

First Amendment to Operating Agreement

This First Amendment to Operating Agreement (“First Amendment”) is effective as of September 30, 2022 (the “First Amendment Effective Date”), by and between Magical Cruise Company, Limited, Doing Business as Disney Cruise Line, a U.K. Company (“Operator”) and the Board of Trustees of the Galveston Wharves (“Wharves”) (each a “Party” and together the “Parties”).

RECITALS

WHEREAS, Operator and Galveston Port Facilities Corporation, a Texas nonprofit corporation (“Corporation”) were parties to that certain Operating Agreement dated and effective as of November 1, 2018 (the “Operating Agreement”); and

WHEREAS, Corporation subsequently assigned its rights under the Operating Agreement to Wharves, and Wharves agreed to assume Corporation’s obligations thereunder, as authorized under Section 13.02 of the Operating Agreement; and

WHEREAS, Operator and Wharves have agreed on certain amendments to the Operating Agreement as more specifically set forth herein; and

WHEREAS, capitalized terms utilized but not defined herein shall have the same meaning as set forth in the Operating Agreement.

NOW, THEREFORE, Operator and Wharves agree, pursuant to Section 16.16 of the Operating Agreement, as follows:

1. **New Article 19.** Article 19 is hereby added to the Operating Agreement as follows:

ARTICLE 19 – AGREEMENT ON AMOUNTS OWED BY OPERATOR TO WHARVES FOR THE 11/1/2021 – 10/31/2022 OPERATING YEAR

Operator and Wharves agree that, pursuant to Section 3.08 of the Operating Agreement, Operator will pay Wharves an amount of eight hundred thousand dollars (\$800,000.00) (the “Shortfall Payment”) which represents payment in full for all Annual Minimum shortfalls for all Operating Years prior to the upcoming 11/1/2022 – 10/31/2023 Operating Year (the “2023 Operating Year”). Operator will pay the Shortfall Payment to Wharves within ten (10) days following the execution of this First Amendment by all Parties. Wharves acknowledges, agrees and covenants that the Shortfall Payment, once paid, represents full and final settlement of any and all claims and/or demands of Wharves against Operator solely with respect to any Annual Minimum amounts owed to Wharves by Operator for any and all Operating Years that have occurred prior to the 2023 Operating Year.

2. **Amendment to Section 1.02 – Cruise Schedules.** Commencing as of the First Amendment Effective Date, the table set forth in Section 1.02 is hereby deleted in its entirety and replaced as follows:

Operating Year	Minimum Number of Passenger Movements Per Operating Year
11/01/2022 – 10/31/2023	96,000 Passenger Movements
11/01/2023 – 10/31/2024 and for each subsequent Operating Year	104,000 Passenger Movements

3. **Amendment to Section 1.04 – Call Guarantee.** Commencing as of the First Amendment Effective Date, Section 1.04 of the Operating Agreement is hereby deleted in its entirety.

4. **Amendment of Schedule 3.04.** Commencing as of the First Amendment Effective Date, Schedule 3.04 of the Operating Agreement is hereby deleted in its entirety.

5. **Amendment of Article 3 - FEES.** Commencing as of the First Amendment Effective Date, Article 3 of the Operating Agreement is hereby deleted in its entirety and replaced as follows:

ARTICLE 3 – FEES

Section 3.01 – Commencement of Fees. Operator’s obligation to pay Fees under this Agreement commences on the Effective Date. Fees include, but are not necessarily limited to, the charges described in this Article 3.

Section 3.02 – Port User Charge. During the Primary Term, and any preceding Renewal Term, Operator shall pay to Wharves a Port user charge (“Port User Charge” or “PUC”) for each of Operator’s multi-day cruise passengers that embark on an Operator Vessel berthed at the Port, debark off an Operator Vessel berthed at the Port, or are in-transit on an Operator Vessel berthed at the Port (each known as a “Passenger Movement(s)”). The PUC for the 2023 Operating Year will be Seventeen and 30/100 Dollars (\$17.30) per Passenger Movement. The PUC shall be in lieu of published Tariff rates for Operator’s Vessels using the Port for:

- Dockage (Item 609, A-5),
- Cruise Terminal Security Fee (Item 614, A-10)
- Passenger Service Charge (Wharfage) (Item 621, A-11),
- Harbormaster (Item 617, A-13),
- Harbor Maintenance (Item 618, A-14)
- Port Security (Item 615, A-12)

it being the intention of the Parties that Operator pay only the Port User Charge for the services and items specifically described in this Section and not be charged

separately or in any other manner (under the Tariff or otherwise) for same. In exchange for the receipt of the PUC Payment(s) from Operator, Wharves hereby agrees to provide Operator all services which are contemplated to be provided for the PUC, on a timely basis and without interruption, unless otherwise provided in this Agreement. Notwithstanding the aforementioned, Operator shall pay all other Tariff charges incurred by Operator in its operations at the Port not expressly covered by the PUC (collectively, “Other Fees”). If Operator should incur charges for Other Fees, Wharves will separately bill Operator for same.

Section 3.03 – Additional Passenger Wharfage; Annual Increases.

- a. Operator will also pay an additional \$0.25 per Passenger Movement, which Wharves will collect and pay to the City of Galveston, in lieu of taxes and to account for other services provided by the City of Galveston. Hereafter, such charges are referred to “Additional Passenger Wharfage.”

Operator must provide Wharves on request copies of its passenger manifests in order to verify the number of Passenger Movements and audit charges owed by Operator under this Agreement.

Beginning on the first day of the 11/1/2023 – 10/31/2024 Operating Year, the PUC and Additional Passenger Wharfage rates will be adjusted on that date and on each anniversary of such date (each an “Adjustment Date”). On each Adjustment Date, the PUC and Additional Passenger Wharfage will each be increased from the amount charged in the preceding Operating Year by 3.5%. Wharves will provide Operator with notice of each adjustment to the PUC and Additional Passenger Wharfage and the calculations of the adjustments no later than thirty (30) days after each Adjustment Date.

Section 3.03A – Alternate Periodic Passenger Wharfage Review.

Beginning with the Adjustment Date occurring on November 1, 2028, and on each Adjustment Date occurring in five-year intervals thereafter (i.e. on November 1, 2033), if Operator exercises its right to enter into one or both Renewal Terms, Wharves may in good faith propose an adjustment to the PUC in an amount different than the increase provided for in Section 3.03, based on economic and market conditions, Wharves operating costs and other relevant economic factors (an “Alternate PUC Amount”); provided however, that such Alternate PUC Amount cannot result in an increase greater than five percent (5%) of the then applicable PUC. Wharves will give Operator written notice of its proposed Alternate PUC Amount no later than 120 days prior to the Adjustment Date to which the proposed Alternate PUC Amount would apply. Thereafter, Wharves and Operator shall negotiate and seek to agree on the PUC to be effective as of the applicable Adjustment Date, taking into account the Alternate PUC Amount. If the Parties cannot agree on the PUC to be effective as of the applicable Adjustment Date on or before the applicable Adjustment Date, this Agreement shall terminate.

Section 3.04 – Cargo Wharfage. Operator must also pay Wharves cargo wharfage charges (“Cargo Wharfage”) as set forth in the Tariff, as it may be amended from time to time. Notwithstanding any contrary provision in the Tariff, Operator will not be required to pay Cargo Wharfage with respect to 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 – Intentionally Omitted.

Section 3.06 – Services to be Provided or Obtained by Operator. Operator will perform or cause to be performed the following services with respect to its Cruise Operations:

- (a) Stevedoring;
- (b) Pilot services;
- (c) Terminal security services;
- (d) Providing water, including hook-ups; and
- (e) Line handling.

If Wharves pays for the services described in this Section 3.06 on Operator’s behalf, Operator will pay Wharves the charges and abide by the rules and regulations for each of these services as set forth in the Tariff, payable in the manner described in Section 3.09 below. Wharves and Operator agree that persons or entities providing said services are not agents or employees of Wharves, and Wharves shall not be liable in any way for any claims relating to said persons’ or entities’ performance (or failure to perform) services.

If Wharves provides any of the services described in this Section 3.06 on Operator’s behalf, Wharves reserves the right to stop providing said services at any time, provided that Wharves shall give Operator at least 90 days’ written notice of its intent to stop paying for said services, specifying the date by which Operator must arrange to obtain and pay for said services directly.

Section 3.07 – Intentionally Omitted.

Section 3.08 – Guaranteed Minimum Annual Passenger Fees. For each Operating Year, Operator guarantees to Wharves payment of the “Annual Guaranteed Payment” which is the product of (x) the Minimum Number of Passenger Movements Per Operating Year guaranteed by Operator (as set forth in Section 1.02), multiplied by (y) the sum of the applicable PUC plus Additional Passenger Wharfage for such Operating Year. Within sixty (60) days after the end

of each Operating Year, Wharves shall calculate the payments paid by Operator for such Operating Year based on the Passenger Movements reported in the passenger manifests submitted by Operator, and shall send a written notice to Operator (the “PUC Differential Notice”) setting forth the difference (positive or negative, if any) between the payments paid by Operator for such Operating Year and the Annual Guaranteed Payment for such Operating Year (the “PUC Differential”). If the PUC Differential for any Fiscal Year is a negative amount (a “Shortfall”), Wharves will invoice Operator in an amount equal to the Shortfall. Operator must pay the invoice within thirty (30) days following receipt thereof.

Section 3.09 – Method of Payment of Fees and Charges. Wharves will invoice Operator directly for all amounts owed by Operator to Wharves. Wharves’ invoices will include the Vendor ID number provided as a part of Wharves’ registration in Operator’s Finance and Accounting System. Wharves invoices will be paid directly by Operator within 30 days of receipt of each invoice. Unless otherwise specified in this Agreement, all charges and fees are in the same manner as would apply in the Tariff.

Section 3.10 – Delinquency. All amounts payable under this Agreement that are not paid when due bear interest from the date thereof until paid at the lesser of (i) the rate contained in the Tariff or (ii) the maximum non-usurious rate allowed by law.

Section 3.11 – Extraordinary Fee or Expense Increases. Notwithstanding any provision in this Article to the contrary, if state or federal law imposes on Wharves 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, or Wharves incurs extraordinary expense in the provision of services or payment of costs under this Agreement and such expenses cannot be funded by other sources, Wharves may immediately raise the Fees applicable to Operator to cover, on a pro-rated basis, such expenses.

6. **Assignment.** All other references to “Corporation” in the Operating Agreement shall refer to Wharves, pursuant to the Assignment referenced in the foregoing Recitals.

7. **Validity of Agreement.** Except as provided in this Amendment, (i) the Operating Agreement shall remain in full force and effect in accordance with its terms and (ii) this Amendment shall be incorporated into the Operating Agreement and be subject to all of the terms, obligations and conditions as set forth therein. In the event there are any conflicts between the terms of this Amendment and the terms of the Operating Agreement, the terms of this Amendment shall prevail.

8. **Counterparts.** This Amendment, including a facsimile or photocopy hereof, may be signed in counterpart, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

In Witness Whereof, the Parties have executed this Amendment as of the date first set forth above.

WHARVES

**BOARD OF TRUSTEES OF THE
GALVESTON WHARVES**

By: _____
Rodger E. Rees
Port Director / CEO

OPERATOR

**MAGICAL CRUISE COMPANY,
LIMITED**

By: _____
Jose I. Fernandez
VP, Port Strategy,
Development & Operations