

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

201160-001



FIRST AMENDMENT TO
MARINE TERMINAL LEASE AND OPERATING AGREEMENT

This First Amendment to Marine Terminal Lease and Operating Agreement ("First Amendment") 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 have entered into that certain Marine Terminal Lease and Operating Agreement dated June 24, 2004; hereinafter referred to as ("Agreement"); and

WHEREAS, COUNTY and MSC desire to amend the Agreement to provide for revisions to the demised premises section, rental and minimum guaranteed payment terms, and other additional terms and conditions of the Agreement as 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 is hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Article 1, entitled, PREMISES, is hereby amended to read as follows:

1. **PREMISES**

...

- C. RELOCATION PARCEL

The parties hereto acknowledge, that it is the intent of COUNTY (within six [6] years following the date COUNTY executes this First Amendment) to use its best efforts to relocate MSC from a ten (±10) acre grid parcel (which grid parcel is assigned to MSC under the terms and conditions of the Port Everglades Tariff No. 12) to an alternative eleven (±11) acre parcel (fully improved to COUNTY's modern terminal container yard specifications) contiguous and adjacent to the existing demised premises hereinafter referred to as ("Relocated Site"). All provisions of this Agreement will apply with respect to the Relocated Site, excepting the description of the demised premises hereunder, which shall be revised by an amendment hereto (to reflect the addition of the Relocated Site to the demised premises leased hereunder) executed by MSC and COUNTY, by and through its Port Director. COUNTY shall provide MSC with no less than one-hundred eighty (180) calendar days prior written notice of the date on which MSC's occupation and use of the Relocated Site is to become effective which

date is hereinafter referred to as ("Relocation Commencement Date"). MSC shall bear all costs and expenses relating to the relocation of all its operations including, but not limited to, relocating all equipment and improvements installed and/or operated by MSC on the ten (±10) acre grid parcel that MSC elects to move to the Relocated Site. All of MSC's improvements and equipment that remains on the ten (±10) acre grid parcel subsequent to the Relocation Commencement Date shall become the property of COUNTY.

3. Article 4, entitled, USE AND COMPLIANCE WITH LAWS; FAILURE TO COMPLY, is hereby amended to read as follows:

4. USE AND COMPLIANCE WITH LAWS; FAILURE TO COMPLY

A. USE

...

Under no circumstances shall MSC allow or permit others to use the ~~demised premises~~ any portion of the demised premises in competition with any business conducted by COUNTY. MSC shall conduct its operations in an orderly and commercially reasonable manner considering the nature of its operations. MSC shall not unreasonably annoy, disturb (whether via vibrations, noise or otherwise), endanger or be offensive to others at Port Everglades. MSC shall commit no waste or injury on or about the demised premises and shall not do or permit to be done anything which may result in the creation or commission or maintenance of such waste or injury on the demised premises. 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.

...

B. COMPLIANCE WITH LAWS

MSC, in the use, occupation, ~~or~~ alteration and/or construction of the demised premises and in the use of property or facilities and services at Port Everglades, shall, at its sole expense, comply with and be governed by all laws, ordinances, rules and regulations and directives of the federal, state, county and municipal of all governmental bodies units or agencies having jurisdiction over the demised premises and the business being conducted thereon including compliance with Section 255.20 Florida Statutes by competitively awarding any construction work required hereunder, the Americans with Disabilities Act of 1990 ("ADA") and COUNTY's published Tariff No. 4412, 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.

C. USE OR COMPLIANCE VIOLATION

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 or compliance 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 use or compliance violations are eliminated to COUNTY's satisfaction, and/or (ii) terminate this Agreement in accordance with Article 18 (A) herein.

4. Article 5, entitled, RENTALS, FEES, AND CHARGES, is hereby amended to read as follows:

5. RENTALS, FEES, AND CHARGES

A. PAYMENTS

...

B. Beginning on the Relocation Commencement Date, MSC's then current total annual rental amount shall be increased accordingly, by adding the product of the then current per acre rental rate in effect pursuant to Article 5 herein and the total number of acres in the Relocation Site to the then current total annual rental amount (hereinafter referred to as "Revised Total Annual Rental"). The Revised Total Annual Rental shall be payable and adjusted in accordance with Article 5 herein and governed by the terms and conditions of this Agreement.

5. Article 10, entitled, UTILITIES, is hereby amended to read as follows:

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 other utilities shall be construed as an eviction of MSC, or a grounds for any abatement of payments required to be made hereunder or claim by MSC against COUNTY for damages.

...

6. Article 14, entitled, INSURANCE, is hereby amended to read as follows:

14. **INSURANCE**

...

B. **ENVIRONMENTAL REQUIREMENTS**

MSC covenants and agrees to provide and keep in force for the term hereof, Environmental ~~and impairment~~ Pollution Liability including cleanup costs and Environmental Impairment Liability insurance coverages 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 Coverage cannot be purchased, MSC may elect one of the following options:

...

7. Article 18, entitled DEFAULT; TERMINATION, is hereby amended to read as follows:

18. DEFAULT; TERMINATION

...

D. HABITUAL DEFAULT

Notwithstanding the foregoing, in the event MSC ~~has frequently, regularly or repetitively defaulted~~ defaults in the performance of or ~~breached~~ breaches any of the terms, covenants and conditions required herein to be kept and performed by MSC two (2) or more times in two (2) consecutive months, 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

...

1) If MSC or an officer, director, executive, partner, or a 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, or (ii) is customarily considered to be a "white collar crime" or theft-related crime such as fraud, smuggling, bribery, embezzlement or misappropriation of funds, or (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 business being conducted thereon, regardless of the length of such suspension or revocation.

8. Article 19, entitled, NOTICES, is hereby amended to read as follows:

19. NOTICES

...

MSC:
Mediterranean Shipping Company S.A.
Attn: Pasquale Formisano, Director
40 Avenue Eugene Pittard
1206 Geneva Switzerland

9. Article 22, entitled PER CONTAINER (SHIPMOVES) RATES AND ANNUAL MINIMUM GUARANTEED PAYMENT, is hereby amended to read as follows:

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. The parties hereto expressly acknowledge and agree that effective October 23, 2007, outbound transshipment container(s) which originates in a foreign port and have been previously: i) discharged from a MSC ship or MSC third party ship and placed directly within MSC's leasehold by MSC's franchised stevedore/cargo handler and ii) subsequently moved directly from MSC's leasehold by MSC's franchised stevedore/cargo handler to shipside for loading on a MSC ship will be charged sixty percent (60%) of the then current MSC per container (shipmoves) rate in effect (as may be adjusted and/or amended by the terms and conditions of this Agreement) at the time the outbound transshipment container (shipmove(s)) occurred. Outbound

transshipment container(s) (shipmove(s)) qualifying for the rate reduction as hereinabove described, shall be counted by COUNTY towards MSC's container (shipmoves) volumes hereunder as follows: every two (2) outbound transshipment shipmove(s) shall equal one (1) MSC container shipmove.

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 ~~4.5%~~ 3 %.

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 ~~4.5%~~ 3 %.

c) The resulting increase to the adjustment in the container (shipmoves) rates set forth in Paragraphs 4(a) and 4(b) as hereinabove amended (annual cap changed from 1.5% to 3%) shall be deemed effective as of the date which begins year 4 of this Agreement to wit: October 23, 2007.

5) The parties hereto expressly acknowledge and agree that, effective on the Relocation Commencement Date and over the remaining term of this Agreement, both the 1-70,000 containers (shipmoves) rate and the 70,001 containers (shipmoves) and greater rate are repealed and replaced with a 1-89,653 containers (shipmoves) rate and a 89,654 containers (shipmoves) and greater rate respectively. Effective on the Relocation Commencement Date, the 1-89,653 containers (shipmoves) rate shall equal the 1-70,000 containers (shipmoves) rate which had been in effect up to the Relocation Commencement Date and the 89,654 containers (shipmoves) and greater rate shall equal the 70,001 containers (shipmoves) and greater rate which had been in effect up to the

Relocation Commencement Date.

On the next annual anniversary of the Commencement Date (following the Relocation Commencement Date) and for each and every successive year thereafter on the annual anniversary of the Commencement Date over the remaining term hereof, the per containers (shipmoves) rates shall be adjusted as follows:

a) 1-89,653 containers (shipmoves) rate shall be increased to an amount equal to the product of the 1-89,653 containers (shipmoves) rate during the immediately preceding year and the CPI Multiplier as provided in Article Five herein, subject to an annual cap of 3%.

b) 89,654 containers (shipmoves) and greater rate shall be increased to an amount equal to the product of the 89,654 and greater containers (shipmoves) rate during the immediately preceding year and the CPI Multiplier as provided in Article Five herein, subject to an annual cap of 3%.

5) 6) 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 ~~4.5%~~ 3%. The change in the annual cap from 1.5% to 3% shall be deemed effective as of the date which begins year 4 of this Agreement to wit: October 23, 2007.

v. The parties hereto expressly acknowledge and agree that, beginning on the Relocation Commencement Date, MSC's then current annual MGP shall be adjusted upwards to equal the product of 89,653 containers (shipmoves) and the 1-89,653 containers (shipmoves) rate in effect as of the Relocation Commencement Date. MSC's adjusted annual MGP shall be referred to as the ("Relocation MGP") and shall be paid by MSC in one-twelfth increments, beginning the first day of the month following the Relocation Commencement Date and on the first day of each month thereafter.

vi. The parties hereto expressly acknowledge and agree that, on the next annual anniversary of the Commencement Date (following the Relocation Commencement Date), MSC's annual Relocation MGP amount shall be increased to an amount equal to the product of the Relocation MGP required to be paid during the immediately preceding year, and the CPI Multiplier as provided in Article Five herein, subject to an annual cap of 3%.

vii. The parties hereto expressly acknowledge and agree, that MSC's Relocation MGP shall be adjusted for each and every successive year thereafter on the anniversary of the Commencement Date over the remaining term hereof. MSC's Relocation MGP amount shall be increased to an amount equal to the product of the Relocation MGP sum required to be paid during the immediately preceding year, and the CPI Multiplier as provided in Article Five herein, subject to an annual cap of

3%.

viii. Effective October 23, 2007 and over the term hereof, MSC shall be eligible for a monetary credit in an amount not to exceed 20% of its required annual MGP/Relocation MGP. MSC shall become eligible for a credit only if the total of MSC's actual annual container (shipmoves) is less than the guaranteed number of MSC container (shipmoves) for the given contract year. The eligible credit shall equal the product of the amount of MSC's container (shipmoves) short and the contract year's guaranteed rate for MSC per container (shipmoves). The amount of MSC's container (shipmoves) short used to determine the eligible credit cannot exceed the number of container (shipmoves) handled by MSC (in the applicable contract year) for its third-party clients.

For example, if MSC's annual guaranteed container (shipmoves) is 70,000 for a given year, but the actual annual MSC container (shipmoves) count was 60,000, with third-party container (shipmoves) equaling 12,000, then MSC's eligible credit would equal the product of MSC's 10,000 container (shipmoves) short and the MSC per container (shipmoves) rate in effect for the given contract year. If the number of third-party container (shipmoves) was 4,000 in the given contract year, then the eligible monetary credit to MSC would equal the product of 4,000 and the MSC per container (shipmoves) rate in effect for that contract year. If MSC's container (shipmoves) short was 20,000 with third-party container (shipmoves) equaling 15,000, then MSC's eligible

monetary credit would be the maximum allowed of 20% of 70,000 or 14,000 multiplied by the MSC per container (shipmoves) rate in effect for the given contract year. Any monetary credit amount shall be posted to MSC's account and applied by COUNTY against MSC's monthly billings not later than December 23rd of each calendar year.

MSC shall pay COUNTY the applicable year's MGP/Relocation MGP amounts 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/Relocation MGP amounts established pursuant to this section be less than the MGP/Relocation MGP amounts in effect during the immediately prior twelve (12) month period.

C. MGP/Relocation 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. ~~4-12~~, 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~~ Port Everglades Tariff No. 12 (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 MSC 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) and outbound transshipment container(s)

described in Article 22A. herein. The reports shall be provided to said Department within five (5) business days following the end of each month over the term hereof. The required Port Everglades Tariff ~~Item 135~~ No. 12 report and the monthly reports shall be in the revised forms attached hereto as in revised 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.

10. Article 31, entitled, MSC'S OBLIGATIONS, is hereby amended to read as follows:

31. MSC'S OBLIGATIONS

...

C. Not cause or permit any welding or burning on the demised premises until all required permits have been obtained from COUNTY and the United States Coast Guard.

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

~~D.E.~~ 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.F.~~ 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.G. 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.).

H. Queue truck traffic within the marine terminal facility to avoid to the greatest extent possible, truck traffic queue on public roads and rights of way within Port Everglades.

11. Article 32, entitled, ALTERATIONS; FIXTURES; IMPROVEMENTS AND REQUIRED APPROVALS, is hereby amended to read as follows:

32. ALTERATIONS; FIXTURES; IMPROVEMENTS AND REQUIRED APPROVALS

...

C. LIENS

...

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. MSC shall not create or permit any lien on any fixtures affixed to the demised premises without obtaining in each instance, the prior written approval of COUNTY excluding, however, or any purchase money security interest in any movable trade fixtures installed at the demised premises.

Unless COUNTY, through its Board of County Commissioners, provides

otherwise in writing, all of MSC's assets which are brought onto the demised premises and used in connection with its business conducted on the demised premises, shall be subject to COUNTY's landlord's lien on such assets.

...

E. PAYMENT FOR DESIGN AND ENGINEERING SERVICES;
PAYMENT FOR SPECIFIC SITE IMPROVEMENTS TO GRID
PARCEL; RENT CREDIT

COUNTY agrees to reduce MSC's annual rental obligation hereunder by providing MSC with rent credit as follows:

i) For costs and expenses relating to land surveys and soil borings (contracted by MSC) with respect to an eleven (±11) acre site in Southport, Port Everglades which site had been previously identified by COUNTY's staff and MSC representatives as a possible MSC relocation site, MSC will receive a rent credit which shall not exceed Twenty-two Thousand Eight Hundred Three Dollars (\$22,803.00).

ii) For costs and expenses relating to professional design, engineering services as well as construction and development costs relating to the construction and development of generic improvements to the ten (±10) acre grid parcel described in Article 1 herein, MSC shall receive a rent credit not to exceed Nine Hundred Thirteen Thousand Dollars (\$913,000.00). This rent credit is restricted to professional design and engineering services, pavement patching, fence repairs, fence removal, drainage upgrades, new lighting and other upgrades necessary to be made to the ten (±10) acre grid parcel. In no event will a rent credit

be given by COUNTY to MSC for non-generic improvements (i.e., security infrastructure) made to said grid parcel. MSC shall provide COUNTY's Port Director with copies of all its construction bid documents and bid results for the ±10 acre grid parcel for his/her review, comments, and approval prior to MSC's finalization of same.

iii) The exact amount of the total rent credit (Subsections (i) and (ii) hereinabove) provided by MSC shall be based on MSC's actual "Capital Expenditure" as verified by a certified statement described in subsection (v) hereinbelow and supported by sufficiently detailed invoices and documentation as required by COUNTY's Port Director.

iv) "Capital Expenditure" is defined as the costs and expenses paid for services rendered and materials furnished in connection with the work and improvements specified to be eligible for rent credit in subsections (i) and (ii) hereinabove. Payments made to independent contractors for engineering, architectural, and professional consulting and construction services in connection therewith shall be included.

v) The exact amount of the total rent credit provided by COUNTY to MSC shall only include third party costs which are substantiated by a certified statement prepared by a Certified Public Accountant retained by MSC at its sole expense, and shall not include any finance or interest expenses or administration, supervisory, overhead or internal costs of MSC.

vi) Within sixty (60) calendar days of the COUNTY's receipt of

the certified statement and the supporting documentation and invoices from MSC as required by COUNTY's Port Director, the COUNTY's Port Director shall review same and provide MSC with a writing which contains the final rent credit calculation. In the event that any dispute arises between the parties in relation to the final rent credit calculation, the parties agree to submit the dispute to mediation. The parties further agree that their participation in mediation is a condition precedent to any party pursuing any other available remedy in relation to the dispute. Any party to the dispute may send written notice to the other party of its desire to commence mediation, and a mediation session must take place within thirty (30) calendar days after the date that such notice is sent. The parties must jointly appoint a mutually acceptable mediator. If the parties hereto are unable to agree upon the appointment of a mediator within fourteen (14) calendar days after a party has sent notice of its desire to mediate the final rent credit calculation dispute, any party may apply to the American Arbitration Association, or such other organization or person agreed to by the parties in writing, for appointment of a mediator. It is the intent of the parties hereto, that the mediation session be conducted within the thirty (30) calendar day period hereinabove provided. The parties further agree to bear their own respective costs and expenses of the mediation, including costs incurred by a party for representation by legal counsel at the mediation. The cost of the mediator shall be borne equally by the parties. The total rent credit amount (derived from the final rent

credit calculation) shall be provided to MSC monthly over consecutive months, commencing on the first day of the month following the date the final rent credit calculation is mutually agreed to by the parties hereto. It is the intent of the parties hereto, that the amount of the monthly rent credit to be applied, is a figure which maximizes an offset to MSC's monthly rental obligations in the shortest time possible. Notwithstanding, the monthly rent credit amount may not exceed MSC's then current monthly rental obligation to COUNTY.

MSC and COUNTY expressly acknowledge and agree that if MSC has not achieved final completion (as evidenced by a certificate of final completion issued to MSC by the City of Hollywood) of its generic improvements to the ten (±10) acre grid parcel within eighteen (18) months (unless further extended by the COUNTY's Port Director for a period not to exceed sixty (60) calendar days) from the date of the COUNTY's Port Director's review and written consent to MSC's plans, specifications, and construction schedule for the ten (±10) acre grid parcel then MSC waives and releases COUNTY from all claims and demands whatsoever in and to the rent credit set forth in subsection (ii) hereinabove. MSC shall submit to the COUNTY's Port Director's for his/her review and written consent, MSC's construction plans, specifications, and construction schedule for the ten (±10) acre grid parcel at the same time it submits its construction plans and specifications to the City of Hollywood and other required permitting agencies for applicable construction plan(s) and specification approval(s) and permit(s).

In the event MSC elects to terminate this Agreement prior to the expiration of its term, COUNTY's rent credit obligation to MSC hereunder shall cease immediately upon the date that MSC's notice of termination is provided to COUNTY. Accordingly, COUNTY's rent credit obligation hereunder is not a continuing or surviving obligation under the terms of this Agreement.

12. Except as otherwise modified herein, the terms and conditions of the Agreement between the parties shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have made and executed this First Amendment to 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 11 day of Dec., 2007, 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

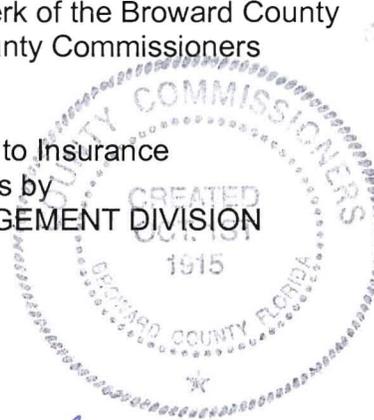
BROWARD COUNTY, by and through
its Board of County Commissioners

By: 

Mayor

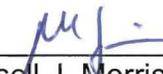
11 day of Dec., 2007

Approved as to Insurance
Requirements by
RISK MANAGEMENT DIVISION



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

By: 

By: 

Russell J. Morrison (10/8/07)
Senior 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,

John Mullaney
(Signature)

JOHN MULLANEY
(Print Name)

Sonia H. Charvet
(Signature)

SONIA H. CHARVET
(Print Name)

By: *[Signature]*

PERFORMISANO - DIRECTOR
(Print Name and Title)

26 day of SEPTEMBER, 2007

ATTEST:

Corporate Secretary

(SEAL)

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 26th DAY OF Sept., 2007.
BY J. Mullaney & S. Charvet
Concettina Scaglione
NOTARY PUBLIC

CONCETTINA SCAGLIONE
Notary Public - State of New York
NO. 01SC5039413
Qualified in New York County
My Commission Expires 2/21/2011

