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FEDERAL MARITIME COMM

FMC Agreement No. 200866-002

**SECOND AMENDMENT TO LEASE AND OPERATING AGREEMENT**

**BETWEEN**

**BROWARD COUNTY**

**AND**

**KING OCEAN SERVICE DE VENEZUELA, S.A.**



**SECOND AMENDMENT TO LEASE AND OPERATING AGREEMENT**

This Second Amendment to Lease and Operating Agreement made and entered into by and between:

BROWARD COUNTY,  
a political subdivision of the State of Florida,  
acting by and through its Board of County Commissioners,  
(hereinafter called the "Lessor"),

and

KING OCEAN SERVICE DE VENEZUELA, S.A.,  
a Venezuelan corporation authorized to transact business in the State of Florida  
(hereinafter called the "Lessee")

**WITNESSETH:**

WHEREAS, Broward County became successor in interest to the Port Everglades Authority in November 1994 pursuant to Ch. 91-346, Laws of Florida; and

WHEREAS, Port Everglades Authority and Lessee entered into a certain Lease and Operating Agreement in June 1994 and Lessor and Lessee executed a First Amendment to Lease and Operating Agreement dated December 8, 1998 hereinafter collectively referred to as "Lease", for approximately 22.84 acres of land in Port Everglades, Broward County, Florida to be used as a container terminal; and

WHEREAS, Lessee and Lessor have negotiated the terms and conditions for payment by Lessee to Lessor of container gantry crane shortfall hours and the credit percentage of Sea Star Line, Inc. crane hours to Lessee's yearly minimum crane usage (crane hour) guarantee; and

WHEREAS, the Lessee and Lessor seek to further amend the Lease to provide for Lessor's updated language in the Indemnity, Choice of Law and Non-discrimination Lease provisions.

NOW, THEREFORE, in consideration of the Premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Paragraph 18 of the Lease entitled, COMPLIANCE WITH GOVERNMENTAL REGULATIONS is amended to read as follows:

Lessee in the use and enjoyment of said premises shall comply with all laws, governmental regulations, statutes, ordinances, rules and directives of the Federal, State, County and Municipal governments having jurisdiction over the demised premises and the business being conducted there on and all rules and regulations now in effect or hereafter imposed by Lessor; provided, however, any such regulations and rules imposed by Lessor shall be imposed uniformly against all businesses or industries located or providing similar services at Port Everglades.

Lessee shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Lease. Lessee shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by Lessor, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Lessee shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

Lessee's decisions regarding the delivery of services under this Lease shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

Lessee shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing any services pursuant to this Lease.

2. Paragraph 20 of the Lease entitled, INDEMNIFICATION AND HOLD HARMLESS is amended to read as follows:

~~Except for its responsibility for repairs and maintenance as provided for in Paragraph 15 hereof, no responsibility shall rest upon Lessor by reason of the condition of the premises or equipment or structures to be located thereon nor shall lessor be liable to lessee or any of its patrons, customers, agents, servants or employees by reason of the condition of the premises or any improvements, equipment or personal property situated thereon. Lessee shall indemnify and hold harmless Lessor against all liability and expenses, including all judgments, court costs, investigative expenses, attorneys' fees and other charges arising from any claim for injuries to the person of any of its patrons, customers, agents, servants or employees, incurred on the demised premises during the term of said Agreement or in any manner arising or resulting from Lessee's occupancy of the demised premises, except when caused by the negligence, act or omission of the Lessor.~~

Lessee shall at all times hereafter indemnify, hold harmless and, at the option of the Broward County Attorney, defend or pay for an attorney selected by the Broward County Attorney to defend COUNTY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of Lessee its employees, agents, servants, or officers, or accruing, resulting from, or related to the demised premises or the subject matter of this Lease including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. Lessee agrees to bind specifically every terminal user on the demised premises, contractor, sub-contractor and consultant it engages for the performance of its obligations hereunder to the applicable terms and conditions of this Lease including this indemnity provision for the benefit of Broward County. The provisions of this section shall survive the expiration or earlier termination of this Lease. To the extent considered necessary by the Port Everglades Department and the Broward County Attorney, any sums due Lessee under this Lease (including without limitation the cash Security Deposit and Payment Bond) may be retained by Broward County until all of Broward County's claims for indemnification pursuant to this Lease have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by Broward County.

3. Paragraph 26 of the Lease entitled, CHOICE OF LAW; WAIVER OF JURY TRIAL, is amended to read as follows:

~~Any controversies arising out of this transaction and this Lease and any action involving the enforcement or interpretation of any rights hereunder shall be prosecuted in the State or Federal courts having jurisdiction in Broward County, Florida, and shall be governed by the Laws of the state of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, the parties hereby waive any rights that either of them may have to a trial by jury of any such litigation.~~

This Lease shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Lease and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby waives any rights it may have to a trial by jury of any such litigation.

4. Paragraph 31 of the Lease entitled, CONTAINER GANTRY CRANE MINIMUM USE AND CHARGES, is amended to read as follows:

Charges for use of the Port's container gantry cranes will be in accordance with Port Everglades Tariff No. 4011, Item No. 905, any amendments thereto or reissues thereof. Lessee guarantees minimum combined usage of container gantry cranes (crane hours) for each Lease year of the Agreement as follows; in the amount of Two Thousand Eighty Four (2,084) hours.

<del>1<sup>st</sup> year</del>	<del>1,400 crane hours</del>
<del>2<sup>nd</sup> year</del>	<del>1,400 crane hours</del>
<del>3<sup>rd</sup> year</del>	<del>1,500 crane hours</del>

~~4<sup>th</sup> year — 1,600 crane hours  
5<sup>th</sup> year — 1,600 crane hours~~

~~In the event additional land is acquired by Lessee under the terms of the this Agreement Lease, Lessee will also guarantee an additional one hundred (100) container gantry crane hours over and above the then existing yearly guaranteed minimum combined usage of container gantry cranes (crane hours) more for each acres of land so added over the term of this Lease. for each year of the agreement. In the event the number of acres leased to Lessee hereunder is reduced, Lessee's yearly guaranteed minimum combined usage of container gantry cranes (crane hours) shall also be reduced by the (100) crane hours per acre returned to Lessor. The amount added during the year or subtracted subsequent to the start of a new Lease year corresponding increase or decrease in revenue derived from the additional yearly crane usage hour guarantee will be prorated monthly over the balance of the Lease year in which land was added or subtracted. All monies due Lessor relating to Lessee's shortfall in yearly guaranteed minimum combined usage of container gantry cranes (crane hours) for a given Lease year shall be paid as follows: (i) fifty percent (50%) in full upon presentment of Broward County's invoice; and, (ii) remaining balance due two (2) gantry crane shortfall hours shall be invoiced at a rate of two hundred (\$200.00) per hour.~~

~~Crane minimum use will be billed and paid as provided for under Paragraph 29;  
MINIMUM GUARANTEED WHARFAGE.~~

5. Paragraph 32 of the Lease entitled, KING OCEAN RELATIONSHIPS WITH OTHER SHIPPING LINES is hereby amended as follows:

For purposes of application of cargo wharfage discounts, minimum tonnage guarantees, container gantry crane minimum use guarantees, and the provision to add container yard land, in instances where King Ocean seeks to act as stevedore and/or terminal operator for a line(s), full tariff wharfage charges will apply unless the Port ~~Port~~ County enters into a separate agreement with such line(s). Tonnage generated by such line(s) will not apply to King Ocean's minimum tonnage guarantees. Crane hours generated by such line(s) will not apply to King ocean's container gantry crane minimum use guarantees, except as otherwise provided herein below. Tonnage generated by such line(s) will not apply to the provisions for adding container yard land. Prior to contracting with any line(s) to perform stevedoring and/or terminal operating services, King Ocean will obtain the written approval of the Port Director, which approval will not be unreasonably withheld. The Port Director could deny approval if in the Port Director's opinion such approval would have a negative impact on Port revenues or would have the potential of causing business disruptions or dislocations among existing Port users.

Notwithstanding the aforementioned prohibition against Lessee receiving crane hour credit for third party use of the cranes, commencing with the Lease year beginning June 15, 2001 and each subsequent Lease year thereafter, Lessee shall be allowed to credit against its required yearly minimum crane hour guarantee, fifty percent (50%) of the actual crane hours realized by Sea Star Line, Inc. (an entity which shares a portion of the container terminal facility leased hereunder to Lessee) during the Lease year.

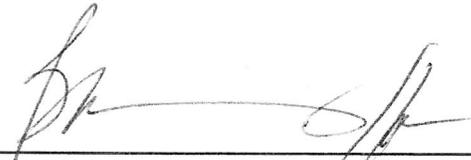
6. Except as otherwise provided herein, all other terms and provisions of the Lease are ratified and reaffirmed and shall remain in full force and effect during the remaining term hereof.

**[THIS SPACE LEFT BLANK INTENTIONALLY]**

IN WITNESS WHEREOF, the parties have made and executed this Second Amendment to Lease and Operating Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair or Vice Chair, authorized to execute same by Board action on the 12<sup>th</sup> day of February, 2002, and KING OCEAN SERVICE DE VENEZUELA, S.A., signing by and through its V-Chair, duly authorized to execute same.

**Lessor:**

ATTEST:

  
\_\_\_\_\_  
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners

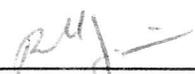
BROWARD COUNTY, by and through  
its Board of County Commissioners

By:  V-Chair  
\_\_\_\_\_  
LORI NANCE PARRISH, Chair

12<sup>th</sup> day of February, 2002



Approved as to form by  
Office of County Attorney  
Broward County, Florida  
EDWARD A. DION  
County Attorney  
1850 Eller Drive, Suite 502  
Fort Lauderdale, Florida 33316  
Telephone: (954) 523-3404  
Telecopier: (954) 523-2613

By:   
\_\_\_\_\_  
Russell J. Morrison  
Assistant County Attorney

**SECOND AMENDMENT TO LEASE AND OPERATING AGREEMENT  
BETWEEN BROWARD COUNTY AND KING OCEAN SERVICE DE VENEZUELA, S.A.**

**Lessee:**

KING OCEAN SERVICE DE  
VENEZUELA, S.A., a Venezuelan  
corporation, authorized to transact  
business in the state of Florida,

ATTEST:

\_\_\_\_\_  
Corporate Secretary

\_\_\_\_\_  
(Print Name of Secretary)

(CORPORATE SEAL)

WITNESS:

[Signature]  
(Signature)

[Signature]  
(Signature)

ATTEST:

\_\_\_\_\_  
Corporate Secretary

\_\_\_\_\_  
(Print Name of Secretary)

(CORPORATE SEAL)

WITNESS:

[Signature]  
(Signature)

[Signature]  
(Signature)

By: [Signature]

Carlos Pezdoro  
(Print Name of Pres./Vice Pres.)

Title: President  
(Print)

8<sup>th</sup> day of November, 2001

**GUARANTOR:**

KING OCEAN CENTRAL AMERICA,  
S.A., a Panamanian corporation,  
authorized to transact business in the  
state of Florida,

By: [Signature]

Carlos Pezdoro  
(Print Name of Pres./Vice Pres.)

Title: President  
(Print)

8<sup>th</sup> day of November, 2001