

**FMC Agreement No.** 201160

**MARINE TERMINAL LEASE AND OPERATING AGREEMENT**  
**BETWEEN**  
**BROWARD COUNTY**  
**AND**  
**MEDITERRANEAN SHIPPING COMPANY S.A.**

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**EXEMPT**  
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Under the  
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of 1984  
Federal Maritime Commission

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**MARINE TERMINAL LEASE AND OPERATING AGREEMENT**

This Marine Terminal Lease and Operating Agreement (hereinafter referred to as ("Agreement")) is 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 referred to as "COUNTY"),

and

MEDITERRANEAN SHIPPING COMPANY S.A.  
a Switzerland corporation,  
authorized to transact business in the state of Florida,  
(hereinafter referred to as "MSC")

**WITNESSETH:**

WHEREAS, COUNTY owns and has jurisdiction over the development, operation and maintenance of Port Everglades in Broward County, Florida, and

WHEREAS, MSC is a privately held shipping line company based in Geneva, Switzerland and is a leading global ocean shipping company; and

WHEREAS, COUNTY and MSC desire to enter into this Agreement with respect to the demised premises hereinafter described; NOW THEREFORE,

In consideration of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. PREMISES

A. DEFINED

COUNTY does hereby lease to MSC the real property comprising thirty-nine and eighteen hundredths (39.18) acres and improvements thereon (hereinafter referred to as the "demised premises") owned by COUNTY, located at Port Everglades in BROWARD COUNTY, FLORIDA, and described on Exhibit "A" attached hereto. COUNTY covenants with MSC that it is possessed of a good and marketable fee simple title to the above described demised premises, free and clear of all encumbrances and that it will defend the same against the lawful claims of all persons whomsoever.

B. CONDITION OF PREMISES

COUNTY makes no representations or warranties whatsoever as to: (i) the condition of the demised premises, or (ii) whether the demised premises are in compliance with applicable federal, state, and local laws, ordinances, rules, or regulations. The demised premises are hereby demised in "AS IS CONDITION" and "WITH ALL FAULTS." MSC represents, acknowledges and agrees that it has had sufficient opportunity to inspect the demised premises and hereby accepts the demised premises in "AS IS CONDITION" and "WITH ALL FAULTS." MSC hereby releases COUNTY of any and all claims and liabilities on account of the condition of the demised premises or any failure of any of the component parts to be in working order.

2. TERM AND COMMENCEMENT DATE

The term of this Agreement shall begin on the "Commencement Date" and shall be for a period of ten (10) years ("initial term"), subject to the rights of termination provided herein. "Commencement Date", as used in this Agreement shall mean the

earlier of: i) the date MSC specifies in writing to COUNTY's Port Director as the date MSC will take occupancy of the demised premises, or ii) one hundred twenty (120) calendar days from the date this Agreement is executed by COUNTY. MSC shall have the option to extend the term of this Agreement for two (2) additional five (5) year periods provided it has kept and remains in compliance with all the terms and conditions of this Agreement. MSC shall give COUNTY's Port Director written notice of its intent to exercise its option to extend the term of the Agreement not less than twelve (12) months prior to the expiration date of the initial term and if applicable, the expiration date of the first five (5) year option term ("Option Notice"). Unless COUNTY, through its Board of County Commissioners, waives the required Option Notice, failure of MSC to provide COUNTY's Port Director with same, shall result in the forfeiture by MSC of its option to extend the then existing term of this Agreement, such option being null and void.

**3. FILING WITH FEDERAL MARITIME COMMISSION**

This Agreement shall be filed with the Federal Maritime Commission in accordance with the terms of Section 5 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1996.

**4. USE AND COMPLIANCE WITH LAWS**

**A. USE**

MSC shall use the demised premises solely as a modern container terminal yard facility with related office and storage space uses and for ancillary or related uses, and for no other use or purpose without the prior written consent of the COUNTY's Port Director.

Under no circumstances shall MSC allow or permit others to use the demised premises in competition with any business conducted by COUNTY. The demised premises shall be used and maintained by MSC in such manner as to avoid the creation of any nuisance from dust, smoke, obnoxious odors, fumes, vapors, dust, noise or otherwise and MSC shall not keep or store any explosives on the demised premises.

Should MSC fail to comply with the provisions of this Section, then COUNTY shall provide MSC with written notice of such violation, and the opportunity to correct and cure same within a reasonable time period not exceeding thirty (30) calendar days of the sending of the notice. If the use violation is not cured within this time period, then COUNTY shall have the right to (i) stop all operations on the demised premises until the cause(s) or use violations are eliminated to COUNTY's satisfaction, and/or (ii) terminate this Agreement. COUNTY shall have the right to seek such remedies in a court of law as are available to address the alleged wrong.

It is understood that MSC will not conduct any welding or burning on the demised premises until it has obtained all required permits from COUNTY, City of Hollywood, and the U.S. Coast Guard. COUNTY agrees that it will not unreasonably withhold issuance of any welding or burning permits required by COUNTY.

MSC shall maintain a five foot clear zone from the perimeter fencing of the terminal yard at all times.

B. COMPLIANCE WITH LAWS

MSC, in the use, occupation or alteration of the demised premises, shall, at its sole expense, comply with all laws, ordinances, rules and regulations of all governmental bodies having jurisdiction over the demised premises and the business

being conducted thereon including the Americans with Disabilities Act of 1990 ("ADA") and COUNTY's published Tariff No. 11, amendments thereto and reissues thereof; provided however, any such laws, ordinances, rules or regulations imposed by COUNTY shall be imposed and operate uniformly with respect to all who avail themselves of similar services or facilities at Port Everglades. Within fifteen (15) calendar days after receipt by either party of a notice of non-compliance, or of a regulatory investigation or enforcement action relating to such non-compliance, the receiving party shall advise the other party in writing and provide copies of same. Once such notice is received, COUNTY shall have, in addition to all rights provided by law and by the provisions herein, the right to terminate this Agreement and/or require MSC, at its sole expense, to make any repairs, alterations and additions to the demised premises and take all corrective measures as may be necessary to bring same into compliance.

## **5. RENTALS, FEES, AND CHARGES**

### **A. PAYMENTS.**

The annual rental, subject to adjustment as hereinafter provided, shall be paid by MSC in twelve (12) equal monthly installments, together with all applicable sales taxes thereon, in advance and without demand, set off or deduction. Rent shall be paid on that date ("Payment Date") which is the first day of the month following the month in which the Commencement Date occurs, or on the Commencement Date if it occurs on the first day of a month. Thereafter monthly installments of rental shall be payable in advance on the 1st day of each and every month. If the Commencement Date does not occur on the first day of a month, then on the Payment Date a partial payment of rent

shall be due, which shall be an amount equal to the first monthly rental payment, prorated based on the number of calendar days occurring between the Commencement Date and the Payment Date, together with all applicable sales taxes thereon.

(1) Commencing on the Payment Date or Commencement Date (as applicable), MSC's initial total annual rental is Six Hundred Thirty-four Thousand Seven Hundred Sixteen Dollars (\$634,716.00) for thirty-nine and eighteen hundredths (39.18) acres which amount shall be paid in twelve (12) equal monthly rental installments of Fifty-two Thousand Eight Hundred Ninety-three Dollars (\$52,893.00). Said monthly rental amount is calculated by multiplying One Thousand Three Hundred Fifty Dollars (\$1350.00) per acre by the number of acres in the Exhibit "A" demised premises.

(2) COUNTY and MSC agree that the initial total annual rental amount established in subparagraph (1) hereinabove, shall be adjusted on January 1, 2005 and each and every January 1, thereafter over the term hereof, (each such date being referred to as an "Adjustment Date") as set forth below, and such adjusted rental (together with applicable sales taxes thereon) shall be the new annual rental for the demised premises (subject to adjustment as hereinafter provided), and shall be payable in twelve equal monthly installments.

(3) On each "Adjustment Date" (except the January 1, 2014, and January 1, 2024 Adjustment Dates, which is subject to the provisions of subparagraph [4], below), the annual rental shall be increased to an amount equal to the greater of either: (i) the product of the annual rental paid during the immediately preceding twelve month period, multiplied by the "CPI Multiplier" (as

hereinafter defined); or (ii) the product of the annual rental paid during the immediately preceding twelve month period, multiplied by 1.03. The product of such multiplication shall be the amount of the annual rental payment to be made during the next succeeding twelve month period, commencing January 1. Upon determining such rental adjustment, COUNTY shall advise MSC of the new annual rental amount and the corresponding adjusted monthly installment payment of rent. In no event shall any adjusted annual rental established pursuant to this subparagraph (3) be less than the total annual rental paid during the immediate prior twelve (12) month period.

(i) The "CPI Multiplier" is a fraction, the numerator of which shall be the "CPI Index Number" (as hereinafter defined) indicated for the month that is three (3) months prior to the Adjustment Date and the denominator of which shall be the CPI Index Number indicated for the month that is fifteen (15) months prior to the Adjustment Date.

(ii) The "CPI Index Numbers" are the index numbers of retail commodity prices designated "CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS -UNITED STATES CITY AVERAGE - ALL ITEMS" (1982-1984 =100) ("Consumer Price Index") issued by the Bureau of Labor Statistics, United States Department of Labor. The rental and the adjustment made based upon the provisions of this section shall be made solely by COUNTY. Any publication by either the United States Department of Labor or the United States Department of Commerce in which such Index numbers are published shall be admissible in evidence

in any legal or judicial proceeding involving this Agreement without further proof of authenticity. Should the Bureau of Labor Statistics cease publishing the above-described Index, then such other Index as may be published by the United States Department of Labor that most nearly approximates the discontinued Index shall be used in making the adjustments described above. Should the United States Department of Labor discontinue publication of an Index approximating the Index contemplated, then such Index as may be published by another United States governmental agency which most nearly approximates the Index first above referenced shall govern and be substituted as the Index to be used.

(4) On the January 1, 2014 and January 1, 2024 Adjustment Dates, the annual rental shall be adjusted (up or down) to an amount equal to the market rent of the demised premises as determined by an appraisal as hereinafter provided. Such adjusted rental shall commence on the Adjustment Date as defined in this Section. Upon determining such rental adjustment, COUNTY shall advise MSC of the new annual rental and the new monthly installment payment of rent. The "market rent of the demised premises" is the market value of the rights of use of the leased fee, given the restrictions of this Agreement. Market rent shall be established as follows:

(i) The market rent of the demised premises shall be equal to the "Land and Improvements MR" (as hereinafter defined). The "Land and Improvements MR" shall be determined based upon the market value of

the leased fee together with the improvements as encumbered by this Agreement to which shall be applied the Percentage Adjustment Factor then being used by COUNTY.

(5) The annual rental shall be adjusted upwards by adding to the then existing annual rental, the market rent of the improvements to the demised premises, as established in subparagraph (ii), below.

(i) Upon determining such rental adjustment, COUNTY shall advise MSC of the new annual rental and the new monthly installment payment of rent, which shall continue in effect until the next Adjustment Date.

(ii) The market rent of the improvements to the demised premises shall be determined based upon the market value of the improvements to the fee as encumbered by this Agreement, to which shall be applied the Percentage Adjustment Factor then being used by COUNTY.

(6) Notwithstanding anything to the contrary herein contained, if at a future time COUNTY adopts as policy for Port Everglades (pursuant to a resolution adopted by its Board of County Commissioners), a requirement that rental adjustments shall be made on the same date for all leases, then the adjustments of rental based on appraisals and the other annual adjustments of rental shall be made in accordance with and at the uniform times established pursuant to said policy. This provision shall not adjust the appraisal Adjustment Dates of January 1, 2014 and January 1, 2024, as provided in Section 5.A.4.

(7) The "Percentage Adjustment Factor" shall be the percentage factor being utilized by COUNTY, in its sole discretion at the time of the adjustment, to establish rentals for leases at Port Everglades.

(8) The appraisals obtained by COUNTY shall be made not less than ninety (90) calendar days before each applicable Adjustment Date. The appraisal reports will follow the narrative format suggested by the American Institute of Real Estate Appraisers, the content of which will conform to the Uniform Standards of Professional Appraisal Practice. Should an appraisal finding result in a projected total rent for the remaining term of this Agreement which exceeds \$2,000,000.00, then a second appraisal will be obtained, and in such case, the final market rent value shall be determined either by COUNTY, through its Department of Public Works, Real Property Section (or successor thereto) acting as the review appraiser, or by a review appraiser selected by either the Real Property Section or Broward County's Port Everglades Department, or any successor. Broward County's Port Everglades Department shall send MSC written notice of the adjusted rent amount based on COUNTY's appraisal(s), or review appraisal, as appropriate, which notice shall include copies of the appraisal(s) and review appraisal, if any. If MSC is not in agreement with the adjusted rent amount, MSC may hire its own appraiser; provided that MSC's appraisal must be obtained within sixty (60) calendar days following receipt of Broward County's Port Everglades Department's notice of the adjusted rent. MSC shall provide Broward County's Port Everglades Department with a copy of any such appraisal. If MSC fails to obtain an appraisal within said sixty (60)-day

period, then MSC shall thereafter have no further rights to dispute the adjusted rent amount as set forth in Broward County's Port Everglades Department's notification of the adjusted rent. If MSC does obtain an appraisal within said (60) calendar days and if such appraisal's finding of market rent value does not agree with Broward County's Port Everglades Department's notice as to the adjusted rent, then the appraiser(s) selected by the COUNTY and the appraiser selected by MSC shall together select another appraiser ("Dispute Resolution Appraiser") within fifteen (15) calendar days following completion of MSC's appraisal. If the appraiser(s) selected by COUNTY and the appraiser selected by MSC fail to select a Dispute Resolution Appraiser within fifteen (15) calendar days following completion of MSC's appraisal, then MSC shall thereafter have no further rights to dispute the rent amount as set forth in Broward County's Port Everglades Department's notification of the adjusted rent. Any Dispute Resolution Appraiser must complete its appraisal ("Dispute Resolution Appraisal") within thirty (30) calendar days of its employment. The finding of market rent value set forth in a timely obtained Dispute Resolution Appraisal shall be binding on both parties. The Dispute Resolution Appraiser shall provide copies of the Dispute Resolution Appraisal to both Broward County's Port Everglades Department and MSC.

(i) MSC shall be required to reimburse COUNTY for the cost of the appraisals obtained by COUNTY in connection with each applicable rental adjustment, and such expense shall be spread evenly over the period of time between the adjustments of rent based on appraisal, with payments being made monthly to COUNTY, on the first date of each

month. The expense of any Dispute Resolution Appraisal shall be borne equally by the parties, with MSC's portion of such expense being spread evenly over the period of time between the adjustments of rent based on appraisal, with payments being made monthly to COUNTY, on the first date of each month.

(ii) Any appraisal conducted hereunder must contain a determination of market rent value, using the methodology required by subparagraphs (4) and (5), above. Any appraiser retained by any of the parties to prepare an appraisal hereunder must be an M.A.I. Appraiser or a State of Florida Certified General Appraiser (or a member of a professional group of similar stature, that has been approved by Broward County's Port Everglades Department), having an office in Palm Beach, Broward, or Miami-Dade County.

(9) It is understood and agreed that if a rental adjustment is required hereunder, the previous rental then being paid shall continue until Broward County's Port Everglades Department provides notice of the adjusted rent amount, and the adjustment shall be retroactive to the Adjustment Date. The sum constituting the adjustment for the months of the period which have passed prior to the determination of the amount of the adjustment shall be due and payable within thirty (30) calendar days after such determination. In the event MSC disputes the amount of any adjustment of the rental payments, MSC shall continue paying the rent to COUNTY under the last preceding rental adjustment until such time as the dispute has been settled, at which time an adjustment (with

interest at the rate of eighteen percent (18%) per annum) will be made retroactive to the beginning of the adjustment period in which the dispute arose.

(10) Upon determining a rental adjustment, Broward County's Port Everglades Department shall advise MSC of the new monthly rental installment for such period, which shall be accompanied by evidence supporting the manner in which the new adjusted rent was determined, which evidence shall be in sufficient detail to enable MSC to verify the calculations.

**6. SECURITY DEPOSIT; ADVANCES BY COUNTY**

A. MSC shall provide COUNTY with a Four Hundred Thousand Dollar (\$400,000.00) letter of credit ("Security Deposit") as a security within seven (7) calendar days of the Commencement Date of this Agreement. The amount of the Security Deposit shall be increased annually over the term hereof, on the rent Adjustment Date, to an amount equal to twenty-five percent (25%) of the applicable year's total annual Minimum Guarantee Payment (MGP) to be made by MSC to COUNTY.

B. In the event that MSC is in default under this Agreement more than two (2) times within any twelve-month period, irrespective of whether or not such default is cured, then, without limiting COUNTY's other rights and remedies provided for in this Agreement or at law or equity, COUNTY shall have the right to automatically increase the letter of credit to three times the original letter of credit amount or three months' minimum rent, whichever is higher. The letter of credit increase shall be effective automatically upon the occurrence of a third default within the time period provided in this section and MSC shall post the increased letter of credit to COUNTY within five (5) business days after receiving such notice from COUNTY.

C. COUNTY shall have the right to use the Security Deposit as a guarantee of MSC's performance of the terms of this Agreement, and said letter of credit shall be used to reimburse COUNTY for any costs or expenses which COUNTY elects, in its sole discretion, to pay on MSC's behalf in the event MSC fails to make payments of any sums required hereunder. In the event of a MSC default(s) under this Agreement, Broward County's Port Everglades Department is authorized to immediately draw down on the Security Deposit to cover the amount of the non-payment deficiency and the amount required to reimburse COUNTY for its costs, expenses and damages incurred as a result of MSC's default(s) hereunder. Further, Broward County's Port Everglades Department shall notify the Broward County Board of County Commissioners of a MSC default(s) hereunder within seven (7) calendar days of same. All or any part of the Security Deposit applied by COUNTY under this Section shall be repaid by MSC within fifteen (15) calendar days after written demand therefor is sent so that the Security Deposit (letter of credit) is maintained at its required full dollar amount provided in this Section. All amounts not paid within said time frame shall accrue interest and late charges in accordance with Article 7 hereof.

**7. INTEREST AND LATE CHARGES**

If MSC fails to pay rent or other amounts which MSC is obligated to pay under the terms of this Agreement within fifteen (15) calendar days of their due date, MSC shall pay COUNTY, in addition to the amount otherwise due, a late charge equal to ten percent (10%) of such overdue amount. Interest shall accrue on all delinquent rent and other amounts as is provided for in COUNTY's rules, regulations and ordinances, including published Tariff No. 11, amendments thereto and reissues thereof, provided

such assessments shall be applied uniformly to all customers of COUNTY similarly situated.

MSC and COUNTY agree that the late charge set forth herein represents a reasonable estimate of such costs and expenses and is fair compensation to COUNTY for the loss suffered from such nonpayment by MSC. No acceptance by COUNTY of rent, fees, charges or other payments in whole or in part for any period or periods after a default by MSC of any of the terms, covenants and conditions hereof shall be deemed a waiver of any right on the part of COUNTY to terminate this Agreement. Any and all amounts due and payable under this Section shall be considered additional rent payable to COUNTY.

**8. PLACE OF PAYMENTS**

All payments required to be made by MSC under this Agreement shall be made payable to: BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS, and shall be delivered to: Port Everglades, Attn: Finance Division, 1850 Eller Drive, Fort Lauderdale, FL 33316, or to such other office or address as may be substituted therefor.

**9. TAXES**

A. Nothing herein shall prevent MSC from challenging any assessment or any tax to the same extent and in the same manner as may any other property owner or resident of Broward County.

Throughout the term of this Agreement, MSC agrees to pay, as required herein, all taxes levied and assessed upon the demised premises, all improvements thereon, together with all special assessments of any kind levied and assessed against the leasehold property and improvements thereon, together with sales tax. Further, MSC

agrees to pay, as rent, when due and before the same becomes delinquent, all personal property taxes which may be levied and assessed against all tangible personal property situated on the demised premises and subject to taxation, or against MSC's intangible personal property subject to taxation in Broward County, Florida. Additionally, MSC agrees to pay, as rent, all sales or use taxes which might hereafter be lawfully assessed or imposed arising out of the execution of this Agreement. Notwithstanding any provision of this Agreement to the contrary, **NO** obligation, which accrued but has not been satisfied under any prior agreements between the parties, shall terminate or be considered canceled upon the execution of this Agreement. Rather, such obligation shall continue as if it had accrued under this Agreement until the obligation is satisfied.

B. 1) For all taxes since January 1, 1995, the obligation for which accrued under any prior agreements between the parties and/or under this Agreement, COUNTY, in its sole discretion, may require MSC to make payment for those amounts, plus sales tax, into an escrow account as designated by COUNTY until final resolution of the Broward County v. Markham case. Any interest which accrues on the amount held in escrow shall be credited against any remaining indebtedness of MSC to COUNTY as a result of the taxes.

2) If upon final resolution of the Broward County v. Markham case, COUNTY is found **NOT** to be liable for any taxes as a result of MSC's use of the demised premises under any prior agreements between the parties and/or under this Agreement, COUNTY shall refund to MSC the total amount which MSC has paid into escrow, plus interest, if any, which may have accrued.

3) In the event COUNTY does not prevail on the issue of immunity in the Broward County v. Markham case, COUNTY shall use all amounts held in escrow, including interest, if any, to satisfy the tax bills issued and applicable sales tax.

4) In the event COUNTY does not prevail on the issue of immunity in the Broward County v. Markham case, and COUNTY has not required MSC to escrow or the amount remaining in escrow is insufficient to cover the obligation(s), then MSC shall pay to COUNTY all amounts as set forth in the tax bills issued, including applicable interest and sales tax, within sixty (60) calendar days after written demand therefor is made.

5) If, upon final resolution of the Broward County v. Markham case, the amounts paid by MSC as set forth in this Section are insufficient to satisfy the ultimate tax liability of COUNTY due to MSC's use of the demised premises, then MSC shall pay all such shortfalls, plus sales tax, within fifteen (15) calendar days after written demand therefor is made. If the amounts paid by MSC as set forth above are greater than the ultimate tax liability of COUNTY due to MSC's use of the demised premises, then COUNTY shall refund the excess amount to MSC within sixty (60) calendar days of final resolution of the Broward County v. Markham case.

C. After final resolution of the Broward County v. Markham case, MSC agrees to pay, as rent, on or before November 1<sup>st</sup> of each year (or such other date as may subsequently be set by COUNTY), all taxes levied and assessed upon the demised premises, all improvements thereon, together with all special assessments of any kind levied and assessed against the leasehold property and improvements thereon for such calendar year, together with sales tax; provided, however, that such amount to

be paid will be pro rated based on the actual days in which this Agreement is effective in the event same is effective for less than an entire calendar year.

In addition, MSC agrees to pay, as rent, to COUNTY at least thirty (30) calendar days prior to expiration of the term hereof or immediately upon termination of this Agreement, a pro rata amount of the tax obligation, together with sales tax, for the calendar year in which such expiration or termination occurs ("Exit Year"), provided that the tax obligation for such year has not been paid in accordance with the foregoing paragraph. In the event the actual tax obligation for the Exit Year has not yet been determined, then the amount due to COUNTY shall be estimated based on the tax obligation levied and assessed against the demised premises and improvements thereon for the prior calendar year. Thereafter, if the estimated amount paid by MSC based on the prior year's obligation is less than the actual tax obligation for the Exit Year, then MSC shall pay the shortfall to COUNTY within fifteen (15) calendar days after written demand therefor is made. If the estimated amount paid by MSC based on the prior year's obligation is greater than the actual tax obligation for the Exit Year than that paid by MSC as required in this Section, then COUNTY shall refund such amount to MSC within sixty (60) calendar days.

D. The parties hereto acknowledge and agree that there are no prior agreements between them for the use and occupancy of marine terminal facilities at Port Everglades, Florida.

E. The provisions of this Section shall survive the termination or expiration of this Agreement.

10. UTILITIES

A. GENERALLY

COUNTY shall provide only such utilities and other services as are presently provided to the demised premises. COUNTY shall not be obligated to perform or furnish any other services in connection with the demised premises, or any services at any time while MSC is default hereunder after the period to cure such default has expired. No failure, delay or interruption in supplying electric services or utilities shall be construed as an eviction of MSC, or a grounds for any abatement of payments or claim by MSC for damages.

B. CHARGES

MSC shall make arrangements directly with the utility company for electric service to the demised premises, and shall pay the utility company directly for all such charges, including applicable Florida sales tax. Notwithstanding, MSC shall be billed monthly by COUNTY for its pro-rata share of electrical service for the high-mast lights serving the demised premises, in addition to applicable sales tax on such electrical service.

No failure, delay or interruption in supplying electric services shall be construed as an eviction of MSC, or a grounds for any abatement of rental or claim by MSC for damages.

Additionally, if COUNTY determines that MSC is utilizing water on the demised premises, COUNTY, or any other entity providing such service, shall bill MSC each month for all charges associated with such water use including Florida sales tax, and MSC shall pay COUNTY and/or other entity proving such utility services, within fifteen

(15) calendar days of demand therefor.

11. RIGHT TO INSPECT

A. INSPECTION

COUNTY, by its officers, employees, agents, representatives and contractors shall have the right at all reasonable times to enter upon the demised premises to inspect same for any reason in order to make inquiry or ascertain whether MSC is complying with the terms of this Agreement, and the doing of any act or thing which COUNTY may be obligated or have the right to do under this Agreement or otherwise.

B. REPAIR

Without limiting the generality of the foregoing, COUNTY, by its officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right, at its own cost and expense, for its own benefit or for the benefit of others at Port Everglades, to maintain existing and future utility, mechanical, electrical and other systems and to enter upon the demised premises at all reasonable times to make such repairs, replacements or alterations thereto as may, in the opinion of COUNTY, be deemed necessary or advisable and from time to time to construct or install over, in or under the demised premises such systems or parts thereof and in connection with such maintenance to use the demised premises for access to other parts of Port Everglades otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration or new construction COUNTY shall not unreasonably interfere with the actual use and occupancy of the demised premises by MSC.

C. REMOVAL OF OBSTRUCTIONS

In the event that any personal property of MSC shall obstruct the access of COUNTY, its officers, employees, agents or contractors to any of the existing or future utility, mechanical, electrical and other systems and thus shall interfere with the inspection, maintenance or repair of any such system, MSC shall move such property, as directed by COUNTY, in order that access may be had to the system or part thereof for its inspection, maintenance or repair, and if MSC shall fail to so remove such property after direction from COUNTY to do so, COUNTY may move it and MSC hereby agrees to pay the cost of such moving upon demand.

D. NO EVICTION CONSTRUED

The exercise of any or all of the foregoing rights by COUNTY or others shall not be or be construed to be an eviction of MSC nor be made the grounds for any abatement of payments nor any claim or demand for damages, consequential or otherwise.

12. INSOLVENCY

If MSC becomes insolvent or bankruptcy proceedings are begun by or against MSC, and within thirty (30) days thereof MSC fails to secure a discharge thereof, or if MSC should make an assignment for the benefit of creditors before the end of the term of this Agreement, COUNTY is hereby irrevocably authorized, at its option, to forthwith cancel this Agreement as for a default. COUNTY may elect to accept rent and other required compensation from the receiver, trustee or other judicial officer during the term of their occupancy in their fiduciary capacity without affecting COUNTY's rights under in this Agreement, but no receiver, trustee or other judicial officer shall have any right, title

or interest in the demised premises.

**13. MAINTENANCE AND REPAIR OF PREMISES**

**A. MSC'S RESPONSIBILITIES**

MSC hereby accepts the demised premises in its present condition and agrees to maintain the demised premises in the same condition as exists at the beginning of the Agreement term except for reasonable wear and tear. MSC shall throughout the Agreement term assume the entire responsibility and shall relieve COUNTY from responsibility for all repair and maintenance whatsoever on the demised premises (which shall include, without limitation all improvements thereon), whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. MSC shall be required to keep the demised premises in good, tenantable, useable condition throughout the Agreement term, and without limiting the generality thereof, shall:

1) Maintain the demised premises in a safe and neat manner, free from garbage, debris or other unsightly or unsanitary waste matter (whether solid or liquid). Any of such garbage, debris or other waste matter as may be temporarily stored in the open shall be kept in suitable garbage and waste receptacles. MSC shall use extreme care when effecting removal of all such waste matter and shall comply with all laws, ordinances, rules, regulations, and procedures of all applicable governmental authorities in so doing.

2) Maintain the demised premises in a clean, orderly and safe condition so as to avoid injury to persons and property.

3) Repair any damage to the paving or other surface of the demised premises caused by overloading or any oil, gasoline, grease, lubricants or other

liquids or substances having a corrosive or detrimental effect thereon.

4) Provide and maintain all obstruction lights and similar devices, fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, resolution or regulation of any applicable governmental authority.

5) Repair all damage to the demised premises [including but not limited to any fencing, gates, lighting or pavement] within thirty (30) calendar days which is the result of any act, omission, negligence or misconduct on the part of MSC, its employees, agents, contractors or invitees.

In the event MSC fails in any material respect (i) to commence so to maintain, clean, repair, replace, rebuild or paint within a period of thirty (30) calendar days (except seven (7) calendar days for maintenance items) after notice from COUNTY to do so is given, or (ii) to continue to completion in a diligent manner the maintenance, repair, replacement, rebuilding or painting of the demised premises required to be maintained, repaired, replaced, rebuilt or painted under the terms of this Agreement, then the Broward County's Port Everglades Department may, at its option, and in addition to any other remedies which may be available to it, maintain, repair, replace, rebuild or paint all or any part of the demised premises included in the said notice and the cost thereof shall be payable by MSC within fifteen (15) calendar days after written demand therefor is sent.

#### B. COUNTY'S RESPONSIBILITY

COUNTY, at its sole expense, shall maintain and repair all underground utilities which now or may be subsequently located at the demised premises; provided,

however, that for repairs necessitated by any act, omission, negligence, or misconduct on the part of MSC, its employees, agents, contractors or invitees, MSC, at COUNTY's option, shall make all such repairs or reimburse COUNTY within fifteen (15) calendar days after written demand therefor is sent.

#### **14. INSURANCE**

A. MSC shall provide at its own expense and keep in continuous force and effect: (i) commercial general liability insurance with minimum limits of Five Million Dollars (\$5,000,000.00) for single limit bodily injury and property damage, and (ii) business automobile insurance (including owned/leased, non-owned and hired vehicles) with a minimum limit of Five Hundred Thousand Dollars (\$500,000.00). Further, MSC shall provide, at its own expense and keep in continuous force and effect, Excess Liability Coverage (umbrella form) for bodily injury and property damage combined with a minimum limit of Four Hundred Thousand Dollars (\$400,000.00) each occurrence and Four Hundred Thousand Dollars (\$400,000.00) annual policy aggregate. In addition, MSC shall provide, at its own expense, Worker's Compensation and Employee Liability Coverage in the amount of One Hundred Thousand Dollars (\$100,000.00) (each accident) required to comply with Florida Statutes Chapter 440, and United States Longshore and Harbor Workers Act, Jones Act, and Maritime Coverages Endorsement, as required by applicable federal, state and local laws. The aforesaid minimum limits of insurance shall be reviewed from time to time by COUNTY and may be adjusted if COUNTY determines that such adjustments are necessary to protect COUNTY's interest.

The commercial general liability insurance policy shall, at MSC's sole expense,

be written so as to protect both COUNTY as an additional insured and MSC. MSC shall furnish COUNTY with insurance certificates to demonstrate the continuous coverage required by this Section, and MSC shall be responsible for assuring that such insurance certificates remain in force for the duration of the term hereof. Certificates of insurance must provide COUNTY with thirty (30) day prior written notice of cancellation. MSC shall provide evidence of the required coverages herein, by presentation of certificates or other evidence of insurance prior to the execution of this Agreement. MSC shall deliver to COUNTY certificates of insurance for renewal or expiring policies at least thirty (30) calendar days in advance of any renewal, expiration or anniversary date. The insurance shall be written by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida or by insurers known to do business in the state.

When such policies or certificates have been delivered by MSC to COUNTY as aforesaid and at any time or times thereafter, COUNTY may notify MSC in writing that, in the opinion of COUNTY, the insurance represented thereby does not conform to the provisions of this Section either because of the amount or because of the insurance company or for any other reason, and MSC shall have fifteen (15) calendar days in which to cure any such defect. Compliance with the foregoing requirements shall not relieve MSC of its liability and obligations under any other provision of this Agreement.

B. ENVIRONMENTAL REQUIREMENTS

MSC covenants and agrees to provide and keep in force for the term hereof, environmental and impairment liability insurance in the minimum amount of One Million Dollars (\$1,000,000.00) per claim, subject to a maximum deductible of Twenty-five

Thousand Dollars (\$25,000.00) per claim. Such policy shall include a One Million Dollars (\$1,000,000.00) annual policy aggregate and name COUNTY as additional insured. In the event environmental impairment liability cannot be purchased, MSC may elect one of the following options:

(1) Self-Insurance in the minimum amount of One Million Dollars (\$1,000,000.00) certified by MSC's Chief Financial Officer. MSC's Chief Financial Officer shall provide not less than thirty (30) calendar days prior notice to COUNTY in the event self-insurance funds are reduced below the specified limit. The certification shall warrant such notice and shall be in form and substance satisfactory to COUNTY; or

(2) MSC shall provide COUNTY with an irrevocable letter of credit drawn on a bank approved by COUNTY or a Financial Guaranty Bond in the amount of One Million Dollars (\$1,000,000.00) specifically based on the conditions and performance of this Agreement. COUNTY's prior approval must be obtained as to the form and substance of the letter of credit and bond, and as to the bank issuing the letter of credit. The surety writing such bond shall maintain a minimum rating of A- by A.M. Best Company Rating Guide, and must be admitted to conduct business in the continental United States.

**15. ASSIGNMENT; SUBLETTING; SUBORDINATION**

**A. COUNTY CONSENT REQUIREMENTS; FACTORS AND STANDARDS**

Except as otherwise provided herein, MSC shall not (i) sublet this demised premises or any part thereof, or (ii) permit any transfer, assignment, pledge or encumbrance of this Agreement, or (iii) transfer, assign, pledge, or otherwise encumber

or subordinate this Agreement or any rights or obligations hereunder, or (iv) allow same to be assigned by operation of law or otherwise (any such action being called an "Assignment") without COUNTY's prior written consent, which consent may be granted or withheld by COUNTY in the exercise of its sole discretion or conditioned upon such additional terms and conditions as COUNTY deems necessary. The factors upon which COUNTY may base its decision on whether to grant such consent shall include, but not be limited to (i) an assessment of whether the proposed assignee meets standards of creditworthiness, (ii) whether the demised premises will be used in connection with the maritime industry for the purposes described herein, and (iii) an assessment of the ability of the proposed assignee to perform the obligations under this Agreement. In the event of any Assignment, the assignee shall be required, at COUNTY's option, to execute a written assumption agreement, agreeing to assume and abide by all of the terms and provisions of this Agreement, which assumption agreement must be acceptable to COUNTY. All consents which are required by COUNTY under this Section shall not be unreasonably withheld.

B. NO RELEASE

In the event of any Assignment, MSC shall not be released of any liability hereunder. COUNTY, as a condition of approving any Assignment or subletting, may increase the rent and fees payable hereunder, and may require modification of any other terms or conditions of this Agreement and/or execution of additional documents, including an irrevocable Guaranty of Payment and Performance.

C. CHANGE IN MSC'S STATUS

For purposes of this Section, an "Assignment" shall include: (i) any transfer of

this Agreement by merger, consolidation or liquidation, or by operation of law, or (ii) if MSC is a corporation, any change in ownership of or power to vote a majority of the outstanding voting stock of MSC from those controlling the power to vote such stock on the date of this Agreement, or (iii) if MSC is a limited or a general partnership or joint venture, any transfer of an interest in the partnership or joint venture which results in a change in control of such partnership or joint venture from those controlling such partnership or joint venture on the date of this Agreement.

Notwithstanding the foregoing, the following shall not be deemed an "Assignment" for purposes of this Section, (i) a transfer of stock or interests in MSC among its current owners and/or their immediate families, (ii) a transfer of stock or interests in MSC resulting from the death of a stockholder, partner or joint venturer, or (iii) any transfers of stock in MSC where same is publicly traded on a national stock exchange.

D. VOIDING OF ASSIGNMENT OR SUBLEASE; RIGHT TO COLLECT RENT

In the event MSC shall take any action specified under this Section without COUNTY's prior written consent, then any such assignment or other action shall be null and void, and of no force or effect, and in addition to all other available remedies, COUNTY shall be entitled to immediately terminate this Agreement. In no case may the activities, uses, privileges and obligations authorized herein regarding the demised premises or any portion thereof be assigned for any period or periods after a default shall have occurred hereunder and remain uncured.

In addition, if the demised premises are occupied by any entity without COUNTY's prior written consent in violation of this Section, then COUNTY may collect

rent from any assigns, sublessee or anyone who claims a right to this Agreement or who occupies the demised premises, and COUNTY shall apply the net amount collected to the rent herein reserved; but no such collection shall be deemed a waiver by COUNTY of the provisions of this Section or any acceptance by COUNTY of any such assignee or sublessee.

E. SUBORDINATE TO COUNTY

MSC acknowledges and agrees that each sublessee of MSC is subject to all of the terms and provisions of this Agreement, including but not limited to the requirement that each such sublessee must comply with all federal, state and local laws, ordinances, rules, regulations and orders that now or at any time during the term of this Agreement are applicable to the operations, use and enjoyment of such sublessee at the demised premises. Notwithstanding any sublease of the demised premises to which COUNTY has consented, MSC shall remain responsible for insuring that each and every term and provision of this Agreement is abided by and complied with and, in that regard, any failure by any sublessee to abide by and/or comply with any term or provisions of this Agreement shall be deemed a default by MSC, entitling COUNTY to any and all remedies available hereunder. Each sublease of the demised premises to which COUNTY has consented shall be subordinate in all respects to all terms and provisions of this Agreement and upon any termination of this Agreement, all such subleases of the demised premises shall also terminate contemporaneously with this Agreement.

F. MORTGAGE ON LEASEHOLD

No mortgage of this Agreement shall be binding upon COUNTY without its prior written consent, in the enforcement of its rights under this Agreement. However,

COUNTY will accept performance by the holder of any leasehold mortgage to which COUNTY has consented of any term of this Agreement required to be performed by MSC, with the same force and effect as though performed by MSC, if at the time of such performance, COUNTY shall be furnished with evidence satisfactory to COUNTY of the interest in the leased property claimed by the person or entity tendering such performance or payment. The holder of such mortgage shall have ten (10) calendar days after the date on which COUNTY may otherwise terminate this Agreement as to the defaulting MSC to cure any default in the payment of rent or additional rent required to be paid under this Agreement and a reasonable time not to exceed thirty (30) calendar days within which to cure any other default.

The Broward County's Port Everglades Department shall, from time to time, upon reasonable written request, provide a leasehold mortgagee or MSC with an estoppel certificate stating whether MSC is in default hereunder, whether this Agreement is in full force and effect, and whether this Agreement has been modified. Notwithstanding any information or consent provided by COUNTY hereunder, no Assignment shall give MSC or its assignee any lien or encumbrance upon the fee simple ownership interest in the demised premises which is vested in COUNTY.

**16. APPLICABILITY OF TARIFF**

Except as otherwise provided herein, MSC, in its use of property or facilities and services at Port Everglades, shall comply with all provisions of Port Everglades Tariff No. 11, and any amendments thereto or reissues thereof.

**17. INDEMNITY**

MSC 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 MSC, its employees, agents, servants, or officers, or accruing, resulting from, or related to the demised premises or the subject matter of this Agreement 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. The provisions of this section shall survive the expiration or earlier termination of this Agreement. MSC agrees to bind its sublessee(s) and every terminal user on the demised premises, contractor, subcontractor and consultant it employs for the performance of its obligations hereunder to the applicable terms and conditions of this Agreement, including this indemnity provision for the benefit of the COUNTY. To the extent considered necessary by the Broward County's Port Everglades Department and the Broward County Attorney, any sums due MSC under this Agreement (including without limitation the Security Deposit) may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by COUNTY.

**18. DEFAULT; TERMINATION**

**A. TERMINATION AFTER NOTICE**

If any one or more of the following Triggering Events defined in Section B. below shall occur, or at any time thereafter during the continuance of such event, same shall be an event of default under this Agreement and COUNTY may at its option, terminate

the rights of MSC hereunder by the giving of written notice, which termination shall be effective upon the date specified in such notice, and/or COUNTY may exercise any and all other remedies available to COUNTY hereunder or at law or in equity.

In the event of any termination by COUNTY, MSC shall have no further rights under this Agreement and shall cease forthwith all operations upon the demised premises and further covenants and agrees to yield and deliver peaceably and promptly to COUNTY, possession of the demised premises on the date of cessation of the letting, whether such cessation be by termination, expiration or otherwise. COUNTY, its agents, employees and representatives shall have the right to enter the demised premises and remove all property therefrom, and to accelerate and declare immediately due and payable all unpaid rents and other sums required to be paid under this Agreement. In addition, MSC shall be liable for all damages incurred by COUNTY in connection with MSC's default or the termination of this Agreement upon such a default, including without limitation, all direct damages, such as collection costs and reasonable attorney's fees, as well as indirect, consequential, and all other damages whatsoever. The exercise by COUNTY of any right of termination shall be without prejudice to and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No remedy herein confirmed upon or reserved to COUNTY is intended to be exclusive of any other remedy herein provided or otherwise available, and each and every remedy shall be cumulative.

B. TRIGGERING EVENTS

Any one or more of the following events shall constitute a Triggering Event:

- 1) MSC shall voluntarily abandon, desert or vacate the demised

premises or discontinue its operations at Port Everglades for a period of thirty (30) consecutive calendar days; or

2) Any lien, claim or other encumbrance which is filed against the demised premises is not removed or if COUNTY is not adequately secured by bond or otherwise, within thirty (30) calendar days after MSC has received notice thereof; or

3) MSC shall fail to pay the rentals within fifteen (15) calendar days following the date on which any payments are due to COUNTY; or

4) MSC shall fail to make any other payment required hereunder when due to COUNTY and shall continue in its failure to make any such other payments required hereunder for a period of fifteen (15) calendar days after notice is given to make such payment(s); or

5) MSC shall take any action described by Article 15 hereof without the prior written consent of COUNTY; or

6) The discovery of any material misrepresentation or fraudulent statement made to COUNTY in connection with any lease or other application or forms submitted to COUNTY in connection with this Agreement or the demised premises, following notice by COUNTY and a failure by MSC to explain the matter to COUNTY's satisfaction within thirty (30) calendar days; or

7) MSC shall fail to keep, perform and observe each and every promise, covenant and term set forth in this Agreement on its part to be kept, performed or observed within thirty (30) calendar days after notice to cure default is sent by COUNTY (except where fulfillment of its obligation requires activity

over a greater period of time and MSC shall have commenced to perform whatever may be required for fulfillment within thirty (30) calendar days after notice is sent and continues such performance without interruption).

8) By or pursuant to, or under authority of any legislative act, resolution or rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of MSC, and such possession or control shall continue in effect for a period of thirty (30) calendar days; or

9) Any business is conducted, or service is performed, or product is sold from the demised premises that is not specifically authorized by this Agreement, and such activity does not cease within ten (10) calendar days after receipt of notice to that effect.

C. Then upon the occurrence of any event set forth in (B), above, or at any time thereafter during the continuance thereof, COUNTY may, at its option, immediately terminate this Agreement, and all rights of MSC hereunder by giving written notice thereof, which termination shall be effective upon the date specified in such notice and/or COUNTY may exercise any and all other remedies available to COUNTY hereunder or at law or in equity. In the event of any such termination, MSC and its sublessee(s) shall immediately quit and surrender the demised premises to COUNTY and shall cease operations at Port Everglades. Any such termination shall be without prejudice to any remedy for arrears of payments due hereunder or breach of covenant, or damages for the balance of the Rent payable hereunder through the full term of this

Agreement, or any other damages or remedies whatsoever.

D. HABITUAL DEFAULT

Notwithstanding the foregoing, in the event MSC has frequently, regularly or repetitively defaulted in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by MSC, and regardless of whether MSC has cured each individual condition of breach or default, MSC may be determined by Broward County's Port Everglades Department to be a "habitual violator." At the time that such determination is made, said Department shall issue to MSC a written notice advising of such determination and citing the circumstances therefor. Such notice shall also advise MSC that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, COUNTY may terminate this Agreement upon the giving of written notice of termination to MSC, such termination to be effective upon delivery of the notice to MSC.

E. TERMINATION WITHOUT NOTICE

The occurrence of any of the following during this Agreement term hereof shall immediately confer upon COUNTY the right to terminate this Agreement without notice, in its sole discretion upon the terms and conditions set forth below:

- 1) If MSC or an officer, director, executive, partner, shareholder, employee or agent who is active in the management of MSC is found guilty or

convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, entry of a plea of guilty or nolo contendere where the illegal conduct or activity (i) is considered to be a public entity crime as defined by Ch. 287, Florida Statutes, as amended, (ii) is customarily considered to be a "white collar crime" or theft-related crime such as fraud, smuggling, embezzlement or misappropriation of funds, (iii) involves an act of moral turpitude meaning conduct or acts that tend to degrade principals or owners in society or bring them into public hatred, contempt, scorn or ridicule, or that tends to shock, insult or offend the community or ridicule public morals or decency or harm the image of COUNTY by virtue of its association with MSC or (iv) results in a felony conviction. MSC understands and agrees that neither the resignation nor the termination of the offending person does not impair COUNTY's right to terminate without notice under this Section; or

2) Suspension or revocation of MSC's operations by a governmental unit or agency having jurisdiction over the demised premises and/or the business being conducted thereon, regardless of the length of such suspension or revocation.

F. NO WAIVER

No waiver by COUNTY of any default on the part of MSC in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by MSC shall be or be construed to be a waiver by COUNTY of any other or subsequent default in performance of any of the said terms, covenants and conditions.

**19. NOTICES**

Any notices required by this Agreement or by law shall be given in writing and shall be sent to COUNTY by registered or certified mail by depositing the same in the United States Mail in the continental United States, postage prepaid, or by hand delivery or by overnight courier. Any such notice mailed as provided hereunder shall be deemed effective and served as of the date of the mailing. Any notice given by hand delivery or overnight courier shall be deemed to have been given upon receipt. Either party shall have the right, by giving written notice to the other, to change the address as which its notices are to be received. Until any such change is made, notices to COUNTY shall be delivered as follows:

**COUNTY:**

Broward County's Port Everglades Department  
ATTN: Port Director  
1850 Eller Drive  
Fort Lauderdale, Florida 33316

With a copy to:  
County Administrator  
Governmental Center  
115 S. Andrews Avenue  
Fort Lauderdale, Florida 33301

**MSC:**

Mediterranean Shipping Company S.A.  
40 Avenue Eugene Pittard  
1206 Geneva Switzerland

**20. APPLICABLE LAW, JURISDICTION, VENUE AND WAIVER OF JURY TRIAL**

This Agreement 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 Agreement 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, 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, EACH PARTY HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY SUCH LITIGATION.**

**21. RIGHT TO CONSTRUCT**

If at any time during the term of this Agreement it is necessary for COUNTY to enter the demised premises for the purposes of constructing utility or pipeline facilities or making repairs or other, needed improvements, MSC agrees that COUNTY may enter the demised premises for such purposes during reasonable hours and under conditions that will not unreasonably interfere with MSC use of the demised premises.

**22. PER CONTAINER (SHIPMOVES) RATES AND ANNUAL MINIMUM GUARANTEED PAYMENT**

**A. PER CONTAINER (SHIPMOVE) RATES**

Except as otherwise provided herein, COUNTY and MSC acknowledge and agree to the following per container (shipmoves) rates (such rates do not include applicable sales tax on crane rental usage) on MSC cargo handled through MSC's terminal facilities at Port Everglades, Florida in lieu of payment of dockage, cargo and container unit wharfage charges, crane rental fees to include crane startup, shutdown, and crane standby of up to one (1) hour, and harbormaster fees:

- 1) Beginning on the Commencement Date for the first year of this Agreement, 1–45,000 containers (shipmoves) at the rate of \$35.55 per container (shipmoves) and 45,001 container (shipmoves) and greater at the rate of \$35.00

per container (shipmoves);

2) For the second year of this Agreement, 1-55,000 containers (shipmoves) at the rate of \$36.36 per container (shipmoves), and 55,001 containers (shipmoves) and greater at the rate of \$35.00 per container (shipmoves);

3) For the third year of this Agreement, 1-70,000 containers (shipmoves) at the rate of \$37.14 per container (shipmoves) and 70,001 container (shipmoves) and greater at the rate of \$35.00 per container (shipmoves);

4) For the fourth year of this Agreement, and each and every successive year thereafter on the anniversary of the Commencement Date over the term hereof, the per container (shipmoves) rates shall be adjusted as follows:

a) 1-70,000 containers (shipmoves) rate shall be increased to an amount equal to the product of the 1-70,000 containers (shipmoves) rate during the immediately preceding year multiplied by the CPI Multiplier as provided in Article Five herein, subject to an annual cap of 1.5%.

b) 70,001 containers (shipmoves) and greater rate shall be increased to an amount equal to the product of the 70,001 and greater containers (shipmoves) rate during the immediately preceding year multiplied by the CPI Multiplier as provided in Article Five herein, subject to an annual cap of 1.5%.

5) The container (shipmoves) rates provided in this section, do not include Port Everglades Tariff charges for breakbulk cargo, electricity, water, line

handling services, and container crane standby of more than one (1) hour, all of which shall be billed by COUNTY and paid by MSC at full published Tariff rates. In no event, shall any adjusted container (shipmoves) rates established pursuant to this section be less than the container (shipmoves) rates in effect during the immediately prior twelve (12) month period.

B. ANNUAL MINIMUM GUARANTEE PAYMENT

Effective upon the Commencement Date, and for each and every successive year over the term hereof, MSC shall guarantee and make payments to COUNTY (apportioned monthly pro-rata, as applicable) the following sums as Minimum Guaranteed Payment ("MGP").

i) For the first year of this Agreement, MSC shall pay the COUNTY the sum of One Million Six Hundred Thousand Dollars (\$1,600,000.00) as MGP.

ii) For the second year of this Agreement, MSC shall pay the COUNTY the sum of Two Million Dollars (\$2,000,000.00) as MGP.

iii) For the third year of this Agreement, MSC shall pay the COUNTY the sum of Two Million Six Hundred Thousand Dollars (\$2,600,000.00) as MGP.

iv) For the fourth year of this Agreement, and each and every successive year thereafter on the anniversary of the Commencement Date over the term hereof, MSC's annual MGP amount shall be increased to an amount equal to the product of the MGP sum required to be paid during the immediately preceding year, multiplied by the CPI Multiplier as provided in Article Five herein, subject to an annual cap of 1.5%.

MSC shall pay COUNTY the applicable year's MGP amount in twelve (12) equal

monthly installments in advance on the first day of each and every month, without demand, setoff or deduction. In no event, shall any adjusted MGP amount established pursuant to this section be less than the MGP amount in effect during the immediately prior twelve (12) month period.

C. MGP required to be paid by MSC hereunder, shall be subject to the payment terms and conditions of this Agreement, including Port Everglades Tariff No. 11, amendments thereto and reissues thereof, and shall include applicable Florida sales tax. In addition to manifests and cargo reports required by Item 135 of the Port Everglades Tariff (which shall be provided by MSC to Broward County's Port Everglades Department within five (5) business days of the vessel call), MSC shall report to Broward County's Port Everglades Department on a monthly basis, the total amount of container (shipmoves) throughput on the demised premises (including, all containers (shipmoves) handled by MSC on the demised premises for its third party clients which shall be credited by COUNTY towards MSC's containers (shipmoves) monthly totals). The reports shall be provided to said Department within five (5) business days following the end of each month over the term hereof. The Tariff Item 135 report and the monthly reports shall be in the forms attached hereto as composite Exhibit "B" and made a part hereof as approved by the COUNTY's Port Director. The COUNTY's Port Director reserves the right to request MSC to provide the Port Everglades Department Finance Division with such other cargo reports/records in order to maintain its statistical database.

**23. SIGNAGE**

**A. PRIOR CONSENT**

MSC will not place, suffer to be placed, or maintain on the demised premises any sign, awning, canopy, or advertising matter without prior written consent of the COUNTY's Port Director or designee, which consent shall not be unreasonably withheld. If such consent is granted by the COUNTY's Port Director or designee, MSC shall maintain such item(s) in good condition at all times and install same pursuant to the Port Everglades Development District Zoning Classification.

**B. REMOVAL OF SIGNS**

Upon the expiration or termination of this Agreement, MSC shall remove, obliterate or paint out, as the COUNTY's Port Director may direct, any and all signs on the demised premises and, in connection therewith, shall restore the portion of the demised premises affected by such signs to the same condition as the same existed prior to the placing thereon of such signs. In the event of a failure on the part of MSC to so remove, obliterate or paint out each and every sign and to so restore the demised premises, Broward County's Port Everglades Department may perform the necessary work, deduct the costs thereof from the security deposit, and MSC shall pay the shortfall, if any, to COUNTY within fifteen (15) calendar days after written demand therefore is sent.

**24. PARKING**

MSC's use of parking spaces(s) in Port Everglades shall be subject to and in accordance with COUNTY's traffic and parking regulations set forth in Section 23-29, et seq., Broward County Code, Port Everglades Tariff No. 11. MSC shall be responsible

for providing adequate parking facilities on the demised premises to include but not be limited to, its employees, operators and invitees.

**25. SECURITY**

MSC, at its sole cost, shall be responsible for security on the demised premises and all improvements thereon and shall take and require others to take as required, whatever legal precautions are necessary to protect the demised premises, improvements thereon, and all persons and property thereon. In addition, MSC and COUNTY acknowledge that security measures at Port Everglades will be increased and that such efforts will likely impact the demised premises. In this regard, MSC agrees to cooperate with COUNTY's efforts to increase security and agrees to comply with all security rules and regulations (whether imposed by the United States Customs Service, the United States Coast Guard, or COUNTY). MSC, at its sole cost, shall be responsible for complying with all security-related measures that impact the demised premises, MSC and/or its employees, representatives, contractors, guests and invitees.

**26. SURRENDER AND ACCEPTANCE; REMOVAL OF PROPERTY**

**A. SURRENDER**

MSC covenants and agrees to promptly yield and deliver peaceably to COUNTY, at the conclusion of the term hereof or as otherwise provided herein, the demises premises or portion thereof as applicable in good condition, reasonable wear and tear excepted.

**B. ACCEPTANCE OF SURRENDER**

No agreement of surrender or to accept a surrender of this Agreement shall be valid unless and until the same shall have been reduced to writing and signed by the

duly authorized representatives of COUNTY and of MSC in a document of equal dignity and formality herewith. Except as expressly provided in this Agreement, neither the doing of nor any omission to do any act or thing by any of the officers, agents or employees of COUNTY shall be deemed an acceptance of a surrender.

C. REMOVAL OF PROPERTY

MSC shall have the right at any time during this Agreement term hereof to remove its inventories and other personal property from the demised premises. If MSC shall fail to remove its personal property by the termination or expiration date of this Agreement or as otherwise required herein, then MSC shall be considered to be holding over under Florida law. In such event, COUNTY shall pursue its legal options, including, but not limited to: (i) title to personalty shall vest in COUNTY, at no cost to COUNTY, or (ii) COUNTY may remove such property to a public warehouse for deposit, or (iii) COUNTY may retain the same in its own possession and sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale; second, to any sums owed by MSC to COUNTY with any balance remaining to be paid to MSC. If the expenses of such removal, storage and sale shall exceed the proceeds of sale, MSC shall pay such excess to COUNTY within fifteen (15) calendar days after written demand therefor is sent. The provisions of this Section shall survive the termination or expiration of this Agreement.

27. ENVIRONMENTAL IMPAIRMENT; CONTAINMENT AND REMOVAL

A. MSC acknowledges and agrees that COUNTY makes no representations or warranties whatsoever as to whether Pollutants (as hereinafter defined) exist on or in the demised premises or the improvements in violation of any federal, state or local law,

rule or regulation or in violation of any order or directive of any federal, state or local court or entity with jurisdiction of such matter. "Pollutants" refer to and include all derivatives or by-products of any one or more of the following terms as defined by applicable local, state or federal laws or regulations: hazardous substances, hazardous materials, hazardous waste, toxic substances, toxic pollutants; or such other pollutants, contaminants, substances, materials and wastes as are or become regulated under applicable local, state or federal laws or regulations. MSC acknowledges, represents and warrants to COUNTY that it has made sufficient inspection of the demised premises and the improvements to satisfy itself as to the presence or absence of any such Pollutants.

B. The discharge of any Pollutants on the demised premises or in Port Everglades in violation of any federal, state or local law, rule or regulation or in violation of an order or directive of any federal, state, or local court or entity is prohibited. Any such discharge by MSC, its sublessee(s), or any of their officers, employees, contractors, subcontractors, invitees, or agents, whether committed prior to or subsequent to the date of execution of this Agreement, shall be, at MSC's expense, and upon COUNTY's demand, immediately contained, removed and abated to the satisfaction of COUNTY and any court or regulatory entity having jurisdiction of the discharge. If MSC does not take action immediately to have such Pollutants contained, removed and abated, COUNTY may undertake the removal of the discharge; however, any such action by COUNTY shall not relieve MSC of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either MSC or COUNTY to contain or remove Pollutants, or to abate a discharge, whether such

action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its discharge.

C. If COUNTY arranges for the removal of any Pollutants in Port Everglades that were caused by MSC, its sublessee(s), or any of their officers, employees, contractors, subcontractors, invitees, or agents, the costs of such removal incurred by COUNTY shall be paid by MSC to COUNTY immediately upon COUNTY's written demand, with interest as is provided for under COUNTY's rules, regulations and ordinances, including its published Port Everglades Tariff No. 11, amendments thereto and reissues thereof.

D. MSC shall not be liable for the discharge of any Pollutants caused by the negligence or willful misconduct of the COUNTY. Nothing herein shall relieve MSC of its general duty to cooperate with COUNTY in ascertaining the source and, containing, removing and abating any Pollutants at the demised premises. COUNTY, its employees, contractors, and agents, shall have the right at all times to enter the demised premises for the purposes of the foregoing activities and/or conducting such environmental inspections, audits, testing or sampling as it deems appropriate. In addition, MSC hereby agrees that upon any Assignment of this Agreement and at anytime during the term hereof, COUNTY shall have the right to have a "Phase I" audit of the demised premises conducted at MSC's expense, and if such "Phase I" audit indicates that further testing and/or studies should be conducted, to include but not be limited to soil samples and water samples, then COUNTY shall have the right to have such further testing and studies conducted at MSC's expense. MSC shall reimburse COUNTY for the cost of such testing and studies within fifteen (15) calendar days after

written demand therefor is sent.

E. In the event COUNTY shall arrange for the removal of Pollutants on the demised premises that are not MSC's responsibility to correct, and if COUNTY's remediation activities prevent MSC from using the demised premises for its intended purposes, then from the date that the use of any portion of the demised premises for its intended purposes is precluded and until said portion again becomes available for MSC's use, compensation shall be abated based on the rate applicable to that pro rata portion of the demised premises so taken. In no event shall MSC be entitled to any amount on account of lost profits, lost rentals, or other damages as a result of COUNTY's remediation activities.

F. The provisions of this Section shall survive the expiration or termination of this Agreement.

## **28. INGRESS AND EGRESS**

MSC, its sublessee(s), invitees, licensees, agents, guests, contractors, suppliers of material and furnishers of services, shall have the right of ingress and egress via appropriate public ways to be used in common with others having rights of passage within Port Everglades, provided that COUNTY may, from time to time, substitute other suitable means (considering MSC's business operations) of ingress and egress so long as an alternate adequate means of ingress and egress is available.

COUNTY may at any time temporarily or permanently close or consent to or request the closing of any such roadway and or other area at Port Everglades presently or hereafter used as such, so long as an alternate adequate means of ingress and egress is made available to the demised premises (considering MSC's business

operations). MSC hereby releases and discharges COUNTY, its successors and assigns, of and from any and all claims, demands or causes of action which MSC may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway or other area used as such, whether within or outside Port Everglades, provided that COUNTY makes available to the demised premises an adequate means of ingress and egress (considering MSC's business operations).

**29. EASEMENT(S)**

COUNTY reserves the right to maintain such easements on the demised premises as may now or in the future be determined to be necessary to serve the needs of Port Everglades, and MSC agrees to take the demised premises subject to said easement requirements. Such easements will be used for, among other things, ingress and egress for other Port users, the installation of water distribution, sewage collection, underground electrical and telephone conduits, above ground street lighting and power poles. However, it is understood and agreed that COUNTY will restore any improvements which MSC has made, if such improvements are damaged by any installation made by COUNTY. Furthermore, COUNTY take reasonable steps to insure that any such installation be the least disruptive to MSC's operations.

**30. TARIFF CHARGES**

Except as otherwise provided herein, nothing contained in this Agreement shall be construed to confer upon MSC and its third party user(s) of its facilities and services, any special right with respect to the payment of charges imposed by Port Everglades Tariff No. 11, amendments thereto and reissues thereof. Except as otherwise provided

herein, MSC shall pay COUNTY for the utilization of all facilities and services at Port Everglades, including, but not limited to, wharfage and dockage in accordance with the charges imposed by COUNTY's published Port Everglades Tariff No. 11, amendments thereto and reissues thereof.

**31. MSC'S OBLIGATIONS**

MSC shall, at its expense:

A. Observe and obey, and require its employees, guests, invitees and those doing business with it, to observe and obey such reasonable rules and regulations of Broward County (including amendments and supplements thereto) governing the conduct and operations of MSC and others on the demised premises as may from time to time be promulgated.

B. Obtain all license(s) and permit(s) and pay all fees and charges for the conduct of any business on the demised premises before such amounts become delinquent.

C. Not overload any paved area on the demised premises and shall repair any paved area damaged by such overloading.

D. Provide COUNTY with immediate notice of any and all spills, leaks or discharges of any size whatsoever of Pollutants (as defined in Article 27 hereof) arising from its operations on the demised premises or in Port Everglades, and further provide COUNTY with not less than one (1) business day prior notice of all curative measures, remediation efforts and/or monitoring activities to be effected.

E. As required by law, provide the relevant regulatory authorities with notice of spills, leaks or discharges of Pollutants on the demised premises or in Port

Everglades, and have an updated contingency plan in effect for such discharges.

F. Provide COUNTY the right to inspect all documents relating in any way to the demised premises and all activities thereon, including but not limited to writings regarding environmental issues, remediation efforts, etc. (such as manifests evidencing proper transportation and disposal of Pollutants, site assessments, sampling and test results, etc.).

## **32. ALTERATIONS; FIXTURES; IMPROVEMENTS AND REQUIRED APPROVALS**

### **A. GENERAL**

MSC shall not design, develop, construct nor make any alterations, modifications or replacements to the demised premises or portion thereof, without the prior written consent of the COUNTY's Port Director or designee, which written consent shall not be unreasonably withheld. In the event any such action is taken or made without said prior written consent being given, then, upon notice in writing so to do, MSC shall remove same to Broward County's Port Everglades Department's satisfaction. In the event MSC fails to comply with the requirements of this section, said Department may effect the required removal or actions and MSC shall pay the cost thereof to COUNTY within fifteen (15) calendar days after written demand therefor is sent.

### **B. TITLE TO IMPROVEMENTS AND FIXTURES; REMOVAL**

All fixtures, structures, facilities, pavements and other permanent improvements, and any additions and alterations made to the demised premises (including those that are nailed, bolted, stapled, or otherwise affixed to the demised premises) by MSC, or at MSC's direction, shall be and remain MSC's property until the termination of this Agreement (whether by expiration of the Agreement term or otherwise), at which time

said improvements shall, at COUNTY's option, either (i) become COUNTY's property and shall be surrendered with and remain on the demised premises, or (ii) be removed by MSC at Broward County's Port Everglades Department's direction.

C. LIENS

MSC shall not do or permit to be done anything which shall result in the imposition of any liens, claims or encumbrances on the demised premises or portion thereof. If any lien or notice of lien shall be filed against the demised premises or portion thereof or any improvements thereon, MSC shall cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction within thirty (30) calendar days after notice of the filing thereof. MSC shall not be deemed to be COUNTY's agent so as to confer upon any contractor or subcontractor providing labor and/or materials to the demised premises, a mechanic's lien upon COUNTY's estate under the provisions of Chapter 713, Florida Statutes, as amended from time to time.

The provisions of this subsection shall not apply to any mortgage of MSC's interest in this Agreement to which COUNTY has consented as provided herein, or any purchase money security interest in any movable trade fixtures installed at the demised premises.

D. CONSTRUCTION REQUIREMENTS

i. The parties hereto, as of the date this Agreement is executed by COUNTY, do not contemplate the need for MSC to commence construction of improvements on the demised premises. Notwithstanding, if MSC so requires during the term hereof to make improvements to the demised premises, all of

MSC's construction on the demised premises, shall be performed in such a manner as to provide that MSC's Improvements shall: (i) be safe and free from any hazards, and (ii) comply with all terms and provisions of this Agreement. All improvements constructed by MSC, its agents, or contractors, including but not limited to the plans and specifications relating to same, shall conform to all applicable state, federal, county and local statutes, ordinances, building codes, fire codes, and rules and regulations; provided, however that review and consent by the COUNTY's Port Director of plans, specifications, or designs shall not constitute a representation or warranty as to such conformity, and the responsibility therefor shall at all times remain with MSC. Any additions, alterations or modifications to the demised premises shall be in conformity and consistent with the Americans with Disabilities Act of 1990, as may be amended from time to time.

ii. Upon COUNTY's Port Director's review and consent to MSC's plans, specifications and construction schedules, MSC shall immediately begin construction and installation of its improvements to the demised premises. MSC shall coordinate and install all such improvements in accordance with all permitting agency requirements as well as Florida, Power & Light company, and MSC shall pursue same to substantial completion within nine (9) months from the date of the COUNTY's Port Director's written review and consent. MSC and its architect/engineer and contractor agree to meet with COUNTY's Port Director's representatives in periodically scheduled meetings to assess the current status of completion of the improvements to the demises premises undertaken by MSC as

provided herein.

iii. Within sixty (60) calendar days after the final completion date of MSC's improvements on the demised premises, MSC shall provide to Broward County's Port Everglades Department at MSC's sole expense: (i) a complete set of "as-built" plans and specifications for all improvements, (ii) a certificate or acknowledgment of completion from all permitting agencies reflecting that MSC's improvements are complete and all permits are closed out, and (iii) a certified statement from the construction contractor(s) and architect stating that the improvements are free and clear of all liens, claims or encumbrances by any suppliers, subcontractors, or laborers.

iv. MSC shall furnish to COUNTY within seven (7) calendar days following the COUNTY's Port Director's review and consent to MSC's construction plans, specifications, and construction schedule as provided herein, the following:

(1) Performance Bond and Payment Bond (Surety):

(a) A performance bond and payment bond in a form acceptable to the COUNTY.

(b) The Bonds shall be in the amount of one hundred percent (100%) of the construction amount guaranteeing to COUNTY the completion and performance of the construction and development on the demised premises as provided in this Agreement, as well as full payment of all suppliers, materialpersons, laborers, or subcontractors employed by MSC.

Such Bonds shall be with a Surety company which is qualified pursuant to the COUNTY's standards for Surety's on COUNTY construction projects as follows:

(i) Qualifications of Surety:

(1) A separate performance bond and payment bond must be executed by a Surety company of recognized standing, authorized to do business in the state of Florida as 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.

2) In addition to the above-minimum qualifications, the Surety company must meet at least one of the following additional qualifications:

3) The Surety company 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 company 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, revised September 1, 1978 (31 CFR Section 223.10 Section 223.111). Further, the Surety company shall provide COUNTY with evidence satisfactory to COUNTY, that such excess risk has been protected in an acceptable manner.

4) The Surety company shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

<u>Size</u> <u>Amount of Bond</u>	<u>Ratings</u>	<u>Category</u>
500,001 to 1,000,000	B+	Class I
1,000,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

(c) Such Bonds shall continue in effect for one year after completion and acceptance of the work with liability equal to one hundred percent (100%) of the construction price, or an additional bond shall be conditioned that MSC will, upon notification by COUNTY, correct any defective or faulty Work or materials which appear within one year after completion of the construction work.  
OR -

(2) Performance and Payment Guaranty:

In lieu of a performance bond and payment bond, MSC may furnish

an alternate form of security which may be in the form of cash, money order, certified check, cashier's check or irrevocable letter of credit. Such alternate forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable above and shall be held by COUNTY for one year after completion and acceptance of the work.

v. It is understood and agreed that MSC shall be responsible for all costs and expenses relating to (i) MSC's improvements, including but not limited to the design, permitting and construction thereof, and (ii) all other improvements necessary to MSC's use of the demised premises, including but not limited to improvements mandated by any governmental authority having jurisdiction over the demised premises.

**33. DAMAGE BY CASUALTY**

If the demised premises are damaged by casualty not caused by an act attributable to MSC or COUNTY, and thereby become untenable, COUNTY may elect to repair within ninety (90) calendar days. If COUNTY does not elect to repair, MSC shall make the required repairs and request the applicable insurance proceeds be released as required to make timely payments for such needed repairs. If the demised premises are not repaired within ninety (90) calendar days and remain untenable, either party may cancel this Agreement and compensation shall be charged only to the date the demised premises became untenable.

It is expressly agreed and understood that COUNTY shall not be liable for any damage or injury by water, which may be sustained by MSC or any other person or for

any other damage or injury resulting from carelessness, negligence or improper conduct on the part of any other party in Port Everglades from breakage, leakage or obstruction of water, sewer or soil pipes or other leakage in or about the demised premises.

**34. TENANCY AFTER AGREEMENT TERM EXPIRES**

It is agreed and understood that any holding over of MSC after the termination of this Agreement shall not renew and extend same but shall operate and be construed as a tenancy from month to month and MSC agrees to pay to COUNTY the annual compensation and all other charges required to be paid hereunder during any such period. COUNTY at its option may impose a higher compensation during any holdover period as permitted by Florida law. MSC shall be liable to COUNTY for all loss or damage on account of any such holding over against COUNTY's will after the termination of this Agreement, whether such loss or damage may be contemplated at the execution of this Agreement or not. It is expressly agreed that acceptance of the foregoing payments by COUNTY in the event that MSC fails or refuses to surrender possession shall not operate or give MSC any right to remain in possession nor shall it constitute a waiver by COUNTY of its right to immediate possession.

**35. NON-LIABILITY OF INDIVIDUALS**

No commissioner, director, officer, agent or employee of COUNTY shall be charged personally or held contractually liable by or to MSC under any term or provisions of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

**36. COOPERATION WITH COUNTY**

A. MSC acknowledges that COUNTY is, or may, subject to Development Orders issued pursuant to Chapter 380, Florida Statutes collectively, "Development Orders"). COUNTY will be seeking regulatory approvals (collectively "Regulatory Approvals") consistent with its 1994 Fort Lauderdale-Hollywood International Airport Master Plan ("Master Plan") and FAR Part 150 Update ("Part 150 Update"), and the implementation of such plans, which may include the following: (1) amendment of existing Development Orders, (2) Preliminary Development Agreements from the Department of Community Affairs, (3) land use and zoning amendments, (4) preparation of Environmental Impact Statements, (5) such environmental permitting as may be required by federal, state, County or local regulations, and (6) any other Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of the Master Plan and the Part 150 Update.

MSC agrees to cooperate with COUNTY in connection with COUNTY's efforts to obtain the Regulatory Approvals. From and after the date of execution of this Agreement, MSC covenants and agrees (i) to support the COUNTY's efforts to obtain the Regulatory Approvals; and (ii) to execute any document(s) or instrument(s) reasonably requested by COUNTY in order to assist COUNTY in obtaining the Regulatory Approvals, provided that MSC shall not be required to bear any expense in connection therewith and MSC shall not be deemed an agent of the COUNTY.

**37. RLI INCORPORATED**

All the terms and conditions of the COUNTY's published RLI # 20030613-0-

PORT-SPEC and MSC's submittals to same are incorporated herein and made a part hereof by reference hereto.

**38. MISCELLANEOUS**

**A. TIME OF ESSENCE**

It is understood and agreed between the parties hereto that time is of the essence of this Agreement and shall apply to all terms and conditions contained herein.

**B. INDEPENDENT CONTRACTOR/RELATIONSHIP OF PARTIES**

MSC is an independent contractor under this Agreement and the relationship of COUNTY and MSC hereunder is that of COUNTY and MSC only. Services provided by MSC pursuant to this Agreement shall be subject to the supervision of MSC. In providing such services, neither MSC nor its agents shall act as officers, employees, or agents of the COUNTY. This Agreement shall not constitute or make the parties a partnership or joint venture.

**C. MSC'S WAIVER OF CLAIMS**

MSC hereby waives any claim against COUNTY, and its officers, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof, from being carried out.

**D. AMENDMENTS**

No modifications, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same formality and of equal dignity as this Agreement and executed by COUNTY and MSC.

E. MATERIALITY AND WAIVER OF BREACH

COUNTY and MSC agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

F. EXECUTION AUTHORITY

The individuals executing this Agreement on behalf of MSC personally warrant that they have full authority to execute this Agreement on behalf of MSC for whom they are acting herein.

G. CAPTIONS, HEADINGS, AND TERMS

The Article, section and paragraph headings in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, section or Article where they appear, unless the context otherwise requires. Whenever reference is made to an Article of this Agreement, such reference is to the Article as a whole, including all of the sections, subsections and subparagraphs of such Article, unless the reference is made to a particular subsection or subparagraph of such Article. Captions and Article headings used in this Agreement are for the convenience of reference of the parties and shall not be deemed to define, limit or in any way affect

the meaning of any provisions of this Agreement.

H. GENDER

All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires.

I. INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. All attached exhibits are incorporated into and made a part of this Agreement.

J. SEVERABILITY

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or MSC elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by a court becomes final.

K. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 38 of this Agreement shall prevail and be given effect.

L. SUCCESSORS AND ASSIGNS BOUND

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

M. AGENT FOR SERVICE OF PROCESS

It is expressly understood and agreed that if MSC is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event MSC does designate the Secretary of State, State of Florida, its agent for the purpose of service of process in any court action between it and COUNTY arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Florida for service upon a non-resident, who has designated the Secretary of State as its agent for service. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, MSC may be personally served with such process out of this State by certified mailing to MSC at the address set forth herein. Any such service out of this State shall constitute valid service upon MSC as of the date of mailing. It is further expressly agreed that MSC is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protest thereto.

N. CUMULATIVE RIGHTS

All rights and remedies of COUNTY hereunder, or at law or in equity, are cumulative and shall be in addition to any other rights and remedies available. The exercise of any right or remedy shall not be taken to exclude or waive the right to the exercise of any other. Failure by COUNTY to promptly exercise any of its rights shall

not operate to forfeit or be treated as a waiver of any such rights.

O. SPECIFIC PERFORMANCE

MSC agrees that in addition to all other remedies, its obligations contained herein shall be subject to the remedy of specific performance by appropriate action commenced in a court of proper jurisdiction.

P. JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

Q. UNCONTROLLABLE FORCES

Neither COUNTY nor MSC shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, earthquakes, hurricanes, tornadoes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

R. NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, SUPPLIER DIVERSITY, AND AMERICANS WITH DISABILITIES ACT

MSC 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 Agreement. MSC shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

In addition, MSC shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

MSC shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 161/2) in performing any services pursuant to this Agreement.

By execution of this Agreement, MSC represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement in accordance with the Default; Termination provision herein. MSC shall take affirmative steps to ensure that minority and women business enterprises have a fair opportunity to be awarded MSC vendor and supplier contracts through MSC's purchasing activity in this market area.

S. PUBLIC ENTITY CRIMES

MSC represents that the execution of this Agreement will not violate the Public

Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from COUNTY's competitive procurement activities

T. PRIOR AGREEMENTS

This Agreement 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 of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with Section 38 D. herein.

U. THIRD PARTY BENEFICIARIES

Neither COUNTY nor MSC intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third party or entity under this Agreement.

V. RADON

Pursuant to Florida Statutes, COUNTY hereby advises MSC of the following: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

W. MULTIPLE ORIGINALS

This Agreement may be fully executed in four (4) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

X. PREFERENTIAL BERTHING AND CRANES

COUNTY, shall upon receipt of MSC's Harbormaster Access To Port Application ("Berth Application") filed in accordance with the provisions of Port Everglades Tariff No. 11, provide Berth 32 to MSC upon ship arrival each day Saturday through Thursday and a berth from among Berths 31, 32, and 33A within four (4) hours of arrival on Fridays.

There is no penalty to the COUNTY for failure to comply with these stated time frames. Upon receipt of a container gantry crane order placed by MSC in accordance with the provisions of Port Everglades Tariff No. 11, COUNTY shall provide MSC with two (2) container gantry cranes to coincide with the scheduled start of ship cargo discharge/load operations.

Y. MSC EARLY TERMINATION

MSC may terminate this Agreement for its convenience upon the giving of not less than thirty-six (36) months prior written notice to COUNTY's Port Director of its intent to terminate ("Termination Notice"). The effective termination date shall be the last day in the thirty-six (36) month period which begins on the date such Termination Notice is received by COUNTY's Port Director. Upon the date COUNTY's Port Director receives MSC's Termination Notice, MSC shall immediately revert to and pay all Port Everglades' charges, i.e., dockage, wharfage, crane rental, etc., at applicable Tariff rates. Further, MSC shall remain liable for its payments of annual rental and MGP due over the thirty-six (36) month period, in accordance with the terms and conditions of this Agreement.

**[THIS SPACE LEFT BLANK INTENTIONALLY]**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: 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 22<sup>nd</sup> day of June, 2004, and MEDITERRANEAN SHIPPING COMPANY S.A., signing by and through its Director, duly authorized to execute same.

**COUNTY:**

ATTEST:



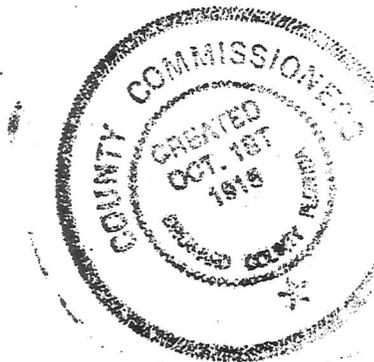
Broward County Administrator, as  
Ex-officio Clerk of the Broward County  
Board of County Commissioners

BROWARD COUNTY, by and through  
its Board of County Commissioners

By: 

ILENE LIEBERMAN, Mayor

24<sup>th</sup> day of June, 2004



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

**MARINE TERMINAL LEASE AND OPERATING AGREEMENT BETWEEN BROWARD COUNTY AND MEDITERRANEAN SHIPPING COMPANY S.A.**

**MSC:**

**WITNESS:**

MEDITERRANEAN SHIPPING COMPANY S.A, a Switzerland corporation, authorized to transact business in the state of Florida,

*[Signature]*  
(Signature)

By: *[Signature]*

Alvin Vogel  
(Print Name)

P. FORMISANO - DIRECTOR  
(Print Name and Title)

*[Signature]*  
(Signature)

2nd day of APRIL, 2004

Peter Pelli  
(Print Name)

**ATTEST:**

*[Signature]*  
Corporate Secretary

(SEAL)

M S C MEDITERRANEAN SHIPPING CO SA





