

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MoU") is made the 29<sup>th</sup> day of July, 2008

Between: **Atlantic Star Limited** of PO Box 2327, Grand Cayman KY1-1106, Cayman Islands ("ASL").

And: **The Ministry of Tourism, Environment, Investment and Commerce** of Government Administration Building, Elgin Avenue, George Town, Grand Cayman, Cayman Islands (the "Government").

And: **The Port Authority of the Cayman Islands** of PO Box 1358, George Town, Grand Cayman KY1 -1108, Cayman Islands (the "PACI").

The purpose of this MoU is to set forth certain non-binding understandings and binding agreements between the parties with respect to recent discussions regarding the management and development of cruise tourism and cargo handling in the Cayman Islands as described below.

The following Part reflects the parties' understanding of the matters described but are not legally binding and do not impose an enforceable obligation on any of the parties to negotiate or conclude an agreement regarding the management and development of cruise tourism and cargo handling in the Cayman Islands on such terms. This is not a complete statement of all terms and conditions of the proposed strategic alliance, but provides a basis for further negotiations.

### Part I – Understandings and Agreements

#### 1. Background

- (A) ASL, a duly registered limited liability company, carries on business in the Cayman Islands as a property developer, project manager and investor.
- (B) The Government and the PACI are committed to developing new facilities to enhance the management and development of cruise tourism and cargo handling in the Cayman Islands ("Port development").
- (C) ASL is interested in entering into an agreement with the Government and PACI in relation to the Port development.
- (D) In furtherance of the commitment and expressions of interest in the foregoing, the parties agree that it would be in their mutual interest to share their respective range of experience, capabilities, resources and knowledge and to enter into discussions with a view to agreeing the terms of a definitive joint venture agreement to plan, finance and build enhanced facilities in George Town harbour for the benefit and growth of the Port Development.

- (E) The parties agree that an environmental impact assessment (“EIA”) will be commenced within ninety days from the date of this MoU to assist in the design of any Port Development with a view to minimising and mitigating, wherever possible, any negative impacts on the natural environment that may result from the Port Development. The EIA shall be conducted by a reputable and suitably qualified firm to be agreed by the parties.

## **2. Objectives**

The parties agree to work closely together and as far as commercially reasonable to co-operate fully with each other in relation to negotiating and finalising an agreement within three (3) months from the date of this MoU in relation to the Port Development.

## **3. Review of Relationship**

- 3.1 Each party shall designate two individuals to be responsible for maintaining the relationship between the parties and these individuals may be changed from time to time where necessary.
- 3.2 At ASL these individuals will be [Director, ASL, Mr. Fahad Nasser Al Rashid] and [Project Manager, ASL, Mr. Gary Lindsay].
- 3.3 At the PACI these individuals will be [Chairman, PA Board, Mr. Wayne Panton] and [Port Director, Mr. Paul Hurlston]
- 3.4 At the Government these individuals will be [Chief Officer, Ministry of TEI&C, Mrs. Gloria McField-Nixon] and [ Deputy Chief Officer, Ministry of TEI&C, Mrs. Oneisha Richards].
- 3.5 All parties agree to make all efforts in good faith attempt to address any concerns involving the subject of this MoU as and when they arise.

## **Part II – Binding Provisions**

By signing this MoU, the parties agree that the following paragraphs will constitute a legally binding and enforceable agreement between the parties. In consideration of the time and expense that the parties will incur in pursuing negotiations and discussions for the finalisation of an agreement for the Port development, the parties agree as follows:

### **4. Confidentiality**

- 4.1 The parties acknowledge that, in the course of their negotiations under this MoU, it may be necessary for one party to provide documentation, technical and business information and/or intellectual property, in whatever form recorded (collectively, “Confidential Information”), to the other party or parties. All Confidential Information provided or disclosed by any party hereunder shall remain the property of the

furnishing party, and shall be held in strict confidence by the receiving party or parties, unless the furnishing party otherwise consents in writing or unless disclosure of such Confidential Information is required by the applicable laws.

- 4.2 Confidential Information furnished by any party shall not be (i) reproduced or copied, in whole or in part, by any receiving party, except for use as specifically authorised by this MoU; (ii) shall, together with any copies thereof, be returned to the disclosing party, or at the request of the disclosing party, destroyed, when no longer needed for the purpose of this MoU; and (iii) shall only be disclosed by the receiving party to its employees who are required to know such Confidential Information in connection with the performance of this MoU; and who have agreed to comply with the confidentiality obligations set forth herein.

## **5. Announcements and Publicity**

Neither party shall issue any press release or otherwise publicise or disclose to any third party the existence or nature of this MoU without the prior written consent of the other parties.

## **6. Exclusivity**

- 6.1 In consideration of ASL's commitment to this co-operation, the PACI and the Government agree for a period of three (3) months from the date of this MoU not to enter into any agreement of a co-operative or strategic nature and/or any similar agreement to this MoU with any other party.
- 6.2 The parties agree that for the term of this MoU, the Parties are permitted to liaise with the following:
- (a) cruise line operators ("Operators") (set out in Annexure 1 of this MoU) in order to determine if any of those Operators are agreeable to participating with the parties in the negotiation and finalisation of an agreement for a long-term strategic plan relating to the development of cruise ship facilities in Grand Cayman; and
  - (b) third parties (set out in Annexure 1 of this MoU) associated with the provision of cargo handling in Grand Cayman for the purpose of receiving any suggestions from those parties to ASL's proposed site design ("Site Design") for a new commercial port facility in Grand Cayman.
- 6.3 The parties agree that each of those parties set out in Annexure 1 of this MoU shall be required to sign a confidentiality agreement with the parties in relation to:
- (a) the Parties' plans relating to the development of certain cargo and cruise ship facilities in Grand Cayman;
  - (b) the Site Design; and
  - (c) any Confidential Information that may be disclosed by the Parties herein.

## **7. Termination**

- 7.1 This MoU shall remain in force for ninety (90) days commencing on the date hereof.
- 7.2 Each party has the right to terminate this MoU at any time with or without cause by giving written notice to the other parties and such termination shall take effect from the date of such notice.
- 7.3 Upon termination of the MoU for any reason, no party shall have any further obligations hereunder other than in relation to paragraphs 4, 13, 14 which shall survive termination.

## **Part III - General**

### **8. Expenses**

Each party shall pay its own expenses (including but not limited to legal, accounting and other professional services) in connection with all negotiations and activities relating to this MoU.

### **9. Relationship**

The parties acknowledge there is no relationship between the parties of joint venture, partnership, principal/agent or employer/employee and nothing in this MoU shall be construed to imply the existence of any such relationships. Accordingly none of the parties shall have any right or authority to act on behalf of any other party herein nor bind any other party by contract or otherwise.

### **10. Entire Agreement**

This MoU, together with the annexures hereto and any documents which the parties specifically agree in writing shall form part of this MoU, constitutes the entire agreement between the parties and supersedes all prior communications, draft agreements, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the parties.

### **11. Modification**

The terms of this MoU may be modified by the parties in writing at any time. Any modification not in writing shall not be effective.

### **12. Warranty**

- 12.1 The parties acknowledge that there is no warranty either express or implied, in this MoU, that either party will be successful in concluding any agreement.

- 12.2 However, each party warrants to the other that it will use all reasonable efforts in giving effect to the understanding and agreements set out in this MoU.

### **13. Limits of responsibility and indemnity**

- 13.1 ASL agrees to indemnify, keep indemnified, defend and hold harmless the PACI and Government, their servants and agents from and against all costs, expenses, liabilities, losses, damages, claims, demands, proceedings or legal costs which the PACI or Government suffers as a result of a breach by ASL, its servants or agents of any of the enforceable terms of this MoU.
- 13.2 The PACI and Government each agree to indemnify, keep indemnified, defend and hold harmless ASL, its servants and agents from and against all costs, expenses, liabilities, losses, damages, claims, demands, proceedings or legal costs which ASL incurs or suffers as a result of a breach by either the PACI or Government, their servants or agents of any of the enforceable terms of this MoU.

### **14. Governing Law and Jurisdiction**

Any issues relating to the legally binding provisions of this MoU shall be governed by Cayman Islands law. The Cayman Islands courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with those obligations and the parties agree to submit to that jurisdiction.

### **15. Assignment**

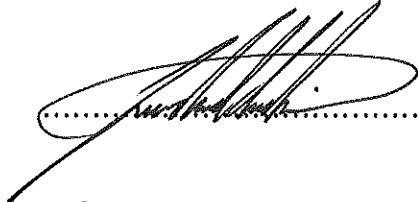
No party shall assign its interest and obligations herein without the prior written consent of the other parties hereto.

### **16. Binding Effect**

This MoU is intended to be a general basis between the parties for pursuing negotiations for a strategic alliance with respect to the matters referenced herein. With the exception of the terms of Part II hereof which are intended to be binding upon the parties, neither party shall have any legal obligation under or by virtue of this MoU including any obligation to enter into any definitive agreement or other contract, to provide any services, to disclose any information, to make any investment or to pay any consideration or compensation, whether or not expressly described herein.


IN WITNESS WHEREOF the parties hereto have caused this MoU to be executed the day and year first above written.

**SIGNED FOR AND ON BEHALF OF ATLANTIC STAR LIMITED**

By:  ..... FAHAD AL RASHID

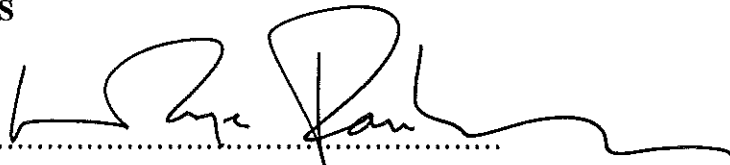
Title: ..... DIRECTOR .....

**SIGNED FOR AND ON BEHALF OF THE MINISTRY OF TOURISM,  
ENVIRONMENT, INVESTMENT AND COMMERCE**

By:  ..... CHARLES CLIFFORD

Title: ..... MINISTER OF TOURISM .....

**SIGNED FOR AND ON BEHALF OF THE PORT AUTHORITY OF THE CAYMAN  
ISLANDS**

By:  .....

Title: ..... CHAIRMAN .....