



**PORT EVERGLADES PASSENGER CRUISE TERMINAL AND BERTH USER AGREEMENT BETWEEN  
BROWARD COUNTY AND BALEARIA CARIBBEAN LTD., CORP.**

This Port Everglades Passenger Cruise Terminal and Berth User Agreement ("Agreement") is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and Balearia Caribbean Ltd., Corp. ("Operator") (each a "Party" and collectively referred to as the "Parties").

**RECITALS**

A. County owns and operates Port Everglades, a deep-water port located in Broward County, Florida.

B. As stated in the Tariff, the use of the waterways and facilities under the governance of County, including Port Everglades, shall constitute a consent to the terms and conditions of the Tariff, and evidences an agreement on the part of all users of the waterways and facilities to pay all charges specified in the Tariff and to be governed by all rules and regulations contained in the Tariff, unless specifically described to the contrary in a written lease, operating agreement, or other contract.

C. The Parties entered into a Port Everglades Passenger Cruise Terminal and Berth User Agreement, dated November 8, 2021, so that Operator may operate a passenger cruise/ferry service from Port Everglades to the Bahamas with roll on/roll off cargo transportation services ("Prior Agreement"). The Prior Agreement expires on November 30, 2022.

D. The Parties have agreed to certain terms and conditions by which Operator will continue to conduct and operate its passenger cruise/ferry service from Port Everglades to the Bahamas with roll on/roll off cargo transportation services.

E. Unless specifically described to the contrary in this Agreement, the rules, regulations, and charges contained in the Tariff shall apply.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. DEFINITIONS**

1.1 **Anchorage** has the meaning defined in the Tariff.

1.2 **Board** means the Board of County Commissioners of Broward County, Florida, which is the governing body of the Port Everglades Department.

1.3 **Business Days** means Monday through Friday of each week, exclusive of holidays, between the hours of 8:00 a.m. and 5:00 p.m. (Eastern).

1.4 **Lay-In** means lying alongside a pier or dock without loading and/or discharging cargo or embarking/debarking cruise passengers.

1.5 **Lay-In Berth** means the place in Port Everglades assigned to a Vessel where the Vessel may Lay-In, unless otherwise specified herein.

1.6 **Passenger/Cargo Berth** means the place in Port Everglades assigned to a Vessel alongside a pier or dock where the Vessel may load and discharge cargo or embark and debark cruise passengers, unless otherwise specified herein.

1.7 **Passenger Cruise Terminal** means a facility at Port Everglades to support cruise operations, including the embarking and debarking of passengers.

1.8 **Port Director** means the Chief Executive/Port Director of the Port Everglades Department.

1.9 **Port Everglades** or **Port** means the deep-water port located on the lower East Coast of the Florida peninsula at the adjoining city limits of the City of Fort Lauderdale, the City of Hollywood, and the City of Dania Beach, and all port facilities located thereon, as more specifically defined in the Tariff.

1.10 **Port Everglades Department** means the County department established pursuant to Section 16.1 of the Broward County Administrative Code and responsible for administering and operating Port Everglades. All approvals by the Port Everglades Department required by this Agreement require the written approval of the Port Director or their designee.

1.11 **Roll-On/Roll-Off Cargo Ramp** means a ramp for the loading and offloading of cargo from a Passenger/Cargo Berth to a Vessel, or from a Vessel to a Passenger/Cargo Berth, by wheels as opposed to by lift.

1.12 **Tariff** means Tariff Number 12, as may be amended, which is electronically filed with the U.S. Federal Maritime Commission, filed in the FMC-ATFI system, and located at <https://www.porteverglades.net/development/tariff>.

1.13 **Vessel(s)** means every type or description of floating craft, whether self-propelled or not self-propelled, that is used or capable of being used as a means of transportation on the water.

1.14 **Wharf(ves)** means a structure of steel and/or concrete built on the shore extending into deep water, so that Vessels may lie alongside.

1.15 **Wharfage** means the charge assessed against all cargo and cruise passengers (embarking/disembarking/in transit), calculated in accordance with the Wharfage charges set

forth in this Agreement for the passage of that cargo and cruise passengers (embarking/disembarking/in transit) onto, over, through, or under Wharves or Wharf premises or between Vessels or overside Vessels (to or from barge or water) when berthed at Wharves or Wharf premises or when moored in a slip adjacent to a Wharf or Wharf premise. Wharfage is the charge solely for use of Wharves or Wharf premises and does not include charges for any other service or facility.

## **ARTICLE 2. SERVICES**

2.1. Services. Commencing on the Commencement Date (hereinafter defined), in accordance with the terms of this Agreement:

2.1.1. Operator may use the following Vessel to conduct, operate, and market passenger cruise/ferry operations from Port Everglades to the Bahamas with related roll on/roll off cargo transportation services: Jaume II, which has a length overall ("Length Overall" or "LOA") of 266.65 feet (81.15 meters) ("Designated Vessel"). The Designated Vessel may be substituted with a comparable Vessel with the approval of the Port Everglades Department. Operator's request to substitute the Designated Vessel with a comparable Vessel shall not be unreasonably withheld by the Port Everglades Department.

2.1.2. Operator may deploy a second Vessel at Port Everglades, for Lay-In purposes only, with the prior approval of the Port Everglades Department, acting in its sole discretion ("Non-Designated Vessel"). Operator shall provide the Port Everglades Department with a written request for the deployment of the Non-Designated Vessel at Port Everglades, for review and approval, not less than thirty (30) days prior to such Non-Designated Vessel's arrival at Port Everglades. The written request shall include the Non-Designated Vessel's specifications.

2.2. Other Services. All other operations at Port Everglades not expressly contemplated by this Agreement, or any amendments hereto, including, but not limited to, any operations before the Commencement Date (unless pursuant to a separate agreement, including, but not limited to, the Prior Agreement) or after the expiration or earlier termination of this Agreement, or the deployment of any Vessel(s) at Port Everglades other than the Designated Vessel or Non-Designated Vessel (if approved by the Port Everglades Department), shall be governed by the Tariff.

## **ARTICLE 3. TERM OF AGREEMENT**

3.1. Effective Date. This Agreement shall become effective on the date it is executed by the last of the Parties executing this Agreement ("Effective Date").

3.2. Term. The term of this Agreement shall begin on December 1, 2022 ("Commencement Date") and shall end one (1) year thereafter ("Term"), unless sooner terminated as provided herein.

#### ARTICLE 4. SCHEDULES AND FACILITIES

4.1. Vessel Schedules and Facility Assignments for Designated Vessel. Operator shall notify the Port Everglades Department, in writing, no later than thirty (30) days prior to the first day of each month, of the date(s) the Designated Vessel needs access to a Passenger Cruise Terminal and/or Passenger/Cargo Berth at Port Everglades for such month and whether the Passenger/Cargo Berth must accommodate a Roll-On/Roll-Off Cargo Ramp (collectively, the "Vessel Schedule"). Operator shall immediately notify the Port Everglades Department, in writing, of any changes to such Vessel Schedule, but such notice of change shall not be less than seventy-two (72) hours prior to the earliest date affected by the change in the Vessel Schedule, except in the case of an emergency; in the case of an emergency, as determined solely by the Port Everglades Department, such notice may be shorter than seventy-two (72) hours.

4.1.1. Within five (5) Business Days of its receipt of a timely Vessel Schedule, or any timely change thereto, the Port Everglades Department shall use its best efforts to assign or reassign, as applicable, and if available, a designated, nonexclusive Passenger Cruise Terminal and/or Passenger/Cargo Berth, which shall accommodate a Roll-On/Roll-Off Cargo Ramp, if requested, for the requested day(s). If a Passenger Cruise Terminal and/or Passenger/Cargo Berth is not available, or if a Roll-On/Roll-Off Cargo Ramp is not available, then the Port Everglades Department shall notify Operator accordingly and assign other available Port facilities, including, but not limited to, a Lay-In Berth, if available. If other Port facilities, including, but not limited to, a Lay-In Berth, are not available, then the Port Everglades Department shall notify Operator accordingly and direct Operator to use the Port's Anchorage area. Notwithstanding anything in this Agreement to the contrary, County will not be responsible for any additional costs incurred by Operator because of Operator utilizing or shifting to/from other Port facilities, including, but not limited to, a Lay-In Berth and/or the Anchorage area. Additionally, notwithstanding anything in this Agreement to the contrary, the Port Everglades Department is not required to assign a Passenger Cruise Terminal and/or Passenger/Cargo Berth, or adjust the assignment, or provide any other Port facilities, if the Vessel Schedule or any change thereto is untimely.

4.1.2. Operator may not use any Passenger Cruise Terminals, Passenger/Cargo Berths, or other Port facilities at Port Everglades, except (a) pursuant to a Vessel Schedule that results in the assignment of such Passenger Cruise Terminal, Passenger/Cargo Berth, or other Port facilities; or (b) pursuant to the procedures set forth in the Tariff, which use shall be subject to the terms and rates set forth in the Tariff.

4.1.3. Notwithstanding anything in this Agreement to the contrary, the Port Everglades Department may adjust Passenger Cruise Terminal and/or Passenger/Cargo Berth assignments, reassign Operator to a Lay-In Berth or other Port facilities, or direct Operator to the Port's Anchorage area, at any time the Port Everglades Department deems such adjustment, reassignment, or direction to be necessary, and County will not be

responsible for any additional costs incurred by Operator because of such adjustment, reassignment, or direction.

4.1.4. If the Designated Vessel is assigned a Lay-In Berth, such berth may be used for the loading and discharging of cargo and/or embarking and debarking of cruise passengers.

4.2. Facility Assignments for Non-Designated Vessel. If the deployment of a Non-Designated Vessel is approved pursuant to Article 2 by the Port Everglades Department, the Port Everglades Department will assign the Non-Designated Vessel a Lay-In Berth for Lay-In purposes only.

4.3. Nonexclusive Use. The Port Everglades Department may, at any time and without limitation, assign the use of the same Passenger Cruise Terminal and/or Passenger/Cargo Berth assigned to Operator, or any other Port facilities assigned to Operator, to other users of Port Everglades, at the sole discretion of the Port Everglades Department.

4.4. Maintenance Standards/Utilities. All Port facilities provided by County shall be consistent with industry standards. The berths, Wharves, bollards, and equipment used for Vessel berthing, and the Passenger Cruise Terminals and related infrastructure (including, without limitation, parking areas, roadways, sidewalks, and other public areas and facilities), as applicable, shall be maintained by County, at its sole expense, in a clean, orderly, safe, and secure condition, and in good working order and state of repair consistent with industry standards. Operator shall use the berths, Wharves, bollards, Passenger Cruise Terminals, other equipment, and related infrastructure in an orderly and safe fashion, and shall run a safe, clean operation, so as to avoid injury to persons and/or damage to property.

Notwithstanding anything herein to the contrary, in the event of a COVID-19 outbreak (or a suspected COVID-19 outbreak) on the Designated Vessel or Non-Designated Vessel, as determined by the Port Everglades Department, Operator, at its sole cost, shall be responsible for all enhanced cleaning measures required to County facilities as a result of such outbreak (or suspected outbreak), including, but not limited to, enhanced cleaning of any facilities or terminal(s) as (a) may be requested by the Port Everglades Department, in its sole discretion, or (b) that is otherwise required by the Centers for Disease Control and Prevention, other regulatory agency, or applicable law. Upon failure of Operator to perform its obligations set forth in this provision, after reasonable written notice to Operator, County may perform or cause the obligations to be performed and Operator shall pay the cost thereof to County within ten (10) days following written demand for said payment.

4.5. Utilities. County, at its expense, shall provide Passenger Cruise Terminal(s) assigned to Operator with electricity, lighting, air conditioning, water, and sewer, and shall use its best efforts to restore electrical and other utility services upon any failure thereto. If Operator wishes to install any utility other than those provided by County, Operator must obtain prior approval from the Port Everglades Department and pay all expenses related to such additional utilities. County shall not be responsible in any way to Operator for any failure or defect in the supply, quality, or character of the electricity, lighting, air conditioning, water, sewer, or any other utility service

furnished at the Passenger Cruise Terminal(s). County shall have the right to suspend or shut down electrical or any other utility services when necessitated by safety, repairs, alterations, connections, upgrades, relocations, reconnections to the utility system, or for any other reason.

## **ARTICLE 5. COUNTY'S PORT USER FEE AND PASSENGER WHARFAGE PAYMENTS; SECURITY DEPOSIT**

### **5.1. Port User Fee.**

5.1.1. During the Term of this Agreement, and subject to the adjustment stated in Section 5.4 of this Agreement, Operator shall pay County a Port user fee of Forty-two Thousand and 00/100 Dollars (\$42,000.00) per month ("Port User Fee") for the Designated Vessel. For each month or any portion thereof that a Non-Designated Vessel is berthed at Port Everglades, the Port User Fee for that month shall increase by Seven Thousand and 00/100 Dollars (\$7,000.00) ("Non-Designated Vessel Port User Fee"). The monthly Port User Fee will be billed to Operator on the Commencement Date and on the first day of each calendar month thereafter throughout the Term (the first and last month adjusted pro rata, if applicable). If a Non-Designated Vessel Port User Fee is due for any month, but not included in the initial invoice, the Non-Designated Vessel Port User Fee will be billed to Operator immediately upon the Non-Designated Vessel's first use of a Lay-In Berth for such month.

5.1.2. Any use of a designated, nonexclusive Passenger Cruise Terminal by the Designated Vessel for more than six (6) operating hours from first use on any given day shall be billed to Operator at the rate of Two Hundred Seventy-five and 00/100 Dollars (\$275.00) per additional operating hour ("Additional Port User Fee").

### **5.2. Wharfage Charges for Designated Vessel.**

5.2.1. During the Term of this Agreement, Operator shall pay to County passenger Wharfage charges for each passenger move (*i.e.*, embark/disembark/in transit, as applicable) for the Designated Vessel as follows (collectively, the "Passenger Wharfage Payments"):

First 75,000 passenger moves:	\$1.40 per passenger move
75,001 to 150,000 passenger moves:	\$2.06 per passenger move
150,001 to 225,000 passenger moves:	\$2.71 per passenger move
225,001 or more passenger moves:	\$3.37 per passenger move

5.2.2. Operator shall pay County for Wharfage charges for cargo (as opposed to passengers), if any, pursuant to the Tariff.

### **5.3. Tariff Charges. The Port User Fee (including the Non-Designated Vessel Port User Fee), Additional Port User Fee, and Passenger Wharfage Payments (collectively, "Terminal Use Fees")**

shall be in lieu of published Tariff rates for the Designated Vessel and Non-Designated Vessel for: dockage (Items 300 through 350), harbormaster fees (Item 1100), linehandler fees (Item 1105), terminal overtime (Item 1120), terminal electric (Item 1120 and Item 1125), Wharfage rates for cruise passengers (Item 540), security (Item 1066), and sworn law enforcement (Item 1069) (collectively, "Terminal Uses"). As such, Operator does not need to pay any fees set forth in the Tariff for the Terminal Uses except the Terminal Use Fees set forth in this Agreement. However, Operator shall pay all other Tariff charges incurred by Operator in its operations at the Port, including, but not limited to, charges for potable water used by its Vessels, charges for the use of County-owned and provided equipment (*i.e.*, electric forklifts for baggage handling inside cruise terminals), Wharfage rates for cargo, and Port security charges for MARSEC II level and above (collectively, "Other Fees"). If Operator should incur charges for Other Fees, the Port Everglades Department will separately bill Operator monthly for same.

5.4. New Port Charges Imposed by Government Agencies for Non-Port Specific Charges. If, after the Effective Date, a new levy, charge, or fee is imposed or assessed under any applicable law, rule, regulation, directive, or other legal requirement of any federal, state, or local governmental authority against Operator (excluding a Port-Specific Charge as defined in Section 5.5 of this Agreement) (hereinafter referred to as a "New Government Charge"), and such New Government Charge must be collected by County from Operator, then the monthly Port User Fee shall be increased by the amount of the New Government Charge (or monthly equivalent, if other than monthly) effective on the date such New Government Charge becomes effective. If the New Government Charge results in a "Material Adverse Change" on Operator's operations from Port Everglades, then the Port Everglades Department and representatives of Operator shall meet to discuss the resulting financial impact on Operator within thirty (30) days after the date such New Government Charge becomes effective. If the Parties are unable to reach an agreement reasonably satisfactory to the Parties within thirty (30) days following such meeting, or an earlier or later date mutually agreed to in writing by Operator and the Port Everglades Department, Operator may terminate this Agreement by giving thirty (30) days' prior written notice to County and cease its operations at Port Everglades on the termination date set forth in such notice. Such action by Operator shall not be deemed a default or Event of Default (hereinafter defined). As used in this section, the term "Material Adverse Change" shall mean a New Government Charge that would increase the then current monthly Port User Fee by Ten Thousand and 00/100 Dollars (\$10,000.00) or more.

5.5. New Port-Specific Charge imposed by County. Any new levy, charge, or fee imposed or assessed by County after the Effective Date against all passenger cruise operators that is specific to the Port or Port operations ("Port-Specific Charge") shall not be included in the monthly Port User Fee as a New Port Charge in the manner described above, but billed separately by the Port Everglades Department. If the Board is scheduled to consider approval of a new fee that may impact Operator, the Port Everglades Department shall provide Operator with written notice in advance of any public meeting of the Board where such a fee will be considered.

5.6. Reports. All passenger moves and the hours of any use of the designated, nonexclusive Passenger Cruise Terminal, and any other activities that require a charge pursuant to the Tariff,

including, but not limited to, the amount of cargo as detailed in the Tariff, shall be reported by Operator to the Port Everglades Department within the deadlines required by the Tariff.

5.7. Method of Payment; Interest and Late Charges. Operator shall pay all County invoices within fifteen (15) days after the date of County's invoice. If Operator fails to timely pay any amounts due, Operator's account shall be placed in "Delinquent Status" and Operator shall pay County, in addition to the amount otherwise due: (a) a finance charge of one and one-half percent (1.5%) for each month or portion thereof, starting thirty (30) days after the due date, that any invoice remains delinquent; and (b) a late charge equal to five percent (5%) of any overdue amount if still unpaid fifteen (15) days after the due date. No acceptance by County of payments in whole or in part after a default by Operator of any of the terms, covenants, or conditions hereof shall be deemed a waiver of any right on the part of County to collect the finance charge or late charge or terminate this Agreement. If placed in Delinquent Status, Operator will be subject to the procedures set forth in Item 910 of the Tariff, as amended.

5.8. Taxes and Fees. Operator shall pay, on or before the respective due dates, all federal, state, county, and local taxes and fees, and all special assessments of any kind that are now or may hereafter be levied upon the business conducted by Operator, upon any of Operator's property used in connection therewith, or upon any sums payable under this Agreement.

5.9. Dishonored Check or Draft. If County receives a dishonored check or draft in payment of any obligation arising under this Agreement, Operator shall pay County a service charge in the amount established by County from time to time. In such event, and in addition to any other remedies available to County under this Agreement, at law or in equity, County may require that future payments be made by cashier's check or other means acceptable to County.

5.10. Weekends and Holidays. Should any payment due date fall on a weekend day or holiday, such payment shall be due and payable on the immediately preceding Business Day.

5.11. Place of Payments. All payments required to be made hereunder shall be made payable to Broward County and delivered to: Port Everglades, Attn: Finance Division, 1850 Eller Drive, Fort Lauderdale, FL 33316, or to such other office or address as may be substituted by County therefor.

5.12. Security Deposit. As security for the payment of all monies due and the performance of Operator's obligations under this Agreement, Operator shall post a security deposit with County equal to Forty-two Thousand and 00/100 Dollars (\$42,000) ("Security Deposit"). The Security Deposit shall be submitted to County simultaneously with submission to County of this Agreement as executed by Operator. The Security Deposit shall be either in the form of cash, an irrevocable letter of credit ("Letter of Credit") in form and substance satisfactory to County, or a payment and performance bond ("Bond") in form and substance satisfactory to County. No interest shall be due or paid on the Security Deposit. County, upon at least fourteen (14) calendar days' notice to Operator, may increase the amount of the required Security Deposit to reflect any increases in monies due. In addition, County, upon at least fourteen (14) calendar days' notice to



Operator, may increase the amount of the required Security Deposit if County determines, in its sole discretion, that an increase is warranted due to increased obligations under this Agreement or based upon Operator's payment or performance history at the Port. In the event of any Event of Default (hereinafter defined), in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw down up to the full amount of the Security Deposit and apply same to any and all amounts owed, whether before or after the expiration or earlier termination of this Agreement. Within five (5) Business Days after notice from County of any such draw, Operator shall replenish the Security Deposit with cash, a new Letter of Credit, or new Bond, as applicable, so it equals the full amount of the required Security Deposit. If a Letter of Credit is posted, the initial term and all renewal terms of the Letter of Credit shall be for a period of not less than one (1) year, and the Letter of Credit shall be kept in full force and effect throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. If a Bond is posted, the Bond shall provide coverage and be kept in full force and effect throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. If Operator posts a cash deposit, then such cash deposit shall be retained by County throughout the Term and for a period of six (6) months following the expiration or earlier termination of this Agreement. Not less than one hundred twenty (120) calendar days prior to any expiration date of the Letter of Credit or Bond, Operator shall submit evidence in a form satisfactory to County that said security instrument has been renewed. Each Letter of Credit shall be provided by a financial institution authorized to do business in the State of Florida, having a resident agent in Broward County, and having been in business with a record of successful continuous operation for at least the immediately preceding five (5) years. Each Bond shall be executed by a surety company authorized to do business in the State of Florida, having a resident agent in Broward County, and having been in business with a record of successful continuous operation for at least five (5) years. Furthermore, such surety company must have at least an "A" rating in the latest revision of Best's Insurance Report. Any failure by Operator to strictly comply with the terms of this section shall constitute an Event of Default, and the obligations of this section shall survive the expiration or earlier termination of this Agreement.

## **ARTICLE 6. REPRESENTATIONS AND WARRANTIES**

6.1. Representation of Authority. Operator represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Operator, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Operator has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Operator. Operator further represents and warrants that execution of this Agreement is within Operator's legal powers, and each individual executing this Agreement on behalf of Operator is duly authorized by all necessary and appropriate action to do so on behalf of Operator and does so with full legal authority.

6.2. Representations. Operator represents and warrants that all statements and representations made in Operator's application or other supporting documents submitted to County in connection with the award of this Agreement, including during the evaluation process,

were true and correct when made and are true and correct as of the date Operator executes this Agreement, unless otherwise expressly disclosed in writing by Operator.

6.3. Contingency Fee. Operator represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Operator, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

6.4. Public Entity Crime Act. Operator represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Operator further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Operator has been placed on the convicted vendor list.

6.5. Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Operator represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Section 215.473 or 215.4725, Florida Statutes. Operator represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Operator represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.

6.6. Claims Against Operator. Operator represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Operator, threatened against or affecting Operator, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Operator to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Operator or on the ability of Operator to conduct its business as presently conducted or as proposed or contemplated to be conducted.

6.7. Prohibited Telecommunications Equipment. Operator represents and certifies that it and its subcontractors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Operator represents and certifies that Operator and its subcontractors shall not provide or use such covered telecommunications equipment, system, or services during the Term.

6.8. Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances ("Act"), Operator certifies and represents that it shall at all times comply with the

provisions of the Act. The contract language referenced in the Act is deemed incorporated in this Agreement as though fully set forth in this section.

6.9. Common Carrier or Contracted Carrier Attestation. In accordance with Section 908.111, Florida Statutes, on or before the Effective Date, Operator shall attest, in the form attached as Exhibit A, that it is not willfully providing and will not willfully provide any service during the Agreement term in furtherance of transporting a person into this State knowing that the person is an unauthorized alien, except to facilitate the detention, removal, or departure of the person from this state or the United States.

6.10. Breach of Representations. In entering into this Agreement, Operator acknowledges that County is materially relying on the representations, warranties, and certifications of Operator stated in this article. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation, warranty, or certification is false, County shall have the right, at its sole discretion, to terminate this Agreement. Furthermore, a false representation may result in debarment from County's procurement activities.

## **ARTICLE 7. INDEMNIFICATION OF COUNTY**

Operator shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach of this Agreement by Operator, or by any intentional, reckless, or negligent act or omission of Operator, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). Upon receipt of a Claim, County shall notify Operator. If any Claim is brought against an Indemnified Party, Operator shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

## **ARTICLE 8. DEFAULT**

8.1 Event of Default by Operator. The occurrence of any of the following shall constitute an "Event of Default" by Operator under this Agreement:

8.1.1 Operator fails to pay any monies when due and continues in its failure to pay for a period of fifteen (15) days following the date written notice to cure is sent by the Port Everglades Department to Operator;

8.1.2 Operator fails to comply with any provision of this Agreement and (a) such failure continues for a period of fifteen (15) days following the date written notice to cure is sent by the Port Everglades Department to Operator; (b) in the case of any obligation that cannot be cured with due diligence and good faith within fifteen (15) days, as determined by the Port Everglades Department, Operator fails to proceed promptly and with due diligence and good faith to begin to cure the default within fifteen (15) days after such notice is sent by the Port Everglades Department; or (c) having begun to cure the default in a timely manner, Operator thereafter fails to diligently prosecute the cure to completion;

8.1.3 Operator assigns all or substantially all of Operator's assets for the benefit of Operator's creditors;

8.1.4 By or pursuant to, or under the authority of any legislative act, resolution, or rule or any order or decree of any court or governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the assets of Operator, and such possession or control shall continue in effect for a period of ninety (90) days;

8.1.5 Operator, or an officer, director, executive, partner, member, shareholder, employee, or agent who is active in the management of Operator, is found guilty or convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, where the illegal conduct or activity (i) is considered to be a Public Entity Crime as defined by Chapter 287, Florida Statutes, as amended; (ii) is customarily considered to be a "white collar crime" or theft-related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds; (iii) involves an act of moral turpitude, meaning conduct or acts that tend to degrade the person in society or bring them into public hatred, contempt, scorn, or ridicule, or that tends to shock, insult, or offend the community, or to ridicule public morals, or decency, or to harm the image of County by virtue of its association with Operator; or (iv) results in a felony conviction. Notwithstanding the foregoing, Operator may abate this triggering event by submitting evidence satisfactory to the Port Everglades Department that Operator has implemented best business practices seeking to address such illegal conduct or activity and prevent it from reoccurring, and requiring the offending person(s) to resign and has otherwise removed the person from Operator's management activities related to this Agreement;

8.1.6 The discovery of any material misrepresentation of fact or fraudulent statement made by Operator in connection with any Agreement application or forms submitted to and relied upon by County in connection with this Agreement that is not waived by the Port Everglades Department. Operator shall be allowed fifteen (15) days following the date written notice is given Operator to explain the matter and provide the Port Everglades Department with the information needed to make a waiver determination, which determination shall be in Port Everglades Department's sole discretion;

8.1.7 Suspension or revocation of Operator's operations by a governmental unit or agency having jurisdiction over Operator;

8.1.8 The material inaccuracy of any representation or warranty made or given by Operator in this Agreement and Operator's failure to cure such inaccuracy to the satisfaction of the Port Everglades Department within fifteen (15) days after written notice to cure is sent to Operator; or

8.1.9 Any subsequent breach or default following notice of Habitual Default (hereinafter defined).

8.2 County's Remedies for Operator's Default. If one or more Events of Default occurs, County may, at its sole option, exercise one or more of the following rights after notice to Operator:

8.2.1 Terminate this Agreement;

8.2.2 Sue Operator for all damages, costs, and expenses arising from the Event of Default, and recover all such damages, costs, and expenses, including reasonable costs and attorneys' fees at both trial and appellate levels;

8.2.3 Seek an injunction or specific performance of any such term or provision of this Agreement. Operator waives any and all requirements that County post any security or collateral that may be otherwise required as a condition for County to obtain specific performance, injunctive relief, or other equitable relief. The Parties agree and stipulate that County may not have an adequate remedy at law for an Event of Default and, if such is such determination is made by County, Operator agrees that injunctive relief or specific performance are required to protect the public from irreparable harm;

8.2.4 Draw down on the Security Deposit; and/or

8.2.5 Exercise any and all other remedies available to County under this Agreement, at law, or in equity.

8.3 Remedies under Federal Bankruptcy Laws. Neither this Agreement nor any rights or privileges under this Agreement shall be an asset of Operator in any bankruptcy, insolvency, or reorganization proceeding. If County is not permitted to terminate this Agreement because of the provisions of any applicable laws, including, but not limited to, the United States Bankruptcy Code, Operator or any trustee for it shall, within fifteen (15) days, upon request by County to the applicable court of administrative body, assume or reject this Agreement, provided, however, that Operator (or successor entity) may not assume this Agreement unless all Events of Default have been cured, County shall have been compensated for any monetary loss resulting from such Events of Default, and County shall be provided with adequate assurance of full and timely performance of all provisions, terms, and conditions of this Agreement on the part of Operator to be performed.

Notwithstanding the foregoing, to the greatest extent permitted under applicable law, upon the filing by or against Operator of any proceeding under federal bankruptcy laws, if there has been an Event of Default within the six (6) months preceding such filing, County shall have the right to immediately terminate this Agreement, in addition to other remedies provided under provisions of any applicable laws, including, but not limited to, the United States Bankruptcy Code. Such termination shall be by written notice to Operator within sixty (60) days after the date of Operator's initial filing in bankruptcy court.

8.4 Payment under Protest. Notwithstanding anything to the contrary in this Agreement, if a dispute arises between County and Operator with respect to any obligation or alleged obligation of Operator to pay money, the payment under protest by Operator of the amount claimed by County to be due shall not waive any of Operator's rights, and if any court or other body having jurisdiction determines that all or any part of the protested payment was not due, then County shall as promptly as reasonably practicable reimburse Operator any amount determined as not due. County shall not be required to pay any interest on any such reimbursed sums.

8.5 Habitual Default. If Operator has frequently, regularly, or repetitively breached any of the terms, covenants, or conditions of this Agreement, regardless of whether Operator has cured each or any individual breach, Operator may be determined by County to be a "Habitual Violator." At the time that such determination is made, County shall issue to Operator a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise Operator that there shall be no further notice or cure periods to correct any subsequent breach and that any subsequent breach of whatever nature, taken with all previous breaches, considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach, County may terminate this Agreement upon the giving of written notice of termination to Operator, such termination to be effective upon delivery of the notice to Operator.

## **ARTICLE 9. INSURANCE**

9.1. For the duration of the Agreement, Operator shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit B in accordance with the terms and conditions of this article. Operator shall maintain insurance coverage against claims relating to any act or omission by Operator, its agents, representatives, employees, or subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

9.2. Operator shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit B on all policies required under this article.

9.3. On or before the Effective Date, Operator shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Operator shall provide

complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

9.4. Operator shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Operator has been completed, as determined by the Port Everglades Department. Operator or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Operator shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

9.5. All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

9.6. If Operator maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit B, County shall be entitled to any such broader coverage and higher limits maintained by Operator. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Operator.

9.7. Operator shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit B and submit to County for approval at least fifteen (15) days prior to the Effective Date. Operator shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Operator to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Operator agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Operator agrees to obtain same in endorsements to the required policies.

9.8. Unless prohibited by the applicable policy, Operator waives any right to subrogation that any of Operator's insurers may acquire against County, and agrees to obtain same in an endorsement of Operator's insurance policies.

9.9. Operator shall require that each subcontractor maintains insurance coverage that adequately covers the services provided by that subcontractor on substantially the same insurance terms and conditions required of Operator under this article. Operator shall ensure that all such subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the subcontractors' applicable insurance policies.

9.10. If Operator or any subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Operator. Operator shall not permit any subcontractor to provide services unless and until the requirements of this article are satisfied. If requested by County, Operator shall provide, within one (1) Business Day, evidence of each subcontractor's compliance with this section.

9.11. If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit B, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Operator must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit B.

#### **ARTICLE 10. ENVIRONMENTAL IMPAIRMENT; CONTAINMENT AND REMOVAL**

10.1. Operator acknowledges and agrees that County makes no representations or warranties whatsoever as to whether Pollutants (as hereinafter defined) exist on or in the cruise terminal facilities and adjacent dock area(s) in violation of any federal, state, or local law, rule, or regulation or in violation of any order or directive of any federal, state, or local court or entity with jurisdiction of such matter. "Pollutants" refer to and include all derivatives or by-products of any one or more of the following terms as defined by applicable local, state, or federal laws or regulations: hazardous substances, hazardous materials, hazardous waste, toxic substances, toxic pollutants; or such other pollutants, contaminants, substances, materials, and wastes as are or become regulated under applicable local, state, or federal laws or regulations. Operator, at its own expense, may perform a base line environmental audit of the cruise terminal facilities and adjacent dock area(s). County shall be responsible for any contamination or Pollutants caused by County.

10.2. The discharge of any Pollutants in the Port in violation of any federal, state, or local law, rule, or regulation or in violation of an order or directive of any federal, state, or local court or entity is prohibited. Any such discharge by Operator, its officers, employees, contractors, subcontractors, invitees, or agents, whether committed prior to or subsequent to the date of execution of this Agreement, shall be at Operator's expense and, upon demand of County, immediately contained, removed, and abated to the satisfaction of County and any court or regulatory entity having jurisdiction of the discharge. If Operator does not take action immediately to have such Pollutants contained, removed, and abated, County may undertake the required action, however, any such action by County shall not relieve Operator of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either Operator or County to contain or remove Pollutants, or to abate a discharge, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its discharge.



10.3. If County arranges for the removal, containment, and/or abatement of Pollutants in the Port that were caused by Operator, its officers, employees, contractors, subcontractors, invitees, or agents, the costs of such action(s) incurred by County shall be paid by Operator to County immediately upon County's written demand, with interest as is provided for under County's rules, regulations, and ordinances, including its published Tariff, and amendments thereto and reissues thereof, not to exceed eighteen percent (18%) per annum.

10.4. The provisions of this article shall survive the expiration or termination of this Agreement.

## **ARTICLE 11. IMPROVEMENTS**

11.1. Required Approval. No improvements, alterations, additions, or renovations (collectively, "Improvements") may be constructed on Port facilities unless Operator obtains the prior approval of the Port Everglades Department.

11.2. Required Contract Documents for Construction of Improvements. Prior to the commencement of construction of any Improvements, Operator shall submit to the Port Everglades Department two (2) copies of the contract documents for approval by the Port Everglades Department. Contract documents shall include, at a minimum, a site plan and complete plans and specifications of the contemplated construction. The plans and specifications shall be certified by an architect or engineer licensed to practice in the State of Florida and shall consist of: (i) working drawings, (ii) technical specifications, (iii) schedule for accomplishing the Improvements, and (iv) such other information as may be required by the Port Everglades Department. All Improvements must be made in accordance with the requirements set forth in this Agreement. All of the plans and specifications shall be in such detail as may reasonably permit the Port Everglades Department to make a determination as to whether the construction will be consistent with the standards set forth in this Agreement. Any plans and specifications that have received the Port Everglades Department's approval, and any amendments and changes thereto that have received the Port Everglades Department's approval, are hereinafter referred to collectively as the "Approved Plans." No construction may be performed on Port facilities except pursuant to Approved Plans.

11.3. Changes to Approved Plans. No material changes shall be made to any Approved Plans without the prior approval of the Port Everglades Department. Any change that requires the issuance of a building permit or modifies an existing building permit shall be considered a material change.

11.4. Compliance with law. All Improvements constructed or installed by Operator, its agents, or contractors, including the plans and specifications relating to same, shall conform to all applicable state, federal, County, and local agency (including divisions and departments of County) statutes, ordinances, building codes, fire codes, rules, regulations, and design standards. The approval by the Port Everglades Department of any plans, specifications, or designs shall not constitute a representation or warranty as to such conformity, and the responsibility therefor shall at all times remain with Operator.

11.5. Ownership. All Improvements to the Port facilities shall become County's property upon the expiration or earlier termination of this Agreement and shall be surrendered with and remain on the Port facilities (without cost to, or reimbursement by, County), excluding furnishings, equipment, and trade fixtures that are not permanently affixed to the Port facilities. Any addition, fixture, or other Improvement that is nailed, bolted, stapled, or otherwise affixed to the Port facilities and is not readily removable shall become part of the Port facilities whether or not such may be deemed a trade fixture. If any personalty is removed by Operator, Operator shall restore any damage to the Port facilities caused thereby. Notwithstanding any other provisions of this Agreement, the Port Everglades Department shall have the right, in its sole discretion, to require Operator, at Operator's sole cost, to remove any improvements installed by Operator prior to the date this Agreement terminates.

11.6. Certified Statements. Within one hundred and twenty (120) days after the installation of any Improvements, Operator must provide to the Port Everglades Department: (a) a certified statement from the construction contractor(s) stating that the Improvements are free and clear of all liens, claims, or encumbrances by any material supplier, subcontractor, or laborer, and that all such fees and charges have been paid; and (b) a certified statement from the architect or engineer stating that the Improvements have been constructed in accordance with the Approved Plans and in compliance with all applicable federal, state, local, and County laws, rules, ordinances, regulations, and building codes. Operator shall provide, upon request, such back-up documentation and releases of lien as may be required by the Port Everglades Department.

11.7. Liens. Operator represents, warrants, and covenants to County that all Improvements constructed or placed on the Port facilities shall be at all times free and clear of all liens, claims, and encumbrances created by Operator or Operator's agents, contractors, employers, officers, or invitees. If any such lien or notice of lien shall be filed against the Port facilities or any Improvements, Operator shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction.

11.8. As-Built Plans and Specifications. Within one hundred twenty (120) days after the installation of any Improvements, Operator shall, at its expense, provide the Port Everglades Department with a complete set of "as-built" plans and specifications, including mylar reproducible "record" drawings, and one set of machine-readable disks containing electronic data in an AUTOCAD format that meets the Port Everglades Department's graphic standards of the "as-constructed" or "record" plans for such Improvements.

11.9. Approval from Other Governmental Agencies for Operator's Improvements. In addition to the Port Everglades Department's approval, Operator shall be responsible for obtaining all construction permits, complying with inspection requirements of the Broward County edition of the current South Florida Building Code, and obtaining any other required approval from all other agencies having jurisdiction over any Improvements, including, but not limited to, departments, divisions, or offices of County, the State of Florida, and the federal government.

11.10. Americans with Disability Act Compliance. All Improvements shall be in conformity and consistent with the Americans with Disability Act of 1990, as same may be amended from time to time.

11.11. Failure to Obtain Approval. In the event any Improvement is made without the approvals required pursuant to this article, then, upon notice in writing, Operator shall remove the same, or at the option of the Port Everglades Department, cause the same to be changed to the satisfaction of the Port Everglades Department. In the case of any failure on the part of Operator to comply with such notice, County may affect the removal or change and Operator shall pay the cost thereof to County within ten (10) days following written demand for said payment, together with interest thereon at the rate of eighteen percent (18%) per annum from the date the expense was incurred by County.

11.12. Impact on Public Areas. During construction of any Improvements, Operator shall maintain the public areas in the same manner and cleanliness as provided by County. Any such Improvements shall be made within the time specified in the approval from the Port Everglades Department and shall be undertaken with the least disturbance possible to the public and the operation of Port.

11.13. Prevailing Wage Requirement. If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, Operator at the Port, Section 26-5, Broward County Code of Ordinances, shall be deemed to apply to such construction work. Operator shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in Exhibit C.

11.14. Construction and Labor and Material Bonds. Operator agrees that before commencing any work or construction of Improvements, Operator shall obtain or require the contractor to maintain, at all times, a valid payment bond and a valid performance bond, each of which shall be in form and content satisfactory to County and in an amount not less than the amount covering the full amount of the work being performed. Such bonds must guarantee to County the completion and performance of the work being performed as well as full payment of all suppliers, laborers, or subcontractors employed in the performance of the project. The bonds shall continue in effect for one year after final completion and acceptance of the work. The bonds must be executed by a surety company of recognized standing, authorized to do business in the state of Florida as a surety, having a resident agent in the state of Florida, and having been in business with a record of successful continuous operation for at least the immediately preceding five (5) years. In addition, the surety company must meet at least one of the following additional qualifications:

11.14.1. The surety company shall hold a current certificate of authority as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the

excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 CFR Section 223.10 Section 223.111). Further, the surety company shall provide County with evidence satisfactory to County that such excess risk has been protected in an acceptable manner.

11.14.2. The surety company shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

<u>Size Amount of Bond</u>	<u>Ratings</u>	<u>Category</u>
500,001 to 1,000,000	B+	Class I
1,000,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

In lieu of such bonds, Operator may furnish an alternate form of security, which may be in the form of cash, money order, certified check, cashier's check, or irrevocable letter of credit. Such alternate forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable above and shall be held by County and remain in effect for one (1) year after final completion and acceptance of the work.

It is understood and agreed that Operator shall be responsible for payment of all costs and expenses relating to (i) Operator's Improvements, including, but not limited to, the design, permitting, and construction thereof; and (ii) all other improvements necessary to Operator's use of the Port facilities, including, but not limited to, improvements mandated by any governmental authority having jurisdiction over the Port facilities.

## **ARTICLE 12. MISCELLANEOUS**

12.1. **Public Records.** Notwithstanding anything else in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of this Agreement. If Operator is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Operator shall:

12.1.1. Keep and maintain public records required by County to perform the services;

12.1.2. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

12.1.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and

12.1.4. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Operator or keep and maintain public records required by County to perform the services. If Operator transfers the records to County, Operator shall destroy any duplicate public records that are exempt or confidential and exempt. If Operator keeps and maintains the public records, Operator shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

If Operator receives a request for public records regarding this Agreement or the services, Operator must immediately notify the Contract Administrator in writing and provide all requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

Operator must separately submit and conspicuously label as "RESTRICTED MATERIAL – DO NOT PRODUCE" any material (a) that Operator contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Operator asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, "Restricted Material"). In addition, Operator must, simultaneous with the submission of any Restricted Material, provide a sworn affidavit from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Operator must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to County for records designated by Operator as Restricted Material, County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Operator, or the claimed exemption is waived. Any failure by Operator to strictly comply with the requirements of this section shall constitute Operator's waiver of County's obligation to treat the records as Restricted Material. Operator must indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to nondisclosure of Restricted Material in response to a third-party request.

**IF OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS**

**AT (954) 468-3508, EKENNEDY@BROWARD.ORG, 1850 ELLER DRIVE, SUITE 603, FORT LAUDERDALE, FLORIDA 33316.**

12.2. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Operator and all subcontractors that are related to this Agreement. Operator and all subcontractors shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Operator and all subcontractors shall make same available in written form at no cost to County. Operator shall provide County with reasonable access to Operator's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

Operator and all subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. This article shall survive any dispute or litigation between the Parties, and Operator expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Operator hereby grants County the right to conduct such audit or review at Operator's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Operator shall make all such records and documents available electronically in common file formats or via remote access if, and to the extent, requested by County.

If an audit or inspection in accordance with this section reveals underpayments to County of any nature by Operator in excess of five percent (5%) of the total contract billings reviewed by County, in addition to making adjustments for the underpayments, Operator shall pay the reasonable cost of County's audit. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Operator.

Operator shall ensure that the requirements of this section are included in all agreements with all subcontractor(s).

12.3. Uncontrollable Forces. The Parties shall not be considered to be in default of this Agreement if delays in or failure of performance are due to uncontrollable forces, the effect of which, by the exercise of reasonable diligence, the nonperforming Party could not avoid. The term "uncontrollable forces" shall mean any event that results in the prevention or delay of performance by a Party of its obligations under this Agreement that is beyond the reasonable control of the nonperforming Party. Uncontrollable forces include, but are not limited to, fires, earthquakes, storms, lightning, epidemics, pandemics, wars, riots, civil disturbances, sabotage,

and Governmental Actions. For these purposes, "Governmental Actions" is defined to mean a change in applicable federal, state, or local tax or employment/labor law: (i) that would result in a financial impact in an amount greater than Three Hundred Ninety Thousand and 00/100 Dollars (\$390,000.00) on Operator if it were to continue using the Port as a home or transit port; and (ii) the impact of which may be avoided or mitigated by redeploying its Vessel(s) to home ports other than the Port (if resulting from a local tax or change in the Tariff) or outside the State of Florida (if resulting from a federal or state tax or change in employment/labor law). Neither economic impracticability nor inability of Operator to perform in whole or in part for economic reasons, except as a direct result of an uncontrollable forces event, shall constitute an Uncontrollable Forces event.

No Party shall, however, be excused from performance if nonperformance is due to forces that are preventable, removable, or remediable and which the nonperforming Party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming Party shall, within a reasonable time of being prevented or delayed from performance, give written notice to the other Party describing the circumstances and uncontrollable forces preventing continued performance of its obligations under this Agreement. If the uncontrollable forces, with the exception of Government Actions as defined above, prevent performance of this Agreement by a Party for a period greater than thirty (30) consecutive days, then either Party may terminate this Agreement upon written notice. Such termination shall not be deemed an Event of Default hereunder.

12.4. Promotion. Operator shall use commercially reasonable efforts to effectively promote and market Operator's passenger cruise operations at Port.

12.5. License; Permits & Taxes. During the Term hereof, Operator agrees to obtain and keep in full force and effect all licenses, permits, and authorizations required by all federal, state, or local governmental authorities, or agencies having jurisdiction or regulatory power over the cruise passenger operations and vessels operated and marketed by Operator that are subject to the provisions of this Agreement, at its expense. Operator agrees to pay any and all taxes that may be levied on rights or interests granted to it hereunder and on any of its improvements and tangible personal property situated on County owned land(s) subject to taxation and other intangible personal property subject to taxation in Broward County, Florida; provided, however, that the Parties agree that this Agreement is not a lease agreement, and that no interest or estate in real property or the improvements located in or at the Port terminals is created by this Agreement. The provisions of this section shall survive the termination or expiration of this Agreement.

12.6. Vehicular Parking, Facilities, Rates, and Ticketing Facilities. Parking rates for all Operator cruise ship passengers shall be in accordance with the Tariff, and any amendments thereto and reissues thereof, which for purposes of this section shall be equally applied and enforced by County. All available parking spaces shall be subject to reasonable rules and regulations imposed by County.

12.7. Damage to Port Facilities. Operator shall be responsible for and repair any and all damage to the Port caused by the negligence of Operator. If Operator fails to make the necessary repairs in a timely manner as determined by the Port Everglades Department, then the Port Everglades Department may, at its option, cause such repairs to be completed and Operator shall reimburse County for the costs and expenses incurred in such repair, plus an administrative fee as permissible under the Broward County Administrative Code.

12.8. Development and Expansion of Port. County shall have the right to develop, maintain, and operate the Port as it deems advisable and desirable in accordance with such appropriate governmental authority and regulation as may be applicable, and County shall have the right to make such agreements as County deems necessary or advisable in connection with federal and state funding of Port improvements, alterations, or modifications. If at any point County seeks federal, state, or local government approval regarding the operation or modification of the Port, Operator shall provide any and all reasonably requested cooperation and support, including, without limitation, supporting County's efforts to obtain any such approvals and executing any documents or instruments reasonably requested by County. Operator shall not be required to bear any additional expense and shall not be deemed an agent of County.

12.9. Closure of Port Roads. County may at any time temporarily or permanently close, or consent to or request the closing of, any entrance roadway or Port roadway, and any other area at the Port presently or hereafter used as such, so long as an alternate means of ingress and egress is made available. Operator hereby releases and discharges County of and from any and all claims, demands, or causes of action which Operator may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway, or other area used as such, whether within or outside the Port, provided County makes available an alternate means of ingress and egress.

12.10. Compliant with Tariff. Except as otherwise expressly provided in this Agreement, in making use of facilities and services provided by County, Operator shall be bound by and adhere to the terms, conditions, rules, and regulations, and pay the applicable rates contained in the Tariff, and any amendments thereto or reissues thereof, provided that such terms, conditions, rules, regulations, and rates are imposed and shall be applied uniformly to all similarly situated Port users.

12.11. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement.

12.12. Nonliability of Individuals. No commissioner, director, officer, agent, or employee of Operator or County shall be charged personally or held contractually liable by or to Operator under any term or provision of this Agreement or of any supplement, modification, or



amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

12.13. Equal Employment Opportunity. No Party may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Operator shall include the foregoing or similar language in its contracts with any subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

12.14. Radon. Pursuant to Florida law, County hereby advises Operator of the following: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the Florida Department of Health in Broward County.

12.15. Relationship of the Parties. Nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing services, neither Operator nor its agents shall act as officers, employees, or agents of County. Operator shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

12.16. Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a party to this Agreement.

12.17. Assignment. Neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Operator without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity.

12.18. Compliance with Laws. Operator must comply, and require its employees, guests, invitees, and those doing business with them to comply, with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

12.19. Conflicts. Neither Operator nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Operator's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the term of this Agreement, none of Operator's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or Operator is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of their expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Operator or any person in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Operator is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Operator shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Operator.

12.20. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

12.21. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

12.22. Notices. Unless otherwise stated herein, for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall

be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Chief Executive/Port Director  
Port Everglades Department  
1850 Eller Drive  
Fort Lauderdale, Florida 33316  
Email address: jdaniels@broward.org

FOR OPERATOR:

Mario Otero, Managing Director  
Balearia Caribbean Ltd., Corp.  
3300 S.W. 13<sup>th</sup> Avenue  
Fort Lauderdale, Florida 33315  
Email address: Mario.Otero@baleariacaribbean.com

12.23. Agent for Service of Process. It is expressly understood and agreed that if Operator is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation that does not have an appointed registered agent for service of process, then Operator hereby designates the Secretary of State, State of Florida, as its agent for the purpose of service of process in any court action between it and County arising out of or based upon this Agreement, and service shall be made as provided by the laws of the State of Florida for service upon a nonresident who has designated the Secretary of State as its agent for service. Operator, in addition, designates Hernan Calvo, CEO for Balearia Caribbean Ltd., Corp., 1800 SE 18<sup>th</sup> Street, Terminal 1, Fort Lauderdale, FL 33316, as an appointed registered agent for service of process. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, as an alternative method of service of process, Operator may be personally served with such process out of this state by certified mailing to Operator at the address set forth in the Notices section herein. Any such service out of this State shall constitute valid service upon Operator as of the date of mailing. It is further expressly agreed that Operator is amenable to and agrees to the process so served, submits to the jurisdiction of the State of Florida, and waives any and all objections and protest thereto.

12.24. Cooperation with County. Operator acknowledges that County is, or may be, subject to Development Orders issued pursuant to Chapter 380, Florida Statutes (collectively, "Development Orders"). County will be seeking regulatory approvals (collectively "Regulatory Approvals") consistent with its 1994 Fort Lauderdale-Hollywood International Airport Master Plan ("Master Plan") and FAR Part 150 Update ("Part 150 Update"), and the implementation of such plans, which may include the following: (1) amendment of existing Development Orders; (2) Preliminary Development Agreements with the State of Florida; (3) land use and zoning amendments; (4) preparation of Environmental Impact Statements; (5) such environmental permitting as may be required by federal, state, county, or local regulations; and (6) any other

Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of the Master Plan and the Part 150 Update. Operator agrees to cooperate with County in connection with County's efforts to obtain the Regulatory Approvals. From and after the date of execution of this Agreement, Operator covenants and agrees: (i) to support the County's efforts to obtain the Regulatory Approvals; and (ii) to execute any document(s) or instrument(s) reasonably requested by County in order to assist County in obtaining the Regulatory Approvals, provided that Operator shall not be required to bear any expense in connection therewith and Operator shall not be deemed an agent of the County. Operator further acknowledges and agrees to cooperate with County in connection with County's efforts to develop the Convention Center site, provided that Operator shall not be required to bear any expense in connection therewith.

12.25. Cumulative Rights. The rights of the Parties hereunder, or at law or in equity, are cumulative and in addition to rights and remedies otherwise provided by the law of the State of Florida. Failure on the part of a County or Operator to promptly exercise any such available right or remedy shall not operate nor be construed to operate as a waiver or forfeiture of any such right or remedy.

12.26. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated.

12.27. Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and Operator.

12.28. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

12.29. Survival. Upon termination or expiration of this Agreement, Operator shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration. Notwithstanding any provision of this Agreement to the contrary, no obligation that accrued but has not been satisfied under any prior agreements between the Parties, including the Prior

Agreement, shall terminate or be considered canceled upon execution of this Agreement. Rather, such obligation shall continue as if it had accrued under this Agreement until the obligation is satisfied.

12.30. Third-Party Beneficiaries. Neither Operator nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

12.31. Time of Essence. Time is of the essence with respect to this Agreement and shall apply to all terms and conditions contained in this Agreement.

12.32. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

12.33. Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

12.34. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. Any attached Exhibits are incorporated into and made a part of this Agreement.

12.35. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section of this Agreement shall prevail and be given effect.

12.36. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

12.37. Use of County Logo. Operator shall not use County's name or logo in marketing or publicity materials without prior written consent from the Port Director.

[The remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 2022, and BALEARIA CARIBBEAN, LTD., CORP., signing by and through its MANAGING DIRECTOR \_\_\_\_\_, duly authorized to execute same.

**County:**

ATTEST:

BROWARD COUNTY, by and through  
Its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Port Everglades Department  
1850 Eller Drive, Suite 302  
Fort Lauderdale, Florida 33316  
Telephone: (954) 523-3404

10/3/2022 | 8:00:43 AM PDT

By Carlos Rodriguez-Cabarrocas  
Carlos Rodriguez-Cabarrocas (Date)  
Sr. Assistant County Attorney

CRC/cr  
09/27/2022  
Balearia  
#80040-1026

**PORT EVERGLADES CRUISE TERMINAL AND BERTH USER AGREEMENT BETWEEN BROWARD  
COUNTY AND BALEARIA CARIBBEAN LTD., CORP.**

**Operator:**

BALEARIA CARIBBEAN LTD., CORP.,  
a foreign corporation authorized to  
conduct business in the State of Florida.

By: MARIO OTERO  
Authorized Signor

MARIO OTERO  
MANAGING DIRECTOR

Print Name and Title

9/30/2022 | 8:46:41 AM EDT

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**EXHIBIT A - Attestation****COMMON CARRIER OR CONTRACTED CARRIER  
ATTESTATION FORM (PUR 1808)**

This form must be completed by a common carrier or contracted carrier and submitted to Broward County. Capitalized terms used herein have the definitions ascribed in Section 908.111, Florida Statutes.

Operator/Vendor Name: \_\_\_\_\_ (“Operator”)

Agreement Title: \_\_\_\_\_ (“Contract”)

Operator is not willfully providing and will not willfully provide any service during the Contract term in furtherance of transporting a person into this state knowing that the person is an Unauthorized Alien, except to facilitate the detention, removal, or departure of the person from this state or the United States.

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true.

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

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT "B"**  
**INSURANCE REQUIREMENTS**

**Tenant: Balearia Caribbean LTD., CORP**  
**Agency: Port Everglades Business Development**

TYPE OF INSURANCE	ADD L INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
<b>GENERAL LIABILITY - Broad form</b> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input checked="" type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <b>Per Occurrence or Claims-Made:</b> <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <b>Gen'l Aggregate Limit Applies per:</b> <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$2,000,000	\$4,000,000
			Personal Injury		
			Products & Completed Operations		
<b>AUTO LIABILITY</b> <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$1,000,000	
<input type="checkbox"/> <b>EXCESS LIABILITY / UMBRELLA</b> <b>Per Occurrence or Claims-Made:</b> <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>					
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION</b> <i>Note: U.S. Longshoremen &amp; Harbor Workers' Act &amp; Jones Act is required for any activities on or about navigable water.</i>	N/A	<input checked="" type="checkbox"/>	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> <b>EMPLOYER'S LIABILITY</b>			Each Accident	\$500,000	
<input checked="" type="checkbox"/> <b>PROTECTION AND INDEMNITY LIABILITY</b>			If claims-made form:	\$10,000,000	
			Extended Reporting Period of:		
			*Maximum Deductible:	\$100,000	
<input type="checkbox"/> <b>PROFESSIONAL LIABILITY (ERRORS &amp; OMISSIONS)</b> All engineering, surveying and design professionals.			If claims-made form:		
			Extended Reporting Period of:		
			*Maximum Deductible:		
<input type="checkbox"/> Installation floater is required if Builder's Risk or Property are not carried. <i>Note: Coverage must be "All Risk", Completed Value.</i>			*Maximum Deductible (Wind and/or Flood):		
			*Maximum Deductible:		
<b>Description of Operations:</b> "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability. County shall be provided 30 days written notice of cancellation, 10 days' notice of cancellation for non-payment. Lessee insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Any self-insured retention (SIR) must be declared to and approved by County and may require proof of financial ability to meet losses. Vendor is responsible for all coverage deductibles unless otherwise specified in the agreement.					

**CERTIFICATE HOLDER:**

Broward County  
1850 Eller Drive  
Fort Lauderdale, Florida 33316

: Attention: Josh Miller

Digitally signed by  
**Norma Dmytriw**  
 Date: 2022.08.08  
 09:11:25 -04'00'

Risk Management Division

**EXHIBIT C - Prevailing Wage Statement of Compliance**

No. \_\_\_\_\_

Agreement No. \_\_\_\_\_

Project Title \_\_\_\_\_

The undersigned Operator hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Section 26-5, Broward County Code of Ordinances, and the applicable conditions of this Agreement.

Dated \_\_\_\_\_, \_\_\_\_\_,

\_\_\_\_\_  
OperatorBy \_\_\_\_\_  
(Signature)By \_\_\_\_\_  
(Name and Title)

STATE OF )

)

COUNTY OF )

The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

NOTARY PUBLIC:

Signature: \_\_\_\_\_

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

State of Florida at Large (Seal)

My commission expires: