

FMC Agreement No.

201136-000

MARITIME OFFICE COMPLEX
LEASE AND OPERATING AGREEMENT

By and Between
Port of Palm Beach District
and ITG VEGAS, INC.,
a Nevada Corporation



FA

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**MARITIME OFFICE COMPLEX
LEASE AND OPERATING AGREEMENT**

This Lease and Operating Agreement is made and entered into as of this ____ day of _____, 2002, by and between the **PORT OF PALM BEACH DISTRICT**, a political subdivision of the State of Florida, organized and existing under, and by virtue of, Chapter 7081, Laws of Florida, Acts of 1915, as amended (hereinafter referred to as "DISTRICT"), having its address at Fourth Floor, One East Eleventh Street, Riviera Beach, Florida 33404, and **ITG VEGAS, INC.**, a Nevada Corporation (hereinafter referred to as "CRUISES"), having its address at Fifth Floor, One East Eleventh Street, Riviera Beach, Florida 33404.

WITNESSETH:

WHEREAS, CRUISES desires to lease certain premises owned by DISTRICT, and desires to operate from the wharves and other property owned by DISTRICT on the terms set forth below; and

WHEREAS, DISTRICT is willing to lease such premises and permit CRUISES to operate from the wharves and other property owned DISTRICT, but only if CRUISES enters into this Lease and Operating Agreement on the terms set forth below.

NOW THEREFORE, in consideration of the mutual premises and promises set forth herein, the parties agree as follows:

1 **CERTAIN DEFINITIONS.** The following terms, wherever they appear in this Agreement, shall be given the meanings set forth below:

1.1 1997 Lease - shall mean that certain lease agreement dated October 15, 1997, by and between the Port of Palm Beach District and LEO EQUITY GROUP, INC.

1.2 1999 Trailer Memo - shall mean that certain Memorandum dated March 30, 1999 regarding "Palm Beach Cruise Line Office Trailers-Monthly Rental".

1.3 1996 Operating Agreement - shall mean that certain Operating Agreement dated May 29, 1996, by and between the Port of Palm Beach District and Palm Beach Cruises, S.A., as assigned to Leo Equity Group, Inc.

- 1.4 Agreed Commencement Date - shall have the meaning assigned in Paragraph 3.2 hereof.
- 1.5 Agreement Year - shall mean a period of twelve calendar months, with the first such period commencing on the first day of the first calendar month following the Agreed Commencement Date.
- 1.6 Building - shall mean the Port of Palm Beach Maritime Office Complex constructed to the north of Slip 3.
- 1.7 Calendar Year - shall mean a period of twelve consecutive calendar months, with the first such Calendar Year commencing January 1, 2003.
- 1.8 Coastal Cruise - shall mean the cruise of a vessel that both departs and returns from the Port of Palm Beach within a twenty-four hour period without making a foreign port of call.
- 1.9 Cruise Terminal - shall mean the new cruise terminal which is adjacent to the Building.
- 1.10 Current Combined Rate - shall mean the total of (a) the Passenger Wharfage Rate (on and off) for sailings from the Port of Palm Beach with no other port of call, and (b) the Terminal Operation Fee, both in accordance with the Tariff of the District.
- 1.11 Demised Premises - shall mean only the areas depicted on **EXHIBIT A** and **EXHIBIT B** and demised under Paragraph 2 hereof, totaling Eleven Thousand One Hundred Five (11,105) square feet, which shall constitute the only real or personal property leased to CRUISES hereunder.
- 1.12 Day - whether or not capitalized, shall mean a calendar day, and shall include weekdays, weekends, and legal holidays.
- 1.13 Index - shall mean the index now known as "United States Bureau of Labor Statistics, Consumer Price Index for Urban Consumers". If the publication of the Index specified herein is discontinued, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selected by DISTRICT shall be substituted. If the Index figures are not known at the time that any adjustment based thereon is due, those figures shall be reasonably estimated by DISTRICT based on the most recently published monthly Index figures. If DISTRICT is entitled to an increase in any amount due or to become due hereunder, DISTRICT shall send a written notice to CRUISES, together with the applicable Index figures, setting forth the computations for the increase. Failure to send any such notice of increase timely shall not constitute a waiver, or form the basis for a claim or defense of estoppel, as to any amounts due from the date that any such increase would have been otherwise applicable.

1.14 Land Based Employee - shall mean an employee actually employed by a tenant of the Building and working in the Demised Premises or the Cruise Terminal.

1.15 Maximum Annual Dockage Charge - shall have the meaning assigned in Paragraph 11.3 hereof.

1.16 Multi-Day Cruise - shall mean a transportation by water of passengers for hire wherein the Port of Palm Beach is either a point of origin, point of destination or stop-over, for a vessel that does not return to its home port within twenty-four hours of its departure.

1.17 Operational Period - shall only mean that DISTRICT shall not approve the scheduling of the departure of a Coastal Cruise of another Coastal Cruise operator within one hour before and one hour after a CRUISES' Coastal Cruise departure pursuant to the Priority Schedule, and that DISTRICT will not approve a sailing schedule for any other Coastal Cruise that provides for a departure or return of such other Coastal Cruise within one-half hour prior to the return of CRUISES' vessel pursuant to CRUISES Priority Schedule.

1.18 Other Cruise - shall mean any transportation by water of passengers for hire to or from the Port of Palm Beach, other than a Coastal Cruise, and includes Multi-Day Cruises.

1.19 Priority Schedule - shall have the meaning assigned in Paragraph 12.1 hereof.

1.20 Pro Rata Share - shall mean a fraction, the numerator of which is Ten Thousand Six Hundred Eighteen (the same being the area demised to CRUISES under Paragraph 2 hereof), and the denominator of which is the Total Leaseable Square Feet in the Building.

1.21 Rent - shall have the meaning assigned in Paragraph 4.1 hereof.

1.22 Tariff of the District - shall mean DISTRICT's standard published then current tariff which is applicable to all Port Users without separate contractual agreements, as the same may be amended time to time, and any successor tariff, the now current Tariff of the District being Tariff No. 13. CRUISES acknowledges receipt of a copy of the current Tariff of the District and agrees that the same is incorporated herein and forms a part of this Lease and Operating as completely as if set forth herein in full.

1.23 Tenant Improvements - shall have the meaning assigned in Paragraph 6.2 hereof.

1.24 Total Leaseable Square Footage - shall mean the total leaseable square feet in the Building and is agreed to be Forty One Thousand Four Hundred Eleven (41,411) square feet.

2 **DEMISE OF PREMISES.** DISTRICT does hereby lease unto CRUISES, and CRUISES does hereby hire and take as tenant under DISTRICT, approximately Nine Thousand Four Hundred Fifty Six (9,456) square feet of leaseable space on the fifth floor, as depicted on **EXHIBIT A**, attached hereto, and approximately One Thousand Six Hundred Forty Nine (1,649) square feet of leaseable space on the second floor, as depicted on **EXHIBIT B**, attached hereto, both in that certain building located in Riviera Beach, Florida, known as the Port of Palm Beach Maritime Office Complex.

In addition, but not as a part of the Demised Premises, CRUISES shall have rights, as more particularly set forth herein, to operate from the Cruise Terminal which is adjacent to the Building.

3 **COMMENCEMENT, TERM AND RENEWALS.**

3.1 **Operations.** CRUISES is presently performing all passenger ticketing, embarkation and disembarkation from the Cruise Terminal, and berthing at Berths 24 and 25, and there are no other cruise or vessel operations being conducted from the old cruise terminal or from Slip 1.

3.2 **Agreed Commencement Date.** Rent and other charges with respect to the Demised Premises shall commence ("Agreed Commencement Date") on the earlier of (i) ten days following the date that CRUISES has completed its Tenant Improvements and received a certificate of occupancy, or (ii) actual occupancy of the Demised Premises by CRUISES, or (iii) October 15, 2002. In the event that CRUISES takes actual occupancy of the Demised Premises and vacates the old Cruise Terminal on or before October 15, 2002, DISTRICT shall pay the sum of Twenty Thousand Dollars (\$20,000.00) to CRUISES as reimbursement to CRUISES for improvements to the Demised Premises, separate and apart from the allowance hereunder for Tenant Improvements. Time is of the essence of this Paragraph 3.2.

3.3 **Initial Term.** The term of this Lease and Operating Agreement shall continue until the last day of the last calendar month of the fifth Agreement Year ("Initial Term"). Except as set forth herein in Paragraph 3.2, all costs associated with CRUISES' relocation to the Demised Premises, the Cruise Terminal, berths 24 and 25, the parking areas, and all other relocation expenses, shall be paid for by CRUISES without reimbursement by DISTRICT. This Lease and Operating Agreement is subject to sooner termination under the terms hereof.

3.4 **Interim Operations.** Although the 1997 Lease and the 1999 Trailer Memo are being terminated concurrent with execution of this Lease and Operating Agreement, until the Agreed Commencement Date, CRUISES shall continue to occupy its existing space within the old cruise terminal, paying rent and other charges as provided under the 1997 Lease, and otherwise on the same terms as provided in the 1997 Lease and shall have the right to

maintain its trailers in their current location under the same terms as contained in the 1999 Trailer Memo. After the Agreed Commencement Date, continued use, occupancy or possession of any property of DISTRICT (except pursuant to this Lease and Operating Agreement), shall be deemed holding over without consent (without notice or demand), and DISTRICT shall have the right to refuse access to such premises, and shall have the option to treat such holding over as a breach of this Lease and Operating Agreement without further notice or demand but for the notice given and acknowledged by the fact of execution of this Lease and Operating Agreement by CRUISES.

3.5 Renewal. This Lease and Operating Agreement is subject to renewal by CRUISES for two (2) additional terms of five years each, exercisable provided that CRUISES is not then in default of this Lease and Operating Agreement. Exercise of any such renewal shall require written notice from CRUISES to DISTRICT given not less than one hundred eighty (180) days prior to the end of the then current term, time being of the essence. Time is of the essence because DISTRICT requires the maximum possible notice to relet the Demised Premises and/or negotiate with another operator. There are no other provisions for renewal or extension of this Lease and Operating Agreement.

4 RENT; TAXES; OTHER CHARGES.

4.1 Rent. CRUISES shall pay to DISTRICT, without demand, setoff or deduction, rent ("Rent"), commencing upon the Agreed Commencement Date, in the annual sum of Sixteen Dollars and Fifty Cents (\$16.50) per square foot of leaseable space within the Demised Premises, which the parties agree is Eleven Thousand One Hundred Five (11,105) square feet, payable monthly.

4.2 Payment. The first month's rent shall be prorated such that subsequent monthly payments shall fall due on the first day of each month. Thereafter, each monthly installment of Rent shall be paid in advance on the first (1st) day of each month of the term to DISTRICT at its office in the Maritime Office Complex, or at such other place as DISTRICT shall, from time to time, designate in writing. If Rent payments are not received in full by the tenth (10th) day of the month, CRUISES shall pay a late charge of Two Hundred Fifty Dollars (\$250.00), if DISTRICT elects to accept such late payment, otherwise, DISTRICT shall have the right declare this Lease and Operating Agreement in default.

4.3 Cost of Living. If CRUISES shall exercise its right to renew under Paragraph 3.5 hereof, then commencing with the beginning of the sixth Agreement Year, and each year thereafter (and continuing through all renewals), the Rent hereunder shall be subject to increase based on changes in the Index, using the last day of the month immediately prior to the beginning of the fifth Agreement Year as the base year; provided, however, Rent shall never be less than the prior year's Rent, and no such increase shall exceed 3% of the prior year's Rent.

4.4 **Ad Valorem Taxes.** (A) In addition to the Rent and other charges payable under this Lease and Operating Agreement, CRUISES shall pay to DISTRICT all real estate taxes assessed with respect to the Demised Premises. CRUISES acknowledges that separate bills for real estate taxes may not be available for some or all of the Demised Premises, and if so, the portion of said amounts attributable to the Demised Premises shall be determined by multiplying the amount of each such tax bill and expense by a fraction, the numerator of which shall be the leased area contained within the Demised Premises and the denominator of which shall be the Total Leaseable Square Feet. CRUISES shall make monthly estimated payments towards the taxes to DISTRICT, with each monthly amount being one twelfth (1/12) of the total of such taxes for the previous year and being paid at the same time, and in the same as Rent, with the same rights as to default and collection, all such one-twelfth payments to be placed at interest, with the benefit of such interest being credited to CRUISES. DISTRICT shall notify CRUISES of the actual amount of taxes for the current year at least fifteen days prior to the last date on which the maximum discount can be obtained ("Maximum Discount Date"), and advise CRUISES of the balance due, after crediting the monthly payments and interest thereon, and said balance due shall be paid within five days. Provided that CRUISES shall pay any balance due at least ten days prior to the Maximum Discount Date, DISTRICT shall pay the taxes on or before the Maximum Discount Date. In the event that this Lease and Operating Agreement is not in effect for the full period for which real estate taxes, then CRUISES' proportionate share shall be prorated. For example, if the term of this Lease and Operating Agreement were to begin exactly in the middle of a calendar year, CRUISES' share of the real estate taxes for the year would be one-half of the amount derived by applying the above formula.

(B) **Right to Contest Assessment.** DISTRICT shall provide a copy of the Notice of Proposed Taxes to CRUISES at least fifteen (15) days before expiration of the period during which such tax bill can be contested. CRUISES shall have the right to contest or review by legal proceedings or in such manner as CRUISES, in its option, shall deem advisable (which proceedings or other steps taken by CRUISES if instituted shall be conducted diligently at its own expense and free of any expense to DISTRICT) any and all taxes or assessments levied, assessed, or imposed against the Building, required to be paid by CRUISES, provided that the full amount of the taxes shall first be paid over to DISTRICT, and that such contest shall not result in a tax sale of the Building, or any portion thereof. However, if CRUISES desires to challenge an assessment, it must notify DISTRICT of said desire a minimum of five (5) days prior to the expiration of the time period in which the contest of assessment can be filed, and prior to payment of the taxes by DISTRICT and CRUISES. At the request of CRUISES, DISTRICT will cooperate with CRUISES and make available to CRUISES upon demand any and all information which CRUISES may reasonably require, join in any such contest or proceeding and execute any documents or pleadings that are reasonably required, including any agreement in settlement of any such contest or proceeding if it is necessary to do so to prosecute such proceeding, but CRUISES in those circumstances shall pay, as incurred, any direct, out of pocket costs and expenses incurred by CRUISES in connection therewith, and DISTRICT shall have the right, as a condition of consenting to a settlement or judgment which imposes any monetary obligation on DISTRICT, to require that security satisfactory to DISTRICT be deposited with DISTRICT to protect against such monetary obligations. In any event, no such contest shall defer or suspend CRUISES' obligations to pay the taxes or assessments as herein provided; but if

CRUISES is required by law to first pay the taxes or assessments and then seek a refund from the taxing authority, CRUISES shall do so. Nothing in these provisions shall be in derogation of DISTRICT's right to contest or review any taxes or assessments by legal proceedings or in such other manner as may be available to DISTRICT.

4.5 Utilities. CRUISES shall pay (as a straight pass-through without increase or surcharge) all electricity charges provided to the Demised Premises. Such charges shall be billed not more frequently than monthly, and shall be paid within fifteen (15) days of invoicing, and CRUISES agrees that the same shall be separately metered. CRUISES shall make any and all arrangements (and pay all costs and deposits associated therewith) for utility service that CRUISES may need to facilitate its use of the Demised Premises and shall comply fully with all laws and regulations with respect to same.

4.6 Property and Casualty Insurance. CRUISES shall also pay its Pro Rata Share of all insurance premiums for all property and casualty, fire, extended coverage, vandalism, malicious mischief and other property insurance carried by DISTRICT with respect to the Building.

4.7 Sales Tax. CRUISES shall also pay, as additional Rent, any and all sales taxes imposed by the State of Florida or any other governmental authority, on any amounts paid by CRUISES hereunder, although the taxing statute or ordinance may purport to impose such sales tax against DISTRICT. The payment of sales tax shall be paid by CRUISES at the same time as payment of Rent.

4.8 Intangible Tax. CRUISES shall be responsible for and shall pay all personal property and intangible taxes imposed upon the Demised Premises and the Tenant Improvements in the Demised Premises.

4.9 Amounts Collectible as Rent. All amounts due under Paragraphs 4.2 through 4.8 shall be deemed amounts "collectible in the same manner as Rent" under Paragraph 23.1 hereof.

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5 USE.

5.1 Use of Demised Premises: Subsidiary Operating Privileges. CRUISES shall use the Demised Premises for general and corporate offices directly related to its operations hereunder, and for a travel agency, and for no other use or purpose whatsoever, without the written consent of DISTRICT which consent shall not be unreasonably withheld provided that the use is directly related to Coastal Cruises conducted to and from the Port of Palm Beach, whether such Coastal Cruises are operated by CRUISES or a wholly-owned subsidiary of CRUISES; notwithstanding the foregoing, so long as all of the other obligations of this Lease and Operating Agreement are performed, CRUISES shall have the right to use the Demised Premises for corporate offices of other businesses actually conducted by CRUISES, but not for other business of any subsidiary of CRUISES (at any level), parent of CRUISES (at any level) or related entity or any third party, except for incidental management level non-operational matters of subsidiaries of CRUISES and parents of CRUISES. CRUISES acknowledges that there shall be no direct access between the Building and the Cruise Terminal, except for individuals for whom security clearance has been granted by DISTRICT, and subject to such security measures as DISTRICT shall reasonably deem necessary.

In the event that Coastal Cruises are operated by a wholly-owned subsidiary of CRUISES, as herein above permitted, then, prior to commencement of operations, any such subsidiary shall (i) execute a guaranty of payment and performance in the form attached hereto as **EXHIBIT C**, and (ii) submit a copy of its most recent financial statement (not more than twelve calendar months old) and such other documentation as DISTRICT deems necessary, including without limitation, other financial records, operating agreements, charter agreements, in order to permit DISTRICT to make a determination as to whether the subsidiary is capable or performance. Notwithstanding the foregoing, the wholly-owned subsidiary Palm Beach Princess, Inc. shall not be required to submit such financial statements or documentation, but shall be required to execute the guaranty of payment and performance. Any obligation of such subsidiary now or hereafter held by CRUISES (or any other parent, subsidiary or related entity of CRUISES) is hereby subordinated to the obligations of such subsidiary to DISTRICT and no such obligations shall be paid in whole or in part as long as there exist any claims by DISTRICT against CRUISES which are due and unpaid.

5.2 Use Consistent With Funding Sources. In all events, use of the Demised Premises and the Cruise Terminal shall be limited to, consistent with, and not in violation of the conditions imposed in connection with any funding sources ("Funding Sources") secured in connection with the construction or refinancing of the Building and the Cruise Terminal, and shall not result in change in the tax exempt status or treatment of any bonds the proceeds of which are used in connection with the construction or refinancing of the Building or the Cruise Terminal. The term Funding Sources shall mean any source of funding other than income derived from operations at the Port of Palm Beach, and shall include, without limitation, loans, bonds and grants, including without limitation,

FSTED funding. Any use that would constitute a violation, default or change of the terms of such Funding Sources, shall constitute a default of this Lease and Operating Agreement. DISTRICT represents that the current Funding Sources permit the uses set forth in Paragraph 5.1 and agrees that any substitute Funding Source shall likewise permit such uses.

5.3 Use of Other DISTRICT Facilities. Use of other DISTRICT facilities afforded to CRUISES herein, including without limitation, the Cruise Terminal (and areas contained therein), parking facilities, berths and wharves, shall be for the sole purpose of conducting therefrom, Coastal Cruises. Any attempted use of the DISTRICT facilities for dockside gaming, gambling, wagering and bookmaking or other forms of wagering is strictly prohibited, irrespective of any future change in law regarding same.

5.4 Compliance with Laws. CRUISES shall comply with all laws, ordinances, rules, permits, licenses and regulations of applicable governmental authorities respecting the use of, and operation, and activities conducted in the Demised Premises, the Building, the Cruise Terminal, and all other DISTRICT real and personal property, including without limitation, the Tariff of the District, as the same may be from time to time amended or modified, and CRUISES shall not make, suffer, or permit any unlawful, improper, or offensive use of the Demised Premises or the Cruise Terminal or any part thereof or permit any nuisance thereon, and shall comply with all laws, rules and regulations of any governmental authority having jurisdiction over its land-based or water-borne use, operation, and activities of any vessel being operated hereunder, and CRUISES shall not make, suffer, or permit any activity on CRUISES' vessel (except gambling, wagering and bookmaking or other forms of wagering), which, if conducted within the State of Florida, would be unlawful, nor shall CRUISES use the Demised Premises, the Cruise Terminal, or any other property belonging to DISTRICT, for the storage or the disposal of 'hazardous or toxic substances' (as defined in any Environmental Law). Business machines and mechanical equipment located in the Demised Premises or Cruise Terminal shall not cause noise and/or vibrations that may be transmitted to the structure or to any other leased space therein. CRUISES shall secure and maintain all licenses required by all applicable governmental and other authorities having jurisdiction over its land-based or water-borne use, operation, and activities.

5.5 Impairment of Coverage. CRUISES shall not make any use of the Demised Premises or Cruise Terminal which would make void or voidable any policy of fire or extended coverage insurance covering the Demised Premises.

5.6 Abandonment. CRUISES shall use the Demised Premises only for the purposes stated in this Lease and Operating Agreement and shall not abandon said Demised Premises (which term shall mean ceasing use of said Demised Premises as provided in this Lease and Operating Agreement for a period of in excess of thirty(30) days) or suffer or permit any waste or mistreatment thereof.

5.7 **Security.** CRUISES, at CRUISES' expense, shall comply with all rules and regulations regarding security now or hereafter imposed by the Port of Palm Beach District, State, local or Federal governments having jurisdiction, at the Building, the Cruise Terminal and the Port of Palm Beach District, which shall include, but not be limited to, approved USCG and FDLE Cruise Terminal Security Plans. CRUISES shall pay a non-discriminatory share of the actual cost of compliance with such rules and regulations, in accordance with the Tariff of the District; provided, however, that such costs shall bear a reasonable relationship to CRUISES' operations and/or the Demised Premises; further provided, however, that the tariff rate for passenger screening is addressed in Paragraph 12.6 hereof. Without being limited by the foregoing, CRUISES shall pay the charges for investigation of employees and issuance of security badges and proximity cards, and for inspection of ship's stores, in accordance with the Tariff of the District. The imposition of such security measures as set forth in this Paragraph 5.7 shall not constitute a force majeure or basis for avoidance of this Lease and Operating Agreement, or any provision hereof.

5.8 **Utilities and Services.**

5.8.1 **Electricity, Heating and Air Conditioning.** The Demised Premises shall be furnished with electricity, heating and air conditioning ("HVAC") customary and sufficient for the normal use and occupancy of the Demised Premises as general offices twenty four (24) hours per day, seven (7) days per week during the term of this Lease and Operating Agreement.

5.8.2 **Common Facilities.** Within the common facilities of the Building, DISTRICT shall furnish reasonably: (i) adequate electricity, (ii) hot and cold water, (iii) lavatory supplies, (iv) automatically operated elevator and escalator service, (v) normal and customary cleaning services (on a seven-day a week basis) after normal business hours, and (vi) heat and air conditioning.

5.8.3 **Disruption of Services.** DISTRICT shall not be liable for any damages to CRUISES resulting from the quality, quantity, failure, unavailability or disruption of any services beyond the reasonable control of DISTRICT and the same shall not constitute a termination of this Lease and Operating Agreement or an actual or constructive eviction or entitle CRUISES to an abatement of rent unless such damage or loss results from the negligence or willful misconduct of DISTRICT or its agents, employees or contractors, and such failure, unavailability or disruption is not remedied within ten (10) business days after written notice of such failure is provided by CRUISES to DISTRICT.

6 **TENANT IMPROVEMENTS.**

6.1 **DISTRICT Work.** DISTRICT shall be responsible for DISTRICT Work, described on the attached **EXHIBIT D**.

6.2 **Tenant Improvements.** CRUISES shall be responsible for design and construction of its tenant improvements ("Tenant Improvements") within the Demised Premises. CRUISES may elect to engage any architect of CRUISES' choosing, subject to DISTRICT'S reasonable approval. All improvements must be, at a minimum, consistent with the nature and character of the Building and

the designs for same must be submitted to DISTRICT engineer (with a copy of the submittal being copied to the Executive Director) for approval prior to application for permit. DISTRICT shall have seven days to review the plans and either approve same, or note the basis for rejection. If DISTRICT has not rejected the Plans within the seven day period, the same shall be deemed approved by DISTRICT. If DISTRICT has rejected the Plans, CRUISES shall submit modified Plans within seven days. The dates set forth herein for commencement of construction or completion shall not be extended on the basis of DISTRICT having rejected any proposed Plans, provided such rejection is reasonable. CRUISES shall be responsible for obtaining all necessary permits and approvals from all governmental authorities having jurisdiction. To the extent practical, such improvements shall not be single purpose design, i.e. they will be functional for tenants customarily leasing corporate offices. All of the Demised Premises shall be fully improved. All of the Tenant Improvements shall be at the sole cost and expense of CRUISES, and CRUISES shall invest a minimum of Thirty Dollars (\$30.00) per square foot of CRUISES leaseable space, the same being Eleven Thousand One Hundred Five (11,105) square feet, in the hard cost of such Tenant Improvements ("Minimum Cost"), including only fixed improvements, and not including, without limitation, design, phone systems, computer cabling or conduit or moveable partitions.

Prior to commencement of construction of the Tenant Improvements, CRUISES shall provide security, satisfactory to DISTRICT in DISTRICT's sole discretion, for the payment of all construction costs of such Tenant Improvements. DISTRICT agrees that a payment and performance bond in form satisfactory to DISTRICT, written by a bonding company licensed to do business in the State of Florida and meeting the requirements for a bonding company acting as surety for vessel agents at the Port of Palm Beach, shall constitute satisfactory security hereunder. If required by law, CRUISES contractor shall furnish a payment and performance bond under Florida Statutes Section 255.05. Upon establishment of all such security, DISTRICT shall transfer to CRUISES the materials set forth on **EXHIBIT E**. The Minimum Cost shall be in addition to the value of the **EXHIBIT E** materials. CRUISES shall not be entitled to take possession of the Demised Premises until CRUISES has provided releases from all contractors, subcontractors and materialmen performing work or furnishing materials in connection with the Tenant Improvements, and otherwise satisfied DISTRICT that it has invested at least the Minimum Cost.

Designs (sufficient in detail to determine compliance with the provisions of this Paragraph 6.2) shall be submitted to DISTRICT on or before June 30, 2002. Actual construction of Tenant Improvements shall commence on or before July 30, 2002, and be continuously and diligently prosecuted to completion, and shall be completed (as evidenced by issuance of a Certificate of Occupancy by all necessary governmental authorities) on or before the October 15, 2002. Time is of the essence of the dates for submission of design and commencement of construction and completion of construction. Prior to commencement of construction, CRUISES contractor shall execute a waiver of lien rights, and agree in writing that, provided said contractor is paid in accordance with the construction contract, it will complete the

Tenant Improvements upon the price and terms specified in the construction contract, on behalf of DISTRICT.

6.3 Amortization of Tenant Improvements. The actual cost of the Tenant Improvements paid to third parties, up to, but not exceeding the Minimum Cost, shall be credited against the Rent due hereunder, amortized in equal monthly credits over the Initial Term, at the lesser of Eight Per Cent (8%) or CRUISES actual cost of borrowing. Except as just set forth, i.e. through monthly amortization crediting, there shall be no other basis (including failure to exercise a renewal right) upon which any portion of the cost of the Tenant Improvements shall be recoverable from DISTRICT, or any third party, by CRUISES, except pursuant to the provisions of Paragraph 37.1, pursuant to the provisions of Paragraph 37.2 or in the event of an uncured default by DISTRICT not waived by CRUISES which would give CRUISES the right to terminate this Lease and Operating Agreement during the Initial Term. CRUISES shall not subject the Tenant Improvements to any mortgages, liens or other security interest.

6.4 Refurbishment Allowance. In the event that this Lease and Operating Agreement is renewed beyond ten years, then, provided that CRUISES is not in default hereunder, DISTRICT shall provide CRUISES with a refurbishment allowance of \$5.00 per square foot for the Eleven Thousand One Hundred Five (11,105) square feet contained within the Demised Premises. Said allowance shall be reimbursed to CRUISES only for the actual hard cost of such refurbishment costs, including only fixed improvements, and not including, without limitation, design, phone systems, computer cabling or conduit or moveable partitions.

7 REPAIRS AND MAINTENANCE.

7.1 DISTRICT Obligations of Repair and Maintenance. DISTRICT shall be responsible for all repairs and maintenance of all common areas of the Building, i.e. areas that are not contained within the area forming a part of the calculation of Total Leaseable Square Feet, and maintenance of that portion of the structure of the Demised Premises consisting of its systems located exterior to the Demised Premises, exterior walls, windows, foundation and roof, not including, however, any portion of the Tenant Improvements. DISTRICT shall also be responsible for all HVAC equipment located within the Demised Premises. CRUISES has inspected Berths 24 and 25, and accepts them in their present condition. DISTRICT will repair normal wear and tear to the bulkhead or wharf adjacent to berths 24 and 25. DISTRICT will repair damage to the bulkhead or wharf adjacent to berths 24 and 25 not caused by CRUISES, and during such repairs, CRUISES shall be assigned other berths on a non-exclusive basis, for layover and passenger embarking and disembarking, and DISTRICT will attempt to provide such berth as close to the Cruise Terminal as practical, subject to availability, all existing and future preferences granted to others, and priorities granted to others, and interference on an interim basis for necessitating circumstances. The foregoing

shall not be interpreted to impair the vitality or continued precedence of CRUISES' sailing schedule priorities contained in Paragraph 12.2. DISTRICT shall be responsible for the maintenance and repair of the Cruise Terminal and all DISTRICT owned utilities, and of all utility easements, unless the same are damaged due to the negligence of CRUISES, and shall maintain the Building, Cruise Terminal, parking areas used by CRUISES and the wharf area adjacent to Berths 24 and 25, in a clean and orderly condition, free of accumulation of dirt and rubbish and shall keep and maintain all landscaped areas about the Building, Cruise Terminal and parking areas used by CRUISES in a neat and orderly condition. DISTRICT shall pay for and provide extermination services to the Demised Premises on a once-monthly basis.

7.2 CRUISES Obligations of Repair and Maintenance. CRUISES shall pay and be responsible for repair and maintenance of all other portions of the Demised Premises, and shall keep and maintain the Demised Premises in a neat and orderly condition; and, upon expiration of the term, shall leave the Demised Premises in good order and condition, ordinary wear and tear excepted, and shall not commit or permit any waste, damage or injury to the Demised Premises, the Cruise Terminal or other property of DISTRICT. CRUISES shall receive the benefit of any warranties available in connection with its repair and maintenance obligations hereunder.

7.3 Janitorial. CRUISES shall pay and be responsible for all cleaning of the Demised Premises, including all janitorial services.

8 QUIET ENJOYMENT. So long as CRUISES pays the Rent and all other charges (including without limitation, all dockage and wharfage) reserved in this Lease and Operating Agreement and performs its agreements hereunder, and is otherwise not in default hereunder, CRUISES shall have right to quietly enjoy and use the Demised Premises and operate from the Cruise Terminal, for the term hereof, subject only to provisions of this Lease and Operating Agreement.

9 **PARKING.**

9.1 **Employee Parking.** DISTRICT shall provide parking for twenty-five (25) of CRUISES Land Based Employees in the general area designated for same and depicted on **EXHIBIT F**. Such parking for CRUISES Land Based Employees shall be temporarily relocated from such location (provided that all employee parking for the Building is then being relocated), at the option of DISTRICT, in the event that DISTRICT elects to construct a parking garage in such location, and, upon completion of such construction, said employee parking shall be established in said garage or other area proximate to the Building, as determined by DISTRICT. Upon completion of such construction, DISTRICT shall provide an additional thirty-five (35) spaces to CRUISES for Land Based Employees, in such garage, or other area proximate to the Building, in such areas as are designated, from time to time, by DISTRICT. Except to the extent that ADA parking is required to be separately identified and marked, parking spaces shall not (unless determined by DISTRICT, from time to time) be reserved, segregated or marked. At DISTRICT's election, additional employee parking (in excess of the parking for the 60 Land Based Employees referenced above) areas may be provided at a rate to be established, from time to time, by DISTRICT. All employee parking shall be subject to such regulations as DISTRICT shall determine, from time to time. CRUISES' employees shall not park in areas not designated for CRUISES' use hereunder.

9.2 **Building Visitor Parking.** DISTRICT shall provide parking spaces for visitors to the Building in the general area designated for same and depicted on **EXHIBIT F**, but no such parking shall be specifically designated for CRUISES, and shall not be used for CRUISES passenger or employee parking, and may be relocated in the general area of the Building, from time to time, as determined by DISTRICT, and such visitor parking shall be temporarily relocated from such location, at the option of DISTRICT, in the event that DISTRICT elects to construct a parking garage in such location, and, upon completion of such construction, said visitor parking shall be established in said garage, or other area proximate to the Building.

9.3 **Other Parking.** Subject to the provisions of Paragraph 9.6, parking for CRUISES' employees (except the twenty-five Land Based Employees referred to in Paragraph 9.1), and, at rates established by DISTRICT, CRUISES' passengers, shall be addressed in three sequential stages: Initial Stage, Interim Stage and Garage Stage. Proceeding from the Initial Stage to the Interim Stage shall be at the sole discretion of DISTRICT, however, DISTRICT shall only proceed to the Interim Stage if a contract has been entered into for construction of a parking structure, a permit for construction has been obtained (if such permit is required), a Notice to Proceed has been given to the contractor, and the contractor has requested that the area be cleared to commence construction. Nothing in this Lease and Operating Agreement shall be construed to require DISTRICT to construct, or participate in the construction of any parking structures.

9.3.1 Initial Stage. During the Initial Stage, the area depicted on **EXHIBIT F** as "CRUISES' EXCLUSIVE PARKING", is designated for the exclusive use of CRUISES for parking of CRUISES' passengers and employees, provided that CRUISES shall have operated at least thirty cruises in the previous calendar month. In addition to same, DISTRICT shall permit non-exclusive parking by CRUISES for use for parking for CRUISES' employees and passengers in the area depicted as "SUPPLEMENTAL PARKING" after 5:00 PM on weekdays, and all day on Saturdays and Sundays, after CRUISES' EXCLUSIVE PARKING area has been filled to capacity. DISTRICT, at DISTRICT's expense, shall provide adequate shuttle service between the Cruise Terminal and the area designated as CRUISES' EXCLUSIVE PARKING for all of CRUISES sailings pursuant to the schedules filed under the terms of this Lease and Operating Agreement. The area designated as "SUPPLEMENTAL PARKING" may be relocated, at DISTRICT's option, to another area, on Eleventh Street, east of existing U.S. Highway One, provided that the area originally designated as "SUPPLEMENTAL PARKING" is not provided to another user of the Cruise Terminal, or any Coastal Cruise or Other Cruise operator, and further provided that adequate shuttle service between the Cruise Terminal and such other area is provided. Without intending to create contractual or other liability, it is the spirit of this paragraph that DISTRICT shall endeavor to provide CRUISES' passengers with reasonably convenient, proximate and secure parking and transportation facilities during the Initial Stage. In the event that CRUISES' EXCLUSIVE PARKING and the SUPPLEMENTAL PARKING prove, during the Initial Stage, to be insufficient, DISTRICT agrees to make reasonable efforts to provide additional parking for CRUISES, and/or impose restrictions on the use of the SUPPLEMENTAL PARKING by others (not including Birdsall, Inc., as tenant of the Maritime Office Building).

9.3.2 Interim Stage. In the event that DISTRICT elects to construct any parking structures in the general area designated as CRUISES EXCLUSIVE PARKING on **EXHIBIT F**, then, while such structure is being constructed ("Interim Stage"), CRUISES' EXCLUSIVE PARKING and/or the SUPPLEMENTAL PARKING shall, at DISTRICT's option, be relocated, upon not less than thirty (30) days prior written notice, to one or more satellite parking areas. CRUISES shall have no right to seek permanent or temporary injunctive or other equitable relief with regard to such relocation, without limiting DISTRICT's rights to such relief. Such satellite areas shall not be exclusive to CRUISES, but shall be sufficient to accommodate all of CRUISES employees and passengers. DISTRICT agrees that, during the Interim Stage, no other cruise operator operating from the Port of Palm Beach (including without limitation, any Coastal Cruise operator and any Other Cruise Operator) shall have passenger parking on property owned or leased to DISTRICT, that is closer to the Cruise Terminal than that which is provided to CRUISES, and DISTRICT shall endeavor to maintain some exclusive parking for CRUISES at least as close as the Initial Stage parking. As used in the preceding sentence, the term "closer" shall mean "at a shorter ground transportation distance". Nothing herein shall be construed to limit the location of valet parking established and operated by DISTRICT. DISTRICT, at DISTRICT's expense, shall provide adequate shuttle service between the Cruise Terminal and the area(s) to which employee and passenger parking is relocated, for all of CRUISES sailings pursuant to the schedules filed under the terms of this Lease and Operating

Agreement. Without intending to create contractual or other liability, it is the spirit of this paragraph that DISTRICT shall endeavor to provide CRUISES' passengers with sufficient, reasonably convenient, proximate and secure parking and transportation facilities during the Interim Stage.

9.3.3 Garage Stage. After completion of the parking structure constructed as set forth in Paragraph 9.3.2, above, or in the event that a parking structure is constructed as part of a cooperative effort between DISTRICT and the City of Riviera Beach, or the City of Riviera Beach Redevelopment Authority, or private business, then CRUISES' employee and passenger parking shall be relocated, on not less than thirty (30) days prior written notice to CRUISES from DISTRICT, to such areas of the parking structure as DISTRICT shall, from time to time determine, provided that the same shall have not less than seven hundred fifty (750) parking spaces, of which at least five hundred (500), less any exclusive parking provided to CRUISES hereinafter, shall be non-exclusive and available for use by CRUISES in common with others. Adequate shuttle service between the parking structure and the Cruise Terminal shall be provided by DISTRICT at DISTRICT expense, unless a "moving walkway" or other method of mechanical transportation is provided. Upon completion of the parking structure as provided herein, DISTRICT will offer CRUISES not less than 100 exclusive parking spaces in the parking structure for CRUISES' parking (in addition to any spaces that may be required under Paragraph 9.1 for relocated Land Based Employees), provided that CRUISES shall pay the applicable parking charges therefor (subject to the provisions of Paragraph 9.6), and CRUISES shall have sixty (60) days (time being of the essence) to accept or reject such offer of exclusive parking, in writing. If such offer is accepted by CRUISES, CRUISES shall have the right to renew such exclusive parking, year-to-year, throughout the term of this Lease and Operating Agreement (subject to the provisions of Paragraph 9.6), with the understanding that the location of the exclusive parking within the parking structure shall be subject to relocation, not more than once annually, at the discretion of DISTRICT, for the reasonable operating requirements of DISTRICT, and that non-exclusive parking in or on the structure shall be available to CRUISES only to the extent that CRUISES' exclusive parking (if any) is filled to 90% capacity. Without intending to create contractual or other liability, it is the spirit of this paragraph that DISTRICT shall endeavor to provide CRUISES' passengers with sufficient, reasonably convenient, proximate and secure parking facilities during the Garage Stage.

9.3.4 Consultation with CRUISES. CRUISES shall be invited to participate in some, but not necessarily all, discussions regarding design and operation of parking structures. Without creating legal obligation on the part of DISTRICT, DISTRICT will attempt, in good faith, to schedule commencement of any garage construction during the months of July or August of the year in which any such structure is undertaken.

9.4 Bus Parking. Bus parking shall be as determined from time to time by DISTRICT. Bus parking shall be permitted in a designated areas within sixty (60) minutes of CRUISES' vessel scheduled return, however, standing near the Cruise Terminal shall be permitted only within thirty (30) minutes of CRUISES' vessel's scheduled return.

9.5 **Towing.** DISTRICT shall use reasonable efforts to enforce designated parking restrictions, which can include towing; provided however, that DISTRICT shall have no obligation to tow vehicles from any spaces reserved or designated for parking by CRUISES employees, invitees or passengers. DISTRICT shall establish such systems as it deems necessary to control parking areas, and in the case of badge or sticker systems, CRUISES shall pay for same at charges assessed under the Tariff of the District.

9.6 **Parking Rates.** CRUISES acknowledges that CRUISES has no authority or control over the rates charged by DISTRICT for passenger parking, and that the establishment of such rates is at the sole discretion of DISTRICT. Rates established for Coastal Cruise operations, Other Cruise operations, employees, office uses, and daily parking associated for non-cruise operations may vary. Notwithstanding the foregoing, DISTRICT agrees that the initial charge for CRUISES' passenger parking shall remain at \$5.00 per car through December 31, 2003, and thereafter, shall not be increased by more than one dollar each Calendar Year, and shall not exceed \$8.00 per car during the first five Agreement Years. Thereafter, passenger parking rates for CRUISES shall be established at levels determined in the sole discretion of DISTRICT, with the only limitation being that such rates shall not be established at levels which are wholly unjustified and solely intended to result in the reduction of passenger counts in order to cause a termination or non-renewal of this Lease and Operating Agreement, caused by CRUISES' inability to operate at profitable levels.

9.7 **Valet Parking.** At DISTRICT's option, DISTRICT may establish, and/or discontinue, at any time and from time to time, valet services at the Cruise Terminal, making such charge for same as it shall determine appropriate. In the event that DISTRICT contemplates initiating or terminating such services, DISTRICT agrees to consult with CRUISES for CRUISES' non-binding input. In the event that DISTRICT shall establish and operate valet parking services, such services shall be offered to CRUISES' passengers on the same terms and conditions as offered to the passengers of other Coastal Cruise operators. This paragraph shall not apply to valet services operated (or contracted for with third parties) by another Coastal Cruise operator.

9.8 **Traffic Control.** DISTRICT shall provide traffic control for ingress and egress from DISTRICT property. DISTRICT shall have the right to require that all Cruise Terminal and Building parking shall be through 11th Street and Avenue C. DISTRICT will make reasonable efforts to enlist the cooperation of the City of Riviera Beach and other applicable authorities having jurisdictions, with respect to traffic control off DISTRICT property.

10 **ALTERATION TO THE PREMISES AND REMOVAL OF EQUIPMENT.**

10.1 CRUISES shall not make any alteration or addition to the Demised Premises, without first obtaining the express written consent of DISTRICT, which consent shall not be unreasonably withheld. Upon expiration and termination of this Lease and Operating Agreement, all Tenant Improvements, all repairs, improvements, installations, fixtures, improvements, and alterations made or installed by CRUISES, including without limitation electric lighting fixtures and bulbs, shall remain a part of the Demised Premises as property of DISTRICT. Except as just set forth, CRUISES shall restore the Demised Premises, reasonable wear and tear accepted, to the condition as existed upon date of occupancy hereunder. Without intending contractual commitment, DISTRICT will consider plans for a rooftop sitting area, constructed at CRUISES expense, adjacent to the Demised Premises, and, if permitted in DISTRICT's sole discretion, DISTRICT may make such additional charges therefore as DISTRICT shall deem appropriate.

10.2 All such approved alterations and additions, shall be done at the expense of CRUISES, and shall comply with all applicable codes and governmental requirements, as well as the standards established by DISTRICT of the quality of improvements to the Maritime Office Building.



11 **FEES.** CRUISES shall pay to DISTRICT, as follows:

11.1 Combined Passenger Wharfage Charges; No Other Port of Call. On sailings without another port of call, charges to CRUISES for passenger wharfage (which shall be inclusive of charges for the Terminal Operation Fee) shall be \$3.00 (\$1.50 on and \$1.50 off) per passenger through December 31, 2002. This rate shall be deemed the Combined Wharfage Charge. After December 31, 2002, the Combined Wharfage Charge paid by CRUISES (which shall be inclusive of charges for the Terminal Operation Fee) shall be \$3.70 (\$1.85 on and \$1.85 off) per passenger for the first five Calendar Years of this Lease and Operating Agreement. Each Calendar Year thereafter (and continuing through all renewals), the Combined Wharfage Charge shall be subject to increase based on changes in the Index, using the last day of the month immediately prior to the beginning of the first month of the fifth Calendar Year as the base year; provided, however, the Combined Wharfage Charge shall never be less than the prior year's Combined Wharfage Charge, and the any increase shall be capped at 3% of the prior Calendar Year's Combined Wharfage Charge. Notwithstanding the foregoing, the Combined Wharfage Charge shall never be greater than the lesser of (a) the Current Combined Rate under the Tariff of the District, or (b) the total of the rates charged by DISTRICT to another Coastal Cruise operator for (i) Passenger Wharfage and (ii) Terminal Operation Fee. The parties acknowledge that the Tariff of the District has not yet been amended to provide for a Terminal Operation Fee, but the same shall be assumed to be \$.90 per passenger (\$.45 on and \$.45 off), for purposes of applying the provisions of this Lease and Operating Agreement, until such rate is actually established under the Tariff of the District. Further provided, that for CRUISES' passengers in excess of 250,000 (with each on/off passenger counting as one) per Calendar Year, but less than 350,001, the Combined Wharfage Rate applicable to such excess shall be 75% of the rate applicable to the first 250,000 CRUISES passengers; and that for CRUISES' passengers in excess of 350,000 (with each on/off passenger counting as one) in each Calendar Year, the Combined Wharfage Rate for such excess shall be 65% of the rate applicable to the first 250,000 CRUISES passengers.

11.2 Passenger Wharfage; Other Port of Call. On sailings with another port of call undertaken by CRUISES solely to fulfill legal requirements regarding foreign flagged vessels and/or repatriation of foreign crews, the rates for Passenger Wharfage, and Passenger Screening, Baggage Screening, and other applicable charges shall be in accordance with the Tariff of the District, but CRUISES shall not pay a Terminal Operation Fee.

11.3 Dockage. The dockage rate shall be the greater of \$.1500 per GRT or Two Dollars (\$2.00) LOA, per any portion of a day docked, provided that there shall only be one such charge per twenty-four hour period. This rate shall remain unchanged through December 31, 2002, and thereafter shall change with the Tariff of the District; provided, however, CRUISES will pay a maximum of \$301,000.00 per Calendar Year during (flat pro rated for any portion of a Calendar Year, in the event

of termination on other than the last day of a Calendar Year). This amount shall be referred to herein as the "Maximum Annual Dockage Charge". Each Calendar Year of this Lease and Operating Agreement commencing after the the fifth Agreement Year (and continuing through all renewals), the Maximum Annual Dockage Charge shall be subject to increase based on changes in the Index, using the last day of the month immediately prior to the beginning of the first month of the fifth Calendar Year as the base year; provided, however, the Maximum Annual Dockage Charge shall never be less than the prior Calendar Year's Maximum Annual Dockage Charge, and the any increase shall be capped at 3% of the prior Calendar Year's Maximum Annual Dockage Charge. No other Coastal Cruise operator shall be given a lower Maximum Annual Dockage Rate, or be charged dockage rates less than those charged to CRUISES.

11.4 Terminal Operation Fee. A Terminal Operation Fee shall be imposed to defray costs associated with operation of the Cruise Terminal, including, but not limited to, terminal security, passenger screening (with no foreign port of call), terminal janitorial, site and terminal landscape maintenance, solid waste disposal (not including stevedoring and vessel solid waste), sewer, water, electricity, pest control, extermination, HVAC, passenger loading equipment maintenance, administrative overhead, and general repair and maintenance and a reserve for replacement of equipment. Notwithstanding the foregoing, CRUISES and DISTRICT agree that the Terminal Operation Fee shall be included within the Combined Wharfage Charges assessed under this Lease and Operating Agreement.

11.5 Cruise Terminal Ad Valorem Taxes. In the event that real estate ad valorem taxes are imposed on the Cruise Terminal, CRUISES shall also pay a pro rata share thereof, with the numerator being the total number of passengers of CRUISES for the period covered by the tax, and the denominator being the total number of all passengers of all users for the period covered by the tax (but not less than 500,000), with each on/off passenger counting as one. Said amount shall be estimated by DISTRICT, and collected monthly in advance, and recalculated, with appropriate adjustments, when actual figures are available.

11.6 Solid Waste. CRUISES shall provide, contract and pay for separately billed vessel and stevedoring solid waste removal. If the applicable solid waste authority will not provide separate bins, or separate billing, then CRUISES shall pay a pro rata share of solid waste fees as reasonably allocated by DISTRICT.

11.7 Other Charges. All other charges shall be in accordance with Tariff of the District, which charges shall be non-discriminatory and fairly applied.

12 PRIORITY RIGHTS. DISTRICT herewith provides certain priorities to CRUISES, as follows:

12.1 Sailing Schedules. In order to accommodate operational limitations of the channel, the Intracoastal Waterway, vehicle ingress and egress on DISTRICT property, parking shuttle services, parking, security, passenger and baggage screening equipment and personnel and operational requirements relating thereto, and access roads of the Port of Palm Beach, CRUISES shall be entitled to have the priority of the Operational Period, as defined herein, for its vessel actually operating under a "Priority Schedule", over sailings of any other Coastal Cruise, and shall conform to a like Operational Period for the sailing schedules of other cruise operators. As used herein, the term "Priority Schedule" shall mean a sailing schedule entitled to the "Operational Period". CRUISES initial Priority Schedule shall be that schedule attached hereto as **EXHIBIT G**. Not later than ninety (90) days prior to the commencement of each Calendar Year, CRUISES shall file with DISTRICT a schedule of sailings of its vessel to and from the Port of Palm Beach applicable to that Calendar Year. Such schedule shall become CRUISES new Priority Schedule effective at the commencement of that Calendar year ("January First Schedule"), and the schedules of all other Coastal Cruise operators shall be adjusted accordingly to afford CRUISES the Operational Period. In the event that CRUISES does not file a new Priority Schedule, the then current schedule shall continue in effect and shall become the January First Schedule. All of CRUISES' sailing schedules are subject to reasonable approval by DISTRICT, and any such schedules, when filed, must make provision for any theretofore scheduled Multi-Day cruises. In establishing or continuing schedules hereunder, whether the Priority Schedule, or otherwise, if there is another Coastal Cruise operator operating or preparing to commence operations at the Port of Palm Beach (as determined to be the case by DISTRICT), CRUISES' schedule shall be adjusted (i) to provide for a minimum of one and one-half hours between return of a CRUISES' vessel and CRUISES' next departure, and such schedule must be prepared based on the assumption that any other user has been granted the benefits of an identical Operational Period as CRUISES is granted herein for CRUISES' Priority Schedule, whether or not such other user has actually been contractually granted the express benefits of an identical Operational Period, and (ii) that embarkations after 6:00 PM shall be at the bottom of the hour, i.e. 6:30 PM, 7:30 PM, etc. In approval of sailing schedules, DISTRICT does not warrant or guaranty that pilots will be available, that the channel will be open or that other vessel conflicts will not occur. Nothing contained in the Lease and Operating Agreement shall be interpreted to mean that CRUISES has any exclusivity as to the Cruise Terminal, during the Operational Period, or otherwise. In the event that CRUISES changes its January First Schedule, CRUISES shall reimburse DISTRICT for the reasonable costs for Cruise Terminal operation, shuttle service, security and other DISTRICT operations necessitated by such changed schedule, to the extent that those costs exceed those that would have been required by the January First Schedule.

In the event that CRUISES desires to change its January First Schedule after the first day of the Calendar Year, then such schedule shall become the new Priority Schedule, to the extent such revised sailing schedule does not interfere with the arrival or departure schedule and/or

use of the ticket counters in the Cruise Terminal building of one or more other then-scheduled users, and such schedule must be prepared based on the assumption that any other user has been granted the benefits of an identical Operational Period as CRUISES is granted hereinabove for CRUISES' Priority Schedule, whether or not such other user has actually been contractually granted the express benefits of an identical Operational Period; provided, however, that at least thirty (30) days prior written notice of such proposed change shall be given to DISTRICT by CRUISES, and such revised schedule shall be subject to the reasonable approval of DISTRICT.

DISTRICT will use reasonable efforts to avoid scheduling a conflict between CRUISES Priority Schedule and any other cruise operator.

In the event that the Operational Period does not work to minimize operational conflicts between Coastal Cruises as anticipated, DISTRICT shall make such reasonable operational and schedule changes as may be required to minimize such conflicts. Practices of DISTRICT, whether expressed in writing or otherwise, with regard to scheduling of other vessels, whether Coastal Cruises, such that such vessels are not permitted to schedule sailings in a period of time that is more restrictive than the aforesaid Operational Period, i.e. expands such period, shall not create any greater contractual rights in CRUISES.

Generally, any cruise which is scheduled to depart the Port of Palm Beach between the hours 9:00 AM and 11:00 PM will carry the rebuttable presumption of reasonableness.

12.2 Priority Berthing. CRUISES shall have the first priority use of Berths 24 and 25 for such times as its sailing schedule indicates its vessel is to be in port, and further provided that CRUISES shall have operated at least thirty cruises in the previous calendar month. At all other times this berth assignment shall be non-exclusive, and the vessel being operated by CRUISES shall move off berth, at CRUISES' expense, upon verbal notice from DISTRICT. Use of Berths 24 and 25 by CRUISES is subject to interference on an interim basis for necessitating circumstances. No portion of the vessel shall project beyond an extension of the north line of Slip 3, or exceed the design dimensions of Berths 24 and 25. DISTRICT does not guaranty or warrant depth in the berths or slips of DISTRICT or depths in the channel. Without granting relief from any of the other provisions of this Lease and Operating Agreement, CRUISES may wet-dock its vessel for not more than a total of fourteen days in any Agreement Year, of which not more than seven such days shall be consecutive days. No spray painting of the vessel or its equipment shall be permitted at any berth. CRUISES shall advise DISTRICT in writing of its intention to wet-dock its vessel at least twenty-four hours before doing so. In the event that CRUISES vessel is required to move off-berth, and at any time that CRUISES vessel is not entitled to the priorities of this Paragraph 12.2, DISTRICT will make another berth available to CRUISES, subject to availability, all existing and future

granted preferences and priorities, and interference on an interim basis for necessitating circumstances, and will attempt to provide such berth as close to the Cruise Terminal as practical.

12.3 Ticket Sales and Passenger Processing. DISTRICT shall provide a minimum of eight (8) counters for exclusive use by CRUISES in processing tickets for passengers from the Port of Palm Beach on the approved Priority Schedule of CRUISES. CRUISES shall have the right to install, at its own costs and expense, and subject to DISTRICT approval, signage above such ticket counters, commensurate with the type and nature of signage now generally prevailing at ticket counters at Palm Beach International Airport. The ticket processing counters shall be located at the eastern end of the Cruise Terminal and shall be equipped with electrical service, conduit for telephone service, general public address capabilities, conduit for linking, at CRUISES' expense, with CRUISES' ticketing and reservation system within the Cruise Terminal and Building, and temporary storage areas for use during embarkation of passengers through the terminal. DISTRICT shall not be responsible for the security of CRUISES' equipment. All terminal users of the Cruise Terminal will have access to DISTRICT's general public address capabilities for passenger paging, emergency announcements, embarkation and disembarkation announcements, and other operational requirements approved by DISTRICT. CRUISES shall not be permitted to maintain any other public address system within the Cruise Terminal, or to use such system for advertising purposes, except when no other use is being made of the Cruise Terminal by DISTRICT or a third party. Passenger matrices shall be as established, from time to time, by DISTRICT in cooperation with CRUISES. DISTRICT shall have the right, after departure of CRUISES' vessel, to de-construct all matrices, provided that the same are re-established by DISTRICT not less than two hours prior to departure of CRUISES next scheduled vessel. CRUISES shall have the right, at its own costs and expense, to install video surveillance of its ticket counters, behind its ticket counters; provided however, that the same shall be maintained in such manner that the same are not operated except during the Operational Period, and that only a passenger actually at the ticket counter being ticketed by CRUISES and CRUISES ticketing personnel are recorded, that notice of the recording is posted at the ticket windows, and that DISTRICT and law enforcement personnel shall have access to all such recordings, within twenty-four hours of demand.

12.4 Group Check In. DISTRICT shall provide non-exclusive temporary areas for CRUISES' portable ticket counters for group check in on the first floor of the Building during the Operational Period, and for one hour before the Operational Period. CRUISES' portable ticket counters shall be removed at all other times, and stored in such locations reasonably proximate and convenient to their use, as DISTRICT shall require. Such portable ticket counters shall be removed from the group check in area in the event that DISTRICT determines that they are not being used on an at-least weekly basis.

12.5 Passenger Embarkation and Disembarkation; Gangway System. CRUISES shall embark and disembark passengers from the first floor of the Maritime Office Complex and from the second floor (Corridor #1) of the Passenger Cruise Terminal. CRUISES acknowledges that there is no

passenger loading bridge from the second floor of the terminal to the north marginal. On or before July 1, 2002, DISTRICT shall provide, at DISTRICT expense (except as set forth herein), a gangway system of the type generally described and depicted on EXHIBIT H, attached hereto. Until the EXHIBIT H gangway is completed, the existing gangway can be used. Such system shall be installed to provide all passenger access and egress for CRUISES through the passenger door depicted as Corridor #1 on the second floor of the Cruise Terminal. First floor access to the Berths 24 and 25 from the Cruise Terminal will be accessed by an elevator from the second floor of the Cruise Terminal and shall be used for wheel chair and passenger assistance access to the vessel. DISTRICT shall maintain, at its sole cost and expense, the gangway systems installed by DISTRICT pursuant to this Lease and Operating Agreement. CRUISES shall have the right to install, on its vessel, video surveillance of passengers loading at the gangway area during the Operational Period, provided however, that the same shall be maintained in such manner that only passengers loading at the gangway area, and CRUISES' personnel, are surveilled, that notice of the surveillance is conspicuously posted, and that DISTRICT and law enforcement personnel shall have access to all recordings, within twenty-four hours of demand.

During the term of this Lease and Operating Agreement, DISTRICT shall not be required to pay for or to make any modification, alteration, and/or replacement of the Port of Palm Beach gangway systems resulting from CRUISES modifying access to and from its vessel or for any substitute vessel operated by CRUISES.

12.6 Passenger Screening. DISTRICT shall provide passenger screening for all passengers boarding vessels through the Cruise Terminal. All fees for passenger screening set forth under the Tariff of the District are, in the case of CRUISES operations, included in the Combined Wharfage Charge, except as set forth below. The passenger screening equipment and procedures shall comply with applicable rules and regulations. Unless otherwise requested by CRUISES, passenger screening shall begin not sooner than two hours prior to the scheduled time of departure for the vessel.

All passengers embarking or disembarking from a foreign port of call shall be required to comply with all U.S. Customs and INS Services requirements established for the Port of Palm Beach Cruise Terminal, and that there will be a separate charge for such passenger screening under the Tariff of the District, which charge is not included in the Combined Wharfage Charge.

12.7 VIP Lounge. DISTRICT shall make the VIP lounge within the Cruise Terminal available for use in common with other Cruise Terminal users, which lounge shall be subject to rules and regulations as established from time to time by DISTRICT, including per-user numerical limitations. VIP lounge hours may be more limited than the hours of operation of the Cruise Terminal under Paragraph 12.11 hereof, but will be open at least two hours prior

to all of CRUISES' departures in accordance with its approved schedule (but not earlier than 9:00 AM).

12.8 Other Cruise Terminal Facilities. Subject to availability, need and desirability (as determined in the sole judgment of DISTRICT), CRUISES may request and be assigned other space(s) within the Cruise Terminal or on the first floor of the Maritime Office Complex for special promotional events, placement of promotional kiosk(s), and other temporary uses directly associated with the coastal cruise operations of CRUISES through the Port of Palm Beach. All such requests shall be made through DISTRICT's Operations Department, and shall be subject to the fees, rules, permits, licenses, regulations, and policies established by DISTRICT for use of the Cruise Terminal. CRUISES shall not have the right to install or operate ATM machines in the Cruise Terminal or any common area of the Building.

12.9 Access and Signage. If DISTRICT permits the use of signage for any cruise operators in or about the Cruise Terminal, then DISTRICT will permit at least equivalent signage for CRUISES, at CRUISES expense. DISTRICT will provide reasonable signage on the building directory in the name of CRUISES. DISTRICT shall provide appropriate directional signage on DISTRICT property, to the Cruise Terminal. DISTRICT shall request the Florida Department of Transportation (FDOT) to establish signage to and from the Cruise Terminal and parking facilities, including appropriate signage on Interstate 95, Florida Turnpike, 45th Street, Blue Heron Boulevard, Old Dixie Highway and U.S. Highway One, if permitted by FDOT, subject to approval of other governmental authorities having jurisdiction. All signage shall be subject to approval and cooperation with other governmental authorities, including without limitation, the City of Riviera Beach and Palm Beach County. Access routes to the Port and within the Port are subject to change, from time to time, by DISTRICT. Off-Port directional signage, specific to CRUISES, shall be at the expense of CRUISES. No temporary or permanent signs shall be hung or displayed on the exterior of the Demised Premises, nor shall any signs be placed in the interior of the Demised Premises which are visible from the exterior of the Demised Premises. DISTRICT will proceed diligently to install all signage required hereunder.

12.10 Non-Exclusivity. Except as set forth herein, there are no priorities, preferences or exclusive rights granted to CRUISES by DISTRICT.

12.11 Operation of Cruise Terminal. The Cruise Terminal is a multi-user terminal and shall be subject to the operational requirements of other users of the terminal, including, but not limited to the U.S. Customs Service, U.S. Immigration and Naturalization Service, and other Coastal Cruise operators and Other Cruise operators. DISTRICT agrees that the Cruise Terminal and/or the Building shall be used for embarkation and disembarkation of all Coastal Cruises. For the operations of CRUISES' vessel, the main entrance of the Cruise Terminal will be open, not less often than each



day that CRUISES' vessel operates in accordance with its sailing schedule, commencing not later than 9:00 AM and remaining open until one hour after the return docking of CRUISES' last-departing vessel, and during such times, DISTRICT shall provide on-call maintenance personnel. After each last departing vessel, DISTRICT shall provide sweeping and such other maintenance as may be reasonably required with respect to the terminal floors and restrooms.

12.12 Crew Area. The crew of CRUISES' vessel shall be permitted to use the crew area "Crew Area" from time to time established or to be established within the Cruise Terminal, for use by employees employed on the vessel operated by CRUISES, subject to reasonable rules and regulations imposed by DISTRICT, and the requirements of governmental authorities having jurisdiction. The Crew Area shall be provided with at least one pay telephone. If additional telephones are warranted and DISTRICT does not desire to install them, CRUISES' shall have the right to have them installed until such time as DISTRICT shall desire to install them. No other portions of the Cruise Terminal or Building shall be used by employees employed on the vessel operated by CRUISES.

12.13 Cage Area. CRUISES shall have the use of a cage area ("Cage Area") of approximately 1200 square feet within the Cruise Terminal, subject to reasonable rules and regulations imposed by DISTRICT, and subject to relocation within the Cruise Terminal from time to time, by DISTRICT, and subject to the requirements of governmental authorities having jurisdiction. Said Cage Area shall only be used for equipment and materials used at the Cruise Terminal, and as a staging area for consumable ship stores and shall not be used for storage of files or other property used in conjunction with the Demised Premises, or for storage of any hazardous or explosive materials. CRUISES shall not make any use of the Cage Area which would make void or voidable any policy of fire or extended coverage insurance covering the Cruise Terminal. Such portion of the Cage Area as is not reasonably required for CRUISES' use as provided herein, may be subdivided and temporarily allocated to other users (or made use of by DISTRICT), until such time as CRUISES' need increases. CRUISES shall be responsible for maintaining security of the Cage Area, and DISTRICT shall not be responsible for lost, stolen or damaged property within the Cage Area. Air flow, acceptable to DISTRICT, shall be maintained through the Cage Area. CRUISES shall have the right to install video surveillance of the interior of the Cage Area, that the same shall be maintained in such manner that only the Cage Area is surveilled, and that DISTRICT and law enforcement personnel shall have access to all recordings, within twenty-four hours of demand.

13 **PERFORMANCE MINIMUMS.**

13.1 Minimum Passenger Count and Sailings. CRUISES acknowledges that DISTRICT would not have leased the Demised Premises upon the terms set forth herein, including without limitation, the rental rates set forth herein, or granted the operational preferences and priorities set forth herein, but for the cruise operations contemplated to be conducted hereunder, and the Combined Wharfage Charges to be earned by DISTRICT as a result thereof, as well as other income generated to DISTRICT as a result thereof, e.g. parking fees, and the general economic benefit to the region constituting the geographical area of the Port of Palm Beach District, and accordingly CRUISES shall maintain (a) a minimum actual passenger count of not less than Ten Thousand (10,000) passengers per calendar month, each and every calendar month of this Lease and Operating Agreement ("Minimum Passenger Count"), and (b) a minimum number of sailings of not less than twenty five per calendar month, each and every calendar month of this Lease and Operating Agreement ("Minimum Sailings"), and that these obligations set forth in (a) and (b) cannot be satisfied by the mere payment of monies, DISTRICT being unable to receive the other benefits of this Lease and Operating Agreement from the mere payment of monies. Failure to meet the Minimum Passenger Count shall be referred to herein as a "Performance Default". Failure to meet the Minimum Sailings obligation shall be referred to herein as a "Performance Default". The Minimum Passenger Count and the Minimum Sailings obligations shall be referred to herein as the "Performance Minimums".

13.2 Relief from Performance Defaults. Relief is herewith granted from Performance Defaults, for up to two non-consecutive calendar months in any given twelve calendar month period. By way of example, (1) if CRUISES fails to meet the Minimum Passenger Count in June, 2004, and July 2004, the same shall constitute a breach, (2) if CRUISES fails to meet the Minimum Passenger Count in June, 2004, and fails to meet the Minimum Sailings in July 2004, the same shall constitute a breach, (3) if CRUISES fails to meet the Minimum Passenger Count in June, 2004, and fails to meet the Minimum Sailings in August 2004, the same shall not constitute a breach, (4) if CRUISES fails to meet the Minimum Passenger Count in June, 2004, and in November 2004, and fails to meet the Minimum Sailings in August 2004, the same shall constitute a breach, (5) if CRUISES fails to meet the Minimum Passenger Count in December, 2004, and January, 2005, the same shall constitute a breach, (6) if CRUISES fails to meet the Minimum Passenger Count in December, 2004, and fails to meet the Minimum Sailings in January 2005, the same shall constitute a breach, (7) if CRUISES fails to meet the Minimum Passenger Count in December, 2004, and fails to meet the Minimum Sailings in March 2005, the same shall not constitute a breach, (8) if CRUISES fails to meet the Minimum Passenger Count in December, 2004, and in November, 2005 and fails to meet the Minimum Sailings in August 2005, the same shall constitute a breach.

13.3 **Failure to Attain Performance Minimums.** Failure to attain the Performance Minimums, shall, but for the relief granted under Paragraph 13.2, constitute a breach of this Lease and Operating Agreement, without notice or opportunity to cure, at the option of DISTRICT exercised at any time within three calendar months following the date of the Performance Default constituting the breach. Failure of DISTRICT to exercise the right to terminate shall not constitute a waiver by DISTRICT of the right to insist on strict performance in the future.

14 **MAXIMUM VESSEL SIZE AND MINIMUM VESSEL CAPACITY.** CRUISES shall only be entitled to operate a single vessel under the terms of this Lease and Operating Agreement, and such vessel shall not exceed 425 feet LOA, and shall be fitted for, and have all necessary certifications to carry not less than four hundred passengers. In the event that experience suggests that a vessel of up to 450 feet LOA can be safely operated from Berths 24 and 25, then DISTRICT will permit use of such vessel. Any vessel operated under this Lease and Operating Agreement must be maintained in safe operating condition, but DISTRICT shall have no obligation to inspect or police compliance with this provision.

15 **PAYMENT DUE DATE.** CRUISES shall submit, on a weekly basis, on a form approved by DISTRICT, a Dockage and Wharfage Report ("Report"), certifying vessel calls, passenger counts and such other information reasonably required by DISTRICT, and stating the Dockage and Combined Wharfage Charge due under this Lease and Operating Agreement. Such Report shall be accompanied by payment of the amount shown as due. Said Report shall accurately report all information contained therein. All amounts payable hereunder will be due within seven (7) days of the Report date.

16 **INSPECTION OF MANIFESTS AND AGREEMENTS.** CRUISES shall maintain, at CRUISES' offices in the Maritime Office Complex or such other location as may be agreed by DISTRICT, such cargo and passenger manifests and other records as shall be reasonably necessary in order to permit DISTRICT to perform accountings and audits of amounts due hereunder, and under the Tariff of the District. All such records shall be available for review by DISTRICT and its agents upon twenty-four (24) hours prior notice to CRUISES.

CRUISES shall also maintain, at CRUISES' offices in the Maritime Office Complex or such other location as may be agreed by DISTRICT, all operating agreements between CRUISES and any vessel owner and other parties who may or shall make available any vessel for use by CRUISES in connection with this Lease and Operating Agreement. DISTRICT shall have the right to review and make notes regarding all such agreements, but shall only be entitled to receive copies in connection with litigation to which DISTRICT is a party, or if litigation is threatened or commenced by CRUISES against DISTRICT.

17 **LIENS.**

17.1 CRUISES shall make full and prompt payment of all sums necessary to pay for the cost of repairs, alterations, improvements, changes, or other work done by or on behalf of CRUISES to the Demised Premises and shall indemnify and hold DISTRICT harmless from and against any and all such costs and liabilities incurred by CRUISES, and against any and all mechanic's, materialman's, or laborer's liens arising out of, or from such work of the cost thereof, which may be asserted, claimed or charged against the Demised Premises or the Building. Notwithstanding anything to the contrary in this Lease and Operating Agreement, the interest of DISTRICT in the Building or Demised Premises shall not be subject to liens for improvements made by or for CRUISES, whether or not the same shall be made or done in accordance with an agreement between DISTRICT and CRUISES and it is specifically understood and agreed that in no event shall DISTRICT or the interest of DISTRICT in the Demised Premises or Building be liable for or subjected to any mechanic's, materialman's, or laborer's liens for improvements made by CRUISES or for which CRUISES is responsible for payment under the terms of this Lease and Operating Agreement. CRUISES shall give written notice to all persons performing services or furnishing materials on its behalf of the terms and conditions of this Paragraph, and concurrently provide copies of same to DISTRICT. In the event any notice of claim of lien shall be asserted of record against the interest of DISTRICT in the Building or Demised Premises on account of, or arising from, any improvement or work done by or for CRUISES, or any person claiming by, through or under CRUISES or for improvements or work the cost of which is the responsibility of CRUISES, CRUISES shall have such notice of claim of lien canceled and discharged of record as a claim against the interest of DISTRICT in the Demised Premises or the Building (either by payment or bond as permitted by Law) within ten (10) days after notice to CRUISES by DISTRICT.

18 **FIRE PROTECTION.** CRUISES acknowledges that DISTRICT does not provide fire-fighting equipment or personnel, and does not have any fire-fighting capability.

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19 **DAMAGE OR DESTRUCTION.**

19.1 **Damage or Destruction of Building.** In the event of damage to or destruction of the Building resulting in damage or destruction of the Demised Premises, all Rent payable by CRUISES to DISTRICT shall abate from the date of casualty until the Demised Premises are restored and ready for re-occupancy by CRUISES, and CRUISES shall be responsible for construction of its own Tenant Improvements. If more than twenty-five (25%) percent of the Building of which the Demised Premises are a part, are so damaged, DISTRICT may elect not to rebuild, such election to be made within thirty (30) days after settlement with the applicable insurance carrier. If DISTRICT has not commenced reconstruction of the Demised Premises within thirty (30) days of settlement with the insurance company insuring the Demised Premises, or elects, prior thereto, not to reconstruct the Building, then this Lease and Operating Agreement shall be terminated, unless CRUISES shall, within thirty (30) days after written notice of the foregoing, elect to delete all provisions of this Lease and Operating Agreement that relate to the Demised Premises, effective as of the date of the casualty, and continue to operate under the operating provisions hereof. In the event that this Lease and Operating Agreement is terminated by DISTRICT or CRUISES, all Rent payments shall cease as of the date of casualty and all prepaid rents paid for periods beyond the date of casualty shall be refunded to CRUISES. Nothing herein shall be deemed to provide any relief from the obligation to pay Dockage and Combined Wharfage Charges or other amounts that may become due hereunder.

19.2 **Damage or Destruction of Cruise Terminal.** In the event of damage to or destruction of more than twenty-five (25%) percent the Cruise Terminal, the terms of this Lease and Operating Agreement relating to operation (including all preferences, priority schedules and berthing privileges) shall be suspended until the Cruise Terminal is reconstructed and ready for occupancy, or this Lease and Terminal Agreement is terminated as set forth below. Notwithstanding any such suspension, in the event that CRUISES desires to continue to operate, it may do so, provided that all applicable wharfage, dockage, Tariff of the District and other charges related to operation of the vessel are paid as provided herein, and if reasonably feasible, CRUISES' Priority Schedule will be maintained. If more than twenty-five (25%) percent the Cruise are damaged, DISTRICT may elect not to rebuild, such election to be made within thirty (30) days after settlement with the applicable insurance carrier. If DISTRICT has not commenced reconstruction of the Cruise Terminal within thirty (30) days of settlement with the insurance company insuring the Cruise Terminal, or elects, prior thereto, not to reconstruct the Cruise Terminal, then this Lease and Operating Agreement shall be terminated. Whether or not this Lease and Operating Agreement is terminated by DISTRICT or CRUISES, all payments due as of the date of casualty shall be paid by CRUISES.

20 **INSURANCE.**

20.1 **Public Liability Insurance.** CRUISES shall obtain public liability insurance from an insurance carrier satisfactory to DISTRICT to protect against loss from liability imposed by law for all damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever, resulting directly or indirectly from any act or activities of CRUISES, or any person acting for it or under its control or direction, or any passenger (ticketed or unticketed) or individual intending to become a passenger (ticketed or unticketed) or users of any vessel being operated by CRUISES hereunder, or any person authorized by it to use the vessel or the Cruise Terminal, the Building, or any property of DISTRICT, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities of any of the foregoing.

Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Lease and Operating Agreement, in the amount of not less Five Million Dollars (\$5,000,000.00) for any property damage or loss from any one (1) accident, and not less than Five Million Dollars (\$5,000,000.00) for injury to anyone (1) person and not less than Five Million Dollars (\$5,000,000.00) from any one (1) accident combined, single limit. DISTRICT reserves the right to require any increase in the amount of liability coverage, from time to time during the term of this Lease and Operating Agreement as DISTRICT should determine to be commercially reasonable. Each such liability insurance policy shall be of the type commonly known as Owner's Landlord's and Tenant's Insurance, but provide the extended coverage required herein above.

20.2 **Casualty Insurance.** CRUISES shall furnish a policy of insurance providing coverage against casualty loss to the Tenant Improvements against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, vandalism and malicious mischief, civil commotion, aircraft, vehicles, smoke and such other hazards, which policy or policies shall be in an amount equal and sufficient, subject to approval by DISTRICT, to cover the replacement cost of such Tenant Improvements. If additional improvements are made during the term of this Lease and Operating Agreement or any extension or renewal thereof, additional insurance coverage will be obtained, as aforementioned, in an amount equal and sufficient to cover the replacement cost of such additional improvements.

20.3 **Miscellaneous Provisions.** As a condition precedent to CRUISES' rights under this Lease and Operating Agreement, CRUISES shall deliver to DISTRICT a copy of the binder of all insurances required of CRUISES hereunder, an duplicate originals of the policy itself, and certificates evidencing the existence of the necessary insurance policies. All insurance policies contemplated herein to be maintained by CRUISES shall insure DISTRICT and CRUISES as their respective interests may appear, and shall show DISTRICT as a named insured. All such policies required to be maintained by CRUISES shall be issued by companies qualified to write insurance in the State of Florida and possessing a rating of A-3A (or higher), by Best's Insurance Rating. The cost of premiums of all such policies of insurance as herein required to

be maintained by CRUISES shall be paid by CRUISES. Any policy required hereunder to be maintained by CRUISES or actually maintained by CRUISES shall contain a clause that the insurer shall not cancel or change the insurance policy without first providing ten (10) days prior written notice to DISTRICT. Not less than thirty (30) days prior to the expiration of any insurance required herein to be maintained by CRUISES or actually carried by CRUISES, CRUISES shall deliver to DISTRICT a copy of the certificate of renewal thereof.

20.4 DISTRICT'S Insurance. DISTRICT shall insure the Building and the Cruise Terminal against damage by fire and standard "all risk" coverage perils in an amount equal to the full replacement cost of the Building and Cruise Terminal with such reasonable deductibles as would be carried by a prudent owner of a similar property in the area. Upon request, DISTRICT shall provide CRUISES with a current certificate evidencing this coverage. CRUISES acknowledges that it has no right to receive any proceeds from any such insurance policy carried by DISTRICT although DISTRICT shall use such proceeds in the repair and reconstruction of the Building, the property and the Demised Premises, subject to the provisions of Paragraph 19, hereof.

21 LIMITATION OF LIABILITY. Nothing contained in this Paragraph 21 shall be deemed or intended to waive sovereign immunity or to create any third party beneficiaries or any rights in third parties.

21.1 DISTRICT shall not be liable to CRUISES or to CRUISES' employees, agents, or visitors, or to any other person or entity, whatsoever, for any injury to person or damage to or loss of property on or about the Demised Premises, the Building, the Cruise Terminal or any other property of DISTRICT (a) caused, in whole or in part, by the negligence, malpractice or misconduct of CRUISES, its employees, subtenants, licensees or concessionaires, or of any other person entering the Demised Premises, the Building, the Cruise Terminal or any other property of DISTRICT under the express or implied invitation of CRUISES, or (b) arising out of the use of the Demised Premises, the Building, the Cruise Terminal or any other property of DISTRICT by CRUISES and the conduct of its business therein, or (c) arising out of any breach or default by CRUISES in the performance of its obligations hereunder, or (d) resulting from any other cause, except (in the case of (a), (b), (c) and (d)) to the extent of DISTRICT'S or DISTRICT'S employees', agent's or contractor's negligence, and allocated on a percentage degree of responsibility.

21.2 DISTRICT shall not be liable for lost profits, consequential damages, demurrage, crew wages, or loss of income caused to CRUISES or any person or property by reason of (a) the failure of DISTRICT to perform any of its covenants or agreements hereunder, (b) defect in the Demised Premises, the Building, the Cruise Terminal or any other property of DISTRICT now or in the future existing, or (c) any present or future defect in the roofing, flooring, plumbing, wiring, or piping of the Demised Premises, the Building, the Cruise Terminal or any other property of DISTRICT.

21.3 Notwithstanding the provisions of Paragraph 21.2 and 21.3, CRUISES shall, except where specifically limited by other provisions of this Lease and Operating Agreement, be entitled to specifically enforce, and apply for injunctive relief, each and every provision of this Lease and Operating Agreement by an action for specific performance should the DISTRICT fail to perform in accordance with the terms hereof.

22 INSPECTION AND REPAIR.

DISTRICT or its representatives; shall have the right at any reasonable time, upon twenty-four (24) hours notice, except in the case of emergency, to enter upon the Demised Premises for the purpose of inspection or for the purpose of making or causing to be made any repairs or otherwise to protect its interest, but the right of DISTRICT to enter, repair or do anything else to protect its interest, or the exercise or failure to exercise said right, shall in no way diminish CRUISES' obligations or enlarge DISTRICT's obligations under this Lease and Operating Agreement, or affect any right of DISTRICT, or create any duty or liability by DISTRICT to CRUISES or any third party. DISTRICT shall have the right to show the Demised Premises to prospective tenants at all reasonable times within one hundred eighty days prior to the expiration or termination of this Lease and Operating Agreement.

23 DEFAULT.

23.1 **Monetary Defaults.** If CRUISES shall fail to make any payment of Rent or of any amount collectible in the same manner as Rent hereunder, any Dockage or Combined Wharfage Charge, any charge made under the Tariff of the District or other payment due hereunder, within ten (10) days after the same shall become due, and shall fail to cure such failure within ten (10) days after written notice from DISTRICT, DISTRICT in any such event(s) shall have the option to terminate this Lease and Operating Agreement and resume possession of the Demised Premises, and/or pursue such other remedies as are provided by law or otherwise herein, which shall include, but not be limited to, recovery of all remaining Rent due or to become due during the unexpired term of this Lease and Operating Agreement, and all unpaid Dockage and Combined Wharfage Charges, and all other amounts due under this Lease and Operating Agreement.

23.2 **Non-Monetary Defaults.** In the event CRUISES shall (a) be adjudged bankrupt; or (b) make an assignment for the benefit of its creditors; or (c) have its leasehold estate taken upon execution against CRUISES; or (d) violate or fail to perform any of the agreements herein contained, except as set forth in Paragraph 23.1, above, and shall (unless notice and or demand are specifically dispensed with under other terms of this Lease and Operating Agreement) fail to cure the default as to such agreements within ten (10) days after written notice from DISTRICT, DISTRICT in any such event(s) shall have the option to terminate this Lease and Operating Agreement and resume possession of the Demised Premises, and/or pursue such other remedies as are provided by law or equity or otherwise herein, which shall include, but not be limited to, the remedies provided in Paragraph 23.1, above. Notwithstanding the foregoing, and matter involving safety, security or

DISTRICT operations directly related to the Cruise Terminal or DISTRICT wharves, berths or slips shall be addressed and cured with all deliberate speed.

23.3 Other Remedies. The remedies for which provisions are made in this Paragraph shall not be exclusive and shall be in addition to other remedies provided by law or equity, including without limitation, specific performance and injunctive relief, and DISTRICT may pursue such other remedies as are provided by law or equity in the event of any breach, default, or abandonment by CRUISES, including DISTRICT's rights to make claim against any financial guaranties provided for herein, e.g. guaranties, bonds and/or letters of credit given in connection with vessel agency or stevedoring.

23.4 Interest on Late Payments. Any and all sums due under this Lease and Operating Agreement from CRUISES to DISTRICT, and not paid within ten days following the due date, shall bear interest from ten (10) days after due date (unless another date is specifically set forth herein for commencement of interest), at eighteen per cent (18%), thereafter until fully paid, in addition to any late charges otherwise provided for in this Lease and Operating Agreement, and the foregoing shall not be in derogation of DISTRICT's right to terminate this Lease and Operating Agreement.

24 WAIVER OR ESTOPPEL.

The failure of DISTRICT or CRUISES to insist, in any one or more instances, upon strict performance of any covenants or agreements of this Lease and Operating Agreement, or exercise any option of DISTRICT herein contained, shall not be construed as a waiver or relinquishment for the future enforcement of such covenant, agreement or option, but the same shall continue and remain in full force and effect.

25 INDEMNIFICATION OF DISTRICT. In consideration of the sum of One Hundred Dollars (\$100.00), receipt of which is herewith acknowledged, the same constituting separate and independent consideration for the undertaking given hereby, CRUISES herewith gives the following indemnities, none of which shall be deemed or intended to waive sovereign immunity or to create any third party beneficiaries or any rights in third parties:

25.1 CRUISES hereby indemnifies, holds and saves harmless DISTRICT of, from, and against (a) all fines, suits, loss, cost, liability, claims, demands, actions and judgments of every kind and character by reason or any breach, violation or non-performance by CRUISES of any term, provision, covenant, agreement or conditions hereunder, and (b) any claim, demand, actions, damages, loss, cost, liabilities, expenses, and judgments suffered by, recovered from, or asserted against DISTRICT on account of injury or damage to person or property to the extent that any such damage or injury arose from any act, omission, negligence, or misconduct on the part of CRUISES, it agents, servants, employees, contractors, guests, licensees, or invitees entered upon the Demised Premises, the Building,

the Cruise Terminal or other property of DISTRICT or CRUISES and any other vessel being operated by CRUISES under this Lease and Operating Agreement; and (c) any claim, demand, actions, damages, loss, liabilities, expenses, and judgments suffered by, recovered from, or asserted by an business invitee of CRUISES (including any passenger, ticketed or unticketed, of CRUISES and any person coming to the Port of Palm Beach with a stated intention of becoming a passenger of CRUISES, whether or not yet ticketed) against DISTRICT on account of injury or damage to person or property of DISTRICT or CRUISES and any vessel being operated by CRUISES under this Lease and Operating Agreement; provided, however, that if DISTRICT is legally responsible for the claims under (a), (b) or (c), above, then CRUISES' liability under this indemnity shall be reduced the percentage degree of responsibility of DISTRICT. This indemnification shall include payment of all reasonable attorneys' fees and costs, which may be incurred by DISTRICT, and payable as incurred. DISTRICT shall have the right to settle any claim without the consent of CRUISES, but shall consult with CRUISES prior to executing any such settlement.

25.2 CRUISES shall indemnify, defend and save DISTRICT harmless from and against and shall promptly remedy upon notice and demand from DISTRICT: (i) any violation of any federal, state, local environmental law or regulation (collectively "Environmental Laws") by CRUISES or its employees, agents, contractors, employees, servants, consultants, lessees, users, permitted invitees or concessionaires at or with respect to any of the Demised Premises or other DISTRICT property or the waters in which any vessel operated by CRUISES hereunder operates; (ii) the disposal of 'hazardous or toxic substances: (as defined in Environmental Law) by CRUISES or its employees, agents, contractors, servants consultants, lessees, users, permitted invitees or concessionaires on any of the Demised Premises or other DISTRICT property or the waters in which the any vessel operated by CRUISES hereunder operates caused by CRUISES or its employees, agents, contractors, employees, servants, consultants, lessees, users, permitted invitees or concessionaires. In addition, each party agrees that in connection with all new construction, and all repairs for which it is responsible, it shall comply with all Environmental Laws. This indemnification shall include payment of all reasonable attorneys' fees and costs, which may be incurred by DISTRICT, payable as incurred by DISTRICT. DISTRICT shall have the right to settle any claim without the consent of CRUISES, but shall consult with CRUISES prior to executing any such settlement.

26 HOLDING OVER.

If CRUISES retains possession of the Demised Premises or any part thereof after the termination of the term of this Lease and Operating Agreement or any extension thereof, by lapse of time or otherwise, CRUISES shall pay DISTRICT Rent at double the rate payable for the time CRUISES thus remains in possession. The provisions of this Paragraph do not limit or waive DISTRICT'S rights of re-entry or any other right hereunder. Any retention of the Demised Premises after the



termination of this Lease and Operating Agreement or any extension hereof shall be considered as a month-to-month holdover unless otherwise agreed to in writing by both parties.

27 CONDEMNATION.

DISTRICT reserves unto itself, and CRUISES assigns to DISTRICT, all right to damages accruing on account of any taking or condemnation of any part of the Building, or by reason of any act of any public or quasi-public authority for which damages are payable. CRUISES shall to execute such instruments or assignments as may be required by DISTRICT, to join with DISTRICT in any petition for the recovery of damages, if requested by DISTRICT, and DISTRICT shall to pay over to CRUISES its proportionate share of any such damages that are actually recovered in any such proceeding. DISTRICT does not reserve for itself, and CRUISES does not assign to DISTRICT, any damages payable for trade fixtures installed by CRUISES at its costs and expense and which are not part of the realty, or any moving expense, relocation expense, or loss of business claim.

28 DISCRIMINATION.

In connection with the utilization of the Demised Premises, CRUISES shall not to discriminate against any person, employee, or applicant for employment with CRUISES because of race, religion, color, age, or national origin.

29 LANDLORD'S LIEN.

CRUISES hereby grants unto DISTRICT a security interest in all of the goods, wares, furniture, fixtures, office equipment, supplies, and other property of CRUISES upon or about the Demised Premises as security for all of the obligations of CRUISES under this Lease and Operating Agreement. Further, to the extent permitted by law, CRUISES consents to, and DISTRICT shall have liens (including without limitation maritime liens) upon all vessels operated hereunder for all such amounts.

30 NOTICES.

All notices required or contemplated by this Lease and Operating Agreement shall be in writing and shall be delivered in person, facsimile or by special courier or by United States Certified Mail (Return Receipt Requested), addressed to the party to whom such notice is directed at the address set forth in the opening paragraph of this Lease and Operating Agreement. By giving at least ten (10) days prior written notice to the other party, either party may change its address for notices hereunder.

31 APPLICABLE LAW.

This Lease and Operating Agreement is entered into in the State of Florida and shall be governed by the applicable laws of said state. Venue for any litigation hereunder shall be in Palm Beach County, Florida.

32 **ENTIRE AGREEMENT.**

CRUISES and DISTRICT each agree that neither of them has made any statement, promise, or agreement, or taken upon itself any engagement whatsoever, verbally or in writing, in conflict with the terms of this Lease and Operating Agreement, or in which any way modifies, varies, alters, enlarges, or invalidates any of its provisions. This Lease and Operating Agreement sets forth the entire understanding between DISTRICT and CRUISES with respect to CRUISES' operation and lease at the Port of Palm Beach and shall not be changed, modified, or amended except by an instrument in writing signed by the party against whom the enforcement of any such change, modification, or amendment is sought.

33 **ENCUMBRANCE OF TITLE.**

33.1 During the term of this Lease and Operating Agreement, including any extension or renewal thereof, DISTRICT shall have the sole and exclusive right to grant, consent to, or join in any mortgage, lien, easement or other encumbrance on the title for the Demised Premises or the underlying real property without the prior written consent of CRUISES.

33.2 CRUISES will, within ten (10) days of written request from DISTRICT, certify in writing to DISTRICT'S designee: (i) whether or not this Lease and Operating Agreement has been modified or amended; (ii) the date through which Rent and other charges have been paid; (iii) whether CRUISES has any knowledge of any default by DISTRICT hereunder, and CRUISES shall further execute such agreements subordinating CRUISES' interest in this Lease and Operating Agreement to the lien of such proposed mortgage, lien, easement or other encumbrance on the title for the Demised Premises or the underlying real property as DISTRICT shall reasonably require.

34 **VESSEL AGENCY.** CRUISES shall have the right to act as vessel agent for the vessel operated pursuant to this Lease and Operating Agreement, subject to all customary and usual requirements imposed upon other companies performing vessel agency services at the Port of Palm Beach, including without limitation, execution of a vessel agency license, in a form approved by DISTRICT, providing for a financial guaranty or payment bond guaranteeing payment of CRUISES obligations hereunder in the amount of \$40,000.00 through the period ending December 31, 2002, from a surety acceptable to DISTRICT. Thereafter the amount of the guaranty or payment bond shall be adjusted as provided in the vessel agency license, which shall be in the form then currently being used by DISTRICT.

35 **STEVEDORING.** Provided that CRUISES enters into the form of stevedoring license agreement then in effect, from time to time, for other persons performing stevedoring services at the Port of Palm Beach, CRUISES shall be permitted to serve as stevedore for its vessel.

36 **FORCE MAJEURE.** If by reason of force majeure, either party is unable, in whole or in part, to carry out the obligations of this Lease and Operating Agreement, that party shall not be

deemed in violation or default of this Lease and Operating Agreement during the period of inability to perform, subject, however, to the following provisions:

36.1 General Provisions. Except as limited in Paragraph 36.2, 36.3 and 36.4, the term "force majeure" shall only mean strikes by organized labor, Acts of God (including only acts of nature, including floods, hurricanes, tornadoes, or earthquakes, fires, storms and the like), declared war, acts of public enemies, orders from any properly constituted governmental authority, insurrections, riots, or other civil disturbances, or any other cause or event not reasonably within the control of the disabled party, including without limitation, refusal of pilots servicing the Port of Palm Beach to provide pilot services to CRUISES' vessel for reasons due to wind, weather or channel conditions unrelated to the vessel's state of repair, and the existence of eight foot seas, as a result of which CRUISES' vessel remains in port.

36.2 Specific Provisions. In the case of application of force majeure provisions to Paragraphs 3 and 13, the term "force majeure" shall only mean Acts of God (including only acts of nature, including floods, hurricanes, tornadoes, or earthquakes, fires, storms and the like), declared war, orders from any properly constituted governmental authority, insurrections, riots, other civil disturbances and refusal of pilots servicing the Port of Palm Beach to provide pilot services to CRUISES' vessel for reasons due to wind, weather, sea or channel conditions unrelated to the vessel's state of repair, and the existence of eight foot seas, as a result of which CRUISES' vessel remains in port.

36.3 Limitation of General and Specific Provisions. Notwithstanding the occurrence of a "force majeure", under any definition, there shall be no recovery by CRUISES for any portion of any unamortized tenant improvements, or the value of same, except as set forth in Paragraph 37.1, Paragraph 37.2 or in the event of an uncured default by DISTRICT not waived by CRUISES which would give CRUISES the right to terminate this Lease and Operating Agreement during the Initial Term.

36.4 Limitations on Meaning of Force Majeure. The term "force majeure" does not include (a) changes in law that would prohibit coastal gaming or coastal cruise activity in the nature of "Cruises to Nowhere", (b) a decline in business due to acts of terrorism, or any other event otherwise constituting a force majeure as defined in Paragraph 36.1, or (c) inability to obtain or operate a vessel, (d) mechanical breakdowns not caused by a force majeure as defined in Paragraph 36.1, (e) inability to obtain a vessel to operate hereunder, or (f) orders of any State or Federal civil court (including a bankruptcy court) directed to any person, entity or vessel. Notwithstanding the foregoing, acts of terrorism directed at the Port of Palm Beach, or maritime interests in south Florida shall be included within the term "force majeure".

37 SPECIAL RIGHTS OF TERMINATION.

37.1 **DISTRICT'S Right to Terminate.** Notwithstanding the provisions of Paragraph 40.5, DISTRICT shall have the right to terminate this Lease and Operating Agreement upon one hundred eighty (180) days prior written notice in the event that DISTRICT has or will become disqualified from receiving any funds totaling in excess of One Million Dollars, individually or in the aggregate, from the State of Florida or any of its agencies or State sponsored programs, by reason of DISTRICT's permitting "Cruises to Nowhere" or other operations conducted by CRUISES hereunder. In the event of such a termination, and only in such event, DISTRICT shall reimburse CRUISES for the cost of its Tenant Improvements not theretofore amortized by crediting against Rent under Paragraph 6.3.

37.2 **CRUISES' and DISTRICT's Right to Terminate.** Notwithstanding the provisions of Paragraph 40.5, both CRUISES and DISTRICT, and either of them, shall have the right to terminate this Lease and Operating Agreement in the event of changes in law that would prohibit coastal gaming or coastal cruise activity in the nature of "Cruises to Nowhere" from the Port of Palm Beach. The right to terminate can only be exercised by the terminating party giving notice in writing to the other prior to the expiration of three calendar months following the effective date of such change in law. In the event of such a termination, and only in such event, DISTRICT shall reimburse CRUISES for one-half of the cost of its Tenant Improvements not theretofore amortized by crediting against Rent under Paragraph 6.3. Said amount to be payable monthly over what the remaining term of this Lease and Operating Agreement would have been but for such termination, in an amount equal to one-half of the amount that would have been amortized by crediting against Rent under Paragraph 6.3. By way of example, if this Lease and Operating Agreement is terminated under this Paragraph 37.2 on the last day of the last month of the fourth Agreement Year, and if the total unamortized cost of Tenant Improvements for which CRUISES would have been entitled to receive credit against Rent for the remainder of the Lease and Operating Agreement, is then \$48,000.00 (including any applicable interest), then CRUISES shall be entitled to receive the sum of \$24,000.00 from DISTRICT, payable at the rate of \$2,000.00 per month over the ensuing twelve months.

37.3 **CRUISES' Right to Terminate.** Notwithstanding the provisions of Paragraph 40.5, CRUISES shall have the right to terminate this Lease and Operating Agreement in the event of changes in law that would permit land-based gaming in Broward County, Palm Beach County, Martin County or St. Lucie County, provided, however, that there shall be no reimbursement to CRUISES for the unamortized cost of its Tenant Improvements, and further provided, that the right to terminate can only be exercised by notice in writing given by CRUISES to DISTRICT within twelve calendar months following the effective date of such change in law. A used herein the term "land-based gaming" shall not include internet gambling.

37.4 **Survival of Certain Rights.** Notwithstanding any termination hereunder pursuant to the terms of this Paragraph 37, the CRUISES and DISTRICT shall continue to be responsible to

each other for amounts due and for amounts accrued hereunder prior to the date of termination, and for any indemnities given herein, with each to have the right of offset against the other for amounts due.

38 **FEDERAL MARITIME COMMISSION.** This Lease and Operating Agreement shall be filed with the Federal Maritime Commission, and shall be subject to acceptance of and continuing exercise of jurisdiction by the Federal Maritime Commission under the Shipping Act of 1984.

39 **ASSIGNMENT AND SUBLETTING.**

39.1 Except in the case of an assignment to Donald F. Conway, The Chapter 11 Trustee for the Bankruptcy Estate of Robert E. Brennan ("Bankruptcy Trustee"), pursuant to that certain "Master Settlement Agreement" between and amongst the Bankruptcy Trustee, MJQ Corporation, a Delaware corporation, Michael J. Quigley, III, Leo Equity Group, Inc., a Florida corporation, Frank A. Leo, Deerbrooke Investments, Inc. a Panamanian corporation, Francis W. Murray, Cambridge Capital Group, Inc. a Delaware corporation, International Thoroughbred Breeders, Inc., a Delaware corporation, and Palm Beach Princess, Inc., a Delaware corporation, neither CRUISES nor any wholly-owned subsidiary permitted to operate hereunder pursuant to Paragraph 5.1 hereof, shall have any right whatsoever to assign, sublet or otherwise transfer its interest in and to this Lease and Operating Agreement, or any portion thereof, to any other person, corporation or entity whatsoever, without the written consent of DISTRICT, which shall not be unreasonably withheld. Notwithstanding the foregoing, no assignment of this Lease and Operating Agreement can be made while CRUISES is in default hereunder. As a condition of assignment of this Lease and Operating Agreement, any such assignee shall agree, including the Bankruptcy Trustee, in writing to be bound by all of the terms and conditions of this Lease and Operating Agreement. In the event of an assignment to the Bankruptcy Trustee, by taking such assignment, this Lease and Operating Agreement shall be treated as a post-petition transaction. Further, in considering whether or not to permit an assignment, DISTRICT shall have the right to review such documentation as it deems necessary, including without limitation, certified financial statements and other financial records, operating agreements, charter agreements, and, except in the case of a public corporation having more than five hundred shareholders, be informed of the names of all shareholders of all entities having an interest, up to the level of a human being, having the ultimate beneficial interest.

39.2 In the event that there is a change in the ownership of more than 50% of the issued and outstanding stock of or control of CRUISES, then the same shall be treated as an assignment under the provisions of Paragraph 39.1. Further provided that for purposes hereof, the term "change" shall mean aggregate change during the term of this Lease and Operating Agreement.

As of the date of execution of this Lease and Operating Agreement, CRUISES represents that the stock of CRUISES is held as set forth on **EXHIBIT I**, attached hereto and incorporated herein.

40 GENERAL PROVISIONS.

40.1 Gender. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

40.2 Successors and Assigns. The terms, provisions, covenants, and conditions contained in this Lease and Operating Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective successors and assigns, otherwise expressly provided in this Lease and Operating Agreement.

40.3 Authority. Each party shall to furnish to the other, promptly upon demand, a corporate resolution, and other appropriate documentation evidencing the due authorization of such party to enter into this Lease and Operating Agreement.

40.4 Captions. The captions and headings set forth in this Lease and Operating Agreement are for ease of reference only and in no way define, limit, or otherwise describe the scope of intent of this Lease and Operating Agreement, or any provision hereof, or in any way affect the interpretation of this Lease and Operating Agreement.

40.5 Invalidity. Notwithstanding the "non-severability" provisions hereof, if any clause(s), phrase(s), provision(s) or portion(s) thereof, of this Lease and Operating Agreement or the application thereof to any person or circumstance shall be asserted or adjudged to be invalid or unenforceable under applicable law or regulation, by any court or governmental authority asserting jurisdiction, such assertion or determination shall not affect, impair, or render invalid or unenforceable the remainder of this Lease and Operating Agreement nor any other clause(s), phrase(s), provision(s) or portion(s) thereof, hereof, regardless of whether such other clause(s), phrase(s), provision(s) or portion(s) thereof is claimed to have been given in reliance on or as consideration for the invalid or unenforceable clause(s), phrase(s), provision(s) or portion(s) thereof, nor shall it affect the application of any clause(s), phrase(s), provision(s) or portion(s) thereof, to other persons or circumstances, and if any clause(s), phrase(s), provision(s) or portion(s) is asserted or adjudged to be invalid or unenforceable by a court or governmental authority asserting jurisdiction, then, either party shall have the right, at its own cost and expense, to challenge such determination or assertion (meanwhile indemnifying the other party for all costs and expenses (including reasonable attorneys fees) such other party might incur as a result of such challenge), and, further, irrespective of whether any such challenge is made, until such time as the court or governmental authority asserting jurisdiction changes its determination or assertion with respect to the clause(s), phrase(s), provision(s) or portion(s) thereof, the application of such clause(s), phrase(s), provision(s) or portion(s) shall be suspended, at the election of either party and during the period of any such suspension (which the parties acknowledge, may be for the

entire term of this Lease and Operating Agreement), the parties agree that, if the clause(s), phrase(s), provision(s) or portion(s) is a matter otherwise governed by the Tariff of the District, that such Tariff of the District shall govern. It is also the intention of the parties to this Lease and Operating Agreement that, in lieu of each such clause(s), phrase(s), provision(s) or portion(s) of this Lease and Operating Agreement that is asserted or adjudged to be invalid or unenforceable, as set forth herein above, there be added as a part of this Lease and Operating Agreement a clause(s), phrase(s), provision(s) or portion(s) as similar in terms to such invalid or unenforceable clause(s), phrase(s), provision(s) or portion(s) as may be possible and be valid and enforceable. In no event shall either party be entitled to damages or injunctive relief as a result of the invalidity, unenforceability or suspension of the applicability of any clause(s), phrase(s), provision(s) or portion(s) thereof under this subparagraph. In addition to the foregoing, in the event that any clause(s), phrase(s), provision(s) or portion(s) thereof is asserted or adjudged to be invalid or unenforceable, as set forth herein above, the party for whose benefit the clause was inserted, shall have the right to either accept this Lease and Operating Agreement with the changes required or suggested by the court of governmental authority asserting jurisdiction, or terminate this Lease and Operating Agreement, upon thirty (30) days prior written notice given within ninety (90) days of notice of the judgment or assertion by the court or governmental authority asserting jurisdiction. In the event of any such termination, all Rent, Dockage, Combined Wharfage Charges and other amounts due (together with other amounts, e.g. taxes and insurance, prorated through the date of termination) shall be immediately due and payable, and all indemnities shall continue for events occurring prior to the date of termination.

40.6 Effective Date. All references in this Lease and Operating Agreement to "the date hereof" or similar references shall be deemed to refer to the last date in point in time, on which all parties hereto have executed this Lease and Operating Agreement.

40.7 Waiver of Trial by Jury. It is mutually agreed by and between the parties hereto that they each waive trial by jury in any action, proceeding, or counterclaim brought by either of them against the other on any matter arising out of, or in any way connected with, this Lease and Operating Agreement.

40.8 Venue and Jurisdiction. This Lease and Operating Agreement shall be governed by and construed under the Laws of the State of Florida.

40.9 Attorneys' Fees. The parties hereto agree that the prevailing party in any court proceeding for the enforcement, defense, or interpretation of either party's rights under this Lease and Operating Agreement, whether it be at trial, on appeal, or in bankruptcy proceedings, shall be entitled to recover all of its costs including reasonable attorneys' fees from the non-prevailing party. It is intended by this subparagraph that only one party to this Lease and Operating Agreement be awarded costs and attorneys' fees.

40.10 Brokers. Each party represents to the other that such representing party has not used or otherwise engaged any broker or agent in regard to this transaction that by virtue of which the other party may be held responsible for any claims for brokerage, fees, commissions or other amounts, and indemnifies and holds such other party harmless from and against all claims, demands, liabilities, damages and expenses (including attorneys fees and costs) which such other party may suffer or incur as a result of a claim being made by any broker based upon such brokers dealings with such representing party.

40.11 Counterparts. This Lease and Operating Agreement may be executed in several counterparts, each of which shall be considered an original.

40.12 Non-Severability. This provisions of this Lease and Operating Agreement relating to lease of the Demised Premises are not severable from the operating terms of this Lease and Operating Agreement, and the operating terms of this Lease and Operating Agreement are not severable from the provisions of this Lease and Operating Agreement relating to the Demised Premises. Both parties acknowledge that DISTRICT would not enter into the provisions of this Lease and Operating Agreement that relate to leasing of the Demised Premises but for the cruise operations to be conducted by CRUISES.

40.13 Controlling Authority. The terms of this Lease and Operating Agreement shall control over any conflicting provisions of the Tariff of the District.

40.14 Drafting. This Lease and Operating Agreement is the product of drafting by both DISTRICT and CRUISES, and shall not be construed against either party as a result of being considered as having been considered drafted by that party.

40.15 Sovereign Immunity; Third Party Beneficiaries. Nothing contained in this Lease and Operating Agreement shall be deemed or intended to waive sovereign immunity or to create any third party beneficiaries or any rights in third parties.

41 **OPERATIONAL MEETINGS.** Upon written request of CRUISES or DISTRICT, and not more than once each calendar month, the parties shall meet within five calendar days to discuss operational concerns under this Lease and Operating Agreement.

IN WITNESS WHEREOF, DISTRICT and CRUISES have caused this Lease and Operating Agreement to be executed as required by law on the dates listed below:

Signed, sealed and delivered
in the presence of:

Sandra C. Pieter
Printed Name: Sandra C. Pieter

John M. McTigue
Printed Name: John M. McTigue

Terry L. Himebaugh
Printed Name: Terry L. Himebaugh

John M. McTigue
Printed Name: John M. McTigue
H:\My Documents\PORT\Princess Lease Oper.0424.wpd

PORT OF PALM BEACH DISTRICT

BY: *Blair J. Czklin*
Blair J. Czklin, Chairman

DATED: 4-26-02

ITG VEGAS, INC., a Nevada Corporation

BY: *Francis X. Murray*
Francis X. Murray, Vice-President

DATED: 4/24/02

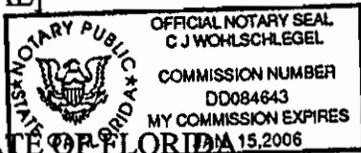
(Handwritten initials)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 29 day of APRIL, 2002 by FRANCIS MURRAY, who is personally known to me or who produced Florida Driver's license _____ as identification, as ~~ITG Vegas~~ ITG Vegas Inc., a Florida corporation, NEVADA on behalf of the corporation.
*VICE PRESIDENT
CJW*

My commission expires:
C. J. Wohlschlegel

[SEAL]



STATE OF FLORIDA
COUNTY OF PALM BEACH

NOTARY PUBLIC

Printed name of Notary:

C. J. WOHLSCHEGEL

The foregoing instrument was acknowledged before me this 26 day of April, 2002 by Blair J. Ciklin, who is personally known to me or who produced Florida Driver's license _____ as identification, as Chairman of PORT OF PALM BEACH DISTRICT, a Political Subdivision of the State of Florida.

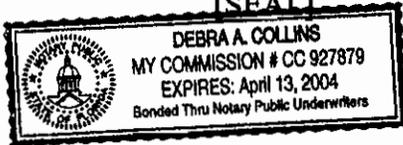
My commission expires:

NOTARY PUBLIC

Printed name of Notary:

Debra A. Collins
DEBRA A. COLLINS

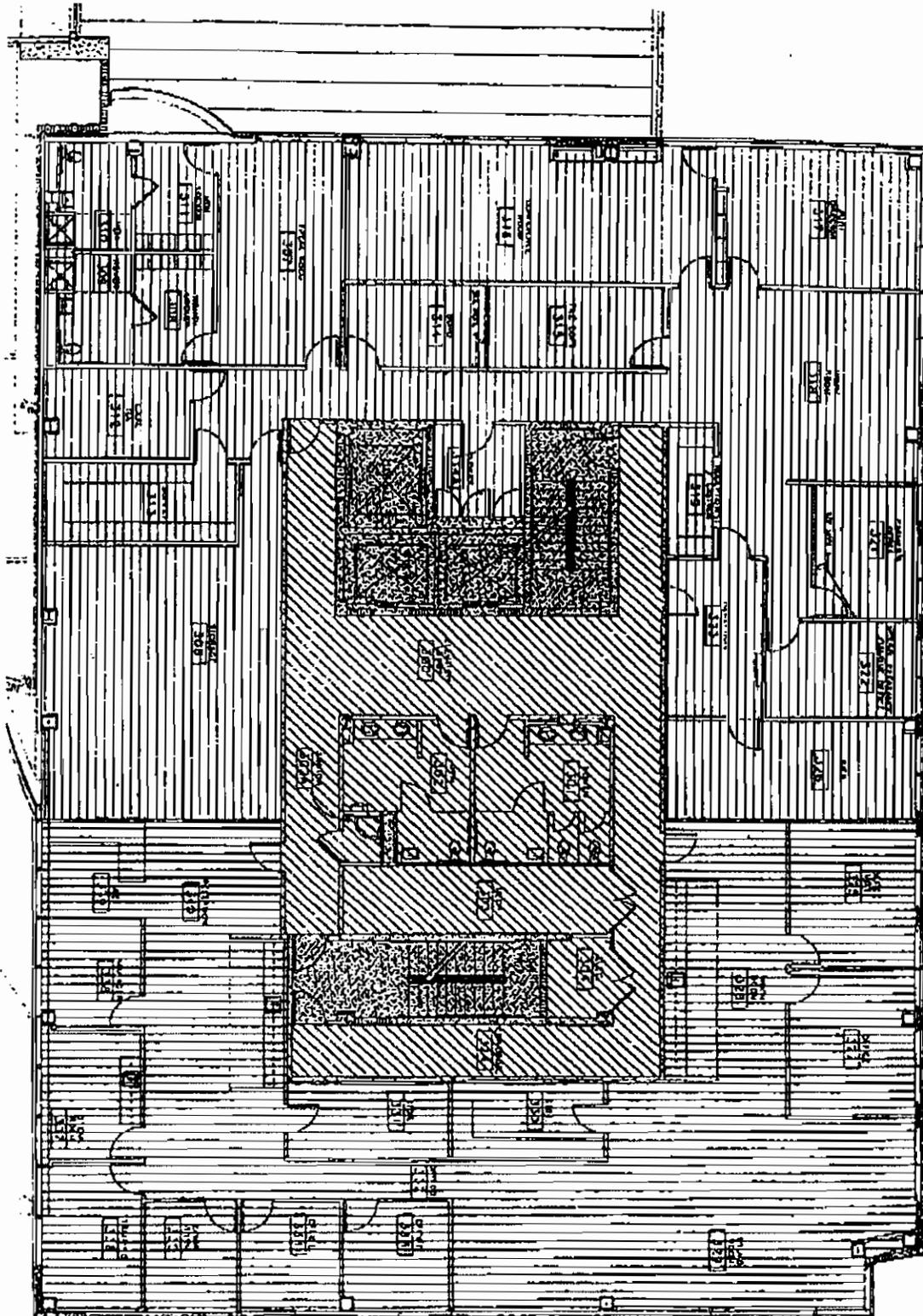
[SEAL]



FW

EXHIBIT A
FIFTH FLOOR PREMISES





VERTICAL SHAPES
 NOT INCLUDED

EXHIBIT A

Zeidler Roberts Partnership, Inc.

Architects

105 South Narcissus Ave. Suite 310
 West Palm Beach, Florida 33401

PORT OF PALM BEACH

THIRD FLOOR AREA ANALYSIS

Date
 03/26/02

Scale
 1/16"=1'-0"

Project No.
 98F-111PPB

Checked
 J.G.B.



 TOTAL AREA = 1649 SF
 NET AREA = 1649 SF
 TOTAL = 7510 SF
 1649 SF
 713 SF
 3536 SF
 1621 SF

ITG VEGAS

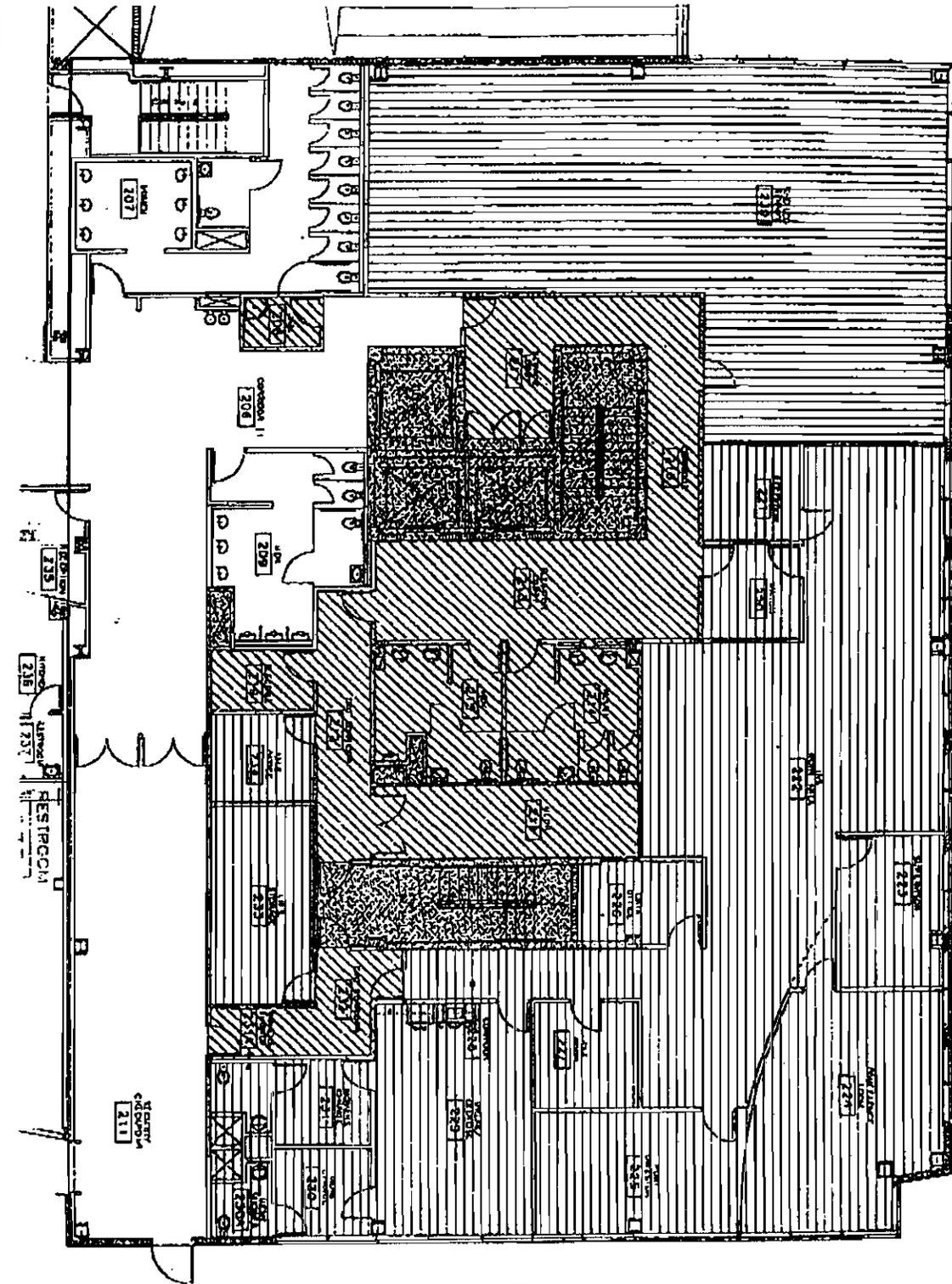


EXHIBIT B

<p>Zeidler Roberts Partnership, Inc. Architects 105 South Narcissus Ave. Suite 310 West Palm Beach, Florida 33401</p>		
<p>PORT OF PALM BEACH SECOND FLOOR-AREA ANALYSIS</p>	<p>Date: 03/26/02</p> <p>Scale: 1/16"=1'-0"</p> <p>Project No: 98F-111PPB</p>	<p>Drawn: J.G.B.</p> 

EXHIBIT B
SECOND FLOOR PREMISES



EXHIBIT C
GUARANTY OF PAYMENT AND PERFORMANCE



GUARANTY OF PAYMENT AND PERFORMANCE

In order to induce PORT OF PALM BEACH DISTRICT, a political subdivision of the State of Florida, organized and existing under, and by virtue of, Chapter 7081, Laws of Florida, Acts of 1915, as amended (hereinafter referred to as "DISTRICT"), having its address at Fourth Floor, One East Eleventh Street, Riviera Beach, Florida 33404, to permit PALM BEACH PRINCESS, INC. to operate Coastal Cruises as a wholly owned subsidiary of CRUISES, under that certain Maritime Office Complex Lease and Operating Agreement dated April 24, 2002 ("Lease and Operating Agreement"), pursuant to Paragraph 5.1 of said Lease and Operating Agreement, the undersigned guarantor ("Guarantor"), hereby (jointly and severally if more than one) unconditionally guarantees to DISTRICT and to its participants, endorsees, successors or assigns the full and prompt payment, upon acceleration or otherwise, and due performance of any and all Obligations of CRUISES to DISTRICT under the terms and conditions of the Lease and Operating Agreement.

Guarantor agrees as follows:

Section 1. Terms Defined. Terms used herein shall have the meaning assigned in the Lease and Operating Agreement, unless the context otherwise requires.

Section 2. Obligations Guaranteed. The word "Obligations" is used herein in its most comprehensive sense and includes each and every amount to which DISTRICT shall or may become entitled under the Lease and Operating Agreement, including, without limitation, dockage, wharfage, Combined Wharfage Rate, Rent, late charges, interest, sales tax, real estate taxes, utilities, intangible tax, reimbursement for property and casualty insurance, and charges due under the Tariff of the District, damages to which DISTRICT may be entitled, indemnity rights, and the due performance of each and every term and condition to be kept and performed by CRUISES under the Lease and Operating Agreement.

Section 3. Continuing and Unconditional Guaranty. This is a continuing guaranty relating to said Obligations. The liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of any circumstance which might constitute a defense available to, or a discharge of, CRUISES in respect of the Obligations or Guarantor in respect of its guaranty of the Obligations. For example, but not by way of limitation, Guarantor shall meet and pay all Obligations irrespective of (i) any change in the time, manner or place of payment, or in any other term, of all or any part of the Obligations, or any other amendment or waiver of or any consent to departure from any of the terms and conditions of the Lease and Operating Agreement; (ii) any exchange, substitution, release, non-perfection, invalidity, unenforceability of any provision of the Lease and Operating Agreement, or (iii) the existence of (x) any bond or collateral or the adequacy thereof, or (y) any other guarantee for the Obligations.



Section 8. Subordination. Any obligation of CRUISES now or hereafter held by Guarantor is hereby subordinated to the Obligations of CRUISES to DISTRICT and no such obligations shall be paid in whole or in part as long as there exists any Obligations of CRUISES to DISTRICT; provided, however, if DISTRICT so requests or in the event Guarantor otherwise receives anything of value from or on behalf of CRUISES as the result of its obligation to Guarantor, any such obligation shall be collected, enforced, and received by Guarantor as trustee for DISTRICT and shall be paid over to DISTRICT on account of the Obligations of CRUISES to DISTRICT without reducing or affecting in any manner the liability of Guarantor under the provisions of this Guaranty.

Section 9. Default. Upon the default of CRUISES with respect to the Lease and Operating Agreement; OR in case CRUISES or any guarantor of the Obligations of CRUISES to DISTRICT shall make an assignment for the benefit of creditors, file a petition in bankruptcy, petition or apply to any tribunal for the appointment of a custodian, receiver or any trustee for any of them or a substantial part of the assets of any of them or shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or if there shall have been filed any such petition or application, or any such proceeding shall have been commenced against any of them, in which an order for relief is entered or which remains undismissed for a period of thirty (30) days or more; or the CRUISES or any guarantor by any act or omission shall indicate consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for any of them or any substantial part of any of the properties of any of them, or shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty days or more; OR the CRUISES or any guarantor shall generally not pay its or their debts as such debts become due; OR in the event a judgment is obtained or warrant of attachment issued against CRUISES or any guarantor or any property of either and the same is not satisfied or discharged within thirty (30) days thereafter either by payment or by bonding, then all or any part of the obligations and Obligations of CRUISES and/or of Guarantor to DISTRICT shall, without notice to or demand upon Guarantor, at the option of DISTRICT, become immediately due and payable and Guarantor shall forthwith pay same to DISTRICT.

Section 10. Authority of CRUISES. Guarantor agrees that if CRUISES is a corporation or a partnership, it is not necessary for DISTRICT to inquire into the powers of CRUISES or the officers, directors, partners or agents acting or purporting to act on behalf thereof, and any Obligations made or created in the professed exercise of such powers or authority by CRUISES or by any officers, partners, directors or agents thereof are guaranteed hereunder.

Section 11. Interest. Notwithstanding any provisions herein or in any instrument now or hereafter evidencing the Obligations of CRUISES to DISTRICT, the total liability for payments in

the nature of interest shall not exceed the lesser of eighteen per cent (18%) per annum or the maximum lending rate (whether such rate is limited or unlimited) that may lawfully be charged under the laws (whether codified or not) of the State of Florida or of the United States whichever is higher or unlimited, as such applicable rate now exists or may hereafter be increased or the limitation, if any, on the legal rate of interest eliminated by legislation or otherwise.

Section 12. Attorneys' Fees. Guarantor agrees that whenever an attorney is used to seek payment under or otherwise to enforce this Guaranty or to enforce, declare or adjudicate any rights or obligations under this Guaranty, whether by legal proceedings or by any other means, all such attorneys' fees shall be payable on demand by Guarantor.

Section 13. Interest of Guarantor in CRUISES. Guarantor (including any married person) acknowledges that (i) it has received value for and is benefitted by this Guaranty; (ii) it has a direct monetary interest in CRUISES; (iii) both CRUISES and Guarantor are solvent, as such term is defined in the Bankruptcy Code of 1978; and (iv) Guarantor has executed this Guaranty in order to induce DISTRICT to permit Guarantor to operate Coastal Cruises as a wholly owned subsidiary of CRUISES pursuant to Paragraph 5.1 of the Lease and Operating Agreement. This Guaranty shall, without further reference or assignment, pass to, and may be relied upon and enforced by, any successor or participant or assignee of DISTRICT in connection with any Obligations or obligations of CRUISES and/or Guarantor to DISTRICT. Guarantor agrees that, if required by DISTRICT, it shall deliver to DISTRICT as often as reasonably required by DISTRICT but no less frequently than annually, so long as any Obligations of CRUISES to DISTRICT exists, a financial statement in form and substance acceptable to DISTRICT. Guarantor warrants and represents that its financial statement, heretofore delivered to DISTRICT, is true and correct in all respects; has been prepared in accordance with generally accepted accounting practice; and fairly presents the financial condition of Guarantor as of the date thereof and no materially adverse change has occurred in the financial conditions reflected thereon since the date thereof.

Section 14. Governing Law. This Guaranty shall, for all purposes, be governed by and construed in accordance with the laws of the State of Florida.

Section 15. Rules of Interpretation. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. If there is more than one person, whether natural or artificial, who either signs this Guaranty or signs a separate guaranty of the Obligations of CRUISES to DISTRICT, then each such guarantor shall be jointly and severally liable with every other guarantor for the obligations and Obligations of CRUISES to DISTRICT. This Guaranty shall be binding upon each Guarantor and his heirs, personal representatives or successors.

Section 16. Taxpayer Identification Number. The undersigned hereby represents that his or their taxpayer identification number (social security number if Guarantor is an individual) is as set forth beside the respective signatures below.

Section 17. WAIVER OF JURY TRIAL. THE UNDERSIGNED AND DISTRICT (BY ACCEPTING THIS GUARANTY) HEREBY MUTUALLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER THE UNDERSIGNED, CRUISES OR DISTRICT AGAINST THE OTHER AND BASED UPON, ARISING OUT OF OR CONNECTED WITH THIS GUARANTEE AND THE LEASE AND OPERATING AGREEMENT.

Section 18. No Rights Acquired. Nothing contained herein shall be construed as granting any rights to Guarantor under the Lease and Operating Agreement, or constituting Guarantor a third party beneficiary of the Lease and Operating Agreement.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Guarantee this April 24, 2002, 2002.

GUARANTOR: Palm Beach Proves, Inc
By: [Signature]
President

Taxpayer Identification No: 65-1101784
Address: 777 East Port Royal
Palm Beach, FL 33404

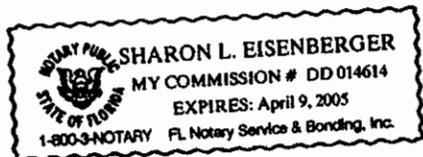
STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 24 day of April, 2002, by Francis X. Murray () who is personally known to me OR () who produced _____ as identification.

SEAL

My Commission Expires:

[Signature]
Notary Signature
Sharon L. Eisenberger
Print Notary Name



[Handwritten mark]

EXHIBIT D
DISTRICT WORK

CRUISES has inspected the Demised Premises and agrees that their condition as of April 23, 2002 is acceptable as completed DISTRICT work, and acknowledges that all further work within the Demised Premises shall be the responsibility of CRUISES as Tenant Improvements.



EXHIBIT E
MATERIALS TO BE TRANSFERRED TO CRUISES



Fifth Floor.

- 280 each 12' x 2-1/2" metal studs
- 246 each 9' x 4" metal studs

- 255 each 5/8" regular drywall - 4' x 12'
- 50 each 5/8" type x fire rated drywall - 4' x 12'
- 10 each 5/8" moisture rated drywall - 4' x 12'

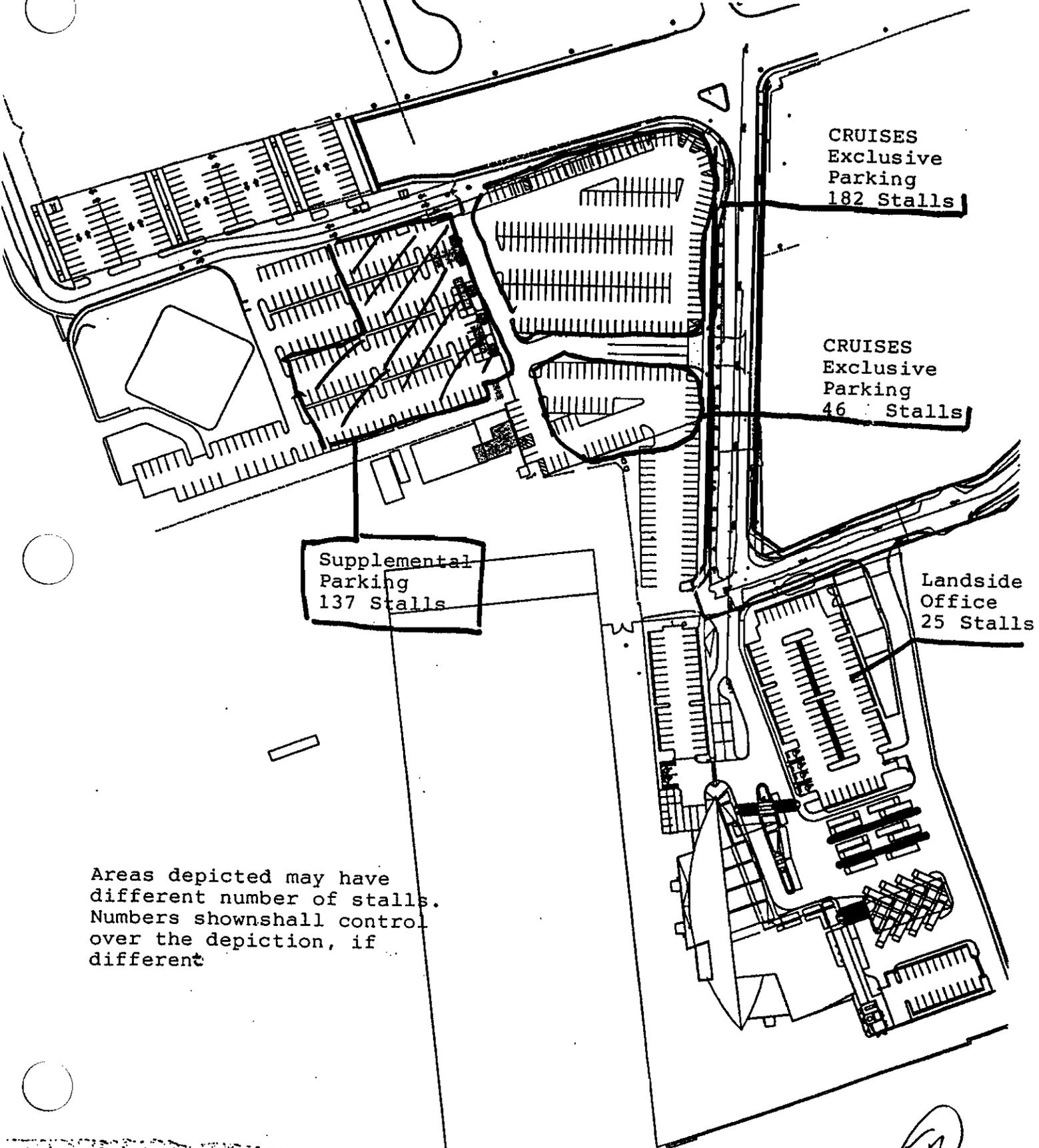
- 2 buckets drywall joint compound
- 1-bucket vinyl adhesive
- 1-bucket tile adhesive
- 2 boxes ceramic tile
- 13 boxes acoustical tile 2' x 2' white
- 2 veneer doors 7' x 3'
- 2 veneer doors 7'-9" x 3'
- 1 metal door 6'-11" x 3'

EXHIBIT E

EXHIBIT F
PARKING AREAS

FR

EXHIBIT "F"



Supplemental
Parking
137 Stalls

CRUISES
Exclusive
Parking
182 Stalls

CRUISES
Exclusive
Parking
46 Stalls

Landside
Office
25 Stalls

Areas depicted may have
different number of stalls.
Numbers shown shall control
over the depiction, if
different

FR

EXHIBIT G
CRUISES' INITIAL SAILING SCHEDULE



We write to advise you that, effective May 20, 2002, the cruise sailing schedule of the *Palm Beach Princess* from the Port of Palm Beach will be as follows:

	DAY CRUISE	EVENING CRUISE
MONDAY	11:30 a.m. to 5:00 p.m.	6:30 p.m. to 11:45 p.m.
TUESDAY	11:30 a.m. to 5:00 p.m.	6:30 p.m. to 11:45 p.m.
WEDNESDAY	11:30 a.m. to 5:00 p.m.	6:30 p.m. to 11:45 p.m.
THURSDAY	11:30 a.m. to 5:00 p.m.	6:30 p.m. to 11:45 p.m.
FRIDAY	11:30 a.m. to 5:00 p.m.	6:30 p.m. to 12:30 a.m.
SATURDAY	11:30 a.m. to 5:00 p.m.	6:30 p.m. to 12:30 a.m.
SUNDAY	11:30 a.m. to 5:00 p.m.	6:30 p.m. to 11:30 p.m.

As exceptions to the above schedule, the ship will sail to the Bahamas, leaving the Port of Palm Beach at approximately midnight and returning at approximately 3:00 to 4:00 p.m., on the following dates: April 29, May 28, June 24, July 22, August 19, September 16, October 14, November 12, and December 9. On these dates the ship will also perform its evening cruise as scheduled above. Please note that the Bahamas cruise is delayed twenty-four hours when the sailing would occur on a federal holiday (i.e. Memorial Day in 2002).

The ship will arrive later on the weekday or weekend evening cruise preceding a federal holiday as follows: President's Day (Sunday evening cruise will depart at 6:30 p.m. arriving back Monday, 12:30 a.m. instead of Sunday, 11:30 p.m.); Memorial Day (Sunday evening cruise will depart at 6:30 p.m. arriving back Monday, 12:30 a.m. instead of Sunday, 11:30 p.m.); Fourth of July (Wednesday evening cruise arrives back Thursday, 12:30 a.m. instead of Wednesday, 11:45 p.m.); Labor Day (Sunday evening cruise will depart at 6:30 p.m. arriving back Monday, 12:30 a.m. instead of Sunday, 11:30 p.m.); Thanksgiving (Wednesday evening cruise arrives back Thursday, 12:30 a.m. instead of Wednesday, 11:45 p.m.).

The ship's evening New Years Eve (December 31) sailing schedule will be from 7:30 p.m. to 1:30 a.m.

EXHIBIT G



EXHIBIT I
PARAGRAPH 39.2 STATEMENT

The owner of 100% of the issued and outstanding stock of ITG VEGAS, INC. is:

International Thoughtbred Gaming Development Corporation,
a Delaware Corporation
211 Begnigno Blvd, Suite 210
Belmawr, NJ 08031 Federal Tax ID 22-329-1821

The owner of 100% of the issued and outstanding stock of International Thoughtbred Gaming Development Corporation is:

International Thoughtbred Breeders, Inc., a Delaware Corporation
211 Begnigno Blvd, Suite 210
Belmawr, NJ 08031 Federal Tax ID 22-233-2039

