will be used for the provision of the alternative berthing rights.

*Unforeseen Site Conditions.* The County is responsible for the costs incurred by MMCT as a result of unforeseen site conditions as described in the memorandum accompanying Resolution No. R-993-19. However, the County's liability for unforeseen site conditions has been reduced from 75 percent of costs above \$5,000,000 to 50 percent of costs above \$5,000,000.

*Acceleration and Liquidated Damages.* The County is responsible for acceleration and liquidated damages as described in the memorandum accompanying Resolution No. R-993-19. However, under the new transaction, the County is not required to pre-allocate the \$6,000,000 acceleration and liquidated damages cap and will, instead, fund such costs as incurred.

### 4. County's Operations-Related Obligations and Off-Site Parking

The post-construction obligations regarding pier maintenance and alternative berthing remain, and the provision of off-site parking remain as described in the memorandum accompanying Resolution No. R-993-19.

5. Financing Contingency

As with the previous lease, MMCT has the right to secure financing for the project. The revised financing deadline is May 31, 2021.

6. Joint Operations Protocols

Under the new Shared Terminal concept, an additional cruise line may have a significant stake and interest in the design, construction, operation, and maintenance of the Shared Terminal. The Lease will include certain minimum requirements related to design and construction and contemplates the development of an operation protocol that will address how the shared terminal operates when both lines are present. To the extent there are conflicts related to design, construction, operation, and maintenance, the Lease will provide a dispute resolution mechanism that will be employed to address such conflicts.

D. Operating Expenses.

Beginning in the first year the Shared Terminal is operational, the Port will remit to MMCT a \$5.00 per passenger operating expense payment paid from non-MSC vessel wharfage fees to the County to reimburse MMCT for the operating costs normally borne by the County, such as utilities, security, and housekeeping expenses. This operating expense fee will escalate at 1.5% each year for the first 10 years; beginning in year 11 the operating expense fee will incur a one-time increase of \$1.19 followed by 3% annual escalation thereafter. The rate of the operating expenses payment will be reviewed by MMCT and the County in year 20 of the Agreement. Once the County reaches its non-MSC vessel Minimum Annual Guarantee (MAG), the County will pay an additional operating expense premium fee of \$3.00 per passengers, unless such passengers are embarking or disembarking from the County-designated primary third-party cruise line; if the passenger MAG is lower than 750,000 passenger movements, the County will not be required to pay the premium fee until after the 750,000<sup>th</sup> passenger movement.

Under the Lease, the County will make a minimum annual guaranteed payment of operating expense fees, even if the County has not identified a third-party cruise line to fulfill the minimum annual guaranteed payment. However, to the extent the County identifies a third-party cruise line to meet this obligation and that cruise line exceeds the minimum annual guarantee, the County will have the ability to carry over passenger movements credits to future years (subject to certain time- and quantity-based restrictions). Further, it is anticipated that any minimum annual guaranteed operating expense fee payments would be satisfied by the MAGs in a subsequent agreement with a primary third-party cruise line that is currently under negotiation.

E. Share of Non-MSC Vessel Dockage Revenue

The County will provide MMCT with 65% of non-MSC vessels' annual dockage revenue paid to the Port. This payment is estimated to be \$2,000,000 to \$4,000,000 each fiscal year, based

on a MAG of 400,000 and 750,000 passengers, respectively. This represents a 10 percent reduction to the dockage revenues that the County would have shared with MMCT under the prior lease.

During the first 5 years of the term, the County will guarantee MMCT dockage revenues from non-MSV vessels calls in the amount of \$7.7 million. MMCT will receive this payment for five years commencing on November 15, 2023 or the day the first non-MSV vessel docks at Berth 8 or 9. As with the operating expenses minimum annual guarantee, the dockage guarantee applies even if a third-party cruise line has not been identified. In 2029, assuming that Berth 10 is operational, the County will retain 100% of dockage revenue for vessels that are berthed at Berth 10. MSV will continue to receive 65% of the dockage revenue for the use of Berths 8 or 9 by non-MSV Vessels.

#### F. Parking Revenue

Consistent with the parking revenue provided in other Board-approved agreements with cruise lines, the County will receive a share of the parking revenue based on the passenger movements of the primary third-party cruise line and the County Parking Incentive, but the revenue is capped at 15 percent of the gross revenues generated at the parking garage. The parking revenue split will be reviewed by the County and MMCT in year 10 of the Lease. The County anticipates passing these revenues along to the primary third-party cruise line as part of a preferential berthing rights agreement that is under negotiation.

### **II. The Amended and Restated Amendment No. 3 to the Existing Preferential Berthing Agreement between the County and MSV**

The Amended and Restated Amendment No. 3 is necessary to secure MSV's berthing rights at the Port given the 1-year extension to the timeline for the Shared Terminal project.

The Amended and Restated Amendment No. 3 (1) maintains MSV's preferential berthing rights at Cruise Terminal C on Sundays until the earlier of the Substantial Completion of Berth 10 or October 2028; (2) establishes MSV's preferential berthing rights at Cruise Terminal D or E on Saturdays or Sundays (day to be determined) until the earlier of Substantial Completion of the Shared Terminal, or November 15, 2023; and (3) requires MSV to honor all planned calls to the Port, as long as the County agrees to provide berths for their planned calls at the Port.

### **III. Potential Primary Third-Party Cruise Line Preferential Berthing Rights Agreement**

As contemplated in the item that this Board approved through Resolution No. R-728-20, the Port has continued to have discussions with Disney to potentially serve as the primary non-MSV cruise line using the Shared Terminal. Disney has recently advised the Port that, prior to entering into a preferential berthing rights agreement with the County, it will conduct due

diligence with a competing port regarding a long-term berthing agreement at that port. Disney, however, has not foreclosed the possibility of an agreement with the County for the use of the Shared Terminal and Berth 10.

The Lease grants participation rights to the County and, if one exists, a third-party cruise line in connection with the design, construction, operation, and maintenance of the Shared Terminal. The County's obligation to MMCT to deliver the guarantees set forth in the Lease are not conditioned on the approval of an agreement with any particular third-party cruise line and, if no agreement is reached with a third-party cruise line (which agreement would require the approval of the Board), the County would be required to meet those obligations.

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

The County is expected to enjoy the economic benefits associated with more than 90 million passenger movements from MSC vessels over the 62-year term of the Lease, which will have a positive long-term economic impact. The Shared Terminal will create approximately 1,500 jobs during the construction of the project, including Berth 10. Over the long term, the operation of Berths 8 and 9 out of the Shared Terminal will create and sustain approximately 8,600 direct, indirect and induced jobs. The project will result in an estimated \$54,500,000 in annual state and local taxes and will create an additional estimated \$1,660,000,000 in total local economic activity, based on a formula set forth in a 2017 report conducted by John C. Martin Associates, LLC assessing the local and regional economic impacts of the Port.

The County will be responsible for funding an estimated \$151,200,000 for the first phase of the multi-berth Shared Terminal (\$76,000,000 of which is payable on a deferred basis over ten years after substantial completion), as set forth in the Background Section of this Memorandum. The County's additional obligations, such as environmental mitigation and unforeseen conditions may be up to an additional \$26,000,000, of which \$6,000,000 will be funded by the HMTF. The County contribution includes obligations during the construction period, as well as remittance to MMCT for any third-party cruise line's use of the facility and its infrastructure such as PBBs and FFE. The County's maximum contribution for the project would be capped at \$177,200,000 and 50% of any unforeseen site conditions.

Further, should demand require the construction of Berth 10 in the future, the County estimates that it will fund an additional \$185,205,000 to complete the Berth 10 project in subsequent fiscal years, which includes 50 percent of the costs of the shared segment of the Berth 10 concourse, estimated at \$20,000,000.

Overall, this item and MMCT's design, construction, operation and maintenance of a state-of-the-art facility with the capacity to serve three berths and a second cruise line under one terminal complex will save the County approximately \$31,000,000 compared to the previously contemplated separate projects for MMCT and the Split Terminal Design. The original County contribution contemplated to MMCT was \$50,200,000 and the separate Split Terminal Design project would have been a minimum \$343,000,000 County responsibility. The multi-berth Shared Terminal streamlines what would have been a complex coordination of construction

schedules for two projects being built in the northeast corner of the Port, eliminates the need for an elevated and sterile roadway for Berth 10, provides a more seamless risk-capped first phase of the project, maintains the port's ability to berth vessels at Berths 9 and/or 10 instead of losing business while undergoing the north bulkhead reconstruction, and benefits the environment by reducing vehicular traffic at Berth 10 through the use of electric-powered moving walkways.

By deferring the County's funding of this project over thirteen years, the Port will defer \$61,300,000 of debt service, plus debt service will be \$2,010,000 less every year because of the difference in the cost between the current and original project concepts.

MMCT will guarantee the County \$2,030,000,000 in base rent over the 62-year term. The following is a breakdown of annual revenue to be received by the County:

- (1) Base rent of \$15,200,000 per year paid quarterly in arrears, which will increase every year according to the escalations laid out in the Background section;
- (2) Additional rent on each MSC passenger move above 4.5 million passengers per year at the rate of \$5.83 per passenger movement (effective rate as of FY 2020/21), increasing 3% per year compounded annually from effective date of this Lease); and
- (3) Potential revenue for 250 County-provided parking spaces for MSC employees outside of the project boundaries, for dates designated by MMCT each year in advance at an initial annual parking cost to MMCT of approximately \$250,000.

With the County delaying the construction of Berth 10, the approximately six acres of land will temporarily stay within the Terminal Link (Miami) LLC terminal area and continue to generate cargo wharfage and dockage revenue for the Port. There are also revenue-generating opportunities for the County by using the approximately three-acre site initially planned for the Split Terminal Design landside terminal for other maritime uses that could potentially generate between \$780,000 to \$1,560,000 annually as per the current Port Tariff for an open ground lease or warehouse space or more if the County finds an opportunity for an alternate use of the land that could generate additional revenue.

MMCT will maintain and operate the Shared Terminal, thus the County will not be incurring operating expenses and will in turn provide the operating expenses guarantee as described in Section I(D) of the Background and dockage payments as described in Section I(E). The County will guarantee to MMCT a total of \$183.8 million in dockage and operating expenses payments over 30 years. This amount is anticipated to be paid from the revenues generated to the Port from third-party cruise lines using Berths 8 and 9, in the case of the dockage guarantee, and the Shared Terminal, in the case of the operating expenses payment.

Honorable Chairman Jose "Pepe" Diaz  
and Members, Board of County Commissioners  
Page No. 12

The Port will fund this project from a combination of the Port's commercial paper, operating revenues, bond proceeds, and grants.

**Track Record/Monitor**

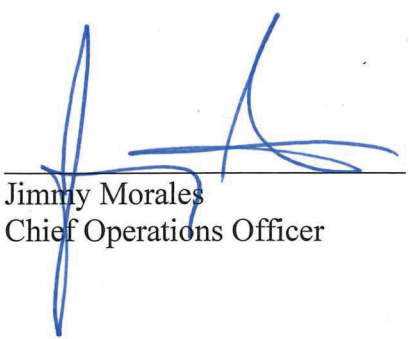
The Seaport Department staff members responsible for monitoring this Agreement are Hydi Webb, Deputy Director, Andy Hecker, Managing Port Director, CFO, and Basil Binns, Assistant Director, Business Development.

**Disclosure of Interest**

In accordance with Section 2-8.6.5 of the Miami-Dade County Code, the corporate officers of MMCT are Pierfrancesco Vago, Ruben Rodriguez, and Gianluca Suprani with corporate offices at 6750 North Andrews Avenue, Suite 100, Fort Lauderdale, Florida 33309.

**Delegated Authority**

In accordance with Section 2-8.3 of the Miami-Dade County Code, the Board by this resolution, delegates authority to the County Mayor or County Mayor's designee to take the following actions on behalf of the County: (a) approve Major Capital Modifications; (b) approve Restricted Transfers (subject to review by the Board); (c) approve the form of Alternate Security proposed in satisfaction of any of the requirements of the Lease or Florida Statutes Section 255.05; (d) approve or revise timelines and completion dates; (e) approve certain changes to the Demised Premises not to exceed 10% of the area thereof; (f) exercise all rights granted to the County and contained in the Agreement approved hereby, other than those expressly reserved by the Board; (g) authorize technical corrections that do not have fiscal impacts to the County, including amendments to the Lease to conform to the requirements of MMCT's lender, as long as those amendments do not (1) authorize encumbrances of the County's real property interest in the Demised Premises or (2) in the judgment of the County Mayor or County Mayor's designee, create unreasonable risk and/or burdens on the County in regard to the County's ability to enforce the terms of the Lease or otherwise; and (h) take all actions necessary to effectuate the transactions contemplated herein.



Jimmy Morales  
Chief Operations Officer



## MEMORANDUM (Revised)

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

**DATE:** February 17, 2021

**FROM:**   
Gen Bonzon-Keenan  
Successor 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
- ☐ 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 ☒ \*7 vote minimum requirement
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved *Daniella Levine Carr* Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(J)(1)  
2-17-21

RESOLUTION NO. R-103-21

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED DEVELOPMENT, MANAGEMENT, AND LEASE AGREEMENT ("LEASE") WITH MSC MIAMI CRUISE TERMINAL LLC ("MMCT") WITH A TERM OF 62 YEARS GENERATING \$2,030,000,000.00 IN RENTAL PAYMENTS TO THE COUNTY LESS GUARANTEED DOCKAGE AND OPERATING EXPENSES PAYMENTS OF \$183,800,000.00 AND OBLIGATING MMCT TO DESIGN, CONSTRUCT, FINANCE, OPERATE, AND MAINTAIN COUNTY-OWNED BERTHS AND A SHARED TERMINAL COMPLEX WITH MMCT BEARING APPROXIMATELY \$400,000,000.00 IN CONSTRUCTION COSTS AND THE COUNTY CONTRIBUTING APPROXIMATELY \$177,200,000.00 PLUS 50 PERCENT OF UNFORESEEN SITE CONDITION COSTS EXCEEDING \$5,000,000.00 AND THE ESTIMATED \$20,000,000.00 COST OF THE SHARED SEGMENT OF THE BERTH 10 CONCOURSE ATTRIBUTABLE TO THE COUNTY; APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED AMENDMENT NO. 3 TO PREFERENTIAL BERTHING AGREEMENT WITH MSC CRUISES S.A.; AUTHORIZING AND APPROVING, BY A MAJORITY OF THE ENTIRE MEMBERSHIP OF THE BOARD, MMCT'S CONSTRUCTION, OPERATION, AND MAINTENANCE OF PORT FACILITIES AS PROVIDED IN SECTION 2-11.6 OF THE CODE OF MIAMI-DADE COUNTY; WAIVING THE PROPERTY APPRAISAL AND MARKET VALUE DISCLOSURE REQUIREMENTS OF SECTION 2-10.4.2 OF THE CODE OF MIAMI-DADE COUNTY AND COUNTY RESOLUTION R-333-15; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL DELEGATED AUTHORITIES IN THE ACCOMPANYING MEMORANDUM SUBJECT TO CONSIDERATIONS REGARDING THE APPROVAL OF THE ALTERNATIVE FORM OF SECURITY; FINDING THAT THE PROJECT IN THE LEASE IS A QUALIFYING PROJECT UNDER SECTIONS 125.012(2) AND 125.012(24), FLORIDA STATUTES; WAIVING RESOLUTION NO. R-130-06; AND DIRECTING THE APPOINTMENT OF STAFF TO MONITOR COMPLIANCE

**WHEREAS**, this Board desires to approve and authorize the execution of an Amended and Restated Terminal Development Management and Lease Agreement (“Lease”) between Miami-Dade County (“County”) and MSC Miami Cruise Terminal LLC (“MMCT”), a subsidiary of MSC Cruises S.A. (“MSC”), pursuant to which MMCT is obligated to design, build, finance, operate, and maintain Berths 8 and 9 and a shared terminal complex (the “Shared Terminal”) to accommodate MSC passengers and passengers of other cruise lines, including those passengers embarking and disembarking from a vessel calling at the adjacent Berth 10 to be constructed upon the future approval of this Board; and

**WHEREAS**, the Board finds that the development of the Shared Terminal will be able to accommodate the world’s largest cruise ships, including LNG-fueled vessels, significantly increase the Port’s annual passenger throughput and serve a paramount port, public, and governmental purpose; and

**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.** Adopts the foregoing recitals as true and correct and incorporates said recitals as set forth herein.

**Section 2.** Approves and authorizes the County Mayor or County Mayor’s designee to execute the Lease between the County and MMCT, in substantially the form attached hereto as Exhibit 1 and made a part hereof, with a term of 62 years generating \$2,030,000,000.00 in rental payments to the County less \$183,800,000.00 in guaranteed dockage and operating expenses payments and obligating MMCT to design, construct, finance, operate, and maintain Berths 8 and

9 and a County-owned shared terminal complex with MMCT bearing approximately \$400,000,000.00 in construction costs and the County contributing approximately \$177,200,000.00 plus 50 percent of costs from unforeseen site conditions exceeding \$5,000,000.00 and the estimated \$20,000,000.00 cost of the shared segment of the Berth 10 concourse attributable to the County, provided however that such authorization is conditioned upon the prior execution of such documents by MMCT. The Board further authorizes the County Mayor or County Mayor's designee to take all actions necessary to effectuate the Lease and to exercise all rights set forth therein, including any rights of termination, unless reserved to the Board.

**Section 3.** Approves and authorizes the County Mayor or County Mayor's designee to execute the Amended and Restated Amendment No. 3 to the Preferential Berthing Agreement, in substantially the form attached hereto as Exhibit 2 and made a part hereof, and authorizes the County Mayor or County Mayor's designee to take all actions necessary to effectuate the Amended and Restated Amendment No. 3 and to exercise any and all rights as set forth therein, including any rights of termination, unless reserved to the Board.

**Section 4.** Authorizes and approves, by a majority of the entire membership of the Board, MMCT and its successors and assigns to construct, operate, and maintain port facilities as provided in Section 2-11.6 of the Code of Miami-Dade County, all in strict accordance with the provisions of the Lease.

**Section 5.** Finds it in the best interest of the County to waive the property appraisal and related market value reporting requirements of County Code Section 2-10.4.2 and County Resolution R-333-15 in conjunction with the approval of the Lease.

**Section 6.** Authorizes the County Mayor or County Mayor's designee to exercise all delegated authorities described in the accompanying memorandum. Provided, however, that in

connection with the County Mayor or County Mayor's designee's approval of the form and amount of any alternative form of security proposed in satisfaction of any requirements in the Lease or Section 255.05, Florida Statutes, the County Mayor or County Mayor's designee shall consider the nature, history, and financial capabilities of the contracting parties, the contractual obligations secured by the alternative security, and the contractual safeguards in place to protect payments to persons performing the work.

**Section 7.** Finds that the project described in section 2 is a qualifying project under Section 125.012(2) and 125.012(24), Florida Statutes, and that the contractual obligations contemplated herein are undertaken by tenants or other uses of the project or providers of service in, on, or in connection with such qualifying project and as such, the County is authorized to enter into these contracts without competitive bidding.

**Section 8.** Directs the County Mayor or County Mayor's designee, pursuant to County Resolution No. R-791-14, to provide a copy of the Lease and all exhibits and riders thereto to the County Appraiser within 30 days of the execution or approval thereof. The Board further directs the County Mayor or County Mayor's designee, pursuant to Resolution No. R-974-09, to record the Lease in the public records and to provide a copy of such recorded instrument to the Clerk of the Board within 30 days of execution and final acceptance. This Board directs the Clerk of the Board, pursuant to Resolution No. R-974-09, to attach and permanently store a recorded copy of such instrument in accordance herewith together with this resolution.

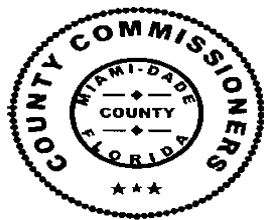
**Section 9.** Waives the requirements of Resolution No. R-130-06 as in the best interests of the County.

**Section 10.** Directs the County Mayor or County Mayor's designee to appoint staff to monitor compliance with the agreements and transactions approved and authorized herein.

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

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

The Chairperson thereupon declared this resolution duly passed and adopted this 17<sup>th</sup> day of February, 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: **Melissa Adames**  
 Deputy Clerk

Approved by County Attorney as  
 to form and legal sufficiency.

MAG

Miguel A. Gonzalez

**AMENDED AND RESTATED TERMINAL DEVELOPMENT  
MANAGEMENT AND LEASE AGREEMENT**

**THIS AMENDED AND RESTATED TERMINAL DEVELOPMENT MANAGEMENT AND LEASE AGREEMENT** (this “**Lease**”) is made this \_\_\_\_ day of February, 2021, by and between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida (with its permitted successors and assigns, hereinafter referred to as “**County**”), and **MSC MIAMI CRUISE TERMINAL LLC**, a Florida limited liability company (with its permitted successors and assigns) (hereinafter referred to as “**Tenant**”).

**RECITALS**

A. The County owns certain lands located in Miami-Dade County, Florida, on which the Port is located.

B. The County operates the Port through the Miami-Dade County Seaport Department which is a department of the County.

C. The Parties desire that Tenant expand the cruise port facilities, as defined in Section 315.02, Florida Statutes, at the Port by developing and constructing the Project, as described in the Project Description, for public, port, and governmental purposes as contemplated by Chapter 315, Florida Statutes, all in accordance with the Cruise Terminals Building Minimum Requirements. The Project shall be built on the Demised Premises more particularly described on **Attachment 1** attached hereto and incorporated herein.

D. The County owns the Demised Premises.

E. As a political subdivision of the State of Florida, the County’s ownership interest in the Demised Premises is constitutionally immune from ad valorem taxation.

F. The County has agreed to lease Tenant the Demised Premises to develop, operate, and maintain in accordance with the terms and conditions contained in this Lease.

G. Tenant has agreed to develop the port facilities consisting of the Project, at its cost and expense (subject to Section 10(b) of this Lease), in accordance with the terms and conditions contained in this Lease in accordance with the Development Rider, a copy which is attached hereto as **Exhibit B** and incorporated herein.

H. Tenant has agreed to operate and maintain the Demised Premises, the Project, including, without limitation, the Cruise Terminals Building (as part of a functional, shared facility which shall be capable of serving up to three Vessels simultaneously, Berth 8 and Berth 9), and the Parking Element for Permitted Uses, in accordance with the terms and conditions contained in the Terminal Operating Rider, a copy of which is attached hereto as **Exhibit C** and incorporated herein.

I. The County has agreed to accomplish certain activities in support of the Project, at its cost and expense, including the Contributions provided for in Section 10(b) of this Lease, and

upon Substantial Completion maintain the Pier, all in accordance with the terms and conditions set forth in this Lease.

J. In consideration of the Contribution made in accordance with Section 10(b) and as a material inducement to the County's entry into this Lease, the Tenant has agreed to design, construct, operate, and maintain the Project (subject to the County's Maintenance Obligations), in accordance with the Cruise Terminals Building Minimum Requirements, Cruise Terminals Conceptual Plans (as they may evolve as provided in the Development Rider), and the Operation Protocol and as otherwise provided in the Development Rider and Terminal Operating Rider, for the shared use and benefit of third-party cruise lines as the County may designate as provided in the Terminal Operating Rider including (without limitation) in respect of Berth 10, once constructed by the County, all during the Operating Term. The Parties acknowledge their intention to share the costs of constructing a Combined Concourse in accordance with Section 7 of the Development Rider and that the County may opt, on a date following Substantial Completion (or as soon as permitted under the Development Rider), to construct, at its cost and expense, Berth 10 and the Concluding Berth 10 Concourse, for the use by one or more third-party cruise lines (and potentially MSC, subject to the County and Tenant or MSC, or both, reaching a future agreement on the terms of such use), the passengers of which shall be processed in the Cruise Terminals Building.

K. The County and the Tenant acknowledge and agree that adequate port facilities are essential for the welfare of the inhabitants of the County and the industrial and commercial development of the County and the Parties agree that the development and use of the Project in accordance with this Lease will significantly improve the port facilities at the Port and this Lease constitutes the performance of proper public, port, and governmental functions by the County and as such the development, operation, and maintenance of the Project by Tenant pursuant to this Lease constitutes public property utilized for a paramount public, port, and governmental purpose in accordance with Section 315.11, Florida Statutes and Section 196.012, Florida Statutes.

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

1. **Recitals; Exhibits, Definitions.** The Recitals contained herein are true and correct and incorporated into and made a part of this Lease. This Lease is composed of this document and all of its exhibits and attachments identified in this document, all of which constitute an integral part of this Lease, including, without limitation, the following: Exhibit A—Definitions; Exhibit Attachment 1—Description of Demised Premises; Exhibit B—Development Rider (including Attachment 6 Cruise Terminals Building Conceptual Plan); Attachment 2 —Base Rent and Additional Rent; Exhibit C—Terminal Operating Rider; Attachment 10 – Operating Expense Contribution Minimum Agreement and County Vessel Dockage; Exhibit D—Permitted Exceptions; and Exhibit E—Memorandum of Lease. Except as otherwise set forth herein, the capitalized terms used throughout this Lease shall have the meanings prescribed in Exhibit A.

1(A). **Lease.** This Lease amends and restates in its entirety the Terminal Development Management and Lease Agreement by and between the County and Tenant dated September 30, 2019 as amended by the Standstill Agreement dated March 26, 2020 and the First Amendment

dated July 22, 2020, all of which shall be deemed null and void and shall be superseded in all respects by this present Lease.

2. **Interpretation.** In construing the terms of this Lease, unless the context expressly otherwise requires:

(a) All references to Articles, Sections, Schedules, Attachments or Exhibits shall, unless otherwise indicated, refer to the Articles, Sections, Schedules, Attachments or Exhibits in this Lease.

(b) The captions of the Sections, and Subsections of this Lease are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of the articles, sections, exhibits, definitions, or other provisions hereof.

(c) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(d) All notices to be given hereunder and responses thereto shall be given within a reasonable time, unless a certain number of days is specified.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, delayed or conditioned.

(f) All references to days shall mean calendar days unless Business Days are specified. In the event that any time period set forth herein expires on a day which is not a Business Day, then such time period shall automatically extend to the first Business Day thereafter.

(g) All amounts referred to and payable hereunder shall be payable in the legal tender of the United States of America.

(h) Each reference to a statute or other Applicable Laws, includes any statute or Applicable Laws which amend, extend, consolidate or replace the statute or Applicable Laws after the Lease Date.

3. **Representations by Tenant.** Tenant represents to County that:

(a) Tenant is a duly organized and validly existing company under the laws of Florida and has all requisite power and authority for the ownership and operations of its properties and for the carrying on of its business as now conducted and as now proposed to be conducted. Tenant is duly qualified, in good standing and is authorized to do business in Florida wherein the nature of the activities conducted by it makes such qualification or authorization necessary.

(b) Tenant has duly authorized the execution, delivery and performance of this Lease and has obtained all required internal corporate approvals in connection herewith, and, assuming due authorization, execution and delivery of this Lease by County, this Lease will be a valid, binding and enforceable agreement of the Parties.

(c) The execution and delivery of this Lease by Tenant does not, and the performance by Tenant of its obligations under this Lease will not:

- (i) Conflict with or result in a violation or breach of any of the terms, conditions or provisions of the organizational documents of Tenant;
- (ii) Conflict with or result in a violation or breach of any term or provision of any law, order, permit, statute, rule, or regulation, applicable to Tenant; or
- (iii) Result in a breach of, or default under (or give rise to right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other similar instrument or obligation to which Tenant may be bound or which are necessary for County to enforce the terms of this Lease.

(d) To the best of Tenant's knowledge, there is no Legal Proceeding before any court or by any Governmental Authority pending or overtly threatened or publicly announced against Tenant, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the ability of Tenant to perform its obligations hereunder.

(e) To the best of Tenant's knowledge, Tenant is in compliance in all material respects with Applicable Laws pertaining to Tenant's business.

(f) Tenant does not unlawfully discriminate against any employee or applicant for employment because of age, ancestry, color, creed, disability, domestic partner or marital status, medical condition, national origin, race, religion, sex, sexual orientation, or any other basis prohibited by Applicable Law.

4. **Representations by County.** County represents to Tenant that:

(a) County is a duly organized and validly existing political subdivision of the State of Florida and has all requisite power and authority for the ownership and operations of its properties for Permitted Uses and for the carrying on of its business as now conducted and as now proposed to be conducted.

(b) Under the laws of the State of Florida, the County is duly authorized to enter into, execute and deliver this Lease, to undertake the obligations contemplated by this Lease and to carry out its obligations hereunder.

(c) By duly adopted resolution, the County has duly authorized the execution and delivery of this Lease and this Lease constitutes a legal, valid and binding obligation of County, enforceable against County in accordance with its terms and in accordance with the laws of State of Florida.

(d) The execution and delivery of this Lease by County does not, and the performance by County of its obligations under this Lease will not:

- (i) Conflict with or result in a violation or breach of any of the terms, conditions or provisions of the organizational documents of County;
- (ii) Conflict with or result in a violation or breach of any term or provision of any law, order, permit, statute, rule, or regulation applicable to County; or
- (iii) Result in a breach of or default (or give rise to a right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other similar instrument or obligation to which County may be bound, or which are necessary for Tenant to continue to enjoy the rights and privileges conferred upon and granted to Tenant under this Lease.

(e) To the best of County's knowledge, there is no Legal Proceeding before any court or by any Governmental Authority pending or overtly threatened or publicly announced against County, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect against County, or any other agreement or instrument entered into by County in connection with the transactions contemplated hereby, or on the ability of Tenant to perform its obligations hereunder.

(f) To the best of County's knowledge, the Demised Premises are in full compliance with all Environmental Laws and the requirements of any authorization or permit issued under such Environmental Laws.

(g) The County knows of no Hazardous Materials present on or in the Demised Premises or deposited or located on any part of the Demised Premises.

(h) To the best of County's knowledge, there are no past, pending or threatened Environmental Claims against County or any other Person, directly or indirectly, associated with the Demised Premises.

(i) To the best of County's knowledge, there are no threatened or pending annexations, moratoriums or condemnations or other judicial or administrative proceedings against the County which affect in a material way any part of the Demised Premises.

(j) As of the date hereof, the County has received no citation or similar official notice of any civil or criminal violation which affect the Demised Premises in a material way.

(k) To the best of the County's knowledge, the County is in full compliance with all Deed Restrictions regarding the use of the Port and the Demised Premises and the County has not received notice from any Party claiming that title to the Port has reverted as a result of violation of the Deed Restrictions.

##### 5. **Acknowledgement by the County.**

The County acknowledges that it has received, read and understood the MSC Cruises' code of conduct (the "**Code of Conduct**"), the current version of which is available under

the following link: <https://www.msccruises.com/en-gl/Assets/MSC-CRUISES-CODE-OF-BUSINESS-CONDUCT.pdf>.

To the extent the Code of Conduct is updated, from time to time, Tenant shall provide the County with an updated version. It is expressly agreed that the Code of Conduct places no affirmative obligation upon the County or the County's agents or contractors, during the Term.

**6. Demised Premises; Surveys; Delivery of Demised Premises.**

(a) Demised Premises. In consideration of, and subject to, all payment and performance obligations undertaken by Tenant herein, County does hereby lease and demise unto Tenant and Tenant does hereby lease and accept from County, upon the terms and conditions and legal description hereinafter set forth the Demised Premises, subject to the County's Reserved Preferential Berthing Rights and its right to access and use the Demised Premises for the purpose of operating Berth 10. For the avoidance of doubt, the Berth 10 Concourse, as depicted on the yet-to-be-completed Berth 10 as-built plans shall not be deemed or construed to be part of the Demised Premises.

(b) Use of Demised Premises. The Tenant acknowledges that the Cruise Terminals Building is intended to be used by up to three cruise Vessels simultaneously, such that up to 18,000 passengers may embark onto Vessels at Berths 8, 9, and 10 during a single daily turn. The Tenant acknowledges that the County intends to enter into one or more preferential berthing agreements utilizing the County's Reserved Preferential Berthing Rights to provide preferential berthing rights to third-party cruise lines at the Project, such rights to be exercised in accordance with and subject to the terms of this Lease and, more particularly, the Terminal Operating Rider. Accordingly, the Tenant agrees to operate the Project as a shared facility not for the sole use by the Tenant and MSC Vessels, but also for the simultaneous use by Non-MSC Vessels on the terms set out in this Lease. The Tenant further agrees to grant access rights to the Demised Premises to any third-party cruise line(s) (together with their personnel, passengers, agents and contractors) using Berths 8, 9, or 10 when exercising its rights to use the same whether pursuant to the County's Reserved Preferential Berthing Rights (when using Berth 8 or Berth 9) or the County's ownership of Berth 10 holding all usage rights with respect to Berth 10 in accordance with the terms of the Terminal Operating Rider. The Parties agree that the County's rights of access and use of the Demised Premises in accordance with the terms of this Lease for the purposes set forth herein (including, without limitation, the Terminal Operating Rider) shall be specifically enforceable.

(c) Berth 10 Concourse. The Parties acknowledge that the County intends to construct, at its sole cost and expense, the Berth 10 Concourse in accordance with the terms of the Development Rider to the extent it constructs Berth 10. Notwithstanding the foregoing, pursuant and subject to the terms of Section 7 of the Development Rider, the Parties shall share equally the costs of design and construction of the Combined Concourse, with, however, the County being fully responsible for the costs, design and construction of the Concluding Berth 10 Concourse Element. For the avoidance of doubt, Berth 10 and the Berth 10 Concourse (including the Berth 10 component within the Combined Concourse as well as the Concluding Berth 10 Concourse Element) do not form part of the Project and are not included in the Demised Premises. The Tenant acknowledges that part of the Berth 10 Concourse shall be adjacent to or over a portion of the Demised Premises. The Tenant shall grant access rights over the Demised Premises to the County pursuant to an easement to be granted by the Tenant over and across the Demised Premises to the

County for the construction, maintenance, and operation of the Berth 10 Concourse in accordance with the Development Rider and Terminal Operating Rider respectively.

(d) Survey. The Demised Premises are represented in the Survey and legal description which is attached hereto as Exhibit B. The Parties hereby mutually stipulate that the measurement of the Demised Premises as determined by the Survey shall be controlling for all purposes hereof.

(e) Availability of Demised Premises. The Parties acknowledge that as of the Lease Date, the Demised Premises are not available for Tenant's possession or use. Pursuant to Section 2 of the Development Rider, the County may grant the Tenant with Early Access to various parcels that make up the Demised Premises, however it is acknowledged by the Tenant that the full site of the Demised Premises shall only become available to Tenant upon the Turnover Date.

7. **Term (Preliminary Term and Operating Term).**

(a) The Preliminary Term shall commence on the Lease Date and end on the Rent Commencement Date.

(b) The Operating Term shall commence on the Rent Commencement Date and terminate at 5 p.m. (local time) on the date sixty-two (62) years after the Rent Commencement Date, unless sooner terminated in accordance with the terms and provisions of this Lease.

(c) If Major Capital Modifications or Capital Improvements to the Project are required during the final eight (8) years of the Operating Term, the Parties agree to use commercially reasonable efforts to negotiate an extension of this Lease to enable further capital investment in the Project by Tenant, on mutually agreeable terms. Nothing contained herein shall be deemed as a commitment or obligation to extend this Lease beyond the Operating Term provided for herein, or a limitation on the terms to be negotiated, but shall be understood merely as the Parties' good faith commitment to negotiate.

8. **Development of Project.** Tenant shall, at its cost (subject to Subsection 10(b) of this Lease), develop and construct the Project and the County, at its cost, shall be responsible for the County Pre-Turnover Obligations and the County Site Obligations, all in accordance with the Development Rider attached hereto and incorporated herein as Exhibit C and the Contributions provided in Subsection 10(b) of this Lease. Based on the Project Plans and Specifications and the design requirements of Subsection 1(b) of the Development Rider, which provide for a design life of the Project of a minimum of seventy-five (75) years and the Tenant's maintenance obligations set forth in the Terminal Operating Rider, Tenant and the County believe that the port facilities comprising the Project will have an economic useful life that will extend beyond the Operating Term.

9. **Base Rent.**

(a) No Rent shall be due or payable by the Tenant during the Preliminary Term. The County and the Tenant agree that no rent shall be due prior to the Rent Commencement Date.

(b) During the Operating Term, the Tenant shall pay the County Base Rent for the Demised Premises. The Base Rent shall be Fifteen Million Two Hundred Thousand Dollars

(\$15,200,000.00) per annum as increased annually in the manner set forth in Subsection 9(d) below. The Tenant and the County have negotiated the Base Rent taking into account the Tenant's maintenance obligations that are set forth in the Terminal Operating Rider; the Operating Expense Contribution made pursuant to the Operating Rider shall account for the additional maintenance burden necessitated by third-party use of the Project and the third-party use of the Cruise Terminals Building, including access to the Berth 10 Concourse, (and other elements of the Project, including but not limited to the Parking Element, Intermodal Area and Provision Staging Areas) and access to Berth 10.

(c) Commencing on the Rent Commencement Date and continuing throughout the Term, Base Rent shall be paid quarterly in arrears in accordance with the terms and conditions set forth in the Terminal Operating Rider; provided that the first payment of Base Rent shall be prorated to reflect the actual number of days rent is to be paid during such period.

(d) Base Rent shall increase one and one-half percent (1.5%) per year compounded annually, beginning in the second Lease Year through the twenty-first (21<sup>st</sup>) Lease Year. Beginning in the twenty-second (22<sup>nd</sup>) Lease Year through the forty-first (41<sup>st</sup>) Lease Year Base Rent shall increase by three percent (3%) per year compounded annually. Beginning with the forty-second (42<sup>nd</sup>) Lease Year until the end of the Operating Term Base Rent shall increase at the beginning of each Lease Year by the lesser of: (i) the CPI Formula or (ii) three percent (3%), compounded annually, except that in no event shall the Base Rent be reduced by operation of this formula. An illustrative schedule of Base Rent is set forth on **Exhibit D** attached hereto.

#### 10. **Tenant Conveyance and Capital Payment.**

(a) Pursuant to the terms of this Lease, Tenant shall without charge convey to the County all right, title and interest to the improvements of the Project by bill of sale free and clear of any liens or encumbrances subject only to Tenant's retained leasehold set forth in this Lease, no later than Substantial Completion ("**Tenant Conveyance**"). Tenant shall operate the Project on behalf of the County, as a cruise terminal and for marine and seaport purposes only in accordance with the Permitted Uses, for a public and port purpose. County and Tenant agree that no portion of the cost of the Project is intended as rent, and the Project would not be undertaken by Tenant unless the Tenant retains and possesses its leasehold interest in the Project, after the Tenant Conveyance, without any further consideration to the County except for (1) the Rent Tenant is paying for the use of the Demised Premises as provided in this Lease, (2) the County's reservation of its rights to access and use the Demised Premises pursuant to the County's Reserved Preferential Berthing Rights (in respect of Berths 8 and 9) as provided in the Terminal Operating Rider and the County's status as owner and operator of Berth 10 to utilize the Cruise Terminals Building pursuant to the Terminal Operating Rider; and (3) the maintenance and operation of the Project as provided in the Terminal Operating Rider.

(b) The County shall make the following contributions in respect of the County's agreed-upon share of the costs of the Project (collectively, the "**Contributions**"):

- (i) the amount of Sixty Million Dollars (\$60,000,000.00) (the "**USD 60m Funding**") during the Preliminary Term in accordance with Section 16 of the Development Rider;

- (ii) the amount of Seventy-Six Million Dollars (\$76,000,000.00) plus interest (except as to Six Million Dollars (\$6,000,000.00) thereof, which shall be interest free) (the “**USD 76m Funding**”) during the Operating Term in accordance with Section 16 of the Development Rider; and
- (iii) the reimbursement to the Tenant in the amount of Fifteen Million Two Hundred Thousand Dollars (\$15,200,000.00) on or before the end of the first Lease Year.

11. **Additional Rent.** In addition to the Base Rent, and in the same manner of payment provided in this Lease for Base Rent, Tenant shall pay the County the Additional Rent. An illustrative schedule of Additional Rent is set forth on **Attachment 2** attached hereto.

12. **Intangible Taxes and Ad Valorem Taxes.** Tenant’s use of the Demised Premises is subject, under existing law, to the annual intangible tax imposed by Chapter 199 of the Florida Statutes. Following the Tenant Conveyance, if any ad valorem real property taxes shall be levied with respect to the Demised Premises, including the Project or Tenant’s leasehold interest therein (other than intangible taxes) during the Operating Term of this Lease, the Tenant shall, to the extent permitted by then Applicable Law, be permitted to reduce the amount of Base Rent otherwise due to the County under this Lease up to the amount of the ad valorem taxes due and payable by the Tenant each year up to the amount of the Base Rent for such year. The term “ad valorem taxes” shall include any ad valorem taxes payable to the County, the City, the School Board, and any special taxing districts.

13. **Taxes and Fees.** During the Term, Tenant shall be required to pay all applicable Taxes and Fees of any nature which derive from Tenant’s design, construction, occupancy, possession, lease of, use, sublet and/or operation of the Demised Premises and the Project, subject to Section 12 above, and subject to any applicable exemption provided under Florida Statutes as a result of the Project constituting a “port facility.”

13A. **Other Payments.** The Tenant shall further pay the County such other amounts as may be due under the Lease, including those payments specified in Subsections 5(c) and 5(d) of the Terminal Operating Rider. The County shall pay to the Tenant such amounts as may be due under the Lease, including those payments specified in Sections 5 and 10 of the Terminal Operating Rider.

14. **Terminal Operations.**

(a) At all times during the Term, Tenant shall use and operate the Project in accordance with the Terminal Operating Rider (including the Operation Protocol), Applicable Laws, the Deed Restrictions and all applicable terms and conditions hereof. Notwithstanding anything herein to the contrary, Tenant, including all future successors, assigns, contractors and subcontractors of all tiers and any other person who may receive operating rights with respect to the Project which may result from the foreclosure, exercise of remedies or otherwise, shall be fully and unconditionally responsible for complying with all conditions of this Lease.

(b) At all times during the Term, Tenant (or its designated terminal operator) shall be responsible for providing the labor, equipment, furniture, fixtures and systems necessary to operate the Cruise Terminals Building and Berth 8 and Berth 9 in accordance with the requirements of the Terminal Operating Rider (including the Operation Protocol).

15. **Use of Demised Premises.** The Demised Premises shall solely be used for the Permitted Uses. The County represents and warrants to Tenant that the County is the owner of fee simple title to the Demised Premises and that title to the Demised Premises has not reverted pursuant to the Deed Restrictions. The County does not warrant fitness of the Demised Premises for any particular use or purpose, except as otherwise provided in this Lease. Prior to the Lease Date, Tenant represents and warrants that Tenant has obtained a leasehold title commitment from a reputable title insurer authorized to conduct business in the State of Florida.

16. **Inspection by County of Demised Property.** In addition to those rights provided to the County in the Development Rider and Terminal Operating Rider, the County and its authorized representatives, upon reasonable written notice (delivered not less than three (3) Business Days prior to the anticipated inspection) and in the presence of a representative of Tenant (and a permitted Sublessee, if the Sublessee's space is to be inspected), shall have the right to enter the Demised Premises at reasonable times during normal business hours for the purpose of inspecting the same to assure itself of Tenant's compliance with the provisions of this Lease other than while any Vessel is berthed at the Cruise Terminals Building. Notwithstanding the foregoing, the County shall at all times be entitled to enter the Demised Premises without notice or restriction to address emergencies or in the exercise of its police powers. During the Operating Term, the County shall ensure that any inspection of, or entrance into, the Demised Premises shall not unreasonably affect or otherwise unduly interfere with ongoing operations at the Cruise Terminals Building and Berths 8 and 9.

17. **Ownership of Project and Demised Premises; Encumbrances of Fee Simple Title.**

(a) Following the Tenant Conveyance, the County shall own fee simple title to the Demised Premises, the improvements of the Project and any Capital Improvements subject to the Tenant's leasehold interest in the Demised Premises, the improvements of the Project and any Capital Improvements under this Lease. For the avoidance of any doubt, the transfer of ownership of the improvements (and any Capital Improvements) made to the Demised Premises by Tenant to the County pursuant to the Tenant Conveyance shall not be deemed or construed to affect in any manner whatsoever the rights of Tenant under this Lease with respect to the use and operation of the Demised Premises, including, without limitation, the improvements constructed thereon, during the Operating Term.

(b) The County shall not be obligated to encumber County's fee simple interest in the Demised Premises or any other County-owned real property, and Tenant is expressly prohibited from taking any actions or authorizing any third parties from taking any actions, that would have the effect of encumbering the fee simple title of the Demised Premises or any other County-owned real property, and any attempt by Tenant, or any other third party acting on Tenant's behalf or pursuant to Tenant's authority, to encumber the County's fee simple interest in the Demised Premises or any other County-owned real property shall be void ab initio.

(c) Following Substantial Completion, the County, at its sole cost and expense, shall be fully responsible for the Pier (excluding the Gangways, and all Pier related lights, lighting fixtures, equipment, poles, and associated utilities, all of which are Tenant's sole responsibility) for the remainder of the Operating Term on the following terms and conditions: (i) the County shall have the obligation to rebuild the Pier in the event of a Casualty, (ii) the County shall at all times perform the County's Maintenance Obligations; (iii) the County shall be responsible for security at the Pier at all times except when a Vessel is berthed at Berth 8 and/or at Berth 9 or when provisioning or other Pier-side terminal or Vessel activities are ongoing; and (iv) the County shall at all times have access to the Pier provided, however, the County shall not interfere with or otherwise disrupt the operations of the Cruise Terminals Building or either berth while a Vessel is docked. In the event the County fails to maintain the Pier as required by this Lease and such failure creates a safety issue, the Tenant shall promptly advise the County of the issue and the required repair to the Pier and may elect to undertake the repair itself pursuant to Section 18 of the Terminal Operating Rider.

(d) Following Substantial Completion, the County shall be fully responsible for the County's Maintenance Obligations in accordance with Section 15 of the Terminal Operating Rider.

18. **Personal Property.**

(a) All of Tenant's or Sublessee's personal property including, without limitation, any Tenant Property in, or used in connection with, the Demised Premises shall be and remain solely Tenant's property, or the property of any Sublessee. Tenant and any Sublessee shall have the right to install, in the Demised Premises, Tenant Property including any Sublessee's personal property and other property of Tenant required by Tenant or used by it in its business, and if installed by Tenant, or the property of any Sublessee to remove any or all such Tenant Property or other property of Tenant from time to time during and upon termination or expiration of this Lease. In connection herewith, Tenant shall repair all damage Tenant causes in connection with removing any applicable Tenant Property.

(b) The Parties agree that the third-party cruise lines operating the Non-MSVessel(s) at Berths 8, 9, and/or 10 shall have the right to bring personal property onto the Demised Premises for the purposes of processing their passengers pursuant to the terms of the Terminal Operating Rider.

19. **Liens against Tenant Property.** The County hereby waives and relinquishes any contractual, statutory or other landlord's liens, all rights of levy, distraint or security that County may now or hereafter with respect to this Lease, including without limitation any lien rights the County may have against any of the Tenant Property including any Sublessee's personal property or any party claiming an interest in the Tenant Property or a portion thereof, whether for Rent or otherwise, and the County disclaims any landlord lien rights and any interest in such Tenant Property and agrees to assert no claim thereto. The County further agrees to execute and deliver such instruments reasonably requested by Tenant's Lender from time to time, in a form reasonably acceptable to County, to evidence or effect the aforesaid waiver and agreements of the County set forth in this Section 19.

20. **Minor Capital Modifications.** During the Operating Term of this Lease, and subject to the additional requirements set forth in Section 21 below for Major Capital Modifications, Tenant shall be entitled to make capital modifications to the Project (with the exception of the Pier which shall require the express written approval of the County, which shall not be unreasonably withheld, conditioned or delayed), provided:

(a) Such capital modifications do not materially and adversely interfere with County's or any other Port user's operations on any property outside the boundaries of the Demised Premises;

(b) Such capital modifications do not materially and adversely affect the ability of the Cruise Terminals Building to accommodate up to three Vessels simultaneously;

(c) Such capital modifications do not materially and adversely affect the ability of the Tenant to operate the Cruise Terminals Building pursuant to the terms of the Terminal Operating Rider (including the Operation Protocol);

(d) All costs of such capital modifications are promptly paid by the Tenant as provided in the Terminal Operating Rider;

(e) The Tenant complies with the provisions of all Permits and Approvals with respect to the capital modifications;

(f) The Tenant complies with the payment and performance bond requirements or alternative security requirements of Section 255.05 of the Florida Statutes and with all other Applicable Laws; and

(g) The Tenant shall provide builders risk insurance and any other insurance required by this Lease.

Upon completion of such capital modification, the same shall be a part of Project for all purposes under this Lease. Any capital modifications constructed during the Operating Term shall automatically pass to the County immediately upon completion, at no cost to the County, subject to Tenant retaining a leasehold interest for the remaining portion of the Operating Term.

21. **Major Capital Modifications.**

(a) A "**Major Capital Modification**" is any capital modification made after Substantial Completion which:

(i) Materially affects the footprint of the buildings originally constructed as part of the Project or any other material element approved by County in the Final Master Plan;

(ii) Can reasonably be expected to materially and adversely affect the pedestrian or vehicular traffic flow or the use, operation or efficiency of the Port;

(iii) Can reasonably be expected to materially and adversely affect County's Maintenance Obligations under this Lease; or

(iv) Relates to or affects one or more Cruise Terminals Building Minimum Requirement(s).

(b) The design and construction of all Major Capital Modifications shall require the advance written approval of the County, which shall not be unreasonably withheld, conditioned or delayed provided such capital modifications do not materially and adversely:

(i) affect the ability of the Cruise Terminals Building to accommodate up to three Vessels simultaneously;

(ii) affect the ability of the Tenant to operate the Cruise Terminals Building pursuant to the terms of the Terminal Operating Rider (including the Operation Protocol);

(iii) regardless of their materiality, affect compliance with any of the Cruise Terminals Building Minimum Requirements, unless otherwise agreed by the County; and

(iv) affect the Port's utility capacity.

The Tenant shall notify the County of any proposed Major Capital Modification reasonably in advance of any such proposed design or construction and shall confirm in such notification whether the proposed Major Capital Modification relates to one or more Cruise Terminals Building Minimum Requirement(s). The County shall approve, reject, or condition such proposed Major Capital Modification in writing, not to be unreasonably withheld, conditioned or delayed in accordance with the procedures set forth in Section 6(f) of the Development Rider. Upon completion of such Major Capital Modification, the same shall be a part of the Project for all purposes under this Lease. Upon substantial completion of any Major Capital Modification title to such Major Capital Modification shall automatically be vested in the County. In the event Tenant elects to undertake any Major Capital Modification, same shall not affect Base Rent and Additional Rent payable under this Lease.

22. **County Capital Modification.** In furtherance of Section 7 of the Development Rider, the County shall have the right to undertake capital modifications for the purposes of accommodating and integrating the Berth 10 Concourse into the Cruise Terminals Building and the Concluding Berth 10 Concourse Element into the Combined Concourse and repairs and modifications with respect thereto (each a "**County Capital Modification**"), subject to and in accordance with the following terms:

(a) The design and construction of any and all County Capital Modifications shall proceed in accordance with Section 7 of the Development Rider;

(b) The design and construction of any and all County Capital Modifications shall be in accordance with the minimum design standards set out in Subsections 1(b) and 1(c) of the Development Rider;

(c) The integration of the Berth 10 Concourse into the Cruise Terminals Building shall be at the external Cruise Terminals Building point of interconnection at the mezzanine level above level 2 of the Cruise Terminals Building reflected on the Approved Berth 10 Concourse Plans and Specifications and the Project Plans and Specifications;

(d) During the planning and construction of the County Capital Modification, passenger access to and from Berth 8 and Berth 9, to the Cruise Terminals Building and the use of Berth 8 and Berth 9 shall not be interrupted or negatively impacted in any material manner;

(e) The County shall be responsible for all costs associated with any County Capital Modification including but not limited to any Berth 10 & Concourse Remedial Work and shall comply with Section 7 of the Development Rider;

(f) No County Capital Modification shall (i) materially and adversely affect passenger or vehicular flow or the use, operation or efficiency of the Project (ii) materially and adversely affect the Tenant's operations and those of MSC at the Demised Premises (iii) result in a material increase in operating costs of the Cruise Terminals Building or (iv) unduly affect the Tenant's maintenance and repair obligations as set out in Section 14 of the Terminal Operating Rider; and

(g) The County shall indemnify and hold harmless the Tenant in respect of such County Capital Modifications in accordance the equivalent applicable provisions in Section 7(g)(x) of the Development Rider, subject to section 768.28 Florida Statutes.

23. **Tenant Indemnification and Duty to Defend.**

(a) With the exception of those claims, demands, suits, causes of actions or proceedings caused by the breach of this Lease by the County, matters arising out of or in connection with the County Capital Modifications or by the negligence, omission or willful misconduct of the County, its officers, directors, employees, agents, contractors, successors or assigns or any and all matters arising out of the use of the Cruise Terminals Building by Non-MSC Vessels (other than matters arising out of Tenant's prior breach of its obligation to operate and maintain the Project under this Lease), Tenant shall defend, indemnify and hold harmless the County Indemnified Parties from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the County Indemnified Parties may incur as a result of any third-party claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of Tenant's use, occupancy, construction, maintenance, or environmental condition (excluding Pre-Existing Environmental Conditions, Berth 10 & Concourse Remedial Work or arising as a result of any Capital County Modification) of the Demised Premises or relating to or resulting from the performance or non-performance of this Lease by Tenant and/or its employees, agents, servants, partners, principals or subcontractors. Tenant shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of County Indemnified Parties, where applicable, including any and all appellate proceedings, and shall pay all costs, judgments, and reasonable attorneys' fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Tenant, shall in no way limit the responsibility to indemnify, keep and save harmless and defend County Indemnified Parties as herein provided. For the avoidance of any doubt, Tenant's indemnification obligations under this Section 23

specifically do not include any liability arising directly or indirectly out of the use of any portion of the Project by Non-MSV Vessels or third party cruise lines, and their respective officers, directors, employees, agents, contractors and invitees unless the claims, demands, suits, causes of action or proceedings arise out of or relate (directly or indirectly) to the Tenant's negligence, omission or willful misconduct. The provisions of this Section 23 shall survive any termination or expiration of this Lease.

(b) Tenant shall not be liable for any damage or injury which may be sustained by any party, person or any personal property located at the Berth 10 Concourse other than in respect of the following (for which Tenant shall indemnify, defend and hold the County harmless): any damage or injury caused by the negligence, omission or willful misconduct of Tenant, its officers, directors, employees or agents, but only in proportion to Tenant's comparative fault.

24. **Landlord Environmental Indemnification; Liability for Damage or Injury.**

(a) With the exception of those claims, demands, suits, causes of action or proceedings caused by the breach of this Lease by Tenant or by the negligence, omission or willful misconduct of Tenant and its employees, agents or contractors, and to the extent permitted under Section 768.28 of the Florida Statutes and subject to the monetary limitations set forth in that law, the County shall defend, indemnify and hold harmless the Tenant Indemnified Parties and any third-party contractor hired by Tenant to undertake the management and operation of the Project or any portion thereof from any liability, losses or damages, including reasonable attorneys' fees and costs of defense, arising out of the construction of Berth 10, the Berth 10 Concourse, the Concluding Berth 10 Concourse Element, Berth 10 & Concourse Remedial Work, County Capital Modifications and Pre-Existing Environmental Conditions (as well as those environmental conditions as part of Berth 10 & Concourse Remedial Work), but expressly excluding matters which the Tenant is responsible for pursuant to Section 23 of this Lease, including without limitation claims against Tenant Indemnified Parties any third-party contractor hired by Tenant to undertake the management and operation of the Project or any portion thereof. The County shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of Tenant Indemnified Parties, where applicable, including any and all appellate proceedings, and shall pay all costs, judgments, and reasonable attorneys' fees which may issue thereon. This provision shall not be deemed or construed to limit in any manner whatsoever, the County's obligation for Environment Remediation under this Lease or limit the County's obligation with respect to Pre-Existing Environmental Conditions (or any required Berth 10 & Concourse Remedial Work) as provided in the Development Rider and with respect to the amount of the County Delay Account.

(b) Except as provided for in Subsection 24(a), County shall not be liable for any damage or injury which may be sustained by any party, person or any personal property located on the Demised Premises other than in respect of the following (for which the County shall indemnify, defend and hold the Tenant harmless): any damage or injury caused solely by the negligence, omission or willful misconduct of County, its officers, directors, employees, agents, contractors, successors, assigns and invitees (including but not limited to third party cruise lines, and their respective officers, directors, employees, agents, successors, assigns and invitees (including but not limited to their passengers and contractors), and all of which is subject to the conditions and limitations of Florida Statutes, Section 768.28. Nothing herein shall be construed

as a waiver or limitation of the conditions and limitations of such statute. The provisions of this Section 24 shall survive any termination or expiration of this Lease. For the avoidance of doubt, nothing in this Section shall limit the County's liability for damages payable to the Tenant pursuant to a claim sounding in contract, which claim arises out of an uncured default by the County of an obligation under this Lease.

25. **Insurance Requirements for Tenant.**

(a) During the Due Diligence Period, Tenant shall carry and maintain, at its expense, or require its contractor to maintain insurance policies (in such amounts and under such terms as generally maintained in the industry) providing adequate insurance coverage, as determined in the reasonable discretion of County, for the activities of Tenant to be performed on site. Certificates of insurance evidencing such coverage, shall be delivered to the County as a condition of the County's issuance of the necessary permits, or other authorizations required for Tenant to occupy any portion of the Demised Premises in anticipation of the issuance of a Notice to Proceed.

(b) During the Preliminary Term, Tenant shall carry and maintain, at its expense, insurance policies (in such amounts and under such terms as generally maintained in the industry) covering:

- (i) General liability insurance or the equivalent thereof, including insurance for assumed or contractual obligations under this Lease for liability arising out of the use of any of the Demised Premises, the Project and all areas appurtenant thereto, with limits of not less than Ten Million Dollars (US \$10,000,000);
- (ii) If and to the extent required by law including USL&H and Jones Acts, Worker's Compensation, and any other coverage (if applicable) or similar insurance in form and amounts required by law with respect to Tenant's employees;
- (iii) Automobile liability insurance covering all owned, non-owned and hired vehicles used in connection with this Lease in an amount not less than One Million Dollars (\$1,000,000) with a (CSL) combined single limit per accident for bodily injury and property damage; and

(c) Commencing on the Rent Commencement Date and continuing throughout the Operating Term, Tenant shall carry and maintain, at its expense, insurance policies covering:

- (i) General liability insurance including terminal, wharfingers liability (or the equivalent thereof), and including insurance for assumed or contractual obligations under this Lease for any liability arising out of the use of the Demised Premises and the Project, with limits of not less than Ten Million Dollars (US \$10,000,000) per occurrence; Ten Million Dollars (US \$10,000,000) in the aggregate;

- (ii) Business automobile liability insurance, with combined single limit per accident of not less than One Million Dollars (\$1,000,000) for personal injury, death and property damage;
- (iii) Legal liability insurance insuring against damage to property in the care of Tenant with limits of not less than One Million Dollars (\$1,000,000); and
- (iv) If and to the extent required by law including USL&H and Jones Act, Workers Compensation, and any other coverage (if applicable) or similar insurance in form and amounts required by law with respect to Tenant's employees.

(d) Tenant's obligation to insure the Pier shall cease upon Substantial Completion and the County shall be solely responsible for all required maintenance and repair of the Pier in accordance with the terms and conditions of this Lease after Substantial Completion. Notwithstanding the foregoing, Tenant shall have a continued obligation to require insurance from Vessels utilizing the Berth 8 and Berth 9 as required by the Terminal Operating Rider, and County shall be listed as a named insured on all such policies. County agrees that any preferential berthing agreement entered into by the County and a third-party cruise line shall require such Non-MSC Vessel to carry such insurance (as listed in Section 17(c) of the Terminal Operating Rider) and for the Tenant and the County to be listed as a named insured on all such policies.

26. **Insurance Requirements for Contractors.** Tenant shall carry and maintain or shall require any contractor (or subcontractor) performing work on the Project at any time; including before and after the Notice to Proceed Date, to carry and maintain:

(a) General liability insurance or the equivalent thereof, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement and contractor's protective liability coverage, of not less than Ten Million Dollars (US \$10,000,000) per occurrence limit;

(b) Subject to customary sub-limits in respect of customary items, completed value builders' risk insurance (including an extension of coverage for debris removal) on a "special causes of loss" form in an amount not less than one hundred percent (100%) of the insurable value of the Project provided that the insurance coverage may be in a lesser amount based upon a probable maximum loss study acceptable to the Tenant and any sublimits for named storm or flood must be acceptable to the County, acting reasonably;

(c) Automobile liability insurance with combined single limit coverage of not less than One Million Dollars (US \$1,000,000) per accident with respect to personal injury, death and property damage;

(d) Worker's Compensation coverage (if applicable) or similar insurance in form and amounts required by law including USL&H and Jones Act;

(e) Professional liability insurance in the name of Tenant or the licensed design professional employed by Tenant in an amount not less than One Million Dollars (US \$1,000,000.00) per claim; and

(f) Contractors Pollution Liability coverage in an amount not less than Ten Million Dollars (US \$10,000,000.00) per claim.

27. **County Named as Additional Insured.** Public liability insurance required from Vessels utilizing the Project, and builders risk insurance policies evidencing such insurance shall all name County and/or its designee(s) as additional insured, shall be primary and non-contributory, and shall also contain a provision by which the insurer agrees that such policy shall not be cancelled, materially changed or not renewed without at least thirty (30) days advance notice to County, by certified mail, return receipt requested, or its designee(s). A certificate evidencing such insurance shall be deposited with County by Tenant promptly upon commencement of Tenant's obligation to procure the same. If Tenant shall fail to perform any of its obligations under this Section 26, the County may perform the same and the cost of same shall be payable upon County's demand.

28. **No Double Recovery.** Nothing in this Lease shall be construed to allow for double recovery on account of the payment of insurance for any loss or damage to either Party. The amount of recovery available to either Party from the other shall be reduced by the amount of an insurance payment for such event. Except as expressly provided in this Section 28, each Party's obligations to the other as set forth in this Lease shall remain unaffected.

29. **County Self-Insured.** The County is a political subdivision of the State of Florida and is authorized, subject to the provisions of Section 768.28 of the Florida Statutes, providing limitations for the making of claims against the County as a sovereign, to self-insure against claims. The County shall upon request of Tenant from time to time provide to Tenant through County's duly authorized officers, written assurances to Tenant with respect to County's status as a self-insured entity under Florida law and its ability to satisfy its claims as they become due. Notwithstanding the foregoing the County covenants and agrees to obtain and maintain the following described insurance following Substantial Completion:

(a) All-Risk Property (Special Cause of Loss) Insurance including, without limitation, coverage for loss or damage to the Demised Premises and Project (other than the Pier) by fire and other perils including named windstorm and all other wind, earthquake/earth movement and malicious mischief, building ordinance extension endorsement (including cost of demolition, increased costs of construction and the value of the undamaged portion of the Project (other than the Pier for which the County is responsible) and soft costs coverage), and boiler and machinery coverage (if such coverage is provided under a separate policy, that policy must include loss of rents or business interruption coverage, as specified by the Tenant). The policy shall be in an amount not less than the full insurable value on a replacement cost basis of the insured Project and personal property related thereto (without deduction for depreciation), in the amount determined by the Tenant (provided that, notwithstanding the foregoing, the Tenant may elect to insure the Project in a lesser amount if so determined). This policy must also list any Lender as mortgagee and loss payee. For the avoidance of doubt, the All-Risk Property Insurance shall not include any part of the Berth 10 Concourse.

(b) All insurance policies shall (i) be issued by an insurance company licensed to do business in the State of Florida having a rating of “A-” VIII or better by A.M. Best Co., in Best’s Rating Guide (unless waived by the Tenant), (ii) name any Lender as mortgagee and loss payee on all All-Risk Property, flood insurance and rent loss or business interruption insurance, (iii) be endorsed to show that County’s insurance shall be primary and all insurance carried by Lender is strictly excess and secondary and shall not contribute with County’s insurance, (iv) provide that Lender and Tenant is to receive thirty (30) days written notice prior to non-renewal or cancellation, (v) be evidenced by a certificate of insurance to be provided to Tenant and Lender along with a copies of the policy for All-Risk Property coverage or such other evidence of insurance satisfactory to Lender in its reasonable discretion, (vi) include either policy or binder numbers on the ACORD form currently approved by the State’s Department of Insurance, and (vii) be in form and amounts satisfactory to Lender and Tenant; provided, however, that with respect to any flood insurance required hereunder, satisfactory proof of coverage shall consist of a copy of the insurance policy, the declarations page of the insurance policy or an application plus proof of premium payment (with a copy of the policy or declarations page provided to Lender and Tenant within thirty (30) days thereafter) and shall not include ACORD or other forms of certificates of insurance.

**30. Waiver of Subrogation.**

(a) The County waives any and all rights of recovery against Tenant, MSC and any MSC Affiliates, for or arising out of damage to, or destruction of the Project to the extent of the insurance to be maintained by the County pursuant to Subsection 28(a) of this Lease and all insurance policies maintained by the County shall include a waiver of subrogation provision consistent with this Section 29(a).

(b) Tenant waives any and all rights of recovery against the County for or arising out of damage to, or destruction of the Project, to the extent of the insurance to be maintained pursuant to Subsection 25(b) of this Lease and all insurance policies maintained pursuant to Subsection 25(b) shall include a waiver of subrogation provision consistent with this Subsection 29(b).

**31. Taking of Demised Premises.** The following provisions shall apply with respect to a taking of all or any portion of the Demised Premises:

(a) Except as hereinafter set forth, in the event of a whole or Partial Taking, Tenant shall be entitled to negotiate, prosecute, adjust or appeal any claim for any award or compensation on account of any Taking affecting the Tenant Property Interest, including, without limitation all compensation for Contributions and amounts due under Section 5 of the Terminal Operating Rider otherwise payable to the Tenant during the unexpired Term of this Lease, and County shall be entitled to negotiate, prosecute, adjust or appeal any claim for any award or compensation with respect to County’s Reversionary Interest, including compensation for Rent otherwise payable during the unexpired Term of this Lease and any compensation due to the County under Section 5 of the Terminal Operating Rider. If the value of the respective interests of the County and Tenant shall be determined according to the proceeding pursuant to which the Demised Premises shall have been taken, the value so determined shall be conclusive upon County and Tenant. If such values shall not have been separately determined in such proceeding, such values shall be fixed by agreement mutually acceptable to County and Tenant, or if they are unable

to agree, by an apportionment hearing within the condemnation proceeding. With the exception of those provisions relating to a Partial Taking whereby Tenant elects not to terminate this Lease as set forth in Subsection 31(c) below, it is the express intention of the Parties that Tenant shall be entitled to receive and retain the portion of the award which compensates for the Taking or diminution in value of the Tenant Property Interest, and County shall be entitled to receive and retain the portion of the award which compensates for the Taking or diminution in value of County's Reversionary Interest.

(b) Total Taking. In the event of a Taking of the totality of the Demised Premises ("**Total Taking**"), this Lease shall terminate on the date of such Taking, and both Parties shall pay and shall satisfy all payments due and accrued hereunder up to the date of such termination and shall perform all of their respective obligations hereunder to such date and with respect to the Contributions the County shall continue to make payments in the manner required under the Development Rider until such Contributions have been satisfied. The proceeds of a total Taking shall be distributed in accordance with Subsection (a) above.

(c) Partial Taking; Termination of Lease. If, in the event of a Taking of less than the entire Demised Premises, (i) the remaining portion of the Demised Premises not so taken cannot be, in Tenant's reasonable determination, adequately restored, repaired or reconstructed so as to constitute the Cruise Terminals Building of substantially the same usefulness, design, construction, and commercial feasibility, as immediately before such Taking (accounting for the County's necessity of utilizing the Project to service Berth 10) (a "**Partial Taking**"), or (ii) the award granted in connection with the Partial Taking is insufficient to pay for such restoration, repair or reconstruction, then Tenant shall have the right, to be exercised by written notice to County within one hundred twenty (120) days after the date of Taking, to terminate this Lease on a date to be specified in said notice, which date shall not be earlier than the date of such Taking, in which case both Parties shall pay and shall satisfy all payments due and accrued hereunder up to the date of such termination (which in the case of the County shall include the continuation of payments in respect of the Contributions as provided in Subsection (b) above) and shall perform all of their respective obligations hereunder to such date, and thereupon this Lease and the Term herein demised shall cease and terminate. The proceeds of a Partial Taking which leads to a termination of this Lease shall be distributed in accordance with Subsection (a) above.

(d) Partial Taking; Continuation of Lease. If this Lease is not terminated upon the occurrence of a Partial Taking as hereinabove provided, then this Lease shall terminate as to the portion of the Demised Premises taken in such condemnation proceedings as of the date of the Taking, and, as to that portion of the Demised Premises not taken, Tenant shall proceed at its own cost and expense either to make an adequate restoration, repair or reconstruction or to rebuild a new Project upon the portion of the Demised Premises not affected by the Taking, subject to Tenant's receipt of the entire award arising from the Partial Taking related to the Tenant Property Interest, plus the portion of the award otherwise payable to County equal to the amount, if any, by which the cost of such restoration; repair or reconstruction or rebuilding exceeds the award related to the Tenant Property Interest. If the award payable with respect to the Tenant Property Interest are in excess of the amount needed to restore, repair or reconstruct the Project, any excess award relating to the Tenant Property Interest after such restoration, repair or reconstruction may be retained by Tenant, and the entire award relating to County's Reversionary Interest shall be retained by County. If a portion of the award relating to County's Reversionary Interest is used for restoration, repair or reconstruction as hereinabove provided, any excess award payable with

respect thereto shall be retained by the County. During the restoration and reconstruction period, Rent shall be partially abated on an equitable basis to be agreed to by County and Tenant; any of the County's payment obligations under the Lease shall be similarly abated on an equitable basis to be agreed between the Parties. In addition, County and Tenant shall agree to an equitable reduction to Rent that reflects the diminished usefulness, if any, of the Demised Premises for its intended purpose; similar reductions in favor of the County shall be made if the usefulness of the Demised Premises affects the County's exercise of the County's Reserved Preferential Berthing Rights or the County's operations at Berth 10.

**32. Casualty Prior to Substantial Completion.**

After the occurrence of a Casualty during construction, Tenant shall proceed, at its own cost and expense, to promptly make a full restoration, repair or reconstruction of the Project upon the Demised Premises in compliance with Applicable Laws and all Project minimum standards and other requirements. In such event, Tenant shall receive the entire proceeds of the applicable insurance, to be used by Tenant for its reconstruction, repair or rebuilding of the Project. Any excess award after such reconstruction, repair or rebuilding, may be retained by Tenant. In the event the anticipated Substantial Completion Deadline of November 15, 2023 is affected by such casualty, the County shall provide the Tenant with alternative berthing rights in the same manner as would be provided in the event of an Early Termination Event under Section 15(g) of the Development Rider for the period until Substantial Completion. The Substantial Completion Deadline and all other applicable deadlines, including, other than the Rent Commencement Date, shall be extended for a reasonable amount of time based upon the new construction schedule provided by Tenant to afford Tenant the opportunity to make an adequate restoration, repair or reconstruction or to rebuild the Project upon the Demised Premises.

**33. Casualty After Substantial Completion: Continuation of Lease.**

(a) Subject to the County complying with its obligations under Section 29 of this Lease, following the occurrence of a Casualty after Substantial Completion, the Tenant, on behalf of the County, shall be obligated to restore the Project (other than the Pier which is the responsibility of the County) to substantially the condition as existed as of the date of the Casualty. The County shall assign to the Tenant all rights to any and all insurance proceeds available under the insurance policies to be maintained by the County under Subsection 29(a) of this Lease and the Tenant is authorized to adjust and settle any insurance claims with respect to such Casualty and the County shall execute any documents reasonable required by the insurance company with respect to such assignment. To the extent the cost to restore the Project, exceeds the amount of the insurance proceeds, Tenant shall be obligated to pay any shortfall amount provided that the County has complied with its obligations pursuant to Section 29(a) of this Lease. The Tenant shall diligently pursue the repair and restoration of the Project resulting a restored Project in substantially the same condition as prior to the Casualty; the Parties agree that the County shall not be involved in the repair and restoration process or otherwise be entitled to contest the condition of Project provided that it meets the Cruise Terminals Building Minimum Requirements.

(b) Following any Casualty, the County shall provide the Tenant with alternative berthing rights in the same manner as would be provided in the event of an Early Termination Event under Section 15 of the Development Rider for the period during which the Cruise Terminals Building is rendered unusable for Cruise Operations as a result of Casualty but

not to exceed the Operating Term. For the purposes of this subparagraph, subject to the County providing the alternative berthing rights referred to above, all Tenant and County obligations under the Lease, including, in the Tenant's case the payment of Rent and in the County's case, payments pursuant to Section 5 of the Terminal Operating Rider in the manner provided under the Lease, shall continue during the use of the alternative berthing arrangement, except those obligations that rendered are impossible by occurrence of the Casualty. The Tenant shall continue to have the right to charge MSC Vessel Cruise Terminal Fees during such period.

34. **Tenant's Default; Tenant Liability.**

(a) The occurrence of the following events shall constitute a "Tenant Event of Default" under this Lease:

- (i) Failure by Tenant to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed hereunder, including without limitation, Tenant's failure to fully and timely pay Rent, which failure shall continue for a period of sixty (60) day after written notice, specifying such failure and requesting that it be remedied, is given to Tenant by the County, unless the County shall agree in writing to an extension of such time prior to its expiration; provided, however, that if such failure cannot be corrected within such sixty (60) day period, it shall not constitute a Tenant Event of Default if effective corrective action is instituted by Tenant within such period and diligently pursued until such failure is corrected. For any matters required to be resolved under the Dispute Resolution Protocol, the Tenant shall be required to implement the decision of the dispute resolution body (to the extent such decision imposes obligations on the Tenant) within the timeframe provided in the dispute resolution body's order/award. The Tenant's failure to implement such decision within the timeframe provided in the dispute resolution body's order/award shall become a Tenant Event of Default if not implemented within thirty (30) days of the expiration of the timeframe provided for implementation in the dispute resolution body's order/award; provided, however, that if such failure cannot be corrected within such thirty (30) day period, it shall not constitute a Tenant Event of Default if effective corrective action is instituted by Tenant within such period and diligently pursued until such failure is corrected; and/or
- (ii) The commencement by Tenant of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or its consent to the entry of an order for relief in an involuntary case under any such law, or its consent to the appointment of or taking possession by a receiver, custodian, liquidator assignee, trustee or sequestrator (or other similar official) of itself or any substantial part of its property, or shall make a

general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due; and/or

- (iii) A court having jurisdiction shall enter a decree or order for relief in respect of Tenant in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, custodian, liquidator, assignee, trustee or sequestrator (or other similar official) of itself or any substantial part of its property, or ordering the winding up or liquidation of its affairs; and the continuance of such decree or order unstayed and in effect for a period of ninety (90) consecutive days; and/or
- (iv) The Tenant's denial or unreasonable and material limitation of the County's right to use the Demised Premises in each case without reasonable justification and in breach of the terms of this Lease with respect to the County's Reserved Preferential Berthing Rights, the right to utilize the Cruise Terminals Building for cruise operations at Berth 10 as provided in the Terminal Operating Rider, access through or over the Demised Premises as permitted under this Lease, or for construction, operation, and maintenance of the Berth 10 Concourse as provided for under this Lease provided that such circumstances shall not be considered to be a Tenant Event of Default unless the Tenant fails to remedy the position within 48 hours following notification by the County specifying the failure under this Subsection 34(a)(iv) and advising the Tenant that the Tenant has 48 hours to cure and requesting the failure be remedied; provided further however, that if such failure cannot reasonably be corrected within such 48 hour period, it shall not constitute a Tenant Event of Default if effective corrective action is instituted by Tenant within such period and diligently pursued until such failure is corrected. The Parties agree that to the extent the County may be able to remedy the cause of the denial or limitation more swiftly than the Tenant, the Parties may agree for the County to perform the remedial work and for the Tenant to be liable for the reasonable associated costs.

(b) Upon the occurrence of a Tenant Event of Default, the County may, at County's option, without any demand or notice whatsoever (except as expressly required in this Section 33):

- (i) Subject to the rights of any Lender under Section 38 of this Lease, terminate this Lease by giving Tenant a Tenant Default Termination Notice, in which event this Lease shall expire and Terminate on the Termination Date specified in such Tenant Default Termination Notice (which such date shall not be earlier than the date that the Tenant Default Termination Notice is deemed to be given pursuant to the terms hereof) and all rights of Tenant under this Lease and in

and to the Demised Premises shall terminate. Tenant shall remain liable for all obligations under this Lease arising up to the Termination Date, and subject to Lender's rights pursuant to Section [36], Tenant shall surrender the Demised Premises to the County on the Termination Date (provided that Tenant shall have reasonable time to remove any of the Tenant Property allowed to be removed under Section 18 of this Lease, from the Demised Premises); and/or

- (ii) Bring an action in a court of competent jurisdiction as provided in this Lease for the collection of any amounts for which Tenant owes as of the Termination Date, or for the performance of any other covenant or agreement devolving upon Tenant, without terminating this Lease.

(c) Tenant agrees that the foregoing remedies available to the County are (i) not exclusive, and (ii) one, some or all of such remedies may be exercised by the County in connection with a Tenant Event of Default. The County's election to terminate this Lease shall not be a waiver of the County's right to recover damages for breach of this Lease.

(d) Notwithstanding anything herein to the contrary contained in this Lease, and without prejudice to Tenant's obligations to indemnify the County Indemnified Parties contained in this Lease, the County's recovery in the event of a Tenant Event of Default shall be limited to (i) recovering all amounts owed by Tenant as of the Termination Date, (ii) recovering the Project (subject the right of any Lender under Section 38 below) and (iii) if the Tenant Event of Default caused damage to the Project, restoration and/or repair of the Project in whole or in part. Under no circumstances shall County have the right to collect any Rent or any other charges that would have become due after the Termination Date.

(e) Tenant agrees and acknowledges that nothing contained in this Lease shall in any way (i) limit Tenant's obligation to at all times fully perform all of its non-payment performance obligations under this Lease, including but not limited to, construction of the Project in accordance with the terms and conditions contained in the Development Rider, and to make such payments to third parties as are necessary to perform such obligations, or (ii) limit the County's ability to exercise rights available to the County hereunder (other than the collection of monetary awards) as a result of Tenant's failure to perform any such performance obligations including those set forth in Subsection 33(b)(i) above and rights of specific performance, or (iii) limit County's ability to enforce any and all rights it may have as an obligee, co-obligee, or beneficiary under insurance policies or bonds issued or required pursuant to the terms of this Lease.

(f) Notwithstanding anything herein to the contrary, Tenant shall at all times comply with all obligations relating to (i) Subsection 9(b) of the Development Rider with respect to Tenant's posting of a payment and performance bond, and/or alternate form of security satisfactory to the County relating to any construction work in compliance with the requirements of Section 255.05 of the Florida Statutes, and (ii) Sections 24 and 25 of this Lease with respect to procurement and maintenance of insurance for Tenant and Tenant's contractors, and/or relating to Tenant's obligations, subject to Section 25(d) above, to require insurance from all Vessels using the Project in the scope and amounts required hereunder, and the use of all available insurance proceeds for their intended purpose.

(g) Notwithstanding any termination of the Lease pursuant to this Section, the County's obligation to pay the Tenant the USD 76m Contribution shall remain in force and effect, to be paid in accordance with the schedule provided for in Section 16 of the Development Rider, unless the Parties otherwise agree to amend such schedule.

35. **County's Default.**

(a) The occurrence of the following events shall constitute a "**County Event of Default**" under this Lease:

- (i) Failure by County to observe or perform, or breach of, any material covenant, condition agreement, obligation, representation or warranty on its part to be observed or performed under this Lease, including without limitation, County's failure to fully and timely pay the Contributions or other payments due pursuant to the Terminal Operating Rider, and such failure or occurrence shall continue for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, is given to County by Tenant, unless Tenant shall agree in writing to an extension of such time prior to its expiration; however, if such failure cannot be corrected within such sixty (60) day period, it shall not constitute a County Event of Default if corrective effective action is instituted by County, within such period and diligently pursued until such failure is corrected. For any matters required to be resolved under the Dispute Resolution Protocol, the County shall be required to implement the decision of the dispute resolution body (to the extent such decision imposes obligations on the County) within the timeframe provided in the dispute resolution body's order/award. The County's failure to implement such decision within the timeframe provided in the dispute resolution body's order/award shall become a County Event of Default if not implemented within thirty (30) days of the expiration of the timeframe provided for implementation in the dispute resolution body's order/award; provided, however, that if such failure cannot be corrected within such thirty (30) day period, it shall not constitute a County Event of Default if effective corrective action is instituted by County within such period and diligently pursued until such failure is corrected; and
- (ii) The transfer of fee simple title in the Demised Premises by the County without preserving the rights conferred to Tenant under this Lease, except as otherwise expressly provided in this Lease.

(b) Upon the occurrence of a County Event of Default, Tenant may, at Tenant's option, without any demand or notice whatsoever (except as expressly required in this Section [34]):

- (i) Terminate this Lease by giving County a County Default Termination Notice, in which event this Lease shall expire and Terminate on the Termination Date and all obligations of Tenant under this Lease shall terminate. County shall remain liable for all damages caused to Tenant as a result of County's failure to perform any obligations required under this Lease and for payment of the greater of (i) the Fair Market Value of the Project, or (ii) the Unamortized Improvement Cost until Substantial Completion, or (iii) the remaining balance on the Leasehold Mortgages including any prepayment penalties; and/or
- (ii) Bring an action in a court of competent jurisdiction as provided in this Lease for the collection of any amounts for which County may be in default (including without limitation the Contributions), or for the performance of any other covenant or agreement devolving upon County, without terminating this Lease.

(c) County agrees that the foregoing remedies available to Tenant are not exclusive, and one, some or all of such remedies may be exercised by Tenant in connection with a County Event of Default. Tenant's election to terminate this Lease shall not be a waiver of Tenant's right to recover damages for breach of this Lease.

(d) Notwithstanding any termination of the Ground Lease pursuant to this Section, the County's obligation to pay the Tenant the USD 76m Contribution shall remain in force and effect and shall be accelerated such that such payment is due upon the date of termination along with any other outstanding payments due pursuant to the Contributions which had accrued and are owing as at the date of termination.

36. **Dispute Resolution Protocol.** Any matter required to be referred to dispute resolution under this Lease (including the Development Rider and Terminal Operating Rider), shall be referred the Dispute Resolution Protocol Process procedure as out at **Attachment 3** (which attachment shall be agreed by the Parties within 90 days of the Lease Date applying generally the standards identified in the provisionally attached Attachment 3). For the avoidance of doubt, to the extent the matter is ultimately referred a dispute resolution body (following the escalation provisions set out in the aforementioned procedure), such tribunal shall not be entitled to render any judgment which orders the termination of this Lease.

37. **Suspension and Termination for Excusable Events.** In the event of the occurrence of an Excusable Event, Tenant, in its sole discretion, may elect to suspend and/or terminate (but only after suspending the Lease under this provision for the entire 24-month period (in aggregate) and only if an Excusable Event exists on the effective date of the termination) this Lease by written notice to the County in accordance with the terms of this Section. Notwithstanding the foregoing, for the purposes of suspension, to the extent an Excusable Event is also a Force Majeure Event, the provisions of Section 48 shall apply; provided that if one or more Force Majeure Events persist for at least a 24 month period (in aggregate), the Tenant shall be entitled to terminate this Lease. The Tenant's right to suspend or terminate shall not be exercisable during the Preliminary Term.

- (a) If the Tenant elects to suspend this Lease as a result of such Excusable Event, this Lease shall automatically be suspended (with the Parties being temporarily relieved of their obligations) on the date specified in the notice of suspension delivered to the County, which shall not be earlier than three (3) months from the date of such notice is delivered to the County nor later than five (5) months from the date of such notice. Any suspension shall be without prejudice to the County's full use of the Project for Cruise Operations at Berths 8, 9, and 10, including, for the avoidance of doubt, in excess of the County's Reserved Preferential Berthing Rights.
- (b) The period of suspension shall not be less than twelve (12) months unless otherwise agreed by the County in its sole discretion. The Tenant shall be entitled to exercise its right to suspend this Lease on more than one occasion but the total aggregate periods of suspension over the Term shall not exceed twenty-four (24) months. No later than two (2) months prior to the end of the notified suspension period the Tenant shall notify the County whether it wishes at the end of the suspension period to continue with the Lease or otherwise terminate the Lease. In the event the Tenant elects to continue with the Lease, the Lease shall recommence and become effective again upon the expiry of the suspension period.
- (c) During the suspension period the Tenant shall be responsible to remain current on any payments to Lenders due in connection with Project Financing issued under Section 38 of this Lease (subject to any agreement which the Tenant may reach with any Lender) and:
  - i. the County shall be entitled to use the Project as a County facility provided that it operates and maintains the Project with due skill and care and during which time the County shall be responsible for all costs associated with its use and the County shall maintain the Project (subject to the provisions of Section 15(m) of the Terminal Operating Rider) and all insurance required by the Lease or, at the County's sole discretion, insure the Demised Premises under the County's self-insurance program. To the extent the Tenant does not terminate the Lease, upon the conclusion of the suspension period, the County shall return the Project to the Tenant in the same state and condition as it was received by the County, ordinary wear and tear excepted. All revenues during such suspension period shall be for the County.
  - ii. the County's obligation to make payments in accordance with the agreed schedule relating to the USD 76m Contribution shall be suspended and repaid as provided in Section (d) below (with the interest being adjusted accordingly), with such repayment period running from the conclusion of the suspension period;
  - iii. the Tenant's obligation to make payments to the County, including Rent, shall be suspended and repaid as provided in Section (d)

below, with such repayment period running from the conclusion of the suspension period;

- iv. the County's obligation to pay any minimum guarantees shall not apply;
  - v. the escalation of the rates and payments shall continue to apply such that the rates and payments applicable when the suspension period shall end shall have been escalated as if the Lease had not been suspended; and
  - vi. the terms and conditions surrounding the Tenant's right to berth at the Project shall be separately agreed with the County, acting reasonably and with a view to allowing for the continuity of MSC's operations to the extent possible. The County shall endeavor to provide MSC with any berths required during any period of suspension.
- (d) Obligations suspended during the suspension period shall be paid in equal installments over a period twice as long as the period of suspension (unless otherwise agreed between the Parties) and commencing thirty (30) days after the conclusion of the suspension period; provided, however, that the County shall not be required to make any payments to the Tenant regarding Operating Expenses Contribution or share revenues as provided in the Terminal Operating Rider.
- (e) In the event the Tenant elects to terminate the Lease after any period of suspension, sub-section (g) below shall apply.
- (f) If Tenant elects to terminate this Lease as a result of such Excusable Event without first electing to suspend this Lease, this Lease shall automatically terminate on the date specified in the notice of termination delivered to the County, which date shall not be earlier than thirty (30) days from the date such notice is delivered to the County nor more than later than one hundred twenty (120) days from the date of such notice.
- (g) In the event of termination pursuant to this Section, Tenant shall pay all amounts due under this Lease up to the date of termination and all rights of Tenant under this Lease in and to the Demised Premises shall terminate as of that date. Any such payments shall be paid by the Tenant over a four (4) year period. Tenant shall remain liable for all obligations under this Lease arising up to the Termination Date. Tenant shall surrender the Demised Premises to the County on the Termination Date (provided that Tenant shall have a reasonable time to remove any Tenant Property allowed to be removed under Section 18 above, from the Demised Premises) free and clear of any encumbrances created by the Tenant, other than any encumbrances arising out of any Project Financing under Section 38 of this Lease. The County's obligation to pay the USD 76m Funding shall remain

but the period for which adjusted correspondingly notwithstanding any such termination.

- (h) In the event of suspension pursuant to this Section, the Operating Term shall be extended by a period of time equivalent to the sum of any period(s) of suspension.

38. **Project Financing.**

(a) **Financing.**

- (i) The Tenant may secure one or more private secured or unsecured financings (tax-exempt, if available, and/or conventional) to provide funds required for the financing or refinancing of the Project and/or for other Capital Improvements on the Demised Premises during the Term of this Lease (collectively, the “**Financing**”). In connection with the Financing, Tenant and the direct and indirect owners of equity interests in Tenant shall have the right, from time to time, subject to the condition set forth in subparagraph (a)(v) and otherwise without the required prior consent of the County, to pledge and otherwise encumber any of its respective direct or indirect equity or ownership interests (whether stock, partnership interest, beneficial interest in a trust, membership interest or other interest of an ownership or equity nature) (the “**Equity Interests**”) to secure a loan made by any Lender. The granting of such pledge or other security shall not operate to make the Lender thereunder liable for performance of any of the covenants or obligations of Tenant under this Lease. The Tenant shall be permitted to encumber its interest in this Lease through a Leasehold Mortgage.
- (ii) The amount of any indebtedness secured by any Leasehold Mortgage or any pledge of the Equity Interests (the “**Secured Indebtedness**”) may be modified, amended, restated, replaced, extended, increased, refinanced, consolidated or renewed from time to time, subject to Subsection 38(a)(iv) below. Any transfer of any direct or indirect ownership interest in Tenant from the foreclosure by any Lender of a Leasehold Mortgage or a pledge of the Equity Interests in Tenant or other appropriate actions or proceedings in the nature thereof, or any transfer made to the purchaser at a foreclosure of a Leasehold Mortgage or of such pledged Equity Interests, or any conveyance, assignment or transfer in lieu of such foreclosure (including any transfer to any Lender, any nominee of any Lender or a third party buyer), of the Tenant Property Interest or of the Equity Interests in Tenant to the Lender or its nominee resulting from the exercise by the Lender of any rights or remedies under any document securing the Secured Indebtedness, shall not require the consent of the County, shall not constitute a breach of any provision or a default under this Lease.

- (iii) Notwithstanding the foregoing, no Leasehold Mortgage or other encumbrance Tenant executed in connection with such Financing will extend to or be a lien or encumbrance upon County's interest in any part of the Demised Premises or in any right appurtenant to that interest or upon any portion of the County's Reversionary Interests. The County has no obligation to subordinate the County's fee simple interest in the Demised Premises or in any portion of the County's Reversionary Interests to the lien of any Leasehold Mortgage or the security interest of any Lender that Tenant may execute pursuant to this Section 36.
- (iv) The County shall have the right to review any Leasehold Mortgage to confirm that the Leasehold Mortgage only encumbers Tenant's interest in this Lease and not the interest of the County in the Demised Premises. The County shall not have the right to review any pledge of the Equity Interests. Tenant shall provide the County with a copy of the proposed of the Leasehold Mortgage to confirm that such Leasehold Mortgage complies with the requirements of this Section 38(a)(iv). The County shall be deemed to have confirmed the Leasehold Mortgage complies with the terms of this Section 38(a)(iv) unless the County objects to the form of such Leasehold Mortgage within five (5) days of receipt from the Tenant. If the County believes the Leasehold Mortgage does not comply with the terms of this Section 38(a)(iv), the County shall advise the Tenant within five (5) Business Days of receipt of the Leasehold Mortgage of which provisions of the Leasehold Mortgage do not comply with this Lease and the Tenant shall revised the Leasehold Mortgage as appropriate to cause the Leasehold Mortgage to comply with the terms of this Section 38(a)(iv) and submit the same to the County. If the County believes the revised Leasehold Mortgage does not comply the terms of the Lease, the County shall advise the Tenant within three (3) Business Days of receipt of the revised Leasehold Mortgage or the County shall be deemed to have confirmed that the revised Leasehold Mortgage complies with the terms of this Section 38(a)(iv). The process shall continue until the Leasehold Mortgage is deemed to comply with the terms of this Section 38(a)(iv). For the avoidance of doubt, the County shall have not right to review or approve any loan documents associated with any Financing other than the Leasehold Mortgage to confirm compliance with this Section 38(a)(iv) and the form of subordination and non-disturbance and attornment agreements to be provided pursuant to Section 38(a)(v) below; the foregoing, however, shall not limit the County's right to verify the interest rate charged to Tenant for its Financing in a manner to be agreed between the Parties in accordance with Section 16(b) of the Development Rider.

- (v) Any Financing authorized under this Lease, secured by a Leasehold Mortgage, shall require, in a form reasonably acceptable to the County, that the Lender grant non-disturbance agreements in favor of the County and any third-party cruise lines with existing or future, preferential or non-preferential berthing rights at the Project pursuant to the County's Reserved Preferential Berthing Rights and in relation to the County's right to operate and maintain Berth 10 and the Berth 10 Concourse which provide, in the event of the foreclosure of the Leasehold Mortgage, that the County and any such third-party cruise lines will not be disturbed and will be allowed continued access and use of the Project in accordance with the terms of their berthing rights at the Project for Permitted Uses in accordance with the terms of this Lease.

(b) Notice of Secured Indebtedness. Following Tenant's execution of a Leasehold Mortgage, Tenant shall furnish to the County: (i) a duplicate original of the Leasehold Mortgage or a photocopy of the Leasehold Mortgage that the Clerk of the Circuit Court of Miami-Dade County, Florida has certified as being a true copy of the Leasehold Mortgage recorded among the public records and (ii) a written notice setting forth the name and address of the Lender. Following the receipt of such notice, the County shall provide the Lender copies of all notices provided to Tenant under this Lease simultaneously with the sending of such notice to Tenant. In the event of a pledge of any Equity Interest in Tenant, Tenant shall provide the County with the name and address of the Lender and following receipt of such notice the County shall provide the Lender with copies of all notices provided to the Tenant under the Lease simultaneously with the sending of such notices to the Tenant.

(c) Default Rights. Notwithstanding any other provision of this Lease, the County shall not have the right to terminate this Lease due to a Tenant Event of Default unless the County shall have first given the required notices to the Lender under Subsection 38(b) above and allowed the Lender the following cure rights:

- (i) The Lender may cure any default on Tenant's part in accordance with the terms of this Section 38, but has no obligation to do so nor will the Lender suffer any personal liability with respect to the performance of Tenant's obligations under this Lease. The County will accept the Lender's performance of any of Tenant's obligations to the same extent as though performed by Tenant.
- (ii) The County may exercise a remedy available to it by reason of a Tenant Event of Default only if Lender fails to cure such Tenant Event of Default within sixty (60) days after the date of Lender's receipt of written notice from the County that a Tenant Event of Default has occurred, or if a cure is not reasonably possible within such sixty (60) day period due to the nature of the default, then within a period of time reasonably required to cure the default with diligence.

- (iii) Notwithstanding the foregoing, even though a Tenant Event of Default has occurred and neither Tenant nor the Lender has provided for a cure within the times permitted by Subsection 36(c)(ii) above, the County will not terminate this Lease for a reasonable period of time, not to exceed two (2) years, from the date of the Lender's receipt of notice provided in Subsection 38(b) above, if the default by its nature cannot be cured without Lender obtaining possession of the Demised Premises and if the Lender is making: (A) diligent efforts to foreclose the lien of its Leasehold Mortgage or foreclose on its security interest in the Equity Interests in the Tenant, (B) the payment to County of all Rent and charges due under this Lease and (C) continuous good faith efforts to cure the Tenant Event of Default contemporaneously with the efforts to gain possession of the Demised Premises.

(d) New Lease. If this Lease shall terminate for any reason (other than (i) for an Early Termination Event; or (ii) as a result of the failure of Lender to cure any Tenant Event of Default which is curable by Lender), or is rejected or disaffirmed pursuant to any bankruptcy law or any other law affecting creditors' rights, any Lender or its nominee, assignee or other party designated by Lender shall have the right, and the County the corresponding obligation, exercisable by written notice to the County within sixty (60) days after Lender receives written notice of the effective date of such termination, to enter into a new lease (the "**New Lease**") of the Demised Premises with the County. The term of the New Lease shall begin on the date of the termination of this Lease and shall continue for the remainder of the Term. The New Lease executed by the Lender or its nominee or assignee shall otherwise contain the same terms and conditions as those set forth herein, except for requirements that have already expired or been performed, and except for prior obligations of Tenant which are not curable as provided herein and which remain unperformed or unsatisfied; provided, however, the new lessee thereunder shall cure any existing defaults, or defaults which existed as of the termination of the Lease with Tenant, which are capable of being cured within the applicable cure periods set forth above in this Section 36. It is the intention of the Parties hereto that, to the fullest extent permitted by Applicable Law, the New Lease shall have the same priority relative to other rights or interests to or in the Demised Premises covered by the New Lease as this Lease. The provisions of this Subsection 36(d) shall survive the termination (but not the expiration) of this Lease and shall continue in full force and effect thereunder to the same extent as if this Subsection 36(d) were a separate and independent contract among the County, Tenant and Lender. From the date on which any Lender shall give the County written notice of the exercise of its right to a New Lease, and subject to the obligation to cure defaults as provided above, the New Lease shall be deemed to have been entered into effective as of the date of termination of this Lease and such Lender or its nominee or assignee may use and enjoy the Demised Premises without hindrance or interference by the County, subject to the terms of the New Lease.

(e) Lender Sale. If the Lender succeeds to the interests of the Tenant under this Lease, through a foreclosure or otherwise, or as a result of a New Lease, the Lender shall have the right to remarket and sell the leasehold interest in this Lease, and, the County agrees to assist the Lender in identifying acceptable candidates for the purchase of such interest (and if the Project has not yet been Substantially Completed, the Substantial Completion Deadline shall be extended by

a period of time reasonably sufficient to permit the Lender to appropriately market and sell such interest), upon the following terms and conditions:

- (i) Any sale of the leasehold interest in this Lease shall be a Restricted Transfer subject to the provisions of Section 49(c) of this Lease;
- (ii) Payment of Rent will commence on the Rent Commencement Date;
- (iii) If the Project is not Substantially Completed within twenty-four (24) months of the Substantial Completion Deadline, Lender must either (A) commence to sell the leasehold interest in this Lease or (B) recommence construction and diligently pursue the same and provide the County with security sufficient to comply with Florida Statute 255.05 and otherwise in form reasonably satisfactory to the County. In the case of any re-commencement of construction, Lender shall complete such construction by the date for completion set forth in the cost-loaded construction schedule provided by Lender and approved by the County in its reasonable discretion (such approval not to be unreasonably withheld, conditioned or delayed) based upon the work and time then reasonably necessary to complete the Project, and such date for completion shall be the "Substantial Completion Deadline" hereunder;
- (iv) If the Project has not yet been Substantially Completed and Lender sells the leasehold interest in this Lease, the purchaser shall commence construction of the Project no later than four (4) months after the closing of such purchase, or such later time as may be agreed by the purchaser and the County in its reasonable discretion. Purchaser shall diligently continue construction and shall complete such construction by the date for completion set forth in the new construction timeline provided by the purchaser to the County, which date shall be the "Substantial Completion Deadline" hereunder;
- (v) If the Project is not Substantially Completed and Lender does not either (A) sell the Tenant Property Interest or (B) recommence construction within the twenty-four (24) month period, the County may terminate this Lease and Lender shall not have any obligation with respect to any amounts accruing under this Lease from and after such termination date.

(f) Replacement Operator. Within ninety (90) days after Lender succeeds to the interests of Tenant under this Lease, Lender shall consult with the County to identify a replacement terminal operator. The County shall cooperate with Lender and assist Lender in identifying an acceptable replacement terminal operator to perform in accordance with the provisions of the Terminal Operating Rider and any other requirements of this Lease. Any such replacement terminal operator may act in such capacity until either (x) the Demised Premises are successfully remarketed and/or sold in accordance with the terms of this Lease or (y) this Lease is terminated

in accordance with its terms. Lender shall not be deemed to be in default of this Lease by virtue of the failure of Lender to timely appoint an acceptable replacement terminal operator and/or have a terminal operator performing the duties under the Terminal Operating Rider so long as Lender shall continue to make all payments of Base Rent and any applicable Additional Rent due and payable during such period. If requested by the County, the Lender shall allow the County to operate the Project on such terms as are mutually agreed upon by the Lender and the County until the replacement terminal operator retained by Lender is prepared to commence terminal operations.

(g) Lender Liability. No Lender shall become personally liable for the performance or observation of any covenants or conditions to be performed or observed by Tenant unless and until such Lender becomes the owner of Tenant's interest hereunder upon the exercise of any remedy provided for in any Secured Indebtedness documents, or enters into a New Lease with the County pursuant to Subsection 38(d) above. Thereafter, such Lender shall be liable for (x) the performance and observance of such covenants and conditions only so long as such Lender owns such interest or is the lessee under this Lease or such New Lease, and (y) any defaults by such Lender occurring during the period it owned such interest or was the lessee under this Lease or such New Lease.

(h) Financing Amendments. Upon the reasonable request of any Lender, the County and Tenant shall cooperate in including in this Lease by suitable amendment from time to time any provision for the purpose of implementing the protective provisions contained in this Lease for the benefit of such Lender in allowing such Lender reasonable means to protect, preserve or enforce the lien of its proposed security interest on the occurrence of a default under the terms of this Lease. The County and Tenant shall execute, deliver and acknowledge any amendment reasonably necessary to effectuate any such requirement, provide however, that any such amendment shall not in any way affect any of the material terms of this Lease, including without limitation, the Term or the Rent nor otherwise in any material respect adversely affect any rights of the County under this Lease.

(i) Lender Rights. Each Lender shall have the right (but not the obligation) to participate in the adjustment of insurance claims and to appear in any and all taking proceedings with respect to the Demised Premises or any portion thereof and to participate in any and all hearings, trials or appeals in connection therewith.

(j) No Merger. As long as the lien of a Leasehold Mortgage or any other security for the Financing remains undischarged, unless Lender shall otherwise expressly consent in writing, the fee title to the Demised Property and the estate of Tenant therein created by this Lease shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said estate of Tenant therein by a third party, by purchase or otherwise.

(k) Third-Party Beneficiary. Each Lender shall be a third-party beneficiary to this Section 38.

(l) Exercise of Rights. Any rights granted under this Lease to Lenders shall, insofar as County is affected by the exercise of such rights, be exercised by them in the order of the priority of their respective Leasehold Mortgages.

(m) **Conflicts.** In the event of any conflict between this Section 38 and any other terms and provisions of this Lease, this Section 38 shall prevail.

39. **Estoppel Certificate.** The County and Tenant agree, at any time, and from time to time, within fifteen (15) days after written request of the other, to execute, acknowledge and deliver a statement in writing to the requesting Party and/or its designee certifying that: (i) this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect, as modified); (ii) the dates to which Base Rent, Additional Rent and other charges have been paid; (iii) whether or not, to the best of its knowledge, there exists any failure by the requesting Party to perform any term, covenant or condition contained in this Lease, and, if so, specifying each such failure; and (iv) and as to such additional factual matters regarding this Lease as may be requested, it being intended that any such statement delivered pursuant hereto may be relied upon by the requesting Party.

40. **Miami-Dade County's Rights as Sovereign.**

(a) The County retains all its sovereign prerogatives and rights as a County under State and local law with respect to the planning, design, construction, development and operation of the Project. It is expressly understood that notwithstanding any provisions of this Lease and County's status thereunder:

- (i) The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a County under State and local law, and in the event Tenant does not comply with the requirements for obtaining Permits and Approvals proscribed by the County, the County shall in no way be estopped from withholding or refusing to issue any approvals or applications for building, zoning, planning or development under present or future laws and regulations whatever nature applicable to the planning, design, construction and development of the Project, or the operation thereof, or be liable for the same; and
- (ii) The County shall not by virtue of this Lease be obligated to grant Tenant any approvals of applications for building, zoning, planning, shoreline review, development or otherwise under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Project.

(b) Notwithstanding and prevailing over any contrary provision in this Lease, any County covenant or obligation that may be contained in this Lease shall not bind the Board of County Commissioners, County's Regulatory and Economic Resources Department, the Division of Environmental Resources Management, or any other County, city, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, or any other approvals that may be granted, withheld, or revoked in the discretion of County or other applicable governmental agencies in the exercise of its/their police power(s).

41. **Notices.** Any notice, approval, request, authorization, direction or other communication under this Lease shall be given in writing and shall be deemed to have been

delivered and given for all purposes (i) on the delivery date if delivered personally; (ii) one (1) Business Day after deposit with a commercial overnight carrier, with written verification of receipt; (iii) if sent by U.S. mail, return receipt requested, postage and charges prepaid, the date of delivery on the date delivery is refused in each case to the following address (or such other place as County or Tenant shall hereinafter designate in writing); or (iv) by electronic mail, provided that confirmation of receipt is provided by the intended recipient:

County: Miami-Dade County  
Port Director, Seaport Department  
Miami-Dade County  
1015 North America Way  
  
Miami, Florida 33132-2081

with a copy to:

Assistant County Attorney, Seaport Department  
111 Northwest 1st Street  
Suite 2810  
Miami, Florida 33128

Tenant: MSC Miami Cruise Terminal, LLC  
6750 N. Andrews Ave. Suite 100  
Fort Lauderdale, FL 33309  
Attn.: Vice President

With a copy by courier and email to:

Chief Legal Officer  
MSC Cruises, S.A.  
Avenue Eugène Pittard 40  
1206 Geneva (Switzerland)  
[corporatelegalaffairs@msccruises.com](mailto:corporatelegalaffairs@msccruises.com)

and with a copy to:

Holland & Knight, LLP  
701 Brickell Avenue  
Suite 3300  
Miami, Florida 33131  
Attn.: William R. Bloom, Esquire

By subsequent letter agreement, the Parties may designate specific types of notices due under this Lease that are subject to a different notification process than that set forth above, provided that written notice shall always be a requirement of this Lease.

42. **Termination.**

(a) No termination of this Lease prior to the expiration or earlier termination thereof as provided herein, by lapse of time or otherwise, shall affect County's right to collect Rent for the period prior to termination thereof nor the Tenant's right to be paid the Contributions or any other payments due to the Tenant from the County for the period prior to termination thereof. Notwithstanding anything to the contrary contained herein, if this Lease is rejected in any bankruptcy action or proceeding filed by or against Tenant, and the effective date of rejection is on or after the date upon which that month's Rent is due and owing, then the Rent owing under this Lease for the month during which the effective date of such rejection occurs shall be due and payable in full and shall not be prorated. The same principle shall apply to any payment of Operating Expense Contribution or Dockage Contribution that is due to the Tenant in respect of the month in question.

(b) At the expiration or earlier termination of the Term of this Lease, regardless of the cause of the termination and subject to the rights of any Lender pursuant to Section [38] of this Lease, Tenant shall (i) provide the County with possession to the Project, free and clear of all liens, mortgage(s), UCC filings, encumbrances of any kind or nature, and claims arising by, through, or under Tenant; and (ii) surrender the Demised Premises and all improvements, alterations and additions thereto (including the Cruise Terminals Building and the Gangways, and except for any Tenant Property and any other property specifically excluded as provided in this Lease), and keys therefor to the County, clean and neat, excepting damage caused by the County, its agents, employees or contractors, but excluding damage caused by Tenant and/or Tenant's agents, employees, invitees, guests (other than County, third-party cruise line passengers and Non-MSV Vessels ), sub-tenants, contractors, and/or subcontractors of all tiers for which Tenant shall be responsible, normal wear and tear, condemnation and/or casualty. Upon the occurrence of such event, no further deed or other instrument shall be necessary to confirm the vesting in County of title to such improvements, provided, however, that Tenant or Lender, as applicable; upon request of County, shall execute, acknowledge and deliver to County, at no cost to County, a bill of sale and assignment confirming that all of Tenant's or Lender's right, title, and interest in or to such improvements has expired (if not previously delivered to the County), and that title to such improvements has vested in County, and releasing its interest in any performance bonds. The provisions of this Section 42(b) shall survive the termination (or expiration of the Term) of this Lease.

(c) If Tenant remains in possession of the Demised Premises after expiration or earlier termination of the Term, with or without the County's acquiescence and without any express agreement of the Parties, Tenant shall be a tenant-at-sufferance at one hundred twenty-five percent (125%) of the Base Rent then in effect. Tenant shall also continue to pay all other Additional Rent due hereunder. Notwithstanding the foregoing, there shall be no renewal of this Lease by operation of law or otherwise (other than Tenant's right to extend the Term as provided in this Lease), and, in addition to and without limiting such rights and remedies as may be available to County at law or in equity as a result of Tenant's holding over beyond the Term, the County shall be entitled to exercise any and all rights and remedies available to County in respect of a Tenant Event of Default hereunder (it being agreed that any such holdover shall be deemed an immediate Tenant Event of Default hereunder). No receipt of money by the County from Tenant after the termination of this Lease or Tenant's right of possession of the Demised Premises shall reinstate, continue or extend the Term or Tenant's right of possession. The provisions of this Subsection [40(c)] shall survive the expiration of the Term.

(d) The Tenant shall be entitled to early termination upon an Early Termination Event pursuant to Section [15] of the Development Rider.

43. **Exclusive Negotiation Period.** Upon the termination of this Lease for any reason other than a termination for a Tenant Event of Default under Section [34] of this Lease or Tenant's termination for an Excusable Termination Event under Section [36] of this Lease, the Tenant (or, at its election, any Affiliate of the Tenant) shall have the benefit of an exclusive negotiation period (the "**Right of Exclusive Negotiation**") to contract with the County for preferential berthing rights (or similar rights) at the Demised Premises in respect of Berths 8 and 9 (the "**PBR Agreement**") subject to and in accordance with the terms and conditions below:

(a) The Tenant's Right of Exclusive Negotiation shall be for a period of one (1) year during which time the County shall negotiate and exclusively with the Tenant for the PBR Agreement (the "**Exclusive Negotiation Period**") and shall not: (i) directly or indirectly encourage, solicit or initiate any discussions or negotiations with other parties in respect of the PBR Agreement; or (ii) enter into, or agree to enter into, any form of agreement or undertaking with any third party that would result in the Tenant (or any Affiliate of the Tenant as applicable) not being able to use the Demised Premises to the extent a PBR Agreement is entered into with the County;

(b) In the event that the Tenant and the County have not executed a contract for the PBR Agreement with the Exclusive Negotiation Period, the Tenant's exclusive right to negotiate with the County for the PBR Agreement shall expire; and

(c) During the Exclusive Negotiation Period, the Tenant shall have the right to berth the MSC Vessels in the same manner as would be provided in the event of an Early Termination Event pursuant to its Alternative Berthing Rights provided for in Section 13(g) of the Development Rider. During the Tenant's use of Alternative Berthing Rights during the Exclusive Negotiation Period, Tenant shall pay County in accordance with the tariff rates and fees set forth in the Port Tariff in effect at the time of the Tenant's exercise of its Alternative Berthing Rights under this Section.

(d) The foregoing shall not prevent the County from entering into a preferential berthing rights agreement with a third-party cruise line in furtherance of, or otherwise utilizing, its County's Reserved Preferential Berthing Rights or from utilizing the Demised Premises for any purpose necessary to service said third-party cruise line, subject to the provisions of Section 38 (including but not limited to the non-disturbance provisions set out in Section 38(a)(v).

44. **Quiet Enjoyment.** The County agrees, covenants and warrants that, except as may be required in connection with County's Maintenance Obligations (which shall be undertaken in a manner that limits disruptions to the extent possible), and County's right to come upon the Demised Premises for inspection purposes, in the exercise of its police powers, or in the event of emergencies or in response thereto, or as otherwise provided or required in the Lease, Tenant shall peaceably and quietly have, hold, and enjoy the Demised Premises for the Term and any extensions thereof hereby granted without any disturbance. Other than in respect of emergencies, the County shall provide reasonable written notice prior to any inspection and shall ensure that such inspections shall not interfere with the Tenant's operations.

45. **No Broker.** Each Party represents and warrants to the other that no real estate broker or agent has been involved in the procurement of this Lease. Each Party shall covenant and agree to indemnify, defend, protect and hold the other Party harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against the other Party by reason of any breach of the foregoing warranty.

46. **Grant of Land Permits.**

(a) The Tenant is hereby authorized to grant Land Permits as necessary, across, under and over the Demised Premises, for the installation, construction, maintenance, repair and replacement of sewer and other utility lines, for rights of way and for other means of ingress and egress, all subject to the express written approval of the County in the County's reasonable discretion. Upon approval by the County of a Land Permit, the County covenants that it will, where required by Applicable Law, join in the execution of such Land Permit as landowner. Tenant shall be solely responsible for all costs associated with (i) Land Permits granted pursuant to this Subsection 44(a), (ii) construction and installation on the Demised Premises in connection with such Land Permits, and (iii) all required repairs to the Project and Demised Premises resulting from the construction, installation and maintenance of such Land Permits.

(b) The County shall have the right but not the obligation, with the consent of Tenant which shall not be unreasonably withheld, to grant Land Permits affecting the Demised Premises, and to construct and install on the Demised Premises, utility lines and related improvements; so long as the Land Permits do not interfere with the construction of the Project in accordance with the Project Plans and Specification or interfere with the operation of the Project. The County shall be solely responsible for all costs associated with (i) the Land Permits granted pursuant to this Subsection [44(b)], (ii) construction and installation on the Demised Premises in connection with such Land Permits, and (iii) all required repairs to the Project and Demised Premises resulting from the construction, installation and maintenance of such Land Permits.

47. **Memorandum of Lease.** The County and Tenant shall execute an amendment to the existing Memorandum of Lease in the form of **Exhibit G** attached hereto which shall be recorded at Tenant's sole cost and expense.

48. **Force Majeure.**

(a) The Tenant and the County shall not be liable for any failure, delay or interruption in performing their individual obligations or in complying with conditions under this Lease where such delay or failure to perform, or interruption in performing, is the result of a Force Majeure Event. In allocating the risk of delay or failure of performance of their respective obligations under this Agreement, the Parties have not considered the possible occurrence of any of the Force Majeure Events listed herein (other than as contemplated in Section 49).

(b) **Procedure.** Notice by Tenant of a Force Majeure Event shall be sent to County and vice versa within twenty-five (25) calendar days of such Force Majeure Event; such notice shall set forth the date on which the Force Majeure Event is alleged to have commenced.

So long as a Force Majeure Event exists, Tenant and the County shall be entitled to suspend their respective obligations hereunder, including, in the case of Tenant, that Rent shall be abated (and not have to be paid for such periods) and, in the case of the County, that all County payment obligations (other than with respect to the USD 76m Contribution if applicable and subject to Tenant's compliance with the requirement in the following sentence) and any minimum guarantees shall be similarly abated and shall not have to be paid for such periods. Notwithstanding the foregoing, the Tenant shall be required to pay a prorated amount of Rent up to the commencement date of the Force Majeure Event, as notified by the Tenant to the County; any payment shall be paid within 30 days of such commencement date..

49. **Covid-19.**

(a) The Parties acknowledge that as at the Lease Date there is an ongoing pandemic resulting from the Severe Acute Respiratory Syndrome Coronavirus 2 (“COVID-19”). For the purposes of the Preliminary Term of this Lease, a Force Majeure Event shall not include any restrictions by any Governmental Authority, including without limitation stay-at-home orders, resulting from COVID-19 in effect as of February 17, 2021 (excluding any extensions, renewals or reinstatements of any such restrictions after expiration or rescission) that affect the Demised Premises, the Project or the work contemplated under this Lease.

(b) Notwithstanding the foregoing, during the Preliminary Term, any stoppage of design works or construction works, or other delays to such design or construction works as a result of COVID-19, including but not limited to restrictions, requirements, measures, policies or guidance imposed from time to time by public authorities, governments, regulators or other public bodies (including but not limited to CDC and the World Health Organization) as well as labor shortages, restrictions on the number, or the number within groups, of laborers on site or supply chain disruptions, or delays in the delivery of equipment and materials due to COVID-19, will be deemed a Force Majeure Event, provided that such stoppage or other delay:

- (1) is the result of or response to restrictions, requirements, measures, policies or guidance imposed by public authorities, governments (including but not limited to any Governmental Authority), regulators or other public bodies (including but not limited to CDC and the World Health Organization) that were imposed after February 17, 2021 (excluding any extensions, renewals or reinstatements of any such restrictions after expiration or rescission), and are still in effect on or after the Turnover Date or otherwise only come into effect after the Turnover Date;
- (2) could not have been reasonably avoided or mitigated through the implementation of industry best practices on the Project site to mitigate risks of COVID-19 infections; provided that to the extent that any mitigation allows the Project to continue but only at a slower rate of progress then the additional time needed will be deemed a Delay that is neither a County Delay nor a Tenant Delay; and
- (3) exceeds in aggregate 14 days in duration.

(c) For the avoidance of doubt, and notwithstanding the exclusion within the definition of Force Majeure Event that states that events which qualify as Force Majeure Events occurring or commencing prior to the Lease Date shall not be deemed to be Force Majeure Events, the Tenant shall be entitled to seek relief from variants or mutations of COVID-19 not in existence as at the Lease Date as a Force Majeure Event.

50. **Consents.** Unless otherwise specifically provided herein, no consent or approval by the County or Tenant permitted or required under the terms of this Lease shall be valid or be of any force whatsoever unless the same shall be in writing, signed by an authorized representative of the Party by or on whose behalf such consent is given.

51. **Governing Law.** This Lease and the interpretation of its terms shall be governed by and construed in accordance with the laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Lease or arising from or relating to this Lease shall lie exclusively in Miami-Dade County, Florida.

52. **Ownership; Assignment and Sublease.**

(a) On the Lease Date, Tenant is a wholly owned subsidiary of MSC. Tenant has completed the Uniform County Affidavit provided for under Section 2-8.1(3) of the County Code.

(b) The provisions of this Section shall be without prejudice to the rights of any Lender pursuant to the provisions of Section 36 of this Lease.

(c) The Tenant shall not be restricted from transferring any shareholding or membership interest in the Tenant where such Transfer is to an MSC Affiliate, subject to compliance with Section 2-8.1 (d)(1) of the County Code with respect to such shareholding or membership interest in the Tenant.

(d) The Tenant shall be authorized to make a Restricted Transfer only with the express written approval of the County, which shall not be unreasonably withheld or delayed. Any proposed transferee shall meet the following criteria:

- (i) such proposed transferee or its designated operator shall have financial strength reasonably sufficient to undertake the obligations to be transferred;
- (ii) Such proposed transferee shall demonstrate that it possesses a good background, responsibility, and reputation (including the absence of criminal, civil or regulatory claims or actions against such person);
- (iii) If obligations are to be retained by Tenant, Tenant shall have the ability to meet its obligations under this Lease after the transfer;
- (iv) for a delegation of rights and obligations under the Terminal Operating Rider to a replacement terminal operator after a Restricted Transfer, such terminal operator (or the combination of

Persons managing and employed by such terminal operator) shall have substantial experience in the operation and management of cruise terminals or facilities requiring substantially similar skills; and

- (v) compliance with Applicable Law.

All Restricted Transfers shall be subject to the express written approval of the County Mayor, or the Mayor's designee (e.g. the Port Director), which approval shall not be withheld conditioned or delayed so long as the transferee meets the above criteria (to be determined in the reasonable discretion of the County Mayor or the County Mayor's designee). Tenant shall provide to the County Mayor or County Mayor's designee any and all documents which County Mayor or County Mayor's designee any reasonably require to demonstrate compliance with the minimum requirements set forth above with respect to any Restrictive Transfer. In the event Tenant disagrees with the decision of the County Mayor, Tenant shall be authorized to request a review of the County Mayor's decision by the Miami-Dade County Board of County Commissioners.

(d) Notwithstanding anything to the contrary in Subsection 49(c), Tenant may, without the prior written consent of the County, sublet a portion of the Cruise Terminals Building subject to the following conditions:

- (i) The aggregate square footage of the sublet space(s) shall not exceed ten percent (10%) of the overall square footage of the Cruise Terminals Building, as applicable;
- (ii) The sublet space(s) shall be used for retail purposes and shall service the cruise guests and crew embarking or disembarking at the Cruise Terminals Building, as applicable (e.g., coffee shop, sale of magazines, newspapers and sundries);
- (iii) The sublease is made expressly subject to all applicable terms and conditions of this Lease, including without limitation, that the sublet space be used only for Permitted Uses, and that the Sublessee discontinue any use which is not a Permitted Use immediately upon notice;
- (iv) The sublease shall contain a right of termination in favor of County without penalties, damages or costs upon such termination should the County take ownership of the Project, exercisable by the County within ninety (90) of the date of transfer; and
- (v) The sublease is consistent with the Operation Protocol.

(e) This Lease shall be binding upon and inure to the benefit of the permitted successors, sublessees and assigns of the Parties hereto.

(f) Subject to the County's Contractor Selection Participation Rights, for the avoidance of any doubt, Tenant may from time to time designate the operator of the Cruise

Terminals Building, without the consent of the County and same shall not constitute a Restricted Transfer as long as there is no Change of Control of Tenant.

53. The Parties agree that, following Substantial Completion, up to one hundred (100) personal occupied vehicles per day shall have access over the road within the Demised Premises (each way, entering and exiting the Port, plus intra-day in and out use) utilized for employees and visitors of Terminal Link Miami (TLM) during the term of the TLM Operating Agreement. For the avoidance of any doubt, a vehicle making a round trip to and from the TLM operating area shall count as a single vehicle for the purpose of the 100-vehicle limitation set forth above; the foregoing limitation shall not apply to provisioning trucks servicing the Project, Berth 10, or Vessels at Berths 8, 9, or 10. No cargo trucks shall have access to TLM through the Demised Premises.

54. **Miscellaneous.**

(a) The Parties hereto hereby covenant and agree that County shall receive the Base Rent, Additional Rent and all other sums payable by Tenant hereinabove provided as net income from the Demised Premises, without any abatement, reduction, set-off, counterclaim defense or deduction whatsoever (except as otherwise expressly set forth in this Lease).

(b) If any clause or provision of this Lease is determined to be illegal, invalid or unenforceable under present or future laws effective during the Term, then and in that event, it is the intention of the Parties hereto that the remainder of this Lease shall not be affected thereby, and that in lieu of such illegal, invalid or unenforceable clause or provision there shall be substituted a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal valid and enforceable.

(c) All rights, powers, and privileges conferred hereunder upon the Parties hereto shall be cumulative, but not restrictive to those given by law.

(d) Time is of the essence of this Lease.

(e) No failure of the County or Tenant to exercise any power given County or Tenant hereunder or to insist upon strict compliance by the County or Tenant with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of the County's or Tenant's rights to demand exact compliance with the terms hereof.

(f) This Lease (and any documents expressly incorporated herein) contains the entire agreement of the Parties hereto as to the subject matter of this Lease, and no prior representations, inducements, letters of intent, promises or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force and effect. Any future amendment to this Lease must be in writing and signed by the Parties hereto, and as to County, subject to approval of same by the Board of County Commissioners.

(g) This Lease may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement.

(h) The Parties acknowledge that this Lease has been extensively negotiated with the assistance of competent counsel for each Party and agree that no provision of this Lease shall be construed in favor of or against any Party by virtue of the fact that such Party or its counsel has provided an initial or any subsequent draft of this Lease or of any portion of this Lease. This Lease shall be construed and enforced in accordance with the Laws of the State of Florida and no presumption as to authorship shall be presumed.

(i) The Parties agree that this Lease and its exhibits and riders are not intended to conflict with each other, and as such, are to be read cooperatively, in a broad, collective and cumulative manner (with parallel provisions covering the same issue co-existing).

(j) The provisions of this Lease shall bind, and the benefits and advantages shall inure to, the respective permitted successors and assigns of the Parties hereto.

(k) It is expressly understood and agreed that the relationship between the Parties shall be solely that of landlord and tenant, and County shall in no event be construed to be a partner or joint venturer of Tenant and Tenant shall not be responsible for any of County's debts or liabilities.

(l) Tenant shall keep and maintain all books, records, and documents of all kinds in any way related to Tenant's performance of its obligations and exercise of its rights under Sections [4 through 14 and 30] of the Terminal Operating Rider separate and identifiable from its other books, records and documents. The County shall be given the opportunity to review any and all documents reasonably necessary to verify compliance with this Lease under Sections [4 through 14 and 30] of the Terminal Operating Rider or otherwise, including the Small Business Enterprise program provisions, and shall have the right to audit the books and records of Tenant relating to this Lease, Tenant's construction of the Project, the hiring, work, and payment of Small Business Enterprise firms, Tenant's compliance with workforce requirements, and the payment of responsible wages. Tenant shall also require in its construction contracts, that construction contractors and trade subcontractors keep and maintain all books, records and documents of any kind related to their respective obligations in connection with construction of the Project, and that the County shall have the right to audit those books and records solely for the purpose of determining compliance with the applicable provisions of this Lease.

(m) Notwithstanding and prevailing over any other provision of this Lease, neither Party shall be liable for any special, incidental, consequential, punitive or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Lease, or any representation made in this Lease being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty, or any other legal theory.

(n) Any expiration or termination of this Lease shall not affect any accrued rights or liabilities of either Party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after the expiration or termination of this Agreement including but not limited to those provisions set out in Section 41 of this Lease and Section 13(g) of the Development Rider.

55. (o) The Tenant shall be required to comply with the applicable provisions of Section 448.095, Florida Statutes, titled “Verification of Employment Eligibility.” This includes but is not limited to utilization of the U.S. Department of Homeland Security’s E-Verify System to verify the employment eligibility of all newly hired employees by the Tenant from and after January 1, 2021, and requiring each of Tenant’s subcontractors and sub-subcontractors to provide to Tenant an affidavit stating that the subcontractor or sub-subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Tenant shall maintain a copy of such affidavits for the Term of this Lease. If Tenant has a good faith belief that a person or entity with which Tenant is contracting has knowingly violated Section 448.095(1) Florida Statute, Tenant shall terminate the contract with such person or entity. If the County has a good faith belief that a subcontractor of Tenant knowingly violated this subsection, but Tenant otherwise complied with this section, the County shall promptly notify Tenant and order Tenant to immediately terminate the contract with the subcontractor. The subcontractor or sub-subcontractor may file an action with a circuit or county court challenge the termination within twenty (20) days of such termination. If the County has a good faith belief that Tenant has knowingly violated Section 448.09(1) Florida Statute the County shall terminate this Lease, subject to the rights of Lender pursuant to Section 38 of this Lease.

Tenant may file an action with a circuit or county court to challenge such termination no later than twenty (20) days after the date the County terminates this Lease pursuant to this section. If this Lease is terminated for a violation of the statute by the Tenant, the Tenant may not be awarded a public contract for a period of one year after the date of termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

56. **Authority of the County Mayor or the County Mayor’s Designee.** The County Mayor or County Mayor’s designee (which on the Lease Date is the Port Director) shall be authorized to take the actions set forth below on behalf of County: (a) approving Major Capital Modifications in accordance with the provisions of Section 21 of this Lease; (b) approving of the Restricted Transfers in accordance with the provisions of Section 49 of this Lease (and subject to review by the Board of County Commissioners of Miami-Dade County in accordance with the provisions set forth therein); (c) approval of the form and amount of any alternate form of security proposed in satisfaction of any of the requirements of this Lease or Florida Statute 255.05; (d) approvals of revised timelines and extensions of completion dates pursuant to this Lease; (e) extend Financing Deadline until May 31, 2021; and (f) those actions authorized in the Board of County Commissioners of Miami-Dade County’s resolution authorizing this Lease. Any and all material amendments to the Lease, to the extent not specifically provided above, and any and all other acts specified to be taken by the Board of County Commissioners of Miami-Dade County by the express terms of this Agreement, shall be subject to the approval of the Board of County Commissioners of Miami-Dade County.

57. **Independent Private Sector Inspector General.** The attention of the Tenant is hereby directed to the requirements of A.O. 3-20 and R-516-96; the County shall have the right but not the obligation to retain, at its sole cost and expense, the services of an independent private sector inspector general (“IPSIG”) who may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Tenant and County in connection with this Lease. The scope of services performed by an IPSIG may include, but are

not limited to, monitoring and investigating compliance with the terms and conditions of this Lease, and investigating and preventing corruption and fraud.

The IPSIG may perform its services at all levels of the contracting and procurement process regarding this Lease, including but not limited to activities of Tenant, its officers, agents and employees, lobbyists, County staff and elected officials.

Upon ten (10) days written notice to Tenant from an IPSIG, the Tenant shall make all requested records and documents available to the IPSIG for inspection and copying. The IPSIG shall have the right to examine all documents and records in the Tenant's possession, custody or control which in the IPSIG's sole judgment pertain to performance of Tenant's obligations under this Lease.

The provisions in this Section shall apply to the Tenant, its officers, agents and employees. Nothing in this Lease shall impair any independent right of the County to conduct audit or investigative activities. The provisions of this Section are neither intended nor shall they be construed to impose any liability on the County by the Tenant or third parties, except that the County shall pay all costs associated with the IPSIG.

58. **Special Audit Rights.**

(a) **Tenant's Right to Audit and Inspect.** Tenant, its auditors, or their designee(s) shall have the right, once a year, at any time during the Operating Term to audit, check, inspect and review the County records and reports pertaining to the obligations of the County under this Lease (including but not limited to in respect of the calculation and payment of Operating Expense Contribution Minimum Guarantee and the Dockage Contribution Guarantee) for purposes of determining compliance with this Lease.

(b) **County's Contribution Rights.** Without limiting any additional audit rights granted to the County in this Lease, the County shall have the right to verify the Tenant's expenditure on the design and construction of the Project to verify the Tenant's expenditure of at least Three Hundred and Fifty Million Euros (€350,000,000) (which as at the Lease Date equates to an amount in US Dollars in excess of Four Hundred Million Dollars (\$400,000,000.00)) on **Improvement Costs** on the Project. Within thirty (30) days of Final Completion, Tenant shall provide to the County a written schedule of costs in the form attached at **Attachment 9A** signed and certified by the Tenant and the Design Builder providing confirmation of the Improvement Costs and a breakdown of the principal components of such Improvement Costs. The County, in its reasonable discretion, may request such additional reasonable information from the Tenant to ascertain the Improvement Costs.

59. **Public Records.** The Tenant shall comply with Florida's public records law, including Fla. Stat. § 119.0701. The Tenant shall specifically: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (2) upon request of the custodian of public records, provide the County with a copy of the public records or allow the public records to be inspected or copied within a reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4)

transfer, at no cost, to the public agency all public records in possession of the Tenant upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements or keep and maintain public records required by the public agency to perform the service. All records stored electronically must be provided to the public agency, upon request of custodian of public records in a format that is compatible with the information technology systems of the public agency.

**IF THE TENANT HAS QUESTIONS CONCERNING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**PortMiami Customer Service Manager  
pomservice@miamidade.gov  
305.347.4844**

60. **MSC Undertaking.** MSC undertakes to enter into, or to procure one or more MSC Affiliates to enter into, one or more MSC Cruise Terminal Usage Agreement(s) with a commitment to pay MSC Vessel Cruise Terminal Fees to the Tenant in an amount no less than that required for the Tenant to meet in full its Base Rent obligations as they fall due under the Lease whilst such Lease is in force. MSC provides this undertaking in partial consideration for the agreement of the County to provide alternative berthing rights to MSC and the Tenant as set forth in Section 13(g) of the Development Rider in the applicable circumstances as set forth under this Lease.

[Signature pages to follow]

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands under seals,  
the day and year first above written.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Print Name \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

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

By: \_\_\_\_\_  
Daniella Levine Cava  
County Mayor

Approved as to legal form and sufficiency

\_\_\_\_\_  
Assistant County Attorney

ATTEST: CLERK OF THE BOARD

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

Signed in the presence of

\_\_\_\_\_  
Print Name \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

MSC MIAMI CRUISE TERMINAL LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MSC Cruises SA joins in the execution of this Lease solely for the purpose of Section 59 of this Lease.

**MSC CRUISES S.A.**

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

Name:\_\_\_\_\_

Title:\_\_\_\_\_

**ATTACHMENT 1**  
**DESCRIPTION OF DEMISED PREMISES**

ATTACHMENT 1  
DESCRIPTION OF  
DEMISED PREMISES

LEGAL DESCRIPTION

A tract of land lying in the Southeast  $\frac{1}{4}$  of Section 5 and the South  $\frac{1}{2}$  of Section 4, Township 54 South, Range 42 East, Miami-Dade County, Florida, being more particularly described as follows:

Commence at a National Geodetic Survey Station "PORT", coordinates of said Station are North 524086.011, East 932242.986 on the NAD 83/90 adjustment, said point being on a Northern Seawall at the Port of Miami, Miami Dade County, Florida; thence S64°56'45"E for a distance of 235.20 feet; thence N25°03'15"W for a distance of 181.17 feet; thence S64°56'45"E for a distance of 1460.00 feet to the Point of Beginning of the herein described; thence S65°49'43"E for a distance of 2474.00 feet; thence S24°10'17"W for a distance of 75.00 feet; thence N65°49'43"W for a distance of 1020.84 feet; thence S73°10'19"W for a distance of 82.10 feet; thence N89°05'58"W for a distance of 572.13 feet to a point of curvature with a circular curve concave to the North having a chord bearing of N82°45'53"W; thence run Westerly, along the arc of said curve, having a Radius of 272.69 feet, through a central angle 12°40'11", for an arc distance of 60.30 feet to a point of tangency; thence N76°25'47"W for a distance of 400.10 feet to a point of curvature with a circular curve concave to the Northeast having a chord bearing of N70°41'32"W; thence run Northwesterly, along the arc of said curve, having a Radius of 275.63 feet, through a central angle 11°28'30", for an arc distance of 55.20 feet to a point of tangency; thence N64°57'17"W for a distance of 207.11 feet; thence N63°42'58"W for a distance of 46.26 feet; thence N63°51'52"W for a distance of 105.11 feet; thence N64°57'17"W for a distance of 62.85 feet; thence N25°02'43"E for a distance of 22.00 feet; thence N64°57'17"W for a distance of 483.46 feet; thence N25°03'15"E for a distance of 345.25 feet; thence S64°56'45"E for a distance of 538.00 feet; thence N25°03'15"E for a distance of 75.00 feet to the Point of Beginning. Lying and being in Miami-Dade County, Florida and containing 766,015 square feet or 17.59 acres, more or less.

Surveyor's Notes:

The sketch is an accurate depiction of the legal description to which is attached and it is in all cases subordinate thereof.

- The bearings on the legal description are being derived from field survey work points network-based RTK last dated November 4, 2015.

- The survey horizontal Control and Bearing are based on State Plane Coordinates, East Zone, Traverse Mercator System, North American Datum of 1983, 1990 Adjustment, and are referenced to a line calculated between the following project control monuments of the Miami-Dade County GPS Network Control Survey: Point "PORT" and "PORT AZ" as published, inverse line having a grid bearing of N64°55'38"W, a grid distance of 2559.686 feet, and 1.00003148 combined scale factor.

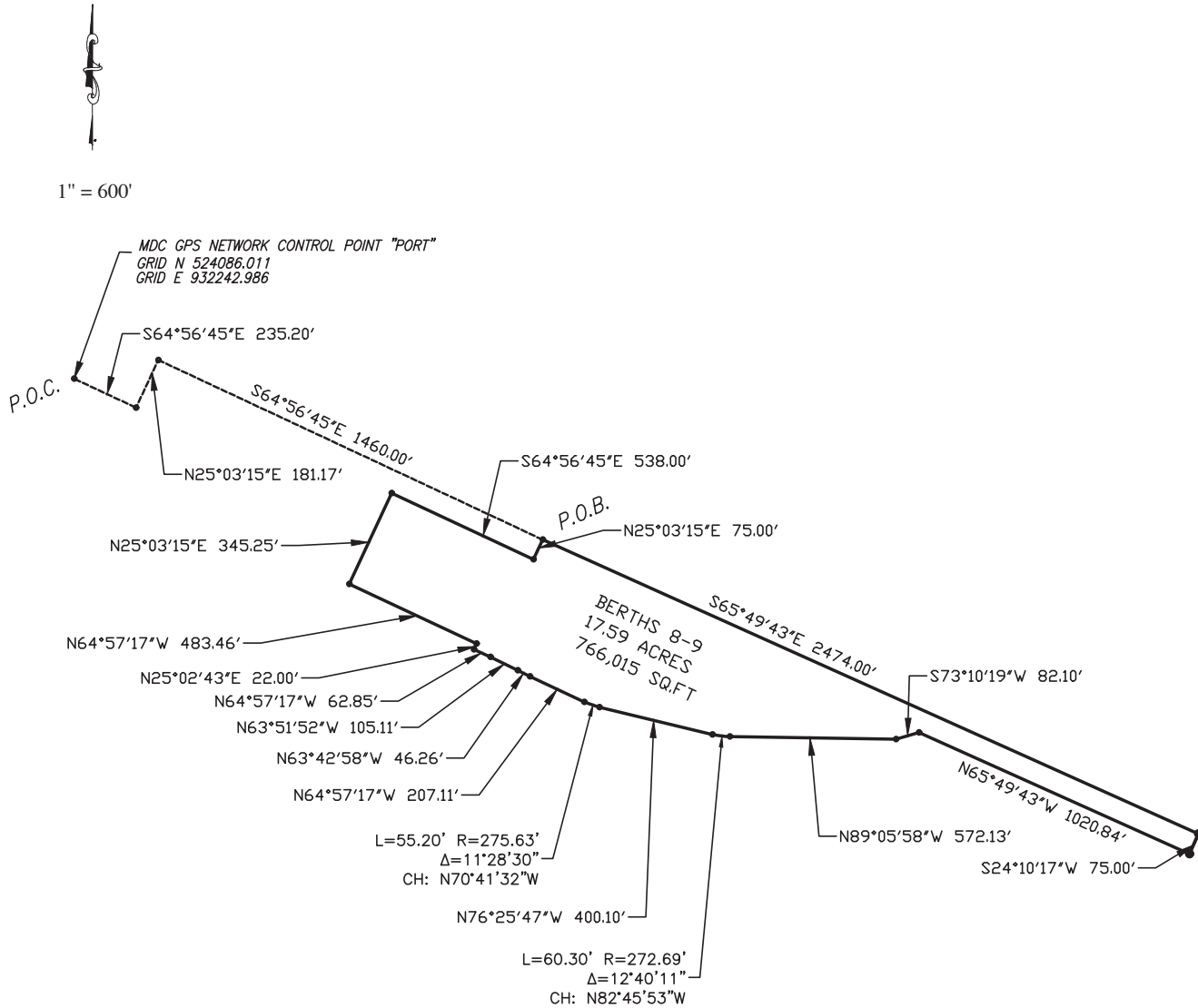


LUIS F. LACAU JR, PSM  
Florida License # 4643

MIAMI-DADE COUNTY  
Department of Transportation  
and Public Works  
111 NW First Street, Suite # 1610  
Miami, Florida 33128 (305) 375-5774  
Date: 10-20-2020

This Description and the accompanying sketch are not valid without the signature and raised seal of a Florida Licensed Surveyor and Mapper. This description and the accompanying Sketch are not valid one without the other.

# ATTACHMENT 1 DESCRIPTION OF DEMISED PREMISES



## NOTES:

1. THIS IS NOT A BOUNDARY SURVEY.
2. "P.O.C." denotes "point of commencement".
3. "P.O.B." denotes "point of beginning".
4. "R" denotes "Radius of curve".
5. "L" denotes "Length of curve".
6. "Δ" denotes "Central angle of curve".
7. "CH" denotes "Chord Bearing".
8. Site is located in Sections 4 and 5 of Township 54 South, Range 42 East, in Miami-Dade County, Florida.
9. "+/-" denotes "more or less".

This Description and the accompanying sketch are not valid without the signature and raised seal of a Florida Licensed Surveyor and Mapper. This description and the accompanying Sketch are not valid one without the other.

**ATTACHMENT 2**

**BASE RENT AND ADDITIONAL RENT**

## Attachment 2

### BASE RENT\* and ADDITIONAL RENT\*\*

| <u>Lease Year</u> | <u>Base Rent</u> | <u>Annual Escalation</u> | <u>Additional Rent</u> |  | <u>Lease Year</u> | <u>Base Rent</u> | <u>Annual Escalation</u> | <u>Additional Rent</u> |
|-------------------|------------------|--------------------------|------------------------|--|-------------------|------------------|--------------------------|------------------------|
| 1                 | \$15,200,000     |                          | \$6.38                 |  | 32                | \$28,338,307     | 3.00%                    | \$15.95                |
| 2                 | \$15,428,000     | 1.50%                    | \$6.57                 |  | 33                | \$29,188,456     | 3.00%                    | \$16.43                |
| 3                 | \$15,659,420     | 1.50%                    | \$6.77                 |  | 34                | \$30,064,110     | 3.00%                    | \$16.92                |
| 4                 | \$15,894,311     | 1.50%                    | \$6.97                 |  | 35                | \$30,966,033     | 3.00%                    | \$17.43                |
| 5                 | \$16,132,726     | 1.50%                    | \$7.18                 |  | 36                | \$31,895,014     | 3.00%                    | \$17.95                |
| 6                 | \$16,374,717     | 1.50%                    | \$7.40                 |  | 37                | \$32,851,865     | 3.00%                    | \$18.49                |
| 7                 | \$16,620,338     | 1.50%                    | \$7.62                 |  | 38                | \$33,837,421     | 3.00%                    | \$19.05                |
| 8                 | \$16,869,643     | 1.50%                    | \$7.85                 |  | 39                | \$34,852,543     | 3.00%                    | \$19.62                |
| 9                 | \$17,122,687     | 1.50%                    | \$8.08                 |  | 40                | \$35,898,120     | 3.00%                    | \$20.21                |
| 10                | \$17,379,528     | 1.50%                    | \$8.32                 |  | 41                | \$36,975,063     | 3.00%                    | \$20.81                |
| 11                | \$17,640,221     | 1.50%                    | \$8.57                 |  | 42                | \$38,084,315     | 3.00%                    | \$21.44                |
| 12                | \$17,904,824     | 1.50%                    | \$8.83                 |  | 43                | \$39,226,845     | 3.00%                    | \$22.08                |
| 13                | \$18,173,396     | 1.50%                    | \$9.10                 |  | 44                | \$40,403,650     | 3.00%                    | \$22.74                |
| 14                | \$18,445,997     | 1.50%                    | \$9.37                 |  | 45                | \$41,615,760     | 3.00%                    | \$23.42                |
| 15                | \$18,722,687     | 1.50%                    | \$9.65                 |  | 46                | \$42,864,232     | 3.00%                    | \$24.13                |
| 16                | \$19,003,527     | 1.50%                    | \$9.94                 |  | 47                | \$44,150,159     | 3.00%                    | \$24.85                |
| 17                | \$19,288,580     | 1.50%                    | \$10.24                |  | 48                | \$45,474,664     | 3.00%                    | \$25.60                |
| 18                | \$19,577,909     | 1.50%                    | \$10.55                |  | 49                | \$46,838,904     | 3.00%                    | \$26.36                |
| 19                | \$19,871,578     | 1.50%                    | \$10.86                |  | 50                | \$48,244,071     | 3.00%                    | \$27.15                |
| 20                | \$20,169,651     | 1.50%                    | \$11.19                |  | 51                | \$49,691,393     | 3.00%                    | \$27.97                |
| 21                | \$20,472,196     | 1.50%                    | \$11.52                |  | 52                | \$51,182,135     | 3.00%                    | \$28.81                |
| 22                | \$21,086,362     | 3.00%                    | \$11.87                |  | 53                | \$52,717,599     | 3.00%                    | \$29.67                |
| 23                | \$21,718,953     | 3.00%                    | \$12.22                |  | 54                | \$54,299,127     | 3.00%                    | \$30.56                |
| 24                | \$22,370,521     | 3.00%                    | \$12.59                |  | 55                | \$55,928,101     | 3.00%                    | \$31.48                |
| 25                | \$23,041,637     | 3.00%                    | \$12.97                |  | 56                | \$57,605,944     | 3.00%                    | \$32.42                |
| 26                | \$23,732,886     | 3.00%                    | \$13.36                |  | 57                | \$59,334,122     | 3.00%                    | \$33.40                |
| 27                | \$24,444,873     | 3.00%                    | \$13.76                |  | 58                | \$61,114,146     | 3.00%                    | \$34.40                |
| 28                | \$25,178,219     | 3.00%                    | \$14.17                |  | 59                | \$62,947,570     | 3.00%                    | \$35.43                |
| 29                | \$25,933,566     | 3.00%                    | \$14.60                |  | 60                | \$64,835,997     | 3.00%                    | \$36.49                |
| 30                | \$26,711,572     | 3.00%                    | \$15.03                |  | 61                | \$66,781,077     | 3.00%                    | \$37.59                |
| 31                | \$27,512,920     | 3.00%                    | \$15.49                |  | 62                | \$68,784,510     | 3.00%                    | \$38.72                |

\*In Year 42 through Term the annual rent escalation shall increase by the lesser of CPI formula or 3% compounded annually. For illustration purposes shown as 3% in the table above.

\*\*Additional Rent is due in any fiscal year when MSC annual passenger movements exceed 4,500,000. The Additional Rent commences at \$6.38 in Fiscal Year 2024 per passenger movement. Additional Rent escalates at 3% compounded each Fiscal Year.

**ATTACHMENT 3**  
**DISPUTE RESOLUTION PROTOCOL**

## ATTACHMENT 3

### DISPUTE RESOLUTION PROTOCOL FRAMEWORK

Disputes arising out of or in connection with those matters in the Lease, Development Rider, or Terminal Operating Rider identified to be referred to the Dispute Resolution Protocol shall be resolved in accordance with the dispute resolution protocol to be developed by the Parties generally in accordance with the framework below:

- (i) Prior to the initiation of any arbitration, the Parties shall undertake good-faith negotiations in an attempt to resolve any dispute;
- (ii) There shall be three levels of escalation during the good-faith negotiations:
  - a. Terminal management personnel;
  - b. Tenant Vice-President and Deputy Port Director; and
  - c. Tenant President and Port Director;
- (iii) County shall have the right to include the Primary Third-Party Cruise Line in any negotiations to the extent the dispute in question involves matters concerning the Primary Third-Party Cruise Line. Alternatively, the County may delegate its right to participate in negotiation surrounding such matters to the Primary Third-Party Cruise Line; provided, however, that the County shall remain in its roles during the escalation process set forth in (ii);
- (iv) To the extent good faith negotiations fail to resolve the dispute within two months (or such shorter timeframe as the subject matter may require), such negotiations shall end;
- (v) If no resolution is reached further to the negotiations, the Parties shall be entitled to refer the matter to an expert and/or arbitral tribunal (being composed of a sole arbitrator unless the parties otherwise agree) for resolution. With respect to matters concerning the Primary Third-Party Cruise Line, the County may participate in the arbitration with the Primary-Third Party Cruise Line. The Parties shall define in the Dispute Resolution Protocol the circumstances in which an expert and/or arbitrator shall be used;
- (vi) The Parties shall agree on qualifications/experience/impartiality requirements for any industry expert or arbitrator;
- (vii) Each Party shall bear its own attorney fees. Arbitration fees shall be shared equally;
- (viii) The legal seat of any arbitration shall be Miami, Florida; and
- (ix) The Parties shall include such further provisions as they may mutually agree when developing the basis for the Dispute Resolution Protocol.

**EXHIBIT A**  
**DEFINITIONS**

The following words shall have the following definitions:

1. **“Acceleration Proposal”** shall have the meaning assigned to such term in Section 14 of the Development Rider.
2. **“Additional Fees”** shall have the meaning assigned to such term in Section 27 of the Terminal Operating Rider.
3. **“Additional Rent”** shall mean Six and 38/100 Dollars (\$6.38) in County Fiscal Year 2024, per Qualifying Passenger Move in excess of Four Million Five Hundred Thousand (4,500,000) Qualifying Passenger Moves at the Cruise Terminals Building during each Lease Year of the Operating Term. The per Qualifying Passenger Move dollar amount shall be subject to three percent (3%) compounded annual increases as depicted in Attachment 2.
4. **“Affiliates”** shall mean any Person Controlled by, under Common Control with, or which Controls any other Person, as may be applicable and warranted by the context in which it is used.
5. **“Agent”** shall mean the financial institution selected by the Parties to act as an escrow agent under the Revenue Collection and Disbursement Agreement.
6. **“Aponte Family Member”** shall mean: (i) Gianluigi Aponte; (ii) Rafaela Diamant (iii) family members of Gianluigi Aponte and Rafaela Diamant (e.g., grandmother, grandfather, father, mother, son, son-in-law, daughter, daughter-in-law, brother, sister, aunt, uncle, niece, nephew, grandson or granddaughter, and ancestors or lineal descendants by birth or adoption) and/or (iii) any (a) trusts for the benefit of any family member(s), (b) partnership in which a family member(s) is/are a general partner, (c) limited partnership in which a family member(s) is/are a general partner, (d) limited liability company in which a family member(s) is/are a managing member, or (e) corporation in which a family member(s) is/are a Controlling shareholder.
7. **“Applicable Laws”** shall mean any federal, State, or County, statute, code, tariff, or regulation, including, without limitation, PortMiami Tariff No. 010, applicable to the Demised Premises by any Governmental Authority having jurisdiction.
8. **“Applicable Measures”** shall mean the applicable subcontractor goals established by the County Mayor upon receipt of the recommendation of the SBD.
9. **“Approved Combined Concourse Plans and Specifications”** shall have the meaning ascribed to said term in Section 7(d) of the Development Rider.
10. **“Approved County Consideration”** shall have the meaning ascribed to said term in Section 4(b) of the Development Rider

11. **“Base Rent”** shall mean the base rent as set forth in Section 9(b) of this Lease.
12. **“Berth 8”** means that berth designated as Berth 8 in the Port master plan.
13. **“Berth 9”** means that berth designated as Berth 9 in the Port master plan.
14. **“Berth 10”** means that berth directly east of Berth 9 designated as Berth10 with a length measuring approximately 1,250 linear feet. Berth 10 is identified in Attachment 8.
15. **“Berth 10 Concourse”** shall have the meaning ascribed to said term in Section 1(a) of the Development Rider.
16. **“Berth 10 & Concourse Remedial Work”** means any corrective work required in respect of any damage on or to the Demised Premises which occurs as a result of the County’s construction of Berth 10 and/or the Concluding Berth 10 Concourse Element including but not limited to damage to the existing improvements as well as any environmental conditions occurring in or on the Demised Premises resulting from such construction works requiring remediation under Applicable Laws.
17. **“Berthing Areas”** shall mean the berthing areas depicted in Attachment 7 to the Development Rider with a length measuring approximately 2,474 linear feet, designed to accommodate two (2) vessels at Berth 8 and Berth 9.
18. **“Business Day”** shall mean any day of the week during which business is carried out in the ordinary course in Miami, Florida, exclusive of Saturdays, Sundays and legal holidays.
19. **“Casualty”** means the damage or destruction of all or any part of the Project, including without limitation by fire or other casualty loss.
20. **“Capital Improvements”** means improvements to the Project after Completion which are required to be capitalized for federal income tax purposes including but not limited to Major Capital Modifications.
21. **“Change Costs”** means, collectively, all costs and expenses incurred by Tenant in connection with a County Requested Change, including without limitation, all hard costs (including but not limited to general conditions, profit, overhead, insurance, labor burden, bonds and contingencies) and all soft costs (including but not limited to surveying, testing, architectural, design, engineering, permitting, project management fees and any other soft costs); soft costs and hard costs shall be itemized. Change Costs shall be determined based on industry standards to perform the work required for completion of the Project, but shall not include Tenant’s errors, omissions, or negligence.
22. **“Change of Control”** means a change of Control.
23. **“Code of Conduct”** has the meaning assigned to such term in Section 5 of the Lease.

24. **“Combined Concourse Plans and Specifications”** shall mean the plans and specifications for the Combined Concourse that are subject to the review process set forth in accordance with Section 7(d) of the Development Rider.
25. **“Community Small Business Enterprise”** or **“CSBE”** shall mean the County’s Small Business Enterprise Program as described in Section 10(c) of the Development Rider.
26. **“Completion”** shall mean the completion of the Project substantially in accordance with the Project Plans and Specification with a final certificate of occupancy for the Project such that the entire Project can be used and operated for its intended purpose.
27. **“Concurrent Works”** shall have the meaning ascribed to said term in Section 6(h) of the Development Rider.
28. **“Contributions”** shall have the meaning ascribed to said term in Section 10(b) of the Lease.
29. **“Control”** shall mean the power, directly or indirectly, either to (i) vote on securities having ordinary voting power for the election of directors (or persons performing similar functions) of a Person or (ii) direct or cause the direction of the management and policies of a Person, whether through the ability to exercise voting power through the beneficial ownership of voting or equity securities, by contract or otherwise. The terms **“Controlling”**, **“Controlled by”**, and **“under common Control with”** have meanings correlative thereto.
30. **“County”** shall mean Miami-Dade County, a political subdivision of the State of Florida.
31. **“County Code”** shall mean the County Code of Ordinances of Miami-Dade County, Florida.
32. **“County Considerations”** shall have the meaning ascribed to said term in Section 4(b) of the Development Rider.
33. **“County’s Contractor Selection Participation Rights”** shall mean the County’s right, acting reasonably, to participate in the establishment of minimum qualifications and a scope of services for the selection process utilized to select the firm(s) providing security, stevedoring services, and baggage handling services. No term of any such agreement(s) shall exceed a duration of two (2) years, unless otherwise agreed between the Parties. The County shall have the right to participate in all interviews, selection meetings, and negotiations for the selection and engagement of the aforementioned services in the same manner as the Tenant. The County may assign its County’s Contractor Selection Participation Rights to the Primary Third-Party Cruise Line. The Tenant shall make the selection of the service provider subject to the County’s, or its assignee’s, approval (which shall not be unreasonably withheld, conditioned or delayed) provided that the County, or its assignee, shall not be entitled to withhold approval if the Tenant’s desired service provider meets the minimum qualifications and scope of services established by the Parties. To the extent the County, or its assignee, fails to provide approval in such circumstances, within ten (10) Business Days its approval shall be deemed to have been provided and the

Tenant shall proceed with the selection of the service provider in question. The County shall not be required to be a party to any agreement(s) entered pursuant to the County's Contractor Selection Participation Rights; such agreement(s) shall not create liabilities for the County. Any disputes regarding the exercise of the County's Contractor Selection Participation Rights shall be subject to the Construction/Operation Dispute Resolution Mechanism.

34. **"County Default Termination Notice"** shall mean a written notice of termination to County as provided by Tenant under Section 34(b)(i) of this Lease.
35. **"County Delay"** shall mean any delay in the critical path of the Project Schedule or the Phasing Plan resulting from: (i) the failure of the County to complete County Pre-Turnover Obligations with respect to the clearance of any structures (temporary or otherwise) erected or used by TLM within seven (7) days of the Turnover Date; (ii) the failure of the County to complete the County Site Obligations within the time frame provided in the Project Schedule and/or the Phasing Plan or through later events or the passage of time if the County Site Obligations fall in the critical path of Substantial Completion of the Project; (iii) the failure of the County to complete the County Pre-Turnover Obligations; (iv) the failure of the County to deliver possession to Tenant of the Site on the Turnover Date; (v) Pre-Existing Environmental Conditions (including any required Environmental Remediation); (vi) restricted access on the Port preventing removal of dredging spoils associated with Tenant Dredging in the time frame reflected in the Project Schedule not cured within ten (10) days of written notice to the County, other than as contemplated by Section 9(j) of the Development Rider; or (ix) acts taken by the County restricting access, use, operation or performance of any demolition, site work, or construction at or about the Demised Premises (other than delays associated with the failure of Tenant to make application for Permits and Approvals in accordance with Applicable Laws and to diligently prosecute such applications); (x) any delays associated with the failure of the County to timely issue all necessary licenses, permits and approvals required to construct the Project (other than delays associated with the failure of Tenant to make application for Permits and Approvals in accordance with Applicable Laws and to diligently prosecute such applications); (xi) the failure of the County to deliver a Notice to Proceed by the dates set forth in the Phasing Plan or on the Turnover Date free and clear of any other tenancies or any occupants, provided such delay is not due to the Tenant's failure to comply with any of the requirements of Section 9(a) of the Development Rider. Notwithstanding the foregoing, a delay shall not be considered a "County Delay" if such delay was directly caused by the actions or inactions of Tenant or any of its employees, agents, contractors or subcontractors of any tier (e.g., without limitation, failure to submit all requirements for receipt of Permits and Approvals; the failure to submit applications for Permits and Approvals in a timely manner, failure of applications for Permits and Approvals to comply with Applicable Laws). For the avoidance of any doubt, to the extent any of the events which constitute a County Delay described above occur simultaneously with any other event(s) described above which constitute a County Delay or simultaneously with a Force Majeure Event or Tenant Delay, in determining the length of the County Delay, the actual period of time of delay to the critical path of the Project Schedule and Phasing Plan caused by the multiple events that constitute a County Delay as described above excluding any

simultaneous delays resulting from Tenant Delay and/or Force Majeure Event(s) shall be the period of time of a County Delay.

36. **“County Delay Account”** shall have the meaning assigned to such term in Section 14(a) of the Development Rider.
37. **“County Events of Default”** shall mean any event of default by County set forth in Section 35 of this Lease.
38. **“County Indemnified Parties”** shall mean County, its officers, directors, employees, agents, successors and assigns.
39. **“County Pre-Turnover Obligations”** shall have the meaning assigned to said term in Section 6(a) of the Development Rider.
40. **“County’s Maintenance Dredging Obligation”** shall mean the County’s obligation, after Tenant’s completion of the Tenant Dredging and commencing with the Operating Term, to maintain the Berthing Areas to -36’ feet and width of one hundred feet from the seawall, excluding the Eastern Transition and the Western Transition as necessary to maintain the required slope.
41. **“County Lead Project Representative”** shall have the meaning assigned to said term in Section 4(b) of the Development Rider.
42. **“County’s Maintenance Obligations”** shall mean those maintenance obligations to be undertaken by the County as set forth in Section 15 of the Terminal Operating Rider.
43. **“County Parking Incentive”** shall mean the dollar amount determined by the division of (i) the parking revenue collected by the County for those vehicles that park at any County-owned and operated parking lots or garages used for cruise terminals at the Port, excluding any fees or surcharges imposed on vehicle parking that are additional to or separately listed from the base parking fee established in the Port Tariff by the (ii) passenger movements at County owned and operated cruise terminals (i.e., excluding Cruise Terminal A and the Project and any future cruise terminals with similar arrangements). The amount of the County Parking Incentive shall be calculated by the County.
44. **“County Parking Revenue Share”** shall mean the product of the passenger movements generated by the Primary Third-Party Cruise Line and the County Parking Incentive; provided, however, that the County Parking Revenue Share shall not exceed fifteen percent (15%) of the gross revenues generated at the Parking Element. The Parties agree to review the aforementioned cap on the County Parking Revenue Share on the fifteenth (15<sup>th</sup>) anniversary of the Rent Commencement Date and at such other milestones as the Parties may agree.
45. **“County Project Representatives”** shall have the meaning assigned to said term in Section 4(b) of the Development Rider.

46. **“County’s Reserved Preferential Berthing Rights”** shall mean (unless otherwise agreed by the Parties):

- (1) before Substantial Completion of Berth 10 and in any event only up to October 1, 2028, the preferential right of the County to utilize:
  - (a) Berth 9 during the winter season on Sundays and Thursdays every week (which may be used for a 3- and 4-night itinerary) and year-round every other week on Mondays and Saturdays (which may be used for a 5/5/4-night itinerary); and
  - (b) Berth 8 (simultaneously with Berth 9) every other week on Thursday (which may be used for 5/5/4- night year-round itinerary) (i.e., on two (2) Thursdays per month).

During this period, the County shall confirm every twelve (12) months, on October 31 of each year, its intention to utilize the foregoing rights at least eighteen (18) months before the first call of the applicable twelve-month period.

- (2) subject to the actual date of Substantial Completion of Berth 10 for five (5) years (provided that such rights shall not start earlier than October 1, 2028 and not go beyond October 31, 2033 regardless of the actual date of Substantial Completion of Berth 10), the preferential right of the County to utilize either Berth 8 or Berth 9 on alternating Fridays; the County shall submit its request identifying the alternating Fridays it wishes to use during a 12-month period, 24 months before the date of the first call on April 30 of each year. The Tenant shall confirm to the County which alternating Fridays the County shall be allocated 21 months in advance of the first call. After the five-year period described above, through the conclusion of the Operating Term, the County shall have the right to request on April 30 each year the right to utilize either Berth 8 or Berth 9 on alternating Fridays upon twenty-four (24) months’ notice ahead of the first call of the applicable twelve month period; within three (3) months of the County’s request, the Tenant shall confirm which, if any, of Berth 8 or Berth 9 is available for the County’s use; and

- (3) For the avoidance of all doubt, all berthing rights at Berth 10.

47. **“County’s Reversionary Interest”** shall mean the County’s fee simple reversionary interest in (a) the Demised Premises and (b) the improvements and fixtures thereon constructed by Tenant and any Capital Improvements made by Tenant during the Operating Term.

48. **“County Requested Changes”** shall have the meaning assigned to said term in Section 4(g) of the Development Rider

49. **“County Site Obligations”** shall mean County’s obligations with respect to the Demised Premises, which are not contained in the scope of the Project to be performed by Tenant and which are defined in Section 13 of the Development Rider.

50. **“COVID-19”** shall have the meaning assigned to said term in Section 49 of the Lease.
51. **“CPI Formula”** shall mean the average of the Consumer Price Index (Miami-Fort Lauderdale-West Palm Beach issued from U.S. Department of Labor, Bureau of Labor Statistics “All items less food and energy”) over the two years prior to the following two years in which the Base Rent is indexed. Should that index no longer be available it will be replaced with the next closest index representing the South Florida economy published by a Federal or State Agency. By way of example, the index average for years 40 and 41 will apply for years 42 and 43 and the two-year index average for years 42 and 43 will apply for years 44 and 45.
52. **“Cruise Operations”** shall mean the operation of cruise vessels, including the navigation of such vessels on navigable waters, the docking, berthing and provisioning of such vessels at the Cruise Terminals Building or Berth 10, and the transiting, embarking and disembarking of passengers from said vessels at the Cruise Terminals Building or Berth 10 in connection with the Permitted Uses.
53. **“Cruise Terminals Building”** shall mean a shared the multi-vessel cruise terminal and parking garage complex as described in the Project Description and shown on the Cruise Terminals Conceptual Plan.
54. **“Cruise Terminals Conceptual Plans”** shall mean what is depicted in Attachment 6.
55. **“Cruise Terminal Fees”** shall mean the MSC Vessel Cruise Terminal Fees and the Non-MSC Vessel Cruise Terminal Fees and expressly excludes all Port Fees.
56. **“Debt Service”** shall mean the cash that is required for a particular time period to cover the repayment of interest and principal on any loans obtained by Tenant which are secured by Tenant’s interest in this Lease.
57. **“Deed Restrictions”** shall mean the conditions, limitations, prohibitions, or restrictions in connection with the use, operation or disposition of the land constituting the Demised Premises, as set forth in any and all deeds or other instruments of conveyance of such land to the County listed on Exhibit D of this Lease.
58. **“Delay”** shall mean any delay in the critical path of the Project Schedule or the Phasing Plan resulting from (i) a County Delay; (ii) a Tenant Delay; (iii) Force Majeure Events; (iv) acts taken by any Governmental Authorities (other than the Port) restricting access, use, operation or performance of any demolition, site work, or construction at or about the Demised Premises (other than delays associated with the failure of Tenant to make application for Permits and Approvals in accordance with Applicable Laws and to diligently prosecute such applications); or (v) any delays associated with the failure of any Governmental Authorities (other than the Port) having jurisdiction over the Project to timely issue all necessary licenses, permits and approvals required to construct the Project (other than delays associated with the failure of Tenant to make application for Permits and Approvals in accordance with Applicable Laws and to diligently prosecute such applications).

59. “**Demised Premises**” shall mean (i) the land owned by the County and rented to Tenant under this Lease and which land is more particularly described in Attachment 1 to this Lease and (ii) after the Tenant Conveyance pursuant to Section 10(a) of the Lease, shall also include the improvements of the Project and any Capital Improvements thereafter constructed.
60. “**Design-Builder**” shall mean the design-builder engaged by the Tenant to perform the design and construction works of the Project.
61. “**Designated Target Areas**” has the mean assigned to that term in Section 2-1701 of the County Code and Implementing Order 3-37, as applied to the Port.
62. “**Development Rider**” shall mean the Development Rider attached to this Lease as Exhibit B which sets forth the obligations of the Parties with respect to the development of the Project.
63. “**Direct Costs**” shall mean any and all third-party costs reasonably incurred by the Tenant including design professionals, consultants, contractors and subcontractors without mark-up by the Tenant as a result of actual work performed and general conditions and profit relating to the design and construction work. Direct Costs shall not include home office overhead of its contractors or subcontractors, or other cost loading. For the avoidance of doubt, Direct Costs shall not include Tenant profit or loss of revenue or other costs resulting from the failure to dock a Vessel at the Port or placement of a Vessel in the TPF, or any cost relating to placement of Vessel in alternate facilities, all of which are provided for and limited specifically in Section 13(g) of the Development Rider.
64. “**Dispute Resolution Protocol**” shall mean the protocol that is developed in accordance with Section 36 of the Lease and attached as Attachment 3.
65. “**Due Diligence Period**” shall mean the period of sixty (60) days from the Lease Date.
66. “**Early Termination Event**” shall have the meaning assigned to it in Section 15 of the Development Rider.
67. “**Eastern Transition**” shall mean the eastern boundary of the Berthing Areas and extending the length of the Berthing Areas at an approximate 2:1 slope.
68. “**Environmental Approval Date**” shall mean the date of issuance of the last Marine Environmental Permit necessary to construction of the Pier.
69. “**Environmental Base Line**” shall have the meaning assigned to such term in Section 13(a) of the Development Rider.
70. “**Environmental Claims**” shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens or encumbrances, notices of noncompliance or violation, investigations or proceedings under any Environmental Law or any authorization or permit issued under any such Environmental Law, including without limitation (i) any and all claims by a Governmental Authority or regulatory

authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from hazardous materials or arising from alleged injury or threat of injury to health, safety or the environment.

71. **“Environmental Laws”** shall mean any statute, law, rule, regulation, ordinance, decree, guideline, policy, code in effect and in each case as amended as of the date hereof, and any judicial interpretation thereof or administrative order applicable to a Person or its operations or property as of the date hereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or hazardous materials.
72. **“Environmental Remediation”** shall mean the obligation of the County to remediate Pre-Existing Environmental Conditions on the Demised Premises.
73. **“Equity Interests”** has the meaning assigned to said term in Subsection 38(a)(i) of this Lease.
74. **“ESA”** shall mean a Phase I Environmental Assessment; and Phase II Environmental Site Assessment, if required based upon the recommendations contained any Phase I Environmental assessment.
75. **“Excusable Events”** shall mean any extraordinary event or circumstance that is out of Tenant’s control that would render Tenant’s operation of the Cruise Terminals Building economically unviable, including without limitation: (i) a material negative change in the economic conditions of Tenant resulting in or from the inability of MSC Vessels to operate in the Caribbean region (including Miami), (ii) a change in the economic conditions of the cruise industry as a whole which causes a material negative economic impact on Tenant’s operation, the operations of MSC at the Port and/or the operations of any MSC Affiliates at the Port and which persists for more than one (1) year, (iii) one or more Force Majeure Events that prevents Tenant from operating the Cruise Terminals Building for more than six (6) months and (iv) issues associated with sea level rise which materially impact cruise operations of the Port. An event shall not be an Excusable Event unless the loss suffered to the Tenant or MSC Affiliates exceeds USD Fifteen Million Dollars (\$15,000,000) (the **“Qualifying Amount”**) in a 12-month period. The Qualifying Amount shall escalate each year of the Operating Term by three (3) percent starting in year two of the Operating Term.
76. **“Exclusive Use County Consideration”** shall have the mean assigned to such term in Section 4(d) of the Development Rider.
77. **“Existing Utilities”** shall have the meaning assigned to such term in Section 13(f) of the Development Rider.
78. **“Fair Market Value”** shall mean the price at which the Project would have realized immediately prior to public knowledge, considering its highest and most profitable use subject to the Permitted Uses, if then offered in the open market, as reasonably determined by averaging the appraisals provided by three (3) independent certified appraisers, one (1)

which shall be selected by County, one (1) which shall be selected by Tenant, and one (1) which shall be selected by agreement of the Parties.

79. **“Fees”** shall mean any and all fees charged by any Governmental Authority in connection with any of the activities contemplated in this Lease, including but not limited to fees related to the issuance of Permits and Approvals, impact fees, recordation or registration fees, and documentary taxes.
80. **“Final Approval”** shall mean County’s approval or deemed approval of the Temporary Master Plan in accordance with Section 5(b) of the Development Rider.
81. **“Final Completion”** shall mean the final completion of the improvements with a permanent certificate of occupancy issued for all portions of the Project.
82. **“Financing”** has the meaning assigned to said term in Subsection 38(a)(i) of this Lease.
83. **“Financing Period”** shall have the meaning assigned to that term in Section 8 of the Development Rider.
84. **“Final Master Plan”** shall mean the final master plan for the Project that has received Final Approval from County, which shall include an overall site plan that sets out the location and dimensions of all elements of the Project, vehicular and pedestrian circulation areas, proposed security zones, and the boundary of the Demised Premises.
85. **“Financing Termination”** shall have the meaning assigned to such term in Section 15(a)(ii) of the Development Rider.
86. **“Force Majeure Event”** shall mean any act, event or condition beyond the reasonable control of the County or the Tenant (and/or their respective agents, employees, Affiliates, contractors, subcontractors and guests) including, without limitation, civil unrest, hurricanes, cyclones, tornadoes, or other acts of God or of public enemies, strikes, war, threat of or preparation for war, armed conflict, embargo, blockade, rebellion, insurrection or riot, epidemic, pandemic, acts of terrorism, imposition of sanctions, breaking off of diplomatic relations, sabotage, earthquake, flood or other acts of nature, fire or explosion, or failure of any public utility, nuclear event, chemical or biological contamination, sonic boom, labor or trade disputes, strikes, industrial action, lockouts, any action taken by a government or public authority (including but not limited to any no sail order issued by the CDC or any other public authority) or applicable casualty or condemnation occurrences, or other acts of similar serious impact to the Demised Premises, the Project or the work contemplated under this Lease. Notwithstanding the foregoing, but subject to the terms of Section 49 of the Lease, a Force Majeure Event shall not include any of the foregoing occurrences that have occurred or commenced prior to the Lease Date.
87. **“Gangways”** shall mean four (4) mobile passenger boarding bridges, two (2) for Berth 8 and two (2) for Berth 9, similar in quality to other passenger boarding bridges utilized at the Port attaching the Cruise Terminals Building to Vessels berthing at the Pier and all associated structures, systems, controls, lifts, and equipment needed for their use, including, without limitation, tie downs, HVAC systems, and safety and backup equipment

and systems. The gangways must be able to accommodate all MSC Vessels and the classes of Non-MSC Vessels identified in the Project Description.

88. **“Governmental Authority”** shall mean the government of Florida, Miami-Dade County, and the United States of America or any department thereof.
89. **“Hazardous Material”** shall mean waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under any Environmental Law.
90. **“Interest Rate”** shall have the meaning assigned to said term in Section 16 of the Development Rider.
91. **“Intermodal Area”** shall mean the bus, taxi and other transportation vehicle staging area for cruise passengers located as shown in the Final Master Plan.
92. **“Land Permits”** shall mean revocable or irrevocable licenses, permits or easements.
93. **“Lease”** or **“Ground Lease”** shall mean this Terminal Development Management and Lease Agreement of even date herewith by and among Tenant and the County.
94. **“Lease Date”** shall mean the date, after the execution of this Lease by Tenant, on which the resolution of the Board of County Commissioners approving this Lease, becomes final and not subject to veto by the Mayor and has been executed by the County.
95. **“Leasehold Mortgage”** shall mean a first priority charge, mortgage, deed of trust, or other lien on all rights and interest of Tenant in this Lease.
96. **“Lease Year”** shall mean the twelve (12) month period commencing on the Rent Commencement Date, and each consecutive twelve (12) month period thereafter during the Lease Term (such that all Lease Years run concurrently after each other). The first year may be prorated to coincide with the County’s Fiscal Year thereafter meaning October 1 through September 30.
97. **“Legal Proceeding”** shall mean a proceeding authorized or sanctioned by law and brought or instituted in a court of legal tribunal, for the acquiring of a right or the enforcement of a remedy.
98. **“Lender”** shall mean any lender that provides financing with respect to the Project which is secured by a Leasehold Mortgage from Tenant.
99. **“LNG”** means liquefied natural gas.
100. **“Major Capital Modifications”** shall mean the major capital modifications to the Project, as provided in Section 21 of the Lease.
101. **“Marine Environmental Permits”** shall mean the Permits and Approvals issued by any Governmental Authority in connection with the conservation of marine or other wildlife

on or about the Demised Premises required in connection with the construction of the Pier and the Tenant Dredging.

102. **“Minor Capital Modification”** shall mean the minor capital modifications to the Project, as provided in Section 20 of the Lease.
103. **“Mitigation”** shall mean the relocation of marine life from the construction areas to other areas off site and any other mitigation or environmental measures which may be required by the environmental agencies as a condition of issuing the Marine Environmental Permits specifically excluding mitigation and/or environmental measures relating to the means or methods of construction or the placement of time and place limitations on the construction.
104. **“MSC”** shall mean MSC Cruises S.A., and its permitted successors and assigns.
105. **“MSC Affiliate”** shall mean (i) any Affiliate of MSC, (ii) any Affiliate of Mediterranean Shipping Company Holding S.A., and (iii) any Affiliate of any Aponte Family Member.
106. **“MSC Cruise Terminal Usage Agreement”** shall mean a terminal usage agreement that shall be executed between Tenant (or through any terminal operator authorized under this Lease) and MSC or any MSC Affiliates pursuant to Section 6 of the Terminal Operating Rider.
107. **“Cruise Terminals Conceptual Plans”** shall mean the conceptual plans set forth on Attachment 6.
108. **“MSC Preferential Berthing Agreement”** shall have the meaning assigned to such term in Section 13(h) of the Development Rider
109. **“MSC Vessel”** shall mean a cruise vessel owned, operated or chartered by MSC or an MSC Affiliate.
110. **“MSC Vessel Cruise Terminal Fees”** shall mean the per passenger charge for dockage and wharfage charged to MSC Vessels for use of the Cruise Terminals Building as established pursuant to Section 5(a) of the Terminal Operating Rider. MSC Vessel Cruise Terminal Fees shall specifically exclude Port Fees, which shall be established and retained by the County.
111. **“New Lease”** shall have the meaning assigned to said term in Section 38(d) of this Lease.
112. **“Non-MSC Vessel”** shall mean any vessel that is not an MSC Vessel.
113. **“Non-MSC Vessel Cruise Terminal Fees”** shall mean the per passenger charge for dockage and wharfage charged to Non-MSC Vessels for use of the Cruise Terminals Building, as applicable, as established pursuant to Section 5(b) of the Terminal Operating Rider.
114. **“Notice to Proceed”** shall mean a notice to proceed issued by the County to the Tenant for the Project, as applicable.

115. **“Notice to Proceed Date”** shall mean the date the County issues a Notice to Proceed to Tenant for construction on all or a portion of the Demised Premises.
116. **“Operating Expenses Additional Contribution”** shall have the meaning assigned to such term in Section 5(b)(iv) of the Terminal Operating Rider.
117. **“Operating Expenses Additional Contribution Threshold”** shall mean the greater of the (i) 750,000<sup>th</sup> Passenger Move to/from a Non-MSC Vessel or (ii) the minimum annual guarantee with respect to Passenger Moves of the Primary Third-Party Cruise (which for the purpose of the Operating Expenses Additional Contribution Threshold shall not be less than 750,000 Passenger Moves).
118. **“Operating Expenses Base Contribution”** shall have the meaning assigned to such term in Section 5(b)(i) of the Terminal Operating Rider.
119. **“Operating Expenses Base Contribution Minimum Guarantee”** shall mean assigned to such term in Section 5(b)(ii) of the Terminal Operating Rider.
120. **“Operating Expenses Base Contribution Guarantee Differential”** shall have the meaning assigned to that term in Section 5(b)(iii) of the Terminal Operating Rider.
121. **“Operating Expenses Base Contribution Minimum Annual Guarantee Differential Notice”** shall have the meaning assigned to that term in Section 5(b)(iii) of the Terminal Operating Rider.
122. **“Operating Expenses Base Contribution Shortfall Amount”** shall have the meaning assigned to that term in Section 5(b)(iii) of the Terminal Operating Rider.
123. **“Operating Expenses Base Contribution Surplus Amount”** shall have the meaning assigned to that term in Section 5(b)(iii) of the Terminal Operating Rider.
124. **“Operating Expenses Shortfall Mechanism”** shall have the meaning assigned to that term in Section 5(b)(iii) of the Terminal Operating Rider.
125. **“Operating Term”** shall mean the term commencing on the Rent Commencement Date and terminating at 5 p.m. (local time) on the date sixty-two (62) years after the Rent Commencement Date, unless sooner terminated in accordance with the terms and provisions of this Lease.
126. **“OSHA”** shall have the meaning assigned to that term in Section 10(d) of the Development Rider.
127. **“Parking Element”** shall mean the structured multi-tier parking element as shown on the Cruise Terminals Conceptual Plans which shall include at least 2,200 car spaces of which 1,000 shall be for the County and any third-party cruise lines.
128. **“Partial Taking”** shall have the meaning assigned to that term in Section 31(c) of the Lease.

129. **“Party”** and **“Parties”** shall refer to County or Tenant, or both, as applicable.
130. **“Passenger Move”** shall mean each revenue passenger embarking, disembarking, and/or in transit through the Cruise Terminals Building for which and in the manner in which the County charges wharfage under the Port Tariff in effect on the Lease Date. To avoid all doubt, passengers in transit shall only be counted once in each 24-hour period and only if they embark or disembark from the Vessel.
131. **“PBR Agreement”** shall have the meaning assigned to such term in Section 43 of the Lease.
132. **“Permits and Approvals”** shall mean any and all approvals, permits or similar authorizations that must be obtained from a Governmental Authority in connection with the design, development, building or operation of any aspect of the Project.
133. **“Permitted Exceptions”** shall mean the list of permitted exceptions identified in Exhibit D to this Lease.
134. **“Permitted Uses”** means Port and seaport public purpose uses (**“Port Uses”**) as they relate to the Cruise Terminals Building, the Demised Premises, and Berth 10 and limited to activities related to or in furtherance of such Port Uses and in connection with Cruise Operations or in support of the cruise industry, including but not limited to: (i) the loading and unloading of passengers, their baggage, and provisions from any vessel in the performance of Cruise Operations; (ii) the entertaining of cruise passengers, guests on board the vessels while in the Port; (iii) the retail sale of goods and services to cruise passengers incidental to Cruise Operations at the Cruise Terminals Building; (iv) office space in support of Cruise Operations and the Office Element Permitted Uses; (v) the holding of group or special events related to or in furtherance of Port Uses; (vi) the loading and unloading of cargo associated with provisioning for Ocean Cay and/or the private island of Non-MSC Cruise line(s) using the Cruise Terminals Building; and (vii) any other Port Uses permitted under this Lease or approved in writing by County which are not prohibited by Applicable Law or Deed Restrictions. Notwithstanding and prevailing over the foregoing and any other term, provision, or implication in this Lease, no use or activity shall be deemed to be a Permitted Use if same would be in violation of or precluded by Applicable Law, or any applicable Deed Restrictions.
135. **“Person”** shall mean any individual, partnership, limited liability company, corporation, association, joint venture, trust or other entity, or any governmental authority.
136. **“Phase I ESA”** shall have the meaning assigned to said term in Section 13(a) of the Development Rider.
137. **“Phase II ESA”** Shall have the meaning assigned to said term in Section 13(a) of the Development Rider.
138. **“Pier”** shall mean a cruise ship pier complex and Berthing Areas which are approximately two thousand four hundred seventy-four (2,474) feet long, including a new bulkhead and apron, bollards, fenders, water station and all work relating thereto.

139. **“Pier Designer”** shall have the meaning assigned to such term in Section 3(a) of the Development Rider.
140. **“Pier Plans and Specifications”** shall have the meaning assigned to such term in Section 3(a) of the Development Rider.
141. **“Port”** shall mean the Dante B. Fascell Port of Miami-Dade County, Florida, also known as PortMiami or the Miami-Dade County Seaport Department.
142. **“Port Fees”** shall mean the County or Port imposed harbor fee, water charges, or other fees or charges, or any other Port fee, charge, or assessment imposed by the County or Port under the authority of the County Code or the Port Tariff, as either may be amended from time to time in the County’s sole discretion, and/or under the County’s or Port’s proprietary or other governmental authority, which fees may be imposed, invoiced for, collected, and retained by the County, excluding any Additional Fees, wharfage fees, taxi, bus, or other fees which Tenant is authorized to charge MSC Vessels and Non-MSC Vessels and retain.
143. **“Port Security Manager”** shall mean the port security manager selected by Tenant pursuant to Section 20(a) of the Terminal Operating Rider.
144. **“Port Security Plan”** shall mean the security plan for the Cruise Terminals Building established by Tenant, which security plan shall be in compliance with Applicable Law and shall be subject to approval by the United States Coast Guard and other applicable governmental authorities.
145. **“Port Tariff”** shall mean Miami-Dade County Terminal Tariff No. 010, as amended from time to time.
146. **“Pre-Existing Environmental Conditions”** shall mean all environmental conditions requiring remediation under Applicable Laws and existing on or in the Demised Premises prior to the date Tenant takes possession of the Demised Premises whether discovered prior to, during or after the construction of the Project.
147. **“Preliminary Schedule”** shall mean a preliminary schedule of the principal milestones required to complete the Project which is attached as Attachment 9.
148. **“Preliminary Term”** shall mean the term commencing on the Lease Date and ending on the Rent Commencement Date.
149. **“Project”** shall mean the design, construction, operation and maintenance over the Term of a new mega cruise terminal complex as described in Section 1 of the Development Rider.
150. **“Project Description”** shall mean the project description attached at Attachment 4.
151. **“Project Plans and Specifications”** shall mean all architectural plans, engineering plans, renderings, sketches, surveys or similar instruments necessary to obtain Permits and Approvals.

152. **“Project Schedule”** shall mean the critical path schedule, including milestones, for the design, permitting, and construction of the Project, including the Marine Environmental Permits and the Tenant Dredging.
153. **“Provisions Staging Area”** shall mean the provisions staging and loading area as shown on the Cruise Terminal Conceptual Plans.
154. **“PSM”** shall mean a contractor or design-builder’s professional surveyor and mapper which must be licensed to practice in the State of Florida.
155. **“Qualifying Passenger Moves”** shall mean Passenger Moves of MSC Vessels.
156. **“Reduced Combined Concourse Option”** shall have the meaning set forth in Section 7(g) of the Development Rider.
157. **“Rent”** shall mean Base Rent and Additional Rent.
158. **“Rent Commencement Date”** shall mean the date on which the first MSC Vessel or the first Non-MSC Vessel berthed at either of Berth 8 and Berth 9.
159. **“Restricted Modification”** shall mean the material or detrimental alteration of a Cruise Terminals Building Minimum Requirements or an Approved County Consideration, unless approved by the County in accordance with Section 4(f) of the Development Rider.
160. **“Restricted Transfers”** shall mean (i) any transfer in the shareholding or membership interest in Tenant resulting in a Change of Control of Tenant, other than a transfer to any MSC Affiliates, and (ii) any sublease by Tenant except as may be expressly authorized in this Lease.
161. **“Revenue and Collection and Disbursement Agreement”** shall mean that agreement entered into by County, Tenant and Agent that provides for collection and disbursement of the revenues from the Cruise Terminal out of the Terminal Revenue Fund.
162. **“Road Network”** shall have the meaning assigned to such term in Section 13(l) of the Development Rider
163. **“SBD”** has the meaning assigned to said term in Section 9(c) of the Development Rider.
164. **“Secured Indebtedness”** has the meaning assigned to said term in Subsection 38(a)(ii) of this Lease.
165. **“SFWIB”** shall have the meaning assigned to such term in Section 31(d) of the Terminal Operating Rider.
166. **“Small Business Enterprises”** has the meaning assigned to the term in the County Code.
167. **“Statement of Vessel Charges”** shall mean a written statement provided to the County by Tenant that shall provide (a) the number of Passenger Moves associated with each MSC

Vessel Cruise Terminal calls; (b) the applicable per Passenger Move MSC Vessel Cruise Terminal Fees; (c) any other fees or charges incurred by the Vessel during the call, if any, and (d) the total amount that County shall invoice the Vessel.

168. **“Sublessee”** shall mean a valid sublessee in accordance with Section 52 of this Lease.
169. **“Substantial Completion”** or **“Substantially Completed”** shall mean the substantial completion of the Project with one or more temporary certificates of occupancy such that the entire Project can be used and operated for its intended purpose. Substantial Completion shall be deemed to have occurred if a temporary certificate of occupancy would have been issued such that the entire Project can be used and operated for its intended purpose.
170. **“Substantial Completion Deadline”** shall mean the anticipated date of Substantial Completion, November 15, 2023, as the same may be extended as a result of (i) Delays; (ii) a Taking under Section 31 of the Lease, and (iii) a Casualty under Section 32 of the Lease.
171. **“Survey”** shall mean a land survey of the Demised Premises, in accordance with local standards.
172. **“Taking”** shall mean any Partial Taking or Total Taking.
173. **“Taxes”** shall mean all taxes, other than ad valorem real property taxes, presently imposed by the State of Florida, the County, City of Miami and any special taxing district in which the Project is located including, but not limited to, sales taxes, tourism and convention development taxes, local option taxes, gross receipts, communication services, municipal public service taxes, documentary stamp taxes, intangible taxes, fuel taxes and corporate income taxes.
174. **“Temporary Master Plan”** shall mean the temporary master plan for the Project, including an overall site plan that sets for the location and dimensions of the Cruise Terminals Building, vehicular and pedestrian circulation areas, proposed security zones, and the boundary of the Demised Premises.
175. **“Tenant”** shall mean MSC Miami Cruise Terminal LLC, a Florida limited liability company, and any and all permitted successors and assigns.
176. **“Tenant Conveyance”** shall have the meaning assigned to it in Section 10 of the Lease.
177. **“Tenant Default Termination Notice”** shall mean a written notice of termination to Tenant as provided by County under Section 34(b) of this Lease.
178. **“Tenant Delay”** means any delay in the critical path of the Project Schedule caused by the Tenant (or its contractor, architect, engineer, consultant, or sub-contractor (of any tier)) and which is not (i) a County Delay; (ii) a delay caused by a Force Majeure Event; (iii) acts taken by any Governmental Authorities (other than Port) restricting access, use, operation or performance of any demolition, site work, or construction at or about the Demised

Premises (other than delays associated with the failure of Tenant to make application for Permits and Approvals in accordance with Applicable Laws and to diligently prosecute such applications); or (iv) any delays associated with the failure of any Governmental Authorities (other than Port) having jurisdiction over the Project to timely issue all necessary licenses, permits and approvals required to construct the Project.

179. **“Tenant Dredging”** shall mean Tenant’s obligation during construction to dredge the Berthing Areas as necessary to maintain the required slope, including all associated work and proper transport and disposal of all dredge spoils, all in compliance with Permits and Approvals and Applicable Laws.
180. **“Tenant Event of Default”** shall mean any event of default set forth in Section 34 of this Lease.
181. **“Tenant Indemnified Parties”** shall mean Tenant, its Affiliates, and it and their officers, directors, employees, Affiliates, agents, successors and assigns.
182. **“Tenant Property”** shall include, but not be limited to, all movable partitions, business and trade fixtures, machinery and equipment, computers, office furniture, satellite dish(s), signage, communications equipment and office equipment, whether or not attached to or built into the Demised Premises which are installed in the Demised Premises by or for the account of Tenant and/or any Sublessees and can be removed without structural damage to the Demised Premises or the Project. The following shall not be Tenant Property: the Gangways, elevators, escalators, moving walkways, terminal counters and seating, air handling systems; parking fee collection systems and equipment, security equipment and infrastructure, baggage handling equipment, wayfinding signage, safety equipment, building management systems and components thereof as well as any the personal property belonging to any third-party cruise lines.
183. **“Tenant Property Interest”** means the leasehold interest in the Demised Premises granted pursuant to this Lease.
184. **“Tenant’s Utility Requirements”** shall have the meaning assigned to said term in Section 13(e) of the Development Rider.
185. **“Tenant’s Water Requirements”** shall have the meaning assigned to that term in Section 13(d) of the Development Rider.
186. **“Term”** shall mean the Preliminary Term and the Operating Term.
187. **“Terminal Operating Rider”** shall mean Exhibit C to this Lease.
188. **“Terminal Revenue Fund”** shall mean an escrow account established in the name of the Tenant pursuant to Section 8 of the Terminal Operating Rider in a federally insured financial institution which is reasonably satisfactory to the Parties. The revenues collected in connection with the use of Cruise Terminal Building shall be paid into the Terminal Revenue Fund and shall be distributed in accordance with Section 9 of the Terminal Operating Rider.

189. “**Termination Date**” shall mean the date that this Lease is terminated in accordance with the terms and conditions contained herein.
190. “**Termination Event**” shall mean an event which results in a Party’s right to terminate this Lease.
191. “**Terminal Services**” shall mean the terminal services set forth in Section 4 of the Terminal Operating Rider.
192. “**Third-Party Cruise Line Exclusive Area**” shall mean up to two permanent offices; one mail room (which may, at the Tenant’s discretion, be located within one of the permanent offices); up to 1,000 square feet of dedicated storage space in one or more areas (as determined in the Tenant’s discretion); access controlled IT areas; a VIP area; such other areas as specified in the Cruise Terminals Building Minimum Requirements as exclusive areas; and such other areas as the Tenant may designate at its discretion from time to time.
193. “**TLM**” shall mean Terminal Link (Miami) LLC.
194. “**TLM Operating Agreement**” shall mean that certain Terminal Operating Agreement date on or about July 1, 2008 by and between the County and TLM, as amended by Amendment Number 1 to Terminal Operating Agreement dated on or about July 6, 2016, the Second Amendment on or about November 8, 2018, and the Third Amendment on or about September 19, 2019, by and between the County and TLM and as amended by and between the County and TLM.
195. “**Total Taking**” shall have the meaning assigned to such term in Section 31(b) of the Lease.
196. “**TPF**” shall have the meaning assigned to such term in Section 13(h) of the Development Rider.
197. “**Turnover Date**” shall have the meaning assigned to such term in Section 6(a) of the Development Rider.
198. “**Unamortized Improvement Costs**” shall mean Tenant’s unamortized cost of the Project constructed by Tenant, up to the point of Substantial Completion, which shall be determined by multiplying such expenditures by a fraction, the numerator of which shall be the number of remaining years of the Operating Term at the time of such termination and the denominator of which shall be sixty-two (62).
199. “**Unforeseen Site Conditions**” shall mean (i) actual conditions which were not reasonably foreseeable based upon the information relating to the Demised Premises available to Tenant prior to Lease Date, (ii) subsurface or otherwise concealed physical conditions, or (iii) unknown physical conditions of an unusual nature which differ materially from those expected to be encountered during the course of construction.
200. “**USC Termination**” shall have the meaning assigned to such term in Section 15(a)(i) of the Development Rider.

- 201. **“USD 60m Contribution”** shall have the meaning assigned to such term in Section 10(b) of the Lease.
- 202. **“USD 76m Contribution”** shall have the meaning assigned to such term in Section 10(b) of the Lease.
- 203. **“Utilities”** shall mean the utilities which are or shall be constructed in accordance with the Pier Plans and Specifications and Project Plans and Specifications and which are or shall be installed and fully functional.
- 204. **“Vessel”** shall mean a cruise line vessel that berths at the Port from time to time.
- 205. **“WASD”** shall mean the Miami-Dade County Water and Sewer Department.
- 206. **“Western Transition”** shall mean the Western boundary of the Berthing Areas and extending the length of the Berthing Areas at an approximately 2:1 slope.
- 207. **“Working Capital Advance”** shall mean payment by Tenant of sufficient funds to the Terminal Revenue Fund to meet any shortfall as may be necessary to satisfy the payment obligations for the prior calendar quarter.

**EXHIBIT B****DEVELOPMENT RIDER****1. CONCEPTUAL PLAN.**

- (a) The Project. Tenant, and any and all successors and assigns of Tenant in accordance with this Lease, shall, at Tenant's sole cost and expense (subject to Sections 7 and 10(b) of the Lease) develop the Project as described in the Project Description attached as **Attachment 4** subject to and in accordance with the terms and conditions contained herein. The Project shall be subject to revision and refinement throughout the design and construction process; provided, however, that such revision and refinement shall be subject to the Cruise Terminals Building Minimum Requirements incorporated herein as **Attachment 5** and other relevant terms in this Development Rider, including the County's rights to participate in the design and construction of the Project through its appointed representative(s) as provided herein. Currently, the Project is depicted on the Cruise Terminals Conceptual Plans attached hereto and incorporated herein as **Attachment 6**, and as otherwise set forth in this Lease. The Parties acknowledge and agree that, subject to the terms and conditions hereof, the Demised Premises will be developed in accordance with the Final Master Plan and the Project consists, among other things, of the following:

Construction of the Pier, Gangways, the Cruise Terminals Building (being capable to serve up to three cruise Vessels simultaneously in accordance with the Terminal Operating Rider (including but not limited to the Operation Protocol)), Provisions Staging Area, Intermodal Area, Parking Element, all associated utilities and drainage facilities, fixtures and equipment and all common areas including roads, sidewalks and curbs, lighting and landscaping, and signage located within the Demised Premises.

In addition, in connection with its construction of the Project, Tenant shall complete the Tenant Dredging in the Berthing Areas.

The Tenant acknowledges the County's intention to develop, at the County's sole cost and expense, Berth 10 adjacent to the Demised Premises. Construction of elements of the Berth 10 Concourse that are within Demised Premises shall unless otherwise mutually agreed commence no earlier than Substantial Completion; the foregoing, however, shall not be construed to limit the County from design, procurement, planning, and construction activities relating to Berth 10 or the Concluding Berth 10 Concourse that are outside the Demised Premises or do not require access to the Demised Premises that would materially interfere with the Design-Builder's responsibilities and obligations. The Cruise Terminals Building is being designed to be of sufficient capacity to accommodate up to 4,000 passengers from a vessel berthed at Berth 10, simultaneously with two other Vessels (and associated passengers) berthed at Berth 8 and Berth 9. The County has confirmed its intention to allow for Vessels potentially with greater capacity than

4,000 passengers to use Berth 10 and the Parties covenant to make reasonable adjustments to the Operating Protocol to address operations within the Cruise Terminals Building to accommodate this eventuality and the use of the Cruise Terminals Building for the embarkation of up to 18,000 passengers at Berths 8, 9, and 10 in a single daily turn. The passenger concourse to link, and provide access for passengers between, Berth 10 and the Cruise Terminals Building (including those sections forming of the Combined Concourse as well as the Concluding Berth 10 Concourse Element) part of which shall be located in an area across a portion of the Demised Premises (the “**Berth 10 Concourse**”) shall be constructed as provided in Section 7 of this Development Rider.

- (b) Minimum Standards. Tenant’s design and construction obligations for the Project shall adhere to the following minimum standards:

The Project, including without limitation the Cruise Terminals Building design, shall incorporate high quality interior finishes, exterior finishes, mechanical, plumbing and electrical systems of equal or better quality than existing terminals at the Port and the design service life of the Project shall be a minimum of seventy-five (75) years so that the useful life of the Project will extend beyond the Term. The Project shall comply with all Applicable Laws (including applicable building codes).

The design of the Cruise Terminals Building shall be required to attain a “Silver” level rating under the LEED rating system and shall comply with applicable Customs and Border Protection Cruise Terminal Guidelines and U.S. Coast Guard requirements.

Tenant shall provide the County with three (3) dedicated IT rooms for use by the Port, each of which shall be a minimum of one hundred (100) square feet in size with external access only which shall be completed to core and shell condition, with lights and air conditioning. The actual cost to install conduit from the IT room(s) to the property line of the Demised Premises to enable the County to install fiber optic cable shall be funded from the Contributions. For the avoidance of doubt, the Tenant shall be responsible for the installation of the conduit from the IT room(s) to the connection location at the perimeter of the Demised Premises; the County shall be responsible for the installation of the fiber optic cable within said conduit.

The Project shall be designed and constructed in accordance with expected sea level rise projections during its anticipated useful life, using regionally consistent unified sea level rise projections as required by the County Board Resolution R-451-14.

The Project shall incorporate the Project Description attached hereto as **Attachment 4** and Cruise Terminals Building Minimum Requirements attached hereto as **Attachment 5**.

The design of the Pier shall include the requirements under Applicable Laws (including applicable building code requirements) for fueling vessels berthed at Berth 8 and/or Berth 9 using bunker fuel barges and LNG fuel barges.

- (c) Design Service Life of Pier. The design service life of primary and permanent marine structural systems inclusive of but not limited to, all steel sheet pilings and piles for earth retaining structures (bulkheads), anchorage walls, tie-rods and all connecting hardware, waterside and landside mooring bollards and other load carrying structural components as well as, all reinforced concrete structures including bulkhead fascia and caps, mooring bollard pilings and foundations, waterside utility service stations, and concrete apron pavements, shall be a minimum of seventy-five (75) years, taking into account that the vessels that berth at the Pier will be up to four hundred (400) meters in length and some of which may utilize azipods.

The design service life is defined as the period of time during which the primary and permanent structural element is expected to perform within its specified design parameters with a factor-of-safety in accordance with that required at the time of design by the Florida Building Code, Applicable Laws and industry standard best practices and guidelines.

- (d) Preliminary Schedule. As of the Lease Date, the Parties have mutually agreed upon the schedule attached as **Attachment 9** (the “**Preliminary Schedule**”) for the construction of the Project, which provides for commencement and completion of activities within the deadlines set forth in the Preliminary Schedule, sets forth the dates for commencement and completion of the County and Tenant activities and the relation of such activities to critical path activities in the Project.
- (e) Document Order of Precedence; Resolution of Conflicts. Should there be a conflict between this document and its attachments with respect to the design and construction of the Project, the document with the most stringent requirement shall prevail over the document with the lesser stringent requirement, unless the application of this provision would result in a Restricted Modification. Any disputes about conflicts within the contract documents or any design or construction documents subsequently created under this Development Rider (e.g., the Final Master Plan or Project Plans and Specifications) shall be resolved through the Dispute Resolution Protocol described in Section 36 of the Lease based upon the application of the foregoing principle.

## 2. **PREDEVELOPMENT WORK AND DUE DILIGENCE.**

- (a) In order to assist with the time frame for completion of the Project reflected in the Preliminary Schedule, the County shall consider, but shall not be under an obligation, to provide the Tenant early access to portions of the Demised Premises prior to the Turnover Date (“**Early Access**”). The County shall confirm to the Tenant in writing within ten (10) days of the Lease Date whether Early Access will be granted and, if so, to what portions of the Demised Premises. To the extent Early

Access is granted, all work undertaken by the Tenant shall be confined to the designated portion(s), including staging and storage of materials, and a security fence shall be installed around such the designated area(s) and Tenant shall comply with the terms, conditions and limitations set forth this Development Rider and otherwise imposed by the County as a condition for the Early Access. Further, Tenant shall be obligated to undertake such work in a manner that does not cause environmental damage to the portion(s) in which Tenant is performing its work, is coordinated with TLM to minimize disruptions to TLM's operations and is otherwise in accordance with Applicable Law.

- (b) The County shall provide Tenant with temporary limited access to the Demised Premises during the Due Diligence Period to enable Tenant to investigate the physical condition of the Demised Premises and perform all tests and studies of the Demised Premises that Tenant, in Tenant's sole discretion, shall deem advisable. Such temporary limited access shall not constitute the County making the Demised Premises available for use. All tests and studies shall be performed in accordance with all Applicable Laws. Access during the Due Diligence Period shall be subject to the rights of TLM to simultaneously utilize the Demised Premises under the TLM Operating Agreement. Tenant covenants and agrees to coordinate its activities with TLM so that Tenant's activities during the Due Diligence Period will not have a material adverse impact on TLM's use of the Demised Premises. The County agrees to liaise in good faith with TLM and the Tenant to the extent that there are any difficulties between TLM and the Tenant and to assist in the facilitation of the Tenant's Due Diligence.

### 3. **PIER DESIGN**

- (a) The Parties acknowledge that the Tenant, at its sole cost and expense, has retained a duly licensed architectural and engineering firm (the "**Pier Designer**") to design the Pier in compliance with all Applicable Laws. The plans and specifications for the Pier (the "**Pier Plans and Specifications**"), which include the Berthing Areas as shown on Attachment 7 attached hereto, have been approved by the County and permitted. The County wishes to ensure that the Pier Plans and Specifications, however, comply with the Project Description and Cruise Terminals Building Minimum Requirements and, accordingly, the Tenant has agreed to review the Pier Plans and Specifications and the original mooring study undertaken, the results of which have been shared by the Tenant with the County. Any reasonable changes to the location and/or number of bollards and/or fenders requested by the County to the Pier Plans and Specifications and/or Berthing Areas based on the aforementioned review required for the berthing of those Non-MSV Vessels identified in the Project Description shall be implemented by the Tenant and funded from the Contributions.
- (b) The Parties further acknowledge that the County has obtained the Marine Environmental Permits for the marine portion of the Pier work. The County shall be responsible for the design and implementation of any Mitigation that is required by the permitting agencies as a condition of issuing the Marine Environmental

Permits. The Parties understand and agree that Marine Environmental Permits are critical to the development of the Pier. In the event that the permitting agencies subsequently require additional action to be performed as a result of County requested changes to the Pier Plans and Specifications and/or Berthing Areas, or otherwise require amendments to, the Marine Environmental Permits, the County shall be responsible for submitting any necessary modification requests to the permitting agencies and obtaining the required modifications to the Marine Environmental Permits as well as any Mitigation required in connection therewith. All necessary construction-related actions to comply with the permitting agency's requirements following any County-requested modification request pursuant to section (a) above shall be discussed between the Parties with any costs associated with such modifications to be met by the County from the Contributions and only if such modification is necessary because of a County-requested change.

- (c) The Tenant, with County participation, shall use reasonable efforts to negotiate an option with its Design-Builder for the design and construction of the pier at Berth 10 (the "**Berth 10 Pier Option**"). To the extent the Berth 10 Pier Option is obtained, the Tenant shall provide the relevant terms to the County on or before the expiry of six months after the Lease Date, and the County shall have 60 days to advise the Tenant in writing whether the County desires to exercise the Berth 10 Pier Option. If the County confirms its desire to exercise the Berth 10 Pier Option, the Berth 10 Pier Option shall be assigned to the County, which shall assume all of the duties and obligations with respect to the Berth 10 Pier Option and shall be at the County's sole cost. Upon assignment, unless otherwise agreed, the Tenant shall have no further obligations or responsibilities with regard to the Berth 10 Pier Option.

#### 4. COUNTY CONSIDERATIONS

- (a) The Parties acknowledge that the Project is being designed and developed with the capability to serve up to three cruise Vessels simultaneously and process their respective passengers simultaneously in accordance with the Operation Protocol, in a functional, shared facility. To this end, the County acknowledges that the Tenant has met with the Port representatives extensively in respect of the Project and that such Port representatives have been afforded sufficient time to review and comment on the Cruise Terminals Conceptual Plans over the months leading up to the execution of this Lease. The County confirms that (i) all its comments in respect of the Cruise Terminal Conceptual Plans have been addressed by the Tenant and incorporated into the Cruise Terminals Conceptual Plans; and (ii) the design of the Cruise Terminals Conceptual Plan is satisfactory and acceptable to the County and complies with the Cruise Terminals Building Minimum Requirements to the extent such requirements are ascertainable from the Cruise Terminals Conceptual Plan.
- (b) The Tenant acknowledges that the County has requested the opportunity to provide reasonable and measured comments and input into the design process of the Cruise Terminal Buildings in relation to the Cruise Terminals Building Minimum Requirements (the "**County Considerations**"). In furtherance of this request, the

Tenant and the County, shall meet at least twice a month (or more frequently if necessary and agreed between the Parties) during the design phase and, pursuant to Section 6(j) of this Development Rider, weekly during the construction phase of the Project to allow the Tenant to update the County on the progress of the design and construction of the Project and for the County to share County Considerations. The County shall appoint a reasonable number of representatives (collectively, **“County Project Representatives”** which shall include a lead representative (the **“County Lead Project Representative”**)) to attend such meetings to discuss such County Considerations; the County shall not be required to appoint County employees to these roles (other than the County Lead Project Representative) and may specifically appoint third parties interested in the manner of design and construction of the Project. The Tenant agrees to consider the County Considerations made by the County Lead Project Representative at such meetings during the design phase of the Project. Any County Considerations jointly approved by the Parties shall become an **“Approved County Consideration”** to be recorded in an agreed form signed by the Parties.

- (c) The Tenant shall be required to implement any County Consideration that is necessary to meet the Cruise Terminals Building Minimum Requirements and implement the Cruise Terminals Conceptual Plans; any such County Considerations shall be deemed Approved County Considerations. The Tenant shall not be required to implement any County Consideration to the extent that:
  - (i) such request exceeds the minimum standards set out in Sections 1(a)-1(c) of this Development Rider, the Cruise Terminals Building Minimum Requirements or is inconsistent with the Cruise Terminals Conceptual Plans;
  - (ii) the Tenant, acting reasonably and in a manner consistent with the Cruise Terminals Building Minimum Requirements and the Cruise Terminals Conceptual Plans, considers such request to be unreasonable and not in keeping with traditional and industry standard means and methods of terminal design and operation for first-class projects similar to the Project;
  - (iii) the Tenant, acting reasonably and in a manner consistent with the Cruise Terminals Building Minimum Requirements and the Cruise Terminals Conceptual Plans, considers that such request would have a material adverse impact on operations of the Tenant and/or MSC or more generally those operations intended at the Project;
  - (iv) such request, if not a Cruise Terminals Building Minimum Requirement or component of the Cruise Terminals Conceptual Plans would increase the contract time in a way that would delay or reasonably threaten to delay achieving Substantial Completion by the Substantial Completion Deadline, with the Parties acknowledging that time is of essence, provided that the Tenant

shall not be entitled to refuse such request pursuant to this sub-section to the extent the County agrees to meet any acceleration costs required to avoid any delay to Substantial Completion;

- (v) such request, if not a Cruise Terminals Building Minimum Requirement, or component of the Cruise Terminals Conceptual Plans, would result in additional cost that the County declines to pay;
  - (vi) such request is not a Cruise Terminals Building Minimum Requirement or component of the Cruise Terminals Conceptual Plans and amounts to a County Requested Change (which shall accordingly be addressed in accordance with Section [4(g)] below); or
  - (vii) such request, if not a Cruise Terminals Building Minimum Requirement, or component of the Cruise Terminals Conceptual Plans, seeks to incorporate any design elements that present unusual permitting problems or are likely to affect the permitting process, any building system or product without an existing notice of acceptance from the County or that involves long-lead items that affect the Project Schedule, problems with constructability, any requirement that only very specialized persons be involved creating shortages in labor, or unusual material specifications requiring sole source or other potentials for material unavailability or shortage.
- (d) The Parties acknowledge that the Project is subject to revision and refinement as set forth in Section 1(a) of this Development Rider. Notwithstanding sub-section 4(c) above, to the extent that during such revision and refinement and prior to the approval of the Final Master Plan, the County Lead Project Representative requests a County Consideration that: (i) relates solely to a Third-Party Cruise Line's Exclusive Areas; (ii) does not constitute a Restricted Modification; (iii) does not increase the contract time in a way that would delay or threaten to delay achieving Substantial Completion by the Substantial Completion Deadline; (iv) does not result in additional cost; and (v) is otherwise reasonable in scope, such County Consideration shall be implemented and is included within the funding provided through the Contribution (each an "**Exclusive Use County Consideration**").
- (f) To the extent the Tenant proposes a modification to the design or construction of the Project that constitutes a Restricted Modification, County shall have the right to approve such modifications, which approval the County may give in its sole discretion and which shall be deemed given if County does not respond within 10 Business Days of written notice. The County's decision in this regard shall not be subject to any dispute resolution procedure and shall be binding on the Parties.

- (g) The County, through the County Lead Project Representative, shall be entitled to request changes to the construction of the Project (the “**County Requested Changes**”) in accordance with the following provisions:
- (i) The County Lead Project Representative shall initiate any desired County Requested Changes in writing addressed to the Tenant which shall include a description of the proposed changes including provisions for any and all architecture and engineering changes. The County shall issue any requested change at least 60 calendar days prior to the date upon which the work related to the proposed change is to be commenced based on the most recent schedule provided to the County, the intention being that the Tenant shall not be required to undo work that has been substantially completed for the implementation of a County Requested Change. Upon receipt of the description of the proposed changes, the Tenant shall provide within 15 days or as mutually agreed by both Parties (a) an estimate of the Change Costs anticipated for such proposed County Requested Changes, and, where applicable, the cost of any necessary project acceleration; and (b) a time impact analysis showing the impact of the County Requested Changes on the critical path of the Project, and any and all required acceleration to ensure that the Substantial Completion Deadline is not affected; such time impact analysis may include proposed resequencing work to defray delays.
  - (ii) Subject to the remaining subsections of this Section 4(g), the Tenant shall be required to implement a County Requested Change to the extent it relates solely to a Third-Party Cruise Line Exclusive Area;
  - (iii) The Tenant shall be entitled to reject a County Requested Change in the event that it: (i) is not requested within the time period established in Section 4(g)(i); (ii) contains insufficient detail for the Tenant to review and approve it; (iii) has a material impact on the cost of the Project (including but not limited to the cost of consultants reviewing and assessing the requested change itself) (unless the County agrees to pay such material costs), the constructability of the Project or the Project Schedule (including but not limited to the Substantial Completion Deadline, unless otherwise mitigated by the ability to accelerate the works and the County’s willingness to pay for such acceleration regardless of the limitation provided for in Section [15] below); (iv) has a material adverse impact on the intended operations of the Project, the Operation Protocol or business model of Tenant or (iv) is not permitted under the Tenant’s financing scheme;
  - (iv) In the event a County Requested Change is not approved by the Tenant, the Tenant shall simultaneously provide the County with the reasons for such disapproval. The County may then revise the County Requested Change and resubmit it to the Tenant for approval within 5 days, and Tenant shall thereafter approve or reject the resubmission within 10 days. In the event Tenant fails to approve or reject the resubmission within 10 days, the resubmission shall be deemed approved. This process shall continue until

approval or deemed approval by the Tenant, or the County chooses not to proceed with any resubmission.

- (v) The Tenant shall not be obliged to undertake any works in respect of a County Requested Change until the Parties have agreed upon a time impact and cost. The County shall segregate funds and prepay all costs arising out of or relating to a County Requested Change implemented under this section and hereby agrees to the payment of any industry-standard additional documented costs relating to such County Requested Change. Payment milestones for the costs for a County Requested Change shall be agreed by the Parties. Under no circumstances shall any such costs be attributable to or payable out of the Contributions. Pursuant to the equivalent rights granted to the Tenant in Section 7(h)(vi) of the Development Rider, the County shall be entitled to observe the construction of the works arising out of any requested change.
- (vi) To the extent that the proposed change order with respect to a County Requested Change results in an extension of the Project Schedule, such additional time required as a result of a County Requested Change shall be a County Delay.
- (vii) No County Requested Change may be submitted with respect to any section of the Project which has been substantially completed.
- (viii) Any dispute arising out of or in connection with a County Requested Change shall be referred to the Dispute Resolution Protocol provided for in Section 1(a)(iii) of the Terminal Operating Rider.

5. **TEMPORARY MASTER PLAN; FINAL MASTER PLAN.**

- (a) Using the Cruise Terminals Conceptual Plans and adhering to the design standards set forth in Subsections 1(a)-1(c) of this Development Rider (including the Project Description and the Cruise Terminals Building Minimum Requirements), Tenant shall create the Temporary Master Plan for the Project which shall be finalized by Tenant and submitted to the County for its review by the date set forth in the Preliminary Schedule, and thereafter approved or rejected by the County, in the exercise of its reasonable discretion, within twenty (20) days of receipt of the finalized Temporary Master Plan. In exercising its reasonable discretion, the County shall be entitled to consider, acting reasonably, whether any Approved County Consideration and any Exclusive Use County Consideration have been incorporated into the submitted documents and whether the submitted documents incorporate the Cruise Terminals Building Minimum Requirements. The County agrees that it shall not reject or withhold approval of any Temporary Master Plan on the basis that the County wishes to incorporate one or more variations into the design set out in the Cruise Terminal Conceptual Plans, where such variation(s) would otherwise each be deemed to be a County Requested Change had the Temporary Master Plan already have been approved by the County at the time of

submission. In the event County fails to approve or reject the Temporary Master Plan within twenty (20) days, the Temporary Master Plan shall be deemed approved. The Temporary Master Plan shall contain, at a minimum, sufficient detail for the County to evaluate the external appearance of the proposed structures and its relation to the Demised Premises and other Port structures, the footprint of the proposed structures, the proposed vehicular (passenger and commercial) and pedestrian traffic flows, including a traffic analysis showing the level of service within the Demised Premises, the location of the Utilities and connection of the Utilities at the perimeter of the Demised Premises, the electrical and water supply needs (and other utility needs) of the Project, the internal layout of the Cruise Terminals Building (including any Third-Party Cruise Line Exclusive Area), proposed passenger movements through the Cruise Terminals Building throughout the embarkation and debarkation process, fencing and a maintenance of traffic plans (acknowledging that no public traffic will be accommodated within the Demised Premises during the Preliminary Term subject to Section [ ] below), and such other details as the County may reasonably require to understand the integration of the Project to the appearance, use, operation and efficiency of the Port and to enable the County to meet its obligations in connection with the Project set forth in this Lease.

- (b) In the event the Temporary Master Plan is rejected by the County or should the Temporary Master Plan contain insufficient detail for the County to review and approve it in the manner set forth in Subsection (a) above, the County shall simultaneously provide Tenant with the reasons for such disapproval. Tenant shall then revise the Temporary Master Plan and resubmit it to the County for approval within twenty (20) days, and County shall thereafter approve or reject the resubmission within ten (10) Business Days. In the event County fails to approve or reject the resubmission within ten (10) Business Days, the resubmission shall be deemed approved. This process shall continue until issuance by the County of the Final Approval.
- (c) Upon issuance of the Final Approval, the County approved Temporary Master Plan for the Project shall be deemed the Final Master Plan. Thereafter, Tenant shall develop the Project substantially in accordance with the Final Master Plan, subject to the County's right to request changes in accordance with Section 4(g) above. In the event that Tenant desires to make a material and substantial change from the Final Master Plan, as reasonably determined by the Tenant, Tenant shall submit such change for County's consideration and approval, which approval shall not be unreasonably withheld or conditioned and shall be given or rejected, within ten (10) Business Days of resubmission. In the event that the County fails to approve or reject the resubmission within ten (10) Business Days, the resubmission shall be deemed approved. This process shall continue until approval or deemed approval by the County. The County shall be entitled to reject a requested change under this subsection if it (i) contains insufficient detail for the County to review and approve, acting reasonably, in the manner set forth above; or (ii) results in a Restricted Modification or a modification of an Approved or Exclusive Use County

Consideration which has a material, adverse impact, in the County's reasonable opinion.

6. **DUE DILIGENCE; DESIGN AND CONSTRUCTION.**

- (a) Suitability. Tenant acknowledges that the County has made no representations as to the Demised Premises or the suitability of the Demised Premises for the Project except as specifically provided in this Lease. The County will turn over the Demised Premises to Tenant between April 15, 2021 and May 15, 2021 (the "**Turnover Date**") ensuring that the termination of the TLM Operating Agreement with respect to the Demised Premises has occurred prior to the Turnover Date. The County shall ensure that on the Turnover Date the Demised Premises previously subject to the TLM Operating Agreement shall be clear of any structures (other than those structures that are required to be removed by Tenant under Section [11(f)]) or, without limiting the Tenant's obligations under Section [11(f)], structures (temporary or otherwise) erected or used by TLM, and free from debris resulting from TLM's operation on the Demised Premises, including debris resulting from TLM, its employees, contractors, suppliers or visitors (the "**County Pre-Turnover Obligations**"). Once any of the Demised Premises is turned over to Tenant, the County shall have no obligation to perform or cause to be performed any work on or about the Demised Premises except for (i) County Site Obligations; (ii) any Environmental Remediation, if required; (iii) any County Pre-Turnover Obligations which the County has not completed prior to the Turnover Date; (iv) following Substantial Completion, the County shall be responsible for the County's Maintenance Obligations as set forth in Section 15 of the Terminal Operating Rider; and (v) Berth 10 & Concourse Remedial Work. Tenant's obligation under this Lease to obtain all land use, construction and operating Permits and Approvals required of Tenant shall not require County to take any action or perform any tasks within the Demised Premises (except as may be required in connection with the County's Site Obligations or otherwise expressly required in this Lease) to enable Tenant to obtain such Permits and Approvals, including the temporary and permanent certificate of occupancy and it shall remain Tenant's exclusive obligation to take or perform all acts necessary to obtain such Permits and Approvals. Notwithstanding the foregoing, the County agrees to promptly execute any documents required to be executed by the County, as owner of the fee interest in the land, and to provide assistance to the Tenant as set forth in Section 6(h) below, with respect to such applications by Tenant for Permits and Approvals. For the avoidance of doubt, unless otherwise agreed, the County shall be responsible for the design and construction of, and any Permits and Approvals required for, the future development and operation of Berth 10 and the Berth 10 Concourse, with the County agreeing that any such development (other than design or, separately from design, construction activities outside the Demised Premises as also set forth in Section 1(a)) shall not commence prior to Substantial Completion, unless otherwise agreed by the Parties.

If the County does not complete the County Pre-Turnover Obligations prior to the Turnover Date, the County and its contractors shall have a license to enter onto the

Demised Premises to enable the County to complete the County Pre-Turnover Obligations. If the County Pre-Turnover Obligations are not completed within the seven (7) day period, the Tenant shall reasonably coordinate its activities with the County during the aforementioned period to mitigate any County Delay. To the extent the County fails to complete the County Pre-Turnover Obligations within seven (7) days of the Turnover Date and the County's failure becomes a County Delay, then the County shall reimburse the Tenant for all Direct Costs incurred by the Tenant, as well as acceleration costs in accordance with the terms, conditions and limitations set forth in Section [14] of this Development Rider.

- (b) Tenant's Due Diligence. County shall provide to Tenant, and Tenant's employees, agents and contractors, limited access to the Demised Premises during the Due Diligence Period as provided in Subsection 2 of this Development Rider, subject to the insurance requirements set forth in this Lease and other customary Port permit conditions, for the purpose of conducting any studies necessary for Tenant to determine the suitability of the Demised Premises for development of the Project. For this purpose, Tenant may conduct a review of all land reclamation and land cut/excavation design studies, local bathymetric charts, geotechnical studies, Utilities plans, construction cost estimates and such other studies as Tenant may deem necessary to satisfy itself of the suitability of the Demised Premises for the Project. Tenant shall disclose to the County, within five (5) days of receiving notice of any subsurface or other concealed physical condition which Tenant discovers in the Demised Premises, which County may be responsible for remediating under this Lease. Following the Due Diligence Period, and without prejudice to the County's obligations to perform Environmental Remediation, in the manner set forth in this Lease, Tenant accepts complete responsibility for any and all known and reasonably foreseeable conditions of the Demised Premises excluding any Pre-Existing Environmental Conditions and Unforeseen Site Conditions. The County acknowledges that at all times it shall be solely responsible for the following: (i) Unforeseen Site Conditions, subject to the limitations contained in Section 10(I); (ii) the County Pre-Turnover Obligations; (iii) Environmental Remediation of Pre-Existing Environmental Conditions (iv) Berth 10 & Concourse Remedial Work, and (v) changes in the condition of the Demised Premises caused by TLM's use of the Demised Premises between the end of the Due Diligence Period and the Turnover Date.
- (c) During Construction. Tenant's construction activities shall not cause any watershed to or flooding of any areas outside the Demised Premises, nor impact to the storm water disposal of areas outside the Demised Premises, and; if necessary, Tenant agrees to implement necessary remediation measures regarding watershed, flooding and dewatering activities, at Tenant's sole cost and expense, during the course of construction.
- (d) Title to Demised Premises; Leasehold Title Insurance. Tenant acknowledges that the County does not warrant the title or represent any set of facts concerning the title to the Demised Premises (other than that (i) that it is the owner of the fee simple title to the Demised Premises and (ii) title to the Demised Premises has not reverted

pursuant to the Deed Restrictions), nor does it warrant fitness for any particular use or purpose, except as otherwise provided in this Lease. Prior to the Lease Date, Tenant has obtained a leasehold title commitment from a reputable title insurer authorized to conduct business in the State of Florida.

Those matters identified in the title commitment that affect the Demised Premises shall be deemed to be Permitted Exceptions. The list of Permitted Exceptions is attached and incorporated in this Lease as **Exhibit D**.

- (e) Agreement to Design and Construct. Tenant agrees to design and complete construction of the Project in accordance with the terms and conditions of this Development Rider. Subject to the County's right to issue approvals as provided in this Development Rider, Tenant shall, except as specifically provided herein and in Sections 4 and 5 of this Development Rider (and without limiting the County's rights thereunder), have total control of the design and construction of the Project and shall effectively direct and supervise the work so that it is undertaken in compliance with this Lease. Tenant shall furnish at its sole cost and expense (subject to Sections 7 and 10(b) of the Lease) all necessary architectural, design and engineering services, labor, materials, equipment and supplies, insurance, testing, accounting, recordkeeping and other things and services of every kind necessary for the full performance and completion of Tenant's design, engineering, construction, startup, commissioning, obtaining and maintaining all applicable governmental approvals and related obligations with the respect to the Project. The Tenant agrees that its Design-Builder's approach to the design, development and construction of the Project including but not limited to timely delivery or quality of workmanship shall not prejudice those areas which may be used by third party cruise lines and those areas which may be used by the Tenant; such approach shall also consider and not unreasonably and materially prejudice the County's intended development and use of the Berth 10 Concourse and Berth 10. Any disputes regarding whether the Tenant's approach unreasonably and materially prejudices the County's intended development and use of the Berth 10 Concourse and Berth 10 shall be subject to the Dispute Resolution Protocol.
- (f) Design. Tenant shall design the Project in accordance with the Final Master Plan. Tenant shall provide the County with copies of the Project Plans and Specifications at the thirty percent (30%), sixty percent (60%) and ninety percent (90%) stages of completion and any material changes that occur thereafter; material changes shall include, without limitation, Restricted Modifications and material changes to Exclusive Use County Considerations. The County shall have the right to approve the Project Plans and Specifications for consistency with the Final Master Plan and the minimum design standards contained in Subsection 1(a)-(c) of this Development Rider, which approval shall not be unreasonably withheld, conditioned or delayed. In addition, the County shall have the right to approve, which approval shall not be unreasonably withheld, conditioned or delayed, those portions of the design which (i) materially impact the County Site Obligations, (ii) materially impact the Port's stormwater system; (iii) materially impact site access or potential traffic congestion or traffic backups outside the Demised Premises; (iv)

materially affect the security plan of the Project; (v) unreasonably and materially prejudice the intended construction of the Berth 10 Concourse or Berth 10; or (vi) concern the Cruise Terminals Buildings Minimum Requirements or Approved or Exclusive Use County Considerations. The Project Plans and Specifications shall be approved or rejected by the County, in the exercise of its reasonable discretion, within ten (10) Business Days of receipt. In the event that the County fails to approve or reject the Project Plans and Specifications within ten (10) Business Days, the Project Plans and Specifications shall be deemed approved. In the event the Project Plans and Specifications are rejected by the County, the County shall simultaneously provide Tenant with the reasons for such disapproval. Tenant shall then revise the Project Plans and Specifications and resubmit them to the County for approval within thirty (30) days, and County shall thereafter approve or reject the resubmission within ten (10) Business Days. In the event that the County fails to approve or reject the resubmission within ten (10) Business Days, the resubmission shall be deemed approved. This process shall continue until approval of the Project Plans and Specifications is issued or deemed issued by the County. Notwithstanding the foregoing, the County agrees that for a submission which the Tenant reasonably considers and confirms is time critical with the potential to impact the critical path unless reviewed very promptly, the Tenant shall have the right to notify the County that such submission is time critical at the time of submittal, whereupon the time periods referred to in this sub-section of ten (10) Business Days shall be reduced to five (5) Business Days and the time period of thirty (30) days shall be reduced to twenty (20) days. Tenant understands and agrees that stormwater drainage with respect to the Project must be self-contained on the Demised Premises.

- (g) Project Schedule and Reports. Tenant shall prepare and provide the County not later than thirty (30) days prior to the Turnover Date with a Project Schedule in its native scheduling software format which is in general conformance with the approved Preliminary Schedule (except as otherwise mutually agreed upon by the Parties), in accordance with critical path methodology, prepared with industry standard scheduling software, which, at a minimum, contains the critical dates set forth in the Lease for commencement and completion of construction activities and the anticipated cost of such construction activities. Tenant shall also place within the Project Schedule, in consultation with the County, the County Site Obligations, with the express understanding that the Project Schedule shall not change the dates for the County Site Obligations from those set forth in the Preliminary Schedule to earlier dates without the express written consent of the County, not to be unreasonably withheld, conditioned or delayed. Tenant shall update the Project Schedule on a regular basis as required; provided, however, that the Tenant's updated Project Schedule(s) shall not materially prejudice the County's performance of any remaining County Site Obligations or Concurrent Works as scheduled by the County in accordance with a Project Schedule previously approved by the Tenant. Except as otherwise provided in the Preliminary Schedule, the Parties understand and agree that, as an initial matter, the County Site Obligations are not intended to be in the critical path of construction activities for the Project. The County agrees that it will not change the dates for the County Site

Obligations from those set forth in the Preliminary Schedule without the express written consent of the Tenant, not to be unreasonably withheld, conditioned or delayed. In the event that the County Site Obligations are shown on the Preliminary Schedule as being in the critical path of construction activities for the Project or through later events or the passage of time the County Site Obligations fall in the critical path of the Project Schedule, the Parties agree to work cooperatively to minimize the impact of such activities to the Project Schedule. Tenant shall submit to the County a bimonthly work progress schedule and copies of any and all other schedules used by Tenant to manage the construction of the Project. The County may review and comment on such schedules.

- (h) Concurrent Works. The County has informed the Tenant that it will be undertaking certain coral relocation works as part of the County's obligation to undertake Mitigation as stated in Section 13(b) of this Development Rider, at the same time as the Tenant is constructing the Project (the "**Concurrent Works**"). To the extent that the County informs the Tenant of the scheduling of the Concurrent Works and requests a revision to the sequencing of the Project Schedule, the Tenant shall evaluate the potential revision of the sequencing of the Project Schedule to facilitate the execution of the Concurrent Works; provided, however, that the Tenant shall be under no obligation to agree to any proposed revision. To the extent that the Tenant agrees to revise the sequencing of the Project Schedule at the request of the County for the purposes of the Concurrent Works, the County shall be responsible for any additional cost or time incurred by the Tenant as a result of such revised sequencing, provided that the Tenant shall be required to provide proof of such additional costs or time in a form reasonably acceptable to the County. The Parties shall agree upon any such additional cost or time, which, unless otherwise agreed by the Tenant, shall not be paid out of the Contributions and shall be deemed to be a County Delay, prior to any revision to the sequencing of the Project Schedule.
- (i) Appointment of County Liaison to Assist with Permits. Subject to obtaining Final Approval, Tenant, shall apply in the normal manner to the appropriate Governmental Authorities to seek and obtain all necessary Permits and Approvals to:
  - (i) develop the Project in accordance with the Final Master Plan; and
  - (ii) operate the Project.

Without assuming responsibility for any portion of Tenant's responsibility to apply for, obtain, and comply with all required Permits and Approvals, the County shall appoint a representative that will (i) assist Tenant with expediting the processing of all required Permits and Approvals, and (ii) act as a liaison with Tenant regarding such Permits and Approvals. The County shall, within a reasonable time of submittal, execute any documents required to be executed by the County as the owner of the Demised Premises with respect to such applications by Tenant for Permits and Approvals. Tenant shall notify the County in writing, giving the reason(s) therefore, if Tenant believes it will be unable to obtain, in accordance

with the approval process and time frames as set forth in this Lease, any Permits and Approvals necessary to construct, operate, maintain, repair or manage the Project.

- (j) Commencement and Completion of Construction Activities. Irrespective of any Early Access granted to the Tenant pursuant to Section [2(a)] above, Tenant shall obtain a Notice to Proceed no later than the Turnover Date in the manner set forth in this Lease and shall commence construction of the Project. Tenant shall at all times diligently pursue the construction of the Project. During construction the Parties shall hold weekly progress meetings (which, where appropriate, may be combined with meetings at which County Considerations are to be discussed pursuant to Section 4 of this Development Rider). In such progress meetings Tenant shall demonstrate to the County's reasonable satisfaction, that the Project is progressing in accordance with the Project Schedule, that all delays have been properly accounted for, or otherwise that Tenant has sufficient plans to accomplish the Project reasonably within the Project Schedule and prior to the Substantial Completion Deadline. Tenant shall provide the County with copies of such documents as the County may reasonably require to determine the progress of the Project. In addition to right of the County Project Representatives to attend and participate in meetings as set forth in this subsection, the County shall be permitted to appoint a reasonable number field personnel; such County personnel shall have the same rights and obligations as Tenant Field Personnel under Section 7(h)(vi) of this Development Rider, and the County's field personnel may be the same or different persons than those participating as the County Project Representatives provided that the County Lead Project Representative shall remain the same person (unless otherwise notified by the County in writing from time to time) and shall be the point of contact and correspondence authorized to represent the County with the Tenant; the County shall not be required to appoint County employees to these roles (other than the County Lead Project Representative) and may specifically appoint third parties interested in the manner of design and construction of the Project. The Project shall be Substantially Completed by November 15, 2023. The above obligations of Tenant shall be extended for Delay.
- (k) Assignment of Contract Documents. Any contracts entered into by the Tenant with architects, contractors, and design builders shall identify the County as an intended third-party beneficiary thereof and allow for their assignment to the County, in the event of termination by the Tenant; provided that any assignment shall be subordinate to the rights of any Lender and the County shall have no right to enforce this collateral assignment unless the County terminates this Lease, except as otherwise provided in Section [14(b)] of this Development Rider. Notwithstanding anything herein to the contrary, the County shall have no approval rights with respect to (i) Tenant's selection of architects and contractors, and (ii) the type and content of the contracts with such architects and contractors.

7. **BERTH 10 CONCOURSE AND BERTH 10.**

- (a) **Timing.** To the extent the County decides to undertake and substantially complete the design and construction of Berth 10, such design and construction shall be at the County's sole cost and expense. If such project is undertaken by the County in its sole discretion and substantially completed, the use of Berth 10 shall be governed by Section 16 of the Terminal Operating Rider and the Operation Protocol.
- (b) **Design and Construction.** The Tenant agrees to design the Project in a manner that shall not unduly frustrate or cause the County to incur material additional costs in the future development of Berth 10 or the build-out of Concluding Berth 10 Concourse Element; any disputes about the materiality of impacts on the future development of Berth 10 or the build-out of the Concluding Berth 10 Concourse Element shall be subject to the Dispute Resolution Protocol as provided in Section 6(e) of this Development Rider. The County has confirmed its desire to construct the Berth 10 Concourse on top of the Tenant's concourse for Berth 9, with both concourses sharing a common structure, footings, foundations, access, life safety egress and areas of refuge for complete operations supporting a fully occupied combined concourse when the concourse on Berth 10 is in operation, and life safety systems (together the "**Combined Concourse**"). The Parties agree that the Combined Concourse shall finish at the end of the Berth 9 concourse. To the extent the County optionally undertakes the works described in Section 7(a) and therefore elects to construct the Concluding Berth 10 Concourse Element, the portion of the Berth 10 Concourse from the easternmost end of the Combined Concourse to Berth 10 shall be the "**Concluding Berth 10 Concourse Element**". The Parties acknowledge and agree that part of the Concluding Berth 10 Concourse Element shall be constructed over (but not shall not form part of) the Demised Premises as it is expected that the Berth 9 concourse (and therefore the Combined Concourse) shall end in the general location as depicted on the Cruise Terminals Conceptual Plans, before the eastern boundary of the Demised Premises. Subject to the terms of this Section, the Parties have agreed that the Tenant shall design and construct the Combined Concourse.
- (c) **Design Fee Proposal and Cost Estimate.** The Tenant shall provide the County with an industry standard design fee proposal for the Combined Concourse, together with an industry standard cost estimate for construction of the Combined Concourse. (For the avoidance of doubt, this shall not include any part of the Concluding Berth 10 Concourse Element, for which the County shall be responsible.). The County shall be liable to meet 50% of the Combined Concourse design and construction fees (excluding any costs associated with the design and construction of any elements of the Combined Concourse that exclusively relate to the Berth 9 elements of the Combined Concourse, which costs shall be borne exclusively by the Tenant; costs that exclusively relate to the Berth 10 elements of the Combined Concourse shall be borne exclusively by the County). If the Parties are unable to reach agreement on the design and construction fees for the Combined Concourse, the County shall pay its share of any undisputed portion of the design and construction fees and the remainder shall be resolved in accordance with the Dispute Resolution

Protocol. The Tenant agrees that there shall be no material difference in the approach to the design or proposed construction of the different sections of the Combined Concourse.

- (d) The County shall have the right to review and approve the design of the Combined Concourse Plans and Specifications at the thirty percent (30%), sixty percent (60%) and ninety percent (90%) stages of completion and any material changes that occur thereafter. The County shall, acting reasonably, review and confirm whether it approves the design of the Combined Concourse. To the extent the County does not approve the design, the County shall provide detailed reasons. The Tenant shall consider the County's comments and, in its reasonable discretion, confirm whether it will update the design to accommodate the County's request. If the County's request in relation to the design relate solely to the Berth 10 elements of the Combined Concourse, increases the cost of construction or go beyond what would reasonably be expected to be incorporated into such design having regard to the design of the Project and industry standards generally, the County shall be solely responsible for meeting the additional cost of design and construction pursuant to such change requests. The design plans and specifications once approved shall be referred to as the **"Approved Combined Concourse Plans and Specifications"**.
- (e) Following agreement on the Approved Combined Concourse Plans and Specifications, the Tenant shall provide an industry standard cost estimate to the County for the construction of the Combined Concourse consistent with the cost-sharing methodology set forth in Section 7(c) above. Nothing shall preclude the County from negotiating savings with the Tenant's Design-Builder, provided that savings shall not be generated in a manner that would materially and adversely impact the integrity and design of the Combined Concourse.
- (f) [reserved]
- (g) On or before April 15, 2021, the County shall have the option to elect whether to delay the construction component for the Berth 10 Concourse shell space of the Combined Concourse. If the County elects to delay the construction component for the Berth 10 Concourse shell space, the Tenant shall proceed with the Combined Concourse without the Berth 10 Concourse shell space (the **"Reduced Combined Concourse Option"**). In such circumstances,
  - i. the parties will each continue to meet their responsibility for 50 percent of the fees of the common structural elements and such other elements of the Combined Concourse that must be constructed simultaneously with the Berth 9 elements of the Combined Concourse to preserve the County's ability to later construct the Berth 10 elements of the Combined Concourse and maintain the integrity and design of the Combined Concourse;

- ii. the County shall undertake the completion of the Berth 10 Concourse at a date of its choosing, provided that it is completed before the completion of Berth 10; and
  - iii. the County shall have full access and use of the design plans developed for the Combined Concourse, either through the grant of a license or assignment.
- (h) In respect of any construction work to be undertaken by the County with respect to the Combined Concourse (if the County elects not to proceed with certain elements of the Combined Concourse under Reduced Combined Concourse Option), the Concluding Berth 10 Concourse Element or Berth 10:
  - i. Operational Considerations. When undertaking works, the County shall proceed with the works promptly and without undue delay and shall liaise with the Tenant as to the County's intended construction schedule and shall consider the reasonable proposals of the Tenant with regard to such schedule and having regard to the Tenant's operations (and those of any other cruise line scheduled to use the Project during the construction period); provided, however, that, other than in the ordinary course of terminal operations or as required under approved berth schedules or those of MSC Vessels, the Project cannot be intentionally used in a manner that would unduly frustrate, cause material additional expense to the County, or materially delay the County's performance of the works. The County shall ensure that the experience of passengers using the Cruise Terminals Building, as well as the operations at the Cruise Terminals Building (whether those of the Tenant and any cruise line using the Project), during the construction works shall not be unreasonably disrupted or affected during such works. The Parties shall coordinate to minimize any impact on the normal operations of the Project.
  - ii. Progress. The Parties and their respective designees, if any, shall meet no fewer than twice a month during the works for the County to update the Tenant on the progress of construction and to inform the Tenant of forthcoming works in furtherance of the County's obligations set out in this Subsection.
  - iii. Maintenance. During performance of the works undertaken by the County, the County shall be responsible for the maintenance of the area where such construction is being undertaken. The County shall keep such construction area neat and orderly at all times, and shall clean up and remove all rubbish and construction debris as they accumulate. The County shall be responsible for removal of any rubbish, trash or debris that may be carried by wind or water, or otherwise from the construction area.
  - iv. Quality of the Work. The construction work shall be done in a good and workmanlike manner, in accordance with State of Florida construction industry standards and in accordance with the integrity and design of the

Combined Concourse, the Permits and Approvals and Applicable Laws., the Permits and Approvals and Applicable Laws.

- v. Laydown Areas. Any laydown and staging areas for construction materials and machinery shall be located outside the Demised Premises, unless Tenant agrees otherwise, and shall in no event materially inhibit or affect the ongoing operations of the Cruise Terminals Buildings or Berths 8 or 9 (including but not limited to provisioning and passenger embarkation and debarkation) in accordance with approved berth schedules or those of MSC Vessels.
- vi. Tenant Field Personnel. The Tenant reserves the right to maintain a reasonable number of its field personnel and designees at any County construction work site on the Demised Premises to observe the construction and the Tenant shall be entitled to have its field personnel or other designees attend the County's job and/or safety meetings; provided, however, that all of the foregoing shall be subject to: (i) the Tenant regularly notifying County of those persons who will be on the construction work site; (ii) compliance by such persons with all reasonable instructions given by County or its designee; (iii) compliance by such persons with all Applicable Laws and applicable safety guidelines. The Tenant shall be afforded the same observation rights in respect of the area where Berth 10 adjoins Berth 9 at the boundary of the Demised Premises.
- vii. Supervision of Project Engineer. All construction work undertaken by the County shall be carried out under the supervision of the project engineer, which shall be selected at the sole discretion of the County. The Tenant, through its agents and authorized personnel, shall be provided reasonable access to consult with the project engineer to monitor any County construction works undertaken within the Demised Premises. The County shall provide the Tenant with notice prior to all inspections performed in connection with construction.
- viii. Compliance with Applicable Laws. In performing any and all of construction work in relation to Berth 10 and the Berth 10 Concourse, the County shall comply with all Applicable Laws.
- ix. Completion of Construction. When the Berth 10 Concourse is completed, as to any portions constructed by the County, the County shall furnish the Tenant with a complete set of "as built" plans and survey for the constructed improvements in print and native digital format (with all features available to construction personnel included). Within ninety (90) days of Completion, County shall provide the Tenant with two (2) signed and sealed sets of complete Berth 10 Concourse "as-built" plans certified both by the architect(s) and/or engineer(s) of record and also by the PSM where required, which as-builts must show all changes and deviations from or to permitted plans and drawings and include as-built dimensions and elevations. All as-built information regarding underground or otherwise concealed facilities

shall be taken in the field concurrently with the program of construction and before facilities are covered or otherwise concealed. The as-built drawing shall be submitted to the Tenant in AutoCAD for Windows Release 14 format or later and in Geographic Information System as-built information format.

- x. Costs of Integration and Berth 10 & Concourse Remedial Work. All costs associated with the integration of the Berth 10 Concourse into the Project, including but not limited to the physical attachment and integration onto or into the existing concourses and/or the Cruise Terminals Building, as well as the adjoining of Berth 10 to Berth 9 at the boundary of the Demised Premises, shall be met by the County. The County shall be responsible and shall indemnify and hold harmless the Tenant for any and all Berth 10 & Concourse Remedial Work as a result of the works performed relating to the construction of Berth 10 and the Berth 10 Concourse. Further each general contract and all subcontracts of any tier entered into by the County shall provide the obligation to indemnify, hold harmless and defend the Tenant for, from and against claims or losses arising from the negligence of such general contractor or its subcontractors of any tier, and shall name the Tenant as express third-party beneficiary with rights of enforcement of such obligation.
- xi. Insurance. The County shall carry and maintain or shall require any contractor (or subcontractor) performing work in relation to Berth 10 and the Berth 10 Concourse at any time to carry and maintain:
  - (i) General liability insurance or the equivalent thereof, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement and contractor's protective liability coverage, of not less than Ten Million Dollars (US \$10,000,000) per occurrence limit;
  - (ii) Subject to customary sub-limits in respect of customary items, completed value builders' risk insurance (including an extension of coverage for debris removal) on a "special causes of loss" form in an amount not less than one hundred percent (100%) of the insurable value of the Project provided that the insurance coverage may be in a lesser amount based upon a probable maximum loss study acceptable to the Tenant and any sublimits for named storm or flood must be acceptable to the County, acting reasonably;
  - (iii) Automobile liability insurance with combined single limit coverage of not less than One Million Dollars (US \$1,000,000) per accident with respect to personal injury, death and property damage;
  - (iv) Worker's Compensation coverage (if applicable) or similar insurance in form and amounts required by law including USL&H and Jones Act;

- (v) Professional liability insurance in the name of Tenant or the licensed design professional employed by Tenant in an amount not less than One Million Dollars (US \$1,000,000.00) per claim; and
- (vi) Contractors Pollution Liability coverage in an amount not less than Ten Million Dollars (US \$10,000,000.00) per claim.

Policies evidencing such insurance shall all name Tenant as additional insured, shall be primary and non-contributory, and shall also contain a provision by which the insurer agrees that such policy shall not be cancelled, materially changed or not renewed without at least thirty (30) days advance notice to Tenant, by certified mail, return receipt requested, or its designee(s). A certificate evidencing such insurance shall be deposited with Tenant by County promptly upon commencement of County's obligation to procure the same. If County shall fail to perform any of its obligations under this Section, the Tenant may perform the same and the cost of same shall be payable upon Tenant's demand.

- (m) The County shall be responsible for insuring the Berth 10 Concourse to the same standards as set out in Section 28(a) of the Lease; for the avoidance of doubt, the Berth 10 Concourse does not form part of the Project and the Tenant shall not be liable to reimburse any portion of any premium related to the Berth 10 Concourse as part of Section [waterfall] of the Terminal Operating Rider. The County may, in its sole discretion, meet its obligation to insure the Berth 10 Concourse under this paragraph through the County's self-insurance program.
- (n) County Interest in Tenant's Design-Builder. The Tenant acknowledges that the County has expressed an interest in exploring the possibility of engaging the Tenant's Design-Builder for the purposes of undertaking some or all of the works associated with Berth 10, such works to be commenced following Substantial Completion, unless otherwise agreed by the Parties. Such engagement shall be handled in accordance with the Berth 10 Pier Option set forth in Section 3(c) of this Development Rider.
- (o) Tenant Interest in Berth 10 Works. Notwithstanding the foregoing, to the extent that following the Lease Date and prior to the County undertaking works relating to Berth 10 and the Berth 10 Concourse, the Tenant expresses an interest in undertaking such works at the Tenant's cost, the Parties shall discuss this possibility in good faith as well as other amendments to the Lease associated with the Tenant undertaking such works. The County, however, shall have no obligation to enter into an agreement with Tenant with respect to Berth 10 and/or the Berth 10 Concourse.

## 8. **PROJECT FINANCING.**

Tenant shall have until April 30, 2021 (the "**Financing Period**") to obtain financing for the Project on terms and conditions acceptable to the Tenant, in the Tenant's

sole discretion. The County shall be entitled to extend the Financing Period until May 31, 2021 at its discretion. Tenant covenants and agrees to diligently pursue financing for the Project. In the event that the Tenant does not obtain financing within the Financing Period the Tenant shall advise the County whether it is exercising its termination rights in accordance with Section 15 of the Lease and, if so, Section 15 shall apply.

9. **NOTICE TO PROCEED FOR PROJECT.**

- (a) Issuance. The County shall issue to Tenant a final Notice to Proceed not later than the Turnover Date, subject to Tenant's satisfaction of the following conditions for commencement of the construction of the Project: (i) Tenant receiving the Permits and Approvals for all or a portion of the Project; (ii) Tenant having executed a construction contract committing Tenant to construct all or a portion of the Project; (iii) Tenant providing County with written assurance that it has received the necessary financing sufficient to complete the Project, if any, and (iv) receipt and approval by the County of certificates of insurance and proof of payment and performance bonds or alternative security as required in this Lease.

The Parties shall hold a formal closing (the date of which shall be the Notice to Proceed Date) at a location in the Port, where the Parties shall acknowledge the satisfaction of the conditions set forth above, deliver copies of all relevant documents, and certify the Notice to Proceed Date. In the event that at the closing either Party wishes to condition or waive any of the requirements set forth above, in a manner that will not materially affect any of the rights or obligations of the Parties under this Lease, such conditions or waivers shall be executed in writing, with such writing to be attached hereto and constitute an amendment to this Lease.

- (b) Control of Demised Premises. On the Notice to Proceed Date, which shall occur not later than the Turnover Date (as the same may be extended by Delay), Tenant shall assume full control of the Demised Premises, subject to any agreements reached as provided in Section 13(l)(iv) and except for the license in favor of the County if the County has not completed the County Pre-Turnover Date Obligations prior to the Turnover Date. With the exception of claims caused by the negligence or willful misconduct of the County and its employees, designees, agents or contractors, including any claims relating to the County Pre-Turnover Date Obligations, Tenant shall assume full liability for all activities and occurrences at the Demised Premises. Tenant shall upon such date fence and provide other security to the Demised Premises as required to protect the safety of the Demised Premises, and otherwise comply with the Port's security plan. Tenant shall submit its proposed fencing and maintenance of traffic plans to the County for approval, which approval shall not be unreasonably withheld, conditioned or delayed not less than thirty (30) days prior to the Turnover Date. Once approved, the Tenant shall utilize commercially reasonable efforts to comply with the plan, as same may be modify with the approval of the County, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the issuance of the Notice to Proceed, Tenant shall provide to the County and its agents, reasonable access to the

Demised Premises, upon reasonable notice, for purposes of the County's fulfillment of its rights and obligations under this Lease, including the County Site Obligations. Except as otherwise expressly provided to the County by this Lease including the right of the County to inspect the Demised Premises and the County's Maintenance Obligations, following issuance of a Notice to Proceed, Tenant shall provide access to the County to the Demised Premises for such other purposes as the County may reasonably request, subject to such conditions as Tenant may reasonably require, including, but not limited to that access may be limited if such access will (i) interfere with the progress of the work in accordance with the Project Schedule, and (ii) interfere with the ability of Tenant to perform its obligation under this Lease. After Tenant takes possession of the Demised Premises, and throughout the Term, Tenant shall be responsible for all environmental conditions relating to the Demised Premises, except for Pre-Existing Environmental Conditions and Berth 10 & Concourse Remedial Work, Environmental Claims relating thereto and subsurface conditions including Unforeseen Site Conditions.

10. **DEVELOPMENT CONTRACTS; COMPLETION.**

- (a) **Development Contracts.** Tenant shall engage and contract with one or more duly licensed and qualified design professionals to design the Project. Tenant shall engage and contract with one or more construction contractors to construct the Project. Each of the contracts entered into by the Tenant shall comply with those County requirements relating to design and construction on property owned by the County and constructed for the use and benefit of private parties as specifically set forth in this Section 9, and each general contract and all subcontracts of any tier, shall provide the obligation to indemnify, hold harmless and defend the County for, from and against claims or losses arising from the negligence of such general contractor or its subcontractors of any tier, and shall name the County as express third-party beneficiary with rights of enforcement of such obligation. In the event that Tenant accomplishes the construction through a master development, master construction, or construction management contract, Tenant agrees that it shall include, or cause to be included, in those contracts, the requirements that all construction be performed in accordance with Applicable Laws including the applicable requirements set forth in this Section 9.
- (b) **Bonding Requirements.** Tenant shall be required to execute, record in the public records of the County, and furnish to the County before commencing work on the Project, a payment and performance bond, and/or alternate form of security satisfactory to the County and in compliance with the requirements of Section 255.05 of the Florida Statutes, in the amount of the contract price for each contract then to be undertaken on the Project, to assure completion of the work and payment of the costs, free and clear of all claims of subcontractors, laborers, mechanics, suppliers and materialmen. In the event that in partial satisfaction of this requirement Tenant furnishes a payment and performance bond not by Tenant, but by Tenant's construction contractor or construction manager, then the payment and performance bond shall name the County and the Tenant as dual obligees. The payment and performance bond shall be issued through a surety authorized to do

business in the State of Florida as a surety and be otherwise in compliance with the requirements set forth in Section 255.05 of the Florida Statutes, and Applicable Laws.

- (c) Small Business Enterprise. Tenant shall at all times comply with the requirements of the Community Small Business Enterprise Program. In compliance with applicable requirements, Tenant shall deliver proposed contract and design and construction packages to the Small Business Division of the Internal Services Department of the County (“SBD”) for a recommendation (which shall be made in consultation with Tenant) to the County Mayor of the Small Business Enterprise subcontractor goals applicable to such design and construction. The County Mayor shall establish the Applicable Measures upon receipt of the recommendation of the SBD. Tenant shall include the Applicable Measures in design and construction documents, as applicable, and shall adhere to those Applicable Measures in design and construction activities. Tenant shall incorporate in all design and development contracts the prompt payment provisions contained in Applicable Laws with respect to Small Business Enterprises. Tenant agrees to include in construction contracts a prohibition against imposing any requirements against Small Business Enterprises that are not customary, not otherwise required by law, or which impose a financial burden that intentionally impact Small Business Enterprises. Tenant shall comply with the Small Business Enterprise requirements during all phases of construction of the Project. Should the Tenant, fail to comply with any of the Small Business Enterprise requirements in one phase of the Project, Tenant shall be obligated to make up such deficit in future phases of construction of the Project.
- (d) Workforce: Residents First. All construction contracts shall comply with Section 241.17 of the Code and Implementing Order 3-61 which, require that: (i) all persons employed to perform construction shall have completed the ten (10) hour construction training course established by the Occupational Safety and Health Administration (“OSHA”) of the United States Department of Labor; and (ii) the contractor will aspire to promote employment opportunities for local residents and, to the extent reasonably practicable, seek to achieve a project goal of having fifty one percent (51%) of all construction labor hours performed by Miami-Dade County residents. Tenant shall coordinate with SBD to implement the provisions of this subsection.
- (e) Workforce; Local Workforce Requirements. All construction contracts shall comply with Section 2-1701 of the Code and Implementing Order 3-37, as applied to the Port, requiring that a minimum of ten percent (10%) of the construction workers be employed from any Designated Target Areas located within Miami-Dade County. Tenant shall coordinate with SBD to implement the provisions of this subsection.
- (f) Responsible Wages. All construction contracts shall comply with Section 2-11.16 of the Code which requires that construction workers be paid certain published minimum wages. Tenant shall coordinate with SBD to implement the provisions of this subsection.

- (g) Art in Public Places. Tenant shall comply with all applicable requirements of the County's Art in Public Places program.
- (h) County Not a Party. Unless the County accepts an assignment under Section 5(j) of this Development Rider, the County is not and shall not be construed as a party to any construction contract or subcontract or (of any tier) related to the Project nor shall County in any way be responsible for any or all claims of any nature whatsoever arising or which may arise from any such construction contract.
- (i) Substantial Completion Deadline. Tenant agrees to design and complete construction of the Project on the Demised Premises on or before the Substantial Completion Deadline, as the same may be extended for Delays.
- (j) Truck and Construction Vehicle Access, Use and Operating Restrictions. The County specifically agrees to allow vehicles removing Tenant Dredging from the Demised Premises use of the Road Network, in common with other users of the Port, twenty-four (24) hours a day, seven (7) days a week except as follows: (i) Mondays from 6 a.m. to 5 p.m.; and (ii) Fridays from 6 a.m. to 5 p.m. and the Tenant agrees to limit its contractor (and subcontractors of all tiers) use of dump trucks (with dredged material or otherwise), flatbed trucks, construction delivery trucks and other construction vehicles on Port roadways as follows: (i) Monday and Fridays from 5 p.m. to 6 a.m. on a road to be designated by the Port; (iii) Tuesday through Thursday 24 hour access via a road designated by the Port; and (iii) Saturday and Sunday 24 hour access through a road designated by the Port. The foregoing timeframes may be modified upon mutual agreement of the Parties to provide Tenant with additional access if such modifications, in the County's sole reasonable determination, would not impact cruise and cargo operations.
- (k) Additional Conditions. All contracts entered into by Tenant for construction of the Project shall provide for a one (1) year warranty period. In addition, a warranty of twenty (20) years shall be provided for the Cruise Terminals Building Roof and a ten (10) year warranty shall be provided for the Pier, bulkhead, caps, and associated structures.
- (l) Unforeseen Site Conditions. All contracts entered into by Tenant for construction shall contain standard industry clauses requiring the construction contractor to provide notice of any Unforeseen Site Condition promptly upon discovery and in all events prior to concealing of the condition. Tenant shall provide to the County notice of such condition within five (5) days of receipt of such notice from its contractor in connection with any condition which Tenant believes the County is responsible for under this Lease. The contract shall require Tenant's contractor to invoice the work related to Unforeseen Site Conditions, and to document its costs relating to such events separately through a separate change order. As a result of an Unforeseen Site Condition, Tenant shall be entitled to claim against the County exclusively in the manner set forth in this subsection 10(l) and not in the manner set forth in Section 14 of this Development Rider. The Parties acknowledge that the date of Substantial Completion may be affected by such Unforeseen Site

Conditions. The County shall be obligated to reimburse the Tenant for the first Five Million and No/100 Dollars (\$5,000,000.00) of Direct Costs in aggregate incurred by Tenant with respect to Unforeseen Site Conditions and fifty percent (50%) of all Direct Costs incurred by Tenant in excess of Five Million and No/100 Dollars (\$5,000,000.00) with respect to Unforeseen Site Conditions. The County shall reimburse Tenant for Direct Costs incurred by Tenant in connection with Unforeseen Site Conditions, as provided above within thirty (30) days of invoice of such Direct Costs being incurred by Tenant upon properly supported invoicing by Tenant with costs relating to Unforeseen Site Conditions separately identified and accounted for.

- (m) Employ Miami-Dade Program. In the construction of the Project, Tenant shall at all times comply with the requirements of Administrative Order No. 3-63, entitled “Employ Miami-Dade Program” which, among other requirements, provides for the hiring of certain participants listed in the Employ Miami-Dade register.

## 11. THE CONSTRUCTION WORK.

- (a) Maintenance. During performance of the construction work, Tenant shall be responsible for the maintenance of the area subject of the Notice to Proceed. Tenant shall keep the construction area neat and orderly at all times, and shall clean up and remove all rubbish and construction debris as they accumulate. Tenant shall be responsible for removal of any rubbish, trash or debris that may be carried by wind or water, or otherwise from the Demised Premises.
- (b) Encumbrances. Except as otherwise permitted in this Lease, Tenant shall use commercially reasonable efforts to cause the construction work to be constructed free and clear of any and all liens. In the event any such lien is filed by a contractor, consultant, or sub-contractor (of any tier), Tenant shall cause said lien to be discharged and transferred to appropriate bond within thirty (30) days of recording. If Tenant does not discharge or transfer to appropriate bond any such lien with thirty (30) days of recording, the County shall have the right, but not the obligation, to cause the lien to be released by any means the County reasonably deems proper and Tenant shall reimburse the County within ten (10) days of written demand for the cost of same. Tenant shall have the right to contest any such lien in good faith.
- (c) Quality of the Work. The construction work shall be done in a good and workmanlike manner, consistent with the standards set forth in Section 1(b), in accordance with State of Florida construction industry standards and in accordance with the Pier Plans and Specifications and Project Plans and Specifications (as applicable), the Permits and Approvals and Applicable Laws.
- (d) Laydown Areas and Construction Office Space. Laydown and staging areas for construction materials and machinery shall be located within each area covered by the Notice to Proceed (or on barges adjacent to the Demised Premises). Tenant shall have the right to set up construction trailers and implement other project

management requirements so long as the construction work is self-contained in that area.

- (e) County Field Personnel at Property. The County shall have the right to appoint field personnel with the rights set forth in Section 6(j).
- (f) Supervision of Project Engineer. All construction work undertaken by Tenant shall be carried out under the supervision of the project engineer, which shall be selected at the sole discretion of Tenant. The County, through its agents and authorized personnel, shall be provided reasonable access to consult with the project engineer to monitor the construction work and coordinate any Environmental Remediation or County Site Obligations required with the construction work. Tenant shall provide the County with notice prior to all inspections performed in connection with construction.
- (g) Compliance with Applicable Laws. In performing any and all of its obligations under the Lease, including without limitation, those set forth in this Development Rider with respect to the construction work, Tenant shall comply with all Applicable Laws.
- (h) Completion of Construction. When the Project is completed, Tenant shall furnish County with a complete set of “as built” plans and Survey for the constructed improvements in print and native digital format (with all features available to construction personnel included). Within ninety (90) days of Completion, Tenant shall provide the County with two (2) signed and sealed sets of complete Project “as-built” plans certified both by the architect(s) and/or engineer(s) of record and also by the PSM where required, which as-builts must show all changes and deviations from or to permitted plans and drawings and include as-built dimensions and elevations and also furnish to the County evidence of satisfaction of all Marine Environmental Permit closure requirements and submittals in accordance with the timing and other requirements set forth therein. All as-built information regarding underground or otherwise concealed facilities shall be taken in the field concurrently with the program of construction and before facilities are covered or otherwise concealed. Otherwise, Tenant’s contractor or design-builder, as the case may be, shall expose (and restore) sufficient areas of work to allow the PSM to meet the aforementioned dimension, elevation, and location verification and certification requirements. The as-built drawing shall be submitted to the County in AutoCAD for Windows Release 14 format or later and in Geographic Information System as-built information format.

## 12. LAND RIGHTS.

The County agrees to provide to Tenant any and all rights to access and occupy the portion of the Demised Premises which is currently leased to TLM that may be necessary for Tenant to exercise its rights and perform its obligations under this Lease in accordance with the terms of this Lease prior to the Turnover Date.

### 13. COUNTY SITE OBLIGATIONS.

The obligations set forth in this Section are obligations of the County to be undertaken by the County in connection with Tenant's construction of the Project. While the obligations set forth herein are not part of the Project for purposes of definition, the performance by the County of these obligations is material to the completion of the Project by Tenant. The County Site Obligations shall be limited to those specifically set forth in this Section, and shall be governed by the provisions set forth below. County's Site Obligations are as follows:

- (a) Environmental Conditions of the Demised Premises and Environmental Remediation. The County has provided Tenant with a Phase I Environmental Site Assessment (ESA) Report Future Cruise Terminals AA and AAA Facilities dated May 2019 prepared by CDM Smith, Inc. (or successor) (the "**Phase I ESA**"). In accordance with the Phase I ESA recommendations, the County undertook and has provided the Tenant with a Phase II ESA Report dated April 1, 2020 (the "**Phase II ESA**"). The Tenant has raised various comments in respect of the Phase II ESA and the Parties have agreed that the County will retain an environmental consultant during the performance of its subsurface demolition of TLM Structures for clearance of the Demised Premises as part of the County Pre-Turnover Obligations (contemplated in Section 6(a) of this Development Rider). The County's environmental consultant shall observe and monitor the subsurface demolition work, taking confirmatory soil and groundwater samples at the locations of the oil separator and/or other underground structures removed during the demolition, and the County shall subsequently issue a letter to the Tenant prior to the Turnover Date confirming whether the site is impacted (with Pre-Existing Environmental Conditions or otherwise) and to the extent the site is impacted, that any impacted materials have been satisfactorily removed or conditions addressed. Notwithstanding the foregoing and in any event, the County shall be responsible for any Environmental Remediation for Pre-Existing Environmental Conditions and Berth 10 & Concourse Remedial Work required under Applicable Laws. The Phase I ESA and the Phase II ESA shall establish a baseline for the environmental condition of the Demised Premises as of the Turnover Date as recommended by CDM Smith Inc. (the "**Environmental Base Line**"). The Environmental Base Line shall not be deemed or construed to relieve the County from its obligations under this Lease for any Pre-Existing Environmental Conditions or Berth 10 & Concourse Remedial Work.

In the event Pre-Existing Environmental Conditions are discovered by Tenant during or after construction of the Project (or as a result of the works undertaken by the County in respect of the Berth 10 Concourse or Berth 10), the County, through duly authorized agents, shall have the right to enter the Demised Premises, on reasonable notice, in order to accomplish the Environmental Remediation of such conditions identified to the extent required under Applicable Laws. In performing the Environmental Remediation, the County may place within the Demised Premises remediation equipment or install monitoring or other types of wells, or take such other action as the County may reasonably determine to accomplish the remediating effort. The County agrees to coordinate its remediation

efforts with Tenant as to minimize interference with the construction or operations. In the event Tenant's construction is delayed as a result of the County's remediation efforts, to the extent such delay is a County Delay, Section [14] shall apply. The Parties may agree that Tenant perform the remediation work contemplated in this Subsection (a) on mutually agreeable terms and conditions.

- (b) Marine Environmental Permits and Mitigation. The County (i) has obtained, at the County's sole cost and expense, Marine Environmental Permits required to enable Tenant to construct the Pier, and (ii) shall be responsible, at the County's sole cost and expense, for the design and implementation of the Mitigation required by the permitting agencies as a condition of the issuance of the Marine Environmental Permits. The County agrees to perform at its sole cost and expense any and all Mitigation (including any coral relocation works) required by the permitting agencies as a condition of issuing the Marine Environmental Permit for construction of the Pier and in connection with the actual construction of the Pier. Any coral relocation works shall be completed in accordance with the Preliminary Schedule. The County shall also be responsible for any additional Mitigation as provided for in Section 3(b) of this Development Rider. The Tenant shall be responsible for any additional costs and expenses with respect to the Mitigation resulting from Tenant's contractor failing to perform the Tenant Dredging and/or other marine work in compliance with the Permits and Approvals and all Applicable Laws.

- (c) Wayfinding Signage.

(i) On Port

The County, at its sole cost and expense, shall provide wayfinding signage on the Port outside the Demised Premises to the Demised Premises, substantially equivalent to the wayfinding signage provided for other cruise terminals at the Port. No later than [4] months prior to Substantial Completion Deadline of the Project, the County shall provide Tenant proposed wayfinding signage plan (which shall include the design of such signage) to be located on the Port for Tenant review (the "**Wayfinding Signage Plan**"). The Tenant shall be entitled to provide comments on the Wayfinding Signage Plan within ten (10) Business Days. The County shall consider but shall not be required to implement the Tenant's comments in respect of signage on the Port.

(ii) On Demised Premises

The Wayfinding Signage Plan shall also provide for proposed wayfinding signage on the Demised Premises in respect of the Project. Notwithstanding section 13(c)(i) above, the Tenant's approval in respect of signage on the Demised Premises shall be required (including with respect to timing of construction), such approval not be unreasonably withheld, conditioned or delayed. Tenant shall have ten (10) Business Days to provide its approval. If Tenant fails to provide a response within the ten (10) Business Day period, the Tenant shall have waived its right to provide

its approval and the Wayfinding Signage Plan in respect of Demised Premises signage shall be deemed approved. To the extent the Tenant does provide a response which does not approve the Wayfinding Signage Plan in respect of signage on the Demised Premises, the Tenant shall provide reasons for its disapproval and the Parties shall work together in good faith to revise the plan accordingly. This procedure shall continue until the Tenant has approved or deemed to have approved the wayfinding signage plan. Upon approval, the County shall, at its sole cost and expense, (i) provide the wayfinding signage for Berth 10 on the Demised Premises (including along the roadway constructed on the Demised Premises by the Tenant upon Substantial Completion) and (ii) construct the foundations, pedestals and structures required for the wayfinding signage for Berth 10 to be located on the Demised Premises at the locations shown in the approved Wayfinding Signage Plan (excluding any internal signage in the Cruise Terminals Building, the Intermodal Area and the Provisioning and Parking Elements). All signage, including wayfinding signage, installed in relation to the Cruise Terminals Building and on the Demised Premises (including internal signage in the Cruise Terminals Building, the Intermodal Area, and the Parking and Provisioning Elements) shall be prepared and installed in accordance with Operation Protocol.

- (d) Water and Sewer Facilities. The County represents and warrants to Tenant that sufficient water and sewer facilities will be available to the Demised Premises, at the property line of the Demised Premises, based upon the anticipated load requirements set forth in Temporary Master Plan, with sufficient capacity to service the anticipated demands of the Project (“**Tenant’s Water Requirements**”). To the extent that it is determined that the existing water and sewer facilities do not have adequate capacity to supply Tenant’s Water Requirements, the County, at its sole cost and expense, shall cause the water and sewer facilities to be upgraded so that sufficient water and sewer capacity will be available to the Project no later than six (6) months prior to Substantial Completion to satisfy Tenant’s Water Requirements. Tenant, at its sole cost, is required to provide lift station systems on the Demised Premises, if necessary.
- (e) Utilities. The County represents and warrants to Tenant that Utilities will be available to the Demised Premises, at the property line of the Demised Premises, based upon the load requirements set forth in the Temporary Master Plan, with sufficient capacity to service the anticipated demands of the Project (“**Tenant’s Utility Requirements**”). To the extent that it is determined the Utilities do not have adequate capacity to satisfy Tenant’s Utility Requirements to service the Project, the County, at its sole cost and expense, shall upgrade the facilities so that sufficient Utility capacity is available to the Project to satisfy Tenant’s Utility Requirements no later than eight months prior to Substantial Completion or later as required by FPL for FPL to provide electrical services to the facility sixty (60) days prior to Substantial Completion, including without limitation expanding any Florida Power and Light substation to support the Project and constructing any duct banks required by the Utility to expand capacity required for the Project.

- (f) Removal of Existing Utilities. The County has advised the Tenant of various subsurface utilities (the “**Existing Utilities**”) located on the Demised Premises:
- (i) abandoned utilities are to be removed by Tenant, at Tenant’s sole cost and expense.
  - (ii) a twelve (12) inch water line which is intended to provide water to the Pier. Tenant shall upgrade/modify this water line as appropriate for the Project, at Tenant’s sole cost and expense.
  - (iii) a thirty (30) inch water line. The County shall be responsible to relocate this water line as required based upon the Final Master Plan, which relocation shall be done by Tenant but the Direct Costs for which shall be paid by the County. The relocation work shall be performed by Tenant in coordination with the Port construction division and WASD.
  - (iv) any active utilities which are Unforeseen Site Conditions are to be removed by Tenant and the County shall be responsible for Direct Costs.

To the extent that the Tenant is required to provide any indemnity to any Governmental Authorities (or departments thereof), including but not limited to the Miami Dade Sewer and Water Department of the County, in relation to the works for the relocation of the thirty (30) inch water line being undertaken by the Tenant on the County’s behalf, the County shall provide a back to back indemnity on terms reasonably satisfactory to the Tenant.

- (g) Addition of Utilities. To the extent that the County considers it necessary to service Berth 10 with utilities or support Port wide utilities, the County shall, at its sole cost and expense, be responsible for such works and shall restore any areas disturbed during the installation of utilities traversing the Demised Premises to its condition before installation provided that in all cases during and following the execution of any such works the County shall ensure that the experience of passengers using the Cruise Terminals Building, as well as the operations at the Cruise Terminals Building (whether those of the Tenant and any cruise line using the Project), shall be not be unreasonably disrupted or affected during such works. The Parties shall coordinate to minimize any impact on the normal operations of the facility. The County agrees to liaise with the Tenant during the Preliminary Term in respect of the addition of any utilities which the County anticipates being able to undertake prior to Substantial Completion with a view to minimizing disruption of the Project following Substantial Completion and during operations provided that the Tenant may require the County to undertake such works after Final Completion if such works are likely, in the Tenant’s sole opinion, to disrupt and/or delay the Tenant’s construction works.
- (h) Alternative Berthing Rights.

- (i) The Parties wish to make provision for MSC Vessels that may be affected as a result of Delay or following an Early Termination Event, regardless of fault, or such other circumstances as provided for under this Lease. The Parties acknowledge that MSC has preferential berthing rights pursuant to an existing preferential berthing agreement (as amended) (the “**MSC Preferential Berthing Agreement**”), unless otherwise earlier terminated in accordance with the terms of the MSC Preferential Berthing Agreement.
- (ii) The County will initially endeavor to provide berthing to MSC Vessels in other existing County terminals, subject to the preferential rights of others. Nothing in this Section shall give MSC or the Tenant any rights over any other existing terminal users who have preferential berthing rights or confirmed calls or constrain the County’s ability to negotiate preferential berthing rights with any other person for existing County facilities.
- (iii) Notwithstanding anything to the contrary, the County shall provide up to two (2) berths simultaneously (but not necessarily at fixed terminals or adjacent to each other) to accommodate MSC Vessel berthing needs resulting from Delay, an Early Termination Event or otherwise provided for in this Lease including but not limited to pursuant to Sections 31, 32(b) and 41 of the Lease. The Tenant shall be entitled to one day of rent abatement under this Lease for each day that such berth or berths are not available to accommodate a Vessel scheduled to be berthed (in accordance with the scheduling requirements set forth in the Terminal Operating Rider).
- (iv) For the purposes of the County’s obligation in (iii) above following a Delay to Substantial Completion, the County’s obligation to provide up to two (2) berths simultaneously (but not necessarily at fixed terminals or adjacent to each other) shall continue until April 30, 2024. The County’s obligation in the context of Delay shall be contingent upon the completion of either Berth 8 or Berth 9 at the Project for use by MSC Vessels. For all calls preceding April 30, 2024, the County shall provide berthing for all Non-MSC Vessels elsewhere on the Port unless the call of a Non-MSC Vessel would not conflict a scheduled call of an MSC Vessel at Berth 8 or Berth 9, in which case the County may use either berth for the Non-MSC Vessel. The Tenant’s need to utilize the Alternative Berthing Rights in the manner provided under this Section (regardless of the cause of Delay) shall not be the cause of the assertion of a default of any obligation under the Terminal Operating Rider in respect of such other scheduled Non-MSC Vessel not being able to use the Project. To the extent Substantial Completion is not achieved by April 30, 2024 due to Tenant Delay and any confirmed calls of Non-MSC

Vessels are not capable of being accommodated at the Demised Premises or at another terminal at the Port, the County's sole remedy shall be liquidated damages pursuant to Section 15 of this Development Rider.

- (v) In the event that no other terminal is reasonably available, the Tenant and the County will identify a Temporary Processing Facility ("TPF") to be located within the Demised Premises or in reasonable proximity to the Demised Premises. In no event shall the County be under an obligation to purchase existing land or buy out other tenants' rights for the TPF. The TPF shall be a facility that will be used to allow for the embarkation, disembarkation and processing of MSC Vessel passengers and, to the extent applicable, passengers of other cruise lines and their respective luggage during the relevant period.
- (vi) The County will initially bear the costs of the TPF, including all costs of designing, permitting, constructing, and procuring the TPF. The County will consult with Tenant and MSC prior to final design of the TPF and take into account any reasonable comments from Tenant and MSC, but the County will have the sole discretion to determine the final design and capabilities of the TPF, subject only to (i) applicable permitting requirements; and (ii) the TPF being suitable for and capable of processing up to 14,000 passenger movements (and associated luggage) per Vessel in a single day within eight hours for each Vessel. In all cases, the TPF shall be operated by the County and during the use of the TPF, the County's obligation to make an Operating Expenses Payment shall be suspended and, to the extent the use of TPF is needed following Tenant Delay, the County's Operating Expenses Payment Minimum Annual Guarantee shall be prorated during the use of the TPF.
- (vii) Nine (9) months prior to the Tenant's (or MSC's) expected need of the TPF based on the anticipated date of Substantial Completion, the Parties shall meet with a view to identify potential delays that will create a need for the TPF. The Tenant shall identify actual and potential delays to Substantial Completion, identify sites within and, together with the County, outside the Lease Demised Premises for the TPF.
- (viii) The Parties shall allocate all costs (including operational costs) related to the TPF based on fault. By way of example, if the County is responsible for four (4) days of County Delay and, the Tenant is responsible for two (2) days of Tenant Delay, the County shall bear two thirds (2/3) of the cost of the TPF and the Tenant, one third (1/3). If the County Delay and Tenant Delay are concurrent, or are

the result of one or more Force Majeure Events, each party shall bear one half (1/2) of the cost of such delays.

- (ix) The Tenant's rental obligations will not be abated during the use of the TPF. The Tenant shall be entitled to charge MSC Vessel Cruise Terminal Fees pursuant to the alternative berthing rights set out in this Section (regardless of whether the Tenant using a terminal facility or the TPF).
- (x) During the exploitation of the alternative berthing rights:
  - a. regardless of fault, the Tenant shall be entitled to receive the applicable portion of the Contributions (if any);
  - b. following any Delay, the Tenant and/or the County (as applicable) shall not be entitled to receive payment of their respective liquidated damages pursuant to section [15] of this Development Rider in the event that the call(s) of the scheduled Vessels (in the case of the County, MSC Vessels and in the case of the Tenant, Non-MSC Vessels, as applicable) occur whether at the Project or elsewhere at the Port and are therefore not missed (notwithstanding that the Project has not obtained Substantial Completion and that such calls may occur at other terminals or using a TPF);
  - c. the Operating Expense Payment Minimum Guarantee shall be reduced by the number of passengers on Non-MSC Vessels which are unable to be accommodated at the Project and berth at another facility at the Port, to the extent that the Project is delayed and Substantial Completion has not been achieved by the Substantial Completion Deadline due to a Tenant Delay; and
  - d. to the extent that any Non-MSC Vessel uses Berth 8 or 9 and/or the Cruise Terminals Building, the Tenant shall be entitled to receive the applicable payments (Operating Expense Payment and Dockage) as set out in the Terminal Operating Rider; provided, however, that the foregoing shall not apply if the Alternative Berthing Rights are being utilized by the Tenant after Tenant's termination of the Lease pursuant to its Early Termination Rights..

(i) LNG Fuel and Bunkering.

Prior to Substantial Completion, and subject to the Tenant's duty to cooperate with the County with regard to the following, the County shall:

- (i) obtain any and all approvals required of the Port under Applicable Laws to allow Vessels (including but not limited to the size and type of those (a) of MSC's current and future fleet and (b) of other cruise lines generally from time to time) to be fueled with LNG and any other conventional fuels from barges on the seaside of Vessels while berthed at the Port (including but not limited to Berth 8 and Berth 9) and taking into account the possibility of inclement weather, including establishing any Port wide rules and regulations, that may be required to ensure that Vessels are allowed to be fueled while berthed at the Port; and
- (ii) be responsible for and complete any Port wide improvement that may be required under Applicable Laws to allow Vessels to be fueled with LNG or conventional fuels while berthed at the Project from barges on the seaside of Vessels.

Pursuant to this Section [14(i)], the Parties shall create a working group (chaired by the Port) together with other interested stakeholders and authorities, and reasonably cooperate in respect of LNG matters.

(j) Disposal of Dredged Material.

The County acknowledges that a significant amount of dredged material will have to be removed from the Demised Premises as part of the Tenant Dredging. To assist in the disposal of the dredged material the County agrees to attempt in good faith to identify potential alternative locations to dispose of the dredge material. The County and Tenant shall meet six (6) months and three (3) months prior to the anticipated start date for Tenant Dredging to discuss Tenant's need for disposal of Tenant Dredging and options for disposal sites. The Parties shall meet periodically thereafter to discuss possible disposal sites. The County shall not be responsible for the failure to identify any disposal site. Tenant acknowledges, however, that the County may not be able to identify such a potential alternative disposal locations due to the unavailability or unsuitability of nearby sites, timing constraints, conflicts and/or the inability or challenge to timely obtain all permits required under Applicable Laws for potential alternative sites and/or the ability to satisfy anticipated permit requirements and conditions, among other factors beyond the County's control. In such circumstances, the Tenant shall be solely responsible for disposal of dredged material.

- (k) Notwithstanding the foregoing, should Tenant be materially delayed in the disposal of Tenant Dredging as a result of restricted road access resulting from: (i) the County's modifications to the Road Network and (ii) traffic restrictions, other than those set out in Section 8(j) of this Development Rider, imposed by the County which are not cured by the County within ten (10) days of written notice from Tenant, the County shall be liable for all Direct Costs incurred by Tenant resulting from such County Delay.

- (l) Port Road Network. The County has advised Tenant that the County is in the process of redesigning portions of the road network serving the Port (the “**Road Network**”) and during the construction process portions of the Road Network will be reconfigured on a temporary basis. In this regard the County agrees as follows:
- (i) The County recognizes that during the construction of the Pier and the balance of the Project significant construction traffic will be generated particularly with regard to removal of Tenant Dredging from the Demised Premises and the County agrees to not to limit on Port construction traffic to and from the Demised Premises in connection with the construction of upgrades to the Road Network except as provided in Subsection [10(j)] of this Development Rider, and except in cases of, or in response to, emergencies or accidents or Force Majeure Events, in which case the County shall exercise diligence to minimize the duration of any resulting temporary roadway access disruptions.
  - (ii) The County shall provide with Tenant and Tenant’s traffic engineer the opportunity to provide comments to the County in connection with the design of those portions of the Roadway Network which will have an impact on the operation of the Project, including but not limited to that portion of the Road Network which will provide ingress and egress to the Project, and that portion of the Port being operated by TLM, and the County shall consider the Tenant’s reasonable suggestions in respect of such matters.
  - (iii) Tenant acknowledges the proposed Road Network, including the flyover and road widening projects, for ingress and egress to the Demised Premises. The County acknowledges that the traffic associated with Terminals C, B and A and proposed Berth 10 could have an adverse impact on the Project, if not properly addressed in the redesign of the Road Network. In the event that the County proceeds to construct proposed Berth 10 to the east of the Demised Premises, it shall design and configure access roads to that construction in a manner which does not materially affect traffic patterns to and from the Demised Premises, affect the level of service within the Demised Premises, restrict access or affect roadway operations, and/or create traffic congestion in any way for the Project including the Parking Element and GTA, Cruise Terminals Building, and its Provision Staging Area. Both Parties agree to coordinate maintenance of traffic (MOT) information to understand traffic maintenance and patterns during and through to the end of the Road Network projects and the Project construction.
  - (iv) During the Preliminary Term, the Parties agree to coordinate in good faith to determine whether Tenant can provide temporary access over the road within the Demised Premises to the TLM terminal area

within a certain construction window(s). While Tenant cannot guarantee that this access will be available at any time during the Preliminary Term, the County agrees that if any access is provided by the Tenant, the County shall be solely responsible for any and all design and construction costs related to temporary maintenance of traffic, including but not limited to, construction phasing, traffic controls (flagmen, temporary signalization, signage, pavement markings, etc.), temporary traffic barriers and/or fencing, temporary pavement, temporary drainage, and lighting. The Tenant will notify the Port of this determination no later than 30 days prior to the Turnover Date.

- (v) Under no circumstances after Substantial Completion shall the Tenant be under an obligation to give access over any road within the Demised Premises to traffic other than to (i) those vehicles associated with, or travelling to and from, the Project; (ii) emergency vehicles, law enforcement vehicles, or vehicles of any Governmental Authority; (iii) vehicles involved in the construction of or servicing Berth 10 and related facilities; and (iv) vehicles traveling to the TLM terminal area in accordance with Section 53 of the Lease. Notwithstanding the foregoing, under no circumstances shall cargo trucks (other than provisioning trucks traveling to the Project or Berth 10) be allowed to utilize the road constructed on the Demised Premises once completed. The County also agrees that any dump trucks (with dredged material or otherwise), flatbed trucks, construction delivery trucks and other construction vehicles using the Road Network, including any roads passing in front of the Demised Premises, during and for the purposes of the construction of Berth 10 and/or the Berth 10 Concourse shall be restricted from transiting within the Demised Premises on Berth 8 or Berth 9 cruise operation days from the time the first Vessel arrives to the time the last Vessel departs.
- (vi) The County covenants and agrees that the redesigned Road Network will provide uninterrupted access after Substantial Completion, to and from the Project at all times, except in the case of emergencies or accidents or Force Majeure Events, in which case the County shall exercise diligent efforts to minimize the duration of any resulting temporary roadway access disruptions.

(m) County Pre-Turnover Obligations.

The County shall perform the County Pre-Turnover Obligations in accordance with Section 6(a) of this Development Rider.

14. **COUNTY DELAYS AND ACCELERATION**

- (a) The County shall establish a contingency account (the “**County Delay Account**”), to be funded as needed, in an amount up to Six Million Dollars (\$6,000,000) for the limited purpose of funding the County’s obligations relating to County Delay (i.e., liquidated damages under Section 14(f)) and acceleration. The disbursements from this County Delay Account shall be governed by the provisions of this Section 14.
- (b) The Parties understand that meeting the anticipated date of Substantial Completion is of paramount importance and time is of the essence. To accomplish the timely completion of the Project, the Parties agree to accelerate the Project unless acceleration is commercially unreasonable.
- (c) In the event of a County Delay, the Tenant shall deliver to the County a proposal for acceleration of the work (the “**Acceleration Proposal**”). Such proposal shall contain, at a minimum, a description of the proposed acceleration, the cost of acceleration and a justification of why the delay constitutes a County Delay, and back up to the cost proposal. The County shall have ten (10) days to review and accept or reject the proposal. The County shall communicate to the Tenant any questions or requests for additional documents or information which may be reasonably necessary for the County to make its determination of the reasonableness of the Acceleration Proposal.
- (d) Wherever possible, the Tenant’s contractor shall segregate acceleration costs associated with the County Delay.
- (e) The County shall be obligated to accept any reasonable Acceleration Proposal. The County’s determination of reasonableness shall be made by reference to the proposed cost of activity and its likelihood that the Acceleration Proposal will result in Substantial Completion by November 15, 2023. To the extent that the County accepts an Acceleration Proposal, County Delay will be reduced by the number of days included in the Acceleration Proposal regardless of the acceleration achieved as a result of implementation of the Acceleration Proposal and the County shall be released in respect of any delay sought to be addressed by the Acceleration Proposal. The County shall prepay the Tenant for the costs set out in the accepted Acceleration Proposal.
- (f) Subject to Section 13(h) of this Development Rider, in the event of a County Delay resulting in Substantial Completion not being achieved November 15, 2023, the County shall pay a liquidated damage amount of Fifty Thousand Dollars (\$50,000) per missed call of an MSC Vessel. In the event of a Tenant Delay resulting in Substantial Completion not being achieved by November 15, 2023, the Tenant shall pay a liquidated damage amount of Fifty Thousand Dollars (\$50,000) per missed call of a Non-MSC Vessel up to a maximum aggregate amount of Two Million Dollars (\$2,000,000). The Parties intend the payment of liquidated damages (which shall not be construed as a penalty) only in circumstances where the work cannot

be reasonably accelerated to achieve Substantial Completion by November 15, 2023.

- (g) The County's liability for County Delay at any time shall be limited to Six Million Dollars (\$6,000,000).

#### 15. **TENANT EARLY TERMINATION RIGHTS**

(a) In addition to the Tenant's termination rights set out in Sections 34 and 35 of the Lease, the Tenant shall also have the right to terminate the Lease upon written notice in the event that:

- (i) if during the Due Diligence Period, the Tenant concludes, as a direct result of Unforeseen Site Conditions, that the construction of the Project is not commercially feasible (the "**USC Termination**"); or
- (ii) the Tenant has not obtained financing for the Project on terms and conditions acceptable to Tenant, in Tenant's sole discretion, on or before the end of the Financing Period, as may be extended ("**Financing Termination**").

(the USC Termination and the Financing Termination, each an "**Early Termination Event**").

(b) Within fifteen (15) Business Days following the expiration of each of the applicable periods set out in Subsection (a)(i) and (ii) above, the Tenant shall be required to advise the County, in writing, whether it is exercising the right of termination in respect of the applicable Early Termination Event. If the Tenant then advises the County that it is not exercising its right of termination, or if the Tenant does not timely provide notice under this subsection, then the right of termination in respect of the applicable Early Termination Event shall be of no further force and effect and the Tenant shall have no right of termination in respect of the Early Termination Event in question. If the Tenant advises the County that it is exercising its right of termination within the aforementioned fifteen (15) Business Day period, then the Lease shall terminate upon expiry of such period.

(c) To the extent the Tenant terminates this Lease pursuant to this Section, then upon an Early Termination Event:

- (i) the County shall purchase all construction materials purchased by Tenant with respect to the Pier (at the same cost as paid by the Tenant) in an amount which the Tenant represents and warrants shall not exceed Twenty Million Dollars (\$20,000,000). The Tenant shall provide the County with a bill of sale to evidence the sale and shall deliver to the County any and all warranties to which the Tenant has the benefit relating to such materials;
- (ii) the full scope of the contract entered into with Atkins by the Tenant for the Pier design work and associated services shall be assigned to the County. The Tenant shall assign and the County shall assume the Atkins contract

and the County shall reimburse the Tenant for all fees paid through the date of assignment. The total cost of this contract shall not exceed of One Million Eight Hundred Thousand Dollars (\$1,800,000).

- (iii) the Tenant shall assign to the County the full scope of the contract (in respect of the Pier) entered into by the Tenant for the design build of the Pier and the County shall assume the same. For the avoidance of doubt, the County shall not be required to accept assignment of any element of the Project other than the Pier. The County shall reimburse the Tenant for all contract costs through the date of assignment. The Pier element of the design build contract shall not exceed Eighty Million Dollars (\$80,000,000) in total cost (which includes the Twenty Million Dollar (\$20,000,000) cost for the steel referred to in subsection (i) above).
- (iv) The Tenant shall include in the contracts listed in (ii) and (iii) above provisions to allow the County to assume the owner's obligations as set forth in this section.
- (v) the Tenant shall indemnify and hold the County harmless from all liability under any assumed contract arising prior to the date of assumption including but not limited to any decision by the Tenant to reject or limit change order requests. Within ten (10) days of the date of assumption, the Parties shall meet to discuss account balances, pending requests for change orders and Tenant's recommendations for disposition of the same, analysis and update of the contract schedule and such other matters that may be relevant to the proper management of the contract
- (vi) The Tenant shall execute any and all transfers of permits, authorizations and approvals as may be required to give effect to the assignment contemplated in this Section 15.
- (vii) Within 60 days of any Early Termination Event, the County may, at its sole discretion, elect to assume any other contracts relating to the Project, excluding the Pier, including but not limited the architect contract by and between the Tenant and Arquitectonica (or successor) for the preliminary design of the Cruise Terminals Building and any contract by and between the Tenant and design builder, on such terms and conditions as the Parties may agree. The Tenant shall provide in the architect contract and any design builder contract provisions to allow the County to assume the owner's obligations under such contracts.
- (viii) If, at the time of an Early Termination Event, the Tenant has commenced construction of any part of the Project, then Tenant, at the County's option, shall return to the County full control of any and all of the Demised Premises, free and clear of any construction, fencing, and construction materials, and agrees to restore the land to its condition prior to commencement of construction but Tenant shall not be required to remove:

(i) any of the foundation or utility work performed by Tenant; and (ii) any materials the County purchases pursuant to this Section.

16. **COUNTY SHARE OF COSTS**

Pursuant to Section 10(b) of the Ground Lease, the County has agreed to pay the Tenant the USD 60m Contribution and the USD 76m Contribution as follows:

(a) **USD 60m Contribution**

The County shall pay the Tenant the USD 60m Contribution during the Preliminary Term in equal Two Million Dollar (\$2,000,000.00) installments over thirty (30) months, with the first installment payable on May 1, 2021 (provided that by such date the Tenant has agreed to waive its right to terminate this Lease by way of the Financing Termination).

(b) **USD 76m Contribution**

The County shall pay the Tenant the USD 76m Contribution. Six Million Dollars (\$6,000,000.00) of this funding shall not be subject to any interest rate and shall be paid in two installments, Three Million Dollars (USD \$3,000,000.00) in year one of the Operating Term and Three Million Dollars (USD \$3,000,000.00) in year two of the Operating Term. The remaining USD 70m shall be subject to interest at a rate to be determined by the Parties on the basis of the lower of (1) Tenant's (or, if applicable, MSC's) interest as determined from the County's review of its financing documents plus 0.5% per annum and (2) 6.5% per annum (the "**Interest Rate**"). Unless otherwise agreed by the Parties, the funds (interest to commence upon Substantial Completion) shall be transferred in accordance with the schedule set out at **Attachment 11**.

To the extent that the County wishes to pre-pay some or all of such contribution or otherwise pay over a shorter or longer period than the anticipated Tenor, the County shall seek the approval of the Tenant as to the terms of such prepayment and/or shortened or lengthened tenor (as applicable).

**ATTACHMENT 4**

**Project Description**

## ATTACHMENT 4 PROJECT DESCRIPTION

(Defined Terms used in this Project Description shall have meaning set out in the Lease unless otherwise stated)

The Project will be a shared multi-vessel cruise terminal and parking garage complex. The Project consists of a LEED Silver certified shared cruise terminal, multi-level parking garage and multi-level intermodal facility to service three (3) cruise vessels simultaneously with a total capacity of up to 18,000 cruise passengers. The Project will also include the development of two new cruise berths (Berths 8 and 9) consisting of a new bulkhead wall system, mooring and wind bollards, fenders, four (4) Passenger Boarding Bridges (“PBBs”) and supporting runways, provisioning facilities to support Berths 8 and 9, and other site and waterside improvements and connection to PortMiami roadways.

The Cruise Terminals Building will be a multi-level, shared facility with two operating berths (Berths 8 and 9) and scaled to accommodate passengers using a future berth (Berth 10). The Parking Element will provide a minimum of 2,200 overnight multi-day parking for three (3) full and operating cruise berths, including wayfinding and flexible Audio Visual/IT messaging. The Parking Element will also include a multi-level Intermodal Area that serves buses, taxis, private motor coaches, ride-share, and personal vehicles for passenger drop-off/pick-up. The Cruise Terminals Building includes applicable embarkation/debarkation programming, VIP guest program, office spaces, US Customs and Border Protection (“CBP”) processing areas and program, and other cruise terminal related programs. The Cruise Terminals Building includes wayfinding, flexible audio visual/IT messaging, terminal wide paging system, multi-line vessel connections, guest check-in/ticketing, and other technologies adaptable for multiple cruise line businesses to support guest flow during embarkation/disembarkation operations. The Cruise Terminals Building will provide a connection point in a manner to incorporate the future Berth 10 concourse to be developed by the County (unless otherwise agreed). A multi-level concourse will be constructed and attached to the Cruise Terminals Building traversing east, along Berths 8 and 9, to the location farthest to the east required to connect to the PBB location points for boarding the Disney Cruise Line class vessels listed below:

### Disney Magic Class Specifications:

- GRT: 83,969 - 84,130
- LOA: 300.1m
- Beam: 32.25m
- Draft: 8.15m
- Max Capacity: 2,700

### Disney Dream Class Specifications:

- GRT: 129,690
- LOA: 339.8m
- Beam: 37m
- Draft: 8.6m
- Max Capacity: 4,000

### Disney Triton Class Specifications:

- GRT: ~ 144,000
- LOA: 341.1m
- Beam: 39m
- Draft: ~ 8.6m
- Max Capacity: 4,000

## ATTACHMENT 4 PROJECT DESCRIPTION

(Defined Terms used in this Project Description shall have meaning set out in the Lease unless otherwise stated)

The site improvements include the development and coordination of all vehicular entry and exits to the Cruise Terminals Building Program from North Cruise Boulevard to East Cruise Boulevard. Additionally, the site improvements will include sidewalks and curbing as necessary, emergency vehicle access to the berths, berth access for ship's service, and ancillary services required for the functions of the complex and vessel berthing. Wayfinding signage, pavement markings, lighting, and landscaping will be included. Potable and fire protection water, drainage, sewage, electrical power, telecommunication, security telecommunications, and other utilities and services are part of the Project. All requirements are to be designed and constructed within the site boundary and construction limits for the Project.

Waterside improvements include the construction of Berths 8 and 9, comprised of approximately 2,474 linear feet of bulkhead, and required dredging for such construction. Each berth will consist of a new bulkhead wall system, new apron, water stations to support ship services, utilities, and mooring and high wind storm bollards. The Project includes the supporting PBB runways, tie downs, and power / data / communication supply. Each berth will have two (2) PBBs. The mooring structures and PBBs will be sufficient to berth and service passengers for MSC Vessels as well as Disney Cruise Line class vessels with available specifications as of January 2021, namely the Magic, Dream and Triton (Disney Wish) classes.

The Cruise Terminals Building will:

1. Deliver a cruise terminal that reflects the design aspiration as set out in Cruise Terminals Conceptual Plans, accurately reflecting the architectural look and feel of the design proposal and delivering on the quality of the design and construction specifications;
2. Incorporate sustainable materials and use diversity of massing, material, texture, color, and scale to create a sequence of experiences;
3. Reflect creative and innovative design and construction techniques, tempered by specific maintenance and life-cycle consideration;
4. Function in an efficient manner, providing the appropriate levels of differentiation of space and support required for pedestrian and vehicle flows, as well as operational and security functions;
5. Promote the efficient and effective implementation of access control and security measures for vehicles, personnel, guest/passenger luggage, and vessels provisioning commensurate with the operational security requirements at each maritime security level;
6. Have built-in flexibility to accommodate different types and sizes of cruise vessels;
7. Integrate innovative "green features" that enable the terminal to attain "**SILVER**" or higher-level rating under the Leadership in Energy and Environmental Design (LEED) New Construction Green Building Rating System (GBRS);
8. Coordinate and incorporate Art in Public Places features;
9. Be designed and constructed in accordance with expected sea level rise projections during its anticipated useful life, using regionally consistent unified sea level rise projections; and

Key elements include but are not limited to:

**ATTACHMENT 4**  
**PROJECT DESCRIPTION**

(Defined Terms used in this Project Description shall have meaning set out in the Lease unless otherwise stated)

**1) Site Improvements**

- a) Intermodal Area for drop-off/pick-up for buses, taxis, limousines, privately owned vehicles (POV), ride share, and motor coaches;
- b) Traffic circulation within the site;
- c) Entry and exits to the adjacent PortMiami roadways;
- d) Utility Infrastructure and connections to utility owner service points;
- e) Electrical service/transformers/vaults;
- f) Backup generator(s);
- g) Trash bins / recycling area;
- h) Potable water;
- i) Fire suppression water;
- j) Sanitary sewer;
- k) Telecommunication, data, security;
- l) Ship services and Provisions Staging Area access and circulation;
- m) Wayfinding signage, roadway signage, roadway lighting, roadway drainage and pavement markings;
- n) Site IT/AV and adaptable AV for multiple cruise line purposes;
- o) Perimeter security and access control points;
- p) Site lighting;
- q) Landscaping with irrigation;
- r) Stormwater drainage;
- s) Areas of “egress discharge”;
- t) Security fencing, with security gates; and
- u) Access point to waterside.

**2) Cruise Terminals Building**

- a) Curb-side baggage check-in and security screening;
- b) Baggage conveyor systems;
- c) Entrance and guest/passenger security screening, including infrastructure to support security devices;
- d) Embarkation / check-in counters;
- e) VIP areas with ability to have a separate area for future Berth 10;
- f) PBB concourses to service Berths 8 and 9;
- g) Baggage claim / handling and CBP guest/passenger queuing;

**ATTACHMENT 4**  
**PROJECT DESCRIPTION**

(Defined Terms used in this Project Description shall have meaning set out in the Lease unless otherwise stated)

- h) CBP, primary and secondary inspection areas;
- i) Dedicated CBP bio-metric screening system and area;
- j) Security offices and cruise offices with support spaces and storage;
- k) Crew / staff check-in/security screening, and crew lounge;
- l) Vertical/horizontal circulation (elevators, stairs, escalators, ramps, baggage conveyors, etc.);
- m) Restrooms, including exterior access restrooms outside the secured area;
- n) Staff changing rooms
- o) Dedicated ILA break area;
- p) Storage and janitorial rooms;
- q) Security and access control at building perimeter and dedicated rooms;
- r) Flexible telecommunications / audio & visual / IT controls, network access points, Multi-Vessel Systems, and dedicated supporting rooms;
- s) Uninterruptible power supply;
- t) Terminal / Complex wide paging system;
- u) Mechanical (HVAC) / electrical rooms and other ancillary spaces (i.e. backup generator area);
- v) Wayfinding and signage;
- w) Service connection at terminal for PBB (electrical power, data connectivity, etc.);
- x) Life safety, fire alarm and fire suppression systems;
- y) Building management system;
- z) Accommodation for Art in Public Places installations;
- aa) Lightning protection system
- bb) All fixed seating and millwork in the interior or exterior spaces; and
- cc) All fixtures and equipment required for the proper servicing/support of the terminal activities.

**3) Waterside Improvements**

- a) New bulkhead wall system;
- b) Potable water ship's filling stations;
- c) Fire hydrants
- d) Utility adjustments/improvements;
- e) Mooring and storm bollards
- f) Fendering system;
- g) PBB runways and tie-downs;
- h) Apron slab/pavement;
- i) Storm water drainage;

ATTACHMENT 4  
PROJECT DESCRIPTION

(Defined Terms used in this Project Description shall have meaning set out in the Lease unless otherwise stated)

- j) Areas of “egress discharge”;
- k) Dredging of 2 berths;
- l) Four (4) PBBs.

**4) Parking Garage**

- a) Adequate parking for three (3) cruise vessels based on parking analysis and mode split analysis;
- b) Intermodal area – two (2) levels; multi-level parking in upper levels;
- c) Dedicated drop-off / pick-up areas in the Parking Element
- d) Security and access control, and parking controls; and
- e) Baggage collection and sorting areas.

**ATTACHMENT 5**

**Cruise Terminals Building Minimum Requirements**

**Attachment 5**  
**Minimum Requirements**

| <b>(Defined Terms used in this Minimum Requirements shall have meaning set out in the Lease unless otherwise stated)</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item</b>                                                                                                              | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Exterior</b>                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>GTA (Ground Transportation Area)</b>                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Guest Transportation Operations</b>                                                                                   | <p>The Ground Transportation Area (GTA) must contain parking spaces designed to accommodate various types of large passenger carrying motor vehicles (e.g., buses, cargo vans, shuttle buses, etc.), in order to support three (3) cruise vessels in a single day, including no less than twelve (12) bus parking spaces being assigned to the Primary Third-Party Cruise Line for transportation operations during its single vessel day operations. It is contemplated that approximately thirty-one (31) bus parking spaces will be afforded for this function based on Concept Plans; provided that, final number of allocated parking spaces may change and must be sufficient to accommodate 3-vessel day operations and allocation will be subject to the Operating Protocol.</p> |
| <b>PMC</b>                                                                                                               | <p>The GTA must contain parking spaces designed to accommodate non-cruise line sanctioned transportation providers who may attempt to offer transportation services to guests at the GTA. A minimum of four (4) parking spaces have been afforded to this function on Level 1 of the GTA as set forth on Concept Plans.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>POV lane</b>                                                                                                          | <p>The GTA must contain parking spaces dedicated solely to operation of guest drop off by taxi service, ride share or family members of guests. Approximately eighty (80) parking spaces have been afforded to this function on Level 2 of the GTA as generally shown in the Concept Plans. Final number will be as necessary to meet queuing analysis for private auto, rideshare, and taxi mode splits based on peak hour vehicle movement demand certified by the traffic engineer.</p>                                                                                                                                                                                                                                                                                               |

**Attachment 5**  
**Minimum Requirements**

|                                                                |                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Roadway</b>                                                 | The GTA must contain ingress and egress lanes with access to public roads, including a minimum of two (2) internal inbound lanes for vehicles entering the GTA and Parking Garage. Such ingress and egress lanes are identified on Concept Plans.                                                                                                                                   |
| <b>Taxi/Ride Share Staging</b>                                 | Approximately eighty (80) parking spaces have been afforded to this function on Level 2 of the GTA as generally shown in the Concept Plans. Final number will be as necessary to meet queuing analysis for private auto, rideshare, and taxi mode splits based on peak hour vehicle movement demand certified by the traffic engineer.                                              |
| <b>Parking Garage</b>                                          |                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Oversized vehicle spaces</b>                                | Parking garage will meet minimum heights required per code, and Levels 2 and higher will accommodate vehicles with a height of no greater than seven feet.                                                                                                                                                                                                                          |
| <b>Area to drop off luggage for vehicles parking in garage</b> | Parking garage must be designed such that there is space dedicated to guest luggage drop off in one or several locations. Space must afford guests that ability to drop off luggage in a safe and efficient manner and accommodate 3-vessel turn days in order to minimize risk of congestion within parking garage. Space afforded to this function is set forth on Concept Plans. |
| <b>Parking spots</b>                                           | Parking Garage will have a minimum of 2,200 parking spaces set forth on the Concept Plans, of which 1,000 spaces will be available for County's Primary Third-Party Cruise Line, including approximately 200 for Primary Third-Party Cruise Line's operational staff.                                                                                                               |
| <b>Provisioning</b>                                            |                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Truck provisioning</b>                                      | Shared Terminal must contain a sufficient number of provisioning loading bays to support two (2) vessels berthed at Berth 8 and 9. A minimum of Twelve (12) provisioning loading bay spaces is required as set forth on Concept Plans. Assignment and signage of provisioning bays on turn days will be covered in the Operating Protocol.                                          |

**Attachment 5**  
**Minimum Requirements**

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|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Staging</b>                             | Design plans will contain wide lanes in advance of the provisioning area to facilitate provisioning queuing and/or staging, if needed. Space afforded to this function is set forth on Concept Plans.                                                                                                                                                                                                                                          |
| <b>Security</b>                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Security Fencing/barrier</b>            | Shared Terminal security fencing and barriers must, at a minimum, meet U.S. Coast Guard, as well as any and all applicable County, State and Federal requirements.                                                                                                                                                                                                                                                                             |
| <b>Security Gates</b>                      | Shared Terminal security gates (both in function and number) must, at a minimum, meet U.S. Coast Guard, as well as any and all applicable County, State and Federal policies and requirements. At least one security gate needs to ensure there is enough turning radius at the east vehicle access gate to accommodate service trucks and cranes.                                                                                             |
| <b>Level One Terminal</b>                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Overall Design &amp; Passenger Flow</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Covered outdoor area</b>                | Covered outdoor areas, including a designated smoking space located in an area away from interaction with guests, will be provided.                                                                                                                                                                                                                                                                                                            |
| <b>Debarking Guest Flow</b>                | Shared Terminal will provide ramps, elevators, stairs and/or escalators from each concourse to Level 1 luggage laydown area, and from luggage laydown/CBP processing area to GTA and Garage area that meet all applicable code and regulatory requirements, as well as ensure maximum of level of efficiency with respect to guest flow, as determined by design flow simulations, and in the general locations depicted on the Concept Plans. |

**Attachment 5**  
**Minimum Requirements**

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| <b>Embarking Guest Flow</b>          | Shared Terminal will provide ramps, elevators, stairs, and/or escalators from GTA and Garage areas into Shared Terminal and from Shared Terminal waiting area to berth concourses that meet all applicable code and regulatory requirements, as well as ensure maximum of level of efficiency with respect to guest flow, as determined by design flow analysis and in the general location depicted on Concept Plans.                                                                                                                                                                                                      |
| <b>Restrooms</b>                     | Shared Terminal must provide sufficient number of restrooms (including baby changing stations) located throughout the Shared Terminal, in accordance with applicable code and regulatory requirements in order to accommodate up to 3-vessel turn day operations and guest flow with general locations shown in Concept Plans.                                                                                                                                                                                                                                                                                              |
| <b>CBP</b>                           | Shared Terminal must meet all requirements set forth by U.S. Customs and Border Protection as it relates to the processing of cruise line passengers for three-vessel turn day operations, including without limitation, office space, inspection areas, furniture, fixtures, and equipment.                                                                                                                                                                                                                                                                                                                                |
| <b>Crew &amp; Vendor Gate</b>        | Shared Terminal will contain crew and vendor gate facilities (including K-9 and X-Ray inspection locations) to accommodate anticipated volumes for 3-vessel turn day operation set forth on Concept Plans.                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Luggage &amp; Security</b>        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Luggage Services</b>              | Luggage Sorting and Screening Area will contain sufficient space to allow Primary Third-Party Cruise Line to perform airline baggage check-in service.                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Luggage sorting and screening</b> | Luggage Sorting and Screening area will be designed to accommodate luggage for 3-vessel turn day operations, as well as minimize risk of luggage comingling amongst vessels and loss. Space will be allocated within the Luggage Sorting and Screening area to Primary Third-Party Cruise Line for sorting and screening of its guests' luggage (which may include K-9 screening of luggage) will allow for sufficient space to accommodate equipment and personnel to facilitate the processing of 1.1 on average bags per guest, based on 4,000 guests per sailing and in the general location depicted on Concept Plans. |

## Attachment 5

### Minimum Requirements

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|--------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Luggage laydown</b>                     | Luggage Laydown area (Level 1 of Shared Terminal) must be designed in order to afford each cruise line vessel sufficient space to laydown its guests' luggage. Design should seek to mitigate risk of luggage comingling amongst ships, as well as incorporate signage to mitigate risk of guest confusion for a 3-vessel turn day operation. At a minimum, approximately 30,000 square feet (with tables) including circulation is required for Primary Third-Party Cruise Line 1-vessel operations. On days when Primary Third Party Cruise Line has 2 vessels, the second luggage laydown area will not require tables and space allocation will be per the Operating Protocol.                                                                                                                                                                                                                  |
| <b>Prohibited items process</b>            | Shared Terminal will include approximately 75 square feet dedicated to the safe screening and segregation of luggage and storage of any items found in luggage that is prohibited by Primary Third-Party Cruise Line.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Technology</b>                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Network connectivity - Multi vessel</b> | In addition to the Primary Cruise Line network, the Shared Terminal shall include multi-vessel network connectivity and will support all active technology equipment across network typology within the Cruise Terminal areas. The design will include multi-tenant secured room(s) with segregated racks for the Primary Third-Party Cruise Line in the Check-in Area and concourses. Secured access/environments for County Primary Third Party Cruise Line closets will be provided. All racks will include UPS power with redundant backup power. Climate controlled spaces for main technology closets will be provided. The network for each cruise line and berths should be private and segregated from all other networks, structured to support multi-tenant environment. Data point connectivity will be provided throughout Cruise Terminals Building including the various concourses. |
| <b>Wireless access - Multi vessel</b>      | Wireless network/access points will be provided to ensure WiFi access is available to crew and guests alike. For terminal space only used by the Primary Third-Party Cruise Line, WiFi points will be provided as required by Primary Third-Party Cruise Line. For shared spaces, requirements will accommodate both Tenant and the Primary Third-Party Cruise Line.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

**Attachment 5**  
**Minimum Requirements**

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| <b>Ship to Shore Connection</b>                                       | Ship to Shore connection will be provided for the Primary Third-Party Cruise Line and multi-vessel. Redundant ship to shore fiber and cable connections for the Third-Party Cruise Line will be provided back to the IT closets.                                                                                                                                                     |
| <b>IT Infrastructure for Entertainment (Signage, PA, Directional)</b> | Data points will be provided to accommodate Tenant, Primary Third-Party Cruise Line and Multi-Vessel requirements, including an ethernet drop behind each video screens and speakers, that go back to the IT room.                                                                                                                                                                   |
| <b>Validate Area</b>                                                  | Shared Terminal will include dedicated connection for Primary Third-Party Cruise Line ACI podiums with dedicated switch.                                                                                                                                                                                                                                                             |
| <b>Greeter Area</b>                                                   | Shared Terminal will include dedicated connection for Primary Third-Party Cruise Line Validation stations with dedicated switch.                                                                                                                                                                                                                                                     |
| <b>Lockable Storage for Technology Kits</b>                           | A dedicated lockable storage room with adequate and secure storage space located in an appropriate location for storage of ancillary Primary Third Party Cruise Line technology equipment.                                                                                                                                                                                           |
| <b>3 Dedicated County IT rooms</b>                                    | Shared Terminal must have three (3) dedicated IT rooms for use by the Port, each of which shall be a minimum of one hundred (100) square feet in size with external access only which shall be completed to core and shell condition, with lights and air conditioning. Conduit from the IT room(s) to the connection location at the perimeter of the Demised Premises is required. |

**Attachment 5**  
**Minimum Requirements**

| <b>Level Two Terminal</b>                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Overall Design &amp; Passenger Flow</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Concourse to Berths 8 &amp; 9</b>       | Shared Terminal will provide berth specific and mobile biometrics; information will not to be shared among the berths.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Lobby/Arrival - Validation Area</b>     | Shared Terminal will allocate space at the main guest entrance to facilitate and support guest validation process of Primary Third-Party Cruise line guests, including allocating sufficient space and required infrastructure to ensure use of validation podiums by Primary Third-Party Cruise line terminal operations staff. Space must also contemplate installation and utilization of signage to identify each station and facilitate guest wayfinding. Area must be approximately 8,000 square feet to operate a minimum of seventeen (17) mobile validation stations (18" deep by 18" wide) in the general location shown in Concept Plans. |
| <b>ACI (Assisted Check-In)</b>             | Shared Terminal must allocate space within the 2nd level to facilitate and support assisted guest check-in (ACI) of Primary Third-Party Cruise line guests, including allocating sufficient space and technical, technology and utility infrastructure to ensure use of ACI podiums by Primary Third-Party Cruise line terminal operations staff, as well as queuing of guests. Space must also contemplate installation and utilization of signage to identify each station and facilitate guest wayfinding. A minimum of sixteen (16) ACI stations will be required in the general location shown in Concept Plans.                                |

**Attachment 5**  
**Minimum Requirements**

|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Security Screening</b>     | Shared Terminal must allocate space within the 2nd level to facilitate and support security screening of Primary Third-Party Cruise line guests and their carry-on luggage, including allocating sufficient space and required infrastructure to ensure use of security screening equipment by authorized terminal operations staff. Space must also contemplate installation and utilization of signage to identify each security lane and facilitate guest wayfinding. It is estimated that approximately six (6) security screening stations will be required for Primary Cruise Line vessel's guests. |
| <b>Storage rooms</b>          | Shared Terminal must allocate approximately 1,000 square feet of space for the storing of Primary Third-Party Cruise line supplies and equipment distributed through the terminal as related to use.                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>VIP</b>                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>VIP Area</b>               | Shared Terminal must allocate space that is dedicated to the operation of a VIP lounge exclusively for Primary Third-Party Cruise line guests. Such space must include required infrastructure to ensure intended use of space. The space must be able to accommodate approximately 250 Primary Third-Party Cruise line guests. Location and square footage allocated to the Primary Third-Party Cruise Line VIP lounge is depicted in Concept Plans.                                                                                                                                                     |
| <b>Crew, Vendor and Staff</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Staff breakroom</b>        | Shared Terminal must allocate shared space that is dedicated to the function of serving as a staff break room area for both the Tenant and the Primary Third-Party Cruise Line. The area must be designed to accommodate staff for a three-vessel same day operation, including staff restrooms and lockers.                                                                                                                                                                                                                                                                                              |
| <b>Staff Changing room</b>    | Shared Terminal must allocate space that is dedicated to the function of serving as a changing room for Primary Third-Party Cruise Line staff members. The area must be designed to accommodate approximately 1 - 3 people and costumes, approximately 150 square feet, and must be located near Berth 10 boarding area.                                                                                                                                                                                                                                                                                  |

**Attachment 5**  
**Minimum Requirements**

| <b>Guest Check-In Areas</b>                                   |                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Primary Third-Party Cruise Line Kiosk</b>                  | Shared Terminal will allocate space within the Primary Third-Party Cruise Line waiting area to support the placement of a kiosk Required infrastructure will be provided, as necessary.                                                                                                                                      |
| <b>Embarkation photo</b>                                      | Shared Terminal will accommodate an embarkation photo area within the Primary Third-Party Cruise Line waiting area to support embarkation photo operations.                                                                                                                                                                  |
| <b>Guest Waiting Area</b>                                     | Shared Terminal must allocate space for no less than 800 guests dedicated for the Primary Third-Party Cruise Line in general conformance with the Concept Plans. Such space must include required infrastructure to ensure intended use of space, including charging stations for guest electronic equipment (i.e., phones). |
| <b>Offices</b>                                                |                                                                                                                                                                                                                                                                                                                              |
| <b>Permanent Third-Party Cruise Line Terminal Ops Offices</b> | A dedicated office space for 3 FTE of the Primary Third-Party Cruise Line is required. The entrance to the office(s) shall have direct external access and no access to the passenger terminal processing areas, or as required to meet security operational requirements.                                                   |
| <b>Ground Operator / Day of Ops Offices</b>                   | Shared Terminal must allocate adequate sufficient office space near the ACI Station that is dedicated to the function of Primary Third-Party Cruise Line time staff administrative use on days of operations.                                                                                                                |
| <b>Security</b>                                               |                                                                                                                                                                                                                                                                                                                              |
| <b>CCTV</b>                                                   | Shared Terminal must include closed-circuit television (CCTV) cameras and surveillance capabilities that must meet (i) all applicable legal and regulatory requirements and (ii) security operational requirements based on threat assessment as developed jointly by MSC and the Primary Third-Party Cruise Line.           |

**Attachment 5**  
**Minimum Requirements**

|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Passenger Secondary Security Area</b> | Shared Terminal must allocate space to facilitate and support secondary security screening of Primary Third-Party Cruise line guests and their carry-on luggage, including space to establish a queue for waiting guests. Such space must meet (i) all applicable legal and regulatory requirements and (ii) security operational requirements based on threat assessment. Final space allocation must be sufficient to accommodate 3 vessel day operations. |
| <b>Marine Berths 8 and 9</b>             |                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Bathroom facilities</b>               | Shared Terminal must allocate space for waterside restrooms near Berth 8 and Berth 9, in accordance with applicable code and regulatory requirements to support waterside staff.                                                                                                                                                                                                                                                                             |
| <b>ILA Break Area</b>                    | Shared Terminal must provide a dedicated covered area to serve as a break area for ILA. Location shall be near restroom facilities.                                                                                                                                                                                                                                                                                                                          |
| <b>Bulkhead and Apron</b>                | Bulkhead apron must have a 60' minimum apron width. Apron width being further described as the distance between the waterside secured area from security fence or Shared Terminal wall to the front face of bulkhead wall cap.                                                                                                                                                                                                                               |
| <b>Crane operation capability</b>        | The apron must accept special short duration crane loads. Crane live load will be up to a 140-ton rubber-tired crane with center of outrigger pads located minimum of 5 feet from back face of bulkhead cap.                                                                                                                                                                                                                                                 |
| <b>Fenders</b>                           | Berth 8 and Berth 9 fenders shall be no less than stated in Pier Plans and Specifications.                                                                                                                                                                                                                                                                                                                                                                   |

**Attachment 5**  
**Minimum Requirements**

|                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Mooring and High Wind Bollards</b>                  | Berth 8 and Berth 9 mooring and high wind bollards number and location to be provided as recommended in the berthing analysis to be completed for the Primary Third-Party Cruise Line and as incorporated in the Pier Plans and Specifications.                                                                                                                                                                                                                                         |
| <b>Passenger Boarding Bridge Runways and Tie Downs</b> | Berth 8 and Berth 9 passenger boarding bridges, including associated runways and tie downs, to be provided as recommended in the berthing analysis to be completed for the Primary Third-Party Cruise Line and as incorporated in the Pier Plan and Specifications                                                                                                                                                                                                                      |
| <b>Water Filling Stations</b>                          | The number of water filling stations shall be in accordance with the Pier Plans and Specifications and in the locations to be provided as recommended in the berthing analysis to be completed for the Primary Third-Party Cruise Line.                                                                                                                                                                                                                                                 |
| <b>Dock Storage</b>                                    | Water side area must allocate space for storage facilities in order to store all dock related equipment, vehicles, and other ancillary materials safely and securely, typical at cruise terminals.                                                                                                                                                                                                                                                                                      |
| <b>Additional Considerations</b>                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Technology</b>                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Digital monitors</b>                                | The Shared Terminal must contain a fully functional Audio/Visual system with a level of digital monitors throughout the Shared Terminal that support guest wayfinding, as well as allow Primary Third-Party Cruise Line to incorporate marketing and branding assets in strategic locations throughout the Shared Terminal. Final number and location of digital monitors must contemplate 3-vessel day operations and incorporate Primary Third-Party Cruise Line input, if available. |

**Attachment 5**  
**Minimum Requirements**

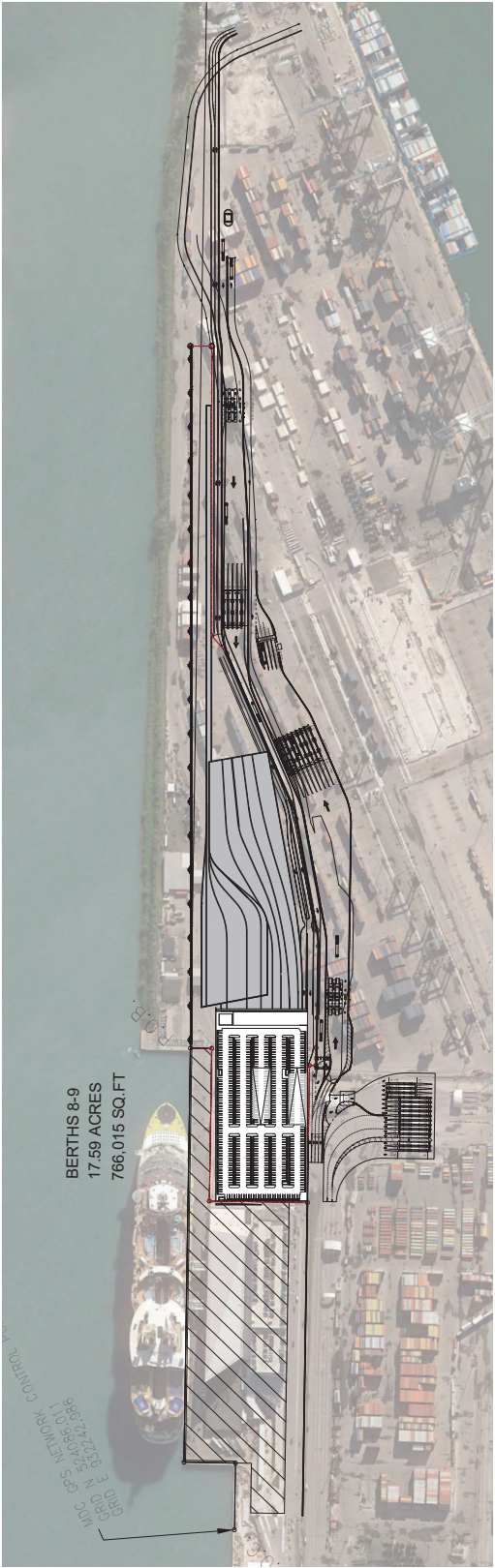
|                                                            |                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;"><b>Paging system</b></p>    | <p>The Shared Terminal must contain a paging and communication system, including the ability to make announcements throughout the Shared Terminal, and specific zones throughout the Shared Terminal to support effective guest services and communications. Final system must contemplate 3-vessel day operations and incorporate Primary Third-Party Cruise Line input, if available.</p>         |
| <p style="text-align: center;"><b>Signage and logo</b></p> | <p>The GTA and Shared Terminal must contain a level of signage throughout the GTA and Shared Terminal that properly instruct guests where to go depending on their intent and/or needs (i.e., drop off, buses, parking, luggage drop, etc.). Final number and location of signage must contemplate 3-vessel day operations and incorporate Primary Third-Party Cruise Line input, if available.</p> |

**ATTACHMENT 6**

**Cruise Terminals Conceptual Plans**



ATTACHMENT 6  
CONCEPT PLANS



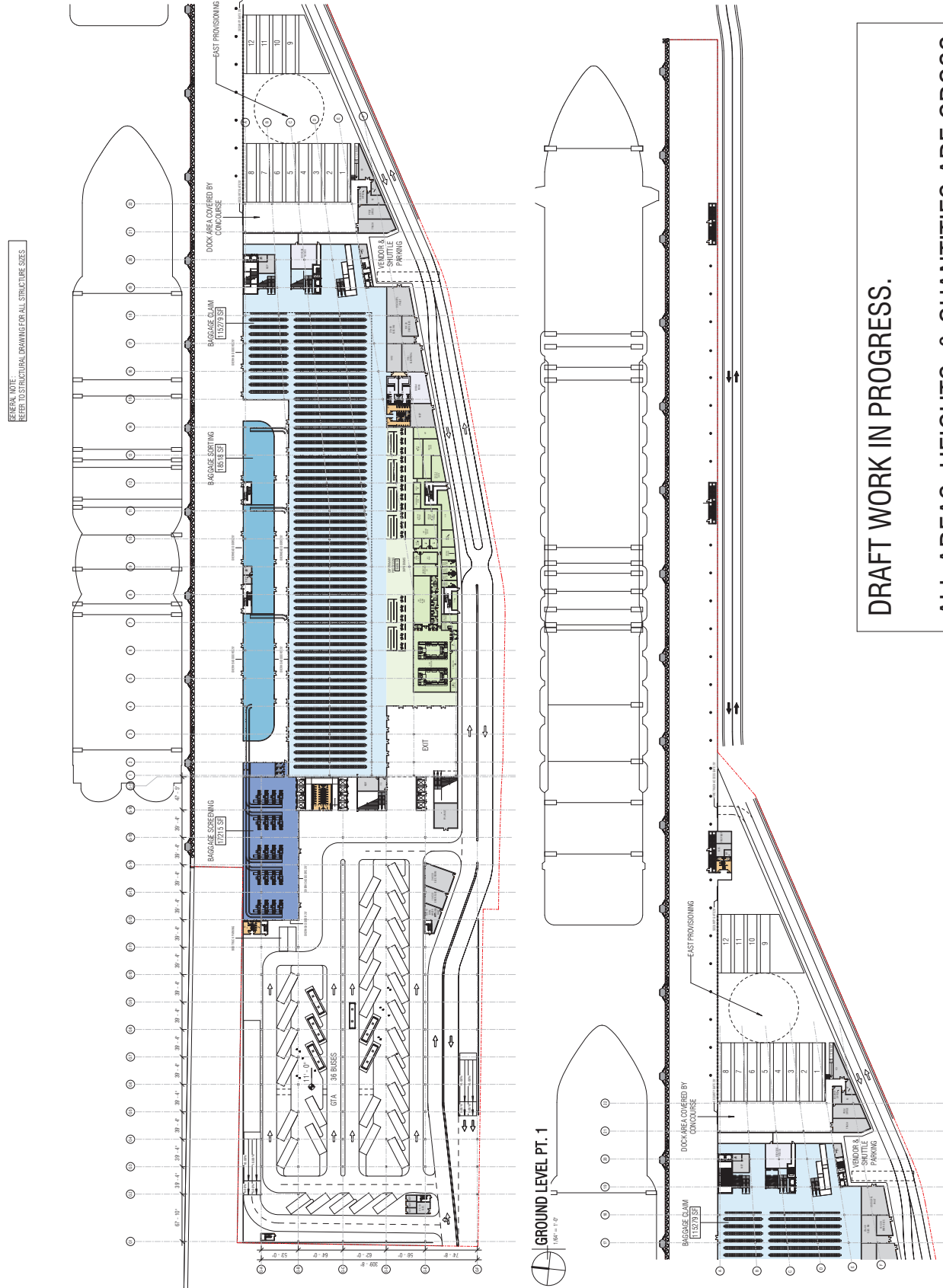
SITE PLAN - ROOF PT. 1



DRAFT WORK IN PROGRESS.

ALL AREAS, HEIGHTS, & QUANTITIES ARE GROSS  
ESTIMATES TO BE REFINED AND VERIFIED.

|                                                                                                                                                                                                                                                                                                                                                                                 |                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
|                                                                                                                                                                                                                                                                                                 |                          |
| NAME                                                                                                                                                                                                                                                                                                                                                                            | MSC-DCL TERMINAL         |
| CLIENT                                                                                                                                                                                                                                                                                                                                                                          | MSC                      |
| 6000 A Avenue Ave #100<br>Miami, FL 33139<br>954.772.800 TEL<br>954.772.800 FAX                                                                                                                                                                                                                                                                                                 |                          |
| ARCHITECT                                                                                                                                                                                                                                                                                                                                                                       | ARQUITECTONICA           |
| 2905 Oak Avenue<br>Miami, FL 33133<br>305.321.8873 TEL<br>305.321.8873 FAX<br>www.arquitectonica.com                                                                                                                                                                                                                                                                            |                          |
| LANDSCAPE ARCHITECT                                                                                                                                                                                                                                                                                                                                                             | ARQUITECTONICA GEO       |
| 2905 Oak Avenue<br>Miami, FL 33133<br>305.321.8873 TEL<br>305.321.8873 FAX<br>www.arquitectonica.com                                                                                                                                                                                                                                                                            |                          |
| INTERIOR ARCHITECT                                                                                                                                                                                                                                                                                                                                                              | ARQUITECTONICA INTERIORS |
| 2905 Oak Avenue<br>Miami, FL 33133<br>305.321.8873 TEL<br>305.321.8873 FAX<br>www.arquitectonica.com                                                                                                                                                                                                                                                                            |                          |
| MEP STRUCTURAL ENGINEER                                                                                                                                                                                                                                                                                                                                                         | DESIMONE                 |
| 3800 NW 13th Ave #100<br>Miami, FL 33133<br>305.321.8873 TEL<br>305.321.8873 FAX<br>www.desimone.com                                                                                                                                                                                                                                                                            |                          |
| CIVIL / TRAFFIC ENGINEER                                                                                                                                                                                                                                                                                                                                                        | Kentley + Hitti          |
| 3800 NW 13th Ave #100<br>Miami, FL 33133<br>305.321.8873 TEL<br>305.321.8873 FAX<br>www.kentleyhitti.com                                                                                                                                                                                                                                                                        |                          |
| MECHANICAL ENGINEER                                                                                                                                                                                                                                                                                                                                                             | SLS                      |
| 3800 NW 13th Ave #100<br>Miami, FL 33133<br>305.321.8873 TEL<br>305.321.8873 FAX<br>www.sls.com                                                                                                                                                                                                                                                                                 |                          |
| STRUCTURAL ENGINEER                                                                                                                                                                                                                                                                                                                                                             | SAUERHOEFER              |
| 3800 NW 13th Ave #100<br>Miami, FL 33133<br>305.321.8873 TEL<br>305.321.8873 FAX<br>www.sauerhoefer.com                                                                                                                                                                                                                                                                         |                          |
| PROJECT NUMBER                                                                                                                                                                                                                                                                                                                                                                  | 100101462                |
| TO THE BEST OF MY KNOWLEDGE AND BELIEF, THESE PLANS AND THE INFORMATION CONTAINED HEREIN COMPLY WITH THE FLORIDA BUILDING CODE AND THE APPLICABLE FIRE SAFETY STANDARDS AS DETERMINED BY THE CITY OF MIAMI. I AM NOT PROVIDING ANY GUARANTEE OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE FLORIDA BUILDING CODE AND THE APPLICABLE FIRE SAFETY STANDARDS. |                          |
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| ISSUE #                                                                                                                                                                                                                                                                                                                                                                         | DESCRIPTION              |
| DATE                                                                                                                                                                                                                                                                                                                                                                            |                          |
| CONCEPT PLAN                                                                                                                                                                                                                                                                                                                                                                    |                          |
| SHEET ISSUE DATE: 11/9/2021                                                                                                                                                                                                                                                                                                                                                     |                          |
| DRAWING NAME                                                                                                                                                                                                                                                                                                                                                                    | SITE PLAN                |
| SCALE                                                                                                                                                                                                                                                                                                                                                                           | 1" = 500' 0"             |
| A-100.0                                                                                                                                                                                                                                                                                                                                                                         |                          |
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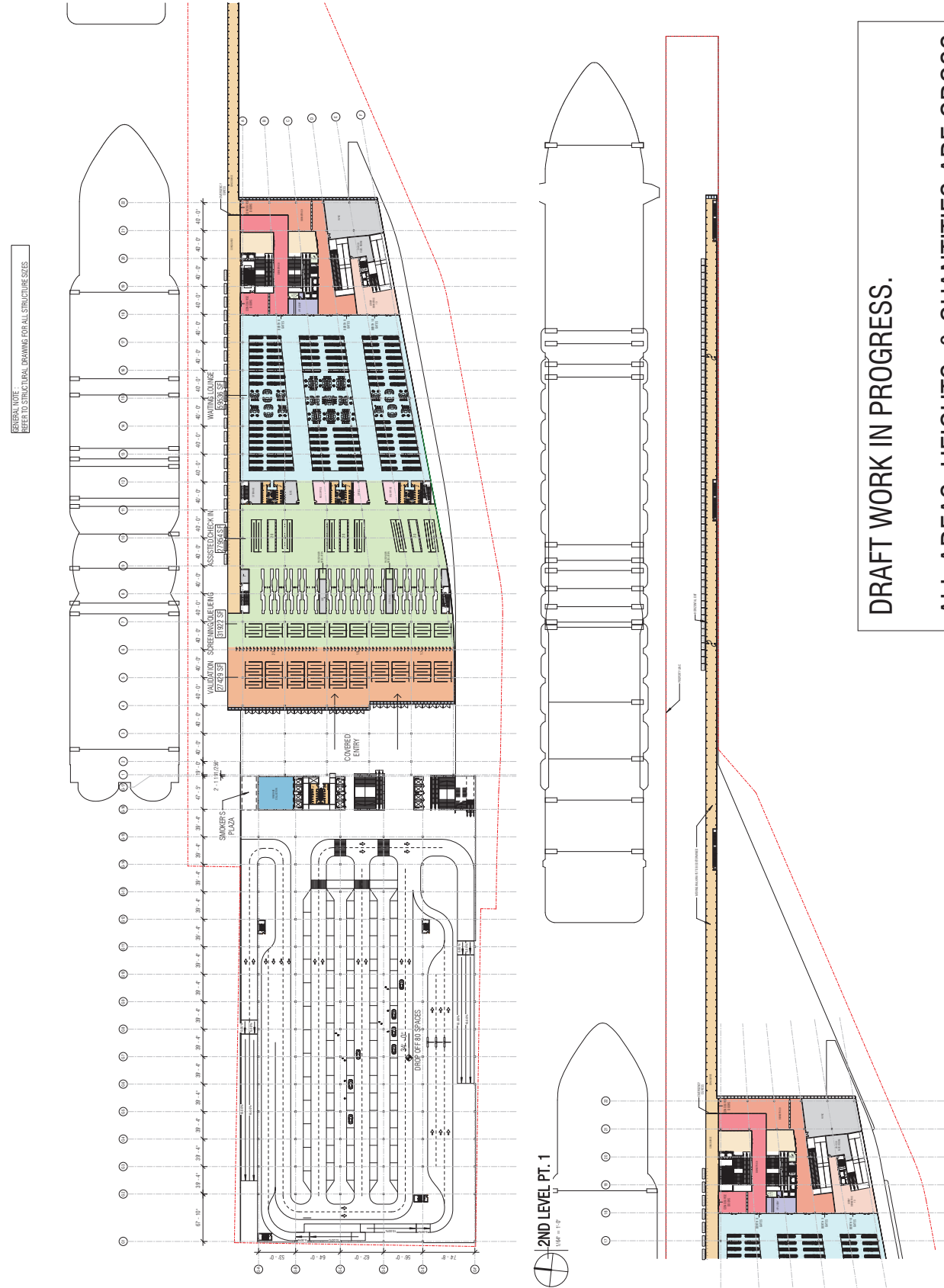
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**ISSUE #** **DESCRIPTION** **DATE**

**CONCEPT PLAN**  
SHEET ISSUE DATE: 11/19/2011

**DRAWING NAME** **2ND LEVEL**  
**SCALE** 1/8" = 1'-0"

**A-103.0**  
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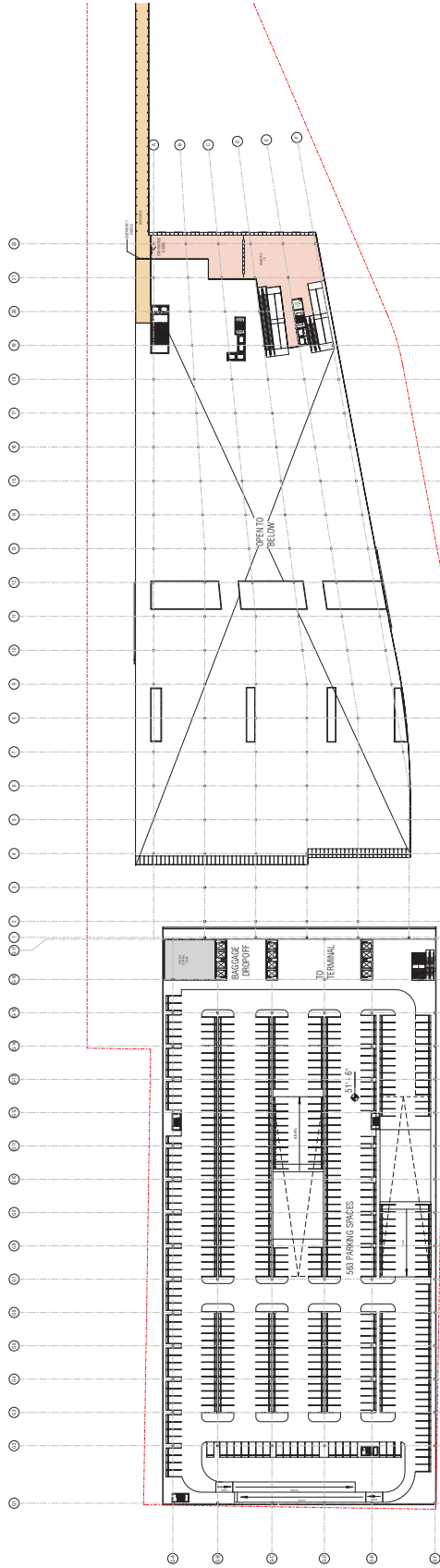
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|                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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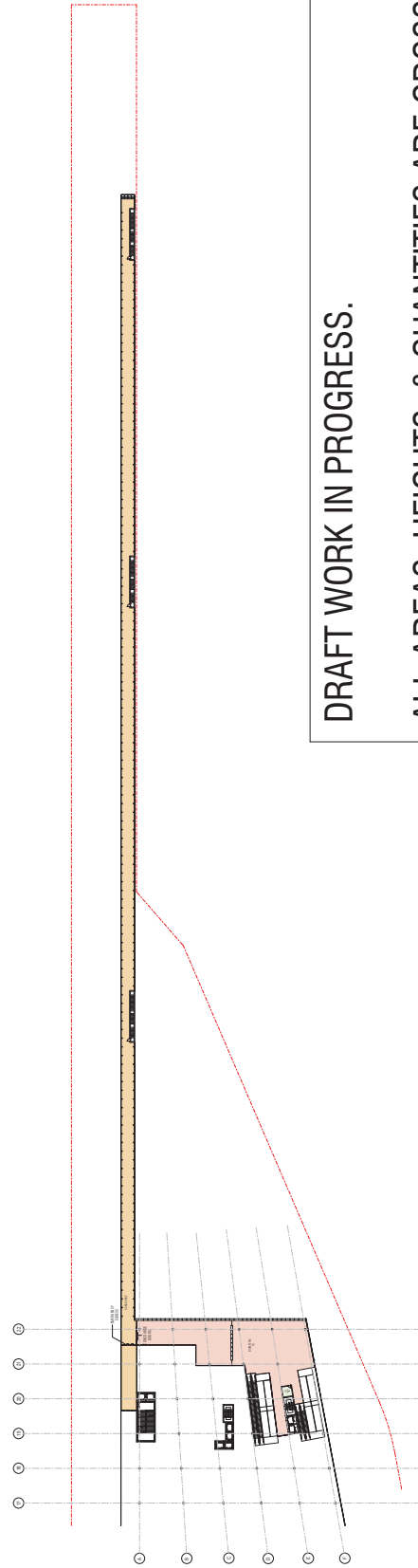
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|----------------|-----------------------|-------------|
| <b>ISSUE #</b> | <b>DESCRIPTION</b>    | <b>DATE</b> |
| 1              | CONCEPT PLAN          | 01/09/2021  |
| 2              | 2ND LEVEL - MEZZANINE | 01/09/2021  |
| 3              | SCALE: 1/8" = 1'-0"   | 01/09/2021  |
| 4              | A-104.0               | 01/09/2021  |

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2ND LEVEL MEZZANINE PT. 1  
1/8" = 1'-0"



2ND LEVEL MEZZANINE PT. 2  
1/8" = 1'-0"

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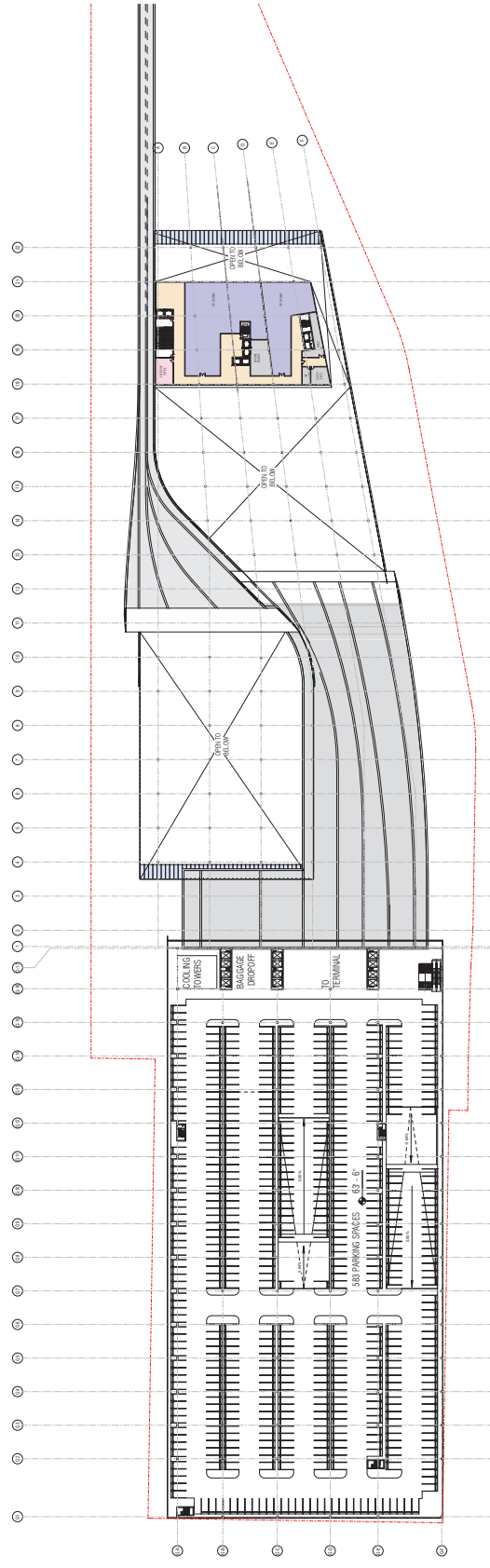
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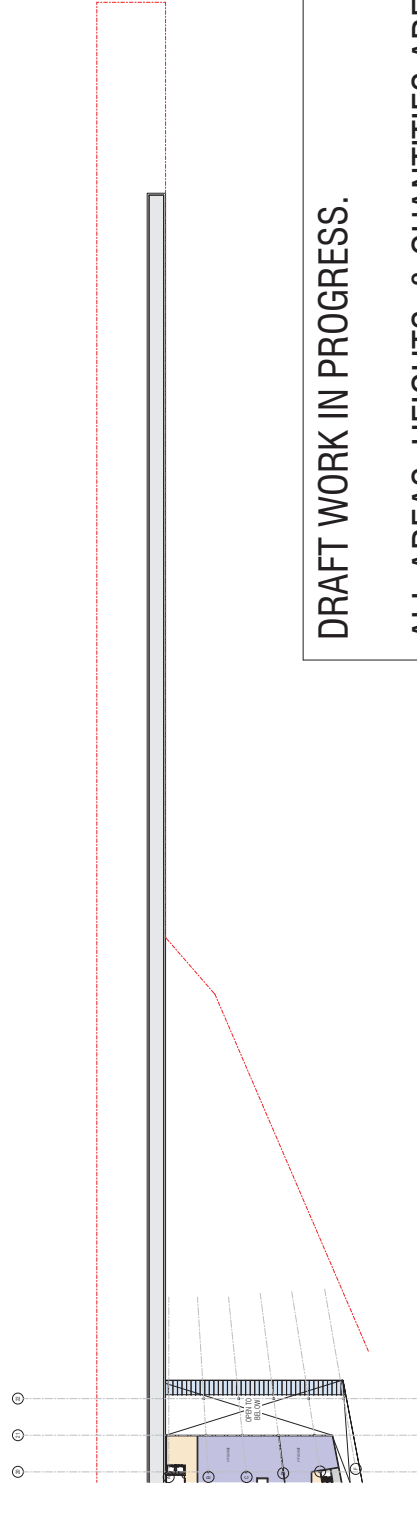
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1/8" = 1'-0"



3RD LEVEL 3RD LEVEL PT. 2  
1/8" = 1'-0"

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CONCEPT PLAN

SHEET ISSUE DATE: 11/19/2011

DRAWING NAME: 3RD LEVEL

SCALE: 1/8" = 1'-0"

A-105.0

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PROJECT NUMBER

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ISSUE #

1

DATE

11/19/2021

CONCEPT PLAN

SHEET DATE: 11/19/2021

DRAWING NAME: ROOF PLAN

SCALE: 1/8" = 1'-0"

A-109.0

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ROOF PT. 1  
1/8" = 1'-0"

| APPROXIMATE PARKING SPACES |        |
|----------------------------|--------|
| LEVEL                      | SPACES |
| GARAGE LEVEL 3             | 563    |
| GARAGE LEVEL 4             | 563    |
| GARAGE LEVEL 5             | 563    |
| GARAGE LEVEL 6             | 493    |
| TOTAL PARKING SPACES       | 2222   |

The final court will be determined once terminal building boundaries are provided and any court with regards to the separation requirements.

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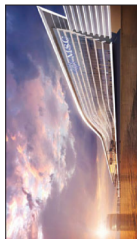
ROOF PT. 2  
1/8" = 1'-0"

164

DRAFT WORK IN PROGRESS



DRAFT WORK IN PROGRESS



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**INTERIOR DESIGNER**

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**PJHA**

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**PROJECT NUMBER:**  
1001.01.0462

TO THE BEST OF MY KNOWLEDGE AND BELIEF, THESE PLANS AND SPECIFICATIONS COMPLY WITH THE MINIMUM BUILDING CODES AND THE APPLICABLE FIRE-SAFETY STANDARDS AS DETERMINED BY THE CITY OF MIAMI IN ACCORDANCE WITH SECTION 110, FLORIDA BUILDING CODE AND CHAPTER 633, FLORIDA STATUTES.

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| ISSUE # | DESCRIPTION | DATE |
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**CONCEPT PLAN**

DRAWING NAME: RENDERINGS - WATERSIDE ELEVATION

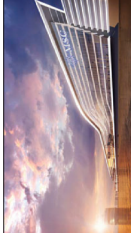
A-901

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DRAFT WORK IN PROGRESS





MSC-DCL TERMINAL

OWNER:



MSC

STRUCTURAL ENGINEER:



DESIMONE

ARCHITECT:



ARQUITECTONICA

INTERIOR DESIGNER:



ARQUITECTONICA INTERIORS

LANDSCAPE DESIGNER:



ARQUITECTONICA GEO

CIVIL ENGINEER:



KUTNEY & HORN

LIFE SAFETY:



SLS

Consultant:



P&H

Consultant:



LUXPOPULI

Consultant:



tgedesign

ALL CONSULTANTS:



ARQUITECTONICA

PROJECT NUMBER:

1001210462

TO THE BEST OF MY KNOWLEDGE AND BELIEF, THESE PLANS AND THE APPLICABLE FIRE SAFETY STANDARDS AND REQUIREMENTS BY THE CITY OF MIAMI, FLORIDA, HAVE BEEN PREPARED IN ACCORDANCE WITH THE FLORIDA BUILDING CODE AND CHAPTERS 63A, FLORIDA STATUTES.

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ISSUE #

DESCRIPTION

DATE

CONCEPT PLAN

SHEET ISSUE DATE: 11/9/2021

DRAWING NAME:

RENDERINGS - AERIAL WATERSIDE

SCALE:

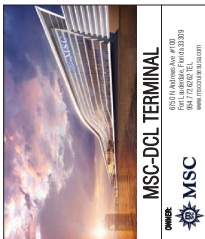
A-902

ARQUITECTONICA INTERNATIONAL, INC.

PAG 65 DE 119 11/09/2021

167

DRAFT WORK IN PROGRESS



## CONCEPT PLAN

SHEET ISSUE DATE: 01/29/2021

DRAWING NAME: RENDERINGS - AERIAL LANDSIDE

A-903

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20020 ARCHITECTONICA INTERNATIONAL, INC.

**ATTACHMENT 7**

**Berthing Areas**

# Attachment 7

## Berthing Areas



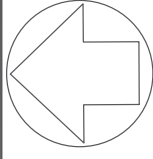
**ATTACHMENT 8**

**Berth 10 Location**

# Attachment 8

Berth 10 Location

DATE: 01/08/2021



## Legend

 Future Berth 10

\*ACRES ARE ROUNDED TO THE NEAREST TENTH



**ATTACHMENT 9**

**Preliminary Schedule**

[illegible]

[illegible]

[illegible]



**EXHIBIT C****TERMINAL OPERATING RIDER****1. Tenant as Terminal Operator.**

- (a) Tenant shall be the sole and exclusive manager and operator of the Project during the Operating Term, subject to the terms and conditions of this Lease and the Operation Protocol prepared in accordance with subsection (b). Tenant or Tenant's designee shall be the terminal operator until the end of the Operating Term or earlier termination in accordance with the terms and conditions contained in this Terminal Operating Rider and this Lease. Commencing upon Substantial Completion, and throughout the Operating Term, Tenant shall, at its sole cost and expense (excepting the County's Operating Expenses Contribution and Dockage Contribution, as described in Section 5, and the County's Maintenance Obligations and other obligations of the County set forth in this Lease), be solely responsible for securing, operating and maintaining the Project and all associated equipment thereon and improvements thereto with the sole exception of the County's Maintenance Obligations; such operation and maintenance shall be conducted in a manner that is consistent with the Operation Protocol. The County shall require any third-party cruise lines and Non-MSV Vessels utilizing the Cruise Terminals Building to adhere to the Operation Protocol. The Tenant shall be required to maintain and operate the Project in a manner that would permit the Cruise Terminals Building of serving up to three cruise Vessels simultaneously and the Tenant acknowledges that the Cruise Terminals Building is being designed to be of sufficient capacity to accommodate up to 4,000 passengers from a Vessel berthed at Berth 10, simultaneously with two other Vessels (and associated passengers) berthed at Berth 8 and Berth 9. It is further understood and agreed that the County may arrange for berthing of a Vessel with a capacity of greater than 4,000 passengers (upon implementation of procedures to be specified in the Operation Protocol) at Berth 10 (simultaneously with two other Vessels at Berth 8 and Berth 9); the Tenant shall operate the Project in a manner to accommodate the embarkation of up to 18,000 passengers at Berths 8, 9, and 10 in a single turn.
- (b) Operation Protocol.
- (i) Creation; Updating; Effect. The Parties, within six (6) months after the Lease Date, shall jointly develop an Operation Protocol which shall be based on industry standard terminal operations for first-class terminals similar to the Cruise Terminals Building. Thereafter, at least six (6) months before the scheduled Substantial Completion, the Parties shall review the Operation Protocol developed under the foregoing sentence and make any necessary revisions considering the final manner of construction of the Project. The Operation Protocol shall be jointly reviewed and, as necessary and subject to the mutual agreement of the Parties, revised by the Parties within thirty (30) days of each anniversary of the date of Final Completion. In connection with all reviews of the Operation Protocol under this subsection, the County shall be permitted to consider the input of the Primary Third-Party Cruise Line and representatives from such line shall be

entitled to attend and participate in any meetings held on the Operation Protocol. Unless otherwise agreed by the Parties, the processes and procedures set out in the Operation Protocol shall apply universally and not differentiate between, or differ as a result of, the use of the Project by different third-party cruise lines. The Operation Protocol shall not impose financial obligations exceeding an amount to be agreed upon in the Operation Protocol or, if no such agreement can be reached, \$30,000 per year of the Term (inclusive of one-time and recurring expenses and increasing by 1.5% per year from the Lease Date), that are additional to the obligations created under this Lease, unless specifically agreed by the party to be charged with such financial obligation. Neither Party shall be entitled to refer to the Dispute Resolution Protocol a dispute arising out of or in connection with a Party's refusal to accept the imposition of a financial obligation above the threshold set out above. The Operation Protocol shall regulate all matters addressed therein, even if reference to such matter is not specifically made in this Terminal Operating Rider, and the Tenant and the third-party cruise lines of all Non-MSC Vessels utilizing Berths 8, 9 and 10 shall be required to comply with the Operation Protocol then in effect.

(ii) Contents. The Operation Protocol created and updated pursuant to Section 1(b)(i) shall, at a minimum, address all operational matters set forth in the Lease (including this Terminal Operating Rider and the Development Rider) as being governed by the Operation Protocol and any other matter concerning the smooth and effective operation of the Cruise Terminals Building as a joint facility that is maintained and operated by the Tenant. The matters to be addressed in the Operation Protocol include, without limitation:

1. the standards for cleanliness and preventative maintenance and repair;
2. the development of standard operating procedures regarding access control (on days with and without Cruise Operations), wayfinding and digital signage, and security;
3. management of motor vehicles (including buses, shuttles, etc.) that are allocated parking on the ground floor of the ground transportation area and the management of truck bays in the Provisions Staging Area;
4. development and implementation of public announcement system zones within and around the Cruise Terminals Building and Parking Element, including considerations regarding music and speaker location;
5. in accordance with Section 21 of the Terminal Operating Rider, restrictions on advertising and marketing in the Demised Premises to avoid competition-based conflicts (e.g., advertising and marketing of theme parks) and conflicts based on brand image

considerations provided, however, that such restrictions shall not apply to restrict a cruise line (including, but not limited to, MSC) from advertising its core business and services;

6. restrictions on retail sales within the Project based on competition-based conflicts and conflicts based on brand image considerations provided, however, that such restrictions shall not apply to restrict a cruise line (including but not limited to MSC) from advertising its core business and services;
7. the review and approval of protocols for the exercise of the County's Contractor Selection Participation Rights, the monitoring of performance under any agreements selected pursuant to the exercise of those rights, and the allocation of shared vendor expenses (if any, without markup or administrative expense to Non-MSV Vessels);
8. the display of branding (which shall be digital) and wayfinding in shared and exclusive areas of the Project;
9. the development of a process for the collection, sharing, and resolution of customer (i.e., passenger) complaints relating solely to the Project which shall be collated by the County (to the extent that they arise from passengers from third-party cruise lines) and shared with the Tenant on a monthly basis, unless the nature of the complaint(s) requires a prompter referral to the Tenant;
10. the development of standard operating procedures for safe, secure, and efficient operational needs prior to Vessel arrival at each berth (e.g., Gangways condition and location, provisioning space allocation, baggage laydown, sorting and security space allocation, passenger check-in, screening and seating space allocation, multi-networking operations, wayfinding and digital signage displays, information technology staffing during operations, etc.);
11. processes for the establishment of fees for Parking and Additional Fees, to the extent it concerns passengers other than passengers of MSV Vessels, if different from the fees set forth in the Port Tariff;
12. the development of a Facilities Security Plan to allow walkthroughs between terminal operator, security company and private security of each cruise line with berthing rights at the Project;
13. the processes for the scheduling and implementation of promotional events and Community Events;
14. the management and operating of parking within the Parking Element or otherwise on the Demised Premises, including through valet parking, the manner of allocation of 1,000 parking spaces to the third-party cruise lines utilizing the Project, designated spaces,

and the Tenant's policy and procedures for shuttling services of passenger overflow, if necessary;

15. the development of procedures for the operations and logistics (e.g., staggered boarding) if the Vessel of the third-party cruise line has a capacity of more than 4,000 passengers and 18,000 passengers, in the aggregate, are anticipated to embark or disembark on or from Berths 8, 9, and 10 on same day; and
16. any berthing considerations other than preferential berthing rights as provided in this Terminal Operating Rider;
17. the process and establishment of permitted and non-permitted interior operation-specific alterations, including but not limited to, costs, timing, etc.; and
18. the process and procedures for self-help in the event of non-compliance with any requirements set forth in the Operation Protocol and chargeback for costs incurred in connection with the exercise of self-help rights.

- (iii) Dispute Resolution. If the Parties are unable to reach agreement on any matter relating to the contents of the Operation Protocol, the Parties may avail themselves of the Dispute Resolution Protocol referred to in Section 36 of the Lease. To the extent the dispute raised through the dispute resolution mechanism requires the utilization of the arbitration process, any arbiter appointed to resolve a dispute in accordance with this subsection shall be bound by limitation contained in Section (1)(b)(i) regarding the imposition of new financial obligations.

## 2. Level of Permitted Uses

The Cruise Terminals Building shall be used for Cruise Operations at Berths 8, 9, and 10 in accordance with the Permitted Uses.

## 3. Access to the Project.

Tenant shall have uninterrupted access to the Project on a three hundred sixty-five (365) day, twenty-four (24) hour per day basis, except for restricted access or periods of unavailability resulting from (i) emergencies, (ii) the exercise of duly authorized regulatory or police power, (iii) access restrictions related to Force Majeure Events or (iv) the County's exercise of the County's Maintenance Obligations in accordance with the requirements set forth in Section 15 of this Terminal Operating Rider.

4. **Project Services Generally.**

- (a) Tenant shall, at its sole cost and expense (except for the County's Operating Expenses Contribution and Dockage Contribution, as described in Section 5 of this Terminal Operating Rider), operate, secure, maintain (except for the County's Maintenance Obligations) and manage the Cruise Terminals Building as cruise terminals for Cruise Operations and other Permitted Uses and shall provide, or contract (subject to the County's Contractor Selection Participation Rights) with vendors to provide all of the Terminal Services. Such Terminal Services shall include generally the following, which shall be performed in accordance with the Operation Protocol (where applicable):
  - (i) The establishment of the MSC Vessel Cruise Terminal Fees in accordance with Section 5 of this Terminal Operating Rider;
  - (ii) The scheduling of cruise vessels at Berths 8 and 9 in accordance with Section 7 of this Terminal Operating Rider and subject to the County's Reserved Preferential Berthing Rights;
  - (iii) The provision of all security at the Cruise Terminals Building as needed for the safety of the passengers, visitors, invitees, employees and vendors and in accordance with plans and procedures required by Applicable Laws, as further provided in Section 20 of this Terminal Operating Rider;
  - (iv) The maintenance of the Cruise Terminals Building, the Gangways, the Provisions Staging Area, the Intermodal Area and the Parking Element in good, clean and satisfactory repair and operating condition consistent in quality to other passenger first-class cruise terminals similar to the Cruise Terminals Building located at the Port and in accordance with Applicable Laws, as further provided in Section 14 of this Terminal Operating Rider;
  - (v) The securing, to the extent made available by the local utility companies, of all utilities on the Demised Premises required for the operation of the Project, including but not limited to electricity, water, communications and sewer which the County has provided to the property line of the Demised Premises as provided in Subsection 13(d) and (e) of the Development Rider.
  - (vi) The coordination of the various Cruise Operations and Permitted Uses at the Cruise Terminals Building to ensure a smooth, efficient and integrated operation of the Cruise Terminals Building and also ensure that to the extent reasonably possible, such Cruise Terminals Building operations do not interfere with the operation of any other cruise terminal at the Port;
  - (vii) The recruitment, employment and supervision of a sufficient number of qualified personnel to provide all of the foregoing Terminal Services in a professional manner and at a standard to be expected from a first-class passenger cruise terminal; and

- (viii) The maintenance and operation of the Project in a manner to accommodate the passenger capacity requirements set forth in Sections 1(a) and 2 of this Terminal Operating Rider.
- (b) Subcontracting of Terminal Operations. Subject to the Operation Protocol and the County's Contractor Selection Participation Rights, Tenant shall appoint one or more professional third-party contractors to undertake some or all of the management and operation of the Cruise Terminals Building, provided that, notwithstanding such hiring, Tenant shall at all times remain fully responsible to the County for the performance of all of its obligations under this Lease. Notwithstanding the foregoing, the Tenant shall be entitled in its sole discretion to provide some or all of the services in question itself (and in place of third-party contractors) provided it complies with generally accepted market price conditions, the minimum qualifications and the scope of services referred to in the County's Contractor Selection Participation Rights.
- (c) Third-Party Cruise Line Operations. The Parties acknowledge and agree that the County may schedule the use of the Project by third-party cruise lines in accordance with the County's Reserved Preferential Berthing Rights and for any Cruise Operations at Berth 10, including at times that MSC Vessels are not scheduled to berth at Berths 8 or 9.
- (i) Third-Party Cruise Line's Personal Property. The Parties agree that the third-party cruise line(s) utilizing the Cruise Terminals Building pursuant to the County's Reserved Preferential Berthing Rights shall have the right to bring personal property onto the Demised Premises for the purposes of processing its passengers in accordance with the Operation Protocol. Such property shall remain the sole property of the third-party cruise line(s). The County shall ensure that any such property shall (i) not contravene any health and safety rules or requirements provided by Applicable Law, the Operation Protocol or any other operating rules or procedures the Tenant may, from time to time, reasonably implement at the Cruise Terminals Building provided that any such rules or procedures shall be generally applicable (i.e., including MSC) and require the approval of the County (not to be unreasonably withheld, conditioned or delayed) to the extent they conflict with the Operation Protocol; (ii) not interfere with the operations of the Tenant or MSC Vessels; or (iii) be promptly removed by third-party cruise line when not using the Cruise Terminals Building, unless stored within a Third-Party Cruise Line's Exclusive Area. Tenant shall have no responsibility or obligations with respect to any personal property brought on to the Demised Premises by any third-party cruise line.
- (ii) Third-Party Cruise Line Exclusive Areas. The Tenant shall dedicate the Third-Party Cruise Line Exclusive Areas to the County for the exclusive use of any third-party cruise line(s) holding preferential berthing rights at Berths 8 or 9, as allowed by the County's Reserved Preferential Berthing Rights, or at Berth 10. The interior of such areas, if capable of being and intended to be locked by such third party cruise line, shall be maintained by the County, at its expense, in a condition of cleanliness that is, at a

minimum, equal to the level of cleanliness of the Cruise Terminals Building; if unlocked or otherwise used for ship operations on the days Non-MSV Vessels are at berth, such areas shall be maintained by the Tenant in accordance with this Terminal Operating Rider.

- (iii) Offices for Primary Third-Party Cruise Line. The County shall be entitled to request that the Tenant make available up to two (2) offices within the Cruise Terminals Building constructed as part of the Third-Party Cruise Line Exclusive Areas for the exclusive use of the Primary Third-Party Cruise Line, with access rights to be governed by the Operation Protocol. Such offices shall be provided to the County at the highest rate established in Port of Miami-Dade Terminal Tariff No. 010 for office space in Passenger Terminals; provided, however, that the County shall not be charged rent for the use of such offices on the dates on which the Primary Third-Party Cruise Line is berthing a Vessel at Berths 8, 9, or 10. The Primary Third-Party Cruise Line shall be entitled to keep such office(s) locked and the Tenant shall not be permitted to enter the Primary Third-Party Cruise Line's locked office(s) without the prior consent of the Primary Third-Party Cruise Line. At its option, the County may from time to time forego its right to use one or both offices on a year-round basis, but in such instances such area(s) shall remain Third-Party Cruise Line Exclusive Areas subject to the County's or third-party cruise lines' exclusive use during third-party cruise lines' Cruise Operations. The Tenant shall require guests or invitees to such offices to have appropriate security credentials.
- (iv) Designation of Primary Third-Party Cruise Line. At least eighteen (18) months before Substantial Completion, the County shall designate one (1) third-party cruise line to be the Primary Third-Party Cruise Line. If the County has not identified and is unable to designate the Primary Third-Party Cruise Line in accordance with the preceding sentence, the County shall have the right to designate its initial Primary Third-Party Cruise Line at any other time upon ninety (90) days' notice. Upon 18 months' written notice to the Tenant, the County may designate a substitute Primary Third-Party Cruise Line, provided that at any time there shall only be one (1) Primary Third-Party Cruise Line.

## 5. Establishment of Fees.

Tenant shall establish and charge fees for use of the Project in accordance with the terms and conditions set forth in this Section 5 during the Operating Term.

- (a) Cruise Terminal Fees.
  - (i) MSV Vessel Cruise Terminal Fees. On an annual basis, Tenant shall in its sole discretion establish the MSV Vessel Cruise Terminal Fees, subject to any terms and conditions set forth in the MSV Cruise Terminal Usage Agreement, which terms and conditions must be consistent with the applicable terms of this Lease and this Terminal Operating Rider. Prior to December 1st of each calendar year during the Term, Tenant shall provide

the County with written notice of the MSC Vessel Cruise Terminal Fees for the following calendar year. Tenant may thereafter modify the MSC Vessel Cruise Terminal Fees at any time during the calendar year by providing the County with thirty (30) days prior written notice.

- (ii) Non-MSVessel Cruise Terminal Fees. For Non-MSVessels, the County shall be entitled to charge such Vessels in accordance with the fees set forth in the Port Tariff or in accordance with the terms of any written agreement between the County and the applicable cruise line. For the avoidance of any doubt, the County shall not be required to pay such fees to the Tenant, but the County shall be required to pay Operating Expense Contribution in the manner required under Section 5(b), and only for Non-MSVessels berthing at Berths 8 or 9, the Dockage Contribution in accordance with Section 5(a)(iv).
- (iii) Cruise Terminal Fees for MSVessels Relocated to other Port Berths. If, after Substantial Completion, an MSVessel is relocated to another berth at the Port in accordance with Section 7(d) of this Terminal Operating Rider, the County shall charge the MSVessel the MSVessel Cruise Terminal Fees which, subject to section 5(e) below, shall be payable into the Terminal Revenue Fund.

For the avoidance of doubt, in addition to the foregoing provision relating to relocation, where MSVessels use another terminal at the Port to allow the County to exercise the County's Reserved Preferential Berthing Rights, such MSVessel shall be charged MSVessel Cruise Terminal Fees (which, subject to section 5(e) below, shall be payable into the Terminal Revenue Fund).

- (iv) Dockage Contribution Minimum Guarantee. During the first five (5) years from the Rent Commencement Date, the County will guarantee a Dockage Contribution from Non-MSVessels over the five (5) year period in the amount of Seven Million Seven Hundred and Three Thousand and Sixty Four Dollars (\$7,703,064.00) in the aggregate. The County shall pay to the Tenant (into the Terminal Revenue Fund) the Dockage Contribution pursuant to Section 10(a) on a quarterly basis (on the same day that Rent is due to be paid by the Tenant to the County pursuant to Section 11 of this Terminal Operating Rider) in an amount which is the greater of: (i) twenty-five percent of the County's annual guaranteed amount and (ii) the amount accrued by the County for the quarter on the basis of the actual Dockage Contribution.. For the first five (5) years, on the anniversary of the Rent Commencement Date, the County and the Tenant shall calculate the quantum of the Dockage Contribution paid over the preceding year. To the extent the amount does not exceed the Dockage Contribution Minimum Guarantee payable for the year in question as set out in **Attachment 10**, the County shall pay to the Tenant the difference within 30 days of the applicable anniversary.

- (b) Operating Expenses Contribution. During the Operating Term, an Operating Expenses Contribution shall be paid by the County to the Tenant (into the Terminal Revenue Fund) from the Rent Commencement Date on a monthly basis to reimburse the operating expenses incurred by the Tenant in servicing Non-MSC Vessels) on a per passenger movement basis as provided herein.
- (i) Establishment and Payment of Operating Expenses Base Contribution. During the Operating Term, the Operating Expenses Base Contribution shall be paid by the County to the Tenant on the basis of Five Dollars (\$5.00) per Passenger Move to/from a Non-MSC Vessel through the Cruise Terminals Building, including revenue passengers who may utilize the Cruise Terminals Building to transit, embark or disembark to/from a Non-MSC Vessel berthed at Berth 10. The Passenger Moves shall be ascertained from the passenger manifest for the Non-MSC Vessel, which the County shall be required to provide to the Tenant within ten (10) days of each call; the County may, in its sole discretion, redact any information identifying passengers (but not passenger numbers) from the manifest that is provided to the Tenant. The Operating Expenses Base Contribution shall escalate at the rate of one and one-half percent (1.5%) per year from the first (1<sup>st</sup>) anniversary of Rent Commencement Date through the eleventh (11<sup>th</sup>) anniversary of Rent Commencement Date and thereafter at the rate of three percent (3%) per year through the conclusion of the Operating Term; provided, however, that on the eleventh (11<sup>th</sup>) anniversary of the Rent Commencement Date there shall be a one-time adjustment to the Operating Expenses Base Contribution of One Dollar and Nineteen Cents (\$1.19) prior to the 3% annual increase as set out in **Attachment 10**.
- (ii) Operating Expenses Base Contribution Minimum Annual Guarantee. During the Operating Term, the County shall pay the Tenant the greater of (1) the product of the actual Passenger Moves times the applicable Operating Expenses Base Contribution at the time of the Passenger Move and (2) the Operating Expenses Base Contribution Minimum Annual Guarantee times the applicable Operating Expenses Base Contribution. Payments of the Operating Expenses Base Contribution shall be paid (on the same day that Rent is due to be paid by the Tenant to the County pursuant to Section 11 of this Terminal Operating Rider) on a quarterly basis in an amount which is the greater of: (i) twenty-five percent of the County's annual guaranteed amount and (ii) the amount accrued by the County for the quarter on the basis of the actual Passenger Moves. The Operating Expenses Base Contribution Minimum Annual Guarantee is set out at **Attachment 10**. Notwithstanding the foregoing in the first two (2) years of the Operating Term (i) the County shall not be required to pay the Tenant more than the Operating Expenses Base Contribution Minimum Annual Guarantee; and (ii) the right of the County to accrue any Operating Expenses Base Contribution Surplus Amount shall not apply.
- (iii) Establishment and Payment of Operating Expenses Shortfall Mechanism. During the Operating Term, within thirty (30) calendar days following the

end of each Fiscal Year, the Tenant shall calculate the total payments paid by the County under Section 5(b)(i) and shall send a written notice (the “**Operating Expenses Base Contribution Minimum Annual Guarantee Differential Notice**”) to the County setting forth the difference (positive or negative) between the total payments paid under Section 5(b)(i) and the Operating Expenses Base Fee Minimum Annual Guarantee due for such Fiscal Year (the “**Operating Expenses Base Contribution Guarantee Differential**”). If the Operating Expenses Base Fee Guarantee Differential for any Fiscal Year is a negative amount (a “**Operating Expenses Base Contribution Shortfall Amount**”) or a positive amount (a “**Operating Expenses Base Contribution Surplus Amount**”), the Operating Expenses Base Contribution Minimum Annual Guarantee Differential Notice shall confirm the Operating Expenses Base Contribution Shortfall Amount or Operating Expenses Base Contribution Surplus Amount to the County.

- (A) Shortfall. Subject to the terms below, if the Operating Expenses Base Contribution Minimum Annual Guarantee Differential Notice for a Fiscal Year reflects an Operating Expenses Base Contribution Shortfall Amount, the County shall pay to the Tenant, within the forty-five (45) days of the end of the applicable Fiscal Year following receipt of such notice, the Operating Expenses Base Contribution Shortfall Amount, subject to the County’s right to apply any amount of credits to such shortfall pursuant to the terms of this Section 5(b)(iii).
- (B) Operating Expenses Base Contribution Surplus Amount. If the Operating Expenses Base Contribution Minimum Annual Guarantee Differential Notice for any Fiscal Year (including the first Fiscal Year) is an Operating Expenses Base Contribution Surplus Amount, then no shortfall payment shall be due from County for such Fiscal Year and the Tenant shall record the Operating Expenses Base Contribution Surplus Amount, provided that the total amount of passenger surplus movements that the County may accrue at any time in the aggregate is limited to One Hundred and Fifty Thousand (150,000) Passenger Moves. The County shall accrue surplus Passenger Moves within a two (2) year rolling window, subject to the preceding limitation on accumulation.
- (C) Use of Operating Expenses Base Contribution Surplus Amount. As set forth in this paragraph, any Operating Expenses Base Contribution Surplus Amount accumulated pursuant to § 5(b)(iii)(B) may be utilized to cover any Operating Expenses Base Contribution Shortfall Amount reflected in an Operating Expenses Base Contribution Minimum Annual Guarantee Differential Notice. Notwithstanding the foregoing, the Operating Expenses Base Contribution Surplus Amount may only be used prospectively to cover Operating Expenses Base Contribution Shortfall Amounts in future Fiscal Years, provided that any given Operating Expenses

Base Contribution Surplus Amount may only be used to the extent it has been earned within the preceding two (2) Fiscal Years. The County shall not be permitted to utilize more than Seventy-Five Thousand (75,000) Operating Expenses Base Contribution Surplus Amount in any given Fiscal Year.

- (D) Expiration of Operating Expenses Base Contribution Surplus Amount. Any given Operating Expenses Base Contribution Surplus Amount earned more than two (2) Fiscal Years before the beginning of a new Fiscal Year shall not be available for use pursuant to § 5(b)(iii)(C) above.
  - (E) Payment of Operating Expenses Base Contribution Shortfall Amount as Exclusive Remedy; Limitation. Notwithstanding anything to the contrary herein, the payment by the County to the Tenant of the Operating Expenses Base Contribution Shortfall Amount as to any Fiscal Year shall represent the sole and exclusive liability of the County for failing to reach the Operating Expenses Base Contribution Minimum Annual Guarantee for such Fiscal Year and the fact that there exists an Operating Expenses Base Contribution Shortfall Amount shall not constitute an event of default under the Lease.
- (iv) Establishment and Payment of Operating Expenses Additional Contribution. During the Operating Term, the Operating Expenses Additional Contribution shall be paid to the Tenant (into the Terminal Operating Fund) for each Passenger Move to/from a Non-MSV Vessel through the Cruise Terminals Building occurring after the Operating Expenses Additional Contribution Threshold (including Passenger Moves to/from a Non-MSV Vessel at Berth 10). Even if the Operating Expenses Additional Contribution Threshold has been met or exceeded, the Operating Expenses Additional Contribution shall not be due for those Passenger Moves from a Non-MSV Vessel belonging to the Primary Third-Party Cruise Line at the time of the relevant call. The Operating Expenses Additional Contribution payable by the County to the Tenant shall be Three Dollars (\$3.00) per revenue passenger movement after the Operating Expenses Additional Contribution Threshold, which amount shall be fixed and shall not escalate throughout the Operating Term.
  - (v) Manner of Invoicing of Operating Expense Contributions. Commencing on the first call of a Non-MSV Vessel at Berth 8 or Berth 9, the Tenant shall invoice the County the amount of the Operating Expenses Contribution due to the Tenant on a quarterly basis, unless the Parties agree to a shorter time period, in accordance with the milestones established for the Tenant's payment of Base Rent as established in Section 11 of this Terminal Operating Rider. The County shall have twenty (20) days to review and dispute the invoice. If there are no disputes, the invoice shall be payable by the County thirty (30) days after the County's receipt of the invoice; if there are disputes, those elements of the invoice which are not disputed (if any)

shall be payable thirty (30) days after the County's receipt of the invoice and the disputed elements shall be payable within thirty (30) days from the date on which the disputed invoice is resolved provided that if the Parties are unable to resolve any disputed elements within 90 days of the County's receipt of the invoice either Party may pursue its legal rights pursuant to Sections 34 and 35 (as applicable) of the Lease. Payments shall be made into the Terminal Revenue Fund.

- (c) Parking Fees. The Tenant shall establish parking fees in accordance with Section 24 of this Terminal Operating Rider, which fees shall be shared with the County as provided therein during the Operating Term.
- (d) Additional Fees. The Tenant may establish Additional Fees in accordance with Section 27 of this Terminal Operating Rider.
- (e) Payment Allocation. Payments made by the County to the Tenant pursuant to this Section 5 and Section 10 shall be paid into the Terminal Revenue Fund, unless otherwise instructed by Tenant during the Operating Term. Notwithstanding the foregoing, in respect of those fees referred to in Section 5(a)(iii) above, if the Port's Consulting Engineer with respect to the Port's outstanding bonds or a court of competent jurisdiction with respect to either the Port's outstanding bonds or agreements with other third party cruise lines at the Port determines (in the case of the court in a final, non-appealable court judgment) that the foregoing payment allocation mechanism is in violation of either the bonds or the agreements, the Parties shall identify and implement an alternative payment allocation mechanism that is cash, revenue and timing neutral.
- (f) Commercial Terms After 30<sup>th</sup> Anniversary of Rent Commencement Date. The Parties agree that one year prior to the thirtieth (30<sup>th</sup>) anniversary of the Rent Commencement Date, the Parties shall discuss the commercial terms set out in this Section 5 as well as Section 10, together with any other Section the Parties may wish to discuss for the remainder of the Operating Term (after the thirtieth (30<sup>th</sup>) anniversary). The Parties shall discuss the potential adjustment of such commercial terms (including but not limited to the Operating Expenses Base Contribution Minimum Annual Guaranty, the limitation of 150,000 Passenger Moves under Section 5(b)(iii), and the 75,000 limitation under Sections 5(b) (iii) C and D) having regard to, among other things, any preferential berthing agreements the County has in place or expects to enter, the state of the cruise industry, passenger volumes, the cost of living, inflation and the cost of operations of the Project. The Parties may mutually agree to amend in writing such commercial terms, in the case of the County, subject to the approval of the Board of County Commissioners. In the absence of agreeing upon updated commercial terms, the Lease shall continue on the basis of the existing commercial terms for the balance of the Operating Term.

6. **Terminal Use Agreements.**

- (a) It is the intent of the Parties that MSC and MSC Affiliates will use the Project pursuant to the conditions and restrictions of the various MSC Cruise Terminal

Usage Agreement(s). Each MSC Cruise Terminal Usage Agreement shall include the following terms and conditions:

- (i) Provide preferential berthing rights for MSC Vessels at Berth 8 and/or Berth 9, subject to the County's Reserved Preferential Berthing Rights;
  - (ii) Provide that the term of any MSC Cruise Terminal Usage Agreement does not extend beyond the Operating Term;
  - (iii) Provide for the payment of the MSC Vessel Cruise Terminal Fees;
  - (iv) Be consistent with all of the terms in this Lease, shall contain such other terms and conditions as are mutually agreed upon by Tenant (or Tenant's designated terminal operator) and MSC or an MSC Affiliate, as applicable, and shall require the maintenance of insurance of the type, amounts and deductibles provided in Section 17(c) of this Terminal Operating Rider; and
  - (v) Require adherence to the Operation Protocol.
- (b) Tenant shall provide the County with a copy of each MSC Cruise Terminal Usage Agreement, for purpose of the County's determination that it is fully consistent with all of the terms of this Lease, which copy maybe redacted with respect to all economic terms which Tenant believes are confidential in a nature.
- (c) Tenant (or Tenant's designated terminal operator) or any terminal operator designated by a Lender (if any) may not enter into a terminal usage agreement or other berthing arrangement with any cruise line other than MSC or an MSC Affiliate (or a successor entity operating MSC Vessels, solely with respect to such MSC Vessels) without the prior written consent of the County. The Parties, and their successors and assigns under this Lease, including any Lenders recognize and agree that this restriction is of paramount importance to the County, and the County's right and obligation as a sovereign to continue operating the Port as a competitive point of entry to Vessels of different brands. Accordingly, and notwithstanding and prevailing over any contrary term or provision in this Lease or Terminal Operating Rider, Tenant agrees that the consent of the County to allow for the use of Berth 8 and Berth 9 by any Non-MSC Vessels shall be in the County's sole discretion and shall survive any transfer of ownership or assignment of this Lease.

7. **Vessel Scheduling.**

Tenant shall develop, coordinate and update annual berth schedules for the use of Berth 8 and Berth 9 in accordance with the terms and conditions set forth in this Section 7. Any such schedules shall be subject to and account for the County's Reserved Preferential Berthing Rights.

- (a) MSC Vessels. On an annual basis, Tenant shall establish the berth schedule for Berth 8 and the berth schedule for Berth 9 upon receipt of the MSC Vessel berthing requests in accordance with the terms and conditions set forth in any MSC Cruise Terminal Usage Agreements.

- (b) Submittal of Berth Schedule to the County. Tenant shall provide the County with the Berth 8 berth schedule and the Berth 9 berth schedule as soon as the same is available and not later than December 31st of each calendar year for the calendar year one (1) year from the time of submittal. By way of example, Tenant shall submit the Berth 8 berth schedule and the Berth 9 berth schedule for calendar year 2024 by December 31, 2022. Notwithstanding the foregoing, the first berth schedule under this Lease shall be delivered to the County not later than six (6) months prior to the anticipated date of Substantial Completion of the Project set forth in the Project Schedule. In the event Tenant thereafter modifies the berth schedule for Berth 8 or modifies the berth schedule for Berth 9, Tenant shall provide the County with an updated berth schedule, as applicable. Any berth schedules submitted under this paragraph shall account for the County's Reserved Preferential Berthing Rights.
- (c) Non-MSV Vessels. Berthing for Non-MSV Vessels at Berth 8 and Berth 9 shall be at County's sole discretion and shall be subject to the preferential berthing rights under any MSV Cruise Terminal Usage Agreement(s) and the County's Reserved Preferential Berthing Rights.
- (i) Utilization of County's Reserved Preferential Berthing Rights. For those berthing opportunities reserved to the County pursuant to the County's Reserved Preferential Berthing Rights, the County shall provide the Tenant with its berth schedule (together with the vessel(s), ship specifications inclusive of tonnage and passenger load (based on double occupancy) in respect of the proposed calls) for Berth 8 and 9 (as applicable) in accordance with the procedure set out in the definition of the County's Reserved Preferential Berthing Rights.

In the event County thereafter modifies the berth schedule for Berth 8 and 9 (as applicable), the County shall provide the Tenant with an updated berth schedule, as applicable; provided, however, that the County's right to modify such berth schedule shall be subject to any confirmed calls of MSV Vessels as contemplated below in this sub-section and the written consent of the Tenant. Any berth schedules submitted under this paragraph shall utilize only the County's Reserved Preferential Berthing Rights.

To the extent the County's berth schedule submitted under this paragraph reflects utilization of less than all of the County's Reserved Preferential Berthing Rights, the County shall have the option to release day(s) to the Tenant on terms to be agreed by the Parties to the extent the Tenant wishes to utilize any unused days for the berthing of MSV Vessels.

The Parties acknowledge that MSV has accepted preferential berthing rights to berth MSV Vessels at terminals outside the Project pursuant to the MSV Preferential Berthing Agreement in order to allow the County to exercise the County's Reserved Preferential Berthing Rights at the Project. Notwithstanding the preceding paragraph, to the extent the County's berth schedule submitted under this subsection does not reflect utilization of some or all of those days which coincide with the days for which MSV has

preferential berthing rights at another terminal at the Port, the Tenant shall be entitled to use a berth at the Project (and, for the avoidance of doubt, the MSC Vessel shall be charged the MSC Vessel Cruise Terminals Fees).

- (ii) Berthing Requests Other Than Under County's Reserved Preferential Berthing Rights. To request berthing at Berth 8 or at Berth 9 for Non-MSC Vessels, on dates not reserved to the County under the County's Reserved Preferential Berthing Rights, the County and Tenant shall follow the procedures set forth below:

- (A) In the event the County desires to have a Non-MSC Vessel berth at either Berth 8 or Berth 9, on dates not reserved to the County under the County's Reserved Preferential Berthing Rights, the County shall submit a written berthing request to Tenant specifying the cruise brand, vessel(s), ship specifications inclusive of tonnage and passenger load (based on double occupancy) and requested berthing date(s) (including times of arrival and departure) and specify either Berth 8 or Berth 9.
- (B) For the County requested ship calls within twelve (12) months of the date of the berthing request, Tenant shall, within ten (10) days of receipt of the berthing request, (x) for calls that do not conflict with MSC scheduled calls, issue a written berthing confirmation, and (y) for calls that do conflict with MSC scheduled calls, issue a written berthing denial.
- (C) For the County requested ship calls twelve (12) months or more after the date of the berthing request, Tenant shall have the right to, within ten (10) days of receipt of the berthing request, either (x) accept the berthing request by issuing a written confirmation notice, (y) reject the berthing request by issuing a written berthing denial or (z) request that County resubmit the request no more than twelve (12) months prior to the request berthing dates.
- (D) In the event Tenant desires to berth a Non-MSC Vessel at either Berth 8 or at Berth 9, Tenant shall submit a written berthing request to the County specifying the cruise brand, vessel(s), ship tonnage and passenger load (based on double occupancy) and requested berthing date(s) (including times of arrival and departure) and specify either Berth 8 or Berth 9 as appropriate. The County shall, within ten (10) days of receipt of the berthing request, either approve or deny such request, which approval or denial shall be in the County's sole discretion. In the event the County denies the request, regardless of cause or reason, such Non-MSC Vessel may not berth at or otherwise utilize Berth 8 or Berth 9 or any portion or component thereof, nor may any of such Non-MSC Vessel's passengers utilize the Project or any portion or component thereof. In the event the County approves the request, Tenant may add the

requested Non--MSC Vessel call to the Berth 8 or Berth 9 berth schedule, as appropriate.

- (E) For Non-MSC Vessel calls approved and confirmed by the County in its sole discretion and in accordance with the procedures set forth in this Lease and this Terminal Operating Rider, the County may not remove or substitute the Vessel scheduled to call without the prior written approval of Tenant, not to be unreasonably withheld. By written notice to Tenant, the County may propose, pursuant to a subsequent berth request, to amend a prior berth request for which a confirmation notice has been issued to add, remove or substitute Vessel calls. Tenant shall grant or deny such berthing change within ten (10) business days from receipt of the amended berth request.
  - (F) Notwithstanding and prevailing over any contrary term or provision set forth in this Lease and this Terminal Operating Rider, in no event may a Non-MSC Vessel berth at Berth 8 or Berth 9 without Tenant obtaining the County's prior written consent, which consent the County may grant or deny in the County's sole discretion. Tenant acknowledges and agrees that the decision of the County to grant or deny the berthing of a Non-MSC-Vessel at Berth 8 or Berth 9 is a material consideration of the County entering into this Lease.
- (d) County Request for Relocation of Non-MSC Vessel to Berth 8 or Berth 9. Without limiting the County's Reserved Preferential Berthing Rights, the County may request that a Non-MSC Vessel that is confirmed at another berth in the Port be relocated to Berth 8 or Berth 9 subject to the following restrictions:
- (i) If the request is for a date that does not conflict with a MSC Vessel scheduled call, the County shall follow the procedures set forth in subsection (c) above relating to requests for dates which do not conflict with MSC Vessel scheduled calls.
  - (ii) If the request is for a date that does conflict with a MSC Vessel scheduled call, the County may request that the Non-MSC Vessel call be relocated to Berth 8 or Berth 9 if (x) the Non-MSC Vessel is larger (measured by gross tonnage) than the MSC Vessel scheduled to call at Berth 8 or Berth 9, as applicable, and (y) the MSC Vessel can be safely accommodated at another berth at the Port. Upon receipt of a written berth relocation request from the County, which request shall include full details on the proposed relocation, Tenant shall request that MSC or the MSC Affiliates, as applicable, approve the relocation in accordance with the terms and conditions set forth in applicable MSC Cruise Terminal Usage Agreement. After receiving a response from MSC or the MSC Affiliates, as applicable, Tenant shall either approve or reject the County's relocation request within thirty (30) days, of receipt of the request.
- (e) Relocation of Vessels if Berth 8 and/or Berth 9 are Unavailable. If Berth 8 and/or Berth 9 are unavailable for use for any reason, including required maintenance or

repairs, the County agrees to provide alternative berthing rights in the same manner as would be provided in the event of an Early Termination Event under Section 13(g) of the Development Rider for the period during which the Berth 8 and/or Berth 9 are unavailable but not to exceed the Operating Term.

- (f) Modifications to Cruise Schedule. For MSC Vessel calls, Tenant may add, remove or modify such calls upon written agreement with MSC and/or any MSC Affiliate (as applicable), so long as any addition or modification does not impact the berthing of a confirmed Non-MSC Vessel call or conflict with the County's Reserved Preferential Berthing Rights. In no event shall Tenant be permitted to remove or modify a confirmed Non-MSC Vessel call, unless otherwise agreed by the County.
- (g) County's Use of Berth 10. Following the opening of Berth 10, County shall provide the Tenant with the Berth 10 berth schedule as soon as the same is available and not later than December 31st of each calendar year for the calendar year one (1) year from the time of submittal. By way of example, the County shall submit the Berth 10 berth schedule for calendar year 2030 by December 31, 2028.. In the event County thereafter modifies the berth schedule for Berth 10, the County shall provide the Tenant with an updated berth schedule, as applicable provided, however, that the County's right to modify such berth schedule shall be subject to any confirmed calls of MSC Vessels as contemplated in Section (h) below. The County's failure to provide notice as provided in this Section, however, shall not limit the County's right to utilize Berth 10; provided that the Tenant shall not be liable to accommodate any Non-MSC Vessel passengers unless the County has provided at least 30 days' written notice of the forthcoming call.
- (h) Tenant's Requests to Utilize Berth 10. Tenant shall be permitted to request the use of Berth 10 for the berthing of MSC Vessels. Any such requests shall be submitted by Tenant to the County in writing. The Tenant's written request shall identify the vessel(s), ship specifications inclusive of tonnage and passenger load (based on double occupancy) and requested berthing date(s) (including times of arrival and departure). The County shall confirm or deny the Tenant's berthing request, in its sole discretion, within ten (10) days of the Tenant's written request; provided, however, that if the County requires additional time to confirm the usage of Berth 10 by third-party cruise lines, the County shall so advise the Tenant and provide a date by which the Tenant's berthing request shall be confirmed or denied. In addition to the foregoing, on an annual basis in October, the Parties shall meet to discuss whether the Tenant (or MSC or an MSC Affiliate) is interested in securing berthing rights at Berth 10 whether by way of a preferential berthing rights agreement or otherwise. Notwithstanding any requests made by Tenant at any such meetings, the County shall not be under an obligation to enter into any berthing arrangements with the Tenant (or MSC or MSC Affiliate) with respect to Berth 10 and any arrangements shall be subject to the Parties reaching agreement upon all relevant terms. In the absence of a preferential berthing rights agreement (or similar agreement) between the Tenant (or MSC or an MSC Affiliate) specifying alternate rates, any MSC Vessels berthing at Berth 10 shall be subject to the rates set forth in the Port Tariff.

8. **Establishment of Agent and Terminal Revenue Fund.**

Not later than five (5) Business Days after Substantial Completion (but in no event later than the day before the first vessel is berthed Berth 8 or Berth 9) the County and Tenant shall select a mutually agreeable Agent and shall enter into the Revenue and Collection Disbursement Agreement on mutually agreeable terms and conditions consistent with those contained herein. The Revenue and Collection Disbursement Agreement shall provide for, the opening and monitoring of the Terminal Revenue Fund.

9. **Collection of Cruise Terminal Berthing Fees.**

- (a) The County shall be responsible for the invoicing and collection of all Cruise Terminal Fees at Berth 8 and Berth 9 (and, once available, Berth 10). Within five (5) business days of each Vessel call at Berth 8 or Berth 9 (or Berth 10), the Tenant shall provide the County with a Statement of Vessel Charges. The Statement of Vessel Charges shall be in the form mutually agreed upon by the Parties. Within five (5) business days of receipt of a Statement of Vessel Charges, the County shall invoice the applicable cruise line for the charges contained in the Statement of Vessel Charges, all in accordance with the County's standard invoicing process. Each County invoice for MSC Vessel Cruise Terminal Fees shall:
  - (i) Provide that payment shall be made to the Terminal Revenue Fund care of the Agent as trustee (subject to Section 5(e) above); and
  - (ii) Provide that all amounts shall be payable within thirty (30) calendar days; and
  - (iii) Only contain the MSC Vessel Cruise Terminal Fees contained in the Statement of Vessel Charges. All other charges owed to the County in connection with such call under the Port Tariff shall be billed and retained by the County via a separate Port Fees invoice.
- (b) The County shall undertake collection of all Non-MSC Vessel Cruise Terminal Fees in accordance with the County's standard collections procedures and Applicable Laws. The County shall receive the funds payable pursuant to such invoices directly. The Tenant shall not have any responsibility or liability to the County for the collection (or non-collection) of fees payable by Non-MSC Vessels to the County. Any failure by a Non-MSC Vessel to pay any Non-MSC Vessel Cruise Terminal Fees to the County shall not alleviate the County's obligation to pay the amounts due to the Tenant pursuant to Sections 5 and 10 of this Terminal Operating Rider.

10. **Non-MSC Vessel Contributions**

The Parties agree that Tenant shall be entitled to receive the Non-MSC Vessel Contributions for all Non-MSC Vessels that berth at Berth 8 and/or Berth 9. The Non-MSC Vessel Contributions shall be determined, as reflected in Attachment 12, as follows:

- (a) For Non-MSV Vessels confirmed at Berth 8 or at Berth 9 in accordance with the procedures set forth in Section 7(c), the County shall pay to the Tenant (into the Terminal Revenue Fund) Non-MSV Vessel Dockage Contribution 65% of Dockage (and the County shall retain all other fees paid to the County).
- (b) For Non-MSV Vessels confirmed at Berth 8 or Berth 9 in accordance with the relocation procedures set forth in Section 7(d), the County shall pay to the Tenant (into the Terminal Revenue Fund) the Operating Expenses Base Contribution (and Operating Expenses Additional Contribution, if applicable) together with the Dockage Contribution. The Non-MSV Vessel shall pay fees in accordance with Section 5(a)(ii) above. The relocated MSV Vessel shall be charged MSV Vessel Cruise Terminal Fees in accordance with Section 5(a)(i) (payable into the Terminal Revenue Fund).

Non-MSV Vessel Contributions shall be payable by the County to the Tenant on a monthly basis. Subject to 11A below and unless otherwise instructed by the Tenant in writing, the County shall pay any amount due under this Section into the Terminal Revenue Fund.

11. **Agent Disbursements from the Terminal Revenue Fund.**

Tenant shall on or before the 10th day of January, April, July and October of each Lease Year, provide the County with notice of the amount of Agent's fees, Base Rent and Additional Rent owed for the prior calendar quarter. The County shall have until the 20th day of January, April, July and October to review and dispute any of the amounts provided by Tenant, and the Parties shall thereafter use commercially reasonable efforts to resolve any pending disputes. The Parties shall direct the Agent to pay on the 30th day of January, April, July and October of each Lease Year the mutually agreed upon amounts from the Terminal Revenue Fund in the following order of priority provided, however, that the Parties shall direct the Agent to pay the amounts due under Sections 11(c) and (d) hereof within thirty (30) days of the County's notification that expenses have been incurred, or are due and payable, within those categories, unless payment would be sooner made under the quarterly payment schedule applicable to other categories:

- a) The Agent's fees;
- b) Base Rent and Additional Rent to the County;
- c) Payment to the County of all third-party costs and expenses incurred by the County, or which are due and payable, to maintain the "All Risk" insurance of the Project following Substantial Completion in accordance with Section 28(a) of this Lease;
- d) Payment to the County of all third-party costs and expenses incurred by the County, or which are due and payable, for Capital Improvements required to maintain the Project undertaken by the County as required by Subsection 15(i) of this Terminal Operating Rider;
- e) Operating expenses of the Tenant;
- f) Debt Service payments (if required by Lender(s));
- g) Funding of any reserve or maintenance accounts (if required by Lender(s));

- h) Repayment of Working Capital Advances (if any);
- i) The remainder to Tenant (or Tenant's designated terminal operator, if any) for Tenant's account.

The above sets forth a priority for payment of moneys available in the Terminal Revenue Fund but shall not be understood to diminish or impair the County's right to receive Base Rent and Additional Rent as set forth in this Lease.

11A. **Offsetting.**

The Parties may agree for the Tenant to offset its Rent payment obligation to the County with the payments owed by the County to the Tenant pursuant to Sections 5 and 10 of this Terminal Operating Rider. Any offsetting and reconciliation will be managed and approved by the Agent.

12. **Working Capital Advances by Tenant.**

In the event there are insufficient funds in the Terminal Revenue Fund to satisfy the payment requirements set forth in Section 11(a)-(g) for any given calendar quarter, Tenant shall make a Working Capital Advance to cover such shortfall amounts. Tenant shall pay the Working Capital Advance into the Terminal Revenue Fund prior to the date Agent is required to distribute the funds thereunder.

13. **Covenants.**

Tenant agrees to the following covenants:

- (a) **Compliance.** Tenant shall carry out or perform all Terminal Services in compliance with the provisions of this Terminal Operating Rider, the Operation Protocol (or any other operating rules or procedures the Tenant may, from time to time, reasonably implement at the Cruise Terminals Building provided that any such rules or procedures shall be generally applicable (i.e., including as to MSC) and require the approval of the County (not to be unreasonably withheld, conditioned or delayed) to the extent they conflict with the Operation Protocol), other provisions of this Lease, and Applicable Laws. Tenant covenants that its undertakings pursuant to this Terminal Operating Rider shall be for the purpose of the operation, management, security, maintenance and repair of the Project (excluding the County's Maintenance Obligations) in accordance with the terms of this Terminal Operating Rider.
- (b) **Performance.** All Terminal Services performed by Tenant shall be performed in compliance with all Applicable Laws, Permits and Approvals, all requirements of this Lease and in accordance with the level of skill and care ordinarily exercised by managers of first-class facilities similar to the Project.
- (c) **Suspension of Performance.** Tenant shall not suspend or discontinue the performance of its obligations under this Terminal Operating Rider (other than in the matter provided for herein or in the Lease).
- (d) **Non-Discrimination.** Tenant shall not discriminate against or segregate any person or group of persons, on account of race, color, religion, creed, national origin,

ancestry, physical handicap, age, marital status, affectional preference or sex, or on the basis of any other classification provided by Applicable Law (as such may change from time to time) in the use, occupancy, tenure or enjoyment of the Project. Matters pertaining to employment in connection with the Project shall be governed by Applicable Laws.

14. **Tenant Maintenance and Repair Services; Repair and Relocation of Utilities.**

- (a) Excluding any damage as a result of a Casualty, which is governed by Section 32 of this Lease, the County's Maintenance Obligations and any Berth 10 & Concourse Remedial Work, the Tenant, at its sole cost and expense, shall maintain, repair, and replace the Demised Premises and Cruise Terminals Building, the Gangways, the Provisions Staging Area, the Intermodal Area, the Parking Element, all sidewalks and curbs, lighting and landscaping on the Demised Premises, common areas within the Demised Premises (not including the Pier), and all building components, systems, equipment, fixtures, and furniture thereof or included therein, but specifically excluding, subject to Section 15(l) below, the Berth 10 Concourse and excluding the Pier (but including the Gangways themselves which are the Tenant's obligation), as and when necessary in accordance with generally acceptable industry standards for first-class terminals similar to the Cruise Terminals Building Applicable Laws, all in order to ensure smooth and efficient operation of the Project. Notwithstanding the foregoing, Tenant shall not be responsible for the County's Maintenance Obligations. If the County inspects any work performed by Tenant and finds it unsatisfactory in accordance with acceptable industry standards or Applicable Laws, Tenant shall be obligated to correct the work to the County's reasonable satisfaction. Except with respect to (i) any damage as a result of a Casualty, which is governed by Section 32(b) of this Lease, (ii) the County's Maintenance Obligations and (iii) Berth 10 & Concourse Remedial Work, the cost of all maintenance, repairs, and replacements required to be performed hereunder shall be Tenant's sole responsibility.
- (b) Subject to section 13(f)(ii) and 13(f)(iii) of the Development Rider, the Tenant shall maintain and repair, replace and relocate as necessary, utilities and associated facilities and equipment installed by the Tenant within the Demised Premises required to occupy or use the Project, including with respect to all future modifications thereof, and, in so doing, Tenant shall:
  - (i) Timely seek and obtain all necessary written approvals from the appropriate utility provider;
  - (ii) Ensure its utility maintenance, repair, replacement, and/or relocation work and activities do not materially or adversely interfere with utilities on any property outside the boundaries of the Demised Premises or with any utility service to the Demised Premises;
  - (iii) Promptly pay all costs of such work and activities as and when due;

- (iv) Take all steps needed to ensure that each of the Utilities and the Demised Premises are thereafter restored to good working order and impacts to any improvements are addressed and corrected at Tenant's cost and expense;
- (v) Comply with Applicable Laws and the provisions of all applicable Permits and Approvals which have been issued and are affected by such maintenance, repair, replacement, and/or relocation; and
- (vi) Comply with the payment and performance bond or alternative form of security requirements of Section 255.05 of Florida Statutes and with any other Applicable Laws governing any Major Capital Modifications.

Nothing in this Section shall limit the County's obligation to maintain water, sewer and electric services to the boundary of the Demised Premises in the manner set forth in the Development Rider to this Lease.

15. **County's Maintenance Obligations.**

- (a) **Pier Maintenance Obligations.** Following Substantial Completion, the County, at its sole cost and expense, and subject to the conditions and limitations forth in subsection 15(b) below, shall: (1) maintain, repair and/or replace the Pier, including the bulkhead, apron, bollards and fenders, as well as on-Pier water bays, stormwater outfalls (expressly including on-Pier outfall lines and stormwater injection wells and associated lines and connections other than outfalls), and gangway runways (but not the Gangways themselves which are the Tenant's obligations) as and when necessary in accordance with generally acceptable industry standards, in order to ensure smooth and efficient operation of Berth 8 and Berth 9. The County's Maintenance Obligations shall be undertaken in a manner that seeks to limit operational disruptions at Berth 8 and Berth 9 in accordance with the requirements set forth in this Terminal Operating Rider. If Tenant inspects any work performed by the County and finds it unsatisfactory in accordance with acceptable industry standards or Applicable Laws, the County shall be obligated to correct the work to Tenant's reasonable satisfaction. The County's Maintenance Obligations hereunder include, without limitation, (1) the periodic replacement of the Pier's bollards and fenders when required due to wear and tear or damage incurred (except if such damage is the result of the negligence or willful misconduct of Tenant - or any of its agents, employees, lessees, consultants, contractors, subcontractors of any tier, invitees, permittees, or guests other than those relating to or emanating from Non-MSV Vessels - in which case the County shall be responsible for the performance of the restoration work but the party at fault shall be financially responsible for the cost of such work); (2) maintenance of the Pier and related equipment and (3) repairing damage resulting from Vessels' use of the Pier. In addition, following Substantial Completion, the County, at its sole cost and expense shall be required to maintain, repair and/or replace the roadways curbs, and sidewalks constructed by Tenant within the Demised Premises which are intended to provide access to other portions of the Port in good condition and repair consist with other roadways maintained by the County at the Port. The County may elect to delegate to the Tenant the responsibility to make any required repairs on behalf of the County, in

which event, the County shall reimburse the Tenant for all cost and expenses incurred by Tenant to properly maintain the roadways.

- (b) Notwithstanding and prevailing over the foregoing Subsection 15(a), the County's Maintenance Obligations shall not include any maintenance, repair, or replacements which:
  - (i) during the ten (10) year period commencing with Substantial Completion of the Project, results solely from any error, deficiency, or omission in the design of the Pier; or
  - (ii) during the ten (10) year period commencing with Substantial Completion, results solely from any defect, error, deficiency, or omission in the construction of the Pier, including any latent defect;
  - (iii) results from the desire of Tenant to make capital improvements or betterments to the Pier to upgrade or improve the Pier to meet Tenant's commercial needs or desires or otherwise unless otherwise agreed otherwise by the County; or
  - (iv) are deficiencies resulting from the failure to construct in accordance with the approved mooring-related adjustments to the Pier Plans and Specifications required under Section 3(a) of the Development Rider.
- (c) For the avoidance of any doubt, the County is obligated to maintain, repair and restore the Pier notwithstanding the negligence or willful misconduct of Tenant, or any of its employees, lessees, or guests, including damage caused by MSC Vessels. To the extent of any damage to the Pier resulting from the negligence or willful misconduct of Tenant or any of its employees, lessees, or guests or from the use of the Pier by MSC Vessels and/or Non-MSC Vessels, the County shall be entitled to all applicable insurance proceeds with respect to such damage to restore the Pier and to seek recovery from the party responsible for the damage to the Pier.
- (d) County's Maintenance Dredging Area Obligation. The County, at its sole cost and expense, shall periodically undertake all required maintenance dredging in the County's Maintenance Dredging Area to ensure that the waterway maintains a minimum depth of minus thirty-six (36) feet in the Berthing Areas. The Parties acknowledge that maintenance dredging of the Port's north channel and turning basin is under the jurisdiction of the United States Army Corps of Engineers. The County shall maintain the Port's north channel and turning basin to a depth of -36' feet, as necessary, to the extent such maintenance duties are in the sole jurisdiction and control of the County. To the extent maintaining portions of the Port's north channel and turning basin are outside the County's sole jurisdiction, the County shall periodically request the United States Army Corp of Engineers maintain those areas of the Port's north channel and turning basin to a depth of -36' feet, as necessary.
- (e) Offsite WASD Utilities. The County, at its sole cost and expense, shall provide to Tenant continuously during the Term, and to maintain and repair, on-Port water

and sewer utility infrastructure required for the water and sewer portion of the Utilities to the boundary of the Demised Premises, excluding any and all Utility infrastructure located on the Demised Premises. Notwithstanding the foregoing, the County shall not be required to upgrade or improve any utility infrastructure (with the exception of standard maintenance) as a result of Tenant's future desire to improve the Project to meet its commercial needs or desires or for any other reason, provided that the water and sewer portion of the Utilities infrastructure maintained by the County shall at all times meet the Project's original water and sewer utility requirements as originally designed by the Tenant and approved by the County. To the extent the water and sewer portion of the Utilities infrastructure is required to be upgraded as a result of the Tenant and/or the County exceeding their respective anticipated Vessel capacity (two 7,000 passenger Vessels for the Tenant and one 4,000 passenger Vessel for the County), the responsible Party / Parties shall meet the cost of such upgrade. Vessels berthed at Berth 8 and Berth 9 shall not be permitted at any time during the Term to discharge grey water or black water at Berth 8 or Berth 9 or elsewhere at the Port or into any County sewer or other facility. Without limiting the foregoing prohibition, to the extent not prohibited by Applicable Laws or Port Tariff rules, Vessels berthed at the Berth 8 and/or the Berth 9 may make prior arrangements to use a properly licensed and bonded outside (non-County) contractor, at the applicable Vessel's or Tenant's sole cost and expense, to properly receive and dispose of Vessel grey and/or black water at properly licensed non-County facilities off-Port, provided that Tenant and the Vessel ensures that such outside contractors at all times meet all applicable insurance and bonding requirements required under this Lease, the Port Tariff, or Applicable Laws, meet all applicable license requirements, and comply with all, Applicable Laws. Notwithstanding the County water and sewer Port maintenance responsibilities described above, Tenant shall at its sole cost and expense pay for all water and sewer related services utilized at the Demised Premises and utilities provided to the Project as and when due at the rates set forth in the Port Tariff or as published by WASD, as applicable, and shall also pay any new service-related impact fees imposed by WASD; provided, however, that the County shall reimburse the Tenant for the actual water charges incurred by Tenant at Berth 8 or Berth 9 during the berthing of a Non-MSV Vessel under Sections 7(c) or (d) within the same timeframes provided in Section 5(b)(v) of this Terminal Operating Rider.

- (f) Port Common Areas. The County shall be responsible to maintain, repair and replace common areas such as roads, sidewalks and curbs, lighting, and landscaping, located outside the boundaries of the Demised Premises, including the access roads to the Project. The County shall also maintain, repair and replace the road on the Demised Premises. The County, at its sole cost and expense, shall also maintain, repair and replace the following areas within the boundaries of the Demised Premises:
  - (i) Potable water from the main water branch to water bays; and
  - (ii) Stormwater outfalls (but not the pipes leading thereto).
- (g) Insurance. Subject to Tenant's obligations to reimburse the County for all expenses incurred by the County to procure and maintain insurance in accordance with

Section 11(d) of this Terminal Operating Rider, from and after Substantial Completion the County shall at all times maintain the insurance required by Section 29(a) of this Lease.

- (h) Capital Improvements. Subject to the obligations of Tenant to reimburse the County for all costs and expenses incurred by the County in connection with Capital Improvements in accordance with Section 11(g) of this Terminal Operating Rider, from and after Substantial Completion, the County shall be responsible for all Capital Improvements required to maintain the Project in accordance with the requirements of this Lease. The Tenant shall advise the County of any Capital Improvement required to the Project and provide the County with the written scope of work required in connection with such Capital Improvements and a budget reflecting the estimated cost to complete same. The County shall have thirty (30) days from the receipt of the request to approve same, which approval shall not be unreasonably withheld, conditioned or delayed. Upon approval, the County shall delegate the responsibility to complete the required Capital Improvements to the Tenant to perform. Capital Improvement approved by the County shall be completed in compliance with all Applicable Laws, Permits and Approvals and any conditions contained in the County's approvals. In connection with any Capital Improvements undertaken by Tenant pursuant to this Section 15(h), Tenant shall indemnify, defend and hold the County harmless from any loss or damage caused by the performance of the respective Capital Improvements by Tenant. In connection with any Capital Improvements performed pursuant to this Section 15(h), the obligation of Tenant to reimburse the County for costs and expenses associated with Capital Improvements under Section 11(e) of this Terminal Operating Rider shall be adjusted so that the reimbursement payments to the County are made when the costs and expenses for such Capital Improvements are due and payable.
- (i) Maintenance Scheduling. The County shall use reasonable commercial efforts and cooperate with Tenant to schedule the County's Maintenance Obligations to reduce the interference of any required maintenance work with the operation of the Project. In the event the County's Maintenance Obligations interfere with Cruise Operations the County shall provide alternative berthing rights as set out in Section 13(h) of the Development Rider.
- (j) Digital Advertising. The County shall have the right to require Tenant to display digital advertising consisting of public service announcements regarding the County on Tenant's digital advertising displays within the Project while passengers are embarking and disembarking. Such advertising materials shall only consist of the County public service announcements and/or promotion of County facilities, parks and County events. The County shall be entitled to ten percent (10%) of average advertising time appearing on digital displays within the Project while passengers are embarking and disembarking. The County shall be responsible for providing the digital content, at its sole cost and expense.
- (k) Terminal IT Room. The County, at its sole cost and expense, shall maintain the three dedicated IT rooms constructed as part of the Cruise Terminals Building in good condition and repair.

- (l) Berth 10 Concourse. Pursuant to Section 7(b) of the Development Rider, part of the Berth 10 Concourse shall be constructed on top of the Tenant's concourse for Berth 9, with complete infrastructure for the Berth 10 Concourse and both concourses sharing common footings, foundations, emergency egress stairs, areas of refuge and other required infrastructure and life safety systems. The maintenance of the interior of the Berth 10 Concourse and any elements of the Combined Concourse that service only the Berth 10 Concourse shall be maintained by the County at its sole cost and expense. Similarly, the maintenance of the interior of the Berth 9 Concourse and any elements of the Combined Concourse that service only the Berth 9 Concourse shall be maintained by the Tenant at its sole cost and expense. The cost of the maintenance of the common components of the Combined Concourse shall be shared equally by the County and Tenant and, subject to this cost sharing arrangement, shall be performed in accordance with the same procedures applicable to Capital Improvements under Section 15(h) of this Operating Rider. The County shall be solely responsible for the maintenance of all elements of the Concluding Berth 10 Concourse Element including the section located outside the Demised Premises.
- (m) The County's obligation to maintain the Project in accordance with the standard set forth in Section 37(c)(i) of the Lease shall apply, provided that the Tenant shall be required to reimburse the County for all reasonable expenses incurred during that time (which shall not however include any costs associated with the County self insuring the Project) upon the conclusion of the suspension period.

16. **Berth 10 Operations**

Following substantial completion of Berth 10, the County shall ensure that operations undertaken by the County and third-party cruise lines at Berth 10 comply with the Operational Protocol and shall not adversely affect or disrupt operations undertaken by the Tenant, MSC or third-party cruise lines at the Project in accordance with the terms of this Terminal Operating Rider and the Operation Protocol. The Parties agree that the transportation of provisions and luggage may traverse the Demised Premises and acknowledge that the Operation Protocol will address such matters in greater detail.

17. **Responsibility for Damage**

- (a) Notwithstanding the Tenant's maintenance, repair, and replacement obligations set forth in Section 14 of the Terminal Operating Rider, if damage to the Cruise Terminals Building, the Gangways, the Provisions Staging Area, the Intermodal Area, and the Parking Element is directly caused by the negligent acts or willful misconduct of the County or Non-MSC Vessels or either of their respective officers, agents, employees, or contractors (other than Tenant) or in the case of Non-MSC Vessels, their passengers, the County shall be responsible for all reasonable costs associated with repairing the damage to the extent of any insurance required to be maintained by the County in accordance with Section 29(a) of this Lease and to the extent not covered by the insurance that the County is required to maintain in accordance with Section 29(a) of this Lease, subject to the limitations set forth in Florida Statutes Section 768.28.

- (b) Notwithstanding the County's maintenance and repair obligations set forth in Section 15, if damage to the Pier is directly caused by the negligent acts or willful misconduct of Tenant or Tenant's lessees or either of their respective officers, agents, employees, contractors, or subcontractors (of any tier) (but which in no case shall include Non-MSC Vessels and their passengers, agents, employees or contractors), Tenant shall be responsible for all reasonable costs associated with repairing the damage to the extent not covered by the insurance and the County shall have the option of requiring Tenant to make the repairs or itself making the repairs. Tenant shall notify the County immediately upon the discovery of any damage to the Pier. If County makes the repairs, Tenant agrees to reimburse the County for the County's actual and reasonable cost of repair to the extent not covered by the insurance.
- (c) Tenant shall require that any Vessels using Berth 8 and/or Berth 9 have insurance of the following types and amounts in the event damage to the Pier is caused by such Vessel, as may reasonably be modified by the County from time to time upon written notice to Tenant. The County shall require that any Vessels using Berth 8 and/or Berth 9 pursuant to the County's Reserved Preferential Berthing Rights have equivalent (or better) coverage.
- (i) Workers' Compensation Insurance. Said insurance shall cover all persons employed by Vessel (other than crew members of the Vessel) or any affiliate of the Vessel's owner or operator in and about Berth 8 and/or Berth 9, as applicable, 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) The Vessels shall be kept insured under customary Hull and Machinery insurance and will procure and maintain, in accordance with all applicable laws, protection and indemnity insurance with a Protection and Indemnity Club member of the International Group of P&I Clubs and insurance against fire and all usual marine risks including war, strike and confiscation risks and war risks' protection and indemnity cover. The insurance shall include the cover against claims for damages or compensation for damage to property, loss of life or personal injury or illness of all passengers and crew. All persons employed as crew of the Vessel 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. The insurance policy shall further include operation pollution liability coverage sufficient to satisfy all applicable requirements of CERCLA and OPA-90.
  - (iii) Shoreside coverage for any employees, that are not crew, working at the Pier and/or either or both of the Cruise Terminals Building;
  - (iv) Commercial General Liability Insurance. With respect to the use and activities of the Vessel and its employees, contractors, agents, customers and guests in and around the MSC Cruise Terminals, Commercial General Liability Insurance must be in place on a comprehensive basis in an amount

not less than \$1,000,000 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 Vessel's owner or operator thereon. This coverage must also include but not be limited to embarkation and disembarkation of the Vessels.

- (v) Automobile Liability Insurance. To the extent applicable, covering all owned, non-owned and hired vehicles used in connection with the Vessel's operations in an amount not less than \$500,000 combined single limit per occurrence for the bodily injury and property damage.
- (d) Insurance Policy Requirements, Generally. Except for Protection and Indemnity insurance and Hull and Machinery Insurance, all insurance policies required under subpart (c) 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 "B" as to management, and no less than "Class V" 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.

Tenant and Miami-Dade County must be shown as an additional insured with respect to the Commercial General Liability coverage. Certificates will indicate that no material modification or change in insurance shall be made without thirty (30) days advance notice to the certificate holder. The County shall be entitled to all insurance proceeds relating to damage to the Pier caused by any of the vessels.
- (e) The County shall be responsible to require all Non-MSV Vessels that the County request utilize Berth 8 or Berth 9 to maintain the insurance required to be maintained in Subsection 16(c) and (d) of the Terminal Operating Rider.

#### 18. Inspection of the Project.

Tenant shall be responsible for inspecting the Project and all times maintaining all of its components (excluding the Pier and the Berth 10 Concourse) in a safe condition in accordance with the terms of this Lease, subject to and without being required to undertake the County's Maintenance Obligations. The County shall have the right to enter the Demised Premises and Project at all reasonable times and upon reasonable notice for the purpose of determining compliance with the terms and conditions of this Terminal Operating Rider or for inspecting portions of Berth 8, Berth 9, and the Berth 10 Concourse in connection with the County's Maintenance Obligations. In connection with any such inspections, the County may be accompanied by the Primary Third-Party Cruise Line. The County shall be responsible for inspecting the Pier and at all times maintaining such areas in a safe condition in accordance with Section 15 of this Terminal Operating Rider. For the avoidance of doubt, the Berth 10 Concourse shall not form part of the Project and the County's responsibilities to maintain such structures are set out in Section 15 of this Terminal Operating Rider.

19. **Option to Perform Repairs or Maintenance.**

If either Tenant or County fails to perform its repair and maintenance obligations in accordance with Section 14 or 15 of this Terminal Operating Rider, Tenant or County may give thirty (30) days' written notice to the non-performing Party to correct such default, except that either Party may immediately undertake repair work without any prior approval, if in the reasonable opinion of the Party, such work is required to ensure the ability of Vessels to berth at Berth 8 and/or Berth 9, the health or safety of any person or Vessels at the Cruise Terminals Building, Berth 8 and/or Berth 9, or the Parking Element. In such circumstances the performing Party shall be reimbursed by the non-performing Party for the work undertaken. None of the performing Party's remedies described above shall preclude the performing party from declaring an Event of Default. In the event of such work commencing without prior written approval, a notice shall be provided as soon as reasonably practicable after the discovery of the condition requiring repair.

20. **Port Security.**

Tenant, at its sole cost and expense, shall provide and maintain a Port Facility Security Plan (the "PFSP") in compliance with Applicable Laws, and shall at all times implement, follow, and comply with the same, and shall, unless more stringent requirements are established in the Operation Protocol:

- (a) Designate a security officer and an alternate in compliance with Applicable Law, provide and implement a security officer training program in compliance with Applicable Laws, provide a Port Security Manager to train and supervise security personnel, and provide a sufficient number of trained security officers to assure security for Cruise Operations;
- (b) Provide two (2) trained, competent and efficient security guards on a twenty-four (24) hour basis, one of whom shall be stationed at the entry gate(s) to the terminal building and the other whom shall patrol the terminal building. Tenant shall not be responsible to provide security immediately adjacent to any Vessel at berth, but may, upon request of the Vessel, provide such additional vessel security under separate arrangement with the Vessels at the Vessel's expense;
- (c) Provide and enforce the wearing of identification badges for all of Tenant's employees at the Project;
- (d) Provide sufficient functioning security screening-equipment (e.g., x-rays, walk through metal detectors, explosive detectors) to screen one hundred percent (100%) of passengers, crews, visitors, invitees, baggage and stores for Cruise Operations at one time at Berth 8 and at Berth 9 and provide a sufficient numbers of trained security staff to operate the same;
- (e) Provide sufficient and effective security communications equipment and trained operators to facilitate security operations for Cruise Operations, in compliance with Applicable Law; and

- (f) Provide additional safety and security procedures and equipment and security staff as may from time to time be further required by Comity or Governmental Authorities with jurisdiction over the Project.

The Parties acknowledge that the County may receive a request from a third-party cruise line that such cruise line wishes to arrange for its own security. The Tenant may accept or deny such request in its sole discretion. To the extent the Tenant agrees to any such request, the applicable cruise line shall arrange for such security in accordance with Applicable Laws and any other reasonable requirements imposed by the Tenant. The Tenant shall have no responsibility or liability in respect of such operations.

21. **Signage.**

- (a) Subject to the Operation Protocol and any reasonable requests from the County concerning the display of advertising materials promoting goods or services competing with the goods or services offered by cruise lines utilizing the Project in accordance with the County's Reserved Preferential Berthing Rights (including goods and services offered by Affiliates of said line), Tenant shall be entitled in its sole discretion to erect or display directional signs and advertising materials within the interior confines of the Project. Notwithstanding the foregoing and for the avoidance of doubt, the County shall not be entitled to request that Tenant be restricted from advertising materials promoting any goods or services of the Tenant, MSC or MSC Affiliates. The placement of exterior signs (including wayfinding signs other than on the Demised Premises except for the road on the Demised Premises) shall be the right and responsibility of the County, provided, however, Tenant, subject to Applicable Laws and zoning requirements, may at its sole cost and expense erect a MSC brand "Class B" sign on the exterior of (i) the Cruise Terminals Building; and/or (ii) the Parking Element and exterior advertising signs, to the extent permitted by Applicable Laws. For the avoidance of doubt, it is understood and agreed that no naming rights are conveyed hereby, and the right to name and re-name County owned facilities is reserved to the Board of County Commissioners.
- (b) If Tenant is permitted pursuant to Applicable Laws to have exterior advertising in addition to "Class B" signs, the Parties shall discuss and separately agree upon the terms of any agreement governing such exterior advertising.
- (c) In addition to Tenant's rights under Section 21(a), the County reserves to itself the right to grant the right to the Primary Third-Party Cruise Line, the right to erect a branded "Class B" sign on the exterior of (i) the Cruise Terminals Building; and/or (ii) the Parking Element. In all cases, such sign(s) shall be of equal size and prominence as the "Class B" sign(s) erected in respect of the MSC brand. Any third-party cruise line (including, but not limited to, the Primary Third-Party Cruise Line) utilizing the Project shall also be permitted to display digital signage within the Project (including, specifically, the Cruise Terminals Building and Parking Element) identifying said cruise line as a user of the Project utilizing, at no additional cost, the digital signage elements installed under the Development Rider as same may be replaced and updated over the course of the Term. The signage installed in accordance with this Section 21(c) shall be of equal size and prominence

as the signage installed by Tenant under Section 21(a). The Tenant shall not be entitled to request that any third-party cruise line using the Project be restricted from advertising materials promoting any goods or services of the third-party cruise line or its affiliates.

- (d) For the avoidance of doubt, neither the Tenant (or MSC Affiliates) nor any third-party cruise lines shall be entitled to advertise whilst their respective Vessels are not at berth at Berth 8, 9 or 10.

**22. Parking Licenses.**

The County shall provide Tenant with any and all licenses required to use, operate, maintain and manage any and all motor vehicle parking at the Project including, without limitation, in the Parking Element. Tenant shall have the exclusive right to use, operate maintain and manage the Parking Element in compliance with Applicable Laws.

**23. Parking Operations.**

Tenant shall, at its sole cost and expense (i) operate, maintain, manage and monitor the Parking Element in a first-class manner, (ii) direct and/or valet park (as Tenant, in its reasonable discretion, deems appropriate having regard also to the number of spaces which may be allocated to valet parking); provided, however, that valet parking shall be optional for passengers of third-party cruise lines using the Parking Element if the rate for valet parking exceeds the rate for direct parking established in the Port Tariff) all motorists and motor vehicles who desire to use the Parking Element, (iii) comply with all Applicable Laws, and (iv) render other services at the Parking Element as Tenant may deem appropriate, all subject to the Operation Protocol. During each call of a Non-MSVessel at Berths 8, 9, or 10, the Tenant shall ensure that one thousand (1,000) parking spaces are made available within the Parking Element to the passengers, vendors, guests, and employees of the applicable third-party cruise line.

**24. Parking Fees; Parking Revenues and Operating Expenses.**

Subject to any restrictions contained in the Operation Protocol, Tenant shall establish and set all parking fees, whether hourly, daily, monthly or otherwise, for the Parking Element at rates no lower than those set by County from time to time for the other parking elements at the Port operated by the County pursuant to Port Tariff. Notwithstanding the foregoing, the Tenant (in conjunction with MSC or MSC Affiliates) shall be entitled to offer passengers of MSC Vessels parking promotions or parking rates lower than those set out by the County pursuant to Port Tariff; provided that, in such circumstances, the County Parking Revenue Share shall be calculated as if the applicable passengers had been charged parking rates as per Port Tariff.

In the event the Tenant wishes to charge rates higher than those set out in the Port Tariff, such higher rates shall apply only to MSC Vessel passengers provided however that the gross revenues generated at the Parking Element for the purpose of calculating the County Parking Revenue Share shall be calculated as if the applicable passengers had been charged parking rates as per Port Tariff. To the extent the County agrees that passengers of Non-MSVessels shall also be charged higher rates (in line with those being charged to MSC Vessel passengers), the gross revenues generated at the Parking Element for the purposes of the County Parking Revenue Share

shall be calculated by reference to the higher rates being universally applied to all passengers for the period in question.

Tenant shall receive all revenues in connection with the Parking Element, and shall incur and pay all costs associated with the Parking Element's operation and maintenance, excluding the County Maintenance Obligations. The County shall issue invoices (of estimated revenue share to the Tenant on a quarterly basis) but shall only be entitled to receive the County Parking Revenue Share within forty-five (45) days of the close of the Fiscal Year.

25. **Parking Element Permitted Activities.**

Tenant shall not permit the Parking Element to be used for any purpose other than accommodating motor vehicles of cruise passengers, and cruise operational personnel, Port employees and guests and such other activities as are commercially reasonable and customary in the operation of a parking facility such as the Parking Element.

26. **Subcontracting of Parking Element Management.**

Tenant may, but shall not be required to, hire a professional third-party contractor to undertake the management and operation of the Parking Element. Notwithstanding such subcontracting, Tenant shall remain fully responsible to the County for all obligations under this Lease.

27. **Additional Fees.** Tenant may establish from time to time during the term fees ("Additional Fees") associated with operations at the Demised Premises, including but not limited to, any access fees for any transportation or ridesharing services visiting the Demised Premises in order to pick up or drop off cruise passengers, guests and invitees at the Cruise Terminals Building to the extent not precluded from charging such fees under Applicable Laws. Tenant shall be entitled to collect and retain all Additional Fees. Tenant acknowledges that the County has the discretion to charge access fees to vehicles visiting the Port pursuant to the Port Tariff. The County covenants and agrees that any such access fees charged by the County for access to the Port shall be uniformly charged to all vehicles going to cruise terminals at the Port and vehicles visiting the Project shall not be charged an access fee greater than the lowest access fee charged by the County for vehicle access to any other cruise terminal at the Port during the Operating Term. Any Additional Fees charged to Non-MSC Vessel passengers under this Section shall require to prior written approval of the County, which approval the County may condition on a revenue-sharing agreement between the Tenant and County for any such Additional Fees.

28. **Other Fees.** The County covenants and agrees that any new fees charged by the Port associated with cruise terminals shall be uniformly charged to all cruise terminals and the Cruise Terminals Building, Berth 8, and Berth 9 shall not be charged any fees greater than the lowest fees charged to other cruise terminals at the Port. To the extent any new fees implemented by the County have a material impact on the economic bargain agreed between the Parties as set out in this Lease, the Parties shall agree to discuss and negotiate in good faith whether any commercial terms should be revised to maintain the balance of such economic bargain.

29. **Parking off Demised Premises.** The County shall make available to Tenant not less than two hundred fifty (250) remote parking spaces at the Port on one or more location(s) in close proximity to the Port at six dollars (\$6.00) per space per day (subject to periodic rate increases in

line with, and at the same percentage increase, of Port Tariff daily parking rate increases that the County may elect to make from time to time), based upon the actual number of parking spaces requested by Tenant. After Substantial Completion on or before October 1 of each year during the Operating Term, Tenant shall provide the County with a schedule for the following calendar year reflecting the number of remote parking spaces that Tenant will commit to using during each day of the following calendar year. Tenant shall be responsible for providing shuttle services for users of the remote parking spaces, at Tenant's sole cost and expense.

30. **Community Events.** Subject to availability, as determined by Tenant, in Tenant's reasonable discretion, the County shall have the right to utilize the Cruise Terminals Building for community events which are not primarily intended to showcase or promote competing cruise ship companies (other than in respect of a cruise ship company which has a preferential berthing agreement for berthing rights at the Project, Berth 10, or both). All requests for use of the Cruise Terminals Building shall be in writing and shall be made no earlier than six months and no later than forty-five (45) days prior the requested use date by the County and include a description of the proposed event, the hours the facility is to be utilized and the anticipated number of people who will be attending. Tenant (acting reasonably) shall approve a request within five (5) days of receipt, unless the request does not comply with this Section 29 or the Cruise Terminals Building is unavailable on the requested date(s). Any use approved by Tenant shall be subject to such reasonable rules and regulations that Tenant deems appropriate and shall be subject to payment by the County of all reasonable operating and cleaning costs associated with such use. In no event shall any rules and regulations adopted by Tenant for community events be more restrictive on the County's use of the Project for the same reasons as the rules applicable to Tenant or MSC.

31. **Compliance with Applicable Law**

- (a) Tenant shall at all times comply with the requirements of Applicable Laws.
- (b) The Tenant may negotiate and enter into service and supply contracts as it deems necessary and reasonable for the proper operation of the Project (the "**Service Contracts**"), subject to the Operation Protocol. Any Service Contract entered into by the Tenant in relation to the Demised Premises shall be consistent with the terms of Lease, including the Operating Term, and Applicable Law. Except where prohibited under Applicable Laws, the Tenant shall be required to comply with the community Small Business Enterprise Program in awarding Service Contracts that are non-revenue generating contracts.
- (c) For all applicable positions, any Service Contract entered into pursuant to this Section 30 shall require the contractor to pay wages in accordance with County Ordinance No. 99-44 and Administrative Order 3-30, "Living Wages Requirement for County Service Contracts."
- (d) Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Tenant, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("**SFWIB**"), the designated referral agency, of the vacancy and list the vacancy with SFWIB according to Section 2-2113, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable

candidates can be employed after a referral period of three to five days, the Tenant is free to fill its vacancies from other sources. The Tenant will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until the Tenant performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.careersourcesfl.com/firstsource/>.

- (e) Any contracts entered by the Tenant for its performance of the Terminal Services shall be subject to the requirements of Section 54(o) of the Lease, requiring compliance with Section 448.095, Fla. Stat.

## **ATTACHMENT 10**

Operating Expense Base Contribution and Additional Contribution

Operating Expense Base Contribution Minimum Guarantee (to be drafted and inserted within 30  
days of the Lease Date)

Dockage Contribution Minimum Guarantee

## Attachment 10

### OPERATING EXPENSE BASE CONTRIBUTION AND ADDITIONAL CONTRIBUTION

| Term Year | Opex Rate* | Non-Mag Rate** | Term Year | Opex Rate | Non-Mag Rate | Term Year | Opex Rate | Non-Mag Rate | Option Year | Opex Rate | Non-Mag Rate |
|-----------|------------|----------------|-----------|-----------|--------------|-----------|-----------|--------------|-------------|-----------|--------------|
| 1         | \$5.00     | \$0.00         | 11        | \$6.91    | \$3.00       | 21        | \$9.29    | \$3.00       | 1           | \$12.48   | \$3.00       |
| 2         | \$5.08     | \$0.00         | 12        | \$7.12    | \$3.00       | 22        | \$9.57    | \$3.00       | 2           | \$12.85   | \$3.00       |
| 3         | \$5.15     | \$3.00         | 13        | \$7.33    | \$3.00       | 23        | \$9.85    | \$3.00       | 3           | \$13.24   | \$3.00       |
| 4         | \$5.23     | \$3.00         | 14        | \$7.55    | \$3.00       | 24        | \$10.15   | \$3.00       | 4           | \$13.64   | \$3.00       |
| 5         | \$5.31     | \$3.00         | 15        | \$7.78    | \$3.00       | 25        | \$10.45   | \$3.00       | 5           | \$14.05   | \$3.00       |
| 6         | \$5.39     | \$3.00         | 16        | \$8.01    | \$3.00       | 26        | \$10.77   | \$3.00       | 6           | \$14.47   | \$3.00       |
| 7         | \$5.47     | \$3.00         | 17        | \$8.25    | \$3.00       | 27        | \$11.09   | \$3.00       | 7           | \$14.90   | \$3.00       |
| 8         | \$5.55     | \$3.00         | 18        | \$8.50    | \$3.00       | 28        | \$11.42   | \$3.00       | 8           | \$15.35   | \$3.00       |
| 9         | \$5.63     | \$3.00         | 19        | \$8.75    | \$3.00       | 29        | \$11.76   | \$3.00       | 9           | \$15.81   | \$3.00       |
| 10        | \$5.72     | \$3.00         | 20        | \$9.02    | \$3.00       | 30        | \$12.12   | \$3.00       | 10          | \$16.28   | \$3.00       |

\*Opex Rate means Operating Expense Contribution

\*\* Non-MAG Rate means Operating Expenses Additional Contribution. The Non-MAG Rate goes into effect commencing with the start of the third year of the term and only for passenger movements in excess of the guarantee.

### OPERATING EXPENSE BASE CONTRIBUTION MINIMUM GUARANTEE

| Term Year | Passenger Guarantee | Term Year | Passenger Guarantee | Term Year | Passenger Guarantee | Term Year | Passenger Guarantee | Term Year | Passenger Guarantee |
|-----------|---------------------|-----------|---------------------|-----------|---------------------|-----------|---------------------|-----------|---------------------|
| 1         | 400,000             | 7         | 750,000             | 13        | 750,000             | 19        | 750,000             | 25        | 750,000             |
| 2         | 450,000             | 8         | 750,000             | 14        | 750,000             | 20        | 750,000             | 26        | 750,000             |
| 3         | 750,000             | 9         | 750,000             | 15        | 750,000             | 21        | 750,000             | 27        | 750,000             |
| 4         | 750,000             | 10        | 750,000             | 16        | 750,000             | 22        | 750,000             | 28        | 750,000             |
| 5         | 750,000             | 11        | 750,000             | 17        | 750,000             | 23        | 750,000             | 29        | 750,000             |
| 6         | 750,000             | 12        | 750,000             | 18        | 750,000             | 24        | 750,000             | 30        | 750,000             |

### DOCKAGE CONTRIBUTION MINIMUM GUARANTEE

Portion of Dockage Guaranteed if we provide 50% of expectations based on the largest DCL vessel

| Pax MAG | Pax/Call | Calls | Est. GRT | Rate   | Est. Dockage | MSC's Estimated portion @ 65% | Guarantee 50% of MSC |
|---------|----------|-------|----------|--------|--------------|-------------------------------|----------------------|
| 400,000 | 8,000    | 50    | 129,690  | \$0.44 | \$2,853,180  | \$1,854,567                   | \$927,284            |
| 450,000 | 8,000    | 56    | 129,690  | \$0.45 | \$3,306,122  | \$2,148,980                   | \$1,074,490          |
| 750,000 | 8,000    | 94    | 129,690  | \$0.47 | \$5,675,510  | \$3,689,081                   | \$1,844,541          |
| 750,000 | 8,000    | 94    | 129,690  | \$0.48 | \$5,845,775  | \$3,799,754                   | \$1,899,877          |
| 750,000 | 8,000    | 94    | 129,690  | \$0.50 | \$6,021,149  | \$3,913,747                   | \$1,956,873          |
|         |          |       |          |        |              | \$15,406,129                  | \$7,703,064          |

\*First year is subject to a pro-rata percentage reduction based on substantial completion date

**ATTACHMENT 11**  
**USD 76M CONTRIBUTION SCHEDULE**

**Attachment 11**

**USD 76m FUNDING SCHEDULE**

| Year of<br>Operating<br>Term | County<br>Contribution<br>Principal | County Payment<br>P&I* | County Additional<br>Contribution** | Annual County<br>Obligation |
|------------------------------|-------------------------------------|------------------------|-------------------------------------|-----------------------------|
| 1                            | \$7,000,000                         | \$8,630,366            | \$3,000,000                         | \$11,630,366                |
| 2                            | \$7,000,000                         | \$8,630,366            | \$3,000,000                         | \$11,630,366                |
| 3                            | \$7,000,000                         | \$8,630,366            |                                     | \$8,630,366                 |
| 4                            | \$7,000,000                         | \$8,630,366            |                                     | \$8,630,366                 |
| 5                            | \$7,000,000                         | \$8,630,366            |                                     | \$8,630,366                 |
| 6                            | \$7,000,000                         | \$8,630,366            |                                     | \$8,630,366                 |
| 7                            | \$7,000,000                         | \$8,630,366            |                                     | \$8,630,366                 |
| 8                            | \$7,000,000                         | \$8,630,366            |                                     | \$8,630,366                 |
| 9                            | \$7,000,000                         | \$8,630,366            |                                     | \$8,630,366                 |
| 10                           | \$7,000,000                         | \$8,630,366            |                                     | \$8,630,366                 |
| Total                        | \$70,000,000                        | \$86,303,660           | \$6,000,000                         | \$92,303,660                |

\*Imputed interest rate subject to verification of Tenant financing documents. For illustrative purpose shown at 4%.

\*\*County Additional Contribution is not subject to interest cost.

**ATTACHMENT 12**  
**NON-MSC VESSEL REVENUE ALLOCATION**

## Attachment 12

### NON-MSC VESSEL REVENUE ALLOCATION

|                                      | Tenant   | Tenant   | Tenant      |
|--------------------------------------|----------|----------|-------------|
|                                      | Receives | Receives | Receives    |
|                                      | 65% of   | the Opex | Additional  |
| <b><u>Years One Through Five</u></b> | Dockage  | Rate*    | Opex Rate** |
| <b><u>BERTHS 8 AND 9</u></b>         |          |          |             |
| Primary Third-Party Cruise Line      | YES      | YES      | NO          |
| Other Lines up to MAG***             | YES      | YES      | NO          |
| Other Lines Exceeding MAG***         | YES      | YES      | YES         |
| <b><u>BERTH 10</u></b>               |          |          |             |
| Primary Third-Party Cruise Line      | YES      | YES      | NO          |
| Other Lines up to MAG***             | YES      | YES      | NO          |
| Other Lines Exceeding MAG***         | YES      | YES      | YES         |
| <b><u>Years Six Through Term</u></b> |          |          |             |
| <b><u>BERTHS 8 AND 9</u></b>         |          |          |             |
| Primary Third-Party Cruise Line      | YES      | YES      | NO          |
| Other Lines up to MAG***             | YES      | YES      | NO          |
| Other Lines Exceeding MAG***         | YES      | YES      | YES         |
| <b><u>BERTH 10</u></b>               |          |          |             |
| Primary Third-Party Cruise Line      | NO       | YES      | NO          |
| Other Lines up to MAG***             | NO       | YES      | NO          |
| Other Lines Exceeding MAG***         | NO       | YES      | YES         |

\* Opex Rate means Operating Expense Contribution

\*\* Additional Opex Rate means Operating Expenses Additional Contribution.

\*\*\* MAG means the Operating Expense Base Contribution Minimum Guarantee

**EXHIBIT D**  
**PERMITTED EXCEPTIONS**

## **EXHIBIT D**

### **PERMITTED EXCEPTIONS**

1. Oil, gas and mineral reservations pursuant to that TIIF Deed recorded January 26, 1931 in Deed Book 1420, Page 331.
2. Grant of Submerged Land to the City of Miami recorded January 31, 1932 in Deed Book 1472, Page 474.
3. Reservation and reversionary interest contained in that Warranty Deed from the City of Miami and the County of Dade, Florida recorded January 23, 1961 in Official Records Book 2454, Page 77, as corrected by that Corrected General Warranty Deed of The City of Miami County of Dade, State of Florida, recorded May 21, 1980 in Official Records Book 10754, Page 1976.
4. Reversionary interest contained in that General Warranty Deed of The City of Miami-County of Dade, State of Florida recorded April 18, 1980 in Official Records Book 10725, Page 452.
5. Notices of Water and/or Sewer Facilities recorded September 16, 2014 in Official Records Book 29311, Page 66, recorded December 10, 2014 in Official Records Book 29422, Page 2112, and recorded March 6, 2015 in Official Records Book 29528, Page 716.
6. Terms, conditions and reversionary interest contained in that Land Exchange Agreement recorded January 14, 1980 in Official Records Book 10625, Page 1526.
7. Grant of Easement Lummus Island in favor of the United States of America recorded April 22, 1963 in Official Records Book 3627, Page 345.

**EXHIBIT E**  
**AMENDED MEMORANDUM OF LEASE**