

SECOND AMENDMENT TO MARINE TERMINAL LEASE AND OPERATING AGREEMENT BETWEEN BROWARD COUNTY AND HORIZON TERMINAL SERVICES LLC

This Second Amendment ("Amendment") is between Broward County, a political subdivision of the State of Florida ("County"), and Horizon Terminal Services LLC, a Delaware limited liability company ("Horizon") (each a "Party" and collectively referred to as the "Parties").

RECITALS

A. The Parties entered into a Marine Terminal Lease and Operating Agreement, dated January 29, 2018, which was amended by a First Amendment, dated December 1, 2020 (as amended, the "Agreement"). Pursuant to the Agreement, Horizon leases from County approximately 13.6 acres of land (together with all improvements thereon) and an additional 27,560 square feet of warehouse space, all located at Port Everglades, for use as a modern ocean-going vehicle processing, motor vehicle, and heavy project cargo marine terminal yard facility with related office uses. The Agreement currently expires on December 31, 2025.

B. On May 21, 2024, the Parties entered into a Consent to Sublease between County, as Landlord, Horizon, as Lessee and Sublessor, and Rehoboth Terminal LLC, as Sublessee, for a portion of the leased premises.

C. The Parties desire to amend the Agreement to provide for expiration on November 30, 2024 (instead of on December 31, 2025), waive rent for the period from October 9, 2024, through November 30, 2024, and waive the Annual Minimum Guaranteed Payment ("MGP") for Lease Year 7 (*i.e.*, January 1, 2024, through November 30, 2024), all upon the terms and conditions set forth herein.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The above Recitals are true and correct and are incorporated herein by reference. All capitalized terms not expressly defined within this Amendment shall retain the meaning ascribed to such terms in the Agreement.

2. Unless otherwise expressly stated herein, amendments to the Agreement made pursuant to this Amendment are indicated herein by use of strikethroughs to indicate deletions and underlining to indicate additions. Except as modified herein, all remaining terms and conditions of the Agreement shall remain in full force and effect.

3. Article 2 of the Agreement is amended as follows (original bolding/underlining omitted):

2. TERM AND COMMENCEMENT DATE

The lease term of this Agreement commenced retroactively to January 1, 2018 (the "Commencement Date"), ~~running for a period of five (5) years~~ and shall expire on

November 30, 2024 ("Term"), unless sooner terminated as provided herein. ~~Effective January 1, 2023, the Term of this Agreement is extended for an additional three (3) year period, and shall continue through December 31, 2025, unless sooner terminated as provided herein. "Lease Year," as used in this Agreement, shall mean each consecutive twelve (12) month period over the Term hereof, beginning on the Commencement Date; provided, however, Lease Year 7 shall be from January 1, 2024, through November 30, 2024. Before June 30, 2025, County, through its Chief Executive & Port Director and Horizon representatives shall meet to discuss the potential to renew this Agreement for a duration and under terms and conditions acceptable to both Parties.~~

4. Article 5 of the Agreement is amended as follows (original bolding/underlining omitted):

5. RENTALS, FEES, AND CHARGES

A. PAYMENTS

The total annual rental amount payable for each Lease Year over the Term, subject to adjustment as hereinafter provided, shall be paid by Horizon in twelve (12) equal monthly installments, plus applicable sales taxes thereon, on the first day of each and every month, without demand, set off, or deduction, beginning on the Commencement Date and continuing for the remainder of the Term; provided, however, notwithstanding anything herein to the contrary, rent for Lease Year 7 shall be paid as set forth in Section 5.A.6 below.

1) Commencing on the Commencement Date, Horizon's total annual rental for the first Lease Year of the Term is in the amount of Four Hundred Twenty-nine Thousand Five Hundred Forty-one Dollars and Sixty-eight Cents (\$429,541.68), plus applicable sales taxes, which amount is made up of Twenty-nine Thousand Two Hundred Thirteen Dollars and Sixty Cents (\$29,213.60) for the warehouse space and Four Hundred Thousand Three Hundred Twenty-eight Dollars and Eight Cents (\$400,328.08) for the improved land. Rent shall be paid in twelve (12) monthly rental installments of Thirty-five Thousand Seven Hundred Ninety-five Dollars and Fourteen Cents (\$35,795.14), plus applicable sales taxes. Effective January 1, 2021, Horizon's total annual rental payable for the fourth Lease Year of the Term is in the amount of Seven Hundred Forty-six Thousand Twenty Dollars and Thirty-two Cents (\$746,020.32), plus applicable sales taxes, which amount is made up of Thirty-three Thousand Seventy-two Dollars (\$33,072.00) for the warehouse space, and Seven Hundred Twelve Thousand Nine Hundred Forty-eight Dollars and Thirty-two Cents (\$712,948.32) for the improved land.

...

6) Rent for Lease Year 7 shall be payable as follows on the first day of each and every month of Lease Year 7, without demand, set off, or deduction:

<u>Due Date</u>	<u>Rent (not including applicable sales taxes)</u>
<u>January 1, 2024</u>	<u>\$73,457.09</u>
<u>February 1, 2024</u>	<u>\$73,457.09</u>
<u>March 1, 2024</u>	<u>\$73,457.09</u>
<u>April 1, 2024</u>	<u>\$73,457.09</u>
<u>May 1, 2024</u>	<u>\$73,457.09</u>
<u>June 1, 2024</u>	<u>\$73,457.09</u>
<u>July 1, 2024</u>	<u>\$73,457.09</u>
<u>August 1, 2024</u>	<u>\$73,457.09</u>
<u>September 1, 2024</u>	<u>\$73,457.09</u>
<u>October 1, 2024</u>	<u>\$18,956.67</u>
<u>November 1, 2024</u>	<u>\$0 (waived)</u>

5. Article 22 of the Agreement is amended as follows (original bolding/underlining omitted):

22. PER UNIT RATES AND ANNUAL MINIMUM GUARANTEED PAYMENT

A. PER UNIT RATES

Effective January 1, 2021, County and Horizon acknowledge and agree to the Per Unit Rate Schedule for each Lease Year over the Term set forth in Revised Composite Exhibit "B." A unit, for the purposes of this Agreement, is derived by utilizing the Tons to Unit Conversion Schedule set forth in Revised Composite Exhibit "B." The per unit rates do not include Port Everglades Tariff charges for dockage, harbor master charges, security fees, electricity, water, line handling services, container crane rental charges and container crane standby charges, or any other Port Everglades Tariff charges not specifically identified herein as being included within the per unit rates, all of which shall be billed separately by County to Horizon. Except for Lease Year 7 (for which there is no MGP, as hereinafter defined), the Per Unit Rate Schedule is based on Horizon agreeing to make annual minimum guaranteed payments to County based on the number of annual minimum guaranteed units to be handled by Horizon on the Demised Premises for each Lease Year over the Term, as set forth in Revised Composite Exhibit "B." The per unit rate is in addition to all other payments, including, rental payments required to be made by Horizon to County, and are inclusive of Port Everglades Tariff charges for cargo wharfage.

...

C. ANNUAL MINIMUM GUARANTEE PAYMENT

1) Effective upon the Commencement Date, and for each and every Lease Year over the Term (other than Lease Year 7, for which there is no MGP), Horizon shall make an Annual Minimum Guarantee Payment ("MGP") to County in an amount equaling the product of the per unit rate and the number of annual minimum guaranteed units in effect for each Lease Year as set forth in Revised Composite Exhibit "B." For the first Lease Year of this Agreement, Horizon's MGP is Two Hundred Twenty-one Thousand Two Hundred Fifty Dollars (\$221,250). The amount of Horizon's annual MGP is adjusted annually on the Adjustment Date as defined in Article 5 herein for each and every Lease Year over the Term (other than Lease Year 7), as set forth in Revised Composite Exhibit "B." Horizon's MGP obligation is in addition to all other payments including rental payments required to be made by Horizon to County.

...

4) Within forty-five (45) calendar days after the end of each Lease Year over the Term hereof other than Lease Year 7, County shall invoice Horizon for the MGP shortfall, if any, for the prior Lease Year. Within thirty (30) calendar days after the date of the MGP shortfall invoice from County's Port Everglades Department, Horizon shall pay County, in fulfillment of its MGP obligations, an amount equal to the MGP shortfall, between the MGP required to be paid and the actual amount paid by Horizon to County for Units during the prior Lease Year.

6. Article 40 of the Agreement is amended as follows (original bolding/underlining omitted):

40. MISCELLANEOUS

X. Discriminatory Vendor and Scrutinized Companies List; Countries of Concern. Horizon represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes. Horizon represents and certifies that it is not, and for the duration of the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Horizon represents that it is, and for the duration of the Term will remain, in compliance with Section 286.101, Florida Statutes.

Y. Verification of Employment Eligibility. Horizon represents that Horizon, and each sublessee have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this

Agreement will not violate that statute. If Horizon violates this section, County may immediately terminate this Agreement for cause and Horizon shall be liable for all costs incurred by County due to the termination.

Z. Prohibited Telecommunications Equipment. Horizon represents and certifies that Horizon and all sublessees do not use, and for the Term will not provide or use, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26.

AA. Criminal History Screening Practices. If this Agreement is subject to the requirements of Section 26-125(d) of the Code, Horizon represents and certifies that Horizon will comply with Section 26-125(d) of the Code for the duration of the Term.

BB. Polystyrene Food Service Articles. Horizon shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

7. Horizon shall ensure that Horizon's Sublease with Rehoboth Terminal LLC terminates on or before November 30, 2024.

8. Revised Composite Exhibit B is replaced by Revised Composite Exhibit B as attached hereto, which is incorporated in the Agreement. All references to Revised Composite Exhibit B in the Agreement are deemed to refer to Revised Composite Exhibit B as attached hereto.

9. Anti-Human Trafficking. By execution of this Amendment by an authorized representative of Horizon, Horizon hereby attests under penalty of perjury that Horizon does not use coercion for labor or services, as such terms are defined in Section 787.06, Florida Statutes. Under penalties of perjury, the undersigned authorized representative of Horizon declares that they have read the foregoing statement and that the facts stated in it are true.

10. In the event of any conflict or ambiguity between this Amendment and the Agreement, the Parties agree that this Amendment shall control. The Agreement, as amended herein by this Amendment, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement as amended in this Amendment. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

11. Preparation of this Amendment has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.
12. Horizon acknowledges that through the date this Amendment is executed by Horizon, Horizon has no claims or disputes against County with respect to any of the matters covered by the Agreement.
13. The effective date of this Amendment is retroactive to October 8, 2024.
14. This Amendment may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Amendment: 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 _____, 20____; and Horizon Terminal Services LLC, signing by and through its duly authorized representative.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

By: _____
Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor
____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 302
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404

CARLOS A.
RODRIGUEZ-
By CABARROCAS
Carlos Rodriguez-Cabarrocas (Date)
Senior Assistant County Attorney

Digitally signed by CARLOS A.
RODRIGUEZ-CABARROCAS
Date: 2024.10.23 15:40:19
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10/23/2024
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**SECOND AMENDMENT TO MARINE TERMINAL LEASE AND OPERATING AGREEMENT BETWEEN
BROWARD COUNTY AND HORIZON TERMINAL SERVICES LLC**

HORIZON

HORIZON TERMINAL SERVICES LLC

By: Jacob Brown
Authorized Signer

Jacob Brown, Chief Financial Officer
Print Name and Title

23rd day of October, 20 24

Revised Composite Exhibit "B"

Lease Year	Per Unit Rate	Annual Minimum Guaranteed Units	Annual Minimum Guaranteed Payment
1	\$7.50	29,500	\$221,250
2	\$7.69	29,500	\$226,855
3	\$7.83	29,500	\$230,985
4	\$8.03	46,408	\$372,459
5	\$8.23	46,408	\$381,770
6	\$8.43	46,408	\$391,315
7	\$8.64	0	\$0

Composite Exhibit B

Tons to Unit Conversion Schedule

Short Tons	Units
0.00-2.00	1
2.01-4.00	2
4.01-6.00	3
6.01-8.00	4
8.01-10.00	5
10.01-12.00	6
12.01-14.00	7
14.01-16.00	8
16.01-18.00	9
18.01-20.00	10
20.01-22.00	11
22.01-24.00	12
24.01-26.00	13
26.01-28.00	14
28.01-30.00	15
30.01-32.00	16
32.01-34.00	17
34.01-36.00	18
36.01-38.00	19
38.01-40.00	20
40.01-42.00	21
42.01-44.00	22
44.01-46.00	23
46.01-48.00	24
48.01-50.00	25