MEMORANDUM

Agenda Item No. 8(J)(1)

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

DATE: November 15, 2022

FROM: Geri Bonzon-Keenan County Attorney

SUBJECT: Resolution approving Terminal Transfer Rider between Miami-Dade County and NCL (Bahamas) LTD., d/b/a Norwegian Cruise Line (NCLB) with an estimated positive fiscal impact of $26,900,000.00; authorizing the County Mayor to execute the Terminal Transfer Rider and exercise all rights contained therein, including rights of extension; authorizing the County Mayor to take any other acts and approve other agreements, including amendments, as are necessary to give effect to the Terminal Transfer Rider; directing the County Mayor to appoint staff to monitor compliance; and waiving Resolution No. R-130-06

Resolution No. R-1101-22

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

For

Geri Bonzon-Keenan
County Attorney

GBK/ks

Memorandum

MIAMI-DADE COUNTY

Date: November 15, 2022

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

From: Daniella Levine Cava
Mayor

Daniella Levine Cava

Subject: Resolution Approving a Terminal Transfer Rider between Miami-Dade County (the "County") and NCL (Bahamas) Ltd., d/b/a Norwegian Cruise Line ("NCLB")

Executive Summary

The purpose of this item is to gain authorization by the Board of County Commissioners ("Board") of a Terminal Transfer Rider ("Rider") between Miami-Dade County (the "County") and NCL (Bahamas) Ltd., d/b/a Norwegian Cruise Line ("NCLB"). The Rider (1) temporarily modifies the berthing rights and Minimum Annual Guarantees ("MAGs") at Cruise Terminal C ("CTC"), stipulated in the Third Amended and Restated Cruise Terminal Agreement, approved by the Board on September 19, 2019, through Resolution No. R-988-19; (2) extends the Cruise Terminal J ("CTJ") Agreement, approved on May 2, 2017, through Resolution No. R-532-17; and (3) grants NCLB first rights of negotiation for a future development and operation of a Multipurpose Parking Facility ("Parking Facility") at PortMiami.

Recommendation

It is recommended that the Board approve the accompanying resolution approving and authorizing the County Mayor or Mayor's Designee to execute the Rider between the County and NCLB. It is further recommended that the Board approve the waiver of Resolution No. R-130-06 as in the best interest of the County, as the Rider has been fully negotiated and agreed by NCLB but additional time is necessary to obtain the signature of the executive signing the Rider on behalf of NCLB.

Delegated Authority

This item authorizes the County Mayor or County Mayor's designee to (1) execute the Rider and to exercise all rights conferred therein; (2) negotiate an agreement to be presented to the Board once fully negotiated for the development of a Parking Facility at PortMiami; and (3) take any other acts and approve any other agreements, including amendments to the Rider that have no adverse fiscal impact to the County and have been reviewed and approved by the County Attorney's Office as to form and legal sufficiency, as are necessary to give effect to the Rider.

Scope

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

Fiscal Impact/Funding Source

Approval of the Rider will have a positive impact to the County of approximately $26.9 million, consisting of a $3.8 million decrease in guaranteed revenues from the temporary transfer to the County of NCLB's preferential berthing rights at CTC, and increase guaranteed revenues of approximately $30.7 million from the extension of the CTJ Agreement. Of further benefit to the County, by entering into the Rider, NCLB has agreed to forfeit 450,000 passenger surplus movement credits, which are valued at approximately $6 million. Prior to this forfeiture, NCLB would have been entitled to use up to 150,000 passenger surplus movement credits per year to offset MAG shortfalls.

Once the 5-year transfer period expires, NCLB will resume its preferential rights at CTC, and the County's guaranteed revenues will further increase. Notably, despite the reduction in guaranteed revenues during the transfer period, NCLB's commitment to pay the County a minimum Capital Recovery Surcharge ("CRS") will guarantee the same amount of CRS revenues as would be payable without the reduction in the CTC passenger guarantee. In addition, the County benefits from the temporary transfer of CTC during the transfer period, as the County will gain the ability to use the terminal for vessels displaced during the realignment of the north bulkhead (the "Project").

The renewal of the CTJ Agreement will generate an estimated positive fiscal impact to the County of $30.7 million. These additional revenues will consist of revenue derived from NCLB's use of CTJ for its Oceania Cruises and Regent Seven Seas Cruises brands during the 15-year term (including extensions) with a minimum guarantee of 45 vessel calls each year.

The negotiation of the Parking Facility authorized in the Rider will not have a fiscal impact to the County, as any agreement entered pursuant to such negotiations will be subject to Board approval once those negotiations are concluded.

Track Record/Monitor
The Seaport Department staff members responsible for monitoring the agreement are Andy Hecker, Deputy Port Director, and George Andrews, Assistant Port Director, Strategy and Economic Development.

Background
PortMiami and NCLB have had a longstanding relationship that spans across multiple decades. NCLB's operations at PortMiami began in 1966 when the MS Sunward became the industry's first vessel to offer weekly departures from Miami to the Caribbean region. Currently, NCLB is a leading global cruise company which operates the Norwegian Cruise Line, Oceania Cruises, and Regent Seven Seas Cruises brands. With a combined fleet of 29 ships, the company has plans to introduce 9 additional ships from 2022 to 2027. The Norwegian brand is introducing 6 Prima Class ships into the market, with expected delivery dates from 2022 through 2027. For Regent Seven Seas Cruises, one Explorer Class ship is on order for delivery in 2023. Oceania Cruises will debut 2 Allura Class Ships, expected in 2023 and 2025. Some of these new vessels will be sailing to the Caribbean and homeport at PortMiami during the next years.

On December 16, 2008, the Board approved Resolution No. R-1442-08 authorizing a 10-year cruise terminal agreement with NCL, establishing certain preferential rights and port incentives while providing PortMiami with a minimum guaranteed revenue stream of more than $98 million throughout the initial term.

On November 16, 2010, through Resolution No. R-1129-10, the Board approved the CTJ Agreement between the County and Prestige Cruise Holdings ("PCH") (which was subsequently acquired by NCLB) for its Oceania vessels, providing PortMiami with guaranteed passenger volumes and revenues. Subsequently, responding to the opportunity to homeport Regent in Miami, the Board approved Amendment No. 1 to the CTJ Agreement on November 20, 2012, through Resolution No. R-988-12. Amendment No. 1 established PortMiami as the exclusive home port in South Florida for both Oceania and Regent brands with increased minimal annual guarantees to the County in exchange for new Tariff incentive rates for small passenger vessels. On May 2, 2017, the Board approved Resolution No. R-532-17 which authorized a preferential agreement for CTJ as well as an MOU for the development of Cruise Terminal B ("CT-B").

On April 10, 2018, a new Amended and Restated Cruise Terminal Agreement was approved, incorporating the design and construction of new CTB. Subsequently, a Third Amended and Restated Cruise Terminal Agreement was approved, providing for certain modifications to the existing agreement, including a CRS for the construction of CTB and annual marketing incentive obligations.

Modification of Berthing Rights and MAGs at CTC

During the 5-year transfer period, PortMiami will undertake the Project, which is a significant capital development project that entails reconstructing and realigning six cruise berths and over 7,000 feet of the north bulkhead. This undertaking will require PortMiami to remove berths from service in a phased approach. The Rider provides for NCLB's relinquishment of its berthing rights at CTC (and a corresponding reduction in the passenger MAG), with the exceptions of Saturdays during the winter seasons, from May 1, 2024, through the end of the transfer period, September 30, 2027. Having CTC available will provide PortMiami with the needed flexibility to relocate other vessels whose berths may be deemed inoperable, reduce the Project costs, and minimize the risk of interruption to cruise operations. Upon the expiration of the transfer period, NCLB will resume its preferential berthing rights at CTC in accordance with the Third Amended and Restated Cruise Terminal Agreement.

During the transfer period, NCLB's MAGs will be reduced from 1.3 million passenger movements (excepting FY 2023 in which the MAG would have been prorated at 975,000 based on the COVID-19 Recovery Rider entered by the County and NCLB under the authority delegated by the Board in Resolution No. R-1116-20) to 900,000 passenger movements during the first 3 years of the transfer period and 950,000 passenger movements during the last 2 years of the transfer period. Losses from the reduction in the MAGs during the transfer period will be offset by the implementation of a $4.00 per passenger wharfage surcharge, which will yield approximately $18.4 million in wharfage revenues. This surcharge shall apply to the greater of (a) the actual passenger embarkations and debarkations at any terminal at PortMiami or (b) the applicable minimum annual guaranteed passengers. Upon the conclusion of the transfer period, NCLB's MAG will increase to 1,500,000 passenger movements, and NCLB will continue paying the applicable wharfage fee stipulated in the Third Amended and Restated Cruise Terminal Agreement without the obligation to pay the surcharge. Commencing on May 1, 2031, NCLB's MAG increases to 1,800,000 passenger movements per year.

The Rider also provides that NCLB will also forfeit its accumulated passenger surplus movement credits (valued at approximately $6 million) and that it will not accumulate additional credits during the transfer period. In addition, the Rider provides for a modified marketing incentive, through which the County will reimburse NCLB $1.00 per passenger movement exceeding 900,000 during fiscal years 2023, 2024 and 2025, and 950,000 for fiscal years 2026 and 2027. This modified marketing incentive will lapse at the conclusion of the transfer period.

Approval of this item will not represent a reduction in the minimum CRS revenues due to the County as required under the Third Amended and Restated Cruise Terminal Agreement. Payments shall continue to be based on the greater of (i) the actual number of NCLB passenger movements times the applicable reimbursement rate, or (ii) the Minimum Annual Payments established in the Rider. If NCLB's passenger volumes are insufficient to meet the minimum payment guarantee, NCLB will be required to make deficiency payments to the County on an annual basis.

Furthermore, NCLB commits to homeporting its third Prima-class ship in Miami for at least two winter seasons and the Regent Grandeur in winter 2023 for one winter season, both state-of-the-art newbuilds, at PortMiami. Another Prima or Prima Plus new build will be guaranteed to PortMiami for at least one cruise season.

In addition, the Rider provides that NCLB will commit 100% more passenger volumes at PortMiami on NCL brand vessels than the port with sailings into the Caribbean Basin with the next highest volume of passenger throughput on NCL brand vessels. Stated differently, PortMiami will have at least double the passenger throughout as the port with next highest number of sailings into the Caribbean Basin. Finally, unless replaced by newer vessels with comparable occupancy or ships with higher capacities, the NCLB will not relocate any vessels destined for the Caribbean Basin from PortMiami to any other Port.

Lastly, for shore power enabled vessels berthing throughout PortMiami, NCLB shall be required to utilize shore power in accordance with all port-wide standards, including reimbursing the County for electrical charges and pay any future fees that may be established in the Tariff (with the exception of capital expenses for the CTB system), provided that such fees are uniformly applied to all users of shore power.

Extension of CTJ Agreement

The Rider also extends the CTJ Agreement for an additional period of 10 years from the effective date, with an additional renewal period of 5 years based on mutual agreement. The CTJ Agreement provides NCLB preferential berthing rights at CTJ from Mondays through Saturdays during the winter season (November 1st through April 30th of each year). Passenger Port Fees will be calculated based on PortMiami Tariff, subject to a 3% annual increase. Revenue during the 15-year is approximately $30.7 million, in addition to dockage and other applicable Tariff fees. All other terms and conditions of the CTJ Agreement shall remain unchanged.

First Right of Negotiations for Future Parking Facility

Lastly, this Rider grants NCLB the first right of negotiation, for up to 2 years, to design, construct, finance, operate, and maintain a Parking Facility across from CTC at PortMiami. The construction of this Parking Facility will serve the parking needs of Port passengers embarking or disembarking from CTB and CTC. Furthermore, the project is expected to include a ground transportation area to accommodate and enhance port-wide operations of taxis, ride-sharing services, and other ground transportation companies which currently lack the needed infrastructure due to limited space at PortMiami. The lease or management agreement, which will contain final terms, financial analysis, and revenue-sharing benefits, will be presented to the Board in the future for its consideration and approval.

Jimmy Morales
Chief Operations Officer

MEMORANDUM
(Revised)

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

DATE: November 15, 2022

FROM: Geri Bonzon-Keenan
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**

_______ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved ______________________ Mayor
Veto __________
Override __________

Agenda Item No. 8(J)(1)
11-15-22

RESOLUTION NO. R-1101-22

RESOLUTION APPROVING TERMINAL TRANSFER RIDER BETWEEN MIAMI-DADE COUNTY AND NCL (BAHAMAS) LTD., D/B/A NORWEGIAN CRUISE LINE (NCLB) WITH AN ESTIMATED POSITIVE FISCAL IMPACT OF $26,900,000.00; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE TERMINAL TRANSFER RIDER AND EXERCISE ALL RIGHTS CONTAINED THEREIN, INCLUDING RIGHTS OF EXTENSION; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO TAKE ANY OTHER ACTS AND APPROVE OTHER AGREEMENTS, INCLUDING AMENDMENTS, AS ARE NECESSARY TO GIVE EFFECT TO THE TERMINAL TRANSFER RIDER; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO APPOINT STAFF TO MONITOR COMPLIANCE; AND WAIVING RESOLUTION NO. R-130-06

WHEREAS, this Board desires to accomplish the objects set forth in the accompanying memorandum, which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recital is approved and incorporated herein.

Section 2. This Board approves the Terminal Transfer Rider, in substantially the form attached hereto, with an estimated positive fiscal impact of $26,900,000.00, and authorizes the County Mayor or County Mayor's designee to execute the Terminal Transfer Rider for and on behalf of the County and to exercise all rights contained therein, including rights of extension.

Section 3. The Board authorizes the County Mayor or County Mayor's designee to take any other acts and approve any other agreements, including amendments to the Terminal

Transfer Rider that have no adverse fiscal impact to the County and have been reviewed and approved by the County Attorney's Office as to form and legal sufficiency, as are necessary to give effect to the Terminal Transfer Rider.

Section 4. The Board directs the County Mayor or County Mayor's designee to appoint staff to monitor compliance with the Terminal Transfer Rider.

Section 5. The Board approves the waiver of Resolution No. R-130-06, requiring the execution of contracts by all non-County parties, as in the best interest of the County.

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

Jose "Pepe" Diaz, Chairman **aye**
Oliver G. Gilbert, III, Vice-Chairman **aye**

Sen. René García	**aye**	Keon Hardemon	**aye**
Sally A. Heyman	**aye**	Danielle Cohen Higgins	**aye**
Eileen Higgins	**aye**	Kionne L. McGhee	**aye**
Jean Monestime	**aye**	Raquel A. Regalado	**aye**
Rebeca Sosa	**aye**	Sen. Javier D. Souto	**absent**

The Chairperson thereupon declared this resolution duly passed and adopted this 15th day of November, 2022. 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

Basia Pruna
By:________________________
Deputy Clerk

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

Miguel A. Gonzalez

TERMINAL TRANSFER RIDER

This Terminal Transfer Rider ("Rider") is entered into this ___ day of November 2022 (the "Effective Date"), by and between Miami-Dade County (the "County"), a political subdivision of the State of Florida, and NCL (Bahamas) Ltd., d/b/a Norwegian Cruise Line ("NCLB"), a Bermuda Company. NCLB and the County, collectively, are referred to as the "Parties" in this Rider.

RECITALS

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

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

WHEREAS, Norwegian Cruise Line Holdings, Ltd. ("NCLH") is a leading international cruise company with a number of cruise lines including Norwegian Cruise Line, Regent Seven Seas Cruises, and Oceania Cruises that presently use the Port as a homeport; and

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

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

WHEREAS, in connection with such commitments, NCLB has entered into that certain Third Amendment and Restated Cruise Terminal Agreement Between Miami-Dade County and NCL (Bahamas) Ltd., which was approved by the Board of County Commissioners through Resolution No. R-988-19 (the "Third Amended and Restated Agreement"); and

WHEREAS, in addition to the Third Amended and Restated Agreement, the County and NCLB have entered into that certain Cruise Terminal J Agreement Between Miami-Dade County and NCL (Bahamas) Ltd. (the "Cruise Terminal J Agreement"), which was approved by the Board of County Commissioners through Resolution No. R-532-17; and

WHEREAS, the County intends to undertake a significant capital project entailing the realignment of the 7,168-foot northern bulkhead of the Port, which project will require the Port to remove berths from service during such period; and

WHEREAS, in connection with such project, the County desires to temporarily reclaim Cruise Terminal C ("CTC") at which NCLB has preferential berthing rights under the Third Amended and Restated Agreement, in order to potentially reduce northern bulkhead project costs and minimize the risk of interruption to cruise operations by making available a floating terminal and berth to cruise lines whose berths have been removed from service as a result of the northern bulkhead project; and

WHEREAS, NCLB desires to continue its longstanding use of Cruise Terminal J, subject to the modifications of that agreement contained in this Rider;

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

TERMS AND CONDITIONS

ARTICLE I
GENERAL TERMS

1.01 **Effectiveness.** This Rider shall take effect on the date that it is executed by all Parties; provided, however, that in the case of the County, the Rider shall not take effect until signed by the County Mayor or County Mayor's designee upon approval of an authorizing resolution by the Board of County Commissioners and the expiration or waiver of the County Mayor's veto period.

1.02 **Terminal Transfer Period.** The period between December 31, 2022, and September 30, 2027, shall be the "Terminal Transfer Period," during which NCLB shall have Preferential Berthing Rights at Cruise Terminal C in accordance with the terms of this Rider (including the limitations set forth in Section 2.01(a)), notwithstanding anything to the contrary in the Third Amended and Restated Agreement.

1.03 **Defined Terms.** Unless separately defined in this Rider, capitalized terms used herein shall have the meaning given in the Third Amended and Restated Agreement.

ARTICLE II
BERTHING RIGHTS AND FINANCIAL GUARANTEES

2.01 **Modification of Berthing Rights.**

(a) During Terminal Transfer Period. Effective May 1, 2024 through the end of the Terminal Transfer Period, NCLB shall have Preferential Berthing Rights at Cruise Terminal C on Saturdays only from November 1st through April 30th of each year within that period., For any calls at Cruise Terminal C during the Terminal Transfer Period (including calls confirmed prior to the Effective Date of this Rider), subject to the additional Wharfage Surcharge described in Section 2.03, NCLB shall be required to pay the fees set forth in the Port Tariff, as such tariff may be amended during the Terminal Transfer Period. Otherwise, and notwithstanding anything to the contrary in the Third Amended and Restated Agreement, during the Terminal Transfer Period, Preferential Berthing Rights at Cruise Terminal C shall be reserved to the County.

(b) After the Terminal Transfer Period. Upon expiration of the Terminal Transfer Period, NCLB shall regain Preferential Berthing Rights at Cruise Terminal C, proceeding in accordance with the Third Amended and Restated Agreement; provided, however, that NCLB shall be required to provide berth schedules in anticipation of the expiration of the Terminal Transfer Period as provided in Section 3(a)(vii) of the Third Amended and Restated Agreement.

2.02 **Irrevocable Elections.** As of the Effective Date and taking effect as provided in the Third Amended and Restated Terminal Agreement, in addition to the Saturday Commitment Election (which NCLB made per Section 3(d)(i) of the Third Amended and Restated Agreement), NCLB shall be deemed to have made the Sunday Commitment Election set forth in Sections 3(a)(v) and 3(a)(vi) of the Third Amended and Restated Agreement.

2.03 **Wharfage.** During the Terminal Transfer Period, NCLB shall be required to pay a wharfage surcharge of Four Dollars ($4.00) for each passenger embarkation and debarkation at any terminal at PortMiami (the "Wharfage Surcharge") in addition to the wharfage due under the applicable agreement or this Rider. Upon the conclusion of the Terminal Transfer Period (i.e., for embarkations and debarkations at PortMiami on October 1, 2027, through the end of the Term), NCLB shall continue payment of the wharfage fee without the obligation to pay the Wharfage Surcharge. The total Wharfage Surcharge payments due to the County during each Fiscal Year (or part thereof) occurring during the Terminal Transfer Period shall be based on the greater of (i) the actual passenger embarkations and debarkations at any terminal at PortMiami times the Wharfage Surcharge or (ii) the applicable Minimum Annual Guarantee times the Wharfage Surcharge. Wharfage Surcharge payments shall be made together with the payment of other Port Fees due by NCLB to the County.

2.04 **Minimum Annual Guarantee.**

(a) During the Terminal Transfer Period. In consideration of NCLB's transfer of Preferential Berthing Rights at Cruise Terminal C to the County as provided in Section 2.01(a), during the Terminal Transfer Period, the Minimum Annual Guarantee under the Third Amended and Restated Terminal Agreement shall be reduced to Nine Hundred Thousand (900,000) passenger movements per year during the first three (3) years of the Terminal Transfer Period (FY 2023 - FY 2025) and Nine Hundred Fifty Thousand (950,000) passenger movements per year during the remainder of the Terminal Transfer Period (FY 2026 & FY 2027).

(b) After the Terminal Transfer Period. Immediately upon the conclusion of the Terminal Transfer Period, NCLB's Minimum Annual Guarantee shall increase to One Million Five Hundred Thousand (1,500,000) passenger movements per year. Commencing on May 1, 2031, NCLB's Minimum Annual Guarantee shall increase to One Million Eight Hundred Thousand (1,800,000) passenger movements per year.

(c) Passenger Surplus Movements. Upon the Effective Date of this Rider, NCLB shall forfeit all Passenger Surplus Movements thus far accumulated under Section 3(c)(ii) of the Third Amended and Restated Agreement. NCLB shall not be entitled to accumulate Passenger Surplus Movements during the Terminal Transfer Period.

2.05 **Capital Recovery Surcharge.** Notwithstanding and without regard to the reductions of the Minimum Annual Guarantees set forth in Section 2.04(a) of this Rider, during the Terminal Transfer Period, NCLB shall be required to pay the Capital Recovery Surcharge in accordance with the greater of (i) the actual number of NCLB passenger movements times the applicable reimbursement rate (including passengers at Cruise Terminal J) or (ii) the Minimum Annual Payments set forth in Exhibit 1 hereto. From the Effective Date of this Rider through the conclusion of the Term of the Third Amended and Restated Agreement, Exhibit 1 hereto shall govern the manner in which the Capital Recovery Surcharge is paid by NCLB; Exhibit E to the Third Amended and Restated Agreement shall be of no further force and effect from the Effective Date of this Rider. Effective October 1, 2027, NCLB shall continue to pay the Capital Recovery Surcharge in accordance with Exhibit 1, including passenger throughput through Cruise Terminal J as provided in Section 3.02 of this Rider.

2.06 **Annual Marketing Incentive.** During the Terminal Transfer Period, the County shall not be required to pay the Annual Marketing Incentive set forth in Section 3(e)(iv). Notwithstanding the foregoing, for each Fiscal Year in the Terminal Transfer Period in which NCLB achieves or exceeds (including passengers at Cruise Terminal J) the applicable minimum annual guarantee set forth in Section 2.04(a), the County shall pay One Dollar ($1.00) to NCLB based upon NCLB's actual passenger movements; the calculation of the amount to be paid under this sentence shall be made within sixty (60) days of the conclusion of the Fiscal Year. Upon the conclusion of the Terminal Transfer Period, the County shall be required to pay the Annual Marketing Incentive in accordance with Exhibit B to the Third Amended and Restated Agreement.

ARTICLE III
ADDITIONAL INDUCEMENTS

3.01 **Memorandum of Understanding Regarding Multipurpose Parking Facility.** Unless terminated by mutual agreement, from the Effective Date and for a period of two (2) years therefrom (the "Negotiation Period"), NCLB shall have the First Right of Negotiation for a parking facility (including ancillary uses supportive of passenger cruises at PortMiami, including, but not limited to, ground transportation space) on the property depicted in Exhibit 2 of a size consistent with the PortMiami master plan and with connectivity to existing garages and terminals utilized by NCLB (the "Proposed Project"). The Proposed Project shall be owned by the County and operated by NCLB pursuant to a revenue-sharing agreement. NCLB shall be fully responsible for designing, building, operating, and maintaining the Proposed Project without County funding or financing.

(a) Limitation During Negotiation Period. The First Right of Negotiation shall entail NCLB's first right to negotiate a lease or management agreement during the Negotiation Period for the Proposed Project. During the Negotiation Period, the County agrees that it shall not enter new contracts or other arrangements with respect to the area depicted on Exhibit 2 hereto that would compromise the substantial completion of the Proposed Project within five (5) years of the Effective Date of this Rider.

(b) Expiration or Extension of Negotiation Period. The Negotiation Period shall terminate upon the earlier of (i) the mutual agreement of the Parties and (ii) two (2) years from the Effective Date of this Rider unless there are ongoing good-faith negotiations regarding the Proposed Project and NCLB requests extension of the Negotiation Period at least six months before its expiration, in which case the Parties may mutually agree to an extension of the Negotiation Period for a period not to exceed twelve (12) additional months.

(c) Right of Consultation Regarding Adjacent Property. NCLB has expressed an interest in the adjacent property depicted in Exhibit 3 (the "Adjacent Property"). During the Negotiation Period, before entering into a binding agreement for the long-term use of or construction of a permanent structure on the Adjacent Property, the County will consult with NCLB to evaluate whether NCLB has an alternate more efficient or economically beneficial (to the Port) use of the Adjacent Property. The County shall take NCLB's comments under advisement but shall not be (i) bound by such comments or (ii) to entering into an agreement with NCLB (or any other third-party) based on NCL's recommendations. NCL's right of consultations hereunder shall expire at the conclusion of the Negotiation Period.

(d) Separate Approval Required. Nothing herein shall be construed to authorize the County Mayor or County Mayor's designee to enter into any binding agreements regarding the Proposed Project or NCLB's use of the Adjacent Property. Any binding agreements for the design, construction, operation, and maintenance of the Proposed Project (including on the properties depicted on Exhibits 2 and 3), including any revenue-sharing agreements, shall be subject to the separate approval of the Board of County Commissioners acting in their full legislative discretion.

3.02 **Renewal of Cruise Terminal J Agreement.** Notwithstanding anything to the contrary in Section 4 of the Cruise Terminal J Agreement, the Term of the Cruise Terminal J Agreement shall be extended for an additional period of ten (10) years from the Effective Date, with one (1) additional renewal period of five (5) years, exercised by mutual agreement (together, the "Cruise Terminal J Renewal Term"). Notwithstanding anything to the contrary in the Cruise Terminal J Agreement, during the Cruise Terminal J Renewal Term, NCLB shall only have Preferential Berthing Rights at Cruise Terminal J on Monday through Saturdays from November 1st through April 30th of each year. In addition, NCLB shall have the right to request and the County shall confirm (if Cruise Terminal J and the associated berth are available on the requested date), any calls at Cruise Terminal J requested by NCLB with twenty-four (24) months' prior notice, even if such calls occur outside of the aforementioned period in which NCLB has Preferential Berthing Rights at Cruise Terminal J. In addition, and notwithstanding anything to the contrary in the Cruise Terminal J Agreement, during the Cruise Terminal J Renewal Term, NCLB's (i) Port Fees, as set forth in Section 3(b) of the Cruise Terminal J Agreement, shall be calculated based on the Port Tariff effective in Fiscal Year 2022-23, escalating each Fiscal Year at an amount not to exceed three percent (3%) and (ii) passenger throughput at Cruise Terminal J shall be included in the calculation, under any other agreement between the County and NCLB, of any passenger minimum annual guarantees and incentives, including, but not limited to, parking revenue sharing, marketing incentives (including the marketing incentive described in Section 2.06 of this Rider), or discounts, and (iii) as provided in Section 2.05 of this Rider, passenger throughput anywhere at PortMiami (including at Cruise Terminal J) shall be considered Passenger Movements when calculating the Capital Recovery Surcharge payment due under Exhibit 1 of this Rider during the Terminal Transfer Period and, after the Terminal Transfer Period, under Exhibit E of the Third Amended and Restated Agreement. All other terms and conditions of the Cruise Terminal J Agreement, including minimum annual guarantees, shall remain unchanged.

3.03 **Home Port Commitment.** From the Effective Date, NCLB commits that it shall homeport one (1) new-build Prima or Prima Plus vessel plus the Regent Grandeur at PortMiami, including the 3rd Prima. In the case of the Prima or Prima Plus vessels, each shall be homeported at PortMiami for at least two (2) winter seasons from deployment. An additional Prima or Prima Plus vessel will be guaranteed to PortMiami for at least one (1) cruise season. In the case of the Regent Grandeur, such vessel shall be homeported at PortMiami for the 2022-23 winter season. In either case, NCLB may reposition such vessels only if such vessels are replaced by newer vessels (of at least comparable occupancy) or vessels with higher passenger occupancy capacities.

3.04 **Most Favored Port.** During the Terminal Transfer Period, NCLB shall have at least one hundred percent (100%) more passenger throughput at PortMiami on Norwegian Cruise Line brand vessels (inclusive of embarkations and debarkations) than the port with sailings into the Caribbean Basin with the next highest volume of passenger throughput on Norwegian Cruise Line brand vessels. To the extent NCLB breaches the foregoing obligation, NCLB shall be liable to pay the County the passenger fees that PortMiami would have collected (e.g., wharfage, Capital Recovery Surcharge, etc.) from the passengers comprising the differential between the foregoing passenger throughput guarantee and the actual passenger throughput at PortMiami.

3.05 **Shore Power.** Notwithstanding anything to the contrary in the Third Amended and Restated Agreement (including, specifically, Section 3(b)(v) thereof) or the Cruise Terminal J Agreement, to the extent the County establishes fees for the recovery of costs arising out of the use of shore power at PortMiami (including operating and maintenance costs for shore power facilities, but excluding fees for the recovery of capital expenditures on the Cruise Terminal B shore power system), the imposition on and collection from NCLB of such fees is agreed by the Parties and shall not be subject to any limitation set forth in the Third Amended and Restated Agreement or the Cruise Terminal J Agreement regarding additional costs, new fees, or fee increases, provided that such fees shall be uniformly applied to all users of shore power at PortMiami. For any shore power enabled vessels berthing at shore power capable berths anywhere at PortMiami, NCLB shall be required to utilize shore power in accordance with any port-wide standards and practices then in effect, reimburse the County for any electrical charges incurred by NCLB, and pay any fees established in the Port Tariff regarding the use of shore power facilities provided that all other users of shore power facilities are subject to these requirements while using shore power.

ARTICLE IV
MISCELLANEOUS

4.01 **E-Verify.** With respect to the Cruise Terminal J Agreement and the Third Amended and Restated Agreement, NCLB 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 NCLB from and after January 1, 2021; and requiring each of NCLB's subcontractors and sub-subcontractors to provide to NCLB an affidavit stating that the subcontractor or sub-subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. NCLB shall maintain a copy of such affidavits for the term of each agreement. If NCLB has a good faith belief that a person or entity with which NCLB is contracting has knowingly violated Section 448.095(1), Florida Statutes, NCLB shall terminate the contract with such person or entity. If the County has a good faith belief that a subcontractor of NCLB knowingly violated this subsection, but NCLB otherwise complied with this section, the County shall promptly notify NCLB and order NCLB 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 NCLB has knowingly violated Section 448.09(1), Florida Statutes, the County shall terminate each agreement for cause, notwithstanding anything to the contrary in either agreement limiting the County's termination rights.

NCLB 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 agreements pursuant to this section. If the agreements are terminated for a violation of the statute by NCLB, NCLB 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.

4.02 **Transportation of Unauthorized Aliens.** With respect to the Cruise Terminal J Agreement and the Third Amended and Restated Agreement, in accordance with Section 908.111, Florida Statutes, NCLB shall be required to complete an attestation, in conformity with Section 92.525, Florida Statutes, that NCLB is not willfully providing and will not willfully provide any service during the contract term in furtherance of transporting a person into Florida knowing that the person is an unauthorized alien, except to facilitate the detention, removal, or departure of the person from Florida or the United States. If NCLB is found in violation of its attestation, notwithstanding anything to the contrary in this either agreement limiting the County's termination rights, the County shall terminate the agreements for cause.

IN ACCEPTANCE WHEREOF, Miami-Dade County and NCL (Bahamas) Ltd. have set their respective hands as of the date and year appearing by their respective signatures.

NCL (Bahamas) Ltd.	**Miami-Dade County, Florida**
By: _________________________	By: _________________________
Print: Frank Del Rio	Print: ________________________
Title: Chief Executive Officer	Title: ________________________
Dated: ______________________, 2022.	Dated: ______________________, 2022.
Attest: Print: Seal:	By: _____________________________ Assistant County Attorney As to Form and Legal Sufficiency

Exhibit 1
<u>(Capital Recovery Surcharge)</u>

Year	Fiscal Year	MAG Passengers	Reimbursement Rate	Minimum Annual Payment
Year 1 *	2023	900,000	$ 10.54	$ 9,481,907.00
Year 2	2024	900,000	$ 10.90	$ 9,806,907.00
Year 3	2025	900,000	$ 11.26	$ 10,131,907.00
Year 4	2026	950,000	$ 11.01	$ 10,456,907.00
Year 5	2027	950,000	$ 12.38	$ 11,756,907.00
Year 6	2028	1,500,000	$ 7.84	$ 11,756,907.00
Year 7	2029	1,500,000	$ 7.84	$ 11,756,907.00
Year 8	2030	1,500,000	$ 7.84	$ 11,756,907.00
Year 9	2031	1,800,000	$ 7.61	$ 13,706,907.00
Year 10	2032	1,800,000	$ 7.61	$ 13,706,907.00
Year 11	2033	1,800,000	$ 7.61	$ 13,706,907.00
Year 12	2034	1,800,000	$ 7.61	$ 13,706,907.00
Year 13	2035	1,800,000	$ 7.61	$ 13,706,907.00
Year 14	2036	1,800,000	$ 7.61	$ 13,706,907.00
Year 15	2037	1,800,000	$ 7.61	$ 13,706,907.00
Year 16	2038	1,800,000	$ 7.61	$ 13,706,907.00
Year 17	2039	1,800,000	$ 7.61	$ 13,706,907.00
Year 18	2040	1,800,000	$ 7.61	$ 13,706,907.00
Year 19	2041	1,800,000	$ 7.61	$ 13,706,907.00
Year 20	2042	1,800,000	$ 7.61	$ 13,706,907.00
Year 21	2043	1,800,000	$ 7.61	$ 13,706,907.00
Year 22	2044	1,800,000	$ 7.61	$ 13,706,907.00
Year 23	2045	1,800,000	$ 7.61	$ 13,706,907.00
Year 24	2046	1,800,000	$ 7.61	$ 13,706,907.00
Year 25	2047	1,800,000	$ 4.11	$ 7,406,907.00

* Before commencement of the Terminal Transfer Period, the Capital Recovery Surchage due shall be calculated in accordance with Exhibit E of the Third Amended and Restated Agreement.

Exhibit 2
<u>(Proposed Project Area)</u>

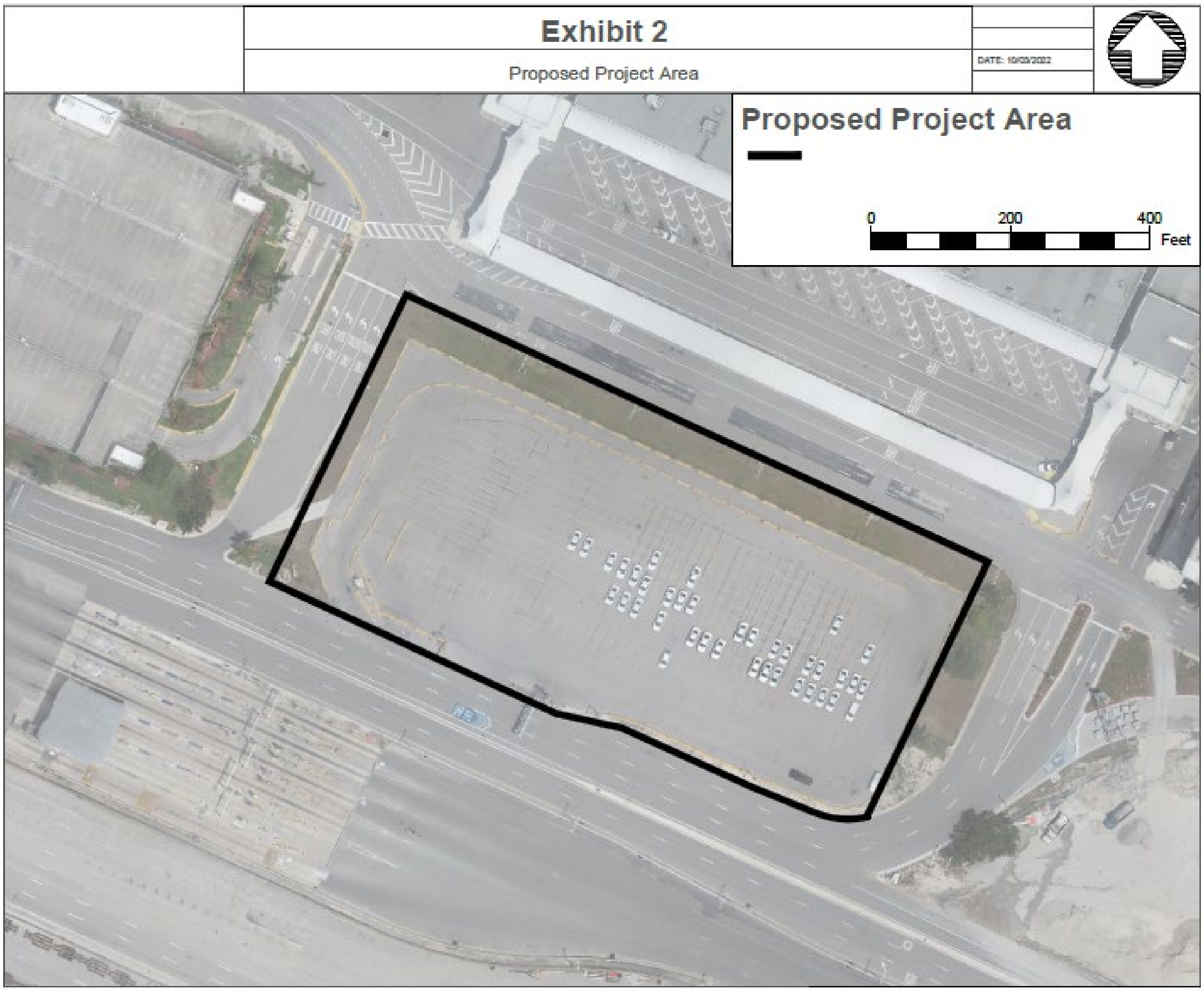

Exhibit 3
(Adjacent Property)