

224 200120-002

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FMC AGREEMENT NO. 224-200120-002

MARINE TERMINAL AGREEMENT OF  
FAIRWAY TERMINAL CORPORATION

DEPARTMENT OF DOMESTIC REGULATION  
**RECEIVED**  
FEB 7 1990  
Federal Maritime Commission

PAGE NO. 1

**EFFICIENT**  
FEB 27 1990  
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FAIRWAY TERMINAL CORPORATION  
MARINE TERMINAL AGREEMENT

This Terminal Agreement between Young and Company ("Young"); I.T.O. Corporation ("ITO"); and Stevens Shipping & Terminal Company ("Stevens") (Young, ITO and Stevens will be referred to collectively as the Shareholders and each individually referred to as a Shareholder):

WITNESSETH

WHEREAS, on or before the effective date of this Amendment the parties hereto will have become the sole Shareholders of Fairway Terminal Corporation ("FTC"), a terminal and stevedore company providing terminal and stevedore services at Barbours Cut Terminal in the Port of Houston, Texas, pursuant to FMC Agreement No. 224-200120 (the "Agreement"), and

WHEREAS, the shares of FTC are currently held by Cavalair Corporation, a wholly owned subsidiary of Biehl International, which owns 100 percent of Young; ITO; and Kerr Steamship Co., Inc., the parent company of Stevens, and

WHEREAS, the parties desire that FTC also conduct terminal and stevedore operations in ports and other locations throughout the State of Texas, including such operations now conducted by each shareholder individually,

Now THEREFORE, in consideration of the mutual covenants herein contained, the parties do hereby agree to amend the Agreement to read as follows:

1. Operations. FTC shall conduct terminal and stevedore operations in ports and other locations throughout the State of Texas including such operations now conducted by each shareholder individually in the State of Texas. FTC may, either itself, in its own name or doing business under other names, or through wholly owned subsidiaries, do the following:

- (a) Establish rates, charges and competitive practices;
- (b) Publish Marine Terminal Tariffs;
- (c) Enter into agreements concerning Marine Terminal Facilities and/or services, Marine Terminal Conference Agreements and/or stevedoring agreements;

- (d) Own and/or lease and operate all cranes, lift machines, trucks and other equipment and gear incident to its purposes;
- (e) Operate, pursuant to lease, assignment, purchase or acquisition, including by stock or asset acquisition, any marine terminal facilities, and operations connected therewith, within the State of Texas.

2. Non-Competition. Shareholders shall not, directly or indirectly, engage in or conduct within the State of Texas any of the business activities conducted by Fairway, except as they may otherwise unanimously agree. Any such unanimous agreement shall be filed pursuant to the Shipping Act of 1984 as an amendment to this Agreement.

3. Decision Making. The management and control of FTC shall be vested in the Board of Directors, consisting of two directors nominated by each Shareholder. All actions of the Board of Directors shall require unanimous written consent, or, if taken at a Board meeting, the unanimous vote of a quorum consisting of not less than five directors.

4. Incorporation. The parties hereto each shall own one third of the FTC shares. A copy of the Articles of Incorporation will be on file with the FMC. A copy of the current Articles of Incorporation is attached hereto.

5. Binding Effect. All the terms, covenants, agreements and conditions herein contained shall be binding upon and inure to the benefits of the parties hereto, and their respective successors and assigns.

6. Governing Law. This Agreement shall be governed by the laws of the State of Texas in all respects.

7. This Agreement shall not be implemented until it becomes effective under the Shipping Act.

IN WITNESS WHEREOF, the parties have caused this  
Agreement to be executed by their corporate officers.

YOUNG AND COMPANY

By: \_\_\_\_\_

I.T.O. CORPORATION

By: \_\_\_\_\_

STEVENS SHIPPING & TERMINAL COMPANY

By: \_\_\_\_\_

ARTICLES OF INCORPORATION  
OF  
FAIRWAY TERMINAL CORPORATION

FILED  
In the Office of the  
Secretary of State of Texas

SEP 06 1985

Clerk I-C  
Corporations Section

ARTICLE I.

The name of the corporation is Fairway Terminal Corporation.

ARTICLE II.

The period of its duration is perpetual.

ARTICLE III.

The purpose or purposes for which the corporation is organized is the transaction of any or all lawful business for which corporations may be incorporated under the Texas Business Corporation Act.

ARTICLE IV.

The aggregate number of shares which the corporation shall have authority to issue is one million (1,000,000) of no par value each.

ARTICLE V.

The corporation will not commence business until it has received for the issuance of its shares consideration of the value of One Thousand (\$1,000.00) Dollars, consisting of money, labor done, or property actually received, which sum is not less than One Thousand (\$1,000.00) Dollars.

Cumulative voting of shares of stock for the election of directors is hereby prohibited. }

ARTICLE VI.

The post office address of its initial registered office is 412 San Jacinto Building, 911 Walker Street, Houston, Harris County, Texas 77002, and the name of its initial registered agent at such address is Robert Eikel.

ARTICLE VII.

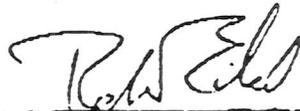
The power to alter, amend or repeal the corporation's by-laws and to adopt new by-laws is hereby delegated to the Board of Directors, subject, however, to ultimate control by the shareholders.

ARTICLE VIII.

The number of Directors constituting the initial Board of Directors is two (2), and the names and addresses of the persons who are to serve as Directors until the first annual meeting of the shareholders or until their successors are elected and qualified are: Joseph S. McDermott, 2727 Allen Parkway, 15th Floor, Houston, Texas 77019; and Robert Eikel, 412 San Jacinto Building, 911 Walker Street, Houston, Texas 77002.

ARTICLE IX.

The name and address of the incorporator is Robert Eikel, 412 San Jacinto Building, 911 Walker Street, Houston, Texas 77002.



Robert Eikel, Incorporator

THE STATE OF TEXAS I  
COUNTY OF HARRIS I

Before me, a notary public on this day personally appeared Robert Eikel, known to me to be the person whose name is subscribed to the foregoing document, and being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 4th day of September, A.D., 1985.

Marta H. Beckett  
Notary Public, State of Texas  
My Commission expires: 12-5-88