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FEDERAL MARITIME COMM

FMC Agreement No. 200866 - 003

**THIRD AMENDMENT TO LEASE AND OPERATING AGREEMENT**

**BETWEEN**

**BROWARD COUNTY**

**AND**

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

**AND**

**KING OCEAN CENTRAL AMERICA, S.A.**



**THIRD AMENDMENT TO LEASE AND OPERATING AGREEMENT**

This Third 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")

and

KING OCEAN CENTRAL AMERICA, S.A.,  
a Panamanian corporation authorized to transact business in the State of Florida  
(hereinafter called the "Guarantor")

**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, and Second Amendment to Lease and Operating Agreement dated February 12, 2002, 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 re-negotiated the terms and conditions for minimum annual tonnage guarantee, minimum annual container crane hour guarantee, and the final five (5) year Lease option term; and

WHEREAS, Lessor and Lessee desire to effectuate additional changes to the Lease as provided herein.

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 is hereby acknowledged, the parties hereto agree as follows:

1. Paragraph 2 of the Lease entitled, TERM, is hereby amended to read as follows:

The term of this Lease shall be for a period of five (5) years, beginning on June 15, 1999 and ending on June 14, 2004, unless sooner terminated under this Lease.

Lessee, as of the date of Lessor's execution of the Third Amendment to Lease, has exercised its right and obligation to the second and final five (5) year option period thereby extending the Lease term hereof through June 14, 2009, unless sooner terminated as provided herein.

2. Paragraph 6 of the Lease entitled, RENTAL, is hereby amended to read as follows:

**6. RENTAL**

...

**D. SECURITY DEPOSIT**

Lessor acknowledges receipt of the sum of ~~Eighteen Thousand Dollars (\$18,000.00)~~ Twenty-nine Thousand Three Hundred Eighty-two Dollars and one cent (\$29,382.01) from Lessee as a security deposit. Said deposit amount shall be adjusted annually to equal Lessee's annually adjusted monthly rental payment.

Said deposit shall be used as a guarantee of Lessee's performance of the terms of this Lease and to reimburse Lessor for any costs or expenses resulting from Lessee's default hereunder. All or any part of the security deposit used by Lessor to remedy any default hereunder shall be immediately due and payable by Lessee

to Lessor so that the security deposit shall at all times be maintained at its original agreed amount.

This deposit shall be returned to Lessee at the expiration of the term provided Lessee has not defaulted hereunder.

In addition to the aforementioned security deposit, Lessee shall also provide Lessor, on or before the execution of the Third Amendment to Lease, with an Indemnity and Payment Bond in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) guaranteeing to Lessor the payment of all its financial obligations as provided herein. Such bond shall be with a Surety company of recognized standing, authorized to transact business in the state of Florida as a surety, having a resident agent in the state of Florida and having been in business with a record of successful continuous operation for at least five (5) years ("Surety").

The Surety shall hold a current certificate of authority as acceptable Surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the Surety shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297 (31 CFR Part 223 Sections 223.10 and 223.11), as amended. Further, the Surety shall provide Lessor with evidence satisfactory to Lessor, that such excess risk has been protected in an acceptable manner.

The Surety shall have at least a B+ minimum rating in the latest revision of Best's Insurance Report.

E. INCREASE IN AMOUNT OF SECURITY DEPOSIT FOR DEFAULT

In the event that Lessee is in default under this Lease more than two (2) times within any twelve-month period, irrespective of whether or not such default is cured, then, without limiting Lessor's other rights and remedies provided for in this Lease or at law or equity, Lessor shall have the right to automatically increase the cash security deposit to three times the original cash security deposit or three months' minimum compensation, whichever is higher. The security deposit increase shall be effective automatically upon the second notice of default and Lessee shall pay the increased cash security deposit to Lessor within thirty (30) business days after its receipt of such written notice.

F. DRAW DOWN OF CASH SECURITY DEPOSIT AND INDEMNITY AND PAYMENT BOND

Lessor shall have the right to use the cash security deposit and Indemnity and Payment Bond as guarantee of Lessee's payment performance under the terms of this Lease, and same shall be used to reimburse Lessor for any costs or expenses which Lessor elects, in its sole discretion, to pay on Lessee's behalf in the event Lessee fails to make payments of any sums required hereunder. All or any part of the cash security deposit and/or Indemnity and Payment Bond applied by Lessor under this Section shall be repaid by Lessee within fifteen (15) calendar days after written demand therefor is sent so that the cash security deposit and Indemnity and Payment Bond are maintained at their respective required amounts as provided herein. All amounts not paid within said time frame shall accrue

interest and late charges in accordance with Paragraph 7, entitled PENALTY CLAUSE, of the Lease.

G. NO INTEREST PAID BY LESSOR

It is understood that no interest shall be paid on the cash security deposit, but that if Lessee has not defaulted hereunder, then Lessor shall return all amounts then held as said cash deposit to Lessee within thirty (30) calendar days after the expiration of Lease term.

3. 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. 11, Item No. 905, any amendments thereto or reissues thereof. Lessee guarantees minimum combined usage of container gantry cranes (crane hours) for each Lease year in the amount of Two Thousand Eighty Four (2,084) hours:

~~In the event additional land is acquired by Lessee under the terms of this 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) for each acre of land so added over the term of this Lease. 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 ratio of one hundred (100) crane hours per acre returned to Lessor. Should land be added or subtracted subsequent to the start of a new Lease year, the corresponding increase or decrease in revenue derived from the yearly crane 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%) immediately upon presentment of ~~Broward County's~~ Lessor's invoice; and, (ii) remaining balance due two (2) weeks thereafter. All container gantry crane shortfall hours shall be invoiced at a rate of two hundred dollars (\$200.00) per hour.

Effective Lease year commencing June 15, 2002, through the remaining balance of the Lease term hereof, Lessee guarantees to Lessor a minimum combined usage of container gantry cranes (crane hours) for each Lease year in the amount of One Thousand Seven Hundred (1,700) hours. Effective Lease year commencing June 15, 2003, Lessee shall pay Lessor One hundred percent (100%) of the prevailing Tariff rate for container gantry crane rental charges for the first seven hundred (700) crane rental hours generated in each Lease year over the Lease term hereof. All container gantry crane rental hours generated in excess of seven hundred (700) per Lease year over the Lease term hereof, shall be billed by Lessor and paid by Lessee at seventy percent (70%) of the published Tariff rate then in effect for container gantry crane rental. In no event, shall Lessee's discount in container gantry crane rental charges exceed One Hundred and Fifty Thousand Dollars (\$150,000.00) in a given Lease year.

4. Paragraph 32 of the Lease entitled, KING OCEAN RELATIONSHIPS WITH OTHER SHIPPING LINES is hereby amended to read 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~~s as stevedore and/or

terminal operator for a line(s), full tariff wharfage charges will apply unless the 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.

Notwithstanding anything to the contrary provided herein, effective Lease year commencing on June 15, 2002, through the balance of the Lease term hereof, tonnage generated through the leasehold by a line(s) for whom Lessee acts as a stevedore and/or terminal operator, will apply to Lessee's minimum guaranteed wharfage obligations as set forth in Paragraph 29 of this Lease.

5. Guarantor, King Ocean Central America, S.A., a Panamanian corporation, reaffirms its guaranty under Paragraph 33 of the Lease and further covenants and agrees that its guaranty shall remain and continue in full force and effect as to any future renewal, extension, amendment or modification of the Lease.

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 Third 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 Mayor or Vice Mayor, authorized to execute same by Board action on the \_\_\_ day of \_\_\_\_\_, 2003, KING OCEAN SERVICE DE VENEZUELA, S.A., signing by and through its \_\_\_\_\_, duly authorized to execute same and KING OCEAN CENTRAL AMERICA, S.A., signing by and through its \_\_\_\_\_, duly authorized to execute same.

**Lessor:**

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

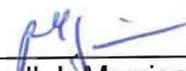
  
\_\_\_\_\_  
Broward County Administrator, as Ex-officio Clerk of the Broward County Board of County Commissioners

By:   
\_\_\_\_\_  
DIANA WASSERMAN-RUBIN, Mayor



26<sup>th</sup> day of June, 2003

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

**THIRD 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:

nikos  
\_\_\_\_\_  
(Signature)

[Signature]  
\_\_\_\_\_  
(Signature)

ATTEST:

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

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

(CORPORATE SEAL)

WITNESS:

nikos  
\_\_\_\_\_  
(Signature)

[Signature]  
\_\_\_\_\_  
(Signature)

By: [Signature]

Carlos Perdomo  
\_\_\_\_\_  
(Print Name of Pres./Vice Pres.)

Title: President  
\_\_\_\_\_  
(Print)

7<sup>th</sup> day of March, 2003

**GUARANTOR:**

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

By: [Signature]

Carlos Perdomo  
\_\_\_\_\_  
(Print Name of Pres./Vice Pres.)

Title: President  
\_\_\_\_\_  
(Print)

7<sup>th</sup> day of March, 2003