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FEDERAL MARITIME COMM

CP SHIPS LYKES/MOL SLOT CHARTER AGREEMENT

FMC AGREEMENT NO. 011878-001 (2<sup>nd</sup> Edition)

A Slot Charter Agreement

This Agreement originally became effective on May 29, 2004.

Expiration Date: None.

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ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is the Lykes CP Ships/MOL Slot Charter Agreement (“Agreement”).

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to authorize CP Ships Lykes to charter slots on its service in the Trade (as hereinafter defined) to MOL.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter “party” or “parties”) are:

1. CP Ships (USA) LLC ~~Lykes Lines Limited, LLC~~  
401 East Jackson Street  
Suite 3300  
Tampa, Florida 33602

(Hereinafter referred to as "CP Ships Lykes")

2. Mitsui O.S.K. Lines, Ltd.  
1-1 Toranomon  
2-chome, Minato-ku  
Tokyo 105-8688, Japan

(Hereinafter, referred to as “MOL”)

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement applies to the trades between ports on the Gulf Coast of the United States and inland and coastal points in the United States served via such ports and ports in Puerto Rico, on the one hand, and ports in the Dominican Republic, Mexico, Honduras, Costa Rica, Panama, the Caribbean Coast of Colombia and Venezuela and inland and coastal points in the aforementioned countries served via such ports, on the other hand (hereinafter referred to as the "Trade").

ARTICLE 5: AGREEMENT AUTHORITY

5.1 Service. Initially, CP Ships Lykes will operate three vessels of approximately 800 to 1,100 TEU capacity which will provide a scheduled round trip voyage duration of 21 days and a port call frequency of seven days, except in circumstances beyond its control. ~~Lykes~~ CP Ships may revise the port coverage, rotation or voyage profile from time to time. It will, however, provide MOL with a master schedule for the service and not less than 45 days notice of any permanent change(s) to be made in port calls. ~~Lykes~~ CP Ships will take into consideration any due concerns of MOL before taking a decision on any port changes. If MOL determines the decision reached materially affects its business, it may either (1) withdraw from the Agreement, effective on the earlier of 45 days after it received notice of the change from CP Ships Lykes or the effective date of the change, whichever is sooner; or (2) reduce its basic slot allocation, effective when the change in port calls takes effect.

5.2 Slots. The parties may consult and agree on the terms and conditions of and relating to sale of slots from CP Ships Lykes to MOL, including without limitation terms and conditions relating to the compensation to be paid for such slots. More specifically, but without limiting the authority granted herein, the parties agree that:

(a) Initially, MOL will be allocated a minimum basic slot allocation of 80 TEUs at 12 tons per TEU per voyage leg on each of the three vessels operated by CP Ships Lykes.<sup>1</sup> This allocation will be based on a used/not used basis and will apply to 80 TEUs or 960 metric tons, whichever limit is reached first. MOL will receive an allocation of reefer plugs on each vessel proportionate to its slot allocation on that vessel, which shall be subject to a reefer premium agreed by the parties on a used basis only. Subject to space availability and the agreement of CP Ships Lykes, MOL may purchase additional slots from Lykes upon such terms and conditions as the parties may from time to time agree. Requests for additional slots per sailing, either one way, round trip or coastal are required 1 working day prior to port cut off. Such additional agreed space will be considered as guaranteed space and will be invoiced on a used or unused basis.

(b) Acceptance of IMO out of gauge cargo and/or special equipment shall be at the discretion of CP Ships Lykes and shall be requested by MOL in writing.

(c) MOL shall have the option to load inter-port cargo, provided such cargo moves within the applicable voyage leg allocation and conforms with any applicable cabotage laws.

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<sup>1</sup> It is understood and agreed that MOL will not use slots chartered under this Agreement to move cargo to/from Puerto Cortes or Ponce.

(d) Slot charter hire shall be based on charter market rates, bunker prices and port/canal costs and/or such other factors as the parties may agree from time to time. Initial charter hire per slot, excluding any bunker adjustment factor agreed upon by the parties, shall remain in effect for 6 months and be reviewed at 6-month intervals. In addition to slot fees, MOL shall be responsible for actual costs arising out of changes in destination requested by it.

(e) In the event vessel capacity is constrained by physical limitations such as navigational or draught restrictions, the allocations of CP Ships Lykes and MOL shall each be reduced in proportion to their respective allocations on the vessel at the time and any slots sold to MOL shall be on a used basis only.

(f) MOL may not, without the consent of CP Ships Lykes, slot charter or sub-charter to any third party any slots the use of which has been granted to MOL under this Agreement.

5.3 Terminals and Stevedores. MOL will make its containers available on, or take delivery of its containers from, the terminal allocated for the relevant vessels at each port prior to the announced export closing time. Late running export containers will be accepted subject to operational feasibility. This Agreement does not authorize joint operation of a marine terminal by the parties in the United States. MOL will contract directly with the local stevedores in the ports called under this Agreement.

5.4 Separate Identities. The parties shall maintain their own identities and tariffs and shall issue their own bills of lading. Each party may separately advertise sailings of the vessels subject to this Agreement. Nothing in this Agreement shall be construed as creating a partnership, association or joint venture between the parties.

5.5 Miscellaneous. The parties may also discuss and agree upon such general administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time, including, but not limited to, performance procedures and penalties, procedures for allocating space, forecasting, terminal operations, stowage planning, schedule adjustments, financial procedures, record-keeping, responsibility for loss or damage, insurance, liabilities, claims, indemnification, consequences for delays, and treatment of hazardous and dangerous cargoes.

5.6 Further Agreements

Pursuant to ~~46 C.F.R. § 535.407~~, a Any further agreement contemplated herein cannot go into effect unless filed and effective under the Shipping Act of 1984, except to the extent that such agreement concerns matters exempt from filing pursuant to 46 C.F.R. §535.408(b). ~~routine operational or administrative matters.~~

ARTICLE 6: OFFICIALS OF THE AGREEMENT AND  
DELEGATIONS OF AUTHORITY

The following are authorized to subscribe to and file this Agreement and any accompanying materials and any subsequent modifications to this Agreement with the Federal Maritime Commission:

- (i) Any authorized officer of each of the parties; and
- (ii) Legal counsel for each of the parties

ARTICLE 7: MEMBERSHIP AND WITHDRAWAL

7.1 Membership. Membership is limited to the parties hereto except that additional carriers offering regular service in the Trade may be admitted by unanimous agreement of the parties and by amendment of the Agreement pursuant to the Shipping Act of 1984, as amended.

7.2 Withdrawal. Any party may withdraw from this Agreement for any reason upon 120 days prior written notice to the other party; provided, however, that no such notice may be given prior to March 1, 2006. Notwithstanding the preceding sentence, if at any time during the term of this Agreement a party becomes bankrupt, insolvent or has a receiving order made against it suspending payments or continuing its business under a receiver for the benefit of any of its creditors, or if a petition is presented or a meeting convened for the purpose of considering a resolution, or other steps are taken, for the winding-up of the party (other than for the purposes of and followed by a resolution previously approved in writing by the other party), or any event similar to any of the above shall occur under the laws of a party's country of incorporation, then the other party may resign from this Agreement with immediate effect.

7.3 Continued Application. In the event of withdrawal by a party or termination of this Agreement for whatever cause, the parties shall continue to be liable to one another in respect of all their liabilities and obligations incurred prior to withdrawal or termination. The terms of this Agreement shall continue to apply in respect of all voyages commenced at the effective date of termination, until final completion of all such voyages.

ARTICLE 8: VOTING

All actions taken pursuant to this Agreement shall require unanimous agreement of the parties.

ARTICLE 9: DURATION AND TERMINATION OF AGREEMENT

9.1 Term. This Agreement shall take effect as of the effective date determined in accordance with section 9.2 below and shall remain in effect until terminated by mutual agreement or upon withdrawal of all parties less one under Article 7 above.

9.2 Effective Date. The effective date shall be the date the Agreement becomes effective pursuant to the Shipping Act of 1984.

9.3. Notice to Government Agencies. The Federal Maritime Commission shall be promptly notified in writing of any termination date of this Agreement.

ARTICLE 10: NON-ASSIGNMENT

The rights and obligations of each party under this Agreement shall not be assignable except to subsidiaries, parent companies or fellow subsidiaries or with the prior consent of all other parties.

ARTICLE 11: GOVERNING LAW AND ARBITRATION

11.1 Governing Law. This Agreement is governed by and shall be construed in accordance with the law of the State of New York (excluding the laws of New York relating to conflicts of law) and shall be subject to the laws of the United States, including general maritime law and the Shipping Act of 1984, as amended.

11.2 Arbitration. Except as otherwise provided herein, any dispute or claim arising hereunder which is not amicably settled by the parties shall be settled by arbitration. Arbitration shall be held in New York, New York, by an arbitrator familiar with ocean container shipping who shall have no financial or personal interest whatsoever in or with any party and shall not have acquired a detailed prior knowledge of the matter in dispute. Upon unanimous agreement among the parties involved in the dispute, arbitration may be held in any other place.

Any party hereto may call for such arbitration by service upon the others of a written notice specifying a brief description of the disputes, the monetary amount involved, if any, the differences which such party desires to put to arbitration and the remedy sought. Within fifteen (15) days after service of such notice, the parties in dispute shall jointly agree upon an arbitrator of the aforesaid qualifications, failing which within five days thereafter, they shall request the President of the Society of Maritime Arbitrators, Inc. to appoint an arbitrator. The arbitration shall thereafter be conducted under the Society's Rules except as expressly provided herein.

For disputes involving \$100,000 or less (excluding interest, costs of arbitration and legal fees and expense) the parties shall arbitrate on documents only, as contemplated under section 27 of the Society's Rules.

The arbitrator's decision, including his written findings of fact and conclusions, shall be rendered within the period provided in the Society's Rules. Judgment may be entered on an award of the arbitrator and shall be enforceable in a court of competent jurisdiction. The arbitrator may allocate the costs of arbitration to one or

more participating parties in a manner consistent with the award or decision. The arbitrator may not award exemplary or punitive damages and may not order specific performance.

A copy of the decision shall be served by the arbitrator on the said parties.

#### ARTICLE 12: FORCE MAJEURE

Neither of the parties shall be responsible for its failure to perform any terms or conditions of this Agreement if such failure is due to civil commotion, invasion, rebellion, hostilities, strikes, labor disputes, sabotage, other work stoppage, governmental (national, state, prefectural, municipal or other) regulations or controls, Acts of God, inability to obtain materials or services, or any other cause beyond the control of such party. In the event of force majeure circumstances, the obligations of the parties shall be suspended to the extent and for the duration of such circumstances.

#### ARTICLE 13: MISCELLANEOUS

13.1 Counterparts. This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute one and the same agreement.

13.2 Severability. In the event any provision of this Agreement may prove to be illegal or unenforceable, the remaining provisions of the Agreement shall continue in

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force and effect unless the parties would not have entered into the Agreement without that provision which may be proven to be illegal or unenforceable.