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FEDERAL MARITIME COMMISSION

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



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**THIRD AMENDMENT TO
MARINE TERMINAL LEASE AND OPERATING AGREEMENT**

This Third Amendment to Marine Terminal Lease and Operating Agreement ("Third 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, First Amendment to Agreement dated December 11, 2007, and Second Amendment to Agreement dated February 9, 2010 hereinafter collectively referred to as ("Agreement"); and

WHEREAS, COUNTY and MSC desire to amend the Agreement to provide for revisions to minimum guaranteed payment and per container (shipmoves) rates provisions, 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 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 (SHIPMOVES) 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. Effective upon the date COUNTY approves this Amendment, and over the remaining initial term hereof, all container (shipmoves) from a vessel calling at Port Everglades, which vessel is subject to a Vessel Sharing Agreement ("VSA") and/or Slot Charter Agreement ("SCA") between MSC and a third party steamship line(s) filed with the Federal Maritime Commission (FMC), shall also be counted towards MSC's required annual MGP and billed at the then applicable rates in effect as provided hereinbelow and invoiced to MSC, which is responsible for applicable payments described herein. VSA/SCA cargo will be billed directly to MSC in the same manner as its own proprietary cargo.

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 initial 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 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 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) Effective ~~u~~Upon the commencement of Contract ~~Y~~year Eight (8), a single rate for all containers (shipmoves) of \$40.8348 per container (shipmoves) shall take effect. Upon the commencement dates for year Nine (9) and year Ten (10), the then current per container (shipmoves) rate shall be increased by the CPI multiplier as provided in Article 5 herein, subject to an annual cap of 3%. ~~the 1-70,000 containers (shipmoves) rate and 70,001 containers (shipmoves) and greater rate shall be repealed and replaced with 1-75,000 containers (shipmoves) rate and 75,001 containers (shipmoves) and greater rate, respectively.~~

a) ~~1-75,000 containers (shipmoves) rate shall be equal to the product of the 1-70,000 containers (shipmoves) rate during the immediately preceding year and the CPI multiplier as provided in Article 5 herein, subject to an annual cap of 3%.~~

b) ~~75,001 containers (shipmoves) and greater rate shall be equal to the product of the 70,001 containers (shipmoves) and greater rate during the immediately preceding year and the CPI multiplier as provided in Article 5 herein, subject to an annual cap of 3%.~~

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 initial 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 initial 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 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, effective upon the Commencement of Contract Year Eight (8), MSC's then current annual MGP shall be adjusted upwards to equal the product of 75,000 containers (shipmoves) and the 1-75,000 containers (shipmoves) rate in effect as of the effective start date of Contract Year Eight (8).~~ For the eighth year of this Agreement, MSC shall pay COUNTY the sum of Two Million Eight Hundred Fifty-eight Thousand Four Hundred Thirty-six Dollars (\$2,858,436.00) as MGP. The parties hereto acknowledge and agree, that this MGP sum is factored on 70,000 containers (shipmoves). MSC's adjusted annual MGP shall be paid by MSC in one-twelfth increments, beginning the first day of the month following the start commencement date of ~~Contract Year Eight (8)~~ 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 start commencement~~ date of ~~Contract Year Eight (8)~~ year Nine (9), MSC's adjusted annual MGP amount shall be increased to an amount equal to the product of the 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 MGP shall be adjusted for the next each and every successive year thereafter on the anniversary of the start commencement date of Contract Year Eight (8) Ten (10) over for the remaining initial term hereof. In the event MSC elects to exercise its first five (5) year option term as provided herein, then MSC's MGP amount for year Ten (10) shall be increased to an amount equal to the product of the 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%. In the event MSC does not elect to exercise its first five (5) year option term as provided herein, then MSC's MGP amount for year Ten (10) shall be equal to the product of 75,000 containers (shipmoves) and the then current container (shipmoves) rate in effect as of the commencement date of year Ten (10). In no event shall any adjusted MGP amounts established pursuant to this Article, be less than the MGP amounts in effect during the immediate preceding twelve (12) month period.

viii. Effective October 23, 2007 and over the remaining initial term hereof, MSC shall be eligible for a monetary credit in an amount not to exceed 20% of its required annual 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 commencing not later than December 23rd of each calendar year.

MSC shall pay COUNTY the applicable year's 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 amounts established pursuant to this Article be less than the MGP amounts 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. 12, amendments thereto and reissues thereof, and shall include applicable Florida sales tax. In addition to manifests and cargo reports required by 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 No. 12 report and the monthly reports shall be in the revised forms attached hereto 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.

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

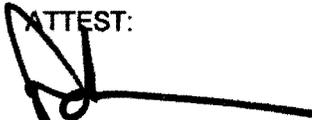
4. This Third Amendment shall become effective upon the date of execution by COUNTY.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Third 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 10 day of January, 2012, and MEDITERRANEAN SHIPPING COMPANY S.A., signing by and through its _____, duly authorized to execute same.

COUNTY:

ATTEST:



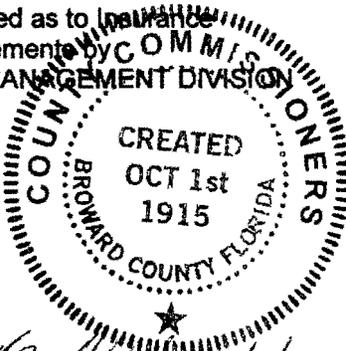
Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

BROWARD COUNTY, by and through
its Board of County Commissioners

By: _____
Mayor

10th day of January, 2012

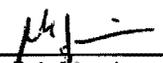
Approved as to Insurance
Requirements by
RISK MANAGEMENT DIVISION



By: 

Risk Management Division
Perez Alexander, SPC III

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

By: 

Russell J. Morrison (10/25/2011)
Senior Assistant County Attorney

By: 

Noel M. Pfeffer (10/22/11)
Deputy County Attorney

RMJ/dh
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Revised 10/17/11

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

MSC:

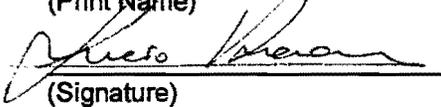
WITNESS:



(Signature)

ELISE NAUJKA

(Print Name)



(Signature)

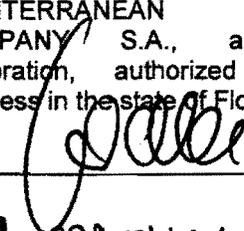
LUCIO VACCARO

(Print Name)

ATTEST:

Corporate Secretary

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

By: 

J. KONIJAHO

(Print Name and Title)

19 day of OCTOBER, 2011

MSC

MEDITERRANEAN SHIPPING COMPANY S.A
40, avenue Eugène-Pittard
CH - 1208 GENEVA / Switzerland

(SEAL)