

SCHEDULE 6-A

CLOSING CORPORATE GUARANTY

[GPH, LETTERHEAD]

Date: []

To: **Puerto Rico Ports Authority** (the "**Authority**")

Calle Lindbergh 64
Antigua Base Naval Miramar
San Juan, PR 00907

Re: San Juan Cruise Terminal Project Closing Corporate Guaranty ("**Guaranty**")

Global Ports Holding plc, a company incorporated under the laws of England and Wales with registered number 10629250, whose registered address is at 3rd Floor, 34 Brook Street, London W1K 5DN, United Kingdom (hereinafter referred to as "**Guarantor**");

1. Whereas San Juan Cruise Port LLC, a limited liability company established under the laws of the Commonwealth of Puerto Rico (the "**Concession Company**"), has entered into the San Juan Bay Cruise Terminals Public-Private Partnership Agreement with the Authority on the date hereof (the "**PPP Contract**") to repair, design, build, finance, operate and maintain the San Juan Bay Cruise Terminals in Puerto Rico (the "**Project**"). **Except where otherwise defined herein, capitalized terms used in this Guaranty shall have the meaning ascribed to such terms in the PPP Contract.**
2. Whereas pursuant to Section 2.3(a) of the PPP Contract, the Concession Company is required to provide this Guaranty from the Guarantor in favor of the Authority without which Guaranty the Authority will not enter into the PPP Contract.
3. Whereas, (i) the Guarantor indirectly owns 100% of the equity interests of the Concession Company; and (ii) to induce the execution and delivery of the PPP Contract and in consideration of the due and punctual performance by the Concession Company of the Concession Company's obligations under the relevant provisions of the PPP Contract, including the requirements of Section 2.4(b) of the PPP Contract regarding the obligations of the Concession Company to satisfy certain conditions precedent to Closing, the undersigned Guarantor, hereby irrevocably undertakes to pay to the Authority, in the event of a Default (as defined in clause 4 below) by the Concession Company, and subject to the provisions of this Guaranty, such amount as is specified in the PPP Contract in respect of such Default up to a maximum of **ten million US Dollars (US \$10,000,000)** (the "**Guaranteed Amount**") upon written demand by the Authority, as liquidated damages for such Default pursuant to clause 4 below.

4. The Concession Company shall only be considered to be in default ("**Default**") if any of the following circumstances occurs:
 - (i) Prior to the earliest of (A) Closing, (B) the Outside Closing Date (as it may be amended pursuant to the terms of the PPP Contract), (C) termination of the PPP Contract under Section 2.4(d)(i) to Section 2.4(d)(vi) of the PPP Contract and (D) expiry of this Guaranty under clause 10 below, the Concession Company or the Guarantor has withdrawn or attempted to withdraw, or altered or attempted to alter, any part or all of this Guaranty; or
 - (ii) The Authority has terminated the PPP Contract pursuant to Section 2.4(d)(iv) thereof because a condition set forth in Section 2.4(b) thereof remains unsatisfied as of the Outside Closing Date (as it may be amended pursuant to the terms of the PPP Contract) (unless such Section 2.4(b) condition remains unsatisfied solely because a condition set forth in Section 2.4(a) or (c) remains unsatisfied or any such condition remains unsatisfied as a result of the occurrence of an event of Force Majeure) and provided that the conditions in Section 2.4(a) have been satisfied (other than any condition (x) the satisfaction of which depends on an action of the Concession Company or the satisfaction of any condition set forth in Section 2.4(b) or Section 2.4(c); or (y) which has not been satisfied as a result of the Concession Company's failure to comply with the provisions of the PPP Contract); or
 - (iii) The Authority has terminated the PPP Contract pursuant to Section 2.4(d)(vii) thereof and none of the conditions set forth in Section 2.3(d) thereof is in effect on the Outside Closing Security Delivery Date and the Concession Company has not delivered the Cash Deposit, the Closing LOC or the Closing Surety Bond to the Authority on or before the Outside Closing Security Delivery Date.
5. Any demand under this Guaranty must be served on us in writing specifying the relevant amount and including:
 - (i) in the event of a Default under clause 4(i) above, a written notification from the Executive Director of the Authority or his/her delegate stating that the PPP Contract has been terminated and the Authority is calling upon this Guaranty and the original decision issued by the expert appointed under the fast-track determination procedure set forth under Appendix 1 of Schedule 6-A of the PPP Contract (the "**Expert**") or a certified copy thereof by such Expert or by the Independent Expert or Technical Dispute Panel under a Technical Dispute, if the Expert's decision was challenged pursuant to Section 3.18 of the Closing Bond or Guaranty Determination Procedure and became final (the "**Decision**"), shall state as a minimum that, prior to the earliest of (A) Closing, (B) the Outside Closing Date (as it may be amended pursuant to the terms of the PPP Contract) or (C) termination of the PPP Contract under Section 2.4(d)(i) to Section 2.4(d)(vi) of the PPP Contract and (D) expiry of this Guaranty under clause 10 below, the Concession Company or the Guarantor has either:
 - a. withdrawn any or all part of this Guaranty; or
 - b. attempted to withdraw any or all part of this Guaranty; or
 - c. altered any or all part of this Guaranty; or
 - d. attempted to alter any or all part of this Guaranty;

- (ii) in the event of a Default under clause 4(ii) above, a written notification from the Executive Director of the Authority or his/her delegate stating that the PPP Contract has been terminated and the Authority is calling upon this Guaranty and the Decision, which shall state as minimum that:
 - a. a condition set forth in Section 2.4(b) of the PPP Contract remains unsatisfied as of the Outside Closing Date (as it may be amended pursuant to the terms of the PPP Contract);
 - b. such condition set forth in Section 2.4(b) of the PPP Contract does not remain unsatisfied solely because a condition set forth in Section 2.4(a) or (c) remains unsatisfied or such condition does not remain unsatisfied as a result of the occurrence of an event of Force Majeure; and
 - c. the conditions set forth in Section 2.4(a) of the PPP Contract have been satisfied (other than any condition (x) the satisfaction of which depends on an action of the Concession Company or the satisfaction of any condition set forth in Section 2.4(b) or Section 2.4(c) of the PPP Contract; or (y) which has not been satisfied as a result of the Concession Company's failure to comply with the provisions of the PPP Contract).
 - (iii) in the case of a Default under clause 4(iii) above, a written notification from the Executive Director of the Authority or his/her delegate stating that the PPP Contract has been terminated and the Authority is calling upon this Guaranty, and the Decision which shall state that none of the conditions set forth in Section 2.3(d) of the PPP Contract is in effect on the Outside Closing Security Delivery Date and the Concession Company has not delivered the Cash Deposit, the Closing LOC or the Closing Surety Bond to the Authority on or before the Outside Closing Security Delivery Date.
6. Any payments made upon the Authority's request shall be made net and free of and without any present or future deductions such as for the payment of any taxes, executions, duties, expenses, fees, deductions or retentions regardless of the nature thereof or the authority levying the same, and if we are compelled by law to make any such deduction from any sum payable under this Guaranty, the sum so payable by us shall be increased so as to result in the receipt by you of a net amount equal to the full amount expressed to be payable under this Guaranty. Any payment shall be made in US dollars.
7. The undertakings under this Guaranty constitute the absolute, direct and irrevocable undertakings of the Guarantor. The obligations of the Guarantor hereunder shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such obligations) based on any claim that the Guarantor may have against Concession Company or any other person. Without limiting the foregoing, the obligations of the Guarantor shall not be discharged or released or in any way modified or conditioned by reason of any of the following (whether with or without notice to, knowledge by, or further consent of, the Guarantor):
- (i) any alteration of the terms of the PPP Contract; any allowance of time or waiver by the Authority under or in respect of the PPP Contract;
 - (ii) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshaling of assets and liabilities, receivership, insolvency,

bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against or affecting the Concession Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty with respect to the Guarantor or the PPP Contract in any such proceeding (it being specifically understood, consented and agreed to, to the extent permitted by Law, that this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding;

- (iii) any sale or other transfer by the Guarantor or any of its Affiliates of any of the capital stock or other interest of the Guarantor or any Affiliate in the Concession Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Concession Company;
- (iv) any failure on the part of Concession Company for any reason to perform or comply with any agreement or obligation with the Guarantor, including that the Guarantor shall subordinate its rights against the Concession Company hereunder or under the PPP Contract to the full performance and discharge by the Guarantor of its obligations hereunder;
- (v) the failure on the part of Concession Company to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty;
- (vi) any legal disability or incapacity of the Concession Company with respect to the PPP Contract; or
- (vii) the fact that entering into the PPP Contract by the Concession Company was invalid or in excess of the powers of such party.

8. Also, the Authority shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Concession Company or exhausting any other remedies against the Concession Company. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the Authority do any of the following:

- (i) file suit or proceed to obtain a personal judgment against the Concession Company or any other person that may be liable for the obligations of the Concession Company;
- (ii) make any other effort to obtain payment or performance from the Concession Company; or
- (iii) exercise any other right or remedy to which the Authority is or may be entitled in connection with the obligations of the Concession Company.

9. This Guaranty shall remain valid and binding on us from the date hereof to the expiry of the Guaranty under clause 10 below.
10. This Guaranty shall expire upon the earliest to occur of the following:
- (i) the date on which the Cash Deposit, the Closing LOC or the Closing Surety Bond, or a combination of the foregoing, has been delivered to the Authority under Section 2.3(a) of the PPP Contract, and the effective date of the Closing LOC or the Closing Surety Bond, or both, as applicable, has been reached; or
 - (ii) the date on which the Guaranteed Amount has been paid under this Guaranty in respect of a Default described in clause 4(i) or (ii) above; or
 - (iii) the date on which the amount of one million US Dollars (US \$1,000,000) has been paid pursuant to Section 2.4(e)(iv) of the PPP Contract in respect of the Default described in clause 4(iii) above; or
 - (iv) the date on which Closing has been achieved under the PPP Contract; or
 - (v) the date on which the PPP Contract is terminated pursuant to Section 2.4(d)(i) to Section 2.4(d)(vi) of the PPP Contract other than where such termination constitutes a Default under clause 4 above; or
- in any case, no later than thirty (30) days after the Outside Closing Date (as it may be amended pursuant to the terms of the PPP Contract), unless within such thirty (30) day period the Authority delivers or mails a notice by certified mail (with return receipt) to the Guarantor, the Concession Company and the Expert which is postmarked or received before such 30th day requesting the Expert to make a determination of Default pursuant to clause 4(i) or 4(ii) above, upon which notice to the Guarantor, the Concession Company and the Expert, the expiration shall extend until a final and unappealable decision by the Expert, the Technical Dispute Panel or Independent Expert (under Section 19.4 of the PPP Contract), or a Commonwealth Court (pursuant to 19.4(b)(iv)), is made and notified to the Authority, the Concession Company and the Guarantor, and payments are made to the Authority if the final and unappealable decision is favorable to the Authority, which payments shall be made no later than twenty (20) days from such final and unappealable decision.
11. Whether or not this Guaranty shall be returned to us, our obligations under this Guaranty shall be released and discharged absolutely upon expiry (as set out and upon completion of the conditions set forth in clause 10 above).
12. The Authority and the Guarantor may not assign or transfer all or any part of their respective rights and obligations hereunder without the prior written consent of the Guarantor in the case of a transfer by the Authority, and of the Authority in the case of a transfer by the Guarantor.
13. This Guaranty and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of the Commonwealth of Puerto Rico. The Commonwealth Courts shall have exclusive jurisdiction to settle any dispute arising from or connected with this Guaranty.

This clause 13 shall survive the expiration or termination of this Guaranty.

14. Other than notices given pursuant to Section 10(v) above, which shall be governed by the specific terms thereof, all notices or communications to be delivered in connection with this Guaranty shall be deemed to have been properly delivered, given and received (i) on the date of delivery if delivered by hand during normal business hours of the recipient during a Business Day, and if not on a Business Day, then on the next following Business Day; or (ii) on the date of receipt by the addressee if sent by a nationally recognized overnight courier or by registered or certified mail, return receipt requested, if received on a Business Day, and if not on a Business Day, then on the next following Business Day. Such notices or other communications must be sent to each respective Party at the address set forth below (or at such other address as shall be specified by a Party in a notice given in accordance with this clause 14):

(i) *In the case of the Guarantor:*

• **GPH:**

Address: 3rd Floor, 34 Brook Street London W1K 5DN, United Kingdom
Marked for the attention of: Jan Fomferra

(ii) *In the case of the Authority:*

Puerto Rico Ports Authority
Calle Lindbergh 64
Antigua Base Naval Miramar
San Juan, PR 00907
Marked for the attention of: Executive Director and General Counsel
With copy to:
Puerto Rico Public Private Partnership Authority
PO Box 42001 San Juan, PR 00940-2001
Marked for the attention of: Executive Director

15. The Guarantor hereby represents and warrants that:

- (i) the Guarantor is a company duly organized, validly existing and in good standing under the laws of England and Wales, has the required corporate power and authority to enter into this Guaranty, carry out its obligations hereunder and consummate the transactions contemplated hereby.
- (ii) The execution and delivery by the Guarantor of this Guaranty, and the Guarantor's performance of its obligations hereunder and consummation of the transactions contemplated hereby have been duly and validly authorized and approved by the required corporate or other similar action on the part of the Guarantor. This Guaranty has been duly and validly executed and delivered by the Guarantor and this Guaranty constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or similar Law (as defined in the PPP Contract) affecting creditors' rights generally and by general equity principles.

- (iii) Neither the execution, delivery or performance by the Guarantor of this Guaranty, nor the consummation of the transactions contemplated hereby will: (i) result in a material violation or breach of, or material default under, any provision of the organizational documents of the Guarantor; (ii) result in a violation of, or give any Governmental Body the right to challenge any of the transactions contemplated hereby under, any Law applicable to the Guarantor.
 - (iv) No consent, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to the Guarantor in connection with (i) the execution and delivery of this Guaranty or (ii) the performance by the Guarantor of its payment or other obligations hereunder, except such as have been duly obtained or made by the Guarantor.
 - (v) There is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Authority pending against the Guarantor or, to the Guarantor's knowledge, threatened against the Guarantor, which if determined adversely against the Guarantor would reasonably be expected to materially and adversely affect (i) the validity or enforceability of this Guaranty or (ii) the performance by the Guarantor of its obligations hereunder.
 - (vi) There is no Law (as defined in the PPP Contract) in effect on the date hereof that would prohibit the execution, delivery or performance by the Guarantor of this Guaranty and the transactions contemplated hereby.
 - (vii) The Guarantor is fully aware of the terms and conditions of the PPP Contract.
 - (viii) The Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.
16. The Guarantor hereby unconditionally and irrevocably waives:
- (i) to the fullest extent lawfully possible, all notices that may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Concession Company required pursuant to the PPP Contract or Law (as defined in the PPP Contract) or any notice required pursuant to this Guaranty including as referred to in clause 10(v));
 - (ii) any right to require a proceeding first against the Concession Company;
 - (iii) any requirement that the Guarantor be joined as a party to any proceeding for the enforcement of any term of the PPP Contract; and
 - (iv) all demands upon Concession Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this clause 16, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.
17. Costs, fees and expenses incurred by the Parties in connection with enforcing this Guaranty shall be governed by the provisions of the Closing Bond or Guaranty Determination Procedure set forth under Appendix 1 of Schedule 6-A of the PPP Contract.

18. This Guaranty may be executed in any number of counterparts, and this has the same effect as if the signatures (and seals, if any) on the counterparts were on a single copy of this Guaranty.

SIGNATURE PAGE FOLLOWS

By signature of authorised person(s):

Executed on the date specified on page 1,])))))))
on behalf of GLOBAL PORTS HOLDING
PLC, a company incorporated in England,
by [◆FULL NAME(S) OF PERSON(S)
SIGNING], being [a] person[s] who, in
accordance with the laws of that territory,
[is][are] acting under the authority of the
company: ▀

Signature -----
Authorized signatory

[Signature] -----
Authorized signatory]

Accepted and agreed to by:

PUERTO RICO PORTS AUTHORITY

Signature: _____
Name: _____
Title: _____
Date : _____

