

OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Agreement") is effective as of November 1, 2018 (the "Effective Date"), by and between the **Galveston Port Facilities Corporation**, a Texas nonprofit corporation ("Corporation") and **Magical Cruise Company, Limited, Doing Business as Disney Cruise Line**, a U.K. Company ("Operator").

WHEREAS, the Corporation is a local government corporation formed under the Texas Transportation Code, and has entered into a lease, as tenant, with the Board of Trustees of the Galveston Wharves ("Wharves"), a separate utility of the City of Galveston, Texas ("City") for the cruise terminal adjacent to Pier 27 ("Terminal No. 2") at the Port of Galveston, Galveston County, Texas (the "Port"); and

WHEREAS, Corporation and Operator are authorized to enter into this Agreement;

WHEREAS, the Corporation seeks to encourage, expand, and continue cruise ship operations at the Port and Operator conducts passenger cruise vessel operations dedicated solely to transporting and entertaining passengers on a round-trip basis originating and terminating at the Port ("Cruise Operations") and seeks to continue conducting those operations from the Port; and

WHEREAS, Corporation and the Operator desire to enter into this Agreement in order to document the terms of their business relationship.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Corporation and Operator agree to the following terms, covenants, and conditions:

ARTICLE 1 – ASSIGNMENT OF BERTH AND TERMINAL USE

Section 1.01 – Berth Description. Corporation grants to Operator, and Operator accepts from Corporation, effective as of the Effective Date, a non-exclusive license to conduct Cruise Operations either directly or through its subsidiaries, divisions, or affiliates (including its Disney Cruise Line brand) at Pier 27 at the Port (the "Berth") as outlined in Exhibit A, and a non-exclusive license to embark and disembark passengers through Terminal No. 2 in connection with Cruise Operations. The only vessel that may be docked at the Berth is a vessel which, in Corporation's reasonable determination, is able to conduct Cruise Operations at the Port without the necessity of any modifications to Terminal No. 2, other than periodic capital improvements and regular maintenance as contemplated by Section 8.04 of this Agreement (a "Vessel").

Section 1.02 – Cruise Schedules. As used in this Agreement, a "Homeport Operation" means the origination of a Vessel from the Port for Cruise Operations. Operator shall conduct no less than the following number Homeport Operations during each Operating Year (defined below) of the Term of this Agreement:

Operating Year

Minimum Number of Homeport Operations Per Year

11/1/2018 – 10/31/2019	10
11/1/2019 – 10/31/2020	14
11/1/2020 – 10/31/2021	20
11/1/2021 – 10/31/2022	22
11/1/2022 – 10/31/2023	24
11/1/2023 – 10/31/2024 and subsequent years	26

As used in this Agreement, “Operating Year” means the twelve (12) month period beginning on the Effective Date and ending on the day before the first anniversary of the Effective Date, and each subsequent 12-month period during the Term thereafter. Operator must continuously conduct Homeport Operations using no less than one Vessel, which must be a vessel of class equal to or larger than a *Magic/Wonder* Class vessel. The approved cruise schedules for each Vessel (“Cruise Schedules”) for each Vessel conducting Homeport Operations from Terminal No. 2 are attached hereto as Schedule 1. All future Cruise Schedules during the Term of this Agreement must be agreed to in writing by Corporation and Operator, and will incorporate the terms and conditions of this Agreement, and are subject to any pre-existing reservations for the Berth for any specified date and time requested by Operator. Operator acknowledges that Corporation has granted Carnival Corporation (“Carnival”) and Royal Caribbean Cruises Ltd. (“RCL”) a preferential right to the use of the Berth and Terminal No. 2 to conduct Cruise Operations. However, Corporation may continue to market the use of the Berth and Cruise Terminal No. 2 by any other cruise line or vessel operator for calls that do not conflict with the Cruise Operations of Carnival and RCL. Corporation will not enter into an agreement with any other cruise line or vessel operator other than Carnival and RCL if such scheduling prevents Operator from operating any Vessel from Terminal No. 2 (or a substitute facility described in Section 1.05 below) on any day designated as a Cruise Day and during which Operator is performing Cruise Operations according to any approved Cruise Schedule (a “Cruise Day”).

Section 1.03 – Preferential Rights. Corporation will provide Operator, either directly or through its subsidiaries, divisions, or affiliates (including its Disney Cruise Line brand), a preferential right to the use of the Berth and Terminal No. 2 to conduct Cruise Operations on each Cruise Day, subject to the following provisions:

- (a) Prior to the commencement of cruise operations at Wharves’ and Corporation’s planned Cruise Terminal No. 3, Operator will have the preferential right to use the Berth and Terminal No. 2 and to conduct Cruise Operations, up to or above the required minimum, on days other than Saturdays and Sundays. Corporation will provide Operator with a right of first refusal for any Saturday or Sunday on which Carnival or RCL holds first priority, but will not use Terminal No. 2 or the Berth, if doing so will not violate Corporation’s Operating Agreements with Carnival or RCL.

- (b) After cruise operations commence at Wharves' and Corporation's planned Cruise Terminal No. 3, Operator will have the preferential right to use the Berth and Terminal No. 2 and to conduct Cruise Operations, up to or above the required minimum, on all days other than Fridays and Saturdays. Corporation will then provide Operator with a right of first refusal for any Saturday on which Carnival holds first priority, but will not use Terminal No. 2 or the Berth.
- (c) After cruise operations commence at Wharves' and Corporation's planned Cruise Terminal No. 3, Corporation must provide written notice informing Operator of any Friday or Saturday subject to Operator's right of first refusal within seven (7) days of receiving written notice that Terminal No. 2 and the Berth will not be used by Carnival on a particular Saturday or Sunday. Operator must provide written notice of its intent to exercise its right of first refusal within seven (7) days of receiving Corporation's notice of Friday or Saturday availability. Should Operator choose to exercise its right of first refusal, the Cruise Operations performed by Operator on that Saturday shall be subject to the terms and conditions of this Agreement.
- (d) Operator will submit proposed Cruise Schedules at least 18 months prior to the commencement of each Operating Year (each, a "Proposed Schedule"). Each Proposed Schedule will be subject to approval by Corporation, which approval will not be unreasonably withheld.
- (e) Each Proposed Schedule must include: (i) each date and time during which the Operator intends to conduct Cruise Operations at the Berth; (ii) the name of the Vessel to be operating from the Berth; and (iii) the size and passenger capacity of each such vessel. The Corporation must provide written notice approving or disapproving any Proposed Schedule within thirty (30) days of receipt thereof. Corporation may disapprove any portion of a Proposed Schedule that includes a date or time that conflicts with any pre-existing reservation for the Berth made by Corporation in accordance with the terms of Corporation's Operating Agreements with Carnival and RCL. All Proposed Schedules approved by the Corporation will be subject to the terms and conditions of this Agreement.
- (f) Corporation may continue to market the use of and allow ships of other cruise lines or vessel operators to utilize the Berth and Terminal No. 2 for calls that do not conflict with Operator's use of the Berth and Terminal No. 2 according to any approved Cruise Schedule.
- (g) Operator will be entitled to schedule its Vessels at the Berth on the dates and times listed on the approved Cruise Schedule and in accordance with the provisions of this Agreement.
- (h) Operator may substitute the actual Vessels that call on any Cruise Day, subject to the other provisions of this Agreement.

Section 1.04 – Call Guarantee. Operator guarantees that Operator will conduct the minimum number of Homeport Operations per year as set out in Section 1.02 above. Failure of Operator to meet this guarantee will not relieve the Operator from any fees, rates, or charges that Operator would be responsible for under this Agreement.

Section 1.05 – Temporary Substitution of Space. Notwithstanding any provision of this Agreement to the contrary, Corporation may, when the Berth or Terminal No. 2 are unusable because of emergency, casualty, maintenance or repairs, temporarily substitute another wharf or berth for the Berth described in Section 1.01 if the substituted wharf or berth includes approximately the same linear and square footage of space as the Berth. Operator will not have a preferential right to use the Berth and Terminal No. 2 until the emergency has resolved and/or the Berth and Terminal No. 2 are both usable. Corporation must, if possible, provide written notification of any substitution to Operator at least ten (10) days before Operator is required to occupy the substituted wharf or berth. Any wharf or berth substituted for the Berth described in Section 1.01 will be considered the Berth for all purposes under this Agreement during the period of time required to address the emergency and/or make Terminal No. 2 and the Berth usable, and Operator's license to use such substituted wharf or berth is subject to all terms and conditions of this Agreement.

Section 1.06 – Cruise Day Temporary Office Use. Operator has a non-exclusive license to use, only on Cruise Days, the office space in Terminal No. 2 designated in Exhibit B, attached hereto, in order to conduct administrative and clerical activities relating to Cruise Operations, at no cost to Operator. This license may not be transferred or assigned without Corporation's prior written consent.

Section 1.07 – Storage Area. Operator also has a license to use, at no cost to Operator, one 20'x20' storage area in Terminal No. 2 for each Vessel conducting Homeport Operations at the Berth ("Storage Area"). The location of the Storage Area will be determined by agreement of the parties at least sixty (60) days prior to the Effective Date. Corporation has no responsibility for the safety, security, or condition of any property placed in the Storage Area. Any property of Operator or its passengers, contractors, suppliers, stevedores, or vendors placed or stored in or about the Port in any area other than the Storage Area will be charged storage rates in the amounts and at the times described in Wharves' Tariff Circular No. 6, as amended (the "Tariff") and Corporation will have no responsibility for the safety, security, or condition of that property.

Section 1.08 – Nature of Rights Granted. Operator acknowledges that (i) the rights granted to Operator hereunder are in the nature of a license, (ii) this Agreement is not a lease, and (iii) no possessory interest or estate in real property is created by this Agreement.

Section 1.09 – Terminal Security. On each Cruise Day Corporation will keep Terminal No. 2 and the Berth in a clean, orderly, secure, and safe condition free of rubbish and trash and will be responsible for the security at Terminal No. 2 and the adjacent apron and wharf, and east and west entrance areas for persons and vehicles authorized and required to service any Vessel. All employees, contractors, suppliers, or vendors of Operator that enter any property under the management or control of the Corporation or Wharves must (i) comply with all laws, ordinances,

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rules, regulations, and codes of the United States, the State of Texas, the City, the Wharves or any other lawful authority having jurisdiction over the Berth, Terminal No. 2, or other property under the management and control of Wharves, and (ii) abide by all security requirements of Corporation and Wharves and applicable provisions of the Tariff, including but not limited to insurance requirements.

Section 1.11 – Relocation. Notwithstanding any provision of this agreement to the contrary, at any time during the Term (defined below), Corporation and Operator may mutually agree to relocate Operator to other property at the Port to be used as the Berth and Terminal No. 2 if, in the parties reasonable determination, the property to which Operator will be relocated contains approximately the same or more square feet of space and provides the same or similar advantages as provided by the Berth and Terminal No. 2 described in Section 1.01. If relocation is required, Corporation must provide written notification of any such relocation to Operator at least sixty (60) days before Operator is required to relocate to the substituted space. Corporation must pay all of Operator’s reasonable costs and expenses associated with Operator’s relocation to the substituted space. Any property substituted for the areas described as the Berth and Terminal No. 2 in Section 1.01 above will be considered as the Berth and Terminal No. 2 for all purposes under this Agreement beginning on the date it is first used by Operator, and its use by Operator is subject to all terms and conditions of this Agreement.

After Operator is relocated and begins operations from the substituted space, the property formerly used by Operator will no longer be considered the Berth and Terminal No. 2, Operator will have no right of use therein, and such property will be treated as if it had been surrendered by Operator under Section 7.01 of this Agreement. In addition, the provisions of Article 10 and Sections 7.03, 16.09, 16.25, and 16.29 of this Agreement, as well as any other provisions that expressly survive the termination of this Agreement, will continue to apply to the Berth and Terminal No. 2 with respect to the period of time it was used by Operator.

ARTICLE 2 – TERM OF AGREEMENT

Section 2.01 – Term. The Term of this Agreement includes the Primary Term and any property exercised Renewal Term, as defined below.

Section 2.02 – Primary Term. This Agreement commences on the Effective Date and terminates on the day before the tenth anniversary of the Effective Date (the “Primary Term”), unless terminated or extended pursuant to the provisions of this Agreement. At end of the first anniversary, Corporation will have right to extend for two additional five year periods.

Section 2.02 – Renewal Term. As long as all fees, charges, and other sums payable by Operator under this Agreement (collectively, “Fees”) are current and Operator is not in default in the performance of its covenants under this Agreement, Operator has the option to renew this Agreement for two additional five-year periods (each known as a “Renewal Term”) to commence on the day following the expiration of the Primary Term or any preceding Renewal Term, as applicable. In order to exercise each option to renew:

1. Operator must deliver written notice of its intent to exercise its option to renew to Corporation at least six (6) months prior to the expiration of the Primary Term or preceding Renewal Term.
2. Corporation and Operator must agree on all Fees to be paid by Operator during the upcoming Renewal Term, at least ninety (90) days prior to the expiration of the Primary Term or preceding Renewal Term.

If either requirement set out in this Section 2.02 does not occur, then this Agreement will terminate at the end of the Primary Term or current Renewal Term.

Section 2.03 – Holding Over. If Operator continues operations at the Berth after the termination of this Agreement, such use of the Berth is governed by all the terms, covenants, and conditions contained in this Agreement, except that (i) the Fees to be paid by Operator hereunder will be increased to 150% of the Fees payable by Operator immediately prior to termination and (ii) the license herein granted may be revoked by the Corporation at any time. No holding over by Operator will extend the Primary Term or any properly exercised Renewal Term.

Section 2.04 – Approval by Regulatory Authorities. If this Agreement or any amendments or modifications thereto are required to be submitted to the Federal Maritime Commission or other governmental agency (the “Agency”) pursuant to 46 U.S.C. App. § 1704, then the Effective Date of this Agreement is the date as designated by the Agency, or, if the Agency declines to designate a date, the Effective Date is as set forth above.

ARTICLE 3 – FEES

Section 3.01 – Commencement of Fees. Operator’s obligation to pay Fees under this Agreement commences on the Effective Date. Fees include, but are not necessarily limited to, the charges described in this Article 3.

Section 3.02 – Dockage. Operator must pay Corporation dockage charges (“Dockage”), as set forth in in the Tariff, as it may be amended from time-to-time.

Section 3.03 – Passenger Wharfage. During the Operating Years, Operator must pay Corporation wharfage charges of \$7.50 per passenger for embarkation at the Port, \$7.50 per passenger for disembarkation at the Port, and \$10.50 per passenger with respect to any passenger who arrives on and leaves with a Vessel docking at the Berth without embarking or disembarking at the Port (“Passenger Wharfage”). Operator must provide Corporation on request copies of its passenger manifests in order to verify and audit Passenger Wharfage charges owed by Operator under this Agreement.

Beginning on the first day of the second Operating Year, if exercised, Passenger Wharfage will be adjusted on that date and on each anniversary of such date (each an “Adjustment Date”) to reflect in part adjustments in the Consumer Price Index for All Urban Consumers (CPI-U) for Houston-Galveston-Brazoria, Texas, All Items (1982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor (the “Index”), or such other economic index

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as the parties may agree to use as a reference base as provided herein. On each Adjustment Date, Passenger Wharfage will each be escalated by the greater of (i) 3% or (ii) the product of the Passenger Wharfage in effect the day before the Adjustment Date multiplied by a fraction, the numerator of which is the Index number for the last reporting period before the Adjustment Date and denominator of which is the Index number for the last reporting period before (x) the Effective Date (with respect to the first adjustment of those fees) or (y) the immediately preceding Adjustment Date (with respect to each subsequent adjustment), whichever is applicable. Corporation will provide Operator with notice of each adjustment to Passenger Wharfage and the calculation of the adjustment no later than thirty (30) days after each Adjustment Date.

Section 3.04 – Cargo Wharfage. Operator must pay Corporation cargo wharfage charges (“Cargo Wharfage”) as set forth in the Tariff, as it may be amended from time to time. Notwithstanding any contrary provision in the Tariff, Operator will not be required to pay Cargo Wharfage with respect to any items or materials (i) consumed onboard or incorporated into the Vessel, such as fuel, water, ship’s spares, ship’s stores or provisions, or (ii) generated or produced by the consumption of ship’s stores or provisions, such as garbage and other refuse.

Section 3.05 – Port Security Fee. Operator must pay Corporation a port security fee (“Port Security Fee”), in an amount equal to the applicable Port Security Fee per passenger, whether that passenger embarks or disembarks or whether no embarkation takes place, per Vessel call at the Port as set forth in the Tariff.

Section 3.06 – Services to be Provided or Obtained by Operator. Operator will perform or cause to be performed the following services with respect to its Cruise Operations:

- (a) Stevedoring;
- (b) Pilot services;
- (c) Terminal security services;
- (d) Providing water, including hook-ups; and
- (e) Line handling.

If Corporation pays for the services described in this Section 3.06 on Operator’s behalf, Operator will pay Corporation the charges and abide by the rules and regulations for each of these services as set forth in the Tariff, payable in the manner described in Section 3.09 below. Corporation and Operator agree that persons or entities providing said services are not agents or employees of Corporation or Wharves, and neither Corporation nor Wharves shall be liable in any way for any claims relating to said persons’ or entities’ performance (or failure to perform) services.

Corporation reserves the right to stop paying for the services described in this Section 3.06 on Operator’s behalf, provided that Corporation shall give Operator at least 90 days’ written notice of its intent to stop paying for said services, specifying the date by which Operator must arrange to pay for said services directly.

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Section 3.07 – Passenger Fees. “Passenger Fees” include the fees and charges set out in Schedule 3.04, attached hereto, for the first Operating Year. For each subsequent Operating Year, Corporation and Operator shall negotiate the amount of the Passenger Fees to be paid during the subsequent Operating Year and execute an Amended Schedule 3.04 setting out the Passenger Fees for the subsequent Operating Year, on or before the July 1 of the current Operating year. The Amended Schedule 3.04 shall also state (1) the Annual Minimum defined in Section 3.08 below and (2) the calculations for paying Passenger Fees set out in Section 3.09 below, for the subsequent Operating Year.

Section 3.08 – Guaranteed Minimum Annual Passenger Fees. The minimum Passenger Fees to be paid by Operator to Corporation during the first Operating Year (the “Annual Minimum”) is \$1,100,000.00, as shown on Schedule 3.04 attached hereto. Corporation and Operator shall negotiate the Minimum Annual Passenger Fees to be paid by Operator to Corporation during each subsequent Operating Year of this Agreement on or before July 1 of each year. At the end of each Operating Year, if the total Passenger Fees actually paid by Operator falls below the Annual Minimum, Corporation will invoice Operator in an amount by which the Annual Minimum exceeds the sum of (1) the total Passenger Fees actually paid by Operator during the Operating Year in issue plus (2) the total consideration collected by Corporation for items set out in Schedule 3.04 from other cruise lines whose performance was obtained solely through the efforts of Operator for use of the Berth and/or Terminal No. 2 on the dates and time when Operator failed to dock a Vessel at the Berth in accordance with the Cruise Schedule then in effect (each a “Replacement Cruise”). Operator must pay the invoice within thirty (30) days following receipt thereof. Operator shall use its best efforts to schedule such Replacement Cruises in order to mitigate the amounts payable by Operator as a result of its failure to meet the Annual Minimum.

Section 3.09 – Method of Payment of Fees and Charges. Corporation will invoice Operator directly for all amounts owed by Operator to Corporation. Corporation’s invoices will include the Vendor ID number provided as a part of Corporation’s registration in Operator’s Finance and Accounting System. Corporation’s invoices will be paid directly by Operator within 30 days of receipt of each invoice. Unless otherwise specified in this Agreement, all charges and fees are payable to Corporation in the same manner as would apply to Wharves in the Tariff.

Section 3.10 – Delinquency. All amounts payable under this Agreement that are not paid when due bear interest from the date thereof until paid at the lesser of (i) the rate contained in the Tariff or (ii) the maximum nonusurious rate allowed by law.

Section 3.11 – Extraordinary Fee or Expense Increases. Notwithstanding any provision in this Article to the contrary, if state or federal law imposes on Wharves or Corporation any charges, fees, or taxes, or mandates the expenditure of funds for security or other reasons, relating to cruise operations at ports in the United States, or Corporation incurs extraordinary expense in the provision of services or payment of costs under this Agreement and such expenses cannot be funded by other sources, Corporation may immediately raise the Fees applicable to Operator to cover, on a pro-rated basis, such expenses.

ARTICLE 4 – TARIFFS AND OTHER CHARGES

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Wharves has the full right and power to assess and collect all charges published in its Tariff against any commodities moving over, or vessels berthing at, the Berth, and no such charge may be assessed or collected by Operator. Wharves has the right to collect all switching charges on rail cars moved to or from the Berth or Terminal No. 2. This Agreement covers only the Berth and Terminal No. 2 and does not give Operator any right or privileges to the aprons, slips, channel, or the property adjacent to the Berth or Terminal No. 2 except as expressly herein provided, and the usual and customary Tariff charges will accrue against and be paid by Operator thereon, the same as if there were no Agreement. Except as specifically provided herein to the contrary, Operator must strictly comply with all Tariff provisions and Wharves' rules and regulations governing the Port. Corporation and Operator acknowledge their intent that this Agreement does not delegate to Operator any governmental powers or duties vested in Corporation of Wharves. To the extent that any provision of this Agreement is alleged or construed to grant to Operator any power to exercise a governmental or legislative function of Corporation or Wharves, including without limitation the authority to (i) fix and levy dockage or wharfage, (ii) establish and enforce rules and regulations in the operation of the Berth or Terminal No. 2, or (iii) maintain and publish rates and charges relating to the operation of the Berth or Terminal No. 2 such power will be ineffective until specifically approved in writing by Corporation and Wharves.

ARTICLE 5 – IMPOSITIONS

Section 5.01 – Impositions. As additional Fees payable during the Term, Operator will pay all Impositions as and when they become due provided (i) that such Impositions are chargeable on the same basis to all multiple night cruise lines that conduct Cruise Operations at the Port and (ii) that nothing herein shall be construed as requiring Operator to pay Dockage, Passenger Wharfage, Port Security or Cargo Wharfage in amounts greater than the amounts specific in Article 3 above. The term “Impositions” means all taxes, assessments, use and occupancy taxes, excises, levies, license and sales and permit fees and taxes, and other charges by any public authority, general or special, ordinary or extraordinary, foreseen or unforeseen, or any kind or nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed, or imposed by any public authority upon, or which accrue or become due or payable out of or on account of, Operator's operations at the Berth or Terminal No. 2 or any part thereof, the appurtenances thereto, or the sidewalks, streets, or other public ways adjacent thereto, for any use or occupation of the Berth or Terminal No. 2, and such franchises, licenses, and permits as may be appurtenant to the use of the Berth or Terminal No. 2, or any documents to which Operator is a party that creates or transfers an interest in the Berth or Terminal No. 2. If any new Imposition is enacted which, in Operator's opinion, reasonably exercised, could have a material adverse effect (\$1 million or greater) on Operator (the “Adverse Imposition”) and such effect could be avoided or reduced, in whole or in part, by calling at another port, Operator shall have the right to terminate this Agreement without liability upon no less than thirty (30) days' notice to Corporation (the “Adverse Termination”). Written notice of the Adverse Termination shall be delivered by Operator to Corporation within thirty (30) calendar days after Operator's actual knowledge of the occurrence of an Adverse Imposition.

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Section 5.02 – Contest of Impositions. Operator may, in good faith at its sole cost and expense contest Impositions and Operator is obligated to pay the contested amount only when finally determined to be due, unless otherwise required by law.

Section 5.03 – Payment by Corporation. Subject to the right of the Operator to contest Impositions, as provided for in this Article, Corporation may at any time that the payment of any Imposition that Operator is obligated to pay remains unpaid, give written notice to Operator of its default, specifying the same. If Operator continues to fail to pay such Imposition or to contest it in good faith, then at any time after ten (10) days from such written notice, Corporation may pay the items specified in the notice, and Operator agrees to reimburse Corporation, upon Corporation's demand, any amount paid on the items specified in the notice.

ARTICLE 6 – USE OF BERTH AND TERMINAL

Section 6.01 – Permitted Activities. The Berth and Terminal No. 2 may be used by Operator only for the purpose of loading and unloading passengers, their baggage, and cargo from any Vessel in the performance of Cruise Operations at the Port, and providing such incidental services as may be necessary to permit Operator to perform Cruise Operations at the Port. Any other activity requires the prior written approval of Corporation.

Section 6.02 – Prohibited Activities. The Berth, Terminal No. 2, and adjacent areas must not be used for:

- (a) The docking or berthing of any floating vessel containing a “gambling place,” a “gambling device,” or “gambling paraphernalia,” as those terms are defined in Section 47.01 of the Texas Penal Code or any similar or successor statute, except that those items or activities are not prohibited on board any Vessel to the extent the items or activities are properly licensed and conducted in compliance with applicable law;
- (b) Any illegal, obnoxious, or offensive activity; or
- (c) The sale or consumption of alcoholic beverages, except that those activities are not prohibited on board any Vessel to the extent the activities are properly licensed and conducted in compliance with applicable law.

No explosive, nuclear, radioactive, or hazardous materials in excess of those amounts permitted by applicable law are allowed on or adjacent to the Berth or Terminal No. 2 without Corporation's prior written approval. Only propane or electric powered vehicles may be used by Operator or any employee, contractor, supplier, or vendor within Terminal No. 2 or on the wharf, staging areas, or apron adjacent to Terminal No. 2 or the Berth to transport persons, luggage, ship's stores, provisions, equipment, or other property in the performance or Cruise Operations or Vessel maintenance. No diesel or gasoline powered equipment may be used by Operator or any employee, contractor, supplier, or vendor within Terminal No. 2, or on the wharf, staging areas, or apron adjacent to Terminal No. 2 or the Berth is a propane or electric powered version of such equipment is available at a commercially reasonable price. Any variance from the provisions regarding propane or electric powered vehicles and equipment must be presented to Corporation in advance

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for approval (which will not be unreasonably withheld) prior to the use of any prohibited vehicles or equipment.

Section 6.03 – Permits, Certificates, etc. Operator must obtain and maintain all permits, certifications, licenses, and pay all fees required for its activities on or about the Berth and Terminal No. 2.

Section 6.04 – No Interference. Except solely as permitted by this Agreement, Operator must not interfere with the operations of the Corporation or Wharves, their respective tenants, or any other permitted user of Corporation’s or Wharves’ property, nor with any other permitted user of the Berth or Terminal No. 2. Operator must not interfere with, restrict, or prevent any Person from using navigable waters.

ARTICLE 7 – NO CONSTRUCTION OR IMPROVEMENTS

Section 7.01 – No Construction or Improvements. Operator cannot build, erect, conduct, affix, or construct any improvements, modifications, major repairs, additions, or fixtures to the Berth, including improvements thereon, any Storage Area, and/or any temporary office space in Terminal No. 2. Operator must surrender the Berth, including improvements thereon, any Storage Area, and any temporary office space in Terminal No. 2 in the same condition and state of repair as they existed on the Effective Date of this Agreement, reasonable wear and tear excepted. Operator is required to immediately restore the Berth, including improvements thereon, any Storage Area, any temporary office space in Terminal No.2, and any other adjacent area to the Berth to the condition it was in on the Effective Date of this Agreement should any construction be conducted in violation of this Agreement. If Operator fails to maintain and/or surrender the Berth, including improvements thereon, any Storage Area, any temporary office space in Terminal No. 2, or any other adjacent area to the Berth to the condition it was in on the Effective Date of this Agreement, Corporation may immediately remove any improvement, modification, major repair, addition, and/or fixture and restore the Berth, including improvements thereon, the Storage Area, any temporary office space in Terminal No. 2, or any other adjacent area to the Berth to the condition it was in on the Effective Date of this Agreement without notice to the Operator. Operator must reimburse Corporation for all removal and restoration costs incurred by Corporation.

ARTICLE 8 – REPAIRS

Section 8.01 – Operator’s Duty to Repair and Maintain. Operator, at its own cost and expense at all times during the Term agrees to (i) repair any damage it causes to, or is caused by its operations at, the Berth, Terminal No. 2, or any other property at the Port and all improvements on or to the Berth, Terminal No. 2, or any other property at the Port, and (ii) on Cruise Days maintain the surface of the wharf adjoining the Berth in a good state of appearance and in a clean, sanitary, and safe condition, all in accordance with Wharves’ standard for the Port, and in a condition sufficient to accommodate and accomplish the conduct of Cruise Operations. All repairs and maintenance required by this section must be performed promptly and so as not to cause depreciation in the value of the Berth and Terminal No. 2 or any improvements.

Section 8.02 – Operator’s Failure to Repair or Maintain. If Operator fails to repair or maintain as required by this Article, after any applicable notice and right to cure provided herein, Corporation may enter the Berth or Terminal No. 2 and make the repairs or maintenance or cause them to be made, and Operator must immediately reimburse Corporation for all costs incurred by Corporation under this section, together with interest from the date Corporation demands reimbursement in writing from Operator until the date paid by Operator.

Section 8.03 – Condition of Berth and Terminal No. 2. Corporation believes the Berth and Terminal No. 2 are in good working order and capable of accommodating the berthing of one Vessel at a time of class equal to the configuration and specifications (as of the Effective Date) of the *Disney Magic*, and is not aware of any facts or conditions indicating that the Berth and Terminal No. 2 are not in good working order or incapable of accommodating the use by Operator set out in this Agreement. Operator accepts the Berth, the Storage Area, and Terminal No. 2, and all improvements thereon, in its condition as of the Effective Date, **AS IS**, and **WITH ALL FAULTS**, and acknowledges that no warranties, either expressed or implied, have been made or will be made by Corporation with respect to the condition of the Berth, the Storage Area, or Terminal No. 2 or their suitability for Operator’s intended use. Subject to the provisions of Section 8.04 of this Agreement, Operator acknowledges that Corporation has no obligation during the Term to make any capital or other improvement to the Berth or Terminal No. 2 to accommodate Operator in the performance of Cruise Operations.

Section 8.04 – Corporation’s Obligation to Improve, Repair, and Maintain. Corporation covenants that it will operate Terminal No. 2 and make periodic capital improvements in accordance with the provisions of any outstanding bond indenture or ordinance relating to Terminal No. 2, and will maintain the Berth and Terminal No. 2 in good condition and working order, normal wear and tear expected, and except as otherwise provided in this Agreement.

ARTICLE 9 – DAMAGE OR DESTRUCTION

Section 9.01 – Notice to Corporation. If the Berth, Terminal No. 2, or any improvement thereto is damaged or destroyed by fire, windstorm, hurricane, or other casualty, Operator must immediately give Corporation notice of the damage or destruction, including a description of the damage and its cause.

Section 9.02 – Partial Destruction. If the Berth, Terminal No. 2, or any improvement thereto is partially damaged or destroyed by fire, windstorm, hurricane, or any other casualty, Corporation will repair reconstruct, or replace the Berth, Terminal No. 2, or those improvements and, if necessary, temporarily relocate Operator in accordance with the provisions of Section 1.05 hereof. In any event, Corporation will be entitled to all insurance proceeds payable by reason of the casualty to the property.

Section 9.03 – Total Destruction. If Corporation and Operator determine after consultation that the Berth, Terminal No. 2, or any improvement thereto is totally destroyed by fire, windstorm, hurricane, or any other casualty, this Agreement will terminate and Corporation will be entitled to all insurance proceeds payable by reason of the casualty to the property.

Section 9.04 – Fees Payable During Reconstruction. During any period of time that the Berth is being repaired, reconstructed, or replaced pursuant to the provisions of Section 9.02 above, the Fees payable hereunder continue to be payable as herein provided.

ARTICLE 10 – MECHANICS’ LIEN

Operator must not suffer or permit any mechanics’ liens or other liens to be filed against the fee of the Berth or Terminal No. 2, nor against Operator’s license to use the Berth or Terminal No. 2, nor any improvements on the Berth or Terminal No. 2 by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Operator or to anyone holding the Berth or Terminal No. 2 or any part thereof through or under Operator. If any such lien is recorded, Operator must promptly notify Corporation in writing of its existence and must either cause it to be removed or purchase a bond acceptable to Corporation against which the lien will attach. If Operator in good faith desires to contest the lien, Operator may do so, but Operator must indemnify and hold Corporation harmless from all liability for damages occasioned thereby and must, in the event of a judgment of foreclosure on the lien, cause it to be discharged and removed prior to the execution of the judgment.

ARTICLE 11 – CONDEMNATION

Section 11.01 – Interests of Parties. If the Berth or Terminal No. 2 or any part thereof is taken for public or quasi-public purposes by condemnation as a result of any action or proceeding in eminent domain, or is transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, all condemnation proceeds will be payable to Corporation.

Section 11.02 – Total Taking – Termination. If the entire Berth or Terminal No. 2 is taken or transferred, or if the taking or transfer of a substantial part of the Berth or Terminal No. 2 leaves the remainder of the Berth or Terminal No. 2 in such condition or in such form, shape, or reduced size as to be not effectively and practicably usable in the reasonable opinion of Corporation and Operator for the intended purpose, this Agreement terminates on the date title to such portion of the Berth or Terminal so taken or transferred vests in the condemning authority and Corporation will be entitled to all condemnation proceeds payable by reason of the condemnation.

Section 11.03 – Partial Taking – Continuance of Agreement. If the taking or transfer of only an insubstantial part of the Berth or Terminal No. 2 leaves the remainder of the Berth or Terminal No. 2 in such condition and in such form, shape, or size as to be used effectively and practicably in the reasonable opinion of Corporation and Operator for the intended purpose, this Agreement terminates only as to the portion of the Berth or Terminal No. 2 so taken or transferred as of the date title to such portion vests in the condemning authority, but continues as to the portion of the Berth or Terminal No. 2 not so taken or transferred. To the extent that a partial taking directly and demonstrably results in increasing the operating expenses for or decreasing the revenues of Operator’s Cruise Operations and those increased expenses or decreased revenues cannot be otherwise fully mitigated (as to increased expenses) or recovered (as to decreased revenues), the Fees payable hereunder will be adjusted equitably.

Section 11.04 – Voluntary Conveyance. A voluntary conveyance by Corporation to a public utility, governmental agency, or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings, is a taking under this Article.

ARTICLE 12 – INSURANCE AND INDEMNIFICATION

Operator must maintain insurance coverage and indemnify Corporation and Wharves as provided in Exhibit C, which is attached and incorporated by referenced, and must otherwise perform each term, covenant, and condition of Exhibit C.

ARTICLE 13 – ASSIGNMENT

Section 13.01 – Assignment by Operator. Operator must not assign its rights or any interest under this Agreement unless approved in writing in advance by Corporation (subject to Corporation’s reasonable discretion). A merger, consolidation, or other business combination by Operator will not be deemed an assignment of this Agreement requiring consent if applicable law provides that the legal effect of such merger, consolidation, or other business combination is that the assets of Operator will rest in the resulting entity without any transfer or assignment having occurred.

Section 13.02 – Assignment by Corporation. Except as provided in the following sentence, Corporation may not assign its rights or any interest under this Agreement unless approved in writing in advance by Operator (subject to Operator’s reasonable discretion). Corporation may assign its rights in this Agreement to the Wharves without Operator’s consent in connection with a termination of the lease between Corporation and Wharves for the land upon which Terminal No. 2 is located, provided Wharves agrees to assume Corporation’s obligations under this Agreement from and after the date of the assignment.

ARTICLE 14 – DEFAULT AND REMEDIES

Section 14.01 – Operator Events of Default. Each of the following occurrences is an “Operator Event of Default”:

- (a) Operator’s failure to pay Fees within ten (10) days after Corporation has delivered notice to Operator that the same are due;
- (b) Lapse in required insurance coverage by Operator or failure by Operator to strictly comply with any provisions in this Agreement relating to insurance coverage, without Operator having taken immediate, reasonable steps to cure such lapse or failure;
- (c) Creating or allowing any unsafe or dangerous condition to exist at or adjacent to the Berth or Terminal No. 2 or elsewhere at the Port without Operator having taken immediate, reasonable steps to cure or cause to be cured such condition, which Operator Event of Default will be immediate and without advance notice;

- (d) Operator abandons or vacates the Berth or any substantial portion thereof, or fails to continuously conduct Cruise Operations from the Berth in substantial compliance with the approved Cruise Schedules and otherwise in the manner described herein unless the failure to so conduct Cruise Operations is caused by (i) the performance of bona fide repairs or maintenance to a Vessel that do not in the aggregate cause interruptions in the performance of Cruise Operations with respect to that Vessel in excess of ninety (90) days in any Operating Year during the Term, (ii) temporary conditions (less than thirty (30) days) beyond Operator's control, (iii) events of force majeure, or (iv) the failure by Corporation to perform its responsibilities or obligations under this Agreement;
- (e) Operator's failure to perform, comply with, or observe any other agreement or obligation of Operator under this Agreement or any other agreement to which Corporation (or Wharves) and Operator are parties and the continuance of such failure for a period of more than thirty (30) days after Corporation has delivered to Operator written notice thereof, or such longer period not to exceed sixty (60) days if the default cannot reasonably be cured within the thirty (30) day period and Operator diligently commences to cure the default as soon as possible following notice thereof and thereafter diligently pursues the default to completion; and
- (f) Subject to the provisions of Section 16.04 of this Agreement, the filing of a petition by or against Operator (the term Operator includes, for the purpose of this Section, any guarantor of Operator's obligations hereunder) in any bankruptcy or other insolvency proceeding; seeking any relief under any state or federal debtor relief law; for the appointment of a liquidator or receiver for all or substantially all of Operator's property or for Operator's interest in this Agreement; or for the reorganization or modification of Operator's capital structure; however, if such a petition is filed against Operator, then such filing will not be an Operator Event Default unless Operator fails to have the proceedings initiated by such petition dismissed within ninety (90) days after the filing thereof.

Section 14.02 – Remedies. Subject to the provisions of Section 14.04, upon any Operator Event of Default, Corporation may, in addition to all other rights and remedies afforded Corporation hereunder or by law or equity, take any of the following actions:

- (a) *Termination of Agreement.* Terminate this Agreement (unless prohibited from doing so by any trust indenture or by applicable law) by giving Operator written notice thereof, in which event Operator must pay to Corporation the sum of all Fees accrued hereunder through the date of termination and all amounts due under Section 14.03(a); or
- (b) *Lock Out.* Additionally, without notice, Corporation may place or alter locks or other security devices at or adjacent to the Berth or Terminal No. 2 to deprive Operator of access thereto, and Corporation will not be required to provide a new key or right of access to Operator until such time as each Operator Event of Default is cured.

Section 14.03 – Payment by Operator; Non-Waiver.

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- (a) *Payment by Operator.* Upon and during the continuance of any Operator Event of Default, Operator must pay to Corporation all costs incurred by Corporation (including court costs and reasonable attorneys' fees and expenses) in obtaining possession of the Berth or Terminal No. 2 or any part thereof, removing and storing Operator's or any other occupant's property, repairing, restoring, altering, remodeling, or otherwise putting the Berth or Terminal No. 2 into condition reasonably acceptable to a new operator, if Operator is excluded from the Berth or Terminal No. 2 and this Agreement is not terminated, licensing all or any part of the Berth or Terminal No. 2 (including brokerage commissions, cost of finish work, and other costs incidental to such licensing), performing Operator's obligation that Operator failed to perform, and enforcing, or advising Corporation of, its rights, remedies, and recourses, arising out of the Operator Event of Default. To the full extent permitted by law, Corporation and Operator agree the state district courts of Galveston County, Texas have exclusive jurisdiction over any matter relating to or arising from this Agreement and the parties' rights and obligations under this Agreement.
- (b) *No Waiver.* Corporation's acceptance of Fees following an Operator Event of Default will not waive Corporation's rights regarding such Operator Event of Default. No waiver by Corporation of any violation or breach of any of the terms contained herein will waive Corporation's rights regarding any future violation of such term. Corporation's acceptance of any partial payment of Fees will not waive Corporation's rights with regard to the remaining portion of the Fees that are due, regardless of any endorsement or other statement on any instrument delivered in payment of Fees or any writing delivered in connection therewith; accordingly, Corporation's acceptance of a partial payment of Fees will not constitute an accord and satisfaction of the full amount of the Fees that are due, regardless of any rule of law to the contrary.

Section 14.04 – Priority of Certain Remedies. For an Operator Event of Default described in Section 14.01(c), Corporation must first exercise the remedy described in Section 14.02(b) and that Operator Event of Default must be continuing for five (5) days before Corporation may exercise any other remedy it may have, but only if the only Operator Event of Default in existence at that time is one described in Section 14.01(c).

Section 14.05 – Corporation Events of Default. Each of the following occurrences is a "Corporation Event of Default":

- (a) any covenant, agreement, or condition of Corporation is not fully and timely performed, observed, or kept, which failure is not cured within thirty (30) days after Operator has delivered to Corporation written notice thereof, or such longer period not to exceed sixty (60) days if the default cannot reasonably be cured within the thirty (30) day period and Corporation diligently commences to cure the default as soon as possible following notice thereof and thereafter diligently pursues curing the default to completion;

- (b) an uncured event of default by the Corporation under the Development Agreement or under any outstanding bond indenture relating to Terminal No. 2; or
- (c) Corporation's uncured default in the performance of its obligations as lessee under any lease of all or any portion of the Berth or Terminal No. 2 which default results in the termination of said lease.

Section 14.06 – Operator's Remedies. Upon a Corporation Event of Default, Operator may, at its election, but without any obligation to do so, without notice, exercise any and all rights and remedies afforded by this Agreement, law, equity, or otherwise.

Section 14.07 – Other Remedies. All rights, options, and remedies contained in this Agreement are construed and held to be cumulative, and no one of them is exclusive of the other, and Corporation and Operator have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement.

ARTICLE 15 – LIABILITY

Section 15.01 – Limitation of Liability of the City. The City is never liable to respond in damages or make indemnity, or contribution, or payment of any character from any source other than the property, and the income and revenues arising from the operation thereof, under the management and control of Wharves by reason of, due to or caused by a breach of this Agreement.

Section 15.02 – No Personal Liability of Corporation or Operator. Neither Corporation's nor Wharves' directors, officers, agents, or employees are personally liable under this Agreement or for any breach thereof. Operator's directors, officers, agents, and employees are not personally liable under this Agreement or for any breach thereof

Section 15.03 – Exoneration. Absent the willful misconduct or negligent acts or omissions of the Corporation, the Wharves, or the City, none of them will be responsible to Operator or any other person for (i) damages to property or injuries to any Person that may arise from or be incident to the use or occupation of the Berth or Terminal No. 2, (ii) damages to the property of Operator or any Person, or (iii) injuries to the person of Operator's officers, agents, servants, or employees or any other Person who may be on or at the Berth or Terminal No. 2.

ARTICLE 16 – MISCELLANEOUS

Section 16.01 – Right of Entry and Inspection. On Cruise Days, Operator will permit Corporation or Corporation's agents, representatives, or employees to enter and inspect the Berth or Terminal No. 2 at all times.

Section 16.02 – No Partnership. The relationship between Corporation and Operator at all times remains solely that of licensor and licensee and is not a partnership or joint venture.

Section 16.03 – Force Majeure. Except for Operator's obligation to pay Fees and to obtain insurance as required in this Agreement and except as otherwise provided herein, Corporation and

Operator are excused from performing any of their respective duties, obligations, or undertakings under this Agreement in the event, so long as, and to the extent that the performance of such duty, obligation, or undertaking is prevented, delayed, retarded, or hindered by an Act of God, epidemic, fire, hurricane, earthquake, flood, explosion, action of civil commotion, sabotage, malicious mischief, strike, lockout, action of labor unions, condemnation, governmental restriction, order of civil or military or naval authorities, embargo, impossibility of obtaining materials, deterioration of security conditions at ports of call deemed unacceptable by Operator, deterioration of market conditions deemed unacceptable by Operator, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the party in question. Either party entitled to such extension hereunder will give prompt written notice to the other party as soon as possible after the occurrence causing such delay asserting its claim of right to such extension and the reasons therefor. If the performance of any such duty, obligation, or undertaking is prevented, delayed, retarded, or hindered for a period of 180 days, either party may terminate this Agreement without liability by delivering written notice of termination to the other party within thirty (30) days after that date.

Section 16.04 – No Termination on Bankruptcy. Neither bankruptcy, insolvency, assignment for the benefit of creditors, nor the appointment of a receiver will cause any termination or modification of this Agreement so long as all covenants of Operator or Corporation are continued in performance by Operator or Corporation and their respective successors or legal representatives.

Section 16.05 – No Waiver. No waiver of any default or breach of any covenant, condition, or stipulation contained in this Agreement is a waiver of any subsequent default or breach of the same or any other covenant, condition, or stipulation of this Agreement.

Section 16.06 – Use Clause. Operator agrees not to use any part of all of the Berth, Terminal No. 2, or any other property under the management and control of Wharves for any use or purpose in violation of any law, rule, regulation, code, or ordinance (as each of them may from time-to-time be enacted or amended) of the United States, the State of Texas, the City, the Wharves, or any other lawful authority having jurisdiction over the Berth, Terminal No. 2, or any other property under the management and control of Wharves.

Section 16.07 – Release of Corporation. In the event the City, the Wharves, or the Corporation sells or transfers the Berth or Terminal No. 2 or any part thereof and as a part of such transaction assigns its interest in and to this Agreement, and provided such buyer, transferee or assignee agrees to perform as Corporation under this Agreement, and further provided Operator approves of the form of the document evidencing the assignment in writing, which approval shall not be withheld unreasonably, then from and after the effective date of such sale, assignment, or transfer, Corporation has no further liability under this Agreement to Operator except as to matters of liability which accrued and are unsatisfied as of such effective date, it being intended that the covenants and obligations contained in this Agreement on the part of Corporation be binding on Corporation and its successors and assigns only during and in respect of their respective successive periods of ownership of the Berth or Terminal No. 2.

Section 16.08 – Joint and Several Liability. If more than one Operator is named under this Agreement, or becomes liable hereunder, the obligation of all such Operators is joint and several.

Section 16.09 – Risk Allocation for Hazardous Materials. Operator is responsible for remediation of any environmental contamination of the Berth or Terminal No. 2 and adjacent land or waterways (and to any other property to which such environmental contamination migrates) caused by Operator or Operator's invitees or agents. For the purpose of this provision, the term "environmental contamination" means the presence on the Berth or Terminal No. 2 or any adjacent land or waterways (and to any other property to which such environmental contamination migrates) of any hazardous, toxic, or other material regulated under any state, federal, or local law dealing with hazardous substances, protection of the environment, or similar matters in excess of lawfully permitted levels. Responsibility for environmental contamination with respect to the Berth or Terminal No. 2 and adjacent land or waterways (and to any other property to which such environmental contamination migrates) will be allocated as follows: (i) to Operator for environmental contamination that is caused by Operator or Operator's invitees or agents, and (ii) to Corporation for environmental contamination in all other cases. This allocation of responsibility is only as between Corporation and Operator and will be without prejudice to any rights Corporation or Operator may have against any other party causing environmental contamination.

Section 16.10 – Notices. All notices, demands, or requests from one party to another must be in writing and must be personally delivered, sent by mail, certified, registered, express or overnight, postage prepaid, or sent by facsimile transmission, to the addresses stated in this Section, or to such other address as the party may request in writing, and are deemed to have been given at the time of delivery. Corporation's address is P.O. Box 328, Galveston, Texas 77553 (for U.S. Mail), 123 Rosenberg, 8th Floor, Galveston, Texas 77550 (for express or overnight mail), or (409) 766-6171 (for facsimile transmissions), in any case to the attention of the Port Director [with a courtesy copy of all such communications to Anthony Brown, McLeod, Alexander, Powel & Apffel, P.C., P. O. Box 629, Galveston, TX 77553 (U.S. Mail), 802 Rosenberg Avenue, Galveston, TX 77550 (for courier, express, or overnight mail), or (409) 762-1155 (for facsimile transmissions)]. Operator's address is Disney Cruise Line, P.O. Box 10299, Lake Buena Vista, Florida 32830 (for U.S. Mail), Disney Cruise Line, 210 Celebration Place, Celebration, Florida, 34747 (for courier, express, or overnight mail), or (409) 566-7599 (for facsimile transmissions), in any case to the attention of Bert Swets [with a courtesy copy of all such communications to Jim Stockton, Assistant Chief Counsel, WDW Legal Counsel, P.O. Box 10000, Lake Buena Vista, Florida (for U.S. Mail), 1375 Buena Vista Drive, Lake Buena Vista, Florida 32830 (for courier, express, or overnight mail), or (407) 828-4311 (for facsimile transmissions)]. Failure of Corporation to send a courtesy copy of a notice will not invalidate any property given notice to Operator.

Section 16.11 – Multiple Parties. If more than one Operator is named in this Agreement, service of any notice on any one Operator is deemed service on all Operators.

Section 16.12 – Parties Bound. Each party represent to the other that (i) this Agreement has been duly authorized, delivered, and executed by such party and constitutes the legal, valid, and binding obligations of such party, enforceable in accordance with its terms, and (ii) the

execution, delivery, and performance by each party of its respective obligations hereunder complies with all laws, rules, regulations, and orders applicable to such party. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

Section 16.13 – Texas Law to Apply and Venue. This Agreement must be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Galveston County, Texas.

Section 16.14 – Legal Construction. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability does not affect any other provision hereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, if consistent with the overall intent of the Agreement.

Section 16.15 – Exclusive Agreements. As of the Effective Date, this Agreement will constitute the sole and only agreement of the parties hereto with respect to the subject matter hereof and will supersede any prior understandings or written or oral agreements between the parties with respect thereto.

Section 16.16 – Amendment. No amendment, modification, or alteration of the terms of this Agreement is binding unless in writing, executed by Corporation and Operator.

Section 16.17 – Attorney’s Fees. In the event of a dispute arising from or relating to the terms of this Agreement, the prevailing party shall be entitled to reimbursement from the non-prevailing party of its reasonable attorney’s fees and costs.

Section 16.18 – Further Assurances. The parties agree that they will from time-to-time and at any reasonable time execute and deliver, or cause to be executed and delivered to the other party such documents and instruments, and shall take, or cause to be taken such other actions as the other party may reasonably request to effectuate the terms of this Agreement.

Section 16.19 – Attachments. All Exhibits and Schedules attached to this Agreement are incorporated by reference.

Section 16.20 – Compliance with Laws. The parties must comply with all laws, ordinances, rules, regulations, and codes (as each of them may from time-to-time be enacted or amended) of the United States, the State of Texas, the City, the Wharves, or any other lawful authority having jurisdiction over the Berth, Terminal No. 2, or any other property under the management and control of Wharves, or governing or in any manner applicable to this Agreement, including without limitation MARPOL, Annex I, II, III, and V; the Safety of Life at Sea Convention (SOLAS); the International Maritime Organization (IMO). Operator must comply with all security standards established by the United States Coast Guard for each Vessel to be docked at the Berth by Operator.

Section 16.21 – Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart is deemed to be an original instrument, but all such counterparts together constitute but one Agreement. A photocopy or facsimile reproduction of an original signature of a party on this Agreement binds that party to the terms, covenants, and conditions of this Agreement.

Section 16.22 – Railroad Clearances. Operator must not locate any structure or materials closer than eight-and-a-half feet (8 feet, 6 inches) from the centerline of the nearest railroad track on or adjoining the Berth or Terminal No. 2, or closer than twenty-two (22) feet above the top of any railroad track on or adjoining the Berth or Terminal No. 2. On Cruise Days, Operator must keep all railroads and passageways on and adjoining the Berth or Terminal No. 2 free from obstruction by motor vehicles and other objects.

Section 16.23 – Remedies and Mitigation. Pursuit of any remedy under this Agreement does not preclude pursuit of any other remedy under this Agreement or that may be provided at law or in equity. Corporation and Operator have a duty to mitigate damages.

Section 16.24 – Disclaimer of Warranties. Corporation disclaims any implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this Agreement, the Berth, or Terminal No. 2, and Operator acknowledges the disclaimer of such warranties.

Section 16.25 – Abandoned Property. In addition to any other remedy under this Agreement or provided by law, Corporation may retain, destroy, or dispose of any property left on the Berth or at Terminal No. 2 following the termination of this Agreement.

Section 16.26 – Abatement. Operator's covenant to pay Fees and Corporation's covenants are independent of each other and Operator is not entitled to abate Fees for any reason.

Section 16.27 – Time. Time is of the essence in this Agreement.

Section 16.28 – Headings. The headings, captions, and arrangements used in this Agreement are for convenience only and do not affect the interpretation of this Agreement.

Section 16.29 – Signage. Operator must not install or erect any sign on or about the Berth or Terminal No. 2 without first obtaining Corporation's written approval with regard to the size, shape, design, color, material, content, and method of attachment of the sign, which approval will not be unreasonably withheld, conditioned, or delayed. Operator must, at its sole expense, remove any sign that it installs or erects on or about the Berth or Terminal No. 2 and repair any damage done to the Berth, Terminal No. 2, or the adjacent land or property by installing, erecting, or removing the sign. Removal and repair of any sign must be completed no later than the date of termination of this Agreement. In addition, any temporary signage used by Operator in the passenger check-in or luggage lay-down areas of Terminal No. 2 must be (i) provided at Operator's sole cost, (ii) installed by 7:00 a.m. and removed by 7:00 p.m. on each Cruise Day, and (iii)

approved in advance by Corporation, which approval will not be unreasonably withheld, conditioned, or delayed.

Section 16.30 – Appointment of Agent. No later than the Effective Date, Operator must appoint a vessel agent acceptable to Corporation (in its reasonable discretion), and must thereafter immediately inform Corporation of any proposed changes in the identity of such agent so that Corporation can approve or reject the proposed agent.

Section 16.31 – Discrimination. In connection with its use of the Berth or Terminal No. 2 and exercise of the license granted to it in this Agreement, Operator must not discriminate against any Person, employee, or applicant for employment because of race, religion, color, or national origin.

Section 16.32 – Baggage Handling. Baggage handling with respect to Cruise Operations must be performed through the use of a stevedore licensed by the Wharves according to the Tariff.

Section 16.33 – Passenger Count. Operator must provide Corporation on a weekly basis the total number of persons embarking or disembarking any Vessel as passengers on any cruise conducted as a Cruise Operation. The report must be delivered to Corporation no later than Friday of the week following the week to which the passenger count relates.

Section 16.34 – Parking for Employees and Contractors. The vehicle of any employee, contractor, supplier, or vendor of Operator involved in Cruise Operations, or any person permitted by Operator to board and Vessel, must be parked in a location to be designated from time-to-time by Corporation, which location will be at least 300 feet but not more than 600 feet from Terminal No. 2 wherever practicable, or such other distances or locations as may from time-to-time be changed in accordance with security requirements determined by Wharves or ordered by any federal, state, or local government entity having jurisdiction over Terminal No. 2 or the operations conducted therefrom.

Section 16.35 – Promotion. Except as otherwise permitted in this Agreement or under another written grant or other written license by Operator or one of its affiliated companies, including, without limitation, Marvel Enterprises, Inc. (“Marvel”), the Corporation shall acquire no right under this Agreement to use, and the Corporation shall not use, the name Disney (either alone or in conjunction with or as part of any other word or name), and fanciful characters, designs, trademarks, trade names, or copyrighted works of Operator or any of its related, affiliated, or subsidiary companies (including, without limitation, Marvel) (collectively “Intellectual Property”) in any advertising, publicity, or promotion, to express or imply any endorsement by Operator, or any of its affiliated companies, of the Corporation’s services; or in any other manner whatsoever (whether or not similar to uses hereinabove specifically prohibited). Notwithstanding the foregoing, Corporation and Wharves are expressly permitted to use the Intellectual Property on directional signage in and around the Port, on the Port’s website, on the Port’s social media accounts, on the Port’s internal publications, on Port-related press releases, and in connection with the preparation, publication, and disclosure of any annual report, financial statement, or other managerial report or statement, provided such use by Corporation or Wharves does not constitute a commercial use of the Intellectual Property in violation of applicable law.

ARTICLE 17 – NO RIGHTS TO OTHER CRUISE LINE COMPANIES

Subject to the rights granted to Carnival and RCL in existing Operating Agreements, during the Term, the Corporation shall not permit any other cruise line to use Terminal No. 2 on those days reserved for Operator under the terms of this Agreement.


ARTICLE 18 – CONTINGENT RIGHT TO NEGOTIATE USE OF TERMINAL

Operator understands that Corporation and Wharves are currently negotiating with another company for the development, use and operation of a cruise terminal at the Port. In the event Corporation's and Wharves' negotiations with that other company are unsuccessful, Corporation will so advise Operator and will afford Operator the right to submit a proposal relating to the use and operation of an alternative cruise terminal and revised cruise schedule, pursuant to such terms and conditions as Corporation and/or Wharves may establish in their sole discretion.

THIS AGREEMENT has been executed by the parties effective as of the date and year first above written.

CORPORATION

APPROVED AS TO FORM ONLY:

By: 
Counsel to the Board of Trustees
of the Galveston Wharves

GALVESTON PORT
FACILITIES CORPORATION

By: 
Rodger Rees, Port Director/CEO

OPERATOR

MAGICAL CRUISE
COMPANY, LIMITED

By: 

Name: Bert Swets

Title: SR. Vice President

LIST OF ATTACHMENTS

Exhibit A - Description of Berth [Section 1.01]

Exhibit B - Temporary Office Space [Section 1.05]

Exhibit C - Insurance and Indemnification [Article 12]

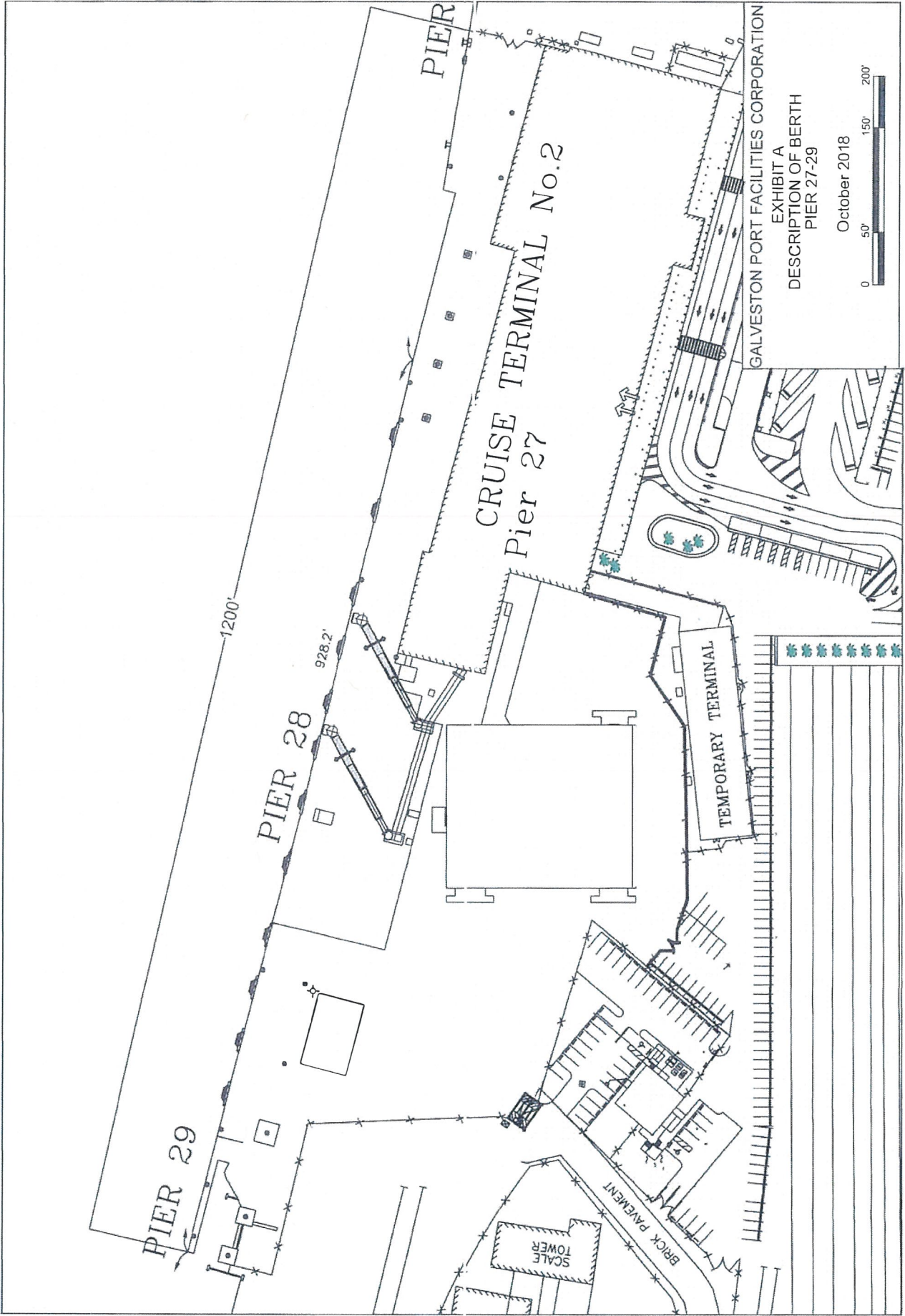
Schedule 1 - Current Cruise Schedule as of the Effective Date [Section 1.02]

Schedule 3.04 - Description of Passenger Fees and Annual Minimum [Sections 3.07 and 3.08]

APB

EXHIBIT A

(Attached)



GALVESTON PORT FACILITIES CORPORATION
EXHIBIT A
DESCRIPTION OF BERTH
PIER 27-29

October 2018

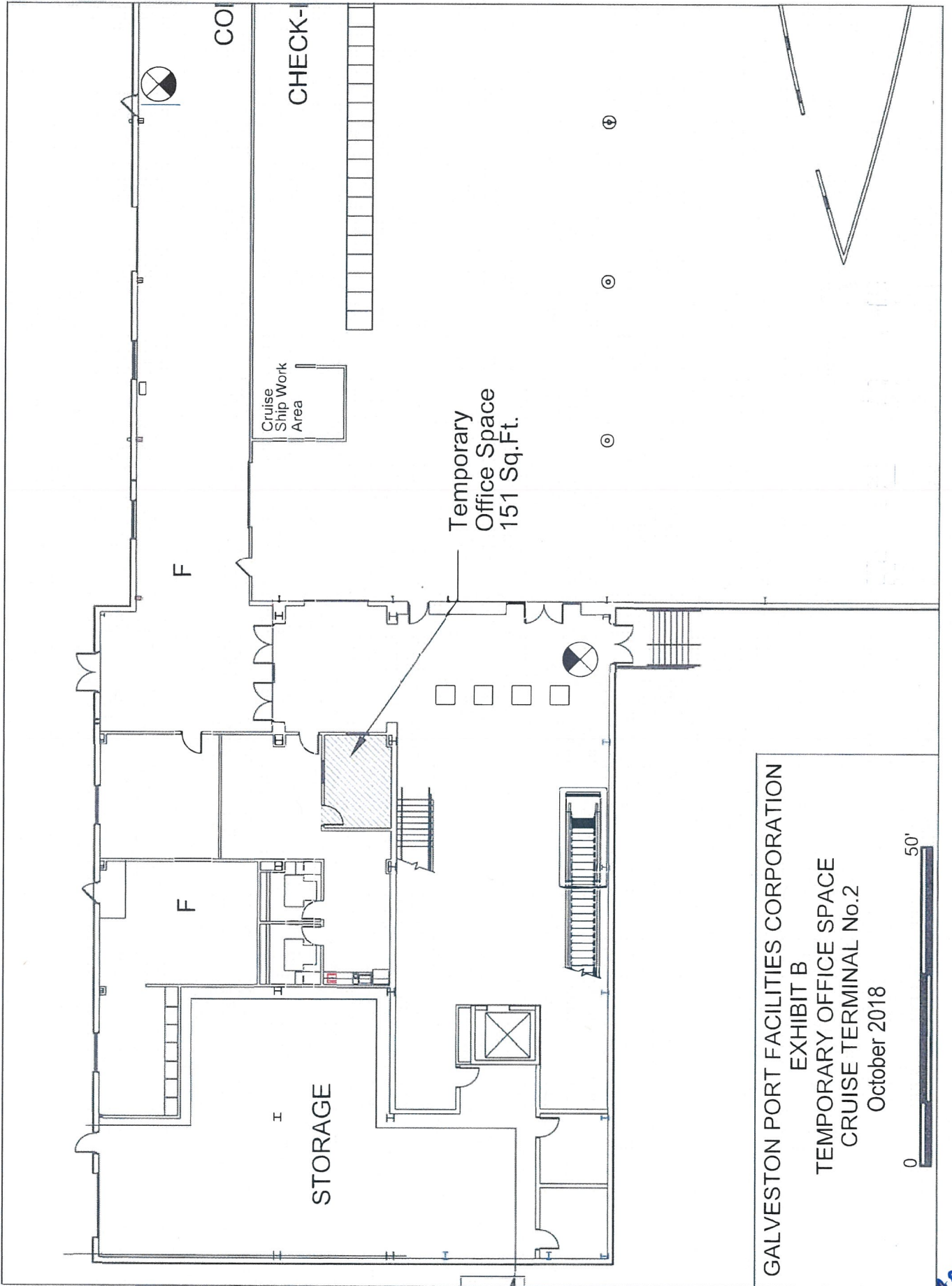


APD

EXHIBIT B

(Attached)

RPB



GALVESTON PORT FACILITIES CORPORATION
 EXHIBIT B
 TEMPORARY OFFICE SPACE
 CRUISE TERMINAL No.2
 October 2018

0 50'

Handwritten signature or initials in blue ink.

Exhibit C

Corporation's Insurance and Indemnity Requirements of Operator

1. Policies To Be Provided by Operator. This Exhibit (the "Insurance and Indemnity Specifications") is attached as an Exhibit as part of the Agreement. In the event of conflict between any of the following Insurance and Indemnity Specifications with any provision in the Agreement, these Insurance and Indemnity Specifications control, amend and supplement the conflicting provision. Subject to review and revision by Corporation from time to time, in Corporation's good faith judgment, the following insurance shall be maintained by Operator with limits of not less than those set forth below at all times during the term of the Agreement and thereafter as required.

No.	Specifications	Coverages, Limits and Other Requirements
A. LIABILITY		
1.	Commercial General Liability. Operator is to maintain commercial general liability ("CGL") insurance and, if necessary, commercial excess insurance, issued on an Occurrence Basis meeting at least the following specifications.	
1.1	Minimum Limits	The limits of coverage shall not be less than the following amounts: \$5,000,000 Per Occurrence \$5,000,000 General Aggregate \$5,000,000 Products and Completed Operations Aggregate \$5,000,000 Personal and Advertising Injury
1.2	General Aggregate	Not applicable.
1.3	Form	This insurance is to be issued on an unmodified ISO CG 00 01, or equivalent, and shall cover liability arising from premises, ongoing and completed operations.
1.4	Insured Contracts	Coverage shall include but not be limited to liability assumed by Operator under the Agreement, including the tort liability of another assumed in a business contract. Unmodified Separation of Insureds coverage shall be included.
1.5	Additional Insureds	Additional Insured status shall be provided in favor of Corporation Parties on a combination of ISO forms CG 20 11 04 13 or equivalent.
1.6	Primary and Noncontributory	This insurance shall be endorsed to provide primary and noncontributing liability coverage. It is the specific intent of the parties to the Agreement that all insurance required herein shall be primary to and shall seek no contribution from all insurance held by Corporation Parties, with Corporation Parties' insurance being excess, secondary and noncontributing.
1.7	Personal Injury Contractual Liability	The personal injury contractual liability exclusion shall be deleted.
1.8	Waiver of Right of Recovery and Subrogation	Operator agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Corporation Parties on ISO form CG 24 04 05 09 or equivalent.
1.9	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Corporation Parties.
1.10	Prohibited Exclusions and Limitations	Prohibited exclusions/limitations or their equivalents include but are not limited to: a. Amendment of Insured Contract Definition ISO CG 24 26 b. Classification or Business Description c. Contractual Liability Limitation ISO CG 21 39 d. Endorsement modifying the Employer's Liability exclusion or deleting the exception to it e. "Insured vs. Insured" exclusion except Named Insured vs. Named Insured f. Limitation of Coverage to Designated Premises or Project ISO CG 21 44 g. Punitive, Exemplary or Multiplied Damages
2.	Business Auto Liability. Operator is to maintain business auto insurance and, if necessary, commercial excess insurance, meeting at least the following specifications.	
2.1	Minimum Limits	The limits of liability shall be no less than \$5,000,000 per accident.

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2.2	Form	This insurance is to be issued on the current edition of the ISO CA 00 01 or equivalent
2.3	Scope	This insurance is to coverage damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use of (1) any auto, including owned, hired and non-owned autos, and (2) any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.
2.4	Additional Insureds	Additional Insured status shall be provided in favor of Corporation Parties on ISO form CA 20 48 10 13 or equivalent.
2.5	Waiver of Right of Recovery and Subrogation	Operator agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Corporation Parties on ISO form CA 04 44 10 13 or equivalent.
2.6	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Corporation Parties or Operator shall endeavor to provide this notice.
3.	Workers' Compensation and Employer's Liability. Operator is to maintain workers' compensation and employer's liability insurance and, if necessary, commercial excess insurance, meeting at least the following specifications.	
3.1	Workers' Compensation Limits	The minimum limits of this insurance shall be no less than the statutory limits.
3.2	Employer's Liability Limits	The minimum limits of this insurance shall be no less than \$1,000,000 each accident and disease.
3.3	Territory	The State of Texas must be listed under Item 3.A. on the Information Page of the policy.
3.4	Scope	This insurance is to cover liability arising out the Operator's employment of workers and anyone for whom the Operator may be liable for workers' compensation claims. Worker's compensation insurance is required and no "alternative" form of insurance is permitted.
3.5	Leased Employees	Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Operator shall require its employee leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Corporation Parties.
3.6	United States Longshoremen and Harbor Workers ("USL&H")	USL&H coverage must be provided where such exposure exists listing the State of Texas.
3.7	Waiver of Right of Recovery and Subrogation	Operator agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Corporation Parties on form WC 42 03 04 or equivalent.
3.8	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Corporation Parties or Operator shall endeavor to provide this notice
4.	Liquor Liability. If indicated in the box to the left, Operator is to maintain liquor liability insurance and, if necessary, commercial excess insurance, issued on an Occurrence Basis meeting at least the following specifications.	
<input checked="" type="checkbox"/>		
4.1	Form	This insurance is to be issued on the most recent reasonably available and unmodified ISO form 00 33 or equivalent.
4.2	Minimum Limits	The minimum limits of coverage are subject to periodic review and approval by Corporation, but are not to be less than \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate
4.3	Aggregate Limit	Not applicable.
4.4	Additional Insureds	Additional Insured status shall be provided in favor of Corporation Parties.
4.5	Scope	This insurance shall cover operations of the Operator at the Berth and Terminal.
4.6	Defense Costs	
4.7	Waiver of Right of Recovery and Subrogation	Operator agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Corporation Parties.

4.8	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Corporation Parties or Operator shall endeavor to provide this notice .
5.	Excess Liability. If any of the above required coverages and conditions are to be maintained by and through excess liability insurance, Operator is to maintain excess liability insurance meeting at least the following specifications.	
5.1	Scope	This insurance shall be excess over and be no less broad than all coverages and conditions described above. The policy limits required herein may be provided by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
5.2	Concurrency	Such coverage shall have the same inception date as the underlying liability coverages.
5.3	Drop Down Coverage	Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.
5.4	Defense Costs	This insurance is to include a duty to defend any insured.
6. <input checked="" type="checkbox"/>	Pollution/Environmental Liability. If indicated in the box to the left, Operator is to maintain environmental liability insurance issued on an Occurrence Basis meeting at least the following specifications.	

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6.1	Minimum Limits	The minimum limits of coverage are subject to periodic review and approval by Corporation, but are not to be less than: \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate
6.2	Additional Insured	Additional Insured status shall be provided in favor of Corporation Parties
6.3	Scope	This insurance must provide third party liability coverage for bodily injury, property damage, clean up expenses, and defense arising from the operations of Operator. Mold and/or microbial matter and/or fungus and/or biological substances shall be specifically included within the definition of Pollutants in the policy.
6.4	Defense Costs	
6.5	Prohibitions	This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> ▪ Asbestos or lead; ▪ Contractual assumption of liability; ▪ Impaired property that has not been physically injured; ▪ Materials supplied or handled by the named insured; ▪
B. PROPERTY		
1.	Property Insurance on Causes of Loss-Special Form. Operator is to maintain property insurance on a Causes of Loss-Special Form meeting at least the following specifications.	
1.1	Scope	This insurance is to be issued for 100% Replacement Cost, on an Agreed Value Basis, and in compliance with all laws, regulations or ordinances affecting such property at any time during the Agreement, for the improvements and betterments, including all the items defined as the Improvements in the Agreement, and all equipment and other property used in connection therewith, including Operator's business personal property, HVAC, trade fixtures and signs from time to time in, on adjacent to or upon the Berth and Terminal No. 2, and all alterations, additions, or changes made by Operator pursuant to the terms of the Agreement, and shall not be subject to coinsurance.
1.2	Form	This insurance is to be issued on an ISO CP 10 30 or equivalent form.
1.3	Insureds	The insureds on this policy are to be Operator, and Corporation as a loss payee as their interest may appear.
1.4	Endorsements or Coverages	The scope of coverage, at Corporation's option, is to include coverages for Antennas, Earthquake, Flood, Glass, Ordinance or Law, Terrorism, Theft, Signs, Debris Removal and Named Windstorms. Operator at its election may cover loss arising out of cancellation of the Agreement, including loss of its undamaged improvements and betterments.
1.5	Waiver of Right of Recovery and Subrogation	Operator agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Corporation Parties.
1.6	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Corporation Parties or Operator shall endeavor to provide this notice.
2.	Business Income and Extra Expense. Operator is to maintain business income and extra expense insurance on a Causes of Loss-Special Form meeting at least the following specifications.	
2.1	Scope	Coverage is to be provided on all operations at the Berth and Terminal No. 2.
2.2	Form	This insurance is to be issued on an ISO CP 00 30 10 12 Business Income and Extra Expense Coverage Form or equivalent form.
2.3	Income Coverage Limit	Coverage is to be provided in an amount of not less than 80% of Operator's gross annual income at the Berth and Terminal No. 2 less non-continuing expenses.
2.4	Valuation Basis	This insurance is to be issued on an Agreed Value basis.
2.5	Waiver of Right of Recovery and Subrogation	Operator agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of Corporation Parties.

2.6	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to Corporation Parties or Operator shall endeavor to provide this notice.
<p>C. OTHER INSURANCE Operator shall obtain and maintain such other insurance against other insurable liabilities or hazards as Corporation may from time to time reasonably require.</p>		

2. General Insurance Requirements

.1 Definitions. For purposes of this Agreement:

- a. “Agreement” means the Agreement to which this Exhibit is attached.
- b. “ISO” means Insurance Services Office.
- c. “Operator” shall include sublicensees and contractors of any tier and any other person or entity occupying the Berth or Terminal No. 2 or performing Work by, through, or under Operator.
- d. “Corporation Parties” means (a) the Galveston Port Facilities Corporation, (b) Board of Trustees of the Galveston Wharves, (c) their respective directors, trustees, officers, employees, and agents, and (d) their affiliates, subsidiaries, successors and assigns.
- e. “Work” means the performance of any work on the Berth or Terminal No. 2 by or for Operator.

.2 Limits. “Limits” set out in these specifications are the minimum dollar amount of insured coverage for the risk, cause of loss or peril specified. If Operator maintains greater limits, then these specifications shall not limit the amount of recovery available to Corporation Parties and the limits specified above as the minimum limits are increased to the greater limits.

.3 Policies. All policies held by Operator and required herein must be written through insurance companies authorized to do business in the State of Texas and rated no less than A-: VII in the most current edition of A. M. Best’s Key Rating Guide at all times during the term of the Agreement.

.4 Deductibles and Retentions. If Operator elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding \$25,000.00, Corporation Parties and Operator shall maintain all rights and obligations between themselves as if Operator maintained the insurance with a commercial insurer including but not limited to Additional Insured status, Primary and Non-Contributory Liability, Waivers of Rights of Recovery, Other Insurance Clauses, and any other extensions of coverage required herein. Operator shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney’s fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Operator had maintained the insurance pursuant to this Exhibit. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Operator's sole risk. The Operator shall not be reimbursed for same.

.5 Forms. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, Corporation will have the right to require other equivalent forms. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Corporation.

.6 Evidence of Insurance. Operator is to provide Corporation with evidence of insurance prior to entry by Operator on the Berth or Terminal No. 2 and thereafter is to provide Corporation refreshed evidence of continued insurance after the expiration of the current policies prior to the expiration of the current policies. Insurance must be evidenced as follows:

- a. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- b. ACORD Form 25 Certificate of Liability Insurance for liability coverages which shall specify:
 - 1) Corporation as certificate holder at Corporation's mailing address;
 - 2) Insured's name, which must match that on the Agreement;
 - 3) Insurance companies producing each coverage and the policy number and policy date of each coverage;
 - 4) Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
 - 5) Additional Insured status in favor of Corporation Parties on General Liability, Auto Liability, Excess Liability, and when required herein, Liquor Liability and Pollution/Environmental Liability;
 - 6) Designated Location(s) General Aggregate Limit on General Liability, Excess Liability, and when required herein, Liquor Liability.
 - 7) Liquor Liability when required herein;
 - 8) Personal Injury Contractual Liability on General Liability and Excess Liability;
 - 9) Pollution/Environmental Liability when required herein;
 - 10) Primary and non-contributory status on General Liability and Excess Liability;
 - 11) Waivers of subrogation on all coverages;
 - 12) 30 Day Notice of Cancellation on all coverages;
- c. Copies of the following shall also be provided:
 - 1) General Liability Additional Insured endorsement(s);
 - 2) and
 - 3) 30 Day Notice of Cancellation endorsement applicable to all required policies.

Commencement of occupancy of the Berth or Terminal No. 2 without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Exhibit or the Agreement, shall not constitute a waiver by any Corporation Party of any rights. The Corporation shall have

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the right, but not the obligation, of prohibiting the Operator from occupying the Berth or Terminal No. 2 until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Corporation.

.7 Insurance Requirements of Operator's Contractors or Sublicensees

- a. Insurance similar to that required of the Operator shall be provided by all contractors or sublicensees (or provided by the Operator on behalf of contractors or sublicensees) to cover operations permitted by the Agreement. The Operator shall be held responsible for any modification in these insurance requirements as they apply to contractors or sublicensees. The Operator shall maintain certificates of insurance from all contractors or sublicensees containing provisions similar to those listed herein (modified to recognize that the certificate is from contractor or subtenant) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Corporation upon request.
- b. The Operator is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Operator's or its contractor's or sublicensee's property shall be the Operator's and its contractor's or sublicensee's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Operator and its contractors or sublicensees shall not be reimbursed for same. Should the Operator or its contractors or sublicensees choose to self insure this risk, it is expressly agreed that the Operator hereby waives, and shall cause its contractors or sublicensees to waive, any claim for damage or loss to said property in favor of the Corporation Parties.

3. Miscellaneous

- .1 **Release and Waiver.** The Operator hereby releases, and shall cause its contractors or sublicensees to release, the Corporation Parties from any and all claims or causes of action whatsoever which the Operator and/or its contractors or sublicensees might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Operator and/or its contractors or sublicensees pursuant to the Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE CORPORATION PARTIES.**
- .2 **No Waiver.** Failure of any Corporation Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Corporation Party

to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Operator's obligation to maintain such insurance.

- .3 Compliance With Laws.** If any insurance requirements are deemed to violate any law, statute or ordinance, the insurance requirements shall be reformed to provide the maximum amount of protection to Corporation as allowed under the law.
- .4 Use of the Corporation's Equipment.** The Operator, its agents, employees, contractors or sublicensees may use the Corporation's equipment only with express written permission of the Corporation's designated representative and in accordance with the Corporation's terms and condition for such use. If the Operator or any of its agents, employees, contractors or sublicensees utilize any of the Corporation's equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Corporation, the Operator shall defend, indemnify and be liable to the Corporation Parties for any and all loss or damage which may arise from such use.
- .5 Operator Insurance Representations to Corporation Parties**

 - a. It is expressly understood and agreed that the insurance coverages required herein (a) represent Corporation Parties' minimum requirements and are not to be construed to void or limit the Operator's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Operator should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Operator in support of the Operator's liability and indemnity obligations under the Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Operator, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
 - b. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, the Agreement. Operator will be liable for any and all costs, liabilities, damages and penalties resulting to the Corporation Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Operator by the Corporation. In the event of any failure by the Operator to comply with the provisions of this Exhibit or the Agreement, the Corporation may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Operator, purchase such insurance, at the Operator's expense, provided that the Corporation shall have no obligation to do so and if the Corporation shall do so, the Operator shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- .6 Survival.** This Exhibit is an independent contract provision and shall survive the termination or expiration of the Agreement.

4. INDEMNITY.

TO THE FULLEST EXTENT PERMITTED BY LAW, BUT IN NO WAY IN CONTRAVENTION OF THE LAW, OPERATOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CORPORATION PARTIES, ANY OTHER PERSON OR ENTITY THAT OPERATOR IS REQUIRED TO DEFEND OR INDEMNIFY UNDER THE AGREEMENT, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES (COLLECTIVELY, THE "INDEMNITEES"), FROM AND AGAINST ANY CLAIMS, SUITS, FINES, PENALTIES, LOSSES, COSTS, EXPENSES AND/OR DAMAGES (INCLUDING ATTORNEYS' FEES) (COLLECTIVELY, "LIABILITIES") ARISING OUT OF OR RELATED TO OR ALLEGED TO ARISE OUT OF OR RELATE TO OPERATORS USE OR OCCUPANCY OF THE BERTH AND TERMINAL NO. 2 INCLUDING, WITHOUT LIMITATION, LIABILITIES ATTRIBUTABLE TO (1) PERSONAL/BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR (2) INJURY OR DAMAGE TO PROPERTY (INCLUDING ANY RESULTING LOSS OF USE OR ECONOMIC LOSS).

4.1 DEFENSE OBLIGATIONS

OPERATOR'S OBLIGATION TO DEFEND UNDER PARAGRAPH 4 ABOVE IS SEPARATE AND DISTINCT FROM ITS OBLIGATION TO INDEMNIFY.

4.2 WORKER INJURIES

OPERATOR AGREES WITH RESPECT TO ANY PERSONS PERFORMING ANY WORK THAT OPERATOR IS SOLELY RESPONSIBLE FOR: (1) PROVIDING ALL NECESSARY SUPERVISION, MONITORING, DIRECTION AND CONTROL, (2) COMPLYING WITH AND ENFORCING ALL SAFETY REQUIREMENTS REQUIRED BY THE AGREEMENT AND APPLICABLE LAW, AND (3) PROVIDING ALL NECESSARY SAFETY EQUIPMENT, TRAINING AND SAFE WORKING CONDITIONS. ACCORDINGLY, AND NOTWITHSTANDING ANYTHING IN THIS EXHIBIT TO THE CONTRARY, IF ANY LIABILITIES ARE ATTRIBUTABLE TO ANY PERSONAL/BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY AGENT, EMPLOYEE, BORROWED SERVANT OR REPRESENTATIVE OF OPERATOR OR ITS CONTRACTORS OR SUBLICENSEES, SUPPLIERS OR VENDORS OF ANY TIER, THEN THE DEFENSE AND INDEMNITY OBLIGATIONS OF OPERATOR HEREIN SHALL EXTEND AND APPLY TO ALL LIABILITIES. HOWEVER, IN NO EVENT SHALL OPERATOR BE REQUIRED TO INDEMNIFY THE INDEMNITEES TO THE EXTENT THAT ANY LIABILITIES ARE CAUSED BY THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

4.3 Architect/Engineer Exclusion

Notwithstanding anything in this Exhibit to the contrary, in no event shall Operator be obligated to defend or indemnify any registered architect or licensed engineer from Liabilities resulting from design defects or professional negligence to the extent prohibited by Section 130.001 et seq. of the Texas Civil Practice & Remedies Code, as the same may be amended or re-codified.

4.4 Compliance

Operator shall comply with its obligations under this Exhibit upon notice of any Liability from any Indemnitee, with legal counsel reasonably acceptable to Corporation and any applicable Indemnitee. Operator shall not settle or compromise any Liability without the prior written consent of Corporation and any applicable Indemnitee. Operator shall comply with its obligations under this Exhibit at its sole cost and expense. If Operator fails to fully comply, Corporation may, in addition to any other rights and remedies in the Agreement, take all such action as it deems necessary in its sole discretion to protect itself and/or any other Indemnitee and defend, pay, discharge or otherwise settle any Liabilities, and Operator shall be liable for all resulting cost, damage, loss or expense (including attorneys' fees) incurred by Corporation. Operator agrees to pay all attorneys' fees, costs and expenses incurred by Corporation in enforcing this Exhibit.

4.5 No Limitation

The rights and remedies of the Indemnitees in this Exhibit are cumulative and in addition to other rights and remedies related to defense and indemnity elsewhere in the Agreement or otherwise available at law or in equity. Operator's obligations under this Exhibit shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable under workers' compensation, disability or other employee benefit acts, or by the scope or limits of insurance required of or otherwise maintained by Operator. The requirements of this Exhibit shall survive termination of the Agreement and shall continue until barred by applicable law.

4.6 Other Definitions

Terms in this Exhibit shall have the meaning assigned in the Agreement unless otherwise defined in this Exhibit.

Schedule 1
(Section 1.02)

Schedule of Cruises During First Operating Year
(Nov. 1, 2018 – Oct. 31, 2019)

<u>Departure Date</u>	<u>Vessel</u>
Nov. 2, 2018	Disney Wonder
Nov. 8, 2018	Disney Wonder
Nov. 12, 2018	Disney Wonder
Nov. 16, 2018	Disney Wonder
Nov. 23, 2018	Disney Wonder
Nov. 30, 2018	Disney Wonder
Dec. 7, 2018	Disney Wonder
Dec. 14, 2018	Disney Wonder
Dec. 21, 2018	Disney Wonder
Dec. 27, 2018	Disney Wonder
Jan. 3, 2019	Disney Wonder
Jan. 9, 2019	Disney Wonder

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**Schedule 3.04 - Calculation of Guaranteed Minimum Annual
Passenger Fee (Section 3.08)**

**Disney Cruise Lines - Galveston Port Facilities Corporation
November 1, 2018**

Item	First Year Rate
Ship Agent (to be handled by DCL directly)	0.00
Passenger Wharfage (Total Invoiced to DCL on Per Voyage Basis) (Guaranteed Minimum Passenger Count per Voyage + 2,472 Passengers) (Invoiced as \$7.50 per actual passenger disembarked and embarked.)	15.00
Vessel Dockage (\$14,455.70 per port call / 2,472 passengers)	5.85
Harbormaster Fees (\$287.69/2,472)	0.12
Water (DCL to handle directly.)	
Water hook up (DCL to handle directly)	
Stevedoring (Quote from Metro Cruise Services based on actual average Passenger cost from 2016-2017 season)	11.95
Line Handling Services (\$825.00 per voyage)	0.33
Pilot Services (Actual Average Passenger Cost from 2016-2017 season updated to reflect Increase in the 2017 Gal-Tex Pilot Tariff)	2.75
Trash Collection (DCL to handle directly.)	0.00
Terminal Security Services (Basis USSA quote \$16,369.08)	6.62
Terminal Security Services - Add K9 (Average cost \$3,785)	1.53
Sub Total:	44.15
Administration Fee Charge	0.41
Sub Total:	44.56
Port Security Surcharge (Total to be Invoice to DCL on Per Voyage Basis) (\$1.00 per passenger embarked per port call)	1.00
Sub Total:	45.56
Tonnage Tax (Invoice to DCL separately, if GPFC is Invoiced.)	
Sub Total:	45.56
Customs Clearance (Invoice to DCL separately, if GPFC is invoiced.) (Including APHIS and User Fees.)	
Sub Total:	45.56
Passenger Fee Grand Total:	45.56

Calculation of Guaranteed Annual Passenger Fee:

Minimum Passenger Count (2,472) x Minimum Homeport Operations (10) X \$45.56 = \$1,126,243,

Rounded \$1,100,000

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