

MEMORANDUM

Agenda Item No. 14(A)(2)


TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: November 20, 2012

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

SUBJECT: Resolution authorizing Terminal
Berthing agreement between
Miami-Dade County and
Magical Cruise Company Ltd.,
D.B.A Disney Cruise Line

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




R. A. Cuevas, Jr.
County Attorney

RAC/cp

Date: November 20, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Authorizing Execution of Terminal Berthing Agreement between
Miami-Dade County and Magical Cruise Company Ltd., d.b.a Disney Cruise Line

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of a Terminal Berthing Agreement ("Agreement") between Miami-Dade County ("County") and Magical Cruise Company ("Disney").

SCOPE

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

FISCAL IMPACT/FUNDING SOURCE

This Agreement provides Disney with berthing rights to Terminal F while providing the Port a minimum annual guarantee of no less than 100,000 Passenger Movements each fiscal year throughout the term of the Agreement.

Despite the above minimum annual guarantee, the volume of ship calls Disney has confirmed (29 calls in FY 2013 and 41 calls in FY 2014) is expected to generate more than 377,000 passengers and approximately \$4.8 million of revenue to the Port over its initial two (2) year term.

TRACK RECORD/MONITOR

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

BACKGROUND

Magical Cruise Company Ltd., d.b.a. Disney Cruise Line, is a family inspired vacation company. The company, headquartered in London, United Kingdom, operates a fleet of four cruise ships. Its first ship, *Disney Magic*, was launched in 1998 followed by the *Disney Wonder* in 1999. Most recently Disney expanded its fleet with the addition of the *Disney Dream* and *Disney Fantasy* in 2011 and 2012, respectively.

Disney's recent newbuild program, doubling the number of vessels in its fleet, has afforded Disney the opportunity to expand its offerings of destinations and home ports. Disney will sail its two newbuild ships from its home port in Port Canaveral, Florida and sail itineraries with its classic ships from new U.S. ports including Miami, New York, and Galveston. It is estimated that Disney Cruise Lines owns nearly a 3% share of the worldwide cruise market.

PortMiami staff met with Disney throughout the last few years to attract the brand to Miami-Dade County. In January 2012, Disney announced its first-ever cruise season from

PortMiami beginning winter 2012. This will be the first time Disney home ports in a South Florida Port.

Under the terms of this proposed Agreement, Disney will home port at PortMiami beginning December 2012 with a series of 4 and 5-day itineraries to the Eastern and Western Caribbean. Disney commits to home porting at PortMiami with a minimum of one hundred-thousand (100,000) passenger moves annually through the Port each fiscal year. However, as stated earlier in the Fiscal Impact section of this memorandum, the number of ship calls Disney has confirmed is expected to generate more than 377,000 passengers to the Port over its initial two (2) year term.

In return, the County shall grant Disney berthing rights to utilize Terminal F as per Exhibit A – Terminal Berth Schedule – for Fiscal Year 2012/13 and Fiscal Year 2013/14. The Port shall have the right to berth other cruise line vessels at this terminal any time in which Disney has not been granted berthing rights pursuant to Exhibit A. Additionally, should Disney have multiple cruise vessels on the same day, then Disney shall have the right to use another cruise terminal provided that such use will not interfere with preferential berthing rights of another cruise line at the Port.

Disney shall pay all Port Fees to the County per Port of Miami Terminal Tariff No. 010. The passenger wharfage rate chargeable to Disney during Fiscal Year 2012/13 shall be \$10.36 per passenger embark plus \$10.38 per passenger debark (total \$20.76 per passenger). The dockage rate chargeable by the County to Disney in Fiscal Year 2012/13 shall be \$.32 per gross registered ton. Wharfage and dockage fees shall increase annually by no more three percent (3%) which is consistent with other County agreements with cruise lines.

Should Disney fail to meet its annual guarantee of one hundred thousand (100,000) passengers in any given year, Disney will make a shortfall payment to the County within thirty (30) days of the end of the fiscal year in which the guarantee was not met. Shortfall payments will be based on the then-applicable wharfage rate for the given fiscal year multiplied by the number of passenger moves below the Minimum Annual Guarantee of 100,000 passengers annually.

In exchange for Disney's annual guarantee, the County shall pay Disney a parking incentive. The parking incentive shall be based on the proportion of Disney multi-day embarkations to the Port's total multi-day cruise embarkations. For example, if Disney's multi-day embarkations are ten percent (10%) of the Port's total multi-day cruise embarkations then Disney shall receive ten percent (10%) of passenger multi-day parking revenues. The Port shall remit parking revenues to Disney within sixty (60) days of the close of each fiscal quarter during the Term in which Disney vessels are calling the Port. This parking incentive is consistent with other cruise agreements previously approved by the Board.

The term of this Agreement shall be for a period of two (2) years. Disney shall have the option to extend this Agreement for up to two (2) additional terms of one (1) year each upon Disney providing written notice to the County within one (1) year prior to the termination of the then-existing term and Disney providing the Port with its berthing


requests for the extension term. Should this option be exercised, the business terms/rates shall remain the same as in this Agreement and the Port will use commercially reasonable efforts to continue to accommodate Disney vessels at Terminal F. Nevertheless, the Port shall have the right to schedule Disney at another cruise terminal, provided that such use will not interfere with preferential berthing rights of another cruise line agreement and also such facility is approved by Disney in advance.

PortMiami is recognized a world-class port offering a diversity of cruise brands appealing to a broad range of passenger budgets. The addition of Disney to the Port's line-up will strengthen Miami's offerings of family-oriented brands to passengers throughout the world.

To accommodate the deadlines and commitments associated with this Agreement, the resolution incorporates language to establish the effective date as the earlier of (1) ten (10) days after the date of its adoption unless vetoed by the 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.

DELEGATED AUTHORITY

In accordance with Section 28.3 of the Miami-Dade County Code related to identifying delegation of the Board authority, there are no authorities beyond that specified in the resolution which include the authority for the Mayor or his designee to execute the Agreement.



Jack Osterholt, Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: November 20, 2012

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

SUBJECT: Agenda Item No. 14(A)(2)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(2)
11-20-12

RESOLUTION NO. _____

RESOLUTION AUTHORIZING TERMINAL BERTHING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MAGICAL CRUISE COMPANY LTD., D.B.A DISNEY CRUISE LINE; AND AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

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

Section 1. Approves the execution Terminal Berthing Agreement between Miami-Dade County and Magical Cruise Company, Ltd. (d.b.a. Disney Cruise Line), in substantially the form attached hereto and made a part hereof; and

Section 2. Authorizes the Mayor or the Mayor's Designee to execute this Agreement after review and approval by the County Attorney's Office, and to exercise any cancellation and renewal provisions therein.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of November, 2012. This resolution shall become effective upon the earlier of (1) ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Richard Seavey

**TERMINAL BERTHING AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND MAGICAL CRUISE COMPANY,
LTD.**

THIS AGREEMENT is made and entered into this _____ day of _____, 2012, by and between Magical Cruise Company Ltd, d.b.a. Disney Cruise Line (hereinafter "Disney"), and Miami-Dade County, Florida, a political subdivision of the State of Florida (hereinafter "the County"). Disney and the County are hereinafter collectively referred to as "the Parties."

WITNESSETH:

WHEREAS, the County owns certain lands located in Miami-Dade County, Florida, on which the Dante B. Fascell Port of Miami-Dade (hereinafter 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, Disney is in the cruise business and manages and operates Disney Vessels, including vessels needing a South Florida Home Port; and

WHEREAS, Disney Vessels intend to call on the Port with such frequency that Disney has requested the County to enter into a volume incentive agreement; and

WHEREAS, in consideration of Disney's commitment to home port Disney Vessel(s) at the Port as set forth in detail below, and other good and valuable consideration, the County finds it to be in its best interest to enter into a volume incentive agreement with Disney on the terms and conditions hereinafter set forth;

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

1. RULES OF CONTRACT INTERPRETATION

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

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

- (c) Words in the singular include the plural, and words in the plural include the singular;
- (d) A pronoun in one gender includes and applies to other genders as well;
- (e) The Parties hereto agree that this Agreement shall not be more strictly construed against either the County or Disney;
- (f) All exhibits and appendices attached hereto shall be deemed incorporated into, and a part of, this Agreement; and,
- (g) All recitals set forth above shall be deemed incorporated herein.

2. DEFINITIONS

- (a) **"Affiliate"** An "affiliate" of, or a person "affiliated" with, a specified person is a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- (b) **"Agreement"** means this Terminal Berthing Agreement between the County and Disney.
- (c) **"Applicable Laws"** means those applicable federal, state and local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, schedules, permits, decrees, tariffs, orders and Seaport Department policies and procedures which govern or relate to the respective Parties' obligations and performance under this Agreement, all as they may be amended from time to time.
- (d) **"Berth"** shall mean that portion of the Terminal(s) utilized for the berthing of Disney Vessels.
- (e) **"County"** means Miami-Dade County, a political subdivision of the State of Florida, and all departments, agencies and instrumentalities thereof, including, without limitation, the Miami-Dade County Seaport Department.
- (f) **"DERM"** means the Miami-Dade County Department of Environmental Resources Management.
- (g) **"Dockage"** means the charge assessed for dockage under Port of Miami Terminal Tariff No. 010 per 24-hour period.
- (h) **"Effective Date"** shall have the meaning set forth in Section 4 hereof.

- (i) **"Fiscal Year"** means the County's fiscal year, which begins October 1 and ends September 30.
- (j) **"Force Majeure"** has the meaning set forth in Section 22.
- (k) **"Home Port"** means the Port from which a vessel embarks and disembarks passengers as the point of origination and conclusion.
- (l) **"Minimum Annual Guarantee"** shall have the meaning set forth in Section 3(c) hereof.
- (m) **"Disney"** means Magical Cruise Company, a U.K. company registered to do business in the State of Florida, and any affiliate cruise vessels calling at ports in South Florida.
- (n) **"Disney Deployment Schedule"** shall mean the proposed annual Disney vessel deployment schedule that Disney shall submit to the Port each Fiscal Year during the Term, which Disney must submit at least twelve months in advance of the earliest vessel call listed therein.
- (o) **"Disney Vessel"** means any vessel either owned, time or voyage chartered, or operated by Disney or its affiliates.
- (p) **"Parking Revenues"** means total vehicle parking revenue collected by the Port from overnight multi-day cruise passengers.
- (q) **"Passenger Movements"** means a cruise ship passenger either embarking or disembarking from a cruise ship.
- (r) **"Port"** means the Dante B. Fascell Port of Miami-Dade County.
- (s) **"Port Director"** means the Director of the Miami-Dade County Seaport Department.
- (t) **"Security Company"** shall mean any of the companies offering security services and awarded Contract Numbers RFQ706a, RFQ706b, RFQ706c, RFQ706d and RFQ706e which were approved by the Board of County Commissioners on February 1, 2011 by Resolution R-73-11.
- (u) **"Shortfall Payment"** means a payment due from Disney to the County in any one Fiscal Year in an amount representing the shortfall, if any, between Disney's total vessel charge payments to the County for vessel charges arising in such Fiscal Year and the Minimum Annual Guarantee.
- (v) **"Tariff" or "Port Tariff"** means the Port of Miami-Dade Terminal Tariff No. 010, Rates, Rules, and Regulations for the Seaport Facilities of

Miami-Dade County, Florida, in effect on the effective date of this Agreement, which includes tariffs for dockage, wharfage, harbor, water fee, and rental, among others. The parties acknowledge and agree that the County may unilaterally revise or amend the terms and rates contained in the Tariff from time to time and at the County's sole discretion.

- (w) "Term" means the period commencing with the Effective Date (as defined in Section 4 hereof) and expiring on the Expiration Date (as defined in Section 4 hereof).
- (x) "Terminal(s)" means any and all land, facilities, buildings, gangways and improvements at the Port, excluding associated parking garages, described in Section 3.
- (y) "Wharfage" means the charge assessed for passenger wharfage under Port of Miami Terminal Tariff No. 010 per each embarkation and per each debarkation.

3. DISNEY AND PORT OF MIAMI PLEDGES

- (a) Terminal Use and Security.
 - (i) The County hereby grants to Disney Berthing Rights to utilize Terminal F for Disney vessels as per Exhibit A – Terminal Berth Schedule – for the upcoming Fiscal Year 2012/13 and Fiscal Year 2013/14. Disney shall notify the County, in writing, of any changes to the Disney Terminal Berth Schedule no less than twelve (12) months prior to the earliest date affected by the change to such schedule. In addition, Disney shall update its deployment schedule on an annual basis at least twelve months prior to the effective date of such schedule. The Parties acknowledge that it is in the best interests of the cruise lines and the Port to work together cooperatively concerning scheduling to maximize the use of the Port's cruise terminal(s).
 - (ii) Should Disney opt to extend this Agreement, per Section 4 herein, the Port will use commercially reasonable efforts to schedule Disney vessel calls at Terminal F. However, the Port shall have the right to schedule Disney at another cruise terminal, provided that such use of that terminal will not interfere with preferential berthing rights of another cruise line and further provided that such other terminal is approved by Disney.
 - (iii) The County covenants and agrees that Disney shall have the Berthing Rights to utilize Terminal F for the berthing of Disney Vessels for embarkation and disembarkation of passengers as per

the attached Exhibit A for FY 2012/13 and FY 2013/14. If Disney has multiple Disney Vessels on the same day then Disney shall have the right to use another terminal at which another cruise line has preferential berthing rights, provided that such use will not interfere with the preferential berthing rights of any other cruise line Agreements and further provided that such other terminal is otherwise available.

- (iv) Notwithstanding and prevailing over any contrary terms or implications set forth herein, the County shall have the right to allow other vessels or lines to use any portion of Terminal F or adjacent Berths, or any other Terminals or Berths, at any time during which Disney has not been granted Berthing Rights pursuant to Exhibit A. The assignment of particular Port Terminals and Berths to cruise lines shall be at the sole discretion of the Port Director.

Should the Disney Vessel(s) be late on the route due to weather or any other cause, Disney shall inform the County as soon as reasonably possible. In such case, The County shall use reasonable efforts to provide a berth and facilities infrastructure subject to availability at the discretion of the Port.

- (v) Disney has previously inspected Terminal F and deems it suitable for Disney's purposes and intended cruise operations at the Port.
- (vi) As requested by Disney, Disney shall have the right, but not the obligation, to request that the County provide Disney security services through utilization of the pool of Security Companies contracted to the County in Contract Nos. RFQ706a, RFQ706b, RFQ706c, RFQ706d, and RFQ706e, and/or any subsequent competitively awarded security contract ("Security Contracts") to provide security services as defined in, and within the scope of, the Security Contracts, and as defined in, and within the scope of, Work Order Proposal Requests made to the pool of Security Companies by the County pursuant to the provisions of the Security Contracts ("Security Services"). Disney shall have the right to submit draft Work Order Proposal Requests to the County for the County's approval and submission to the pool of Security Companies, such approval not to be unreasonably withheld. If Disney elects to have the County provide Security Services, upon the County's receipt of invoices from a Security Company for services rendered to Disney, the County shall bill Disney for (1) the full amount invoiced to the County by the Security Company and (2) an administrative fee of \$350 per Disney Vessel call or other event for which Disney requests that the County provide it

Security Services. Disney shall pay the County for the full amount of the invoice within ten (10) business days.

(b) Port Fees.

- (i) Wharfage: Notwithstanding and prevailing over any other provision to the contrary in the Tariff or otherwise and in consideration for providing the guarantee set forth in section (c), the passenger wharfage fees due from Disney to the County shall be based on the rates set forth in the Tariff during Fiscal Year 2012/13. Such rate for FY 2012/13 is \$10.38 per each passenger embarkation and each passenger debarkation.

The County may increase the wharfage rate that applies to Disney passengers in an amount equal to any percentage increase otherwise charged to cruise lines in general; provided, however, no such increase shall be in excess of three percent (3%) per annum of the then existing rate chargeable to Disney and such rate shall not be increased more than one time in a twelve month period. Such rate increases shall apply regardless of, and prevail over, any increase in passenger wharfage increases applied to the Tariff.

- (ii) Dockage: Notwithstanding and prevailing over any other provision to the contrary in the Tariff or otherwise and in consideration for providing the guarantee set forth in section (c), the dockage fees due from Disney to the County shall be based on the rates set forth in the Tariff during Fiscal Year 2012/13. Such rate for FY 2012/13 is \$0.32 per gross registered ton.

The County may increase the dockage rate that applies to Disney passengers in an amount equal to any percentage increase otherwise charged to cruise lines in general; provided, however, no such increase shall be in excess of three percent (3%) per annum of the then existing rate chargeable to Disney and such rate shall not be increased more than one time in a twelve month period. Such rate increase shall apply regardless of, and prevail over, any dockage increase applied to the Tariff.

- (iii) Harbor Fee / other Tariff terms: Harbor Fees due from Disney Vessels to the County (per vessel call) shall be those set forth in the Tariff. Other than the dockage and wharfage rate, all other applicable Port Fees due to the County from Disney Vessels shall be as per the Tariff.

- (c) Disney Minimum Annual Guarantee
Commencing Fiscal Year 2012/13 and continuing each Fiscal Year during

the Term, Disney shall have a Minimal Annual Guarantee of no less than 100,000 Passenger Movements through the Port each Fiscal Year. As sole remedy for failure to meet its Minimal Annual Guarantee, DISNEY shall make a Shortfall Payment to the County within thirty (30) days of the end of the Fiscal Year in which the guarantee was not met. Shortfall payments will be based on the then applicable wharfage rates for the given Fiscal Year times the number of passenger moves below the Minimum Annual Guarantee of 100,000 Passenger Movements annually.

(d) Parking Revenues

(i) In consideration of the Passenger Movements that will be generated by Disney, its subsidiaries, divisions and its affiliates during the Term of the Agreement, and the Parking Revenue that will be collected by the County for paying passenger vehicles that park at the Port during the Term of this Agreement, the County shall pay to Disney a parking incentive based upon a fraction of the Parking Revenue collected by the County for those paying vehicles that park at the Port during the Term of this Agreement deemed to carry Disney multi-day cruise passengers (the "Parking Incentive").

(ii) For purposes of this Agreement, Disney's Parking Incentive shall be determined based on the proportion of Disney multi-day cruise embarkations at the Port to total multi-day cruise embarkations at the Port in a given Fiscal Year. Embarkations associated with port-of-call vessels shall not be included in the calculation of the Parking Incentive, nor shall cruise passenger embarkations associated with daily cruises, non-revenue cruises, or cruises to nowhere be included in such calculation. As an example, if in a given Fiscal Year during the Term, Disney's (multi-day cruise passenger or cruises on vessels subject to any other Port related volume incentive and/or Preferential Berthing Agreement) embarkations are ten percent (10%) of the Port's total multi-day cruise passenger embarkations then Disney will receive ten percent (10%) of Parking Revenues collected by the Port in such Fiscal Year. The Port shall remit Parking Revenues to Disney within sixty (60) days of the close of each fiscal quarter, the first fiscal quarter close being December 31, 2012.

As the Parking Incentive is to be based on an annual proportion of Parking Revenues, but paid quarterly (within sixty (60) days of the close of each fiscal quarter during the Term in which Disney Vessels are calling the Port), such quarterly payments shall be subject to an end-of-the-Fiscal Year reconciliation conducted by the County. Disney reserves the right to check said reconciliation

for accuracy. The operational mode and timings of its verifications will subject to the Parties mutual agreement.

4. TERM AND EFFECTIVE DATE

This Agreement shall be effective upon the last to occur of (i) its execution by a duly authorized representative of Disney and (ii) its execution by the County Mayor or his designee after the effective date of a resolution approved by the Board of County Commissioners of Miami-Dade County ("Board") approving this Agreement and authorizing its execution ("Effective Date"), and shall expire at 12:01 am on October 1, 2014 (the "Expiration Date"). Disney shall have the option to extend this agreement for up to two (2) additional terms of one (1) year each upon the same terms business terms in this Agreement, except as provided in Sub-Section 3(a)(ii) above, upon Disney providing notice to the County within one (1) year prior to the termination or expiration of the then-existing term, provided that Disney also provides with its notice a schedule of berthing requests for the entire term of such extension. Absent the execution of such an amendment, neither party shall be obligated to continue under the terms of this agreement beyond its stated Term or (if applicable) properly approved and authorized extended term.

5. PERMITTED USE OF TERMINAL

- (a) No Unlawful or Unauthorized Use. Disney shall not use the Terminal(s) for any unlawful purpose, any use other than a cruise passenger terminal, or any use prohibited by Applicable Laws.
- (b) No Abandonment or Cessation of Service, Exceptions. During the Term, including any renewal term, Disney agrees not to abandon or cease service to the Terminal(s), unless expressly specified and authorized under this Agreement.
- (c) Port and Vessel Registration Requirements. Prior to operating any Disney Vessel from the Terminal(s), Disney must first register such Vessel with the Port and deliver copies of all required vessel certifications, approvals, and operating permits to the Port.
- (d) Terminal Advertising and Promotions. The County shall have the right to advertise and/or promote in the interior and exterior of the Terminal(s) in the County's sole discretion, as long as such Advertising does not interfere with Disney's operations.

6. SECURITY, MAINTENANCE AND REPAIR OF THE TERMINAL(S)

- (a) Terminal Maintenance & Security Responsibility.

- (i) Disney shall have no responsibility or obligation to maintain the Terminal(s), except as provided in this Section 6(a). When using the Terminal(s), Disney shall at all times, at its own cost and expense, keep the Terminal(s) in a clean, orderly, secure, and safe condition, normal wear and tear excepted, and shall be responsible for security of the apron, wharf and interior portions of the Terminal(s) when using the Terminal(s). These responsibilities shall ultimately remain Disney's responsibilities even if Disney elects to exercise its right to retain the County to provided Security Services through one of the Security Companies.
 - (ii) The County shall:
 - a. Provide electricity, water and sewer service to the Terminal(s).
 - b. Maintain, repair and replace, as needed, the electrical, heating, ventilating, air-conditioning, elevators, escalators, mechanical, plumbing, safety systems, wiring systems, carpets, fixtures, furniture, lighting and structural components of the buildings and improvements comprising the Terminal(s) and paint the exterior and interior of the Terminal(s), as necessary, and keep the Terminal(s) in a clean, orderly, secure, safe, and operating condition to accommodate DISNEY's then current fleet throughout the Term.
 - c. Except when Disney is using the Terminal(s), provide all necessary janitorial services in accordance with the County's current practice.
 - d. Make repairs at its own cost and expense to all paved surfaces, all utilities and lighting at the Terminal(s) and the surrounding areas.
 - (iii) Disney shall not make any changes or alterations to the Terminal(s) without the prior written permission of the Port Director.
- (b) Disney solely shall be responsible for complying with all federal, state and local security requirements related to Disney's operations at the Port. Disney agrees to indemnify and hold harmless the County for any security or security-related notice of violation or other fine or penalty of any kind or in any form whatsoever that is based on action or inaction by Disney or its affiliates, employees, contractors, subcontractors or passengers.

- (c) County Rights to Enter Terminal Space. The County, its agents and representatives and federal, state and local law enforcement officers may at all times and without advanced notice, enter the Terminal(s) to view, inspect, and/or show the Terminal(s), or for any other purpose.
- (d) Casualty.
- (i) In the event that any of the Terminal(s) or any portion thereof, is damaged or destroyed by fire or other casualty, or the Port is inaccessible to Disney Vessels or passengers (including without limitation, due to damage or destruction to the Port bridge or waterway), the County shall promptly notify Disney of such an event and repair or remedy the damage or situation to the condition that existed immediately prior to such casualty or provide reasonably suitable temporary alternative accommodations, at the Port's option.
- (ii) In the event of any such casualty that only affects the Terminal(s), the County shall make reasonable efforts to provide alternative berthing and terminal facilities at the Port to enable Disney to continue its operations until the affected Terminal(s) is/are restored.
- (iii) In the event of a casualty, the provisions of this Agreement temporarily shall be suspended and the term of this Agreement shall be extended accordingly until reasonably suitable temporary accommodations are available on the Port.

7. SIGNAGE AT TERMINAL(S)

- (a) The County requires the use of international symbols for all safety and visitor signs (such as elevators, check-in, and safety instructions) and the County agrees to maintain such international signage at the Terminal(s) at all times, at its sole cost and expense.
- (b) Disney shall at all times be permitted to maintain temporary and removable signage inside of a particular Terminal for Disney and the Disney Vessels when Disney is using a particular Terminal provided same complies with the Miami-Dade County Sign Ordinance requirements or its successor as such may be amended from time to time, and all Applicable Laws, has been approved in advance by the Port Director, and is removed by Disney. Disney shall be solely responsible for all costs associated with the design, construction, installation and removal of such signage at the direction of the Seaport.

- (c) Disney acknowledges that the County has entered or may enter into agreements for commercial signs and advertising both within and outside Port terminal(s) and elsewhere on the Port. Disney agrees that this Agreement shall not preclude or in any way affect such commercial sign and advertising agreements, or the County's rights or ability to enter into such agreements in the future.

8. VOLUME INCENTIVE AGREEMENT NOT A LEASE

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

9. COMMITMENT ON INDEMNITY AND INSURANCE

- (a) Indemnification by Disney. Disney agrees to indemnify, protect and hold harmless the County, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, reasonable attorneys' fees, and costs of every kind or description to which the County, its agents or employees may be subjected which are caused by or arise out of, in whole or in part, the reckless or negligent acts or omissions or intentional misconduct of, Disney or its agents, employees, officers or contractors which arise from, grow out of, or are connected in any way with either the occupation and use of the Terminal(s) by Disney or its agents, employees, officers, contractors, subcontractors, invitees or guests under this Agreement or any breach of this Agreement by Disney, except to the extent that such damage, loss or liability is caused by the negligence of, or intentional misconduct of the County or its employees, officers, agents, contractors, subcontractors, invitees or guests. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs be against or sustained by others to whom the County, its agents or employees may become liable. Upon request of the County, Disney shall undertake to defend, at its sole cost and expense, any and all suits brought against the County in connection with the matters specified in this Section.
- (b) Security Contract Option Indemnification. In the event Disney elects to have the County provide it security services as provided in Section 3(a)(v) above, Disney agrees to indemnify and hold the County harmless for any fine, charge, assessment or penalty of any kind or in any form whatsoever that is based on any action, inaction, or omission by Disney or any of its affiliates, subsidiaries, employees, contractors, subcontractors or passengers. Further, Disney agrees to indemnify, protect and hold harmless the County, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind or description (collectively

"Claims") to which the County, its agents, officers or employees may be subjected (1) which are caused by or arise out of any acts or omissions of Disney or any of its agents, employees, officers or contractors, including without limitation Claims based on negligence, fraud, deceptive and unfair trade practices, deceptive advertising, non-disclosure, breach of contract, passenger billing or invoicing, breach of fiduciary duty, intentional torts, or any other type of Claims, or (2) which arise from, are a direct result of, grow out of, or are connected in any way with the County's agreement to provide security services to Disney in accord with Section 3(a)(v) above, except to the limited extent such Claims are based solely on the negligent, grossly negligent or intentional acts or omissions of the County or its employees, officers, or contractors (other than the County's act of entering into this Agreement or the entry into and use of the Security Contracts). This indemnity obligation shall apply regardless of whether such Claims are against or sustained by others to whom the County, its agents or employees may become liable. Upon request of the County, Disney shall undertake to defend, at its sole cost and expense (including payment of all legal fees and costs at all levels, including trial and appellate), any and all Claims against the County in connection with the matters specified in this Section.

- (c) Indemnification by County. The County agrees to indemnify and hold harmless Disney, to the extent and within the limitations of Section 768.28, Florida Statutes, whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any person which exceeds the sum of \$200,000 or any claim or judgments or portions thereof, which, when totaled with all other claims arising out of the same occurrence, exceed the sum of \$300,000, from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence or wrongful act of the County, its agents or its employees acting within the scope of their employment. However, nothing herein shall be deemed to indemnify Disney from any liability or claim to the extent any claim or liability arises out of the negligence, intentional act, omission, negligent performance or failure of performance of Disney, its agents or its employees, or any other unrelated third party. To the extent allowed by Florida law, the Parties agree that the above sovereign immunity limits do not restrict Disney's ability to assert claims against the County for breach of contract based on any alleged breach of any express written terms of this Agreement. The County hereby represents and warrants that it is self-insured and does not maintain private or independent liability insurance that would provide coverage to the County for injury, damage or death claims related to any incident on port property caused by the negligence of the County, its employees, or its contractors, except to the extent that the County's contractors maintain liability insurance naming the County as an additional insured if so required. Nothing herein shall limit the right of

Disney to seek, demand, or claim indemnification or contribution above the above referenced liability limits to the extent such claim or demand may be covered by available insurance.

- (d) No Indemnification by County in Connection with the Security Service Option. The County does not agree to indemnify Disney for any Claims to which Disney, its agents or employees may be subjected which are caused by, arise out of, arise from, grow out of, or are connected in any way with either the County's agreement to provide security services to Disney in accord with Section 3(a)(vi) above, or the County's entry into and use of any Security Contract with any Security Company.
- (c) No Actions to Invalidate Insurance Policies of County. Disney covenants that it will not permit to be done on or about or in the proximity of the Terminal(s), anything which shall invalidate the County's fire, casualty, liability or other insurance policies, if any, with respect to the Terminal(s) or violate any terms thereof, or increase the premiums payable therefore.
- (d) Environmental. Disney shall comply with all federal, state and local environmental laws and regulations applicable to the use, storage and handling of hazardous substances, hazardous materials, industrial wastes, hazardous wastes and wastes generated on or by Disney Vessels, in, on, or near the Terminal(s). Disney shall indemnify and hold harmless the County, its officers, employees, agents, successors and assigns from, and assume liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, costs, charges, and expenses (including, but not limited to, reasonable attorneys' fees, environmental response and remediation costs and the costs and expenses of appellate action, if any) imposed on, incurred by or asserted against the County by any party including, without limitation, governmental entities, to the extent it arises out of, is in connection with or relates in any way to any environmental condition or contamination or any violation of applicable Federal, state or local environmental law with respect to the Terminal(s), caused or created in whole or in part by Disney or its employees, officers, agents or guests.
- (e) Insurance Coverage Required. Disney shall procure and maintain throughout the Term, at its sole cost and expense, insurance coverage as required below. Disney shall furnish to Seaport Department, 1015 North America Way, Miami, Florida 33132-2081, Certificates of Insurance which indicate that the insurance coverage has been obtained which meet the requirements as outlined below:
 - (i) Workers' Compensation Insurance. Said insurance shall cover all persons employed by Disney (other than crew members of the Disney Vessels) or any Disney affiliate in and about the Terminal Area including coverage required under the United States

- Longshore and Harborworkers Compensation Act (if applicable) and/or as required by Florida Statute 440 or any successor thereto.
- (ii) Crew Insurance. Said insurance shall cover all persons employed as crew of the Disney Vessels under a Protection and Indemnity Policy or a Marine Employers Liability Policy to provide coverage for liability under 46 USC Section 688, (The Jones Act) and under General Maritime Law.
 - (iii) Commercial General Liability Insurance. With respect to the use and activities of Disney and its employees, contractors, agents, customers and guests in and around the Terminal Area, Commercial General Liability Insurance must be in place on a comprehensive basis in an amount not less than \$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 Disney thereon. This coverage must also include but not be limited to embarkation and disembarkation of Disney Vessels. Miami-Dade County must be shown as an additional named insured with respect to this coverage.
 - (iv) Pollution Liability Coverage. Disney shall maintain at its sole cost and expense for Disney Vessels used in connection with this Agreement, operation pollution liability coverage sufficient to satisfy all applicable requirements of CERCLA and OPA-90.
 - (v) Vessel Liability Insurance (Hull and Machinery). Covering all Disney Vessels used in connection with this Agreement, whether owned or chartered, in an amount not less than \$10,000,000 per occurrence for hull and property damage.
 - (vi) Automobile Liability Insurance. Covering all owned, non-owned and hired vehicles used in connection with Disney's operations in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.
- (f) Insurance Policy Requirements, Generally. Except for Protection and Indemnity Insurance and Hull and Machinery Insurance, all insurance policies required under subpart (e) above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "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.

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

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

10. EXCLUSIVE VENUE AND CHOICE OF LAW

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in Miami, Miami-Dade County, Florida. This provision shall not apply to matters in regard to which exclusive jurisdiction is conferred upon by law upon the Federal Maritime Commission. Disney hereby consents to personal jurisdiction in the courts of the State of Florida or federal courts venued in Miami-Dade County, Florida.

11. NO ORAL CHANGE OR TERMINATION

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

12. COMPLIANCE WITH APPLICABLE LAWS

Throughout the Term of this Agreement, Disney shall comply with all Applicable Laws relating to this Agreement, Disney's use of the Terminal(s) and Disney's use of the Port. Throughout the Term, the County shall also comply with all Applicable laws in connection with this Agreement.

13. NUISANCE

Disney shall not commit any nuisance on the Port or in the Terminal(s) or do or permit to be done anything that may result in the creation or commission of a nuisance on the Port or in the Terminals.

14. REPRESENTATIONS

Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms. The County represents that the execution, delivery and performance by County of this Agreement complies with all laws, rules, regulations and orders applicable to County; and that County has full authority to enter into and perform this Agreement in accordance with its terms.

15. NO EXCLUSIVE REMEDIES

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

16. FAILURE TO EXERCISE RIGHTS NOT A WAIVER

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

17. EVENTS OF DEFAULT

- (a) Disney shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:
 - (i) Disney fails to timely comply with any payment obligation arising hereunder which is not cured within thirty (30) days from Disney's receipt of written notice from the County of failure to meet such payment obligation.

- (ii) Disney fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within sixty (60) days after receipt of written notice from the County specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days, Disney shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently prosecutes such cure to completion.
- (iii) If Disney shall be adjudicated bankrupt, or if Disney shall make a general assignment for the benefit of creditors, or if in any proceedings based upon the insolvency of Disney are commenced and not dismissed within sixty (60) days of filing or a receiver is appointed for all the property of Disney which is not dismissed within sixty (60) days of such appointment.

(b) The County shall be in default under this Agreement if the County fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within sixty (60) days after receipt of written notice from Disney specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within sixty (60) days and such breach does not unreasonably interfere with the operations of Disney at the Port, the County shall not be in default if it commences to cure such breach within said sixty (60) day period and diligently and expeditiously prosecutes such cure to completion so as to minimize any interference with Disney's operations.

18. REMEDIES UPON DEFAULT AND TERMINATION

Subject to Section 3(c) of this Agreement, upon the occurrence of a default under this Agreement not cured within the applicable grace period, the non-defaulting party may pursue all remedies available at law or in equity, including, without limitation, termination or specific performance of this Agreement.

19. PORT BOND OBLIGATIONS

Notwithstanding and prevailing over any other provision of this Agreement, the County reserves the right to increase the rates contained in this Agreement herein at a percentage increase no greater than that applied to other multiple-day cruise line operators upon a reasonable determination by the County's independent Financial Advisor that Port revenues in the aggregate will not be sufficient to meet the rate covenant and/or additional bonds tests on all outstanding Seaport bonds obligations or any bond coverage requirements contained therein. The County shall give Disney thirty (30) days written notice of its intent to increase the rates pursuant to this provision of the Agreement, and shall make reasonable efforts, within the limitations of the applicable bond documents, to provide Disney more than thirty (30) days notice. Disney shall have the right to terminate this Agreement by written notice to the County within thirty (30) days of the date of such notice. If Disney does not terminate this Agreement within the thirty (30) day period, the increased rates shall become effective immediately and Disney

shall have no other recourse with respect to such increase.

20. ATTORNEY FEES

In the event an action is commenced by one Party against the other Party to this Agreement and arises out of this Agreement, each party shall bear their own attorney fees and costs.

21. CONFLICT OF PROVISIONS

If there is any conflict between the provisions of this Agreement and the provisions of an addendum, schedule, exhibit, and/or purchase order attached to this Agreement, the provisions of this Agreement shall prevail.

22. FORCE MAJEURE; INABILITY TO PERFORM

County and Disney shall not be liable for any failure, delay or interruption in performing their individual obligations hereunder due to causes or conditions beyond the reasonable control of the County, Disney, and their agents, employees, contractors, subcontractors, and guests including, without limitation acts of God, an act of state or war, public emergency, strikes, boycotts, picketing, work stoppages or labor troubles of any other type (whether affecting County, Disney, its contractors or subcontractors), providing that the party claiming the existence of a force majeure event delivers written notice to the other party of such event within fifteen calendar days of the commencement of such event.

23. SEVERABILITY

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

24. ASSIGNMENT

The term of this Agreement shall inure to the exclusive benefit of Disney and is binding upon Disney. Disney will not transfer, assign or pledge this Agreement or any rights hereunder without the prior written consent of the County.

Notwithstanding the foregoing, Disney may transfer, assign or pledge this Agreement to an affiliate of Disney without consent upon written notice to County, provided, however, that the intended recipient of such assignment, transfer or pledge first provides an unqualified written assumption of all Disney's payment and other obligations hereunder to the County stating that it will be jointly and severally responsible for all of such Disney's obligations to the County hereunder along with Disney. For the purposes

of this Agreement, an assignment shall not be deemed to occur upon a transfer of stock or interest in among Disney's current shareholders.

This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties, but Disney's obligations under Section 9 (Commitment on Indemnity and Insurance) of this Agreement shall also remain in full force and shall remain binding on Disney after any assignment by Disney.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

25. OBLIGATIONS SURVIVING TERMINATION HEREOF

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

26. LACK OF AGENCY RELATIONSHIP

Nothing contained herein shall be construed as establishing an agency relationship between the County and Disney and neither Disney nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the County for any purpose hereunder, and the County, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of Disney or its subsidiaries, divisions or affiliates.

27. NON SOLICITATION

The County agrees that it will not, and will direct its agents, representatives or employees not to, solicit any employee of Disney or any of its affiliates to become employed by the County or any of its affiliates, without the prior written consent of Disney.

28. NOTICES

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing, delivered by personal service, or shall be sent by telex, telecopy, telegram, United States Registered or

Certified Mail, return receipt requested, postage prepaid, to the parties at the addresses and telecopy numbers listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

FOR COUNTY:

Bill Johnson
Director, Seaport Department
Miami-Dade County
1015 North America Way
Miami, Florida 33132-2081
Telephone Number: 305-371-7678
Telecopy Number: 305-347-4852

with a copy to:

County Attorney
111 Northwest 1st Street
Suite 2810
Miami, Florida 33128
Telephone Number: 305-375-5151
Telecopy Number: 305-375-5634

FOR DISNEY:

Jeff Swindell
Vice President Finance
210 Celebration Place
Celebration, FL 34747

with a copy to:

WDW Legal Dept.
1375 Buena Vista Dr.
Lake Buena Vista, FL 32830
Attn: Jim Stockton
Telecopy/Facsimile Number:
407-828-4311
Email: jim.stockton@disney.com

29. ACKNOWLEDGMENT BY DISNEY

- (a) Exclusive Franchise Arrangements and County Contracts. Disney acknowledges that the County may be a party to exclusive arrangements for the provision of various goods and services, including but not limited to ATMs, pay telephones, phone cards and vending machines at the Port. Accordingly, Disney shall not install, cause to be installed or permit to be installed pay telephones, ATMs, vending machines or any other device or service for which the County has a contract or agreement in or around the Terminal(s) by any person or entity other than the County, absent the

consent of the County and the relevant party with whom the County has so contracted. The County has installed or may install at its expense pay telephones, ATMs, vending machines, signage, or other devices in the Terminal(s), and shall be entitled to all revenue derived therefrom.

- (b) Furniture. Disney acknowledges that the furniture and fixtures located in the Terminal(s) and terminal seating areas, are the property of the County. Disney shall not remove or otherwise alter such furniture and fixtures without the express written consent of the County.
- (c) Concessions. Disney acknowledges that the County has or may have concession agreements (such as car rental, retail shops or kiosks, ferry operations, etc.) at the Terminal(s). This Agreement shall not affect such concession agreements.
- (d) Notwithstanding and prevailing over any other provisions in this Agreement, Disney acknowledges that the County has the sole and exclusive right to any and all retail establishments, advertising, signage or space, or any other revenue-generating activity, in, on or about the Terminal(s).

30. COUNTERPARTS

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

31. PROMOTION

Except as otherwise permitted in this Agreement or under another written grant or other written license by Disney or one of its affiliated companies, including, without limitation, Marvel Enterprises, Inc. ("Marvel"), the County shall acquire no right under this Agreement to use, and the County shall not use, the name "Disney" (either alone or in conjunction with or as part of any other word or name), any fanciful characters, designs, trademarks, trade names, or copyrighted works of The Walt Disney Company or any of its related, affiliated or subsidiary companies (including, without limitation, Marvel) in any advertising, publicity, or promotion; to express or imply any endorsement by Disney of the County's services; or in any other manner whatsoever (whether or not similar to uses hereinabove specifically prohibited).

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

Signed, sealed and delivered

MIAMI-DADE COUNTY,

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

Signed, sealed and delivered in the presence of:

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

By: _____
Carlos A. Gimenez
Mayor

ATTEST:
CLERK OF THE BOARD

Approved as to legal form and sufficiency:

By: _____
Deputy Clerk

Signed, sealed and delivered

MAGICAL CRUISE COMPANY
LTD.

ATTEST:

By: 
Karl Holz
President

By: _____

EXHIBIT A
TERMINAL BERTH SCHEDULE

FY 2012/13

December 2012

December 23
December 30

January 2013

January 5
January 10
January 14
January 19
January 24
January 28

February 2013

February 2
February 7
February 11
February 16
February 21
February 25

March 2013

March 2
March 7
March 11
March 16
March 21
March 25
March 30

April 2013

April 4
April 8
April 13
April 18
April 22
April 27

May 2013

May 2
May 6

FY 2013/14

October 2013

October 18
October 19
October 20
October 25
October 27

November 2013

November 1
November 6
November 10
November 15
November 20*
November 24
November 29

December 2013

December 4
December 8
December 13
December 18
December 22
December 27
December 30

January 2014

January 1
January 5
January 10
January 15
January 19
January 24
January 29

February 2014

February 2
February 7
February 12
February 16
February 21
February 26

March 2014

March 2
March 7
March 12
March 16
March 21
March 26
March 30

April 2014

April 4
April 9
April 13
April 18
April 23
April 27

May 2014

May 2
May 7
May 11
May 16
May 19

*Terminal F not available;
alternate PortMiami
terminal to be provided