

201130

CRUISE PASSENGER WHARFAGE AGREEMENT

BETWEEN

BROWARD COUNTY

AND

DISCOVERY CRUISE SERVICES, INC.



TABLE OF CONTENTS

1. DEFINITIONS 2

2. SERVICES TO BE PROVIDED BY DISCOVERY 2

3. EFFECTIVE DATE; TERM 4

4. PORT TERMINAL FACILITIES AND DISCOVERY'S RIGHT TO TERMINATE AGREEMENT 4

5. PASSENGER WHARFAGE RATE 5

6. PORT CHARGES 6

7. ANNUAL MINIMUM GUARANTEE OF PASSENGER WHARFAGE 6

8. COMPLIANCE WITH GOVERNMENTAL LAWS; TARIFFS; RULES; REGULATIONS AND POLICIES 9

9. CHOICE OF LAW; VENUE SITUS; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL 10

10. NOTICES 10

11. METHOD OF PAYMENT; INTEREST, LATE CHARGES AND TARIFF REMEDIES 11

12. UNCONTROLLABLE FORCES 12

13. VEHICULAR PARKING RATES AND USE 13

14. ASSIGNMENT 13

15. PROMOTION 14

16. SEVERABILITY 15

17. INDEMNIFICATION OF COUNTY 15

18. AGENT FOR SERVICE OF PROCESS 16



19.	<u>LICENSE; PERMITS; TAXES</u>	17
20.	<u>DEFAULT; REMEDIES</u>	17
21.	<u>JOINT PREPARATION</u>	21
22.	<u>TIME OF ESSENCE</u>	21
23.	<u>CUMULATIVE RIGHTS</u>	21
24.	<u>CAPTIONS AND HEADINGS</u>	21
25.	<u>HUMAN RIGHTS ACT</u>	22
26.	<u>PUBLIC ENTITY CRIMES</u>	22
27.	<u>RADON</u>	22
28.	<u>MULTIPLE ORIGINALS</u>	22
29.	<u>INSURANCE</u>	22
30.	<u>ENVIRONMENTAL IMPAIRMENT; CONTAINMENT AND REMOVAL</u>	23
31.	<u>NON-LIABILITY OF INDIVIDUALS</u>	25
32.	<u>RELATIONSHIP OF PARTIES / NO THIRD PARTY BENEFICIARIES</u>	25
33.	<u>EXECUTION AUTHORITY</u>	26
34.	<u>SUCCESSORS AND ASSIGNS BOUND</u>	27
35.	<u>ENTIRE AGREEMENT; MODIFICATIONS; AMENDMENTS</u>	27
36.	<u>PORT SECURITY</u>	28
37.	<u>AUDIT RIGHT AND RETENTION OF RECORDS</u>	28
38.	<u>CONFLICTS</u>	29
39.	<u>NO CONTINGENT FEE</u>	30

CRUISE PASSENGER WHARFAGE AGREEMENT

This Agreement by and between:

BROWARD COUNTY

a political subdivision of the State of Florida,
hereinafter referred to as
"COUNTY", through its Board of County Commissioners,

and

DISCOVERY CRUISE SERVICES, INC.,

a Florida corporation,
hereinafter referred to as "DISCOVERY "

WITNESSETH:

WHEREAS, COUNTY owns and operates Port Everglades, a deep water port located in Broward County, Florida; and

WHEREAS, DISCOVERY, a Florida corporation, authorized and qualified to transact business in the State of Florida; and

WHEREAS, DISCOVERY annually causes 350 vessel calls at Port Everglades, creating a significant, positive impact on Broward County; and

WHEREAS, DISCOVERY provides approximately 400,000 passenger moves annually through Port Everglades via a vessel marketed by DISCOVERY, creating a significant, positive economic impact on Broward County; and

WHEREAS, COUNTY is entering into this Agreement because of the volume of passengers and vessel movements that DISCOVERY brings to Port Everglades, and the resultant positive economic impact on the COUNTY and the long-term continuation of said service and benefits; and,



WHEREAS, the Parties hereto have agreed to certain terms and conditions by which DISCOVERY will conduct daily cruise passenger services from Port Everglades;

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments herein set forth, the Parties hereby agree as follows:

1. **DEFINITIONS**

A. "Agreement" - means this Cruise Passenger Wharfage Agreement between the Parties.

B. "Annual Guaranteed Payment" - means a payment relating to minimum passenger wharfage guarantees as set forth in Section 7.

C. "Contract Year" - means the period which begins on the Commencement Date and each successive twelve (12) month period of the Term of this Agreement.

D. "Parties" - means COUNTY and DISCOVERY.

E. "Port" - means Port Everglades, Florida.

F. "Port Department" - means the Port Director of the Port or designee.

G. "Tariff" - means Port Everglades Tariff Number 11 Rules and Regulations which includes tariffs for dockage, wharfage and other fees, as it may be revised or amended from time to time.

2. **SERVICES TO BE PROVIDED BY DISCOVERY**

DISCOVERY agrees to conduct daily passenger cruise services (as defined in the "Tariff") pursuant to the terms and conditions provided herein from the Port, with a



vessel operated for and marketed by DISCOVERY. Such cruise services will be conducted by DISCOVERY in conformance with the standards and characteristics utilized in its current operations at the Port , to wit:

DISCOVERY's current vessel the M/V Discovery Sun shall continue to be deployed from the Port. DISCOVERY shall provide the Port Department with ninety (90) calendar days prior written notice of its intent to replace the current vessel in operation at Port Everglades with a substitute vessel. Prior written approval from the Port Department is required before any substitute vessel is utilized in DISCOVERY's operation at the Port. The Port Department shall consider both operational characteristics of the proposed substitute vessel compared with the physical dimensions of the berth and public safety requirements of Port Everglades in its review of DISCOVERY's substitute vessel request. Notwithstanding, such approval shall not be unreasonably denied. DISCOVERY shall adhere to the sailing schedule attached hereto as Exhibit "A," and made a part hereof. Notice of any proposed changes to said sailing schedule made by DISCOVERY, shall be provided in writing to the Port Department within fourteen (14) calendar days prior to such proposed changes being implemented. The Port Department, in order to facilitate navigation and commerce at the Port, reserves the right to reject DISCOVERY's proposed sailing schedule changes and require DISCOVERY to adhere to the sailing schedule attached hereto as Exhibit "A." Any proposed changes to the sailing schedule which are accepted by the Port Department shall be made a part of Exhibit "A" by an amendment to same which the Port Department is authorized to effectuate.



3. **EFFECTIVE DATE; TERM**

This Agreement shall be effective as of the first day of month following approval of this Agreement by COUNTY, ("Commencement Date") and shall be for a term of ten (10) years, commencing upon the Commencement Date ("Term"), unless sooner terminated as provided herein.

4. **PORT TERMINAL FACILITIES AND DISCOVERY'S RIGHT TO TERMINATE AGREEMENT**

COUNTY shall maintain and provide DISCOVERY, for the operation of its daily passenger cruise services as contemplated by the terms of this Agreement, berthing and related terminal facilities (for a vessel as described in Section 2 hereinabove), which the Port Department deems necessary in order to facilitate navigation, commerce, and protect vessels and property at Port Everglades. COUNTY shall observe and obey, and require their employees, guests, invitees and those doing business with them, to observe and obey, all applicable laws, regulations, rules and other legal requirements including, without limitation, the Americans with Disabilities Act. Notwithstanding, the Port Department shall have the right over the Term of this Agreement, to: a) assign other Port users such berthing and related terminal facilities as it deems necessary to support and facilitate navigation and commerce, which may include berthing and related terminal facilities which are utilized by DISCOVERY in the conduct of its daily passenger cruise services hereunder, and b) re-assign DISCOVERY a berth and related terminal facilities which do not provide roll-on/roll-off ("Ro-Ro") access for its vessel described in Section 2 hereinabove. In the event the Port Department, in order to maintain its ability to support



and facilitate navigation, commerce, and protect vessels and property at Port Everglades requires re-assignment to DISCOVERY of a non-"Ro-Ro" facility, COUNTY shall provide DISCOVERY with sixty (60) calendar days prior written notice of its intention to make such a re-assignment. Such notice shall include the length of time of the re-assignment i.e. thirty consecutive days or greater. In instances where the Port Department requires re-assignment to DISCOVERY of a non-"Ro-Ro" facility for a period exceeding thirty (30) consecutive days, DISCOVERY shall have the right to terminate this Agreement by providing COUNTY with prior written notice (within thirty (30) calendar days of its receipt of COUNTY's notice of re-assignment to non-"Ro-Ro" facility) of its intention not to continue its operations out of Port Everglades at a non-"Ro-Ro" facility. The effective termination date for the purposes of this provision shall be on the thirtieth day following COUNTY's receipt of DISCOVERY's aforementioned termination notice. DISCOVERY shall, within thirty (30) calendar days of the effective termination date, pay to COUNTY, the applicable AMG pro-rated monthly as of the effective termination date and all other applicable charges and fees due and payable to COUNTY hereunder which have accrued as of the effective termination date.

5. PASSENGER WHARFAGE RATE

During the Term of this Agreement, DISCOVERY shall pay to COUNTY daily passenger wharfage charges (per each passenger) as follows:

- A) First 400,000 annual passenger moves at one-hundred percent (100%) of the published Tariff rate.
- B) 400,001 to 450,000 annual passenger moves at one-hundred percent (100%) of the published Tariff rate plus Fifty Cents (\$.50) per person for each embarking and disembarking passenger move.



- C) 450,001 to 500,000 annual passenger moves at one-hundred percent (100%) of the published Tariff rate plus Seventy-five Cents (\$0.75) per person for each embarking and disembarking passenger move.
- D) 500,001 and over annual passenger moves at one-hundred percent (100%) of the published Tariff rate plus One Dollar (\$1.00) per person for each embarking and disembarking passenger move.

6. PORT CHARGES

During the Term of this Agreement, except as otherwise provided in this Agreement, DISCOVERY shall pay to COUNTY Dockage at the Tariff rate equivalent to that of a vessel of 10, 000 Gross Registered Tons (GRT) or the actual size of the vessel in operation, whichever is greater, and all other Port charges at their respective published Tariff rates, as such Tariff rates may be amended by COUNTY.

7. ANNUAL MINIMUM GUARANTEE OF PASSENGER WHARFAGE

A. Over the Term of this Agreement, DISCOVERY shall pay to COUNTY an Annual Minimum Guarantee ("AMG") of passenger wharfage as follows, utilizing the rates set forth in Section Five herein:

- i. Year 1 a minimum of 400,000 passenger movements.
- ii. Year 2 a minimum of 425,000 passenger movements.
- iii. Year 3 a minimum of 450,000 passenger movements.
- iv. Year 4 a minimum of 475,000 passenger movements.
- v. Year 5 a minimum of 500,000 passenger movements.
- vi. Year 6 a minimum of 525,000 passenger movements.
- vii. Year 7 a minimum of 550,000 passenger movements.



- viii. Year 8 a minimum of 575,000 passenger movements.
- ix. Year 9 a minimum of 600,000 passenger movements.
- x. Year 10 a minimum of 625,000 passenger movements.

Except as otherwise provided herein, within thirty (30) days following the completion of each Contract Year of this Agreement, DISCOVERY shall pay to COUNTY an amount equal to the shortfall if any, between the AMG of passenger wharfage and the actual passenger wharfage amount paid by DISCOVERY for said period utilizing the rates set forth in Section Five herein.

B. Notwithstanding the schedules for AMG and Passenger Wharfage Rates herein provided, the Parties hereto agree to meet and renegotiate within ninety (90) days prior to expiration of Contract Year 6, the AMG schedule and Passenger Wharfage Rates schedule for Contract Years 7 through 10. The newly negotiated schedule for Passenger Wharfage Rates shall not contain rates less than those stated herein. Upon successful conclusion of negotiations, this Agreement shall be amended as provided herein, to reflect the revised AMG and Passenger Wharfage Rates schedules for Contract Years 7 through 10.

DISCOVERY and COUNTY agree that the AMG based on a minimum of 400,000 annual passenger movements is predicated on DISCOVERY's representation that it intends to sail only from Port Everglades, Florida to the Bahamas seven (7) days a week. Except as hereinafter provided, should DISCOVERY conduct its daily passenger cruise service in any manner other than the aforesated, at any time during the Term of this



Agreement, the applicable AMG for the affected Contract Year of this Agreement shall be automatically increased to 600, 000 passenger movements. DISCOVERY and COUNTY agree that DISCOVERY, for each Contract Year over the term of this Agreement, may conduct not more than three (3) special event cruises that do not involve a cruise to the Bahamas (i.e. New Year's Eve cruise) without triggering the automatic increase in the applicable AMG for a given Contract Year. Additionally, the parties hereto agree that DISCOVERY shall be allowed to operate cruises from Freeport, Grand Bahama Island, totaling no more than two sailings per month (for each Contract Year), without triggering the automatic increase in the applicable AMG for the given Contract year in which such Bahama sailings occur. In the event, the AMG is raised to 600,000 annual passenger movements, DISCOVERY's annual minimum passenger wharfage guarantee schedule as provided in Section 7 herein shall be increased by 40,000 moves annually from that Contract Year forward. In addition, DISCOVERY shall pay to COUNTY daily passenger wharfage rates (per each passenger) as follows:

- A) First 600,000 annual passenger moves at one-hundred percent (100%) of the published Tariff rate.
- B) 600,001 to 650,000 annual passenger moves at one-hundred percent (100%) of the published Tariff rate plus Fifty Cents (\$.50) per person for each embarking and disembarking passenger move.
- C) 650,001 to 700,000 annual passenger moves at one-hundred percent (100%) of the published Tariff rate plus Seventy-five Cents (\$.75) per person for each embarking and disembarking passenger move.



- D) 700,001 and over annual passenger moves at one-hundred percent (100%) of the published Tariff rate plus One Dollar (\$1.00) per person for each embarking and disembarking passenger move.

8. **COMPLIANCE WITH GOVERNMENTAL LAWS; TARIFFS; RULES; REGULATIONS AND POLICIES**

Except as otherwise expressly provided for herein, in making use of facilities and services provided by COUNTY, DISCOVERY shall be bound by and adhere to the rules and regulations, and pay the applicable rates contained in the Tariff, any amendments thereto or reissues thereof, provided that such rules, regulations, and rates are imposed and shall be applied uniformly to all similarly situated Port users. DISCOVERY at its expense, shall comply with all applicable laws, ordinances, rules, regulations, and directions of the federal, state, county and municipal governmental units or agencies having jurisdiction over the business being conducted by DISCOVERY hereunder. DISCOVERY shall be obligated; (i) to observe and obey, and to require its employees, guests, invitees and those doing business with it, to observe and obey such reasonable rules and regulations of Broward County (including amendments and supplements thereto) governing the conduct and operations of DISCOVERY as may from time to time be promulgated; (ii) to pay all license and permit fees and charges for the conduct of its business before such amounts become delinquent; and (iii) subject to COUNTY's obligations under Section Four herein, maintain COUNTY property in a clean, orderly and safe condition so as to avoid injury to persons and property.



9. **CHOICE OF LAW; VENUE SITUS; CONSENT TO JURISDICTION;
WAIVER OF JURY TRIAL**

DISCOVERY acknowledges that it has and will continue to develop a substantial and continuing relationship with COUNTY at Port Everglades, where COUNTY's day-to-day decision making authority, with respect to the operation of the Port, is located. Therefore, it is mutually understood and agreed by the Parties hereto that this Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance, where not preempted by applicable federal laws, rules and regulations and any controversies, legal problems or litigation arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida. DISCOVERY irrevocably submits to the jurisdiction of said court. This provision shall not apply to matters in regard to which jurisdiction is conferred upon by law upon the Federal Maritime Commission. In such case, either Party may choose to bring any such matter upon the Federal Maritime Commission. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each Party hereby waives any rights it may have to a trial by jury of any such litigation.

10. **NOTICES**

Any notices required by this Agreement or by law shall be given in writing and shall be sent by registered or certified mail by depositing the same in the United



States Mail in the continental United States, postage prepaid, or by hand delivery or by overnight courier. Any such notice mailed as provided hereunder shall be deemed effective and served as of the date of the mailing. Any notice given by hand delivery or overnight courier shall be deemed to have been given upon receipt. Either Party shall have the right, by giving written notice to the other, to change the address as which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

COUNTY

Port Director
Port Everglades Department
1850 Eller Drive
Fort Lauderdale, FL 33316

DISCOVERY

Mr. Hanns J. Hahn, General Manager
Discovery Cruises, Inc.
P.O. Box 52-7544
Miami, Florida 33152-7544

Mr. Hanns J. Hahn, General Manager
Discovery Cruises, Inc.
C/O Apollo Ship Chandlers
1775 N.W. 70th Avenue
Miami, Florida 33126-1341

11. METHOD OF PAYMENT: INTEREST, LATE CHARGES AND TARIFF REMEDIES

Any notices required by this Agreement or by law shall be given in writing as provided herein. DISCOVERY shall pay COUNTY invoices and such payments required shall be governed by this Agreement and by the Tariff pursuant to the payment procedures established by the COUNTY's Port Everglades' Finance Division. In the event DISCOVERY's account should become delinquent, DISCOVERY shall be subject to the COUNTY's collection and enforcement remedies as provided in the Tariff as it may be



revised or amended from time to time. No acceptance by COUNTY of payments in whole or in part for any period or periods after a default by DISCOVERY of any of the terms, covenants, and conditions hereof shall be deemed a waiver of any right on the part of COUNTY to terminate this Agreement. All payments required to be made hereunder shall be made payable to BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS, and shall be paid to: Port Everglades, Attn: Finance Division, 1850 Eller Drive, Fort Lauderdale, FL 33316, or to such other office or address as may be substituted therefor.

12. UNCONTROLLABLE FORCES

The Parties shall not be considered to be in default of this Agreement if delays in or failure of performance shall be due to uncontrollable forces, the effect of which, by the exercise of reasonable diligence, the non-performing Party could not avoid. The term "uncontrollable forces" shall mean any event which results in the prevention or delay of performance by a Party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing Party. It includes, but is not limited to fire, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage and Governmental Actions. For these purposes, "Governmental Actions" is defined to mean a change in applicable federal, state or local law which would prohibit the operations of DISCOVERY as they exist as of the date of DISCOVERY's execution of this Agreement, or a change in applicable federal, state or local tax or employment/labor law, or a change in the Tariff, that: (i) would result in a financial impact in an amount greater than \$400,000 on DISCOVERY if it were to continue using Port Everglades as a home port; and (ii)



causes a majority of the foreign-flagged cruise industry to redeploy ships to home ports outside the Port as a result of any local tax or change in the Tariff, or outside the state of Florida as a result of any federal or state tax or change in employment/labor law.

No party shall, however, be excused from performance if non-performance is due to forces which are preventable, removable or remediable and which the non-performing Party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch. The non-performing 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.

13. VEHICULAR PARKING RATES AND USE

Parking rates for all daily cruise ship passengers shall be in accordance with the Tariff. All available parking spaces shall be subject to reasonable rules and regulations imposed by COUNTY. DISCOVERY and the passengers of the DISCOVERY vessel shall continue to have access to parking facilities consistent with the practices employed in the current operations at the Port.

14. ASSIGNMENT

A. DISCOVERY shall not transfer, assign, pledge, or otherwise encumber this Agreement or any rights or obligations hereunder, or allow same to be assigned by operation of law or otherwise without the prior written consent of COUNTY, which consent shall not be unreasonably withheld. COUNTY may condition such approval upon



additional terms and conditions as COUNTY in its sole discretion may impose. An "assignment" shall include any transfer of this Agreement by merger, consolidation or liquidation, or by operation of law, or any change in ownership of or power to vote a majority of the outstanding voting stock of any of them from those controlling the power to vote such stock as of the Commencement Date of this Agreement. Notwithstanding the foregoing, an "assignment" for the purposes of this section, shall not be deemed to occur upon i) a transfer of stock or interests in DISCOVERY among its current owners and/or their immediate families; ii) a transfer of stock or interests in DISCOVERY resulting from the death of a stockholder, partner or joint venturer; iii) any transfers of stock in DISCOVERY when publicly traded on a national stock exchange.

B. VOIDING OF ASSIGNMENT

In the event DISCOVERY shall take any action specified under this Section without the prior written consent of COUNTY, then any such assignment or other action shall be null and void, and of no force or effect, and in addition to all other available remedies, COUNTY shall be entitled to immediately terminate this Agreement.

15. PROMOTION

In consideration of COUNTY's commitment to berthing facilities as provided for herein, DISCOVERY shall use its best efforts to effectively promote and market its daily cruise services at the Port.



16. SEVERABILITY

The provisions of this Agreement are severable, and should one or more clauses, sections or provisions be deemed unlawful, invalid, or unenforceable by a court of competent jurisdiction then, notwithstanding said determination, all other remaining provisions of this Agreement will remain in full force and effect and not be affected thereby.

17. INDEMNIFICATION OF COUNTY

DISCOVERY shall at all times hereafter, and except for any negligent act of COUNTY or its employees, indemnify, hold harmless and at County Attorney's option, defend or pay for an attorney selected by County Attorney and consented to by DISCOVERY as provided for herein, to defend COUNTY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of DISCOVERY or its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement arising from an intentional or negligent act or omission of DISCOVERY including, without limitation, any and all claims, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property.

DISCOVERY shall have the right to consent to the selection of indemnification counsel, which consent shall not be unreasonably withheld, from a list of existing special counsel approved by the County Attorney's office or the services of the County Attorney. DISCOVERY shall be required to respond to any request for selection



of indemnification counsel within three (3) business days from the date of notification of suit. Failure to timely respond by DISCOVERY shall constitute a waiver of its right to a consent. Other indemnification counsel not on the existing list of special counsel approved by the County Attorney may be considered upon the mutual agreement of the Parties. DISCOVERY shall have the right to provide input and recommendations to indemnification counsel on any matter relating to the litigation including any proposed settlement. COUNTY agrees to provide DISCOVERY with prompt notice of any claim, demand or case of action and will cooperate with DISCOVERY as indemnification counsel may reasonably request.

The provisions of this section shall survive the expiration or earlier termination of this Agreement until the expiration of any applicable Statute of Limitations for any such claim, demand, cause of action or proceeding of any kind.

18. AGENT FOR SERVICE OF PROCESS

It is expressly understood and agreed that if DISCOVERY 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 in any such event DISCOVERY designates the Secretary of State, State of Florida, their 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 the service shall be made as provided by the laws of the State of Florida for service upon a non-resident, who has designated the Secretary of State as his agent for service.



It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, DISCOVERY may be personally served with such process out of this State by certified mailing to DISCOVERY at the address set forth herein. Any such service out of this State shall constitute valid service upon DISCOVERY as of the date of mailing. It is further expressly agreed that DISCOVERY is amenable to and hereby agrees to the process so served, submit to the jurisdiction, and waive any and all objections and protest thereto.

19. LICENSE; PERMITS; TAXES

A. DISCOVERY agrees to obtain and keep in full force and effect all licenses, permits, and authorizations required by any governmental authority, body, or agency having jurisdiction or regulatory power over the vessel operated for and marketed by DISCOVERY that is subject to the provisions of this Agreement.

B. DISCOVERY agrees to pay any and all taxes that may be levied on rights or interests granted to them hereunder and on any of their improvements and tangible personal property situated on COUNTY owned land(s) subject to taxation and intangible personal property subject to taxation in Broward County, Florida.

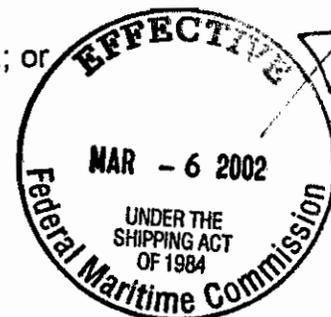
C. The provisions of this Section 19 shall survive termination or expiration of this Agreement.

20. DEFAULT; REMEDIES

A. DISCOVERY shall be in default under this Agreement if any of the following events occurs:



- i. DISCOVERY neglects or fails to perform or observe any of the terms, provisions, conditions or covenants herein contained, and, if such neglect or failure can be remedied, such neglect or failure continues for a period of thirty (30) days after written notice as provided in Section 10 hereof to DISCOVERY from Port Department to cure such neglect or failure or if such neglect or failure cannot reasonably be cured within said 30-day period but is otherwise capable of being cured through action by DISCOVERY, then if DISCOVERY, as applicable, shall fail to commence curative action within fifteen (15) days after said notice and thereafter diligently prosecutes such cure to completion; or
- ii. If the estate hereby created shall be taken by execution or by other process of law; or
- iii. The taking by a court of competent jurisdiction of DISCOVERY or any of its assets pursuant to proceedings under the provisions of any federal or state reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act; or
- iv. If any court of competent jurisdiction shall enter a final order with respect to DISCOVERY providing for modifications or alteration of the rights of creditors.; or



- v. DISCOVERY shall voluntarily abandon its daily cruise passenger services at Port Everglades; or
- vi. DISCOVERY, its officers, employees, agents, or representatives shall be fined by any agency of the State of Florida or the United States government due to any material act and/or omission arising out of the daily cruise passenger service to be provided hereunder; or
- vii. DISCOVERY or an officer, director, executive, partner, shareholder, employee or agent who is active in the management of DISCOVERY 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, entry of a plea of guilty or nolo contendere where the illegal conduct or activity (1) is considered to be a public entity crime as defined by Ch. 287, Florida Statutes, as amended, (2) is customarily considered to be a "white collar crime" or theft related crime such as fraud, smuggling, embezzlement or misappropriation of funds, (3) results in a felony conviction.

No waiver by COUNTY of any default on the part of DISCOVERY in performance of any of the terms, covenants or conditions hereof to be performed, kept or



observed by DISCOVERY shall be construed to be a waiver by COUNTY of any other or subsequent default in performance of any of the said terms, covenants and conditions.

B. COUNTY shall be in default under this Agreement if the COUNTY fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within thirty (30) days after written notice as provided in Section 10 hereof from DISCOVERY specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days but is otherwise capable of being cured through action by COUNTY, the COUNTY shall not be in default if it commences to cure such breach within fifteen (15) calendar days after said notice and thereafter diligently prosecutes such cure to completion.

C. Upon the occurrence of a default under this Agreement not cured within the applicable grace period, the non-defaulting Party may pursue all remedies and damages available at law or in equity, including, without limitation, specific performance of this Agreement.

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



21. JOINT PREPARATION

Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other. The Parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits and attachments hereto, and have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein. The language of this Agreement has been agreed to by the Parties to express their mutual intent and no rule of strict construction shall be applied against another Party hereto.

22. TIME OF ESSENCE

It is understood and agreed between the Parties hereto that time is of the essence of this Agreement and shall apply to all terms and conditions contained herein.

23. CUMULATIVE RIGHTS

The rights of a Party hereunder at law or in equity shall be cumulative and in addition to rights and remedies otherwise provided by the statutes and laws of the State of Florida. Failure on the part of a party hereto to promptly exercise any such available right shall not operate nor be construed to operate as a waiver or forfeiture of any such right.

24. CAPTIONS AND HEADINGS

The section and paragraph headings in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.



25. HUMAN RIGHTS ACT

DISCOVERY shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in exercising any of its rights or obligations under this Agreement.

26. PUBLIC ENTITY CRIMES

DISCOVERY verifies by its execution of this Agreement that it has not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services.

27. RADON

Pursuant to Florida Statutes, COUNTY hereby advises DISCOVERY 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 Broward County Health Department.

28. MULTIPLE ORIGINALS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

29. INSURANCE

DISCOVERY shall cause to provide at its own expense and keep in continuous force and effect: (i) Protection and Indemnity insurance to include such coverages with a minimum limit of Ten Million Dollars (\$10,000,000) and be placed with such insurers as is customary for luxury cruise ship operators; (ii) with respect to the



activities of DISCOVERY and its employees, contractors, agents, customers and guests in and around the Port, Comprehensive General or Commercial Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence for personal injuries and property damage liability, including for premises/operations and independent contractors; (iii) Business Automobile Liability in the minimum amount of Five Hundred Thousand Dollars (\$500,000) per occurrence bodily injury and property damage liability for all owned, non-owned and hired autos operating in or out of the Port; and (iv) Worker's Compensation insurance in an amount not less than One Hundred Thousand Dollars (\$100,000) for each accident in compliance with Florida Statutes Chapter 440, and including United States Longshore and Harbor Workers Compensation Act, Jones Act and coverages, and Maritime Coverages Endorsement, as required by applicable federal and state laws.

The Comprehensive General or Commercial Liability policy must reflect Broward County as an additional insured and must provide for COUNTY to receive thirty (30) days prior written notice of cancellation and/or restriction or material change. DISCOVERY shall provide evidence of the required coverages herein, by presentation of certificates of Insurance prior to the execution of this Agreement. DISCOVERY shall deliver to COUNTY certificates of insurance for renewal of expiring policies prior to expiration date thereof. All insurances specified above other than the Protection and Indemnity Insurance shall be written by companies authorized to do business in the State of Florida.

30. ENVIRONMENTAL IMPAIRMENT; CONTAINMENT AND REMOVAL

A. DISCOVERY 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. COUNTY shall be responsible for any contamination or Pollutants caused by COUNTY.

B. 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 DISCOVERY 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 DISCOVERY'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 DISCOVERY does not take action immediately to have such Pollutants contained, removed and abated, COUNTY may undertake the removal of the discharge, however, any such action by COUNTY shall not relieve DISCOVERY of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either DISCOVERY 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.

C. If COUNTY arranges for the removal of any Pollutants in the Port that were caused by DISCOVERY, its officers, employees, contractors, subcontractors, invitees, or agents, the costs of such removal incurred by COUNTY shall be paid by DISCOVERY 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, amendments thereto and reissues thereof.

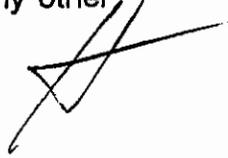
D. The provisions of this Section 30 shall survive the expiration or termination of this Agreement.

31. NON-LIABILITY OF INDIVIDUALS

No commissioner, director, officer, agent or employee of COUNTY shall be charged personally or held contractually liable by or to DISCOVERY 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.

32. RELATIONSHIP OF PARTIES / NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the Parties hereto. It is understood and agreed that neither the method of computation of fees, nor any other

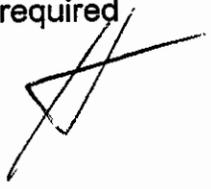


provision contained herein, nor any acts of the Parties hereto creates a relationship other than the relationship of COUNTY and DISCOVERY.

DISCOVERY is an independent contractor under this Agreement. Services provided by DISCOVERY shall be subject to the supervision of DISCOVERY. In providing any services, DISCOVERY or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the COUNTY. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity, other than the rights, duties and obligations conferred upon the Parties under this Agreement. Therefore, the Parties agree that, other than the rights, duties and obligations conferred upon COUNTY and DISCOVERY, there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

33. EXECUTION AUTHORITY

The individuals executing this Agreement on behalf of DISCOVERY personally represent and warrant to COUNTY that they have full authority to execute this Agreement on behalf of DISCOVERY for which they are acting herein and that, when executed, this Agreement shall be binding and enforceable in accordance with its terms. COUNTY represents and warrants to DISCOVERY that it has statutory authority to enter into and perform the terms of this Agreement, that, when executed, this Agreement shall be binding and enforceable in accordance with its terms and that all approvals required for COUNTY to enter into this Agreement have been obtained.



34. SUCCESSORS AND ASSIGNS BOUND

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto where permitted by this Agreement.

35. ENTIRE AGREEMENT; MODIFICATIONS; AMENDMENTS

It is understood and agreed that this instrument contains the entire Agreement between the Parties hereto. It is further understood and agreed by DISCOVERY that COUNTY and COUNTY's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as expressly set forth in this Agreement, and that no claim or liability or cause for termination shall be asserted by DISCOVERY against COUNTY for, and COUNTY shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parol agreement with COUNTY being expressly waived by DISCOVERY. COUNTY understands and agrees that DISCOVERY has made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as expressly set forth in this Agreement, and that no claim or liability or cause for termination shall be asserted by COUNTY against any of them for, and they shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parol agreement with DISCOVERY being expressly waived by COUNTY. This Agreement may not be changed, modified, discharged or amended except by written instrument duly executed by COUNTY and DISCOVERY with the same formality and of equal dignity herewith. COUNTY and



DISCOVERY agree that no representations or warranties shall be binding upon them unless expressed in writing herein.

36. PORT SECURITY

DISCOVERY shall be responsible for compliance with federal, state and local laws and regulations, and such laws and regulations as may be imposed from time-to-time by the U.S. Coast Guard, U.S. Customs Service or other federal agencies, and by COUNTY, with respect to passenger security, drug interdiction, and other import and export controls.

37. AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of DISCOVERY that are related to this Agreement. DISCOVERY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

DISCOVERY shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the



Florida Public Records Act is determined by COUNTY to be applicable to DISCOVERY's records, DISCOVERY shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by DISCOVERY. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

38. CONFLICTS

Neither DISCOVERY nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with DISCOVERY's loyal and conscientious exercise of judgment related to its performance under this Agreement.

DISCOVERY agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event DISCOVERY is permitted to utilize subcontractors to perform any services required by this Agreement, DISCOVERY agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.



39. NO CONTINGENT FEE

DISCOVERY warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for DISCOVERY to solicit or secure this Agreement and that it has not paid nor agreed to pay any person, company, corporation or individual, other than a bona fide employee working solely for DISCOVERY, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate this Agreement without liability at its discretion or otherwise recover, the full amount of such fees, commission, percentage, gift or consideration.



[THIS SPACE LEFT BLANK INTENTIONALLY]



IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair, authorized to execute same by Board action on the 5th day of February, 2002, and DISCOVERY CRUISE SERVICES, INC., signing by and through its General Manager, duly authorized to execute same.

COUNTY

ATTEST:



COUNTY Administrator and
Ex-Officio Clerk of the Board of
County Commissioners of
Broward County, Florida



Reviewed and approved by



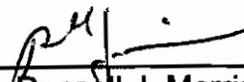
Mary Meister
Risk Management Division

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

By 

DIANA WASSERMAN-RUBIN ^{v-} Chair
5th day of February, 2002

Approved as to form by
Office of County Attorney
Broward County, Florida
Edward A. Dion, County Attorney
Port Everglades Dept. of Broward County
1850 Eller Drive, Suite 502
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404
Telecopier: (954) 523-2613

By 

Russell J. Morrison
Assistant County Attorney

RJM:cm/wg
g:\port\legal\wpdocs\AGREES.01/Discovery.a01; Rev. 12/04/01; #01-3033.02; December 4, 2001



**DAILY PASSENGER CRUISE WHARFAGE AGREEMENT BETWEEN
BROWARD COUNTY AND DISCOVERY CRUISE SERVICES, INC.**

DISCOVERY CRUISE SERVICES, INC., a
Florida corporation,

ATTEST:

[Signature]
Corporate Secretary

By [Signature]

(CORPORATE SEAL)

Hanns J. Hahn, General Manager
(Print Name and Title)

17 day December, 2001.

Telephone: (305) 704-0917

Telecopier: (305) 718-9623

WITNESSES:

[Signature]
Signature

Tamara Gardner
Print Name

[Signature]
Signature

Maria Borrego
Print Name



EXHIBIT A

M/V DISCOVERY SUN SAILING SCHEDULE

DAY CRUISES

(Round – trip from Port Everglades To Freeport, Bahamas)

Monday – Sunday

Departing: 7:45 a.m. **To:** Freeport, Bahamas

Returning: 10:00 p.m. **From:** Freeport, Bahamas

(Sea Buoy Time For All Arrivals)

