



**THE CITY OF KEY WEST  
MALLORY SQUARE T-PIER  
USE AGREEMENT**

This Use Agreement (the "Agreement") is made on this 17th day of December 2023 ("the Effective Date") between the City of Key West (hereinafter referred to as "LESSOR") and American Cruise Lines, Inc., a Delaware corporation (hereinafter described as "LESSEE").

**1. LESSEE Identification**

The LESSEE is identified as follows:

Name: American Cruise Lines, Inc.  
Address: 741 Boston Post Road, Suite 200, Guilford, CT  
Corporate Officer or Managing Partner: Charles Robertson  
Telephone Numbers: 203-453-6800 / 203-453-7394  
LESSEE's Representative: Eric Dussault  
Telephone Numbers: 203-453-6800 / 203-909-2103  
In case of emergency contact: Eric Dussault  
Telephone number: 203-453-6800 / 203-909-2103

This Use Agreement is applicable to all passenger vessels operated by LESSEE as set forth in Addendum A, attached; it being understood and agreed that there may be vessels substituted on a temporary basis to accommodate repairs to the scheduled vessels set forth in Addendum A, so long as any vessel calling on Key West complies with City of Key West Resolution 22-073. It is also understood and agreed that from time to time during the term of this agreement, Addendum A may be amended to reflect any replacement vessels, or additional vessels as herein provided for, so long as the total linear footage of the scheduled vessels does not decrease, provided however that in no instance shall LESSEE exceed the vessel/ship limits in City of Key West Resolution 22-073. The LESSOR shall assign docking times and locations that will meet the arrival and departure times per the scheduled routes operated by the vessels identified in Addendum A and any substituted or replacement vessels as aforesaid. The LESSOR acknowledges that the times may vary daily and will accommodate fluctuations in the vessels docking times that best serve the overall operation of the LESSEE schedule and the Facility so long as in no instance shall LESSEE's vessels/ships be moored at Mallory Square during the nightly Sunset Celebration as outlined in this Agreement.

**2. Use of Facility**

LESSEE agrees to use the Key West Mallory Square T-Pier ("the Facility") to dock any and all passenger vessels operated by LESSEE and operating in Key West. In the event that LESSEE wants to use the Facility to operate international routes, an amended agreement must be entered into that may be subject to different terms and conditions.

LESSOR warrants that the seawall, docks, piers, walks, gangways, ramps, mooring gear and/or electrical and water services (if available) are fit for their intended use. LESSOR shall repair and maintain the Facility at its sole cost and expense, however damage and associated repair costs attributable to LESSEE's use of the Facility shall be the responsibility of LESSEE, normal wear and tear excepted. In the event that LESSOR shall deem it necessary or be required by any governmental authority to repair, alter, remove, reconstruct or improve any part of the Facility then the same shall be made by LESSOR with reasonable dispatch, and should the making of such repairs, alterations and improvements cause any interference with LESSEE's use of the Facility, such interference shall relieve LESSEE from the performance of its payment obligations hereunder

until such time when reasonable use is restored. However, it shall not be deemed an actual or constructive eviction or partial eviction unless previously agreed to between the parties. During such times, LESSOR shall use its best efforts to locate a suitable facility whereby LESSEE can dock for purposes of loading and unloading passenger so as to minimize any disruptions to LESSEE's schedule. All such repair and maintenance shall: (a) result in maintenance of the Facility in strict conformity with the requirements of all applicable authorities, and (b) include such repairs and maintenance as required to maintain the Facility in an aesthetically pleasing manner.

This use of dock space shall in no way constitute a tenancy and is not governed by Chapter 83 of the Florida Statutes.

### **3. Proof of Ownership; Change in Ownership**

Prior to exercising any rights whatsoever pursuant to the terms of this Agreement, and at such times during the term of this Agreement as LESSOR may reasonably request, LESSEE shall furnish to LESSOR for its review an original or certified copy of proof of ownership of the vessel. This proof shall consist of an original or certified copy of either a state-registered title to the vessel or documentation by the U.S. Coast Guard or foreign sovereign. LESSEE agrees to give LESSOR prior written notification of any change of ownership of the vessel or of LESSEE during the term of this Agreement. Except with respect to a sale or other transfer of interests in LESSEE between the persons or entities who own interests in LESSEE on the Effective Date any LESSEE shall notify LESSOR of any sale or transfer of any such interests. The sale or transfer of a controlling interest in LESSEE (except with respect to a sale or other transfer of interests in LESSEE between the persons or entities who own interests in LESSEE on the Effective Date) to another individual, partnership or corporation shall constitute an assignment of this Agreement requiring approval by the Key West City Commission. If LESSEE is leasing or otherwise operating the vessel, proof of authority to lease or operate the vessel shall be provided to LESSOR.

### **4. Changes in Information**

LESSEE agrees to deliver to LESSOR written notice of any change in any of the information furnished by LESSEE in this Agreement or in Addendum A within fifteen (15) days of the change.

### **5. Mallory T-Pier**

It is understood that LESSEE will be docking its vessels at the Facility for 34 (thirty-four) hours, plus or minus. Within that 34 hour period, LESSEE is required to vacate the Facility two hours before sunset and return no earlier than one hour after sunset to accommodate the activities of the Cultural Preservation Society (CPS). The terms of departure and return as well as ship operations can be modified according to terms and conditions as outlined in a Memorandum of Understanding attached as Exhibit A, if CPS and ACL so stipulate. The specific terms of the departure and return times shall be revisited by the City Commission six months from the effective date of this agreement. Exceptions to the requirement to depart for sunset will be made on the rare occasions where it is determined that the weather makes it unsafe to do so. Daily sunset time to be determined by the National Weather Service.

### **6. Term**

The term of this Agreement shall be for (2) two years from the Effective Date. This Agreement may be renewed in accordance with the City of Key West Code of Ordinances. It is expected that a longer term contract may be entered into after this first year.

[Schedule submitted through 2025 is confirmed]

**7. Rates**

Rates will be in accordance with the "City of Key West Resolution 22-073 Compliant Ship Fee Structure" letter dated October 16, 2023, as approved by City Commission resolution 23-279, and attached here as Addendum B. Passenger counts will be determined by the number indicated on LESSEE's Persons On Board report, which LESSEE will provide to LESSOR within eight hours of arrival.

**8. Other Charges**

LESSEE shall contract directly for all other charges, including garbage, parking, deliveries, or any other service usually provided by a ship's agent.

**9. Payment**

All monies due under this Agreement shall be paid to City of Key West, c/o Key West Port and Marine Services Department, 201 William Street, Key West, Florida 33040.

**10. Notices**

Notices required to be delivered pursuant to this Agreement or by law shall be sent by certified mail return receipt requested and by regular United States mail, by nationally recognized overnight delivery service (e.g. UPS, Federal Express), or by electronic transmission with confirmed receipt of the same by the receiving party as follows:

To:  
Director of Port Operations  
City of Key West  
201 William Street  
Key West, FL 33040

Copy to:  
City Manager  
City of Key West  
P.O. Box 1409  
Key West, FL 33041-1409

To:  
Charles Robertson  
American Cruise Lines, Inc.  
741 Boston Post Road, Suite 200  
Guilford, CT 06437

Copy To:  
Alston F. Ludwig  
Brunini, Grantham, Grower & Hewes, PLLC  
PO Drawer 119  
Jackson, MS 39205

Notices shall be deemed given upon actual receipt or upon the first refusal of the addressee to accept delivery.

**11. Utilities**

LESSEE shall pay for the actual metered or prorated cost of water.

**12. LESSOR Advertising**

LESSEE agrees to provide each passenger with material furnished by the LESSOR listing services available at the Key West Bight or at City of Key West Facilities.

**13. Remedies**

**13.1 LESSOR Remedies**

If LESSEE's vessel is using the Facility and fails to vacate the dockage space as scheduled or if this Agreement is terminated and LESSEE's vessel remains at the Facility without permission of LESSOR, LESSOR, with written notice to LESSEE and a with reasonable opportunity to cure, shall have the right at its option:

a) To board the vessel and, by its own power or by placing it in tow, remove from the dockage space and from all property of LESSOR both the vessel and any other personal property of LESSEE found in or adjacent to the dockage space. The vessel and personal property shall be removed to a dockage or mooring chosen at the discretion of LESSOR, and LESSEE hereby designates LESSOR as its attorney-in-fact for the purpose of acting in its place for purposes of such removal and relocation, and further agrees that LESSOR and its designee(s) shall be required only to exercise ordinary and reasonable care in such purposes. LESSEE further agrees to pay all costs incurred by LESSOR in the removing, relocation and/or storage of the vessel and personal property, including but not limited to wages, insurance premiums, towing fees, dockage and storage costs; and

b) To pursue any remedy provided by state or federal law; and

c) To use any proceedings for documented vessels as authorized pursuant to Federal law, including but not limited to arrest of the vessel and sale pursuant to Court Order.

### **13.2 LESSEE Remedies**

a) To terminate this Agreement as provided for in Section 31; and

b) To pursue any remedy provided by state or federal law.

### **14. Lien, Attorneys Fees**

In the event of litigation affecting the rights of either party under this Agreement, the losing party shall pay the prevailing party's costs, expenses, and Attorney's Fees incurred in the enforcement of the prevailing party's rights hereunder. LESSEE agrees that LESSOR shall have a lien against the vessel, its appurtenances and contents, for such unpaid sums, or for any damage to docks, other vessels or property, or to invitees of LESSOR caused by LESSEE or the vessel.

### **15. Sanitation Device**

LESSEE's vessels shall contain marine sanitation devices with current U.S. Coast Guard approval for marine use. The devices shall be properly installed, properly functioning, and used for all waste while the vessel is at dock. Failure to comply strictly with the provisions of this Section shall be a default under this Agreement. Upon advanced written notice to LESSEE and a time mutually agreeable to the parties, LESSOR reserves the right to board and inspect LESSEE's vessel while docked at the Facility to determine compliance. Each vessel must conform to the laws of the State of Florida in regard to marine sanitation and Section 82-41 of the Key West Code of Ordinances regulating discharge of waste into waters of the City of Key West.

### **16. Assignment**

LESSEE's and LESSOR'S rights under this Agreement shall neither be assigned, transferred, nor sublet to another without the prior written consent of the LESSOR or LESSEE which consent shall not be unreasonably withheld, conditioned or delayed.

### **17. Indemnification**

LESSEE agrees to indemnify and hold harmless the LESSOR and the City of Key West, their officers and employees, from liabilities, property damage, losses, personal injuries, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of LESSEE, its employees or agents, in the performance of this Agreement which results in damage to property or injuries to persons on the basis of comparative fault. Nothing herein shall be intended to waive the sovereign immunity afforded to LESSOR pursuant to Florida law, including section 768.28, Florida Statutes.

LESSEE agrees to be responsible to LESSOR and pay for any and all loss or damages to the docks, floats or other facilities caused by LESSEE's vessel or LESSEE, his/its agents, servants and employees, whether caused by negligence or not, and further to hold LESSOR harmless for any of the foregoing except to the extent attributable to LESSOR. Further, LESSEE agrees to be responsible for damages that LESSEE or LESSEE's vessel may cause to other vessels. LESSEE further agrees to indemnify LESSOR for all damages or losses caused by or arising from fault of LESSEE's vessel and appurtenances, personal property, guests, passengers, which results in damage to property or injuries to persons on a comparative fault basis.

This indemnification shall survive the expiration or termination of this Agreement. In the event that any action or proceeding is brought against the LESSOR or the City of Key West by reason of such claim or demand, LESSEE shall, upon written notice from the LESSOR, resist and defend such action or proceeding by counsel satisfactory to the LESSOR. The LESSEE shall defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the LESSOR's option, any and all claims of liability and all suits and actions of every name and description covered above which may be brought against the LESSOR or the City of Key West whether performed by LESSEE, or by persons employed or used by LESSEE. The LESSEE's obligation under this provision shall not be limited in any way by the agreed upon rate or fee structure as shown in this Agreement, or the LESSEE's limit of or lack of sufficient insurance protection.

#### **18. Release**

This Agreement is for temporary berthing space only, and such space is to be used at the sole risk of LESSEE. Unless caused by the LESSOR, its employees or agents, LESSEE hereby agrees that LESSOR shall not be liable for the care, protection or security of the vessel, its appurtenances or contents, or of any of LESSEE's personal property, guests, passengers or invitees, or for any loss or damage of any kind to the same due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains or other calamities. However, nothing herein shall be construed as a release of claims arising out of any of LESSOR's acts or omissions or obligations hereunder, including without limitation, the maintenance obligations of the LESSOR contained in Section 2 above, LESSEE agrees that there is no warranty of any kind as to the condition of the seawall, docks, piers, walks, gangways, ramps, mooring gear or electrical and water services, and that LESSOR is not responsible for injuries to persons or property occurring on LESSOR's property. This release shall include, but not be limited to: (1) acts in connection with LESSEE's vessel, motors and accessories while it is on or near LESSOR's property including the rented space, or while it is being moved, or docked; (2) loss or damage to LESSEE's vessel, motors and accessories and contents or other personal property due to fire, theft, vandalism, collision, equipment failure, windstorm, rain or hurricane or any other casualty loss; and (3) causes of action arising out of the use of any adjacent pier or docking facilities or walkways giving access thereto by LESSEE and/or its guests, passengers and invitees.

#### **19. Insurance**

##### **19.1 General Insurance Requirements:**

19.01 During the Term of the Agreement, LESSEE shall provide, pay for, and maintain with insurance companies satisfactory to the City of Key West, Florida ("LESSOR"), the types of insurance described herein.

19.02 All insurance shall be from responsible insurance companies eligible to do business in the State of Florida. The required policies of insurance shall be performable in Monroe County, Florida, and shall be construed in accordance with the laws of the State of Florida.

- 19.03 The LESSOR shall be specifically included as an additional insured on LESSEE's Liability policies with the exception of LESSEE's Professional Liability policies (if required) and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured's" provision). The LESSOR's additional insured status should be extended to all Completed Operations coverages.
- 19.04 LESSEE shall deliver to the LESSOR, prior to commencing work/activities under the Agreement, properly executed "Certificate(s) of Insurance" setting forth the insurance coverage and limits required herein. The Certificates must be signed by the authorized representative of the insurance company(s) shown on the Certificate of Insurance. In addition, certified, true, and exact copies of the insurance policies required herein shall be provided to the LESSOR, on a timely basis, if requested by the LESSOR.
- 19.05 If LESSEE fails to provide or maintain the insurance coverages required in this Agreement at any time during the Term of the Agreement and if LESSEE refuses or otherwise neglects to deliver the required Certificate(s) of Insurance signed by the authorized representative of the insurance company(s) to the LESSOR, the LESSOR may, at the LESSOR's sole discretion, after written notice and a reasonable opportunity to cure, terminate or suspend this Agreement.
- 19.06 LESSEE shall take immediate steps to make up any impairment to any Aggregate Policy Limit upon notification of the impairment. If at any time the LESSOR reasonably requests a written statement from the insurance company(s) as to any impairment to the Aggregate Limit, LESSEE shall promptly authorize and have delivered such statement to the LESSOR.
- 19.07 LESSEE authorizes the LESSOR and/or its insurance consultant to confirm all information furnished to the LESSOR, as to its compliance with its Bonds and Insurance Requirements, with LESSEE's insurance agents, brokers, surety, and insurance carriers.
- 19.08 All insurance coverage of LESSEE shall be primary to any insurance or self-insurance program carried by the LESSOR. The LESSOR's insurance or self-insurance programs or coverage shall not be contributory with any insurance required of LESSEE in this Agreement.
- 19.09 The acceptance of delivery to the LESSOR of any Certificate of Insurance evidencing the insurance coverage and limits required in the Agreement does not constitute approval or agreement by the LESSOR that the insurance requirements in the Agreement have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Agreement requirements.
- 19.10 No work/activity under this Agreement shall commence or continue unless and until the required Certificate(s) of Insurance are in effect and the written Notice to Proceed is issued by the LESSOR.
- 19.11 The insurance coverage and limits required of LESSEE under this Agreement are designed to meet the minimum requirements of the LESSOR. They are not designed as a recommended insurance program for LESSEE. LESSEE alone shall be responsible for the sufficiency of its own insurance program. Should LESSEE have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, it should seek professional assistance.
- 19.12 During the Term of this Agreement, the LESSOR and its agents and contractors may continue to engage in necessary business activities during the operations of LESSEE. No

personal property owned by LESSOR used in connection with these business activities shall be considered by LESSEE's insurance company as being in the care, custody, or control of LESSEE.

- 19.13 Should any of the required insurances specified in this Agreement provide for a deductible, self-insured retention, self-insured amount, or any scheme other than a fully insured program, LESSEE shall be responsible for all deductibles and self-insured retentions.
- 19.14 All of the required insurance coverages shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.
- 19.15 All policies of insurance required herein shall require that the insurer give the LESSOR thirty (30) days advance written notice of any cancellation, intent not to renew any policy and/or any change that will reduce the insurance coverage required in this Agreement, except for the application of the Aggregate Limits Provisions.
- 19.16 Renewal Certificate(s) of Insurance shall be provided to the LESSOR at least twenty (20) days prior to expiration of current coverage so that there shall be no termination of the Agreement due to lack of proof of the insurance coverage required of LESSEE.
- 19.17 If LESSEE utilizes contractors or subcontractors to perform any operations or activities governed by this Agreement, LESSEE will ensure all contractors and subcontractors maintain the same types and amounts of insurance required of LESSEE. In addition, LESSEE will ensure that the contractor and subcontractor insurances comply with all of the Insurance Requirements specified for LESSEE contained within this Agreement. LESSEE shall obtain Certificates of Insurance comparable to those required of LESSEE from all contractors and subcontractors. Such Certificates of Insurances shall be presented to the LESSOR upon request. Contractor's obligation to ensure that all contractor's and sub-contractor's insurance as provided herein shall not exculpate Contractor from the direct primary responsibility Contractor has to the LESSOR hereunder. The LESSOR will look directly to Contractor for any such liability hereunder and shall not be obligated to seek recovery from any contractor or subcontract or under such contractor's or subcontractor's insurance coverages.

LESSEE and LESSOR shall obtain from their respective insurers endorsements whereby the insurers agree to waive any right of subrogation against LESSEE or LESSOR, as the case may be, in connection with fire or other risks or casualties or liability covered by property or liability insurance. LESSOR agrees that it shall make no claim nor authorize any claim to be made against LESSEE, its employees, servants or agents in connection with any fire, explosion, or other casualty, or liability, or for any loss insured against by any policy maintained by the parties hereunder except as to the proceeds of any such coverage. LESSEE agrees that it shall make no claim nor authorize any claim to be made against the LESSOR, its employees, servants or agents in connection with any fire, explosion, or other casualty, or liability, or for any loss insured against by any policy maintained by the parties hereunder except as to the proceeds of any such coverage.

#### 19.2 Specific Insurance Coverages and Limits:

- 19.21 All requirements in this Insurance Section shall be complied with in full by LESSEE unless excused from compliance in writing by the LESSOR.
- 19.22 The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable.

Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to the LESSOR.

19.23 Workers' Compensation and Employers' Liability Insurance shall be maintained in force during the Term of this Agreement for all employees engaged in this work under this Agreement, in accordance with the laws of the State of Florida. The minimum acceptable limits shall be:

Workers' Compensation	Florida Statutory Requirements
Employer's Liability	\$1,000,000.00 Limit Each Accident
	\$1,000,000.00 Limit Disease
	Aggregate
	\$1,000,000.00 Limit Disease Each

Employee

19.24 Jones Act Coverage shall be maintained by LESSEE that will respond to claims filed under the federal Jones Act (*46 U.S.C.A. sub-section 688*). The limits of such coverage shall not be less than \$1,000,000.

19.25 USL&H Coverage shall be maintained by LESSEE that will respond to claims filed under the United States Longshoremen and Harbor Workers Act (*33 USC sections 901-950*). The limits of such coverage shall be not less than \$1,000,000.

19.26 Marine General Liability Insurance shall be maintained by LESSEE on a Full Occurrence Form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, and Products & Completed Operations Coverage. The limits of such coverage shall not be less than:

Bodily Injury & Property Damage Liability	\$5,000,000.00 Combined Single Limit each Occurrence and Aggregate
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Completed Operations Liability Coverage shall be maintained by LESSEE for a period of not less than four (4) years following expiration or termination of this Agreement.

The use of an Excess, Umbrella and/or Bumbershoot policy shall be acceptable if the level of protection provided by the Excess and/or Umbrella policy is equal to or more comprehensive than the Primary Marine General Liability policy.

19.27 Protection & Indemnity Insurance (P&I) shall be maintained by LESSEE and shall include Water Craft Liability coverage, Crew coverage, and Wreckage Removal coverage. The limits of such coverage shall not be less than \$500,000.

19.28 Full Liquor Liability Insurance shall be maintained by LESSEE with minimum acceptable limits of \$1,000,000. Host Liquor Liability will **not** be sufficient to satisfy this requirement.

19.29 Pollution/Environmental Liability Insurance shall be maintained by LESSEE that will respond to the impairment of land, water, or air resulting from activities governed by this Agreement. The minimum acceptable limits of liability shall be \$2,000,000. If the policy is structured on a "Claims Made" basis, the policy must contain a "Retroactive Date" of no later than the commencement date of the Agreement and will have an extended reporting period of four (4) years following expiration or termination of the Agreement.

## **20. Dockage to Signer and Particular Vessel Only; Partners Bound**

LESSEE agrees that ownership by partners of the vessel does not in any way create for LESSOR any obligation to furnish dockage space to any partner other than the original signer of this Agreement, or to any vessel other than those described on each addendum to this Agreement, whether the partnership is dissolved for any reason whatsoever. In the event of dissolution of a partnership, or the withdrawal of a part-owner, all parties shall nonetheless be bound by the terms



of this Agreement and be obligated for the payment of all sums due, and for the strict performance of all its covenants and conditions.

#### **21. Emergencies**

LESSEE agrees that any emergency involving a vessel subject to this Agreement will be handled upon the agreement of LESSOR and LESSEE, and the LESSEE shall bear all expenses and risks of such an emergency unless the emergency was caused or created by LESSOR or its agents or employees. In the event of an emergency and inability to contact LESSEE or its agent, the LESSOR is authorized to take whatever steps are necessary to protect its Facility or any other of its facilities. Any towing charges or repair charges accrued in handling such an emergency shall be at the expense of the LESSEE.

#### **22. Peaceable Use**

LESSEE agrees to use peaceably the dockage space assigned hereby, and agrees not to do or allow, either individually or with others, any act that has the effect, in the sole judgment of LESSOR, of disturbing the peace or of disturbing, inconveniencing or subjecting to physical jeopardy the premises, other persons, or other vessels. LESSEE further agrees to do no act that impedes or disrupts the orderly operation of the Facility and its surrounding waters.

#### **23. LESSEE's Inspection**

LESSEE acknowledges having inspected the docking space assigned by this Agreement, and hereby accepts it in as is condition for berthing the vessel(s) described in Addendum A. LESSEE agrees that LESSOR makes no warranty, guarantee, or assertion of any kind whatsoever concerning the condition of the docks, pilings, piers, walks, gangways, ramps or berthing gear.

#### **24. LESSOR Inspection**

LESSEE agrees that the LESSOR shall have the right to enter vessels and dockage space during reasonable hours in order to determine whether LESSEE is in full compliance with the terms of this Agreement and all applicable laws and regulations. The LESSOR shall give the LESSEE reasonable prior written notice of an inspection.

#### **25. LESSEE's Insolvency**

If LESSEE becomes insolvent or enters bankruptcy proceedings during the term of this Agreement, LESSOR is hereby irrevocably authorized, at its sole option, to cancel this Agreement as for a default. LESSOR may elect to accept payment from any receiver, trustee, or other judicially appointed officer without affecting LESSOR's rights under this Agreement, but no such officer shall otherwise have any right, title or interest under this Agreement.

#### **26. Time; Rights Cumulative; No Waiver**

Time is of the essence of this Agreement. Each party agrees that the rights of the other under this Agreement are cumulative, and that the failure to exercise any such right shall not operate to waive or forfeit same. Neither the failure nor any delay on the part of either party to this Agreement to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

#### **27. Jurisdiction**

The laws of the State of Florida govern the validity of this Agreement, its interpretation and performance, and any claims related to it. The venue for mediation, arbitration or any other legal proceeding shall be Monroe County, Florida.

**28. Headings Not Part of Agreement**

LESSOR and LESSEE agree that any heading which labels any section herein is for convenience only and shall not in any way be construed as affecting, limiting, expanding, or stating the contents, meaning, or intent of the section or of this Agreement.

**29. Severability and Survival**

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**30. Person Signing**

The person signing below whether natural or corporate does hereby certify that he/she is a managing member of the limited liability company.

**31. Termination**

LESSOR may terminate this Agreement by furnishing a written notice ("Termination Notice") to LESSEE and except for violations of paragraph 5, LESSEE shall have thirty (30) business days to cure, or take reasonable steps to cure, the subject matter of the Termination Notice, failing which cure, this Agreement shall automatically terminate. In the case of a violation of paragraph 5 or City of Key West Resolution 22-073, LESEEE shall have 1 day to cure and violations shall be deemed material. LESSOR shall be entitled to furnish a Termination Notice only upon the occurrence of the following events:

- (1) a failure of LESSEE to comply with the stipulations, agreements, conditions and covenants contained herein with which LESSEE must comply, if such failure is not cured, or if LESSEE fails to take reasonable steps to cure such default, within thirty (30) days from and after the date that LESSEE receives (or is deemed to have received) written notice of such failure (which written notice must be furnished prior to and in addition to and as a precondition to the furnishing of, the Termination Notice; or
- (2) A failure to pay timely the Rates (Section 7) or Other Charges (Section 8), or to maintain proper insurance limits (Section 19); or

LESSEE may terminate this Agreement by furnishing a written notice ("Termination Notice") to LESSOR and LESSOR shall have fifteen (15) business days to cure the subject matter of the Termination Notice, failing which cure, this Agreement shall automatically terminate, except with respect to a termination for an event to which reference is made in subsections (2,3,4) herein below, which termination shall be effective six (6) months from and after the date that the Termination Notice is furnished with respect to a termination for an event to which reference is made in subsection (2,3,4) herein below. LESSEE shall be entitled to furnish a Termination Notice only upon the occurrence of the following events:

- (1) a failure of LESSOR to comply with the stipulations, agreements, conditions and covenants contained herein with which LESSOR must comply, if such failure is not cured within fifteen (15) days from and after the date that LESSOR receives (or is deemed to

have received) written notice of such failure (which written notice must be furnished prior to and in addition to and as a precondition to the furnishing of, the Termination Notice; or

(2) in the event that any cost, charge or expense payable by LESSEE hereunder is adjusted upward to reflect the compounded increase in the United States Department of Labor, Bureau of Labor Statistics Miami – Ft. Lauderdale Consumers Price Index for All Urban Consumers if such compounded increase for any compounding period shall factor in an annual increase in excess of three percent (3.00%); or

(3) in the event that any cost, charge or expense payable by LESSEE hereunder is not adjusted downward from time to time so that such sums as are due and payable hereunder by LESSEE are at all times not greater than the sums paid or payable at the Facility by any third party; or

(4) in the event that LESSEE exercises the termination rights herein provided for pursuant to subsections 2,3 above, LESSEE may elect to provide a written six month notice of termination while continuing full time scheduled operations of the vessels that have reserved dockage at the Facility pursuant to Addendum A, at the then current rates pursuant to Section 7 hereof.

### **32. Homeland Security**

LESSEE understands and agrees that a term or terms of this Agreement may be superseded or altered by a rule or regulation of the Federal Department of Homeland Security, the Florida Department of Law Enforcement or the United States Coast Guard; and in such event this Agreement shall be interpreted in accordance therewith. If such rule or regulation makes this Agreement impossible or economically unreasonable to perform, then the Agreement shall terminate.

### **33. Force Majeure**

In the event the docks of the Facility owned by LESSOR or in the event the vessels owned by LESSEE are unusable because of an act of God or other force majeure such as epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of public enemy, or blockage, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, neither party has any obligation under this Agreement until the Facility is usable by LESSEE, as determined mutually by LESSOR and LESSEE.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates shown below.

American Cruise Lines, Inc., a Delaware Corporation

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Julia Riczu  
\_\_\_\_\_  
Witness

Charles K. Robertson  
\_\_\_\_\_  
Charles Robertson  
President and CEO

12/04/2023  
\_\_\_\_\_  
Date

City of Key West  
[Signature]  
\_\_\_\_\_  
Witness

[Signature]  
\_\_\_\_\_  
Teri Johnston  
Date

12-7-23