

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

---

**Docket No. 14-06**

---

**SANTA FE DISCOUNT CRUISE PARKING, INC. d/b/a EZ  
CRUISE PARKING; LIGHTHOUSE PARKING, INC.; and  
SYLVIA ROBLEDO d/b/a 81<sup>st</sup> DOLPHIN PARKING**

**Complainants**

**v.**

**THE BOARD OF TRUSTEES OF THE GALVESTON  
WHARVES and THE GALVESTON PORT FACILITIES  
CORPORATION**

**Respondents**

---

**COMPLAINANTS' OBJECTIONS AND RESPONSES TO  
RESPONDENTS' PROPOSED FINDINGS OF FACT**

Santa Fe Discount Cruise Parking, Inc. d/b/a EZ Cruise Parking; Lighthouse Parking, Inc.; and Sylvia Robledo d/b/a 81<sup>st</sup> Dolphin Parking (collectively “Complainants”), pursuant to the Scheduling Order dated January 14, 2015 and 46 C.F.R. 502.221, herby submit this Complainants’ Reply Brief. In addition to Complainants’ Reply Brief, pursuant to the above-cited Procedural Order, Complainants simultaneously file Complainants’ Objections and Responses to Respondents’ Proposed Findings of Fact.

**OBJECTIONS AND RESPONSES TO  
RESPONDENTS’ PROPOSED FINDINGS OF FACT**

1. The Wharves is a separate utility and body politic created by the City of Galveston pursuant to Article XII of the Galveston City Charter and Chapter 54 of the Texas Transportation Code. GALVESTON, TEX., CHARTER, art. XII, §§ 1-2 (Comp. App. Tab 12 at p.278).

**RESPONSE: Complainants admit that the Wharves was created by the City of Galveston as a separate utility of the City of Galveston, managed and controlled in part by a member of the City Council of the City of Galveston. GALVESTON TEX. CHARTER, art. XII, §§ 1-2 (Comp. App. at p.278).**

2. The Wharves is managed by a seven-member Board of Trustees, which is appointed by the Galveston City Council. GALVESTON, TEX., CHARTER, art. XII, §§ 1-2 (Comp. App. Tab 12 at p.278).

**RESPONSE: Admit.**

3. In contrast to other Ports, such as the nearby Port of Houston Authority, the Wharves does not levy ad valorem (property) taxes to help subsidize its operations and financial requirements. Affidavit of Michael Mierzwa at ¶ 5 (Resp. App. Tab 75 at p. 002070).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that no evidence of a study of other ports has been submitted by Respondents, who rely instead on an unsupported blanket statement of presumption. Subject to and without waiving the**

**foregoing objections, Complainants admit that the Port of Galveston does not collect ad valorem taxes to help subsidize its operations.**

4. The Wharves relies solely on revenues, grants, bank loans and bond debt to fund its operations and infrastructure improvements. *Id.*

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that the proposition made is not supported by evidence cited. See Affidavit of Michael Mierzwa at ¶5 (Resp. App. Tab 075, at p.002070). Subject to and without waiving the foregoing objection, Complainants admit that the Wharves relies in part on revenue from its operations to support its operations.**

5. The Wharves does not generate enough funds from these sources to cover all needed repairs and improvements; thus, it must prioritize and do what it can with the funds it has.

**RESPONSE: Complainants object to this Proposed Finding of Fact as wholly unsupported by evidence cited. Subject to and without waiving the foregoing objections, Complainants do not have enough information to admit or deny Respondents' proposition. Complainants deny that the Wharves operated at the \$1.5M deficit used to justify the 2014 increase in Access Fees.**

6. GPFC is a legal hybrid - a "local government corporation" authorized by Texas state law pursuant to Subchapter D, Chapter 431 of the Texas Transportation Code. Tex. Transp. Code Sec. Sec. 431.108 (Resp. App. Tab 73 at p.001950).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that "legal hybrid" is a vague and undefined term. Complainants further object that the evidence cited by Respondents in support of this proposition merely defines a "local government corporation," providing no support whatsoever for Respondents' proposition. See Tex. Transp. Code, § 431.108 (Resp. App. Tab 073, at p.001950). Complainants admit that the Galveston Port Facilities Corporation ("GPFC") is a nonprofit corporation, organized and existing under the laws of the State of Texas.**

7. Local government corporations are authorized to be created to aid one or more units of local government to accomplish any governmental purpose of those local governments. *Id.* at §431.101(a). (Comp. App. Tab 14 p. 284).

**RESPONSE: Admit.**

8. The Wharves is entitled to any income generated by GPFC that is not needed to pay GPFC's expenses or obligations. *See Id.* at §431.107 (Resp. App. Tab 72 at p. 001949); GPFC Articles of Incorporation at art. XII. (Comp. App. Tab 15 at p.287)

**RESPONSE: Admit.**

9. GPFC was created to facilitate the financing, construction and operation of the Galveston Island Cruise Terminals. Affidavit of Michael Mierzwa at ¶ 9 (Resp. App. Tab 75 at p. 002071).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it expands the documented purpose of GPFC and is therefore incompatible with Respondents' prior stated purpose. See Comprehensive Annual Financial Report for the Year End Date 12-31-2006, BOT\_014098 (Resp. App. Tab 009, at p.000800)(GPFC was created in 2002 "for use as a financing vehicle for expansion and renovation of Wharves facilities."). Subject to the foregoing objections and without waiving same, Complainants admit that GPFC was created to be used as a means to circumvent the laws of the State of Texas which the Wharves Board felt to be hindrances to their intended Cruise Terminal operations. Depo. M. Mierzwa, at 10:24 – 11:10 (Comp. App., p.000295).**

10. GPFC's financial information is reported on a consolidated basis in the Wharves' financial statements because their activities are so inter-related that doing otherwise would be materially misleading. Affidavit of Mark Murchison at ¶ 9 (Resp. Aff. 77 at p. 002083); Affidavit of Jeffery Compton (Resp. App. Tab 103 at p. 002756); Rebuttal Expert Report of Jeffery Compton, p. 4, ¶ 19 (Resp. App. Tab 7 at p.404); Wharves— 2009 Comprehensive Annual Financial Report at BOT\_014303 (Resp. Tab 12 App.1005); Wharves—2010 Comprehensive Annual Financial Report at BOT\_013986 (Resp. Tab 13 App.\_1077\_); Wharves—2011 Comprehensive Annual Financial Report at BOT\_013901 (Resp. Tab 14 App.1093); Wharves—2012 Comprehensive Annual Financial Report at BOT\_ 014464 (Resp.

Tab 15 App.001251); Wharves—2013 Comprehensive Annual Financial Report at BOT\_014552 (Resp. App. Tab 16 at p. 001339); Wharves—2014 Comprehensive Annual Financial Report at p. 3 (Resp. App. Tab 77 at p. 002113).

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that it incorrectly implies that a consolidated financial report is required to avoid materially misleading financial statements by either of Respondents. Subject to and without waiving the foregoing objections, Complainants admit that the financial reports for the separate entities of GPFC and the Wharves Board are routinely consolidated by Respondents.

11. GPFC has never issued a Tariff. Affidavit of Michael Mierzwa at ¶ 10 (Resp. App. Tab 75 at p. 002071); Affidavit of Mark Murchison at ¶ 4 (Resp. App. Tab 77 at p. 002081).

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that it is an attempt by Respondents to blur the line of distinction between GPFC and the Wharves Board. The Tariff was issued by Respondent The Board of Trustees of the Galveston Wharves. Amendments to the Tariff were made with input from GPFC, and consideration of GPFC's operations and finances.

Subject to and without waiving the foregoing objections, Complainants do not have enough information to either confirm or deny the truth of this Proposed Finding of Fact. Subject to same, Complainants admit that the lease agreements between the Wharves Board (as lessor) and GPFC (as lessee) deny GPFC the right to assess and collect fees published in the Tariff for “commodities moving over, or vessels berthing at the Leased Premises...” Lease & Development Agreement – Cruise Terminal I, BOT\_018036 (Resp. App. Tab 018, at 001406); Lease & Development Agreement – Cruise Terminal II, BOT\_018057 (Resp. App. Tab 019, at 001427).

12. GPFC has never billed or collected Access Fees to Complainants or anyone else. Affidavit of Michael Mierzwa at ¶ 11 (Resp. App. Tab 75 at p. 002017); Affidavit of Mark Murchison at ¶ 4 (Resp. App. Tab 77 at p. 002081). *See generally*, Commodore Access Fees (BOT 015921 – BOT 15950) (Comp. App. Tab 46 at p.771), County Inn Access Fees (BOT 015951 – BOT 15982) (Comp. App. Tab 47 at p.801), Marriott Access Fees (BOT 015983 –

BOT 16004) (Comp. App. Tab 48 at p.833), Fertitta Access Fees (BOT 016196 – BOT 16262) (Comp. App. Tab 49 at p.855), Galveston Beach Hotel Access Fees (BOT 01626 3 – BOT 16273) (Comp. App. Tab 50 at p.922), Hampton Inn Access Fees (BOT 016274 – BOT 16321) (Comp. App. Tab 51 at p.933), Holiday Inn Access Fees (BOT 016322 – BOT 16379) (Comp. App. Tab 52 at p.982), Holiday Inn (Sunspreet Resort) Access Fees (BOT 016380 – BOT 16441) (Comp. App. Tab 53 at p.1039), Galvez Hotel Access Fees (BOT 016442 – BOT 16557) (Comp. App. Tab 54 at p.1101), Inn at the Waterpark Access Fees (BOT 016558 – BOT 16568) (Comp. App. Tab 55 at p.1217), Island Breeze Shuttle Access Fees (BOT 016569 – BOT 16579) (Comp. App. Tab 56 at p.1228), LaQuinta Hotel Access Fees (BOT 016580 – BOT 16686) (Comp. App. Tab 57 at p.1239), Moody Gardens Access Fees (BOT 016798 – BOT 16916) (Comp. App. Tab 58 at p.1346), San Luis Hotel Access Fees (BOT 016922 – BOT 17038) (Comp. App. Tab 59 at p.1465), Tremont Hotel Access Fees (BOT 017039 – BOT 17144) (Comp. App. Tab 60 at p.1582), The Woodlands Access Fees (BOT 017180 – BOT 17185) (Comp. App. Tab 61 at p.1688), AAA Corporation Access Fees (BOT 017186 – BOT 17190) (Comp. App. Tab 62 at p.1694), Abiding Limo Access Fees (BOT 017191 – BOT 17193) (Comp. App. Tab 63 at p.1699), Action Limo Access Fees (BOT 017194 – BOT 17201) (Comp. App. Tab 64 at p.1702), AFC Corporate Transportation Access Fees (BOT 017202 – BOT 17205) (Comp. App. Tab 65 at p.1710), AIM Limo Access Fees (BOT 017206 – BOT 17210) (Comp. App. Tab 66 at p.1714), Airport Transportation Access Fees (BOT 017211 – BOT 17212) (Comp. App. Tab 67 at p.1719), American Standard Limo Access Fees (BOT 017213 – BOT 17214) (Comp. App. Tab 68 at p.1721), American Transport Access Fees (BOT 017215 – BOT 17222) (Comp. App. Tab 69 at p.1723), Avanti Transport Access Fees (BOT 017223 – BOT 17227) (Comp. App. Tab 70 at p.1731), Best Limo Access Fees (BOT 017228 – BOT 17230) (Comp. App. Tab 71 at p.1736), Big Star Custom Coach Access Fees (BOT 017233 – 172236) (Comp. App. Tab 72 at p.1739), Blackhorse Limo Access Fees (BOT 017233 – BOT 17236) (Comp. App. Tab 73 at p.1741), Black Tie Limo Access Fees (BOT 017237 – BOT 17239) (Comp. App. Tab 74 at p.1745), C&S Executive Transport Access Fees (BOT 017240 – BOT 17243) (Comp. App. Tab 75 at p.1748), Carey Worldwide Services, Inc. Access Fees (BOT 017244 – BOT 17247) (Comp. App. Tab 76 at p.1752), Cheap Town Car Limo Access Fees (BOT 017248 – BOT 17251) (Comp. App. Tab 77 at p.1756), Cherry Limo Transportation Access Fees (BOT 017252 – BOT 17254) (Comp. App. Tab 75 at p.1760), Clark's Travel Access Fees (BOT 017255 – BOT 17257) (Comp. App.

Tab 79 at p.1763), Clear Lake Shuttle Bus Access Fees (BOT 017258 – BOT 17277) (Comp. App. Tab 80 at p.1766), Colony Limo Access Fees (BOT 017278 – BOT 17279) (Comp. App. Tab 81 at p.1786), Corporate Limo Access Fees (BOT 017280 – BOT 172281) (Comp. App. Tab 82 at p.1788), Cowtown Charters Access Fees (BOT 017282 – BOT 17292) (Comp. App. Tab 83 at p.1790), Daisy Tours & Conventions Access Fees (BOT 017293 – BOT 17296) (Comp. App. Tab 84 at p.1801), Devine Towncar & Limo Access Fees (BOT 017297 – BOT 17298) (Comp. App. Tab 85 at p.1805), Distinct Class Limo Access Fees (BOT 017299 – BOT 17303) (Comp. App. Tab 86 at p.1807), Enterprise Rent-A-Car Access Fees (BOT 017304 – BOT 17307) (Comp. App. Tab 87 at p.1812), Envoy Executive Limo Access Fees (BOT 017308 – BOT 17310) (Comp. App. Tab 88 at p.1816), Executive Transportation Access Fees (BOT 017311 – BOT 17313) (Comp. App. Tab 89 at p.1819), Extreme Elegance Access Fees (BOT 017314 – BOT 17316) (Comp. App. Tab 90 at p.1822), Finesse Transportation Access Fees (BOT 017317 – BOT 17318) (Comp. App. Tab 91 at p.1825), First Class Access Fees (BOT 017319 – BOT 17322) (Comp. App. Tab 92 at p.1827), Galveston Limo Access Fees (BOT 017323 – BOT 17336) (Comp. App. Tab 93 at p.1831), Garcia Garcia Access Fees (BOT 017337 – BOT 17338) (Comp. App. Tab 94 at p.1845), Gatlen Adventures Access Fees (BOT 017339 – BOT 17340) (Comp. App. Tab 95 at p.1847), Gemini Limo Access Fees (BOT 017341 – BOT 17343) (Comp. App. Tab 96 at p.1849), Gotta Go Trailways Access Fees (BOT 017344 – BOT 17346) (Comp. App. Tab 97 at p.1852), Gulf Coast Limo Services Access Fees (BOT 017347 – BOT 17348) (Comp. App. Tab 98 at p.1855), Houston Executive Limo Access Fees (BOT 017349 – BOT 17350) (Comp. App. Tab 99 at p.1857), Houston Express Limo Access Fees (BOT 017351 – BOT 17354) (Comp. App. Tab 100 at p.1859), J&J Tours Access Fees (BOT 017355 – BOT 17358) (Comp. App. Tab 101 at p.1863), Lonestar Executive Limo Access Fees (BOT 017359 – BOT 17362) (Comp. App. Tab 102 at p.1867), Lone Star Access Fees (BOT 017363 – BOT 17369) (Comp. App. Tab 103 at p.1871), Merlo's Limo's Access Fees (BOT 017370 – BOT 17377) (Comp. App. Tab 104 at p.1878), Onyx Limo Service Access Fees (BOT 017378 – BOT 17384) (Comp. App. Tab 105 at p.1886), Pride Limo Service Access Fees (BOT 017385 – BOT 17387) (Comp. App. Tab 106 at p.1893), Primavera Access Fees (BOT 017388 – BOT 17391) (Comp. App. Tab 107 at p.1896), R&R Partnership Access Fees (BOT 017392 – BOT 17396) (Comp. App. Tab 108 at p.1900), Reliance Limo & Town Car Access Fees (BOT 017397 – BOT 17399) (Comp. App. Tab 109 at p.1905), Royal Carriages Access Fees (BOT 017400 – BOT

17413) (Comp. App. Tab 110 at p.1908), South Houston Limo Access Fees (BOT 017414 – BOT 17419) (Comp. App. Tab 111 at p.1922), Select Corporate Access Fees (BOT 017420 – BOT 17422) (Comp. App. Tab 112 at p.1928), Shif Limo Access Fees (BOT 017423 – BOT 17424) (Comp. App. Tab 113 at p.1931), Sierra Trailways Access Fees (BOT 017425 – BOT 17428) (Comp. App. Tab 114 at p.1933), SMZ Transportation Access Fees (BOT 017429 – BOT 17433) (Comp. App. Tab 115 at p.1937), Space Town Transportation Access Fees (BOT 017434 – BOT 17437) (Comp. App. Tab 116 at p.1942), Superior Limo Access Fees (BOT 017438 – BOT 17439) (Comp. App. Tab 117 at p.1946), Totally Texas Limo Access Fees (BOT 017440 – BOT 17445) (Comp. App. Tab 118 at p.1948), Town Car Limo Access Fees (BOT 017446 – BOT 17447) (Comp. App. Tab 119 at p.1954), Transgate Limo Access Fees (BOT 017448 – BOT 17452) (Comp. App. Tab 120 at p.1956), Transportation Unlimited Access Fees (BOT 017453 – BOT 17455) (Comp. App. Tab 121 at p.1961), Western Motorcoach, Inc. Access Fees (BOT 017456 – BOT 17457) (Comp. App. Tab 122 at p.1964), Wynn Coaches Access Fees (BOT 017458 – BOT 17461) (Comp. App. Tab 123 at p.1966), Z Limo Services Access Fees (BOT 017462 – BOT 17470) (Comp. App. Tab 124 at p.1970).

**RESPONSE: Complainants do not have enough information to either confirm or deny the truth in totality of this Proposed Finding of Fact. Complainants admit that the lease agreements between the Wharves Board (as lessor) and GPFC (as lessee) deny GPFC the right to assess and collect fees published in the Tariff for “commodities moving over, or vessels berthing at the Leased Premises...” Lease & Development Agreement – Cruise Terminal I, BOT\_018036 (Resp. App. Tab 018, at p.001406); Lease & Development Agreement – Cruise Terminal II, BOT\_018057 (Resp. App. Tab 019, at p.001427). Complainants further admit that GPFC has never billed or collected Access Fees from Complainants.**

13. GPFC has a board of nine directors. Seven of the nine directors are the seven members of the Board of Trustees of the Galveston Wharves. Additionally, two non-Trustee directors are appointed by the City Council of the City of Galveston (the same body which appoints the Wharves Board of Trustees). GPFC Articles of Incorporation at Art. VI (Comp. App. Tab 15 at p.287).

**RESPONSE: Admit.**

14. GPFC has no employees. Affidavit of Mark Murchison at ¶ 4 (Resp. App. Tab 77 at p. 002081); Affidavit of Michael Mierzwa at ¶ 8 (Resp. App. Tab 75 at p. 002071).

**RESPONSE: Complainants do not have enough information to either confirm or deny the truth of this Proposed Finding of Fact. Subject to and without waiving the foregoing, other than members of GPFC’s board of directors, Complainants are not aware of individual persons employed by GPFC.**

15. The Wharves leased the Cruise Terminals (I and II) to GPFC. Lease and Development Agreement—Cruise Terminal No. I, BOT\_018034-018054 (Resp. App. Tab 18 at p. 001404-001424); Lease and Development Agreement—Cruise Terminal No. II, BOT\_018055-018072 (Resp. App. Tab 19 at p.001425-001442).

**RESPONSE: Complainants admit that the relationship between the Wharves Board and GPFC is that of landlord and tenant, and is not a partnership or joint venture. Lease Agreement between The Board of Trustees of the Galveston Wharves and Galveston Port Facilities Corporation, dated December 23, 2007, at p.12, sec. 17.02 (Comp. App., at p.000409)(“The relationship between Lessor [the Wharves Board] and Lessee [GPFC] at all times remains solely that of landlord and tenant and is not a partnership or joint venture.”); Depo. of Michael Mierzwa, 45:1-20, 83:3-6 (Resp. App. Tab 078, at pp.002187, 002215).**

16. GPFC then entered a Management Agreement with the Wharves, under which the Wharves manages the Cruise Terminals for GPFC. *Id.*

**RESPONSE: Complainants admit that according to the subject lease agreements, the “Lessor [the Wharves Board] will manage the daily operations of Lessee [GPFC], including the management of [the Cruise Terminals].” Lease & Development Agreement – Cruise Terminal I, BOT\_018034 (Resp. App. Tab 018, at p.001404); Lease & Development Agreement – Cruise Terminal II, BOT\_018055 (Resp. App. Tab 019, at p.001425).**

17. GPFC enters agreements with Cruise Lines, such as Royal Caribbean Cruise Lines and Carnival Cruise Lines. *See generally*, Carnival Development Agreement, BOT\_017940- 017964 (Resp. App. Tab 23 at p.001490); Royal Caribbean Cruises Construction Loan Agreement, BOT\_017916-017939 (Resp. App. Tab 22 at p.001466-001489).

**RESPONSE: Admit.**

18. Wharves employees perform GPFC's obligations thereunder, pursuant to the Management Agreement. Lease and Development Agreement—Cruise Terminal No. I, BOT\_018034-018054 (Resp. App. Tab 18 at p.001404-001424); Lease and Development Agreement—Cruise Terminal No. II, BOT\_018055-018072 (Resp. App. Tab 19 at p.001425-001442).

**RESPONSE: Admit.**

19. Both GPFC and the Wharves collect various sources of revenues, and are responsible for paying various categories of expenses, relating to the Cruise Terminals. Lease and Development Agreement—Cruise Terminal No. I, BOT\_018034-018054 (Resp. App. Tab 18 at p.001404-001424); Lease and Development Agreement—Cruise Terminal No. II, BOT\_018055-018072 (Resp. App. Tab 19 at p.001425-001442); Wharves—2006 Comprehensive Annual Financial Report at BOT 0140092 to 014158 (Resp. App. Tab 009 at p. 794-860); Wharves—2007 Comprehensive Annual Financial Report at BOT 014159-014197 (Resp. App. Tab 010 at p. 861-899); Wharves—2008 Comprehensive Annual Financial Report at BOT 014198 to 014269; (Resp. App. Tab 011 at p. 900 to 971); Wharves—2009 Comprehensive Annual Financial Report at BOT 014270 to 014351; (Resp. App. Tab 012 at p. 972 to 1053); Wharves—2010 Comprehensive Annual Financial Report at BOT 013963 to 014047 (Resp. App. Tab 013 at p. 1054 to 1138); Wharves—2011 Comprehensive Annual Financial Report at BOT 014352 to 014439 (Resp. App. Tab 014 at p. 1139 to 1226); Wharves—2012 Comprehensive Annual Financial Report at BOT 014440 to 014527 (Resp. App. Tab 015 at p. 1227 to 1314); Wharves—2013 Comprehensive Annual Financial Report at BOT 014528 to 014615 (Resp. App. Tab 016 at p. 1315 to 1402); Wharves—2014 Comprehensive Annual Financial Report at p. 77 (Resp. App. Tab 77 at p. 002089).

**RESPONSE:** Complainants object to the Proposed Finding of Fact on grounds that it implies multiple sources of revenue collected by GPFC. “[T]he sole source of revenue for the GPFC is derived from its agreements with the cruise lines that call on the Port at Cruise Terminals No. 1 and 2.” (Resp. Corr. Resp. and Obj. to Comp. PFF, ¶34 at pp.15-16). Subject to the foregoing objection and without waiving same, Complainants admit that the Wharves Board has sources of revenue which differ from those of GPFC.

20. Under the terms of GPFC’s lease with the Wharves, any net income attributable to GPFC is ultimately transferred to the Wharves. Lease and Development Agreement—Cruise Terminal No. I, at BOT\_018035-018036 (Resp. App. Tab 18 at p.001405-001406); Lease and Development Agreement—Cruise Terminal No. II, BOT\_018056-018057 (Resp. App. Tab 19 at p.001426-001427).

**RESPONSE:** Denied. Complainants object to this Proposed Finding of Fact on grounds that it mischaracterizes the lease terms which it cites, and further object to the extent that it implies a single lease between the two entities. The subject leases do not require, as asserted by Respondents, that any net income attributable to GPFC be ultimately transferred to the Wharves Board. Instead, they allow Lessor [the Wharves Board] to demand of Lessee [GPFC] payment of “all funds received by Lessee resulting from the management, control, or operation of the Leased Premises of any nature and from any source in excess of those funds needed to discharge any obligation of Lessee...” Lease & Development Agreement – Cruise Terminal I, BOT\_018036 (Resp. App. Tab 018, at p.001406); Lease & Development Agreement – Cruise Terminal II, BOT\_018057 (Resp. App. Tab 019, at p.001427).

21. The Wharves operates a cruise terminal complex on Galveston Island which consists of two terminals (I and II) (hereinafter sometimes collectively called the “Cruise Terminal”). Lease and Development Agreement—Cruise Terminal No. I, BOT\_018034- 018054 (Resp. App. Tab 18 at p.001404-001424); Lease and Development Agreement— Cruise Terminal No. II, BOT\_018055-018072 (Resp. App. Tab 19 at p.001425-001442).

**RESPONSE:** Admit.

22. Cruise lines which have made calls to the Cruise Terminal since its opening include Carnival Cruise Lines, Royal Caribbean Cruise Lines, Celebrity Cruises, Princess Cruise Lines and Disney Cruise Lines. Wharves—2012 Comprehensive Annual Financial Report at BOT\_014452 (Resp. App. Tab 15 at p.001239); Wharves—2014 Comprehensive Annual Financial Report at p. vi (Resp. App. Tab 77 at p.002102); Wharves—Cruise Calls for 2004-2011, EZC000031-000038 (Resp. App. Tab 91 at p. 002629-002636).

**RESPONSE: Admit.**

23. Early in its operations, these Cruise lines made more ship calls than now on an annual basis. Wharves—2008 Comprehensive Annual Financial Report at BOT\_014267 (Resp. App. Tab 11 at p.000969); Wharves—2009 Comprehensive Annual Financial Report at BOT\_014349 (Resp. App. Tab 12 at p.1051); Wharves—2010 Comprehensive Annual Financial Report at BOT\_014045 (Resp. Tab 13 App.001136); Wharves—2011 Comprehensive Annual Financial Report at BOT\_014437 (Resp. Tab 14 App.1224); Wharves—2012 Comprehensive Annual Financial Report at BOT\_014525 (Resp. Tab 15 App.001312); Wharves—2013 Comprehensive Annual Financial Report at BOT\_014613 (Resp. Tab 16 App. 001400); Wharves—2014 Comprehensive Annual Financial Report at p. 54 (Resp. App. Tab 77 at 002174).

**RESPONSE: Complainants object to the ambiguity inherent in the time references Respondents provide in this Proposed Finding of Fact. Respondents' records show that in 2014, more cruise ships called on the Cruise Terminal than did in 2000-2002. Wharves – Cruise Traffic – 2000-2008, BOT\_014267 (Resp. App. Tab 096, at p.002749). Respondents' records further show that more cruise ships called on the Cruise Terminal in 2014 than did any year from 2008 through 2013. Wharves—2014 Comprehensive Annual Financial Report, at p.54 (Resp. App. Tab 077, at p.002174). Complainants further object to this Proposed Finding of Fact to the extent it is a global statement of the previously identified cruise lines' operations outside of the Port of Galveston.**

**Subject to and without waiving the foregoing objections, Complainants admit that the year 2006, with 253 cruise ship calls to the Cruise Terminal, saw more cruise ships calling on the Cruise Terminal than any subsequent year to date. *Id.***

24. Although the number of ship calls has declined, the Cruise lines have brought in and home ported larger cruise ships in Galveston, which has led to less ship calls without a corresponding reduction in passengers. *Id*

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it misrepresents the trend in cruise ship calls to the Cruise Terminal. While 2006 recorded more cruise ship calls to the Cruise Terminal than any year since, the trend since 2008 has been an annual increase in the number of cruise ships calling on the Cruise Terminal. Wharves—2014 Comprehensive Annual Financial Report, at p.54 (Resp. App. Tab 077, at p.002174).**

**Subject to and without waiving the foregoing objections, Complainants admit that the year 2006, with 253 cruise ship calls to the Cruise Terminal, saw more cruise ships calling on the Cruise Terminal than any subsequent year to date. *Id*.**

25. In 2006, 253 ship calls were recorded at the Cruise Terminal with 616,939 cruise passengers going through the terminal. Wharves—2008 Comprehensive Annual Financial Report at BOT\_014267 (Resp. App. Tab 11 at p. 969); Wharves—2009 Comprehensive Annual Financial Report at BOT\_014349 (Resp. App. Tab 12 at p.1051); Wharves—2010 Comprehensive Annual Financial Report at BOT\_014045 (Resp. App. Tab 13 at p.1136); Wharves—2011 Comprehensive Annual Financial Report at BOT\_014437 (Resp. App. Tab 14 at p.001224); Wharves—2012 Comprehensive Annual Financial Report at BOT\_014525 (Resp. App. Tab 15 at p. 1312); Wharves—2014 Comprehensive Annual Financial Report at p. 52 (Resp. App. Tab 77 at p. 002172).

**RESPONSE: Complainants object to Respondents citation (“Wharves—2014 Comprehensive Annual Financial Report at p.52 (Resp. App. Tab 77 at p. 002172)”) as unresponsive of this proposition. Otherwise, Admit.**

26. In 2014, the ship call count was only 181 but 641,650 passengers were recorded. Wharves—2014 Comprehensive Annual Financial Report at p. 52 (Resp. App. Tab 77 at p. 002172).

**RESPONSE:** Complainants object to this Proposed Finding of Fact because the document cited as evidence to support Respondents' proposition does not demonstrate cruise ship counts or passenger counts.

27. When compared to other Ports, the Cruise Terminal ranks first in Texas, second in the Gulf of Mexico, fourth in the United States and nineteenth in the World in terms of annual cruise passenger traffic. "Galveston Cruise Terminal Expansion Moves Forward," *Houston Business Journal*, May 28, 2015, (Resp. App. Tab 048 at p.001754); Texas Department of Transportation, Texas Ports 2013-2014 Summary & Capital Campaign at 19 (found at [http://www.recenter.tamu.edu/mdata/pdf/Texas\\_Ports\\_Summary\\_2013-14.pdf](http://www.recenter.tamu.edu/mdata/pdf/Texas_Ports_Summary_2013-14.pdf)) (Resp. App. Tab 044 at p.001715).

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that the evidence cited to indicate only the Cruise Terminal's past rankings, and there, without reference to rankings based on cruise passenger traffic. See Texas Department of Transportation, Texas Ports 2013-2014 Summary & Capital Campaign, at p.19 (Resp. App. Tab 044, at p.001715)(showing ranking on unidentified criteria for year 2010); *but see* "Galveston Cruise Terminal Expansion Moves Forward," (Resp. App. Tab 048, at p.001755)(alleging that in 2014 the Cruise Terminal "is the fourth largest home port in the United States when measured by embarkations.").

**Subject to and without waiving the foregoing objections, Complainants do not have enough information to either admit or deny the Cruise Terminal's ranking in the above-referenced categories.**

28. Cruise passengers arrive at the Galveston Cruise Terminal in a variety of ways. Affidavit of Michael Mierzwa p. 7 (Resp. App. Tab 75 at p. 002076); Affidavit of Peter Simons (Resp. App. Tab 76 at p. 002078).

**RESPONSE: Admit.**

29. Some passengers park at the homes of nearby friends or family, who drop them off at the Cruise Terminal without compensation. Affidavit of Michael Mierzwa at ¶ 42 (Resp. App. Tab 75 at p. 002076).

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that it assumes facts not supported by the evidence cited. The evidence cited provides only that “[s]ome cruise passengers get dropped off by friends and family at no charge.”

Subject to and without waiving the foregoing objection, Complainants do not have enough information to either admit or deny that cruise passengers “park at the homes of nearby friends or family.”

30. Passengers who are dropped off at the Cruise Terminal by friends or family are not charged an access fee. *Id.*

**RESPONSE:** Complainants admit that, when properly charged pursuant to the Tariff, only commercial vehicles should be charged Access Fees.

31. Some passengers arrive on charter buses provided by the Cruise lines, as part of a "fly/cruise" package. *Id.* at ¶ 33.

**RESPONSE:** Complainants admit that GPFC entered into agreements with certain cruise lines that exempt those cruise lines from paying the Access Fees as required by the Tariff. *See e.g., Operating Agreement GPFC and Carnival, GPFC\_002029 (Ex. A, at p.7).*

The Tariff only exempts such entities from paying initial application fees and annual renewal fees, it does not exempt them from paying Access Fees. Wharves Tariff Circular No. 6 – Item 111, BOT\_017486-017491 (Resp. App. Tab 001, at pp.000016-000021); Wharves Tariff Circular No. 6 – Item 111, BOT\_017559-017565 (Resp. App. Tab 002, at pp.000089-000095); Wharves Tariff Circular No. 6 – Item 111, BOT\_017634-017642 (Resp. App. Tab 003, at pp.000164-000172); Wharves Tariff Circular No. 6 – Item 111, BOT\_017705-017714 (Resp. App. Tab 004, at pp.000234-000243); Wharves Tariff Circular No. 6 – Item 111, BOT\_017790-017794 (Resp. App. Tab 005, at pp.000319-000323).

32. Buses used under the Cruise Lines’ “fly/cruise” programs are exempted from the Wharves’ Tariff, and no access fees are paid. *Id.*

**RESPONSE:** Denied in part; Admitted in part. Complainants object to this Proposed Finding of Fact on grounds that it misinterprets and misstates the requirements under the

Tariff, and is therefore incorrect in stating that such buses are exempted by the Tariff. Complainants deny that buses used under the cruise lines' "fly/cruise" programs are exempted from the Wharves' Tariff. The Tariff exempts those buses only from being charged an initial application fee and annual renewal fees. Wharves Tariff Circular No. 6 – Item 111, BOT\_017486-017491 (Resp. App. Tab 001, at pp.000016-000021); Wharves Tariff Circular No. 6 – Item 111, BOT\_017559-017565 (Resp. App. Tab 002, at pp.000089-000095); Wharves Tariff Circular No. 6 – Item 111, BOT\_017634-017642 (Resp. App. Tab 003, at pp.000164-000172); Wharves Tariff Circular No. 6 – Item 111, BOT\_017705-017714 (Resp. App. Tab 004, at pp.000234-000243); Wharves Tariff Circular No. 6 – Item 111, BOT\_017790-017794 (Resp. App. Tab 005, at pp.000319-000323). The Tariff does not exempt those buses from paying Access Fees. *Id.*

Complainants admit that GPFC entered into agreements with certain cruise lines that exempt those cruise lines from paying the Access Fees as required by the Tariff. *See e.g., Operating Agreement GPFC and Carnival, GPFC\_002029 (Ex. A, at p.7).* Complainants admit that the Respondents have given preferential treatment to those buses by GPFC's waiver of the Tariff in its agreements with participating cruise lines, and by the Wharves Board's refusal to enforced the Tariff against those buses, and failure to collect Access Fees from those buses as required.

33. Some passengers come to Galveston prior to their actual cruise departure date, and stay as paying guests at a local hotel. Affidavit of Steve Cunningham at ¶4 (Resp. App. Tab 88 at p. 002626); Galveston.com: Enhance Your Cruise with an Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p.001712).

**RESPONSE: Admit.**

34. Many local hotels will allow paid guests to leave their vehicle without charge on hotel property during their cruise, and will provide (either directly, or using a third party shuttle service) a courtesy van to drop the passengers off at the terminal and pick them up when they return. Affidavit of Steve Cunningham at ¶4 (Resp. App. Tab 88 at p. 002626); Galveston.com: Enhance Your Cruise with an Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p.001712).

**RESPONSE:** Complainants object to this Proposed Finding of Fact to the extent it implies that many local hotels do not charge cruise passengers for parking their vehicles in the hotels' parking lots for the duration of the passengers' cruises. Both Complainants and Respondents have produced evidence showing that local hotels charge their customers to leave their vehicles parked in the hotel's parking lot while away on a cruise. *See Galveston.com Advertisements (Resp. App. Tab 043, at p.001713); (Comp. App., at p.000511).*

Subject to the foregoing objections, Complainants admit that some local hotels incorporate their parking fees into their room rates, thereby allowing cruise passengers who stay at those hotels to park their vehicles for the duration of their cruises without additional charges. *See Audio Transcript of Special Finance Committee, May 22, 2014, at 22:4-15 (Comp. App., at p.000424).*

35. Cruise passengers are a small percentage of these hotels' overall business. Affidavit of Steve Cunningham at ¶ 5 (Resp. App. Tab 88 at p. 002626); Hilton Galveston Island Cruise Ship Numbers April 2013- March 2014; BOT\_012979 (Resp. App. Tab 049 at p. 001757); Affidavit of Peter Simons at ¶ 5 (Resp. App. Tab 76 at p. 002079).

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that it attempts to define the business model of every hotel in the Galveston area based on that of two cherry-picked examples.

Subject to and without waiving the foregoing objections, Complainants do not have enough information to either admit or deny such a blanket statement.

36. The Hilton on the Galveston Seawall from April 2013 to April 2014 rented fewer than three percent (3%) of its 60,000 rented and occupied rooms to cruise passengers. Hilton Galveston Island Cruise Ship Numbers April 2013- March 2014; BOT\_012979 (Resp. App. Tab 049 at p. 001757).

**RESPONSE:** Complainants admit that the document cited to by Respondents to support this Proposed Finding of Fact appears to support Respondents' assertion.

37. Five percent (5%) or less of the Hotel Galvez's guests utilize the Galvez's courtesy shuttle to access the Cruise Terminal. Affidavit of Steve Cunningham at ¶ 6 (Resp. App. Tab 88 at p. 002626).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it states as fact an opinion clearly defined as a guess in the evidence cited.**

**Subject to and without waiving the foregoing objections, Complainants do not have enough information to either admit or deny the accuracy of Mr. Cunningham's guess, or of this Proposed Finding of Fact.**

38. Other cruise passengers arrive at the Cruise Terminal in their own vehicles. 81<sup>st</sup> Dolphin Advertisement, Robledo\_A\_000008 (Resp. App. Tab 041 at p. 001709); EZ Cruise Website—FAQ (found at <http://ezcruiseparking.com/faqs/>) (Resp. App. Tab 042 at p. 001710); Depo of George Templeton at 43:15-43:22 (Resp. App. Tab 83 at p. 002534).

**RESPONSE: Admit that some cruise passengers arrive at the Cruise Terminal in their own vehicles.**

39. Passengers who drive to the Cruise Terminal can park their vehicles at lots owned and operated by the Wharves, or alternatively at lots operated by private owners such as Complainants. *Id.*

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it attempts to exclude the option cruise passengers have to park their vehicles at local hotels for a fee, and to subsequently have their transportation to and from the Cruise Terminal arranged by those hotels.**

**Subject to and without waiving the foregoing objections, Complainants admit that passengers who drive to the Cruise Terminal have many options for parking their vehicles.**

40. Passengers can make advance reservations for parking at any of the available parking facilities online, or else simply "pay at the door" on arrival, assuming there is available space. 81<sup>st</sup> Dolphin Advertisement, Robledo\_A\_000008 (Resp. App. Tab 041 at p. 001709); EZ Cruise Website—FAQ (found at <http://ezcruiseparking.com/faqs/>) (Resp. App. Tab 042 at p.001710).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it makes global assumptions of fact based on the policies of only two parking facilities. Subject to and without waiving the foregoing objections, Complainants do not have enough information to either admit or deny the accuracy of this Proposed Finding of Fact.**

41. Both the Wharves and the private lots provide courtesy shuttle vans to take passengers to and from the Cruise Terminal, which is provided only to customers parking at the lot providing the service, and is provided at no additional charge. 81<sup>st</sup> Dolphin Advertisement, Robledo\_A\_000008 (Resp. App. Tab 041 at p. 001709); EZ Cruise Website—FAQ (found at <http://ezcruiseparking.com/faqs/>) (Resp. App. Tab 042 at p.001710).

**RESPONSE: Denied in part; Admitted in part. Complainants object to this Proposed Finding of Fact on grounds that it makes a blanket statement inapplicable to all entities identified therein. Complainants further object that the term “private parking lots” is not defined. Complainants include the private parking lots of local hotels/motels in such a definition.**

**Complainants deny that all private parking lots provide courtesy shuttle vans to carry passengers to and from the Cruise Terminal. See e.g., Audio Transcript of Meeting, September 22, 2014, at 8:7-19 (Comp. App., at p.000541).**

**Subject to the foregoing objections, Complainants admit that Complainants transport cruise passengers that park in Complainants’ parking lots, to and from the Cruise Terminal.**

42. There are one or two parking lots located across Harborside Drive from the Cruise Terminal; their customers typically arrive at the Cruise Terminal on foot, carrying their luggage with them. Affidavit of Michael Mierzwa at ¶ 31 (Resp. App. Tab 75 at p. 002074-002075).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it is an indefinite statement. Subject to the foregoing objections, Complainants admit that some cruise passengers walk to the Cruise Terminal.**

43. A relatively small number of cruise passengers arrive by taxicab - either local taxis, or taxis from other locations, such as the Houston Airports; limousine; or other charter bus services (hereafter sometimes collectively referred to as “Transportation Services”), which are not part of the Cruise lines' Fly-Cruise packages. Affidavit of Michael Mierzwa at ¶ 41 (Resp. App. Tab 75 at p. 002076).

**RESPONSE: Denied. Complainants object to this Proposed Finding of Fact on grounds that it seeks to include limousines and charter buses in the definition of “taxicab.” Complainants further object to the reliance on the phrase “relatively small number” when no comparisons have been made. Complainants are left to guess to whom or what Respondents are comparing the market share of taxicabs as defined by Respondents herein.**

**Subject to and without waiving the foregoing objections, Complainants deny that a relatively small number of cruise passengers arrive by local taxis; taxis from other locations; limousines; and charter bus services.**

44. Hotels and the Transportation Services are not similarly situated to Complainants or the Wharves. *Id.* at ¶20.

**RESPONSE: Denied. Complainants dispute this Proposed Finding of Fact in its entirety. See Comp. Original Brief; see also Audio Transcript, May 12, 2014, at 22:4-15 (Comp. App., at p.000424).**

45. Hotels and the Transportation Services are not in a direct competitive relationship with Complainants or the Wharves. Depo. of Sylvia Robledo at 50:17-51:2 (Resp. App. Tab 80 at p. 2314-2314).

**RESPONSE: Denied. Complainants dispute this Proposed Finding of Fact in its entirety. See Comp. Original Brief; see also Audio Transcript, May 12, 2014, at 22:4-15 (Comp. App., at p.000424).**

46. The City of Galveston places restrictions on the maximum rate of fares that may be charged by taxicab companies that operate within its city limits. Affidavit of Michael Mierzwa at

¶ 46 (Resp. App. Tab 75 at p. 002077); Affidavit of Margaret Benham at ¶ 5 (Resp. App. Tab 89 at p. 002627); Chapter 35, Section 35.86 (Resp. App. Tab 40 at p. 001707).

**RESPONSE: Complainants object to this Proposed Finding of Fact as misleading. Respondents attempt to imply that a taxicab's fare rate is the only factor by which a taxicab can charge a passenger. Subject to and without waiving the foregoing objections, Complainants admit that the maximum fare rate that a taxicab can charge in the City of Galveston is set by the City of Galveston. However, Complainants assert that a passenger directing a taxicab through an area which charges a toll or access fee, would bear the associated costs in addition to the fare rate charged by the taxicab.**

47. Complainants, hotels, and the Transportation Services all offer unique services to cruise passengers. Depo. Of George Templeton at 70:5-70:13 (Resp. App. Tab 083 at p. 2543).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it attempts to argue against Complainants' status of being similarly situated and/or in competitive relationships with the above identified entities on criteria wholly irrelevant to a finding of same. Complainants' status as similarly situated and/or in competitive relationships with other entities is not determined by the services they provide to the customers, but by the services provided to—and use made of—the Cruise Terminal. Complainants further object to this Proposed Finding of Fact because it misconstrues the testimony cited. In response to Respondents' attorney's question of whether hotels are in the same business as Complainant Lighthouse, Mr. George Templeton identified the obvious difference that his parking lot is not a hotel. Depo. of George Templeton, 70:5-8 (Resp. App. Tab 083, at p.2543). However, Mr. Templeton went on to identify that his operation and the hotels provide the same essential service to cruise passengers and the Cruise Terminal; they all operate shuttles that move cruise passengers in and out of the Cruise Terminal. *Id.* at 70:11-13.**

**Subject to and without waiving the foregoing objections, Complainants admit that they are similarly situated and/or in competitive relationships with local hotels/motels, limousines, taxicabs, and buses as outlined in Complainants' Original Brief.**

48. Cruise passengers who drive to Galveston on cruise day cannot park at a hotel, because they did not agree to stay there as paying guests. Affidavit of Steve Cunningham at ¶4 (Resp. App. Tab 88 at p. 002626); Galveston.com: Enhance Your Cruise with an Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p.001712).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it is incorrect and misstates Mr. Cunningham’s statements and the advertisements listed in the documents cited. Neither Mr. Cunningham nor the hotels advertising on the cited Galveston.com document state that a cruise passenger must stay at the hotel on a night prior to his or her cruise. Respondents have made a baseless assumption to support their position.**

**Subject to and without waiving the foregoing objections, Complainants admit than many local hotels that provide parking for cruise passengers and arrange for their transportation to and from the Cruise Terminal, require in addition to other fees for such parking and/or transportation, that the cruise passenger stay at least one night in the hotel as a guest. Complainants do not have enough information to admit or deny the time-frame in which each hotel requires those cruise passengers to stay as guests.**

49. Other cruise passengers who drive to Galveston several days prior to cruise do so to extend their vacation a few days and visit local beaches on the Gulf of Mexico, tour local examples of historic 19th Century architecture, sample fresh Gulf Coast Seafood, or pursue other recreational activities. Affidavit of Steve Cunningham at ¶ 2 (Resp. App. Tab 88 at p. 002625); Wharves—2014 Comprehensive Annual Financial Report at p. 52 (Resp. App. 77 at p. 002172).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it was made as a general statement, and in reference only to guests of a single hotel, the Hotel Galvez. Affidavit of Steve Cunningham, ¶2 (Resp. App. Tab 088, at p.002625). While Complainants believe all visitors to Galveston Island should take full advantage of and enjoy the rich history, architecture, dining, and other recreational activities available, Complainants object that a singular, vague statement made by a single hotel manager supports Respondents’ broad proposition.**

**Complainants further object that Respondents' cited evidence in support of this Proposed Finding of Fact, Wharves—2014 Comprehensive Annual Financial Report at pg. 52 (Resp. App. 77 at p.002172), is wholly irrelevant to and unsupportive of the proposition made.**

**Subject to and without waiving the foregoing objections, Complainants admit that some cruise passengers do drive to Galveston in order to have their own vehicles to use in exploring what the island has to offer.**

50. Passengers that arrive several days before their cruise departure likely will not live out of their car in a parking lot while doing so, but will instead check into one of Galveston's many fine hotels for the pre-cruise portion of their vacation. Galveston.com: Enhance Your Cruise with an Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p. 001712).

**RESPONSE: Complainants object to this Proposed Finding of Fact because it is an assumption, not a fact. Complainants further object on grounds that the evidence cited provides no support to Respondents' proposition other than to show the undisputed fact that hotels are located on Galveston Island.**

**Subject to and without waiving the foregoing objections, Complainants do not have enough information to admit or deny the vacation plans of hypothetical cruise passengers.**

51. These hotel customers will likely use a complimentary cruise parking and shuttle service if offered - having already paid to stay at the hotel first. Affidavit of Steve Cunningham at ¶4 (Resp. App. Tab 88 at p. 002626); Galveston.com: Enhance Your Cruise with an Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p.001712).

**RESPONSE: Complainants object to this Proposed Finding of Fact because it is an assumption, not a fact. The document cited as support for Respondents' proposition is equally supportive of the proposition that hotel customers will likely pay an additional fee to park their vehicles at the hotels identified therein, and to be shuttled to and from the Cruise Terminal.**

**Complainants further object on grounds that the evidence cited provides no support to Respondents' proposition other than to show the undisputed fact that the hotels identified in the cited document met the definition of an "Off-Port Parking Users" as defined in the Tariff from 2006 through September 30, 2014.**

**Subject to and without waiving the foregoing objections, Complainants do not have enough information to admit or deny the potential choices a hypothetical cruise passenger would make.**

52. Taxicabs and limousines provide transportation services to the public in general. Affidavit of Babak Roodi at ¶ 3 (Resp. App. Tab 85 at p. 002585);

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that evidence cited in support of this proposition does not contain the information set forth in the finding. The document cited is wholly void of reference to taxicabs. Similarly, the document, an affidavit of a single manager of a single limousine company, lacks determinative reference regarding whom the affiant's company, Colony Limousine, provides services to. In fact, the only reference identifying who Colony Limousine provides its services to is not the general public, but cruise passengers. Respondents would like for the assumption to be made that Colony Limousine—and therefore, all limousines and all taxis—provide only limited services to cruise passengers, and are otherwise providing their services to the general public.**

**Subject to and without waiving the foregoing objections, Complainants admit that taxicabs offer their services to the general public, including cruise passengers. Complainants however, do not have enough information to admit or deny to whom Colony Limousine in particular, much less limousines in general, offer their services to.**

53. Cruise passengers are, at best, an incidental portion of taxicabs and limousines' customer base. Affidavit of Babak Roodi at ¶ 3 (Resp. App. Tab 85 at p. 002585); Wharves—Monthly Board Meeting Minutes, February 27, 2006, at BOT\_000403 (Resp. App. Tab 068 at p.001944).

**RESPONSE: Denied in part; Admitted in part. Complainants object to this Proposed Finding of Fact on grounds that evidence cited in support of this proposition does not**

contain the information set forth in the finding. The affidavit of Babak Roodi is wholly void of reference to taxicabs, and addresses only a single, cherry-picked example chosen by Respondents to bolster their defense that, even though limousines were given disparate and preferential treatment over Complainants from 2008 through 2014 by waiver of the Access Fees required to be collected from limousines under the Tariff, somehow the violation of the Shipping Act is excusable because Respondents don't believe it hurt Complainants' businesses too bad. *See* (Resp. Brief, at pp.21, 23, fn. 5, 6).

Complainants further object to Respondents' use of the term "incidental portion." The evidence cited does not support the statement that "cruise passengers are an incidental portion of taxicabs and limousines' customer base."

Subject to and without waiving the foregoing objections, Complainants admit that the affidavit of Babak Roodi provides that "Colony Limousine makes only one to two trips per month to the Port of Galveston Cruise Terminal to drop off and pick up customers." Complainants deny that this provides any indication of what percentage of Colony Limousine's business those trips represent. *See* Affidavit of Babak Roodi, ¶3 (Resp. App. Tab 085, at p.002585). Complainants do not have enough information to admit or deny the percentage of business cruise passengers represent for all taxicabs and limousines.

54. The only relevant businesses that limit the types of customers they serve are the private parking lots. That is, you do not have to be a cruise passenger to hire a taxicab or limousine or rent a room at a hotel; indeed most of their customers do not. Affidavit of Steve Cunningham at ¶4 (Resp. App. Tab 88 at p. 002626); Galveston.com: Enhance Your Cruise with an Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p.001712); Affidavit of Babak Roodi at ¶ 3 (Resp. App. Tab 85 at p. 002585).

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that it attempts to argue against Complainants' status of being similarly situated and/or in competitive relationships with the above identified entities on criteria wholly irrelevant to a finding of same. Complainants' status as similarly situated and/or in competitive relationships with other entities is not determined by the services they provide to the customers, but by the services provided to—and use made of—the Cruise Terminal.

**Complainants maintain and admit that they are similarly situated and/or in competitive relationships with local hotels/motels, limousines, taxicabs, and buses as outlined in Complainants' Original Brief.**

55. Virtually all of Complainants' customers are cruise passengers seeking to park their vehicles for the duration of their cruises. Depo of George Templeton at 24:9-24:19 (Resp. App. Tab 083 at p. 2519); Depo of Cynthia Tompkins at 101:8-101:11 (Resp. App. Tab 82 at p. 2485).

**RESPONSE: Admit.**

56. In 2003, the Wharves issued Tariff Circular No. 6, Item 111, which describes rules and regulations for all vehicles owned by commercial entities seeking to access the Cruise Terminal to drop off and pick up cruise passengers. Wharves – Tariff Circular No. 6 (Item 111) revised November 14, 2003, at BOT\_017486-017491 (Resp. App. Tab 1 at p.000016-000022).

**RESPONSE: Complainants object that the above-cited revision (November 14, 2003) is not found pertaining to this Proposed Finding of Fact. Subject to and without waiving the foregoing objection, Complainants admit that the above-cited version of the Tariff was issued with the intention identified in the Proposed Finding of Fact. Subject to and without waiving the foregoing objections, Complainants do not have enough information to admit or deny whether all such vehicles are included in the Tariff.**

57. Included in these regulations are fees required for accessing the terminal. *Id.*

**RESPONSE: Complainants object that the above-cited revision (November 14, 2003) is not found pertaining to this Proposed Finding of Fact. Subject to and without waiving the foregoing objection, Complainants admit that the Tariff, as issued October 27, 2003 and effective November 1, 2003, addresses Access Fees.**

58. All such commercial entities accessing the Cruise Terminal must purchase a decal for each vehicle. *Id.* at BOT\_017486-017487 (Resp. App. Tab 074 at p. 1951-2069).

**RESPONSE: Denied. Complainants object that the above-cited revision (November 14, 2003) is not found pertaining to this Proposed Finding of Fact. Complainants further object that the evidence cited above does not support Respondents' proposition. The**

identified Tariff revision (Resp. App. Tab 001, BOT\_017486-017487), issued October 27, 2003 and effective November 1, 2003, provides that some such commercial entities must purchase a decal, while others must pay Access Fees. Wharves Tariff Circular No. 6 – Item 111, BOT\_017486-017487 (Resp. App. Tab 001, at pp.000016-000017). The other document cited by Respondents, Resp. App. Tab 074 at p. 1951-2069, shows only decals purchased by port users in 2007. Neither of these documents Respondents rely upon support this **Proposed Finding of Fact.**

59. To obtain the decal the owners or operators must show proof of insurance and add the Wharves and GPFC as additional insureds on their policies. Wharves – Tariff Circular No. 6 (Item 111) revised September 22, 2014, at BOT\_017861-017862 (Resp. App. Tab 006 at p.000389).

**RESPONSE: Denied in part; Admit in part. Complainants object to this Proposed Finding of Fact on grounds that the document cited to in support of the proposition is not the Tariff as published, but is a working copy of a Tariff with proposed changes. Subject to and without waiving the foregoing objections, Complainants admit that the above-cited document provides that “[i]n addition to the application and Port User Permit fee, all applications must be accompanied by a Certificate of Insurance showing proof of insurance . . . The City of Galveston and the Board of Trustees of the Galveston Wharves must also be named as ‘Additional Insureds’ . . .” (Resp. App. Tab 006, at p.000389). Complainants deny that the evidence cited demonstrates a requirement that GPFC be named as an additional insured on such policies.**

60. With the exception of taxicab operators, these owners and operators must also pay an access fee for each time they access the Cruise Terminal to pick up or unload passengers. Wharves – Tariff Circular No. 6 (Item 111) revised September 22, 2014, at BOT\_017862 (Resp. App. Tab 006 at p.000391).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that the document cited to in support of the proposition is not the Tariff as published, but is a working copy of a Tariff with proposed changes. Complainants further object to this Proposed Finding of Fact to the extent it implies that the identified Cruise Terminal users**

were charged proper Access Fees each time they accessed the Cruise Terminal and that such charges were properly collected. Complainants maintain that the Tariff was selectively enforced, and though it required specific Access Fees, invoicing and collection of same was routinely enforced only against Complainants.

**Subject to and without waiving the foregoing objections, Complainants admit that the Tariff, as effective October 1, 2014, mandated collection of Access Fees from Cruise Terminal users.**

61. The Wharves cannot require cruise passengers to arrive at the Cruise Terminal in commercial vehicles that pay Access Fees. GALVESTON, TEX., CHARTER, art. XII, §§ 1-2 (Comp. App. Tab 12 at p.278).

**RESPONSE: Denied. Complainants object to this Proposed Finding of Fact on grounds that the evidence cited in support thereof does not address the proposition made. To the contrary, the document cited provides that the Wharves Board “shall have those powers which are necessary or proper to the discharge of their responsibilities including, but not being limited to . . . the fixing of charges, . . . the determination of policies, and, in general, the complete management and control of the Galveston Wharves...” GALVESTON CITY CHARTER, art. XII, sec. 4 (Comp. App., at p.000278).**

62. From 2003 through August 15, 2006, the Wharves' Tariff provided that Complainants, other private parking lots, hotels and others covered therein were to pay Access Fees at the same rate -- A per trip. Wharves – Tariff Circular No. 6 (Item 111) revised November 14, 2003, at BOT\_017486-017491 (Resp. App. Tab 001 at p.016); Affidavit of Michael Mierzwa at ¶ 12 (Resp. App. Tab 75 at p. 002071).

**RESPONSE: Denied in part, Admitted in part. Complainants object to this Proposed Finding of Fact on grounds that the evidence cited does not possess the revision date of November 14, 2003, as identified by Respondents. Subject to and without waiving the foregoing objections, Complainants admit that most Cruise Terminal users covered therein were required by the Tariff to pay the same Access Fee. Complainants deny that taxicabs, as identified Cruise Terminal users covered therein, were required by the Tariff to pay the**

**same Access Fee as other Cruise Terminal users. Wharves Tariff Circular No. 6 – Item 111, revised October 27, 2003, BOT\_017486-017491 (Resp. App. Tab 001, at pp.000016-000021).**

63. The Wharves did not charge or seek to collect this per trip access fee until 2005, when it advised all persons and companies obligated to pay access fees under its Tariff that it would, in fact, assess and collect Access Fees. Affidavit of Michael Mierzwa at ¶ 15 (Resp. App. Tab 75 at p. 002072); Steven M. Cernak notice to Port users, May 20, 2005, EZC\_A\_005577-5583 (Resp. App. Tab 050 at p.1758).

**RESPONSE: Admit.**

64. The Wharves' staff collected data regarding the number of times these users actually accessed the Cruise Terminal in 2005 and through June of 2006. Port Tariff Charges for the Year 2006 (Access Fee Study) (Comp. App. Tab 29 at p.532).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that the evidence cited as support for Respondents' proposition shows only data collected from January 2006 through June 2006. Subject to and without waiving the foregoing objections, Complainants admit that the Wharves Board collected data regarding the number of times twelve (12) hotels/motels, four (4) limousine companies, five (5) bus companies, and Complainants were charged for access to the Cruise Terminal in the first six months of 2006.**

65. In 2005 and 2006 EZ Cruise used Galveston Limousine Co. as a contractor to provide complimentary shuttle service for its customers, because it did not own enough vehicles. Cynthia Hayes letter dated June 14, 2005, BOT\_010819-010831 (Resp. App. Tab 051 at p.1765); Depo. Of Cynthia Tompkins at 39:1-40:16 (Resp. App. Tab 082 at p.2474).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it is not a complete statement of the facts, and is therefore misleading. Complainants object to the extent Respondents proposition implies that EZ Cruise used Galveston Limousine Co. for the entirety of 2005 and 2006. Subject to and without waiving the foregoing objections, Complainants admit that EZ Cruise used Galveston Limousine Co. to shuttle its customers**

to and from the Cruise Terminal until March of 2006. Cynthia Hayes Letter, June 14, 2005, BOT\_010819-010820 (Resp. App. Tab 051, at pp.001765-001766).

66. During 2005 Complainants collectively accessed the Cruise Terminal 7,701 times: EZ Cruise accessed 2,316 utilizing its own shuttles and an additional 4,146 times utilizing shuttles owned by Galveston Limo, and 81<sup>st</sup> Dolphin accessed the Cruise Terminal 1,239 times. Port Tariff Charges for the Year 2005, BOT\_010851 (Resp. App. Tab 058 at p.1790).

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that the evidence cited as support for Respondents' proposition shows Complainants collectively accessing the Cruise Terminal 3,555 times in 2005, not 7,701 times. Port Tariff Charges for the Year 2005, BOT\_010851 (Resp. App. Tab 058, at p.001790). Complainants further object that the evidence cited is a document showing "Port Tariff Charges for the Year 2005," and does not purport to be an accounting, accurate or otherwise, of actual accesses to the Cruise Terminal—only of charges levied. *Id.* This goes to the heart of Complainants' complaint that other Cruise Terminal users were not charged for access to the Cruise Terminal.

Subject to and without waiving the foregoing objections, Complainants admit that EZ Cruise and 81<sup>st</sup> Dolphin accessed the Cruise Terminal in 2005. Otherwise, Complainants deny the accuracy and applicability of the evidence cited by Respondents.

67. Complainant Lighthouse Parking did not access the Cruise Terminal in 2005. *Id.*

**RESPONSE:** Admit.

68. Collectively, all hotels that accessed the Cruise Terminal in 2005 accessed 8,488 times. *Id.*

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that the evidence cited as support for Respondents' proposition is a document showing "Port Tariff Charges for the Year 2005," and does not purport to be an accounting, accurate or otherwise, of actual accesses to the Cruise Terminal—only of charges levied. Port Tariff Charges for the Year 2005, BOT\_010851 (Resp. App. Tab 058, at p.001790). This goes to

**the heart of Complainants' complaint that other Cruise Terminal users were not charged for access to the Cruise Terminal.**

**Subject to and without waiving the foregoing objections, Complainants do not have enough information to admit or deny the accuracy of Respondents' proposition.**

69. In the first six months of 2006, Complainants collectively accessed the Cruise Terminal 5,693 times: EZ Cruise accessed 1,669 utilizing its own shuttles and an additional 1,297 times through the month of March utilizing shuttles owned by Galveston Limo, Lighthouse Parking accessed 1,423 times and 81<sup>st</sup> Dolphin accessed the Cruise Terminal 1,304 times. Port Tariff Charges for the Year 2006, BOT\_010846 (Comp. App. Tab 29 at p.532).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that the evidence cited as support for Respondents' proposition directs to BOT\_010846, which is not the same document as Comp. App., at 000532, and therefore is an unsupported statement. See Port Tariff Access Fee Study – 2006, BOT\_010831, 010834 (Comp. App., at pp.000532-000533). Complainants further object on grounds that Comp. App., at 000532 shows Complainants collectively accessing the Cruise Terminal 4,396 times in the first half of 2006, not 5,693 times. Port Tariff Access Fee Study – 2006, BOT\_010831, 010834 (Comp. App., at pp.000532-000533). Subject to and without waiving the foregoing objections, Complainants admit that the evidence cited shows Complainants were charged Access Fees for accessing the Cruise Terminal 4,396 times in the first half of 2006.**

70. All thirteen hotels collectively accessed the Cruise Terminal 5,135 during the first six months of 2006. *Id.*

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that the evidence cited as support for Respondents' proposition directs to BOT\_010846, which is not the same document as Comp. App., at 000532, and therefore is an unsupported statement. See Port Tariff Access Fee Study – 2006, BOT\_010831, 010834 (Comp. App., at pp.000532-000533). Complainants object to this Proposed Finding of Fact on grounds that the evidence cited as support for Respondents' proposition is a document showing "Port Tariff Charges for the Year 2006," and does not purport to be an accounting, accurate or**

**otherwise, of actual accesses to the Cruise Terminal—only of charges levied. Port Tariff Access Fee Study – 2006, BOT\_010831, 010834 (Comp. App., at pp.000532-000533). This goes to the heart of Complainants’ complaint that other Cruise Terminal users were not charged for access to the Cruise Terminal.**

**Subject to and without waiving the foregoing objections, Complainants do not have enough information to admit or deny the accuracy of Respondents’ proposition.**

71. The three Complainants accessed the Cruise Terminal more times during the first six months of 2006 than all thirteen hotels combined. *Id.*

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that the evidence cited as support for Respondents’ proposition directs to BOT\_010846, which is not the same document as Comp. App., at p.000532, and therefore is an unsupported statement. See Port Tariff Access Fee Study – 2006, BOT\_010831, 010834 (Comp. App., at pp.000532-000533). Complainants object to this Proposed Finding of Fact on grounds that the evidence cited as support for Respondents’ proposition is a document showing “Port Tariff Charges for the Year 2006,” and does not purport to be an accounting, accurate or otherwise, of actual accesses to the Cruise Terminal—only of charges levied. Port Tariff Access Fee Study – 2006, BOT\_010831, 010834 (Comp. App., at pp.000532-000533). This goes to the heart of Complainants’ complaint that other Cruise Terminal users were not charged for access to the Cruise Terminal.**

**Subject to and without waiving the foregoing objections, Complainants do not have enough information to admit or deny the accuracy of Respondents’ proposition.**

72. From January 2005 through August 2006, Complainants were invoiced for Access Fees on a per trip basis, but refused to pay the full amounts owed. Steven Cernak July 29, 2005, letter to EZ Cruise, BOT\_011064-011068 (Resp. App. Tab 052 at p.1768); Cynthia Hayes (Tompkins) October 15, 2005, letter to Wharves, BOT\_010815 (Resp. App. Tab 053 at p.1773); R. Wayne Byrd August 16, 2006, letter to EZ Cruise, BOT\_010845 (Resp. App. Tab 056 at p.1787); Michael Mierzwa July 20, 2006, letter to EZ Cruise, BOT\_010816-010820 (Resp. App. Tab 054

at p.1774); Michael Mierzwa July 25, 2006, letter to Lighthouse Parking, BOT\_010832-010839 (Resp. App. Tab 055 at p.1779).

**RESPONSE: Complainants object to this Proposed Finding of Fact because the evidence cited does not support Respondents' proposition. Nothing cited by Respondents shows Complainants' refusal to pay the full amounts owed. Instead, each document cited, individually and collectively, demonstrates negotiations between Complainants and Respondents.**

**Subject to and without waiving the foregoing objections, Complainants admit that the Access Fees assessed to Complainants between January 2005 and June 2006 were in dispute and negotiated to resolution.**

73. The Wharves continued to try to work with them to reach an agreement under which they would pay their Access Fees. Steven Cernak July 29, 2005, letter to EZ Cruise, BOT\_011064-011068 (Resp. App. Tab 052 at p.1768); Cynthia Hayes (Tompkins) October 15, 2005, letter to Wharves, BOT\_010815 (Resp. App. Tab 053 at p.1773); R. Wayne Byrd August 16, 2006, letter to EZ Cruise, BOT\_010845 (Resp. App. Tab 056 at p.1787); Michael Mierzwa July 20, 2006, letter to EZ Cruise, BOT\_010816-010830 (Resp. App. Tab 054 at p.1774); Michael Mierzwa July 25, 2006, letter to Lighthouse Parking, BOT\_010832-010839 (Resp. App. Tab 055 at p.1779); Cynthia Hayes (Tompkins) June 14, 2005, letter to Wharves, BOT\_010819-010820 (Resp. App. Tab 051 at p.1765).

**RESPONSE: Complainants object to this Proposed Finding of Fact because it incorrectly implies that the subject negotiations were one-sided concessions by the Wharves Board. The documents cited by Respondents show all parties making concessions to reach an agreement acceptable to all.**

**Subject to and without waiving the foregoing objections, Complainants admit that the Access Fees assessed to Complainants between January 2005 and June 2006 were in dispute and negotiated to resolution.**

74. During discussions on this issue, Complainants complained that the Access Fees were too high, and could vary significantly from month to month. Cynthia Hayes (Tompkins) October 15,

2005, letter to Wharves, BOT\_010815 (Resp. App. Tab 053 at p.1773); Cynthia Hayes (Tompkins) June 14, 2005, letter to Wharves, BOT\_010819-010820 (Resp. App. Tab 051 at p.1765).

**RESPONSE: Denied in part; Admitted in part. Complainants object to this Proposed Finding of Fact on grounds that it includes a patently untrue statement. The evidence cited by Respondents as support for same, nowhere includes nor even suggests, that Ms. Hayes (Tompkins), much less all Complainants, ever complained that Access Fees “could vary significantly from month to month.” Accordingly, Complainants deny same.**

**Complainants further object to this Proposed Finding of Fact to the extent it attributes EZ Cruise’s complaint that the then Access Fees were too high, to all Complainants without support for same. Subject to and without waiving the foregoing objections, Complainants admit that EZ Cruise complained that the Access Fees then charged were too high. Otherwise, denied.**

75. During discussions, Complainants asked to be treated differently from other users and pay some type of flat rate for unlimited access. Cindy Hayes letter dated June, 14, 2005, BOT\_010819 (Resp. App. Tab 051 at p.1765); Cindy Hayes letter dated October 15, 2005, BOT\_010815 (Resp. App. Tab 053 at p.1773); Michael Mierzwa letter date July 20, 2006, BOT\_010816-010818 (Resp. App. Tab 054 at p.1774); Depo. of George Templeton at 40:12-40:25 (Resp. App. Tab 83 at p. 2531); “Shuttle Diplomacy” Article in July 31, 2006, edition of The Daily News, EZC\_A\_001811-001813 (Resp. App. 047 at p. 1752); Depo. Of Sylvia Robledo at 63:2-63:4 (Resp. App. Tab 80 at p. 2321).

**RESPONSE: Denied in part; Admitted in part. Complainants object to this Proposed Finding of Fact on grounds that it includes a patently untrue statement that is not supported by evidence cited by Respondents.**

**Subject to and without waiving the foregoing objections, Complainants admit that, in the process of negotiations, they agreed to payment of a flat-rate Access Fee. Complainants deny that they asked that other Cruise Terminal users not be charged a flat-rate, or that Complainants be treated differently than other Cruise Terminal users.**

76. In the Fall of 2005 EZ Cruise owner Cynthia Tompkins (formerly Cynthia Hayes) wrote to (then) Deputy Port Director Michael Mierzwa asking that EZ Cruise be charged an access fee of \$1,000 per month for unlimited access to the Cruise Terminal. Cindy Hayes letter dated October 15, 2005, BOT\_010815 (Resp. App. Tab 053 at p.1773).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it mischaracterizes the evidence cited. The evidence cited by Respondents in support of this proposition shows EZ Cruise asking for a flat-rate, but nowhere addresses limitations on access to the Cruise Terminal. Cindy Hayes Letter, October 15, 2005, BOT\_010815 (Resp. App. Tab 053, at p.001773).**

**Subject to and without waiving the foregoing objections, Complainants admit that EZ Cruise requested a flat-rate Access Fee of \$1,000.00 per month. Otherwise, denied.**

77. Complainants met with Wharves' staff on many occasions in late 2005 through June of 2006, still refusing to pay an access fee on a "per trip" basis. Cindy Hayes letter dated June, 14, 2005, BOT\_010819 (Resp. App. Tab 051 at p.1765); Cindy Hayes letter dated October 15, 2005, BOT\_010815 (Resp. App. Tab 053 at p.1773); Michael Mierzwa letter date July 20, 2006, BOT\_010816-010818 (Resp. App. Tab 054 at p.1774); Depo. Of George Templeton at 40:12-40:25 (Resp. App. Tab 83 at p. 2531); "Shuttle Diplomacy" Article in July 31, 2006, edition of The Daily News, EZC\_A\_001811-001813 (Resp. App. Tab 047 at p. 1752).

**RESPONSE: Complainants object to this Proposed Finding of Fact because the evidence cited does not support Respondents' proposition. Evidence cited by Respondents indicates and identifies only two (2) meetings between the Wharves Board's staff and Complainants; one on May 25, 2006 and one on June 26, 2006. Cindy Hayes Letter, June 14, 2006, BOT\_010819 (Resp. App. Tab 051, at p.001765); Michael Mierzwa Letter, July 20, 2006, BOT\_010816 (Resp. App. Tab 054, at p.001774). Complainants further object to Respondents' proposition because no evidence cited by Respondents shows Complainants' refusal to pay an Access Fee on a "per trip" basis. Instead, each document cited, individually and collectively, demonstrates negotiations between Complainants and Respondents.**

**Subject to and without waiving the foregoing objections, Complainants admit that the Wharves Board's staff granted two meetings with Complainants, and that Complainants were attempting to negotiate Access Fees with the Wharves Board between January 2005 and June 2006. Otherwise, denied.**

78. After protracted negotiation, the Complainants and the Wharves staff agreed on a simple fee formula – the Complainants would be charged a flat dollar rate per month for each space in their lots used for cruise passenger parking. Wharves – Tariff Circular No. 6 (Item 111) revised November 14, 2003, at BOT\_017486-017491 (Resp. App. Tab 001 at p.016); Affidavit of Michael Mierzwa at ¶ 12 (Resp. App. Tab 75 at p. 002071); Affidavit of Michael Mierzwa at ¶ 18 (Resp. App. Tab 75 at p. 002072).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that the evidence cited as support for Respondents' proposition does not contain the information set forth in this proposed finding. The Tariff cited does not show a revision date of November 14, 2003 as indicated, neither does it address a per-space per-month Access Fee. See Wharves Tariff Circular No. 6 – Item 111, BOT\_017486-017491 (Resp. App. Tab 001, at pp.000016-000021). Paragraph 12 of Mr. Mierzwa's Affidavit is similarly absent any substance related to a per-space per-month Access Fee. See Affidavit of Michael Mierzwa, ¶12 (Resp. App. Tab 075, at p.002071). The only relevant evidence cited to by Respondents, paragraph 18 of Mr. Mierzwa's Affidavit, provides that Complainants were to be charged "an Access Fee rate of \$8 per space per month, for each space in their parking lots." *Id.* at ¶18, p.002072. Respondents' attempt to imply that Complainants were charged only for parking spaces used. This was not the case. See Depo. of George Templeton, 40:1-11 (Resp. App. Tab 083, at p.002531).**

**Subject to and without waiving the foregoing objections, Complainants admit that after negotiations with the Wharves Board's staff, an amendment to the Tariff was made, whereby Complainants were charged Access Fees based on the number of parking spaces in their parking lots.**

79. Ultimately, in 2006 the Wharves decided on a rate of \$8 per space per month. Depo. Of George Templeton at 40:12-40:25 (Resp. App. Tab 83 at p. 2531).

**RESPONSE: Complainants admit that the Wharves Board amended the Tariff in 2006, thereafter charging Complainants Access Fees of \$8 per space in their parking lots, per month.**

80. Complainants have admitted that the \$8 per space per month rate was a good “deal.” Depo. of George Templeton at 40:12-40:25 (Resp. App. Tab 83 at p. 2531).

**RESPONSE: Denied. Complainants object to this Proposed Finding of Fact on grounds that it is patently false and the document proffered as proof of this proposition does not support the claim. Complainants further object to this proposition to the extent Respondents attempt to show that circumstances they claim to be beneficial to one of Complainants, are necessarily beneficial to all Complainants.**

81. This agreed upon rate was put into effect on August 15, 2006, and applied retroactively to January 1, 2005 - but only for these Complainants. Affidavit of Michael Mierzwa at ¶ 21 (Resp. App. Tab 75 at p. 002072).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that the evidence cited does not support Respondents’ proposition. The evidence cited by Respondents states that the “\$8 per space per month rate was applied retroactively to January 1, 2005,” but does not indicate whether such retroactive reductions were granted to other Cruise Terminal users. See Affidavit of Michael Mierzwa, ¶21 (Resp. App. Tab 75, at p.002072).**

**Subject to and without waiving the foregoing objections, Complainants admit that the Tariff Rate of \$8 per space per month as established in the August 2006 amendment to the Tariff, was applied retroactively for Complainants to January 1, 2005. Otherwise, Complainants do not have enough information to admit or deny.**

82. During the same time period, the hotels and others assessed Access Fees paid the full amount due under the per-trip access fee. Commodore Access Fees (BOT 015921 – BOT 15950) (Comp. App. Tab 46 at p.771), County Inn Access Fees (BOT 015951 – BOT 15982) (Comp. App. Tab 47 at p.801), Marriott Access Fees (BOT 015983 – BOT 16004) (Comp. App. Tab 48 at p.833), Fertitta Access Fees (BOT 016196 – BOT 16262) (Comp. App. Tab 49 at p.855),

Galveston Beach Hotel Access Fees (BOT 01626 3 – BOT 16273) (Comp. App. Tab 50 at p.922), Hampton Inn Access Fees (BOT 016274 – BOT 16321) (Comp. App. Tab 51 at p.933), Holiday Inn Access Fees (BOT 016322 – BOT 16379) (Comp. App. Tab 52 at p.982), Holiday Inn (Sunspreet Resort) Access Fees (BOT 016380 – BOT 16441) (Comp. App. Tab 53 at p.1039), Galvez Hotel Access Fees (BOT 016442 – BOT 16557) (Comp. App. Tab 54 at p.1101), Inn at the Waterpark Access Fees (BOT 016558 – BOT 16568) (Comp. App. Tab 55 at p.1217), Island Breeze Shuttle Access Fees (BOT 016569 – BOT 16579) (Comp. App. Tab 56 at p.1228), LaQuinta Hotel Access Fees (BOT 016580 – BOT 16686) (Comp. App. Tab 57 at p.1239), Moody Gardens Access Fees (BOT 016798 – BOT 16916) (Comp. App. Tab 58 at p.1346), San Luis Hotel Access Fees (BOT 016922 – BOT 17038) (Comp. App. Tab 59 at p.1465), Tremont Hotel Access Fees (BOT 017039 – BOT 17144) (Comp. App. Tab 60 at p.1582).

**RESPONSE: Complainants object to this Proposed Finding of Fact to the extent it implies that all “hotels and others assessed Access Fees” were in fact assessed Access Fees every time they accessed the Cruise Terminal. Subject to and without waiving the foregoing objections, Complainants do not have enough information to admit or deny truth in totality of Respondents’ proposition. Complainants deny that Cruise Terminal users other than Complainants were routinely assessed Access Fees as required by the Tariff.**

83. The \$8.00 per space per month agreement resulted in significant savings for Complainants for fees assessed from January of 2005 to June of 2006. Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.401); Affidavit of Jeffrey Compton at ¶40 and Exhibits C1, C2 and C3 (Resp. App. Tab 103 at p. 2766, 2773-2775).

**RESPONSE: Denied. Complainants object to this Proposed Finding of Fact on grounds that it attempts to characterize the Tariff as an agreement. Complainants object to this proposition because it is opposed by Complainants own testimony. See e.g., Depo. of George Templeton, 40:4-11 (Resp. App. Tab 083, at p.002531). Complainants further object to this proposition because the evidence cited by Respondents fails to take account of the fact admitted by Respondents, that as a result of Complainants being charged based on a metric other than actual access to the Cruise Terminal while, at the same time, all other Cruise Terminal users were required to be charged based on their actual access to the**

**Cruise Terminal, Complainants were injured by the Wharves Board's selectively and sporadically assessing Access Fees to those entities that were charged based on actual access to the Cruise Terminal. See (Resp. Corr. Brief at pp.21, 23 at fn. 5 and 6).**

84. Because it would have paid \$87,930.00 in access fees under the \$10 per space system and only paid \$35,680.00 as part of the per-space assessment, EZ Cruise realized a savings of \$52,250.00 for the period of January 2005 to June of 2006. Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.401); Affidavit of Jeffrey Compton (Resp. App. Tab 103 at p. 2766, 2773-2775); Invoices—EZ Cruise, BOT\_016088 (Resp. App. Tab 032 at p.1607).

**RESPONSE: Denied. Complainants object to this Proposed Finding of Fact on grounds that it attempts to characterize the Tariff as an agreement. Complainants object to this proposition because it is opposed by Complainants own testimony. See e.g., Depo. of George Templeton, 40:4-11 (Resp. App. Tab 083, at p.002531). Complainants further object to this proposition because the evidence cited by Respondents fails to take account of the fact admitted by Respondents, that as a result of Complainants being charged based on a metric other than actual access to the Cruise Terminal while, at the same time, all other Cruise Terminal users were required to be charged based on their actual access to the Cruise Terminal, Complainants were injured by the Wharves Board's selectively and sporadically assessing Access Fees to those entities that were charged based on actual access to the Cruise Terminal. See (Resp. Corr. Brief at pp.21, 23 at fn. 5 and 6).**

85. Because it would have paid \$14,230.00 in access fees under the \$10 per space system and only paid \$9,120.00 as part of the per-space assessment, Lighthouse realized a savings of \$5,110.00 for the period of January 2006 to June of 2006. Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.401); Affidavit of Jeffrey Compton (Resp. App. Tab 103 at p. 2766, 2773-2775); Invoices—Lighthouse, BOT\_016688 (Resp. App. Tab 034 at p.1640).

**RESPONSE: Denied. Complainants object to this Proposed Finding of Fact on grounds that it attempts to characterize the Tariff as an agreement. Complainants object to this proposition because it is opposed by Complainants own testimony. See e.g., Depo. of George Templeton, 40:4-11 (Resp. App. Tab 083, at p.002531). Complainants further object to this proposition because the evidence cited by Respondents fails to take account of**

**the fact admitted by Respondents, that as a result of Complainants being charged based on a metric other than actual access to the Cruise Terminal while, at the same time, all other Cruise Terminal users were required to be charged based on their actual access to the Cruise Terminal, Complainants were injured by the Wharves Board's selectively and sporadically assessing Access Fees to those entities that were charged based on actual access to the Cruise Terminal. See (Resp. Corr. Brief at pp.21, 23 at fn. 5 and 6).**

86. Because it would have paid \$25,430.00 in access fees under the \$10 per space system and only paid \$11,520.00 as part of the per-space assessment, 81<sup>st</sup> Dolphin realized a savings of \$13,910.00 for the period of January 2005 to June of 2006. Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.401); Affidavit of Jeffrey Compton (Resp. App. Tab 103 at p. 2766, 2773-2775); Invoices—81<sup>st</sup> Dolphin, BOT\_015797 (Resp. App. Tab 030 at p.1571).

**RESPONSE: Denied. Complainants object to this Proposed Finding of Fact on grounds that it attempts to characterize the Tariff as an agreement. Complainants object to this proposition because it is opposed by Complainants own testimony. See e.g., Depo. of George Templeton, 40:4-11 (Resp. App. Tab 083, at p.002531). Complainants further object to this proposition because the evidence cited by Respondents fails to take account of the fact admitted by Respondents, that as a result of Complainants being charged based on a metric other than actual access to the Cruise Terminal while, at the same time, all other Cruise Terminal users were required to be charged based on their actual access to the Cruise Terminal, Complainants were injured by the Wharves Board's selectively and sporadically assessing Access Fees to those entities that were charged based on actual access to the Cruise Terminal. See (Resp. Corr. Brief at pp.21, 23 at fn. 5 and 6).**

87. The Wharves Board of Trustees approved the agreement between Complainants and Wharves staff, and the Tariff was modified to reflect that Complaints and other private parking lot owners would pay \$8 per space per month as "Off-Port Parking Users." Wharves – Tariff Circular No. 6 (Item 111) revised August 28, 2006, at BOT\_0017559- 017565 (Resp. App. Tab 002 at p.90); Affidavit of Michael Mierzwa at ¶ 19 (Resp. App. Tab 75 at p. 002072).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it incorrectly implies that the Tariff, as modified, required only Complainants and other**

private parking lot owners to pay Access Fees of \$8 per space per month. The identified Tariff required all “Off-Port Parking Users” to pay Access Fees based on the same criteria—per space per month. Wharves Tariff Circular No. 6 – Item 111, BOT\_017560-017563 (Resp. App. Tab 002, at pp.000090-000093).

The definition of “Off-Port Parking User” as provided in the Tariff, included all local hotels/motels that “provide[d] or arrange[d] for one or more commercial passenger vehicles, courtesy vehicles, buses or shuttles, however owned or operated, to pick up or drop off passengers within a terminal complex of the Galveston Wharves in connection with the operations of a business of the user involving the parking of motor vehicles of any type at a facility located outside of the boundaries of property owned, operated or controlled by the Galveston Wharves.” *Id.*; *see also* Galveston.com Advertisements (Resp. App. Tab 043, at pp.001712-001713) (showing hotels meeting that definition).

Subject to and without waiving the foregoing objections, Complainants admit that the Tariff identified in this proposition required Complainants to pay \$8 per space per month.

88. One of the Trustees who voted for this change was Don Suderman. His wife owns a fifty percent (50%) interest in Complainant Lighthouse Parking, Inc. Depo of George Templeton at 48:13-49:16 (Resp. App. Tab 83 at p. 2536-2537); Lighthouse Stock Purchase and Sale Agreement, L.T. 001142-001146 (Exhibit No. 43 of Deposition) (Resp. App. Tab 20 at p. 1443).

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that it incorrectly implies that Ms. Suderman owned interest in Complainant Lighthouse Parking, Inc. at or around the time that Mr. Suderman voted for the Tariff modification. As identified by Respondents, the Tariff was modified, with the benefit of Mr. Suderman’s vote, in August of 2006. *See* Wharves Tariff Circular No. 6 – Item 111, BOT\_017560-017563 (Resp. App. Tab 002, at pp.000090-000093); *see also* Resp. PFF No. 87, above. Contrary to Respondents’ intended implication, Ms. Suderman purchased an ownership interest in Lighthouse on April 1, 2009. Lighthouse Stock Purchase and Sale Agreement (Resp. App. Tab 020, at p.001443). Ms. Suderman did not own any interest in Lighthouse until three years after Mr. Suderman’s vote. Any implied impropriety made by Respondents is wholly unsupported by facts, and is nothing more than a thinly veiled

**attempt to attack Mr. Suderman for his past differences of opinion with the Wharves Board.**

89. The 2006 Tariff revision also provided for increases based on the Consumer Price Index beginning on August 15, 2011. Wharves – Tariff Circular No. 6 (Item 111) revised August 28, 2006, at BOT\_0017561 (Resp. App. Tab 002 at p.091).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it misstates the terms of the Tariff. The 2006 Tariff does not “provide for increases based on the Consumer Price Index beginning on August 15, 2011,” instead, the Tariff *requires* such incremental increases be made annually. Wharves Tariff Circular No. 6 – Item 111, BOT\_017561 (Resp. App. Tab 002, at p.000091).**

90. The Wharves did not implement this increase, pending an overall study of Cruise Terminal finances and access fees, which led so the 2014 changes to the Wharves' Tariff. Affidavit of Peter Simons at ¶ 3 (Resp. App. Tab 76; at p. 002078; Affidavit of Michael Mierzwa at ¶ 27 (Resp. App. Tab 75 at p. 002073).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that the evidence cited does not support Respondents’ proposition. The affidavits of both Mr. Mierzwa and Mr. Simons fail to provide any indication of the impetus for the 2014 changes to the Tariff. See Affidavit of Peter Simons, ¶3 (Resp. App. Tab 076, at p.002078); Affidavit of Michael Mierzwa, ¶27 (Resp. App. Tab 075, at p.002073).**

**Respondents have not provided, and Complainants do not have, enough information for Complainants to admit or deny the truth of this Proposed Finding of Fact.**

91. From August 15, 2006, through October 1, 2014, the Access Fees charged to Complainants and other private parking lot owners did not change. Wharves – Tariff Circular No. 6 (Item 111) revised August 28, 2006, at BOT\_017561 (Resp. App. Tab 002 at p.091); Wharves – Tariff Circular No. 6 (Item 111) revised December 17, 2007, at BOT\_017637 (Resp. App. Tab 003 at p.167).

**RESPONSE:** Complainants admit that the Access Fees charged to Complainants did not change from August 15, 2006 through September 30, 2014.

92. Reducing the fee to an \$8 per space flat fee reduced EZ Cruise' access fees by 39.7% or \$6.00 per trip. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p. 2785).

**RESPONSE:** Denied. Complainants object to this Proposed Finding of Fact on grounds that the evidence cited by Respondents fails to identify any changes in the number of parking spaces EZ Cruise operated throughout the time period of the calculation. *See Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104, at p.002785).* Complainants also object to this proposition on grounds that the document cited provides no information on where the average number of trips per month was obtained. *Id.* Complainants further object to this proposition because the evidence cited by Respondents fails to take account of the fact admitted by Respondents, that as a result of Complainants being charged based on a metric other than actual access to the Cruise Terminal while, at the same time, all other Cruise Terminal users were required to be charged based on their actual access to the Cruise Terminal, Complainants were injured by the Wharves Board's selectively and sporadically assessing Access Fees to those entities that were charged based on actual access to the Cruise Terminal. *See (Resp. Corr. Brief at pp.21, 23 at fn. 5 and 6); see also Depo. of George Templeton, 40:1-11 (Resp. App. Tab 083, at p.002531).*

93. Under the new \$8 per space per month tariff rate, EZ Cruise would only be charged \$2,560 per month. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p. 2785).

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that the evidence cited by Respondents fails to identify any changes in the number of parking spaces EZ Cruise operated throughout the time period of the calculation. *See Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104, at p.002785).*

Subject to and without waiving the foregoing objections, Complainants admit that 320 (parking spaces) multiplied by \$8 (per space per month), equals \$2,560 per month.

94. This would equate to a dollar savings of \$1,690 savings per month for EZ Cruise. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p. 2785); Affidavit of Jeffrey Compton at ¶ (Resp. App. Tab 103 at p. 2775); Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.418).

**RESPONSE: Denied. Complainants object to this Proposed Finding of Fact because it is opposed by Complainants own testimony. See e.g., Depo. of George Templeton, 40:4-11 (Resp. App. Tab 083, at p.002531). Complainants also object to this proposition on grounds that the evidence cited by Respondents, the Affidavit of Jeffrey Compton and the Rebuttal Report of Jeffrey Compton, do not support the proposition made. Affidavit of Jeffrey Compton (Resp. App. Tab 103, at p.002775); Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007, at p.000418). Complainants further object to this proposition because the evidence cited by Respondents fails to take account of the fact admitted by Respondents, that as a result of Complainants being charged based on a metric other than actual access to the Cruise Terminal while, at the same time, all other Cruise Terminal users were required to be charged based on their actual access to the Cruise Terminal, Complainants were injured by the Wharves Board's selectively and sporadically assessing Access Fees to those entities that were charged based on actual access to the Cruise Terminal. See (Resp. Corr. Brief at pp.21, 23 at fn. 5 and 6); see also Depo. of George Templeton, 40:1-11 (Resp. App. Tab 083, at p.002531).**

95. Extended from August of 2006 to May of 2014, this savings was more than \$20,000 per year or approximately \$150,000 per year, before factoring the additional spaces added by EZ Cruise. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p.2785).

**RESPONSE: Denied. Complainants object to this Proposed Finding of Fact because of the inherent ambiguity in the amount of savings suggested therein. Complainants object to this Proposed Finding of Fact on grounds that the evidence cited by Respondents fails to identify any changes in the number of parking spaces EZ Cruise operated throughout the time period of the calculation. See Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104, at p.002785). Complainants also object to this proposition on grounds that the document cited provides no information on where the average number of**

trips per month was obtained. *Id.* Complainants further object to this proposition because the evidence cited by Respondents fails to take account of the fact admitted by Respondents, that as a result of Complainants being charged based on a metric other than actual access to the Cruise Terminal while, at the same time, all other Cruise Terminal users were required to be charged based on their actual access to the Cruise Terminal, Complainants were injured by the Wharves Board's selectively and sporadically assessing Access Fees to those entities that were charged based on actual access to the Cruise Terminal. *See* (Resp. Corr. Brief at pp.21, 23 at fn. 5 and 6); *see also* Depo. of George Templeton, 40:1-11 (Resp. App. Tab 083, at p.002531).

96. Lighthouse Parking with 195 spaces in 2006 and averaging 240 trips a month saved 35.0% in fees or approximately \$12,000 per year and \$90,000.00 since August of 2006, before its expansion. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p. 2785); Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.419).

**RESPONSE: Denied.** Complainants object to this Proposed Finding of Fact on grounds that the evidence cited by Respondents fails to identify any changes in the number of parking spaces Lighthouse operated throughout the time period of the calculation. *See* Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104, at p.002785). Complainants also object to this proposition on grounds that the document cited provides no information on where the average number of trips per month was obtained. *Id.* Complainants object to this Proposed Finding of Fact on grounds that the evidence cited, Rebuttal Report of Jeffrey Compton at p.419, is wholly unresponsive and unrelated to the proposition made. Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007, at p.000419). Complainants further object to this proposition because the evidence cited by Respondents fails to take account of the fact admitted by Respondents, that as a result of Complainants being charged based on a metric other than actual access to the Cruise Terminal while, at the same time, all other Cruise Terminal users were required to be charged based on their actual access to the Cruise Terminal, Complainants were injured by the Wharves Board's selectively and sporadically assessing Access Fees to those entities that were charged based on actual access to the Cruise Terminal. *See* (Resp. Corr. Brief at pp.21, 23 at fn. 5 and 6); *see also* Depo. of George Templeton, 40:1-11 (Resp. App. Tab 083, at p.002531).

97. 81<sup>st</sup> St. Dolphin with 120 spaces in 2006 and averaging 224 trips per month saved 57% in fees or approximately \$5,300 per year and over \$40,000.00 since August 2006, before its increase in space allocation. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p. 2785); Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.420).

**RESPONSE: Denied. Complainants object to this Proposed Finding of Fact on grounds that the evidence cited by Respondents fails to identify any changes in the number of parking spaces Lighthouse operated throughout the time period of the calculation. See Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104, at p.002785). Complainants also object to this proposition on grounds that the document cited provides no information on where the average number of trips per month was obtained. Id. Complainants object to this Proposed Finding of Fact on grounds that the evidence cited, Rebuttal Report of Jeffrey Compton at p.420, is wholly unresponsive and unrelated to the proposition made. Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007, at p.000420). Complainants further object to this proposition because the evidence cited by Respondents fails to take account of the fact admitted by Respondents, that as a result of Complainants being charged based on a metric other than actual access to the Cruise Terminal while, at the same time, all other Cruise Terminal users were required to be charged based on their actual access to the Cruise Terminal, Complainants were injured by the Wharves Board's selectively and sporadically assessing Access Fees to those entities that were charged based on actual access to the Cruise Terminal. See (Resp. Corr. Brief at pp.21, 23 at fn. 5 and 6); see also Depo. of George Templeton, 40:1-11 (Resp. App. Tab 083, at p.002531).**

98. For others paying Access Fees on a per-trip basis, changes were made to the Tariff in 2007 to delineate per trip fees on the basis of the passenger capacity of the shuttle vans accessing the Cruise Terminals. Wharves – Tariff Circular No. 6 (Item 111) revised December 17, 2007, at BOT\_017637 (Resp. App. Tab 003 at p.167).

**RESPONSE: Complainants object to this Proposed Finding of Fact to the extent it limits the Cruise Terminal users for which Access Fees were increased in 2007 to “shuttle vans.” Subject to and without waiving the foregoing objections, Complainants admit that changes**

**were made to the Tariff in 2007 that created graduated Access Fees based on the passenger capacity of the vehicle accessing the Cruise Terminal.**

99. Despite the change, the Wharves did not receive the benefit of the 2007 rate changes until after the 2013 -2014 review of cruise terminal access issues by Wharves staff disclosed an inadvertent failure to collect the higher amounts charged for larger buses and shuttle vans required by the amended Tariff. Affidavit of Mark Murchison at ¶ 23 (Resp. App. Tab 77 at p. 002086).

**RESPONSE: Complainants admit that the Wharves Board failed to enforce the Tariff as written from 2007 to 2014.**

100. Specifically the employee responsible for counting vehicles accessing the Cruise Terminal apparently was not aware of the higher rates, and charged all such vehicles a \$10 access fee per trip regardless of size - in violation of the Tariff. As a result, some commercial users paying access fees on a per-trip basis were charged less than they should have been charged. This oversight was corrected in August 2014, when a new employee took over the position. Affidavit of Mark Murchison at ¶ 23 (Resp. App. Tab 77 at p. 002086).

**RESPONSE: Complainants admit that the Wharves Board failed to enforce the Tariff as written from 2007 to 2014.**

101. The 2007 change did not affect the Access Fees which Complainants paid. Wharves – Tariff Circular No. 6 (Item 111) revised December 17, 2007, at BOT\_017637 (Resp. App. Tab 003 at p.167); Depo of George Templeton at 41:19-42:6 (Resp. App. Tab 83 at p. 2532-2533).

**RESPONSE: Denied. Complainants object to this Proposed Finding of Fact on grounds that it is factually incorrect. The Wharves Board increased the Tariff in 2014 in response to an asserted \$1.5M deficit in Respondents' Cruise Terminal operations. Audio Transcript of M. Mierzwa Interview, 5:5 – 6:21 (Comp. App., at 000763-000764). The Wharves Board failed to collect Access Fees pursuant to the Tariff from 2007 through 2014. (Resp. Corr. Brief at pp.21, 23 at fn. 5 and 6). The Wharves Board's failure to enforce the Tariff resulted in shortcomings in the Wharves Board's revenue. Affidavit of Mark Murchison, ¶23 (Resp. App. Tab 077, at p.002086). Had the Wharves Board**

**collected Access Fees as required by the Tariff, not only would Complainants not have been competitively disadvantaged, but the Wharves Board would not have experienced the same asserted \$1.5M deficit in 2014 that was the impetus for increasing Access Fees under the Tariff. Accordingly, the 2007 changes did affect the Access Fees Complainants paid.**

102. From August 1, 2006 through May of 2014 Complainants knew and were aware of the \$8 per space per month rate they were charged, while others paid a per trip fee. Wharves – Tariff Circular No. 6 (Item 111) revised August 28, 2006, at BOT\_017561 (Resp. App. Tab 002 at p.091; Wharves – Tariff Circular No. 6 (Item 111) revised December 17, 2007, at BOT\_017637 (Resp. App. Tab 003 at p.167).

**RESPONSE: Complainants object to this Proposed Finding of Fact to the extent it implies that Complainants were aware that the Wharves Board was not enforcing the Tariff as written. Complainants were unaware that the Wharves Board was not charging all “Off-Port Parking Users” pursuant to the requirements of the Tariff. See Depo. of George Templeton, 42:15-22 (Resp. App. Tab 083, at p.002533).**

**Subject to and without waiving the foregoing objections, Complainants knew what they were being charged throughout the identified time period.**

103. From August 1, 2006 through May of 2014 Complainants never complained once that the rate they were being charged was unfair, discriminatory or prejudicial. Affidavit of Michael Mierzwa at ¶ 23 (Resp. App. Tab 75 at p. 002073); Email Correspondence from Jason Hayes to Bernie Curran, BOT\_011101-011102 (Resp. App. Tab 92 at p. 002637).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it assumes that Complainants, from August 1, 2006 to May of 2014, knew of the disparate, unfair, discriminatory, and prejudicial treatment they were subjected to. The Wharves Board itself claims it did not know that it was treating Complainants in an unfair, discriminatory, and prejudicial manner until the conclusion of its 2013 study. See (Resp. Brief, at pp.21, 23 at fn.5 and 6); Affidavit of Mark Murchison, ¶23 (Resp. App. Tab 077, at p.002086). Likewise, Complainants did not know they were being subjected to disparate, unfair, discriminatory, and prejudicial treatment by the Wharves Board until such facts**

**materialized in the discovery process pursuant to Complainants' claims against Respondents.**

**Subject to and without waiving the foregoing objections, Complainants admit that they did not formally complain to the Wharves Board between August 1, 2006 and May of 2014 regarding the Access Fees they were charged.**

104. In late 2013, Wharves Staff proposed several revisions to Tariff Circular No. 6, which included an increase in the Access Fees paid by Complainants and other private parking lot owners, to \$9.14 per space, beginning in 2014. Affidavit of Michael Mierzwa at ¶ 28 (Resp. App. Tab 75 at p. 002074).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it misstates and mischaracterizes the testimony cited to as evidence. The evidence cited to by Respondents to support this proposition provides that the Wharves staff recommended, among other things, to increase the Access Fees for all "Off-Port Parking Users," not just Complainants and other private parking lots, to \$9.14 per space per month. Affidavit of Michael Mierzwa, ¶28 (Resp. App. Tab 075, at p.002074).**

**Subject to and without waiving the foregoing objections, Complainants admit that in late 2013, staff of the Wharves Board recommended an increase in Access Fees paid by "Off-Port Parking Users" to \$9.14 per space per month.**

105. In 2013, the Board of Trustees approved other revisions, but deferred the Access Fee increase. *Id.*; Wharves—Monthly Board Meeting Minutes, November 21, 2013, BOT\_002739-002789 (Resp. App. Tab 93 at p. 002690-002740).

**RESPONSE:**

106. Although the Access Fee increase was deferred, the change was inadvertently included in actual revisions made to the Tariff in November 2013. Since the change was not formally approved by the Board of Trustees, it was not legally valid. When the error was discovered it was corrected. Affidavit of Michael Mierzwa at ¶ 28 (Resp. App. Tab 75 at p. 002074).

**RESPONSE: Denied in part; Admitted in part. Complainants deny that all Access Fee increases proposed for the November 2013 Tariff revisions were not approved. See Affidavit of Michael Mierzwa, ¶28 (Resp. App. Tab 075, at p.002074)(“While other Access Fee increases were approved...”). Complainants admit that the Wharves staff’s 2013 recommended increase in Access Fees from \$8 to \$9.14 per space per month for “Off-Port Parking User” was included in the November 2013 Tariff revisions, and subsequently corrected.**

107. The Board of Trustees directed Wharves staff to conduct a complete review of Cruise Terminal finances and operations, including security, access gates, pedestrian traffic, access by ground transportation companies, and develop a true picture of the financial condition and operation of the Cruise Terminal. Affidavit of Peter Simons at ¶ 3 (Resp. App. Tab 76 at p. 002078); Affidavit of Mark Murchison at ¶ 17 (Resp. App. Tab 77 at p. 002085); Affidavit of Michael Mierzwa at ¶ 27 (Resp. App. Tab 75 at p. 002073).

**RESPONSE: Complainants admit that in 2013, the Wharves Board conducted a study of the Cruise Terminal.**

108. The study showed that the costs and expenses incurred by the Wharves and GPFC greatly exceeded their revenues attributable to the Cruise Terminal. Affidavit of Michael Mierzwa at ¶ 30 (Resp. App. Tab 75 at p. 2074); Board of Trustees—Regular Monthly Meeting Minutes, May 19, 2014, at BOT\_000085-000086 (Comp. App. Tab 25 at p.479-480).

**RESPONSE: Denied. Complainants object to vague and ambiguous use of the term “greatly exceeded” used in this Proposed Finding of Fact. Complainants further object to this Proposed Finding of Fact on grounds that the evidence cited does not support the proposition made. The 2013 study showed that the Cruise Terminal’s expenses exceeded GPFC’s “revenues generated by the collection of passenger fees.” Affidavit of Michael Mierzwa, ¶30 (Resp. App. Tab 075, at p.002074). The study also showed that the deficit resulting from the difference in the Cruise Terminal’s expenses and GPFC’s revenues from passenger fees was “made up by revenues from the Wharves’ cruise parking operations and Access Fees...” *Id.* Because the identified deficit was “made up” by revenues**

**attributable to the Cruise Terminal—cruise passenger parking and Access Fees—this Proposed Finding of Fact is false.**

109. Following completion of this study, Wharves staff recommended that the per-trip fee rate be increased. Affidavit of Michael Mierzwa at ¶ 30 (Resp. App. Tab 75 at p.002074); Board of Trustees—Regular Monthly Meeting Minutes, May 19, 2014, at BOT\_000092 (Comp. App. Tab 25 at p.486); Wharves – Tariff Circular No. 6 (Item 111) revised May 19, 2014, at BOT\_017793 (Resp. App. Tab 005 at p.322).

**RESPONSE: Complainants admit that in May 2014, the Wharves Board’s staff recommended that per-trip Access Fees in the Tariff be increased.**

110. The lower \$10 trip charge was indexed to the Consumer Price Index and rounded up to \$20. Wharves—CPI-U Calculation, BOT\_018097 (Resp. App. Tab 101 at p. 002754).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that the document cited provides no evidence in support of Respondents’ proposition. It is merely a representation of a Consumer Price Index schedule, and provides no showing of application or rounding-up. Subject to and without waiving the foregoing objections, Complainants admit that in 2014, the Wharves Board’s amendments to the Tariff included increasing the previous \$10 per-trip charge to \$20 per-trip.**

111. The higher trip charges for larger shuttle vans and buses were also increased. Wharves – Tariff Circular No. 6 (Item 111) revised May 19, 2014, at BOT\_017793 (Resp. App. Tab 005 at p.322).

**RESPONSE: Denied in part; Admitted in part. Complainants object to this Proposed Finding of Fact to the extent it implies that the identified Access Fees were increased in accordance with the Consumer Price Index as required by the Tariff. Complainants also object to this proposition because it is factually untrue. For instance, the Access Fee required to be charged to a Courtesy Vehicle with a passenger capacity of 16 persons prior to the May 2014 was \$50. Meeting Minutes, May 19, 2014, BOT\_000101 (Comp. App., at p.000495). The Access Fee required to be charged to that same vehicle after the May 2014**

Tariff amendment was \$30. *Id.*; Wharves Tariff Circular No. 6 – Item 111, BOT\_017793 (Resp. App. Tab 005, at p.000322).

Complainants further object that this proposition fails to identify the new exemptions granted to certain Cruise Terminal users pursuant to these same Tariff amendments. *See Meeting Minutes, May 19, 2014, BOT\_000101 (Comp. App., at p.000495); Wharves Tariff Circular No. 6 – Item 111, BOT\_017793 (Resp. App. Tab 005, at p.000322).*

Subject to and without waiving the foregoing objections, Complainants admit that as amended in May 2014, the Access Fees required by the Tariff were increased for certain vehicles, but deny the Proposed Finding of Fact as written.

112. Despite the per-trip fee rate increases, a significant deficit remained. Affidavit of Michael Mierzwa at ¶ 30 (Resp. App. Tab 75 at p. 002074); Board of Trustees—Regular Monthly Meeting Minutes, May 19, 2014, at BOT\_000092 (Comp. App. Tab 25 at p.486).

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that the evidence cited does not support Respondents’ proposition. Subject to and without waiving the foregoing objections, Complainants do not have enough information to admit or deny Respondents unsupported proposition.

113. In order to close the financial gap, the per-space access fees for parking lot owners and operators was increased. Affidavit of Michael Mierzwa at ¶ 31 (Resp. App. Tab 75 at p. 002074); Affidavit of Mark Murchison at ¶ 13 (Resp. App. Tab 77 at p. 002084).

**RESPONSE:** Complainants object to this Proposed Finding of Fact on grounds that it implies that the indicated increases were allocated to parking lot owners and operators only. The subject increase in Access Fees dictated by the Tariff applied to all “Off-Port Parking Users.” Wharves Tariff Circular No. 6 – Item 111, BOT\_017793-017796 (Resp. App. Tab 005, at pp.000322-000325). Complainants further object that Respondents have not established that the referenced “financial gap” existed.

**Subject to and without waiving the foregoing objections, Complainants admit that the Wharves Board increased the Access Fees required to be charged to all “Off-Port Parking Users” pursuant to the Tariff in 2014.**

114. The Wharves allocated approximately 68% of the remaining deficit, to itself, as it operated 68% of the parking lots servicing cruise passengers. Affidavit of Michael Mierzwa at ¶ 31 (Resp. App. Tab 75 at p. 002074-2075); Access Fee Study Group Presentation (Comp. App. Tab 20 at p.438); Affidavit of Mark Murchison at ¶ 13 (Resp. App. Tab 77 at p. 002084).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that Respondents have not established that the referenced “deficit” existed.**

**Subject to and without waiving the foregoing objections, Complainants admit that in 2014, the Wharves Board’s cruise parking operations accounted for approximately 68% of the cruise parking market in the area.**

115. The Wharves also allocated to itself the parking spaces in private lots who did not pay Access fees, because they are in closer proximity to the Wharves, and their customers simply walk to the Cruise Terminal. *Id.*

**RESPONSE: Complainants object to this Proposed Finding of Fact because the evidence cited does not support the proposition that the Wharves Board assumed parking spaces of other private parking lots for reasons of their proximity to the Wharves. Complainants further object to this proposition because the testimony cited attributes 68% of cruise passenger parking spaces to the Wharves Board’s operations and 32% of same to Complainants’ operations. Affidavit of Michael Mierzwa, ¶31 (Resp. App. Tab 075, at pp.002075-002076); Affidavit of Mark Murchison, ¶13 (Resp. App. Tab 077, at p.002084); see also Resp. PFF No. 114, above. Respondents assert that they assumed parking spaces from other private parking lots for purposes of percentage allotment of the alleged deficit, however, they do not identify the percentage assume, which according to the above, appears to be 0%. *Id.***

**Subject to and without waiving the foregoing objections, Complainants admit that the cruise passenger parking operations of the Wharves Board in 2014 accounted for approximately 68% of that market.**

116. The end result of the study was a \$28.88 per-space per-month Access Fee charge to private parking lots like Complainants'. Wharves – Tariff Circular No. 6 (Item 111) revised May 19, 2014, at BOT\_017793 (Resp. App. Tab 005 at p.322); Affidavit of Mark Murchison at ¶ 13 (Resp. App. Tab 77 at p. 002084).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it misstates the terms of the Tariff. Complainants further object to the extent this proposition implies that the subject Tariff amendment applied to “private parking lots like Complainants” rather than to all “Off-Port Parking Users.”**

**Subject to and without waiving the foregoing objections, Complainants admit that the Wharves Board amended the Tariff in 2014, wherein all “Off-Port Parking Users,” as defined therein, were required to be charged Access Fees of \$28.88 per parking space per month. Wharves Tariff Circular No. 6 – Item 111, BOT\_017793-017796 (Resp. App. Tab 005, at pp.000322-000325).**

117. On September 22, 2014, the Wharves retroactively rescinded the May 2014 Tariff rate increase for Off-Port Parking Users. Affidavit of Mark Murchison at ¶ 19 (Resp. App. Tab 77 at p. 002085).

**RESPONSE: Admit.**

118. With this rescission in September of 2014 all moneys collected under that Tariff were either refunded or, at the user’s election, given a credit to apply for future billing. *Id.* at 20 (Resp. App. Tab 77 at p.002085-002086).

**RESPONSE: Denied. The Wharves Board’s September 22, 2014 rescission of the May 2014 Tariff refunded only \$20.88 per parking space per month from the “Off-Port Parking Users” that had been charged \$28.88 per parking space per month under the May 2014**

**Tariff. Minutes of Meeting, September 22, 2014, BOT\_015653-015654 (Resp. App. Tab 087, at 002617-002618).**

119. On September 22, 2014, the Tariff was again modified, and the "per space per month" method for calculating parking lot Access Fees was eliminated, effective October 1, 2014, and its place, all persons paying Access Fees now pay on a per-trip basis. Wharves – Tariff Circular No. 6 (Item 111) revised September 22, 2014, at BOT\_017862 (Resp. App. Tab 006 at p.391).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it improperly limits the “per space per month” allocation of Access Fees to parking lots only, in clear contradiction to the terms of the Tariff. See Wharves Tariff Circular No. 6 – Item 111, BOT\_017793-017796 (Resp. App. Tab 005, at pp.000322-000325).**

**Subject to and without waiving the foregoing objections, Complainants admit that the September 2014 modification of the Access Fees required to be charged pursuant to the Tariff, removed the “per space per month” method of calculating Access Fees for “Off-Port Parking Users.”**

120. As of October 1, 2014, Complainants were charged on the exact same basis, \$20 per trip, as all other users. Wharves – Tariff Circular No. 6 (Item 111) revised September 22, 2014, at BOT\_017862 (Resp. App. Tab 006 at p.391); Affidavit of Michael Mierzwa at ¶ 32 (Resp. App. Tab 75 at p. 002075).

**RESPONSE: Complainants object to this Proposed Finding of Fact on grounds that it misstates the terms of the Tariff. As of October 1, 2014, not “all other users” of the Cruise Terminal, nor Complainants when operating vehicles with a seating capacity of more than 14 persons, are charged Access Fees of \$20 per access. See Wharves Tariff Circular No. 6 – Item 111, BOT\_017862 (Resp. App. Tab 006, at p.000391).**

**Subject to and without waiving the foregoing objections, Complainants admit that the Tariff as effective October 1, 2014 requires the Access Fees charged to Complainants to be assessed on the same basis as other Cruise Terminal users.**

121. From 2006 until 2014, Wharves staff maintained regular contact with Complainants regarding the assessment of Access Fees. Affidavit of Mark Murchison at ¶ 6 (Resp. App. Tab 77 at p. 02082); Depo. S. Robledo at 67:6 – 68:3 (Resp. App. Tab 80 at p. 0002324-002325); Affidavit of Michael Mierzwa at ¶ 24 (Resp. App. Tab 75 at p. 002073); Email Correspondence between Mark Murchison and Charles Tompkins, October 27, 2012, BOT\_012650 (Resp. App. Tab 57 at p. 001788-001789); Email Correspondence from Jason Hayes to Bernie Curran, BOT\_011101-011102 (Resp. App. Tab 92 at p. 002637).

**RESPONSE: Complainants object to this Proposed Finding of Fact because the term “regular contact” is vague, ambiguous, and undefined. Subject to and without waiving the foregoing objections, Complainants admit that they received regular contact from the Wharves Board regarding the assessment of Access Fees, from 2006 through 2014, in the form of monthly invoices.**

Respectfully submitted,

GILMAN \*ALLISON LLP



---

**Douglas T. Gilman**

[dgilman@gilmanallison.com](mailto:dgilman@gilmanallison.com)

Texas Bar No. 24048496

Tex. S.D. Fed. I.D. No.19897

**Brenton J. Allison**

[ballison@gilmanallison.com](mailto:ballison@gilmanallison.com)

Texas Bar No. 24040417

Tex. S.D. Fed. I.D. No. 36863

2005 Cullen Blvd.

Pearland, Texas 77581

Telephone (713) 224-6622

Facsimile (866) 543-3643

**Attorneys for Complainants Santa Fe  
Discount Parking, Inc. d/b/a EZ Cruise  
Parking, Lighthouse Parking, Inc., and  
Sylvia Robledo d/b/a 81<sup>st</sup> Dolphin Parking**

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed this document on this **24th day of June, 2015**, and that a true and correct copy of the foregoing was served on all counsel of record *via* certified mail – return receipt requested and email, as indicated below:

Anthony P. Brown

[apbrown@mapalaw.com](mailto:apbrown@mapalaw.com)

Wm. Hulse Wagner

[whwagner@mapalaw.com](mailto:whwagner@mapalaw.com)

MCLEOD, ALEXANDER, POWEL & APFFEL, P.C

P.O. Box 629

Galveston, Texas 77553

**ATTORNEYS FOR THE BOARD OF TRUSTEES OF THE GALVESTON WHARVES  
AND GALVESTON PORT FACILITIES CORPORATION**



---

Douglas T. Gilman

## OPERATING AGREEMENT

THIS OPERATING AGREEMENT ("Agreement") is made and entered into and effective as of the 19th day of December, 2002 ("Effective Date"), by and between the **GALVESTON PORT FACILITIES CORPORATION**, a Texas nonprofit corporation ("Corporation") and **CARNIVAL CORPORATION**, a Panamanian corporation ("Operator").

*WHEREAS*, the Corporation is a local government corporation formed under the Texas Transportation Code, and has entered into a lease (the "Lease") with the Board of Trustees of the Galveston Wharves ("Wharves"), a separate utility and agency of the City of Galveston, Texas ("City"), to manage and operate The Texas Cruise Ship Terminal on Galveston Island® ("Terminal No. 1") at the Port of Galveston, Galveston County, Texas (the "Port");

*WHEREAS*, the Corporation intends to facilitate the making of certain improvements to Terminal No. 1 as more fully described in a Development Agreement of even date between Operator and Corporation (the "Development Agreement"), which also provides for the advancing of funds by Operator to pay for construction and development costs relating to the construction (the "Loan");

*WHEREAS*, Corporation is seeking to encourage, expand, and continue cruise ship operations at the Port and Operator and its subsidiaries, divisions and affiliates are in the business of conducting passenger cruise vessel operations dedicated solely to housing, feeding, and entertaining passengers on a round-trip basis from an originating port ("Cruise Operations"), and would like to conduct those operations from the Port;

*WHEREAS*, Wharves and Operator are currently parties to a Berthing Agreement dated August 16, 1999, as amended by a First Amendment to Berthing Agreement dated October 29, 2001 (as amended, the "1999 Carnival Agreement"), which relates to the usage of Terminal No. 1 for Cruise Operations;

*WHEREAS*, Corporation and the Operator desire to enter into this Agreement in order to establish the terms of their business relationship and facilitate the development of the Port.

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

### ARTICLE 1 - ASSIGNMENT OF BERTH AND TERMINAL USE

Section 1.01 - Berth Description. Corporation, for and in consideration of the fees, charges and other sums payable by Operator hereunder and the covenants and premises contained in this Agreement and to be kept, performed, and observed by Operator, and subject to the conditions, reservations, and restrictions contained in this Agreement, does hereby grant to Operator, and Operator does hereby accept from Corporation, a non-exclusive license to conduct Cruise Operations either directly or through its subsidiaries, divisions or affiliates (including its Carnival Cruise Line,

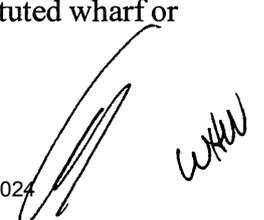
Handwritten signature and initials in the bottom right corner of the page.

Holland America Line, Windstar Cruises, Cunard Line, Seabourn Cruise Line, and Costa Crociere brands) at Piers 23-25 at the Port (the "Berth"), as outlined on Exhibit A, and a non-exclusive license to embark and disembark passengers through Terminal No. 1 in connection with Cruise Operations. The only vessel that may be docked at the Berth is an operationally ready vessel suitable, in Corporation's reasonable determination, to conduct Cruise Operations at the Port by Operator under the terms of this Agreement without the necessity of making any modifications to Terminal No. 1 following completion of the improvements described in the Development Agreement (a "Vessel").

Section 1.02 – Cruise Schedules. Beginning on the Commencement Date, Operator shall conduct Cruise Operations using no less than two Vessels, at least one of which must be a Celebration class vessel (or equivalent with a minimum 737 feet LOA) or larger and at least one of which must be a Fantasy class vessel (or equivalent with a minimum 855 feet LOA) or larger. The cruise schedules for the Vessels are collectively referred to in this Agreement as the "Cruise Schedules". The Cruise Schedules for the Vessels conducting Cruise Operations from Terminal No. 1 as of the Commencement Date are attached as Schedule 1. The Cruise Schedules will reflect cruises to be operated during the following 18 month period, and may be updated by Operator every 6 months following the Commencement Date to reflect any changes in dates or itineraries, subject to the prior approval of Corporation, such approval not to be unreasonably withheld, conditioned, or delayed. All Cruise Schedules (as updated from time to time) will be attached to this Agreement as Schedule 1. Any subsequent changes to a Cruise Schedule are subject to the prior approval of Corporation, such approval not to be unreasonably withheld, conditioned, or delayed. Corporation shall not enter into an operating or other agreement with any other cruise line or vessel operator if such scheduling prevents Operator from operating any Vessel from Terminal No. 1 or a substitute facility (on a temporary basis) described in Section 1.04 below on any day designated as a cruise day and during which Operator is performing Cruise Operations at the Port according to any approved Cruise Schedule (a "Cruise Day").

Section 1.03 - Preferential Rights. Except as provided by Section 1.04 below, Corporation will provide Operator a preferential right to the use of the Berth and Terminal No. 1 to conduct Cruise Operations on each Cruise Day.

Section 1.04 – Temporary Substitution of Space. Notwithstanding any provision of this Agreement to the contrary, Corporation may during emergencies and during any period of time that the Berth or Terminal No. 1 is unusable because of unforeseen casualty or repairs, temporarily substitute another wharf or berth for the Berth described in Section 1.01 and another facility for Terminal No.1 if the substituted wharf or berth and facility includes approximately the same linear and square footage of space and provides the same or similar advantages as provided by the Berth described in Section 1.01 and Terminal No.1, and if, in the reasonable opinion of Operator, the Vessels can safely berth at such substitute wharf, in which case Operator will not have a preferential right to use the Berth and Terminal No. 1 during such time. Corporation must, if possible, provide written notification of any such substitution to Operator at least 10 days before Operator is required to occupy the substituted wharf or berth and facility. Any wharf or berth and facility substituted for the Berth described in Section 1.01 and Terminal No. 1 will be considered the Berth and Terminal No. 1 for all purposes under this Agreement during the period of time required to address the emergency or unforeseen repair in question, and Operator's license to use such substituted wharf or

Handwritten signature and initials in the bottom right corner of the page.

berth and facility is subject to all the terms of this Agreement; provided, however, that if the period during which a substitute berth and facility is required to be used by Operator exceeds 60 days (or such longer period not to exceed 180 days in the case of a situation where the repairs cannot be completed within 60 days, provided Corporation promptly commences the repairs and diligently pursues the same to completion), Operator may terminate this Agreement upon written notice to Corporation effective on the date provided in such notice. Operator's termination of this Agreement under this Section shall constitute an "event of default" as defined under the Development Agreement and shall not be considered a Non-Recourse Termination under such agreement. Accordingly, the loan thereunder shall be immediately due and payable, at the option of Operator.

Section 1.05 – Cruise Day Temporary Office Use. Operator has a non-exclusive license to use, only on Cruise Days, any office space in Terminal No. 1 designated for such use by Corporation to conduct administrative and clerical activities relating to Operator's performance of Cruise Operations, at no cost to Operator. This license is a personal right of Operator, and may not be transferred or assigned to any other person or entity ("Person") without Corporation's prior written consent.

Section 1.06 – Permanent Office Space. If Operator desires to have exclusive or non-temporary use of an office in Terminal No. 1, it must notify Corporation of that fact prior to the Commencement Date (defined below) and enter into a separate lease agreement with Corporation for such space. The form of the office lease agreement will be substantially in the form of Exhibit B.

Section 1.07 – Storage Area. Corporation grants Operator a license to use, at no cost to Operator, one 40'x40' storage area in Terminal No. 1 (or such other size space as agreed by the parties) for each Vessel conducting Cruise Operations at the Berth (each of those areas is referred to herein as a "Storage Area"). The location of each Storage Area will be determined by agreement of the parties at least 60 days prior to the Commencement Date or the date a Vessel begins conducting Cruise Operations under this Agreement, whichever is applicable. Corporation has no responsibility for the safety, security, or condition of any property placed in the Storage Area. Any property of Operator or its passengers, contractors, suppliers, stevedores, or vendors placed or stored in or about the Port in any area other than the Storage Area will be charged storage rates in the amounts and at the times described in the then current Wharves' Tariff circular, as it may from time to time be amended (as amended, the "Tariff"), and Corporation will have no responsibility for the safety, security, or condition of that property.

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

Section 1.09 – Terminal Security. On Cruise Days Operator must, at its own cost and expense, keep Terminal No. 1 and the wharf area adjacent the Berth in a clean, orderly, and safe condition, free of rubbish and trash, and be responsible for the security on, of, and to Terminal No. 1 and the adjacent apron and wharf (except for security curbside on the South face of Terminal No. 1 and the east and west entrance areas to the adjacent apron and wharf, all of which will be Wharves' responsibility). All employees of Operator that enter Terminal No. 1 or any other property under the



management or control of the Corporation or Wharves must (i) comply with all laws, ordinances, rules, regulations, and codes (as each of them may from time to time be enacted or amended) of the United States, the State of Texas, the City, the Wharves or any other lawful authority having jurisdiction over the Berth, Terminal No. 1, or any other property under the management and control of Wharves, and (ii) abide by all security requirements of Corporation and Wharves and applicable provisions of the Tariff, including without limitation any insurance requirements.

## **ARTICLE 2 - TERM OF AGREEMENT**

Section 2.01 - Commencement and Termination Date. The license granted herein is for a period of 10 years ("Primary Term"), commencing on September 28, 2003 (the "Commencement Date") and terminating on the day before the tenth anniversary of the Commencement Date, unless sooner terminated or extended pursuant to the provisions of this Agreement.

Section 2.02 - Renewal Term. As long as all fees, charges and other sums payable by Operator under this Agreement (collectively, "Fees") are current and Operator is not in default in the performance of its covenants under this Agreement, Operator has the option to renew this Agreement for one additional 2-year period ("Renewal Term"), to commence at the expiration of the Primary Term. Operator must exercise this option to renew by delivering written notice of such election to Corporation at least 6 months prior to the expiration of the Primary Term. The renewal of this Agreement is upon the same terms and conditions contained in this Agreement, except as is otherwise herein provided, but without any additional option to renew. As used herein, the word "Term" means the Primary Term and any properly exercised Renewal Term.

Section 2.03 - Holding Over. If Operator continues operations at the Berth and Terminal No. 1 after the termination of this Agreement with Corporation's consent, such use of the Berth and Terminal No. 1 is governed by all the terms, covenants, and conditions contained in this Agreement, except that (i) the Fees to be paid by Operator hereunder will be equal to 150% of such Fees in force immediately prior to termination and (ii) the license herein granted may be revoked by Corporation at any time. No holding over by Operator will be construed as an extension of the Term or the exercise of any Renewal Term.

Section 2.04 - Effective Date and Approval. The Effective Date of this Agreement is set forth in the introductory paragraph. However, if this Agreement or any amendments or modifications thereto are required to be submitted to the applicable governmental agency (the "Agency"), pursuant to 46 U.S.C. App. § 1704, then the Effective Date of this Agreement is such date as designated by the Agency, or if the Agency declines to designate a date, the Effective Date is as set forth in the introductory paragraph of this Agreement. Any extension of this Agreement, and the terms and conditions thereof, will promptly be filed with the Agency for its review and approval, if required.

## **ARTICLE 3 - FEES**

Section 3.01 - Commencement of Fees. The payment of Fees under this Agreement commences on the Commencement Date.

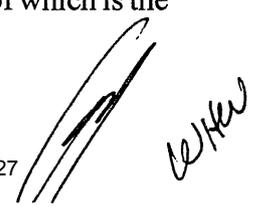
Handwritten signature and initials in the bottom right corner of the page.

Section 3.02 - Dockage. So long as Operator is not in default under this Agreement, Corporation will waive dockage charges ("Dockage") with respect to any Vessel operating under the terms of this Agreement.

Section 3.03 – Passenger Wharfage. During the first 5 Operating Years of the Primary Term, Operator must pay Corporation passenger wharfage charges ("Passenger Wharfage") of \$2.875 per passenger for embarkation at the Port, \$2.875 per passenger for disembarkation at the Port, and \$2.875 per passenger with respect to any passenger who arrives on and leaves with a Vessel docking at the Berth without embarking or disembarking at the Port. On the first day of the 6<sup>th</sup> Operating Year, Operator must begin paying Corporation Passenger Wharfage equal to 75% of the applicable Passenger Wharfage charge set forth in the Tariff on that date, and otherwise in the manner described therein, subject to escalation throughout the remainder of the Term as described in Section 3.05 below.

Section 3.04 – Cargo Wharfage. Operator must pay Corporation cargo wharfage charges ("Cargo Wharfage") as set forth in the Tariff on any commercial cargo loaded or unloaded from any Vessel. Notwithstanding any contrary provision in the Tariff, Operator will not be required to pay Cargo Wharfage with respect to any luggage, baggage, or packages loaded or unloaded in the performance of Cruise Operations, or any items or materials (i) consumed onboard or incorporated into the Vessel, such as fuel, water, ship's spares, ship's stores, or provisions, or (ii) generated or produced by the consumption of ship's stores or provisions, such as garbage and other refuse.

Section 3.05 – Passenger Wharfage Escalation. Beginning on the first day of the 7<sup>th</sup> Operating Year, Passenger Wharfage will be adjusted on that date and on each anniversary of such date (each an "Adjustment Date") to reflect adjustments in the Consumer Price Index for All Urban Consumers (CPI-U) for Houston-Galveston-Brazoria, Texas, All Items (1982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor (the "Index"), or such other economic index as the parties may agree to use as a reference base as provided herein, subject to a maximum increase of 3% on any Adjustment Date. If the Index is converted to a different standard reference base or otherwise revised, the determination of the Index will be made with the use of such conversion factor, formula, or table for converting the Index as may be published by the agency or authority that establishes the Index or, if one is not published by such agency or authority, then with the use of such conversion factor, formula, or table as may be published by any nationally recognized publisher of similar statistical information. If the Index ceases to be published, then within 30 days after such Index ceases to be published the parties will substitute a new index of similar type to be used as the Index for determining future Passenger Wharfage escalation. If the parties fail to agree upon a substitute Index during the 30 day period, Corporation and Operator will jointly designate a qualified independent third party who will select as a substitute Index any independently published index of similar type. If the parties fail to jointly designate a qualified independent third party to select the Index, then Corporation may select the new index to be used as the Index for determining future Passenger Wharfage escalation. On each Adjustment Date, Passenger Wharfage will be recalculated to be equal to the product of the Passenger Wharfage in effect the day before the Adjustment Date multiplied by the lesser of 3% or a fraction, the numerator of which is the Index number for the last reporting period before the Adjustment Date and the denominator of which is the

A handwritten signature, possibly "W. H. W.", is written in the bottom right corner of the page. It is written in black ink and appears to be a stylized signature.

Index number for the last reporting period before (i) the first day of the 6<sup>th</sup> Operating Year (with respect to the first adjustment of Passenger Wharfage) or (ii) the immediately preceding Adjustment Date (with respect to each subsequent adjustment), whichever is applicable. If the product is greater than the Passenger Wharfage in effect the day before the then current Adjustment Date, Operator must pay the greater amount until the next Adjustment Date. Passenger Wharfage must not increase by more than 3% on any given Adjustment Date. Passenger Wharfage as calculated in this Section must never be less than the amount of Passenger Wharfage set forth in Section 3.03 above. Corporation will provide Operator with notice of each adjustment to Passenger Wharfage and the calculation of the adjustment no later than 60 days after each Adjustment Date.

Section 3.06 - Favored Nations Clause. Notwithstanding the provisions of Sections 3.02, 3.03, and 3.04, the Fees Corporation charges Operator hereunder must never be greater than the lowest charges and fees Corporation charges any other Person conducting Cruise Operations for voyages to a foreign port in excess of two nights in duration.

Section 3.07 – Guaranteed Minimum Annual Passenger Wharfage. The minimum Passenger Wharfage to be paid by Operator with respect to each Operating Year during the Term is \$575,000 (the "Annual Minimum"). At the end of each Operating Year, if the total Passenger Wharfage actually paid by Operator falls below the Annual Minimum, Corporation will invoice Operator in an amount by which the Annual Minimum exceeds the total Passenger Wharfage actually paid by Operator during the Operating Year in issue. Operator must pay the invoice within 30 days following receipt thereof. Passenger Wharfage during any Operating Year in excess of the Annual Minimum ("Excess Passenger Wharfage") must be used by Corporation to repay the Loan in the manner described in the Development Agreement, and Operator is authorized to withhold payment of any Excess Passenger Wharfage as an offset against any amounts owed by the Corporation under the Loan until the Loan is paid in full according to the terms thereof. Operator must properly account for and maintain records in support of any Excess Passenger Wharfage withheld and offset by Operator under this Agreement. Upon full repayment of the Loan, all Excess Passenger Wharfage must be paid to the Corporation without offset. If this Agreement is terminated because of a Non-Recourse Termination (as defined in the Development Agreement) before the Loan is fully paid Corporation will have no obligation to repay the remaining outstanding balance of the Loan except as otherwise provided in the Development Agreement.

Section 3.08 – Method of Payment of Fees. Dockage, if any, Passenger Wharfage, Cargo Wharfage, and any other Fees are payable in the manner provided in the Tariff.

Section 3.09 - Delinquency. All amounts payable under this Agreement that are not paid when due bear interest from the due date thereof until paid at the lesser of (i) the rate contained in the Tariff or (ii) the maximum nonusurious rate allowed by law.

Section 3.10 - Passenger Wharfage Discount. Following full payment of the Loan, Passenger Wharfage payable by Operator during the remainder of the Term will be discounted 10% from the amounts that Operator would otherwise pay Corporation in accordance with the other terms of this Agreement.

A large, stylized handwritten signature is written in black ink. To its right, the initials 'WKEW' are written in a smaller, more legible hand.

Section 3.11 – Extraordinary Fee Increases. Notwithstanding any provision in this Article to the contrary, if state or federal law imposes on the Wharves or the Corporation any charges, fees, or taxes, or mandates the expenditure of funds for security or other reasons, relating to cruise operations at ports in the United States and such expenses are not or cannot be funded by other sources or cannot otherwise be met by existing cruise related revenues and tariffs, the Corporation may raise the Fees applicable to Operator to cover, on a pro-rated basis relative to other users at the port, such expenses.

#### **ARTICLE 4 - TARIFFS AND OTHER CHARGES**

Except as otherwise provided in this Agreement, Wharves has the full right and power to assess and collect all charges now published in its tariffs or regulations, or that it may publish in the future, against any commodities moving over, or vessels berthing at, the Berth, and no such charge may be assessed or collected by Operator; provided, however, that nothing herein shall be construed as requiring Operator to pay Dockage, Passenger Wharfage, or Cargo Wharfage in amounts greater than the amounts specified in Article 3 above. Wharves has the right to collect all switching charges on rail cars, if any, moved to or from the Berth or Terminal No. 1. This Agreement covers the Berth, Terminal No. 1, and the adjacent aprons, slips, and channel. Except as specifically provided herein to the contrary, Operator must strictly comply with all Tariff provisions and Wharves' rules and regulations governing the Port. Wharves will provide water service to the Berth on a separate meter, to be read and recorded by Wharves and Operator each time the Vessel departs from and returns to the Berth, and Operator must pay all charges for such services used by Operator as and when they become due in the manner provided in the Tariff. If any Person other than Operator uses the Berth and consumes any water, Wharves will bill such Person directly for the amount of the charges. Operator further agrees to pay all fees for out of the ordinary security services directly requested by Operator in excess of those security services (i) provided in general by Wharves to other users of the Terminal, or (ii) required by Wharves under Section 1.09 of this Agreement.

#### **ARTICLE 5 - IMPOSITIONS**

Section 5.01 - Impositions. As additional Fees payable during the Term, Operator will pay all Impositions as and when they become due; provided, (i) that such Impositions are chargeable on the same basis to all multiple night cruise lines that conduct Cruise Operations at the Port; and (ii) that nothing herein shall be construed as requiring Operator to pay Dockage, Passenger Wharfage, or Cargo Wharfage in amounts greater than the amounts specified in Article 3 above. The term "Impositions" means all taxes, assessments, use and occupancy taxes, excises, levies, license and sales and permit fees and taxes, and other charges by any public authority other than the Corporation or the Wharves, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind or nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed, or imposed by any public authority upon, or which accrue or become due or payable out of or on account of, Operator's operations at the Berth or Terminal No. 1 or any part thereof, the appurtenances thereto, or the sidewalks, streets, or other public ways adjacent thereto, for any use or occupation of the Berth or Terminal No. 1, and such franchises, licenses and permits as may be appurtenant to the use of the Berth or Terminal No. 1, or any documents to which Operator is a party that creates or transfers an interest in the Berth or Terminal No. 1.



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

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

## **ARTICLE 6 - USE OF BERTH AND TERMINAL**

Section 6.01 - Permitted Activities. The Berth and Terminal No. 1 may be used by Operator only for the purpose of loading and unloading passengers, their baggage, and cargo from any Vessel in the performance of Cruise Operations at the Port. Any other activity requires the prior written approval of Corporation.

Section 6.02 - Prohibited Activities. The Berth, Terminal No. 1, and adjacent areas must not be used for:

- (a) In the event Section 47.01 of the Texas Penal Code applies to Operator or its Cruise Operations, the docking or berthing of any floating vessel containing a "gambling place", a "gambling device", or "gambling paraphernalia", as those terms are defined in Section 47.01 of the Texas Penal Code or any similar or successor statute, except that those items or activities are not prohibited on board any Vessel to the extent the items or activities are properly licensed and conducted in compliance with applicable law;
- (b) The installation or use of container cranes, or the loading, unloading, or dockage of container vessels;
- (c) Any illegal, obnoxious or offensive activity; or
- (d) The sale or consumption of alcoholic beverages except that those activities are not prohibited on board the Vessel to the extent the activities are properly licensed and conducted in compliance with applicable law.

No explosive, nuclear, radioactive or hazardous materials are allowed on or adjacent to the Berth or Terminal No. 1 without Corporation's prior written approval, unless such materials are in lawfully permitted amounts and are handled in compliance with applicable law. To the extent possible, Operator will consider requiring the use of electric or propane powered vehicles by Operator and its contractors within Terminal No. 1 and on the wharf, staging areas, and apron adjacent Terminal No.

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be 'George' and the initials are 'W.H.W.'.

1 and the Berth to transport persons, luggage, ships' stores, provisions, equipment, or other property in the performance of Cruise Operations or Vessel Maintenance.

Section 6.03 - Permits, Certificates, etc. Operator must obtain and maintain all permits, certifications, licenses, and fees required by applicable law for its activities on or about the Berth and Terminal No. 1.

Section 6.04 - No Interference. Operator must not interfere with the operations of Wharves, its tenants, or any other permitted user of Wharves' property, nor with any other permitted user of the Berth or Terminal No. 1. Operator must not interfere with, restrict, or prevent any Person from using navigable waters. So long as Operator pays Fees as herein provided and observes each term, covenant, and condition of this Agreement, Corporation covenants that Operator will peaceably and quietly have, hold, and enjoy the license granted herein for the entire Term, subject to the provisions of this Agreement.

## **ARTICLE 7 - CONSTRUCTION OF IMPROVEMENTS**

Section 7.01 - General Conditions for Construction by Operator. Operator must not construct any improvements to Terminal No. 1, the Berth, or adjacent piers, wharfs, or aprons without Corporation's prior written consent. Operator must, at its expense, obtain and maintain any licenses, permits, or approvals required for the construction of any improvements permitted by Corporation.

Section 7.02 – Construction of Improvements to Terminal No. 1. The Corporation will use commercially reasonable efforts to substantially complete the terminal improvements in the manner described in the Development Agreement (the "Terminal Improvements") no later than the Commencement Date. For purposes of this Section the Terminal Improvements will be substantially complete if, as reasonably determined by the engineering firm selected by Corporation to design the Terminal Improvements, the Berth and Terminal No. 1 (including the loading bridge) can be safely utilized for conducting Cruise Operations with a Fantasy class vessel (even if on a temporary basis and even if additional, non-essential improvements need to be completed), and a certificate of occupancy (whether permanent, conditional, or temporary) has been issued by the relevant government authorities. The expenditure of funds by the Corporation for construction of the Terminal Improvements is made in reliance upon the agreements herein by Operator, including without limitation, Operator's agreement to utilize the Berth and Terminal No. 1 for Cruise Operations with the minimum number of Vessels required during the Term and to pay the Annual Minimum. If the Terminal Improvements are not substantially completed by the Commencement Date and the Berth and Terminal No. 1 are unusable as a functioning cruise ship berth and terminal (as reasonably determined by the engineering firm selected by Corporation to design the Terminal Improvements and the relevant governmental authorities) Corporation, at its option, must (i) provide substitute facilities sufficient for Operator to conduct Cruise Operations during the period of time the Berth and Terminal No. 1 are unusable, or (ii) reimburse Operator for all actual damages (excluding consequential, punitive, or extraordinary damages) incurred by Operator as a direct result of the Berth and Terminal No. 1 being unusable. If the Terminal Improvements have not been substantially completed within 30 days of the Commencement Date, unless such delay is caused by changes to the plans and specifications or scope of work for the Terminal Improvements requested by Operator,

Handwritten signature and initials in the bottom right corner of the page. The signature is written in dark ink and appears to be 'WAW' or similar. Below the signature are the initials 'WAW' written in a larger, bolder font.

Operator may terminate this Agreement without prejudice to any rights against Operator for damages as a result thereof. Operator's termination of this Agreement under this Section shall constitute an "Event of Default" as defined in the Development Agreement and shall not be considered a Non-Recourse Termination under such agreement. Accordingly, the Loan thereunder shall be immediately due and payable, at the option of Operator.

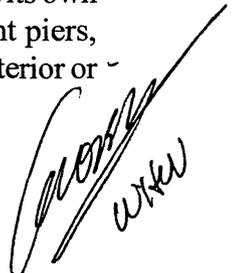
## ARTICLE 8 - REPAIRS

Section 8.01 - Operator's Duty to Repair and Keep Clean. Operator, at its own cost and expense at all times during the Term agrees to (i) repair any damage it causes to, or is caused by its operations at, the Berth, Terminal No. 1, or any other property at the Port and all improvements on or to the Berth, Terminal No. 1, or any other property at the Port, with the exception of any damage caused by ordinary wear and tear and (ii) keep the surface of the wharf adjoining the Berth in a good state of appearance and in a clean, sanitary, and debris-free condition (except for ordinary wear and tear), all in accordance with Wharves' standards for the Port, and in a condition sufficient to accommodate and accomplish the safe conduct of Cruise Operations. All repairs required by this section must be performed promptly and so as not to cause depreciation in the value of the Berth and Terminal No. 1 or any improvements. Operator has no obligation to perform routine maintenance of Terminal No. 1, the Berth, or adjacent piers, wharfs, or aprons.

Section 8.02 - Operator's Failure to Repair or Keep Clean. If Operator fails to repair or keep clean as required by this Article, after any applicable notice and right to cure provided herein, Corporation may enter the Berth or Terminal No. 1 and make the repairs or do the work or cause them to be made or done, and Operator must immediately reimburse Corporation for all costs incurred by Corporation under this section, together with interest from the date Corporation demands reimbursement in writing from Operator until the date paid by Operator.

Section 8.03 - Condition of Berth and Terminal No. 1. Upon completion of the Terminal Improvements and acceptance thereof by Operator (and after Operator has made such inspections thereof as Operator deems appropriate), Operator accepts the Berth, the Storage Area, and Terminal No. 1, and all improvements thereon, in their condition as of the Commencement Date, **AS IS**, and **WITH ALL FAULTS** and acknowledges that no warranties, either expressed or implied, have been made or will be made by Corporation with respect to the condition of the Berth, the Storage Area, or Terminal No. 1 or their suitability for Operator's intended use. Subject to the provisions of Sections 7.02 and 8.04 of this Agreement, Operator acknowledges that Corporation has no obligation during the Term to make any capital or other improvements to the Berth or Terminal No. 1 to accommodate Operator in the performance of Cruise Operations.

Section 8.04 - Corporation's Obligation to Improve, Repair and Maintain. Corporation covenants that it will operate Terminal No. 1 and make periodic capital improvements in accordance with the provisions of any outstanding bond indenture or ordinance relating to Terminal No. 1, and will maintain the Berth and Terminal No. 1 in good condition and working order, normal wear and tear excepted, and except as otherwise provided in this Agreement. The Corporation must, at its own cost and expense, perform routine maintenance on Terminal No. 1, the Berth, and adjacent piers, wharfs, and aprons, including without limitation any paved surfaces, utilities, lighting, and interior or



exterior landscaping, all in accordance with the Corporation's current practice and as required by applicable law. Without limiting the generality of the foregoing, Corporation must, at no cost to Operator:

- (a) provide electricity, water and sewer service to Terminal No. 1;
- (b) Maintain, repair and replace, as needed, the electrical, heating, ventilating, air conditioning, elevators, escalators, mechanical, plumbing, safety systems, wiring systems, carpets, fixtures, furniture, lighting and structural components of the buildings and improvements comprising Terminal No. 1 and paint the exterior and interior of Terminal No. 1, as necessary, and keep same in good working order and operating condition to accommodate Cruise Operations throughout the Term; and
- (c) provide all necessary janitorial services in accordance with Corporation's current practice.

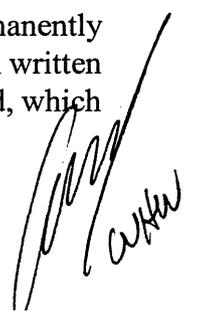
Section 8.05 - Corporation's Failure to Repair or Maintain. If Corporation fails to repair or maintain as required by this Article, after any applicable notice and right to cure provided herein, Operator may enter the Berth or Terminal No. 1 and make the repairs or maintenance or cause them to be made or done, and Corporation must immediately reimburse Operator for all costs incurred by Operator under this section, together with interest from the date Operator demands reimbursement in writing from Corporation until the date paid by Corporation.

## **ARTICLE 9 - DAMAGE OR DESTRUCTION**

Section 9.01 - Notice. If the Berth, Terminal No. 1, or any improvement thereto are damaged or destroyed by fire, windstorm, hurricane or other casualty, each party following actual knowledge of such damage or destruction must immediately give the other notice thereof, including a description of the damage and its cause.

Section 9.02 - Partial Destruction. If the Berth, Terminal No. 1, or any improvement thereto are partially damaged or destroyed by fire, windstorm, hurricane or any other casualty, Corporation will repair, reconstruct, or replace the Berth, Terminal No. 1, or those improvements and, if necessary, temporarily relocate Operator in accordance with the provisions of Section 1.04 hereof. In any event, Corporation will be entitled to all its insurance proceeds payable by reason of the casualty to the property.

Section 9.03 - Total Destruction. If Corporation determines, in its reasonable discretion, that the Berth, Terminal No. 1, or any improvement thereto are totally destroyed by fire, windstorm, hurricane, or any other casualty, Corporation may either repair, reconstruct, or replace the Berth, Terminal No. 1, or those improvements or, if Corporation reasonably determines that it would be uneconomical to cause the same to be repaired, reconstructed, or replaced, permanently relocate Operator in accordance with the provisions of Section 1.04 hereof. If Corporation permanently relocates Operator, Operator may elect to terminate this Agreement by giving Corporation written notice of its election to so terminate within 30 days after Operator is permanently relocated, which

A handwritten signature in black ink, appearing to be 'C. Carter', is located in the bottom right corner of the page.

termination will be effective on the date provided in such written termination notice. Corporation will be entitled to all its insurance proceeds payable by reason of the casualty to the Berth, Terminal No. 1, or any improvement thereto, except as otherwise provided in the Development Agreement.

Section 9.04 – Fees Payable During Reconstruction. During any period of time that the Berth or Terminal No. 1 is being repaired, reconstructed, or replaced pursuant to the provisions of Sections 9.02 or 9.03 above, the Fees payable hereunder continue to be payable as herein provided subject to suitable temporary facilities being provided to Operator pursuant to the terms herein.

### **ARTICLE 10 - MECHANICS' LIENS**

Operator must not suffer or permit any mechanics' liens or other liens to be filed against the fee of the Berth or Terminal No. 1, nor against Operator's license to use the Berth or Terminal No. 1, nor any improvements on the Berth or Terminal No. 1 by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Operator or to anyone holding the Berth or Terminal No. 1 or any part thereof through or under Operator. If any such lien is recorded, Operator must promptly notify Corporation in writing of its existence, and must either cause it to be removed or purchase a bond acceptable to Corporation against which the lien will attach. If Operator in good faith desires to contest the lien, Operator may do so, but Operator must indemnify and hold Corporation harmless from all liability for damages occasioned thereby and must, in the event of a judgment of foreclosure on the lien, cause it to be discharged and removed prior to the execution of the judgment.

### **ARTICLE 11 - CONDEMNATION**

Section 11.01 - Interests of Parties. If the Berth or Terminal No. 1 or any part thereof is taken for public or quasi-public purposes by condemnation as a result of any action or proceeding in eminent domain, or is transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, all condemnation proceeds will be payable to Corporation (except as otherwise provided in the Development Agreement) and the interests of Corporation and Operator under this Agreement are as provided by this Article.

Section 11.02 - Total Taking - Termination. If the entire Berth or Terminal No. 1 is taken or transferred, or if the taking or transfer of a substantial part of the Berth or Terminal No. 1 leaves the remainder of the Berth or Terminal No. 1 in such condition or in such form, shape, or reduced size as to be not effectively and practicably usable in the reasonable opinion of Corporation and Operator for the intended purpose, this Agreement terminates on the date title to such portion of the Berth or Terminal so taken or transferred vests in the condemning authority.

Section 11.03 - Partial Taking - Continuation of Agreement. If the taking or transfer of only an insubstantial part of the Berth or Terminal No. 1 leaves the remainder of the Berth or Terminal No. 1 in such condition and in such form, shape, or size as to be used effectively and practicably in the reasonable opinion of Corporation and Operator for the intended purpose, this Agreement terminates only as to the portion of the Berth or Terminal No. 1 so taken or transferred as of the date title to such portion vests in the condemning authority, but continues as to the portion of the Berth or

Handwritten signature and initials in the bottom right corner of the page.

Terminal No. 1 not so taken or transferred. To the extent that a partial taking directly and demonstrably results in increasing the operating expenses for or decreasing the revenues of Operator's Cruise Operations and those increased expenses or decreased revenues cannot be otherwise fully mitigated (as to increased expenses) or recovered (as to decreased revenues), the Fees payable hereunder will be adjusted equitably.

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

## ARTICLE 12 - INSURANCE AND INDEMNIFICATION

Section 12.01 - Indemnification of City, Wharves, and Corporation. Operator INDEMNIFIES and HOLDS HARMLESS Corporation, its directors, officers, agents and employees, Wharves, its trustees, officers, agents, and employees, and the City, its officers, agents, and employees (collectively, the "Indemnified Persons"), against all costs and expenses, including, without limitation, reasonable attorneys' fees and costs of investigation and defense, as well as legal liability, whether from suit, judgment, settlement or otherwise arising out of any or all claims for injury to any Person or property, including but not limited to injuries resulting in death, arising from, or caused by, any wrongful or negligent act or omission of Operator, its agents, invitees, servants and employees upon the Berth or Terminal No. 1, or arising or resulting from any defective or unsafe condition for which Operator is responsible, or of any apparatus, equipment or other property of Operator, or in any other manner arising out of any action or inaction of Operator; provided that any such indemnity shall not apply in the event such claim arises from the negligence or willful misconduct of Corporation or its failure to perform any obligation under this Agreement. Any language to the contrary notwithstanding, the covenants and agreements contained in this paragraph survive the termination or expiration of this Agreement for whatever cause.

Section 12.02 - Property Insurance. Operator must insure any personal property located in Terminal No. 1 or at the Port, against loss or damage by fire, hurricane, windstorm, flood, earthquake and all other risk with "all risks" endorsement or its equivalent; excluding loss due to terrorist acts as defined in the policy and provided that Operator may (upon prior written notice to Corporation) elect to self insure in lieu of providing insurance coverage for such risk. The insurance must be paid for by Operator and must be in amounts not less than the full actual replacement value of such property, and must have a replacement cost endorsement or similar provision. Such policy must name Corporation (and any successor or assign designated by Corporation) as a loss payee, as its interest may appear.

Section 12.03 - Commercial General Liability Insurance. Operator must maintain commercial general liability insurance, including pollution liability coverage unless such coverage is provided in an alternative policy such as a Protection and Indemnity (P&I) policy, covering Corporation and Operator for liability for property damage, bodily injury, personal injury and death at the Berth or Terminal No. 1 or as a result of Operator's operations at the Berth or Terminal No. 1, or its presence on Port property. The insurance provided under this section must be in the amount of not less than \$1,000,000 per occurrence for property damage and not less than \$1,000,000 per

Handwritten signature and initials in the bottom right corner of the page.

occurrence for personal injury, bodily injury or death. This insurance must protect against liability to any employees or servants of Operator and to any other Person or Persons whose property damage, personal injury or death arises out of or in connection with the occupation, use, or condition of the Berth or Terminal No. 1 or as a result of Operator's operations at the Berth or Terminal No. 1, and must include (i) coverage for premises and operations, including completed operations, (ii) coverage for products liability, and (iii) contractual liability coverage insuring the obligations of Operator under the terms of this Agreement. Such commercial general liability insurance policy must name Corporation (and any successor or assign designated by Corporation) as an additional insured.

Section 12.04 - Workers Compensation. Operator must maintain workers compensation insurance to protect against claims under Texas Workers Compensation laws as well as all Federal acts applicable to Operator's operations at the Berth and Terminal No. 1, including but not limited to U.S. Longshoremen and Harborworkers' Act, Jones Act and Federal Employers' Liability Act. The limit of liability for such coverage must at least meet applicable statutory requirements. Additionally, each policy must contain an endorsement waiving all rights of subrogation against Corporation, Wharves, and the City, and their respective agents and employees.

Section 12.05 - Employer's Liability. Operator must maintain employer's liability insurance in the minimum amount of \$1,000,000 per occurrence for personal injury, bodily injury or death to any employee of Operator who may bring a claim outside the scope of the Texas Worker's Compensation laws or federal acts applicable to Operator's operations at the Berth or Terminal No. 1. This insurance must contain all endorsements necessary to cover maritime operations, including admiralty benefits and damages under the Jones Act, in the minimum amount of \$1,000,000 per occurrence. Additionally, each policy must contain an endorsement waiving all rights of subrogation against Corporation (and any successor or assign designated by Corporation), the Wharves, and the City, and their respective agents and employees.

Section 12.06 - Automobile Insurance. Operator must maintain automobile liability insurance coverage on all its owned or leased vehicles in the minimum amount of \$1,000,000 combined single limit coverage per occurrence. Additionally, each policy must contain an endorsement waiving all rights of subrogation against Corporation (and any successor or assign designated by Corporation), the Wharves, and the City, and their respective agents and employees.

Section 12.07 – Liquor Liability Insurance. If Operator is engaged in any way in the sale of alcoholic beverages, either for consumption of alcoholic beverage on or off premises, Operator must maintain liquor liability insurance with limits of not less than \$1,000,000. If written on a separate policy from the commercial general liability policy, such policy must name Corporation (and any successor or assign designated by Corporation) as an additional insured.

Section 12.08 – Protection and Indemnity Insurance. Operator must maintain Protection and Indemnity (P&I) insurance coverage in form and substance acceptable to Corporation in the minimum amount of \$5,000,000 combined single limit coverage per occurrence. Additionally, each policy must contain an endorsement waiving all rights of subrogation against Corporation (and any successor or assign designated by Corporation), the Wharves, and the City, and their respective

A handwritten signature in black ink, appearing to be 'WAW', is located in the bottom right corner of the page.

agents and employees, except in respect of liabilities, losses, costs, or expenses arising out of the negligence of Corporation, the Wharves, the City, or their respective agents and employees.

Section 12.09 - Umbrella Liability Insurance. Operator must maintain umbrella/excess liability insurance. The insurance provided under this section must be in the amount of not less than \$5,000,000 per occurrence and be excess over all underlying insurance coverage in this Article.

Section 12.10 - Waiver of Subrogation. Corporation and Operator agree to waive any and all rights of recovery, claims, actions or causes of action against the other, its agents, officers and employees for any injury, death, loss or damage that may occur to Persons or to the Berth or Terminal No. 1, or any personal property of such party on the Berth or Terminal No. 1, by reason of fire, windstorm, earthquake, flood or any other risks, or any other cause that is insured under the insurance policy or policies that either party is required to provide or maintain under this Agreement, to the extent and only to the extent of any proceeds actually received by Corporation or Operator, respectively, with respect thereto, regardless of cause or origin, and each party covenants that no insurer will hold any right of subrogation against the other. If such waiver is not obtained, the party failing to do so indemnifies the other party for any claim by an insurance carrier arising out of subrogation.

Section 12.11 - Insurance Requirements. The phrase "Required Policy" means each policy of insurance required to be maintained by Operator under the terms of this Agreement. Each Required Policy must be written by a company satisfactory to Corporation, but in all events by a company with an A.M. Best Company financial rating of not less than A:XII (or a similar rating by a comparable service selected by Corporation should A.M. Best Company cease providing such ratings) and be licensed to do business in Texas or, if the aforesaid is not available, by a company qualified to do business as a non-admitted insurer in Texas under current Texas surplus lines requirements. All Required Policies may contain a deductible of not more than \$5,000,000 provided Operator maintains a credit rating of BBB (or equivalent) or better from Moody's or Standard and Poor's. Such policies must be endorsed so as to require 30 days prior written notice to Corporation and Operator in the event of cancellation, material change or intent not to renew. Required Policies must contain cross-liability clauses, when applicable and available. Operator must deliver to Corporation a certificate of insurance for any Required Policy no later than the Commencement Date. The required evidence of coverage must always be deposited with Corporation. If Operator fails to provide Corporation with a current (as of the date insurance coverage is being determined) insurance certificate indicating full compliance with the terms of this Article, or if Corporation receives notice that any Required Policy will be canceled, materially changed, or will not be renewed, Corporation, in addition to any other remedy under this Agreement, may purchase and maintain any Required Policy and Operator must immediately reimburse Corporation for any premiums paid or costs incurred by Corporation in providing such insurance. Failure of Operator to reimburse Corporation is a default by Operator in the payment of Fees. At Corporation's option, Corporation may draw on the Letter of Credit to reimburse itself for any premiums paid or costs incurred by Corporation in providing such insurance. Operator must notify Corporation immediately upon discovery of any fact or condition that may result in a claim covered by the insurance or indemnity provisions contained in this Agreement.

A handwritten signature in black ink, appearing to be 'W. New', is written in the bottom right corner of the page.

Section 12.12 - Indemnity for Noncompliance with Insurance Requirements. Operator INDEMNIFIES and HOLDS HARMLESS Corporation from any loss it may suffer due to Operator's failure to comply with all the above insurance requirements, including the requirement of obtaining waivers of subrogation, and due to any insurance coverage being invalidated because of Operator's failure to comply with the terms, conditions and warranties of any Required Policy.

Section 12.13 - Indemnification of Operator. To the fullest extent permitted by applicable law, Corporation INDEMNIFIES and HOLDS HARMLESS Operator, its directors, officers, agents and employees, its affiliates and the directors, officers, agents and employees of its affiliates (collectively, the "Operator Indemnified Persons"), against all costs and expenses, including, without limitation, reasonable attorneys' fees and costs of investigation and defense, as well as legal liability, whether from suit, judgment, settlement or otherwise arising out of any or all claims for injury to any Person or property, including but not limited to injuries resulting in death, arising from, or caused by, or incident to any wrongful or negligent act or omission of Corporation, its directors, officers, invitees, servants and employees upon the Berth or Terminal No. 1, or arising or resulting from any defective or unsafe condition for which Corporation is responsible, or of any apparatus, equipment or other property of Corporation, or in any other manner arising out of any action or inaction of Corporation. Any language to the contrary notwithstanding, the covenants and agreements contained in this paragraph survive the termination or expiration of this Agreement for whatever cause.

Section 12.14 - Insurance Requirements of Corporation. Corporation covenants that it will maintain property insurance coverage on the Berth and Terminal No. 1 and such other additional insurance coverage on the Corporation's operations as may be required to comply with the provisions of any outstanding bond indenture or ordinance relating to Terminal No. 1.

### **ARTICLE 13 - ASSIGNMENT**

Section 13.01 – Assignment by Operator. Operator must not assign its rights or any interest under this Agreement unless approved in writing in advance by Corporation (subject to its reasonable discretion).

Section 13.02 – Assignment by Corporation. Operator consents in advance to the assignment by Corporation of its rights or any interest in this Agreement to the Wharves or the City, and agrees to recognize the Wharves or the City, as the case may be, as the contracting party under this Agreement from and after the date of the assignment. Other than as provided herein, Corporation shall not assign its rights or obligations herein to any Person, without the prior written consent of Operator.

### **ARTICLE 14 - DEFAULT AND REMEDIES**

Section 14.01 - Events of Default. Each of the following occurrences is an "Event of Default":

- (a) Operator's failure to pay Fees within 10 days after Corporation has delivered notice to Operator that the same are due;

Handwritten signature and initials in black ink, appearing to be 'WAW'.

(b) Lapse in required insurance coverage by Operator or failure by Operator to strictly comply with any provisions in this Agreement relating to insurance coverage, without Operator having taken immediate, reasonable steps to cure such lapse or failure;

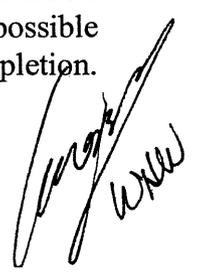
(c) Creating or allowing any unsafe or dangerous condition to exist at or adjacent to the Berth or Terminal No. 1 or elsewhere at the Port without Operator having taken immediate, reasonable steps to cure or cause to be cured such condition after written notice of such condition is provided by Corporation to Operator;

(d) Operator abandons or vacates the Berth, Terminal No. 1, or any substantial portion thereof, or fails to continuously conduct Cruise Operations from the Berth and Terminal No. 1 in the manner described herein unless the failure to conduct Cruise Operations is caused by (i) the performance of bona fide repairs or maintenance to a Vessel that do not in the aggregate cause interruptions in the performance of Cruise Operations with respect to that Vessel in excess of 90 days in any Operating Year during the Term, (ii) temporary conditions (less than 30 days) beyond Operator's control, (iii) events of force majeure, or (iv) the failure by Corporation to perform its responsibilities or obligations under this Agreement;

(e) Operator's failure to perform, comply with, or observe any other agreement or obligation of Operator under this Agreement or any other agreement to which Corporation (or Wharves) and Operator are parties and the continuance of such failure for a period of more than 30 days after Corporation has delivered to Operator written notice thereof, or such longer period not to exceed 60 days if the default cannot reasonably be cured within the 30 day period and Operator diligently commences to cure the default as soon as possible following notice thereof and thereafter diligently pursues curing the default to completion;

(f) Subject to the provisions of Section 16.04 of this Agreement, the filing of a petition by or against Operator (the term Operator includes, for the purpose of this Section, any guarantor of Operator's obligations hereunder) in any bankruptcy or other insolvency proceeding; seeking any relief under any state or federal debtor relief law; for the appointment of a liquidator or receiver for all or substantially all of Operator's property or for Operator's interest in this Agreement; or for the reorganization or modification of Operator's capital structure; however, if such a petition is filed against Operator, then such filing will not be an Event of Default unless Operator fails to have the proceedings initiated by such petition dismissed within 90 days after the filing thereof; and

(g) Corporation's failure to perform, comply with, or observe any agreement or obligation of Corporation under this Agreement or any other agreement to which Corporation (or Wharves) and Operator are parties and the continuance of such failure for a period of more than 30 days after Operator has delivered to Corporation written notice thereof, or such longer period not to exceed 60 days if the default cannot reasonably be cured within the 30 day period and Operator diligently commences to cure the default as soon as possible following notice thereof and thereafter diligently pursues curing the default to completion.

A handwritten signature in black ink, appearing to be 'W. H. W.', is located in the bottom right corner of the page.

Section 14.02 - Remedies. Upon any Event of Default, Corporation may, in addition to all other rights and remedies afforded Corporation hereunder or by law or equity, terminate this Agreement (unless prohibited from doing so by applicable law) by giving Operator written notice thereof, in which event Operator must pay to Corporation the sum of all Fees accrued hereunder through the date of termination.

Section 14.03 - Non-Waiver. Corporation's acceptance of Fees following an Event of Default will not waive Corporation's rights regarding such Event of Default. No waiver by Corporation of any violation or breach of any of the terms contained herein will waive Corporation's rights regarding any future violation of such term. Corporation's acceptance of any partial payment of Fees will not waive Corporation's rights with regard to the remaining portion of the Fees that are due, regardless of any endorsement or other statement on any instrument delivered in payment of Fees or any writing delivered in connection therewith; accordingly, Corporation's acceptance of a partial payment of Fees will not constitute an accord and satisfaction of the full amount of the Fees that are due, regardless of any rule of law to the contrary.

Section 14.04 - Other Remedies. All rights, options, and remedies of Corporation contained in this Agreement are construed and held to be cumulative, and no one of them is exclusive of the other, and Corporation has the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement, provided, however, that Corporation waives any prejudgment right to proceed in rem against any Vessel for a breach of this Agreement.

Section 14.05 – MAC Termination. If any new or change of applicable law is enacted, whether such law or regulation governs or relates to Operator's obligations and performance under this Agreement, which imposes a fee, tax or other requirement which, in Operator's opinion, reasonably exercised, could have a material adverse effect (\$15,000,000 or greater) on Operator and/or its divisions, subsidiaries or affiliates (a "MAC Event") and such material adverse effect could be avoided or reduced, in whole or in part, by repositioning Operator's vessels, Operator shall have the right to terminate this Agreement (a "MAC Termination"). Written notice of a MAC Termination shall be delivered by Operator to the Corporation within 15 calendar days after Operator's actual knowledge of the occurrence of a MAC Event. Operator's termination of this Agreement under this Section shall not constitute an "event of default" as defined under the Development Agreement but shall not be considered a Non-Recourse Termination under such agreement. Accordingly, the loan thereunder may not be accelerated by reason of such termination and interest will continue to accrue at the "non-default" rate.

Section 14.06 – Alternative Dispute Resolution. Any controversy or claim between the parties arising out of or relating to this Agreement, any provision of it, or any breach or alleged breach of it, except controversies or claims involving less than the maximum jurisdictional limits of the County Courts at Law of Galveston County, Texas, will be settled by arbitration according to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and will be conducted through the AAA's office in Dallas County, Texas. The parties also agree that the AAA Optional Rules for Emergency Measures of Protection will apply to the proceedings. Unless the

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be 'Corporation' and the initials are 'WAW'.

parties agree otherwise, three arbitrators will be appointed to hear the dispute. Operator and the Corporation will each appoint an arbitrator within 15 days after the filing of (i) the submission or (ii) the answering statement or the expiration of the time within which the answering statement is to be filed, whichever event is applicable to the party making the appointment. Within 15 days after the last appointment of a party appointed arbitrator, the two party appointed arbitrators must choose a neutral arbitrator, who will act as chairperson for the arbitrators. Judgment on the reward rendered by the arbitration may be entered in any court having jurisdiction of the award.

## **ARTICLE 15 - LIABILITY**

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

Section 15.02 - No Personal Liability of Wharves. Wharves' officers, agents and employees and the trustees of the Wharves, either singularly or collectively, are not personally liable on this Agreement or for any breach thereof.

Section 15.03 - No Personal Liability of Corporation. Corporation's officers, agents and employees and the directors of the Corporation, either singularly or collectively, are not personally liable on this Agreement or for any breach thereof.

## **ARTICLE 16 – MISCELLANEOUS**

Section 16.01 - Right of Entry and Inspection. On Cruise Days, Operator will permit Corporation or Corporation' agents, representatives, or employees to enter and inspect the Berth or Terminal No. 1 at all times provided that Corporation, its agents, representatives and employees shall not interfere with Operator's business, use or quiet enjoyment of the Berth or Terminal No.1.

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

Section 16.03 - Force Majeure. Except for Operator's obligation to pay Fees and to obtain insurance as required in this Agreement and except as otherwise provided herein, Corporation and Operator are excused from performing any of their respective duties, obligations or undertakings under this Agreement in the event, so long as, and to the extent that the performance of such duty, obligation or undertaking is prevented, delayed, retarded or hindered by an Act of God, epidemic, fire, hurricane, earthquake, flood, explosion, action of civil commotion, sabotage, malicious mischief, strike, lockout, action of labor unions, condemnation, governmental restriction, order of civil or military or naval authorities, embargo, impossibility of obtaining materials, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the party in question. Either party entitled to such extension hereunder will give prompt written notice to the other party as soon as possible after the occurrence causing such delay asserting its claim of right to such extension and the reasons therefor.

Handwritten signature and initials in black ink, located in the bottom right corner of the page. The signature appears to be 'C. W. H. W.' and the initials below it are 'W. H. W.'.

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

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

Section 16.06 - Use Clause. Operator agrees not to use any part or all of the Berth, Terminal No. 1, or any other property under the management and control of Wharves for any use or purpose in violation of any law, rule, regulation, code, or ordinance (as each of them may from time to time be enacted or amended) of the United States, the State of Texas, the City, the Wharves, or any other lawful authority having jurisdiction over the Berth, Terminal No. 1, or any other property under the management and control of Wharves.

Section 16.07 - Release of Corporation. In the event the City, the Wharves, or the Corporation sells or transfers the Berth or Terminal No. 1 or any part thereof and as a part of such transaction assigns its interest in and to this Agreement, and provided such buyer, transferee or assignee agrees to perform as Corporation under this Agreement, then from and after the effective date of such sale, assignment, or transfer, Corporation has no further liability under this Agreement to Operator except as to matters of liability which accrued and are unsatisfied as of such effective date, it being intended that the covenants and obligations contained in this Agreement on the part of Corporation be binding on Corporation and its successors and assigns only during and in respect of their respective successive periods of ownership of the Berth or Terminal No. 1.

Section 16.08 - Risk Allocation for Hazardous Materials. Operator is responsible for remediation of any environmental contamination of the Berth or Terminal No. 1 and adjacent land or waterways (and to any other property to which such environmental contamination migrates) caused by Operator or Operator's invitees or agents. For the purpose of this provision, the term "environmental contamination" means the presence on the Berth or Terminal No. 1 or any adjacent land or waterways (and to any other property to which such environmental contamination migrates) of any hazardous, toxic, or other like material regulated under any state, federal, or local law dealing with hazardous substances, protection of the environment, or similar matters in excess of lawfully permitted levels. Responsibility for environmental contamination with respect to the Berth or Terminal No. 1 and adjacent land or waterways (and to any other property to which such environmental contamination migrates) will be allocated as follows: (i) to Operator for environmental contamination that is caused by Operator or Operator's invitees or agents, and (ii) to Corporation for environmental contamination in all other cases. This allocation of responsibility is only as between Corporation and Operator and will be without prejudice to any rights Corporation or Operator may have against any other party causing environmental contamination.

Section 16.09 - Notices. All notices, demands, or requests from one party to another must be in writing and must be personally delivered, sent by mail, certified, registered, express or overnight,

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be 'W. H. W.' and the initials are 'W. H. W.'.

postage prepaid, or sent by facsimile transmission, to the addresses stated in this Section, or to such other address as the party may request in writing, and are deemed to have been given at the time of delivery. Corporation's address is P. O. Box 328, Galveston, Texas 77553 (for U. S. Mail), 123 Rosenberg, 8<sup>th</sup> Floor, Galveston, Texas 77550 (for express or overnight mail), or (409) 766-6171 (for facsimile transmissions), in any case to the attention of the Chairperson. Operator's address is 3655 NW 87th Avenue, Miami, Florida 33178, (for U. S. Mail, express or overnight mail), or (305) 406-4904 (for facsimile transmissions), in any case to the attention of Roger Blum.

Section 16.10 - Parties Bound. Each party represents to the other that (i) this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligations of such party, enforceable in accordance with its terms, and (ii) the execution, delivery and performance by each party of its respective obligations hereunder complies with all laws, rules, regulations and orders applicable to such party. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

Section 16.11 - Texas Law to Apply and Venue. This Agreement must be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Galveston County, Texas.

Section 16.12 - Legal Construction. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability does not affect any other provision hereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, if consistent with the overall intent of this Agreement.

Section 16.13 - Prior Agreements Superseded. As of the Commencement Date, this Agreement will constitute the sole and only agreement of the parties hereto with respect to the subject matter hereof and will supersede any prior understandings or written or oral agreements between the parties with respect thereto, including without limitation the 1999 Carnival Agreement. Prior to the Commencement Date, the terms of the 1999 Carnival Agreement will continue in full force and effect as written but such agreement will terminate on the Commencement Date.

Section 16.14 - Amendment. No amendment, modification, or alteration of the terms of this Agreement is binding unless in writing, dated subsequent to the Effective Date and executed by Corporation and Operator or their successors and permitted assigns.

Section 16.15 – Attorneys' Fees. In the event Corporation or Operator breaches any of the terms of this Agreement and the party not in default employs attorneys to protect or enforce its rights and prevails, then the defaulting party agrees to pay the non-defaulting party's reasonable attorneys' fees.

Section 16.16 - Further Assurances. Operator agrees that it will from time to time and at any reasonable time execute and deliver, or cause to be executed and delivered to Corporation such

Handwritten signature and initials in black ink, located in the bottom right corner of the page. The signature appears to be 'WHEW' and the initials below it are 'WHEW'.

documents and instruments, and shall take, or cause to be taken, such other actions Corporation may reasonably request to effectuate the terms of this Agreement.

Section 16.17 - Attachments. All Exhibits and Schedules attached to this Agreement are incorporated by reference.

Section 16.18 - Compliance with Laws. Operator must comply with all laws, ordinances, rules, regulations, and codes (as each of them may from time to time be enacted or amended) of the United States, the State of Texas, the City, the Wharves, or any other lawful authority having jurisdiction over the Berth or Terminal No. 1, or governing or in any manner applicable to this Agreement, including without limitation MARPOL, Annex I, II, III, and V; the Safety of Life at Sea Convention (SOLAS); the International Maritime Organization (IMO); as well as all security standards established by the United States Coast Guard for each Vessel to be docked at the Berth by Operator.

Section 16.19 - Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart is deemed to be an original instrument, but all such counterparts together constitute but one Agreement. A photocopy or facsimile reproduction of an original signature of a party on this Agreement binds that party to the terms, covenants, and conditions of this Agreement.

Section 16.20 - Railroad Clearances. Operator must not locate any structure or materials closer than 8 feet 6 inches from the centerline of the nearest railroad track on or adjoining the Berth or Terminal No. 1, or closer than 22 feet above the top of any railroad track on or adjoining the Berth or Terminal No. 1. On Cruise Days, Operator must keep all railroads and passageways on and adjoining the Berth or Terminal No. 1 free from obstruction by motor vehicles and other objects.

Section 16.21 - Remedies and Mitigation. Pursuit of any remedy under this Agreement does not preclude pursuit of any other remedy under this Agreement or that may be provided at law or in equity. Corporation and Operator have a duty to mitigate damages.

Section 16.22 - Limitation of Warranties. Corporation disclaims any implied warranties of merchantability or of fitness for a particular purpose arising out of this Agreement, the Berth, or Terminal No. 1, and Operator acknowledges the disclaimer of such warranties.

Section 16.23 - Abandoned Property. In addition to any other remedy under this Agreement or provided by law, Corporation may retain, destroy, or dispose of any property left on the Berth or at Terminal No. 1 at the termination of this Agreement.

Section 16.24 - Time. Time is of the essence in this Agreement.

Section 16.25 - Headings. The headings, captions, and arrangements used in this Agreement are for convenience only and do not affect the interpretation of this Agreement.

A handwritten signature in black ink, appearing to be 'W. H. W.', is written over the initials 'W.H.W.' which are also written in black ink below the signature.

Section 16.26 - Signage. Operator must not install or erect any sign on or about the Berth or Terminal No. 1 without first obtaining Corporation's written approval with regard to the size, type, shape, design, color, material, content, and method of attachment of the sign, which approval will not be unreasonably withheld, conditioned, or delayed. Operator must, at its sole expense, remove any sign that it installs or erects on or about the Berth or Terminal No. 1 and repair any damage done to the Berth, Terminal No. 1, or the adjacent land or property by installing, erecting, or removing the sign. Removal and repair of any sign must be completed no later than the termination of this Agreement. In addition, any temporary signage used by Operator in the luggage lay-down area of Terminal No. 1 must be (i) provided at Operator's sole cost, (ii) installed by 7:00 a.m. and removed by 7:00 p.m. on each Cruise Day, and (iii) approved in advance by Corporation, which approval will not be unreasonably withheld, conditioned, or delayed.

Section 16.27 - Appointment of Agent and Stevedore. No later than the Commencement Date, Operator must appoint a vessel agent acceptable to Corporation from a security perspective (in its reasonable discretion), and must thereafter immediately inform Corporation of any proposed changes in the identity of such agent so that Corporation can approve or reject the proposed agent using the criteria described above. In conducting Cruise Operations, any person or entity Operator uses to provide stevedoring services at the Port must be duly licensed by Wharves to perform such stevedoring services at the Port, which license must be maintained in good standing by such person or entity at all times that it is performing services for Operator with respect to this Agreement.

Section 16.28 – Passenger Count. Operator must provide Corporation on a weekly basis the total number of persons boarding any Vessel as passengers on any cruise conducted as a Cruise Operation. The report must be delivered to Corporation no later than Friday of the week following the week to which the passenger count relates.

Section 16.29 – Parking for Employees and Contractors. The vehicle of any employee, contractor, supplier, or vendor of Operator involved in Cruise Operations, or any person permitted by Operator to board any Vessel, must be parked in a location to be designated from time to time by Corporation, which location will be at least 300 feet but not more than 600 feet from Terminal No. 1 wherever practicable, or such other distances or locations as may from time to time be changed in accordance with security requirements determined by Wharves or ordered by any federal, state, or local governmental entity having jurisdiction over Terminal No. 1 or the operations conducted therefrom.

Section 16.30 – Exclusive Homeport Operations. As consideration for being granted this license to conduct Homeport Operations (defined below) from the Port, Operator covenants not to conduct Homeport Operations from any other port in the State of Texas during the Term, provided that Terminal No. 1 and the adjacent berthing area, or a temporary, substitute facility as described in Section 1.04, is available to accommodate Operator's Cruise Operations on the dates described in the Cruise Schedules.

Section 16.31 –Relocation of Spare Anchor and Propeller. As of the Effective Date Operator is storing a spare anchor and propeller in the Pier 15 area of the Port. On or before the Commencement Date, Operator must move the anchor and propeller to a location in Terminal No. 1

A handwritten signature in black ink, appearing to read 'WAW', is written over the end of the text in Section 16.31.

designated by Corporation. Operator must pay Corporation storage charges for the anchor and propeller beginning on the day it is relocated to Terminal No. 1 at the rates and in the manner described in the Tariff.

### **ARTICLE 17 - RIGHT OF FIRST REFUSAL**

Corporation hereby grants to Operator during the Term the right of first refusal to match any bona fide 3<sup>rd</sup> party offer made to Corporation on or after the Commencement Date to conduct Homeport Operations from Terminal No. 1. As used in this Agreement, a "Homeport Operation" means the origination of Cruise Operations from the Port for cruises totaling, in the aggregate, at least 90 days in duration per Operating Year. An "Operating Year" is each 12-month period during the Term that begins on the day of the year that corresponds to the Commencement Date (or an anniversary thereof) and ends on the day before the following anniversary thereof. If Corporation receives a bona fide offer on or after the Commencement Date from a 3<sup>rd</sup> party unrelated to Operator to conduct Homeport Operations from Terminal No. 1 and the terms of that offer are acceptable to Corporation, Operator has the right of first refusal to enter into an agreement with Corporation to allow it to conduct those operations instead of the 3<sup>rd</sup> party offeror under the same terms and conditions offered by the 3<sup>rd</sup> party; provided, however, that if Operator commits to conduct Homeport Operations from Terminal No. 1 for a number of calls that exceed the number of calls proposed by such 3<sup>rd</sup> party offeror by at least 20% (on an annual basis or based on a commitment for a longer term), then Operator has the right of first refusal to amend this Agreement to allow it to conduct those operations instead of the 3<sup>rd</sup> party offeror under the same terms and conditions of this Agreement regardless of the terms offered by the 3<sup>rd</sup> party. The right of first refusal is subject to, and contingent upon, this Agreement being then in effect and Operator having fully performed all its duties and obligations under this Agreement. Corporation will furnish written notice to Operator stating the terms and conditions of the proposed agreement with the 3<sup>rd</sup> party. Operator has a period of 30 days from the date of the notice within which to exercise its right of first refusal. Within 30 days after Operator gives Corporation notice of its election to exercise the right of first refusal, either (i) Corporation and Operator must enter into a new agreement to allow Operator to conduct the Homeport Operations from Terminal No. 1 instead of the 3<sup>rd</sup> party offeror under the same terms and conditions offered by the 3<sup>rd</sup> party, or (ii) this Agreement must be amended to reflect the existence of an additional Vessel or Vessels and the new Cruise Schedules for CCL to conduct the additional Homeport Operations from Terminal No. 1; in either case depending on whether Operator is matching the number of calls in the 3<sup>rd</sup> party offer or exceeding them by at least 20%. The parties recognize that this is a continuing right of first refusal such that Operator's non exercise or waiver of its right of first refusal as to any 3<sup>rd</sup> party offer shall not affect its rights as to any subsequent 3<sup>rd</sup> party offer made during the term of this Agreement.

A handwritten signature in black ink, appearing to be 'W. H. W.', is located in the bottom right corner of the page.

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

CORPORATION

GALVESTON PORT  
FACILITIES CORPORATION

By: Donald L. Schattel  
Donald L. Schattel, Chairperson

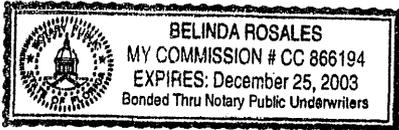
OPERATOR

CARNIVAL CORPORATION

By: [Signature]  
Name: Giora Israel  
Title: VICED PRESIDENT

THE STATE OF Florida §  
COUNTY OF MIAMI-DADE §

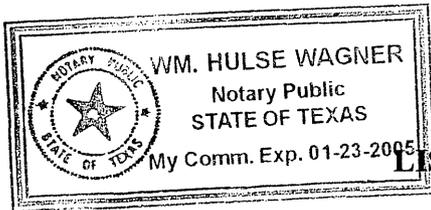
This instrument was acknowledged before me on the 19 day of December, 2002, by Giora Israel, of CARNIVAL CORPORATION, on behalf of said entity.



Belinda Rosales  
Notary Public, State of Florida

THE STATE OF TEXAS §  
COUNTY OF GALVESTON §

This instrument was acknowledged before me on the 19th day of December, 2002, by Donald L. Schattel, Chairperson of the GALVESTON PORT FACILITIES CORPORATION, on its behalf.



Wm. Hulse Wagner  
Notary Public, State of Texas

**LIST OF ATTACHMENTS**

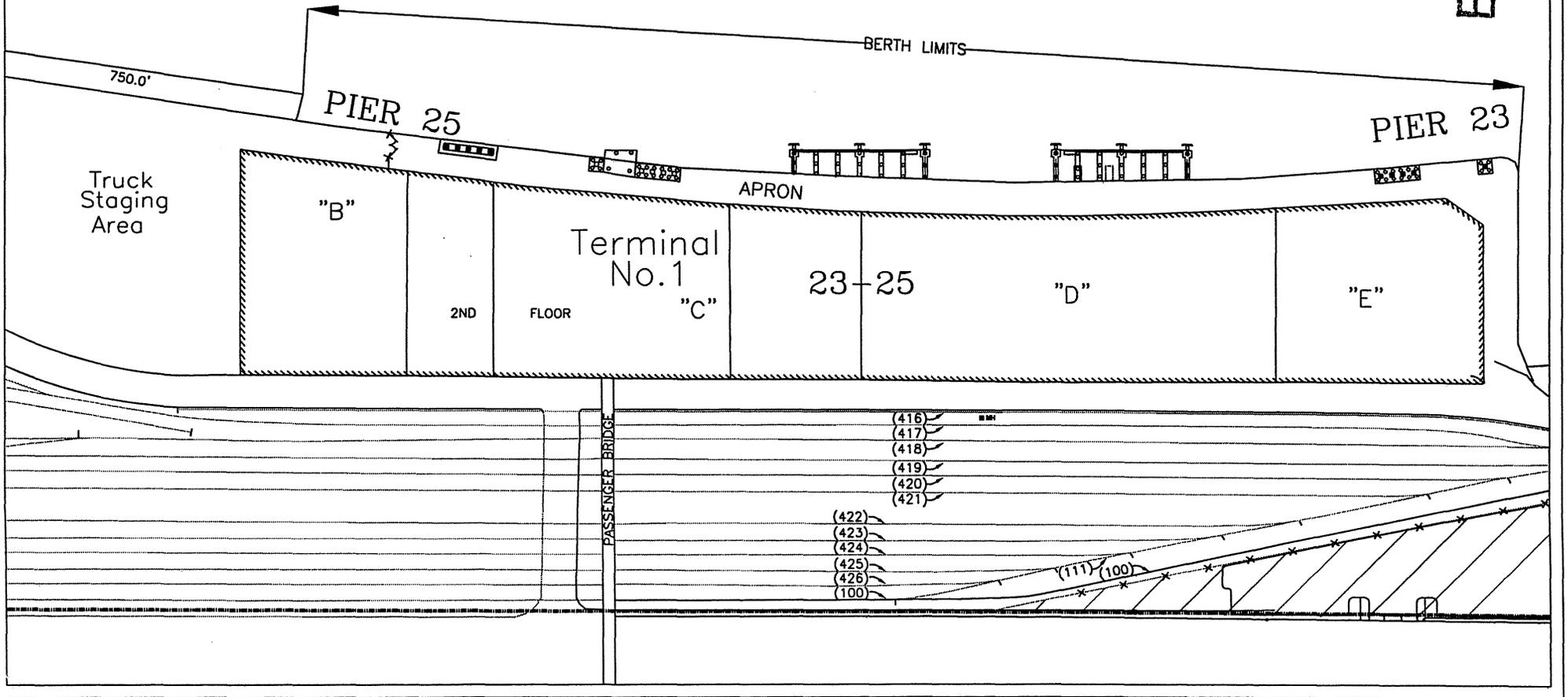
- Exhibit A – Description of Berth [Section 1.01]
- Exhibit B – Form of Office Lease [Section 1.06]
- Schedule 1 – Cruise Schedules [Section 1.03]

C:\WHW\Wharves\Carnival Cruise Lines\Operating Agreement (WHW 121102).doc

[Signature]  
WHW

EXHIBIT "A"  
December 2002

EXHIBIT A



**EXHIBIT B**

Form of Office Lease

[to be negotiated by the parties in the future]

Handwritten signature and initials in the bottom right corner. The signature is a large, stylized scribble, and the initials below it appear to be 'WHW'.

**CELEBRATION CRUISE SCHEDULE I**

2000/2001	2001/2002	2002/2003	2003/2004	2004/2005
Sat 09/30/00	Thu 10/04/01	Thu 10/03/02	Thu 10/02/03	Mon 10/04/04
Thu 10/05/00	Mon 10/08/01	Mon 10/07/02	Mon 10/06/03	Sat 10/09/04
Mon 10/09/00	Sat 10/13/01	Sat 10/12/02	Sat 10/11/03	Thu 10/14/04
Sat 10/14/00	Thu 10/18/01	Thu 10/17/02	Thu 10/16/03	Mon 10/18/04
Thu 10/19/00	Mon 10/22/01	Mon 10/21/02	Mon 10/20/03	Sat 10/23/04
Mon 10/23/00	Sat 10/27/01	Sat 10/26/02	Sat 10/25/03	Thu 10/28/04
Sat 10/28/00	Thu 11/01/01	Thu 10/31/02	Thu 10/30/03	Mon 11/01/04
Thu 11/02/00	Mon 11/05/01	Mon 11/04/02	Mon 11/03/03	Sat 11/06/04
Mon 11/06/00	Sat 11/10/01	Sat 11/09/02	Sat 11/08/03	Thu 11/11/04
Sat 11/11/00	Thu 11/15/01	Thu 11/14/02	Thu 11/13/03	Mon 11/15/04
Thu 11/16/00	Mon 11/19/01	Mon 11/18/02	Mon 11/17/03	Sat 11/20/04
Mon 11/20/00	Sat 11/24/01	Sat 11/23/02	Sat 11/22/03	Thu 11/25/04
Sat 11/25/00	Thu 11/29/01	Thu 11/28/02	Thu 11/27/03	Mon 11/29/04
Thu 11/30/00	Mon 12/03/01	Mon 12/02/02	Mon 12/01/03	Sat 12/04/04
Mon 12/04/00	Sat 12/08/01	Sat 12/07/02	Sat 12/06/03	Thu 12/09/04
Sat 12/09/00	Thu 12/13/01	Thu 12/12/02	Thu 12/11/03	Mon 12/13/04
Thu 12/14/00	Mon 12/17/01	Mon 12/16/02	Mon 12/15/03	Sat 12/18/04
Mon 12/18/00	Sat 12/22/01	Sat 12/21/02	Sat 12/20/03	Thu 12/23/04
Sat 12/23/00	Thu 12/27/01	Thu 12/26/02	Thu 12/25/03	Mon 12/27/04
Thu 12/28/00	Mon 12/31/01	Mon 12/30/02	Mon 12/29/03	Sat 01/01/05
Mon 01/01/01	Sat 01/05/02	Sat 01/04/03	Sat 01/03/04	Thu 01/06/05
Sat 01/06/01	Thu 01/10/02	Thu 01/09/03	Thu 01/08/04	Mon 01/10/05
Thu 01/11/01	Mon 01/14/02	Mon 01/13/03	Mon 01/12/04	Sat 01/15/05
Mon 01/15/01	Sat 01/19/02	Sat 01/18/03	Sat 01/17/04	Thu 01/20/05
Sat 01/20/01	Thu 01/24/02	Thu 01/23/03	Thu 01/22/04	Mon 01/24/05
Thu 01/25/01	Mon 01/28/02	Mon 01/27/03	Mon 01/26/04	Sat 01/29/05
Mon 01/29/01	Sat 02/02/02	Sat 02/01/03	Sat 01/31/04	Thu 02/03/05
Sat 02/03/01	Thu 02/07/02	Thu 02/06/03	Thu 02/05/04	Mon 02/07/05
Thu 02/08/01	Mon 02/11/02	Mon 02/10/03	Mon 02/09/04	Sat 02/12/05
Mon 02/12/01	Sat 02/16/02	Sat 02/15/03	Sat 02/14/04	Thu 02/17/05
Sat 02/17/01	Thu 02/21/02	Thu 02/20/03	Thu 02/19/04	Mon 02/21/05
Thu 02/22/01	Mon 02/25/02	Mon 02/24/03	Mon 02/23/04	Sat 02/26/05
Mon 02/26/01	Sat 03/02/02	Sat 03/01/03	Sat 02/28/04	Thu 03/03/05
Sat 03/03/01	Thu 03/07/02	Thu 03/06/03	Thu 03/04/04	Mon 03/07/05
Thu 03/08/01	Mon 03/11/02	Mon 03/10/03	Mon 03/08/04	Sat 03/12/05
Mon 03/12/01	Sat 03/16/02	Sat 03/15/03	Sat 03/13/04	Thu 03/17/05
Sat 03/17/01	Thu 03/21/02	Thu 03/20/03	Thu 03/18/04	Mon 03/21/05
Thu 03/22/01	Mon 03/25/02	Mon 03/24/03	Mon 03/22/04	Sat 03/26/05
Mon 03/26/01	Sat 03/30/02	Sat 03/29/03	Sat 03/27/04	Thu 03/31/05
Sat 03/31/01	Thu 04/04/02	Thu 04/03/03	Thu 04/01/04	

*Schedule 1*

GPFC\_002050



**CELEBRATION CRUISE SCHEDULE I**

2000/2001	2001/2002	2002/2003	2003/2004	2004/2005
Thu 04/05/01	Mon 04/08/02	Mon 04/07/03	Mon 04/05/04	
Mon 04/09/01	Sat 04/13/02	Sat 04/12/03	Sat 04/10/04	
Sat 04/14/01	Thu 04/18/02	Thu 04/17/03	Thu 04/15/04	
Thu 04/19/01	Mon 04/22/02	Mon 04/21/03	Mon 04/19/04	
Mon 04/23/01	Sat 04/27/02	Sat 04/26/03	Sat 04/24/04	
Sat 04/28/01	Thu 05/02/02	Thu 05/01/03	Thu 04/29/04	
Thu 05/03/01	Mon 05/06/02	Mon 05/05/03	Mon 05/03/04	
Mon 05/07/01	Sat 05/11/02	Sat 05/10/03	Sat 05/08/04	
Sat 05/12/01	Thu 05/16/02	Thu 05/15/03	Thu 05/13/04	
Thu 05/17/01	Mon 05/20/02	Mon 05/19/03	Mon 05/17/04	
Mon 05/21/01	Sat 05/25/02	Sat 05/24/03	Sat 05/22/04	
Sat 05/26/01	Thu 05/30/02	Thu 05/29/03	Thu 05/27/04	
Thu 05/31/01	Mon 06/03/02	Mon 06/02/03	Mon 05/31/04	
Mon 06/04/01	Sat 06/08/02	Sat 06/07/03	Sat 06/05/04	
Sat 06/09/01	Thu 06/13/02	Thu 06/12/03	Thu 06/10/04	
Thu 06/14/01	Mon 06/17/02	Mon 06/16/03	Mon 06/14/04	
Mon 06/18/01	Sat 06/22/02	Sat 06/21/03	Sat 06/19/04	
Sat 06/23/01	Thu 06/27/02	Thu 06/26/03	Thu 06/24/04	
Thu 06/28/01	Mon 07/01/02	Mon 06/30/03	Mon 06/28/04	
Mon 07/02/01	Sat 07/06/02	Sat 07/05/03	Sat 07/03/04	
Sat 07/07/01	Thu 07/11/02	Thu 07/10/03	Thu 07/08/04	
Thu 07/12/01	Mon 07/15/02	Mon 07/14/03	Mon 07/12/04	
Mon 07/16/01	Sat 07/20/02	Sat 07/19/03	Sat 07/17/04	
Sat 07/21/01	Thu 07/25/02	Thu 07/24/03	Thu 07/22/04	
Thu 07/26/01	Mon 07/29/02	Mon 07/28/03	Mon 07/26/04	
Mon 07/30/01	Sat 08/03/02	Sat 08/02/03	Sat 07/31/04	
Sat 08/04/01	Thu 08/08/02	Thu 08/07/03	Thu 08/05/04	
Thu 08/09/01	Mon 08/12/02	Mon 08/11/03	Mon 08/09/04	
Mon 08/13/01	Sat 08/17/02	Sat 08/16/03	Sat 08/14/04	
Sat 08/18/01	Thu 08/22/02	Thu 08/21/03	Thu 08/19/04	
Thu 08/23/01	Mon 08/26/02	Mon 08/25/03	Mon 08/23/04	
Mon 08/27/01	Sat 08/31/02	Sat 08/30/03	Sat 08/28/04	
Sat 09/01/01	Thu 09/05/02	Thu 09/04/03	Thu 09/02/04	
Thu 09/06/01	Mon 09/09/02	Mon 09/08/03	Mon 09/06/04	
Mon 09/10/01	Sat 09/14/02	Sat 09/13/03	Sat 09/11/04	
Sat 09/15/01	Thu 09/19/02	Thu 09/18/03	Thu 09/16/04	
Thu 09/20/01	Mon 09/23/02	Mon 09/22/03	Mon 09/20/04	
Mon 09/24/01	Sat 09/28/02	Sat 09/27/03	Sat 09/25/04	



**Schedule II - Cruise Schedule Elation  
Sundays**

<b>2003/2004</b>	<b>2003/2004</b>	<b>2004/2005</b>
Sun 09/28/03	Sun 04/25/04	Sun 10/03/04
Sun 10/05/03	Sun 05/02/04	Sun 10/10/04
Sun 10/12/03	Sun 05/09/04	Sun 10/17/04
Sun 10/19/03	Sun 05/16/04	Sun 10/24/04
Sun 10/26/03	Sun 05/23/04	Sun 10/31/04
Sun 11/02/03	Sun 05/30/04	Sun 11/07/04
Sun 11/09/03	Sun 06/06/04	Sun 11/14/04
Sun 11/16/03	Sun 06/13/04	Sun 11/21/04
Sun 11/23/03	Sun 06/20/04	Sun 11/28/04
Sun 11/30/03	Sun 06/27/04	Sun 12/05/04
Sun 12/07/03	Sun 07/04/04	Sun 12/12/04
Sun 12/14/03	Sun 07/11/04	Sun 12/19/04
Sun 12/21/03	Sun 07/18/04	Sun 12/26/04
Sun 12/28/03	Sun 07/25/04	Sun 01/02/05
Sun 01/04/04	Sun 08/01/04	Sun 01/09/05
Sun 01/11/04	Sun 08/08/04	Sun 01/16/05
Sun 01/18/04	Sun 08/15/04	Sun 01/23/05
Sun 01/25/04	Sun 08/22/04	Sun 01/30/05
Sun 02/01/04	Sun 08/29/04	Sun 02/06/05
Sun 02/08/04	Sun 09/05/04	Sun 02/13/05
Sun 02/15/04	Sun 09/12/04	Sun 02/20/05
Sun 02/22/04	Sun 09/19/04	Sun 02/27/05
Sun 02/29/04	<u>Sun 09/26/04</u>	Sun 03/06/05
Sun 03/07/04		Sun 03/13/05
Sun 03/14/04		Sun 03/20/05
Sun 03/21/04		<u>Sun 03/27/05</u>
Sun 03/28/04		
Sun 04/04/04		
Sun 04/11/04		
<u>Sun 04/18/04</u>		

A large, stylized handwritten signature or set of initials, possibly 'AWW', is written in the bottom right corner of the page.