

CONSENT TO LEASEHOLD MORTGAGE AND SUBORDINATION AGREEMENT

THIS CONSENT TO LEASEHOLD MORTGAGE AND SUBORDINATION AGREEMENT ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by BROWARD COUNTY, a political subdivision of the State of Florida ("County"), PORT EVERGLADES TERMINAL, LLC, a Florida Limited Liability Company ("Borrower") as the terminal operator for Tenant, MEDITERRANEAN SHIPPING COMPANY S.A., a Switzerland corporation, authorized to transact business in the State of Florida ("Tenant"), and TD BANK, N.A., a national banking association ("Secured Party").

RECITALS:

WHEREAS, on June 24, 2004, County and Tenant entered into a Marine Terminal Lease and Operating Agreement, which agreement was amended by First Amendment dated December 11, 2007, Second Amendment dated February 9, 2010, Third Amendment dated January 10, 2012, and Fourth Amendment dated August 12, 2014 (hereinafter collectively referred to as the "Ground Lease"); and

WHEREAS, pursuant the terms of the Ground Lease, Tenant may pledge its leasehold mortgage interests under the Ground Lease ("Collateral") regarding the real property described in the Ground Lease as the "Demised Premises," upon the prior written consent of County; and

WHEREAS, Secured Party has agreed to make a leasehold mortgage to Borrower for the purpose of making leasehold improvements and Tenant has agreed to pledge its leasehold interests as Collateral for the loan; and

WHEREAS, Borrower and Tenant desire to pledge the Collateral to Secured Party and has requested that the County consent to the leasehold mortgage and subordinate its interests in the Collateral to Secured Party; and

WHEREAS, Secured Party requires a first priority security interest in the Collateral, which shall be and remain at all times a lien or a charge upon the Collateral prior and superior to County's security interest; and

WHEREAS, County consents to the leasehold mortgage and agrees to subordinate its interests in the Collateral to Secured Party as provided herein.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, declared, and understood, the parties agree as follows:

A. CONSENT TO LEASEHOLD MORTGAGE

County acknowledges that as of the date of execution of this document, the Ground Lease is in full force and effect. County hereby consents to the leasehold mortgage between Borrower, with joinder and consent by Tenant, and Secured Party securing indebtedness in an amount up to Four Million One Hundred Sixty Thousand and 00/100 Dollars (\$4,160,000.00). This consent shall not obligate the County to any affirmative obligations which may be set forth by the terms of the leasehold mortgage, the promissory note, or any other documents executed in connection therewith. County's consent given in this document shall not, under any circumstances, be construed to allow or permit any subordination of the fee simple interest of County in and to the Demised Premises under the Ground Lease, despite any provision which may appear to be to the contrary contained within the leasehold mortgage or other loan documents. All other rights and remedies reserved to Secured Party under the terms and conditions of the Ground Lease are incorporated herein by reference hereto.

B. SUBORDINATION

The Secured Party's interest in the Collateral under the security documents executed and to be executed by the Borrower in favor of the Secured Party ("Security Documents") as to all obligations recited as being secured thereby, and any renewals, modifications, advances, or extensions thereof shall unconditionally be and remain at all times a lien or charge on the Collateral ("Secured Party's Lien"), prior and superior to the County's security interest reserved pursuant to the Ground Lease, or by operation of law (and any renewal, modifications, advances, or extensions thereof) until the earlier of (i) such time as all obligations and all duties owing by Borrower to Secured Party under the Security Documents, now existing or hereafter arising, of every kind or description, are paid and performed, or (ii) the termination of the Ground Lease applicable to the Demised Premises wherein the Collateral is located. Upon the occurrence of subparagraph (i) preceding, this Agreement shall terminate. Upon the termination of the Ground Lease, the Secured Party's Lien against the Collateral shall terminate.

C. LICENSE

Provided Secured Party shall give County at least thirty (30) calendar days prior written notice of any such entry to the Demised Premises covered by the Ground Lease, the Secured Party shall have a license to enter the Demised Premises at all reasonable times for the purposes hereinafter stated, subject to all security regulations and requirements of the County's Seaport Security Program. The purpose of Secured Party's license shall be to maintain the Collateral. Secured Party shall be liable to County for any damage to the condition of the Demised Premises that may arise while maintaining the Collateral. Upon failure of Secured Party to repair any and all damage to the Demised Premises, County may have the Demised Premises repaired and the applicable charges shall be paid by Secured Party. Secured Party shall indemnify and hold harmless 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 Secured Party, its employees,

agents, subcontractors, servants, or officers, or accruing, resulting from, or related to 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. In the event that any action or proceeding is brought against County by reason of any such claim or demand, Secured Party shall, upon written notice from County, resist and defend such action or proceeding by counsel satisfactory to County. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by overnight courier with receipt acknowledgment, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. All notices, approvals, and consents required hereunder must be in writing to be effective. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this paragraph. For the present, the parties designate the following:

FOR BROWARD COUNTY:

Chief Executive/Port Director  
Port Everglades  
1850 Eller Drive  
Fort Lauderdale, Florida 33316

FOR BORROWER:

Port Everglades Terminal, LLC  
125 NE 9<sup>th</sup> Street  
Miami, Florida 333132

FOR TENANT:

MEDITERRANEAN SHIPPING COMPANY S.A.  
40 Avenue Eugene Pittard  
1206 Geneva Switzerland

FOR SECURED PARTY:

TD BANK, N.A.  
2130 Centrepark, West Drive  
West Palm Beach, Florida 33409

E. BINDING EFFECT

This Agreement shall be governed and controlled by and interpreted under the laws of the State of Florida, may not be modified, amended, or changed by either party without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors, and assigns.

F. COUNTERPARTS

This Agreement may be executed in counterparts and the parties understand that it may be executed in counterparts. When all original signatures are together, the various documents containing the signatures constitute one original document fully executed by all parties.

G. INCORPORATION

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The provisions contained in the Ground Lease are incorporated into and made a part of this Agreement by this reference.

**(The remainder of page intentionally left blank)**

IN WITNESS WHEREOF, the parties hereto have made and executed this SUBORDINATION AGREEMENT by and through their respective representatives: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, PORT EVERGLADES TERMINAL, LLC, a Florida limited liability company, signing by and through its duly authorized representatives, MEDITERRANEAN SHIPPING COMPANY S.A., a Switzerland corporation, signing by and through its duly authorized representatives, and TD BANK, N.A., a national banking association, signing by and through its duly authorized representatives.

COUNTY:

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

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

By \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 2015

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Port Everglades Department  
1850 Eller Drive, Suite 502  
Fort Lauderdale, Florida 33316  
Telephone: (954) 523-3404  
Telecopier: (954) 523-2613

By Carlos De La Guerra 2.4.15  
Signature (Date)  
CARLOS DE LA GUERRA  
RISK MANAGEMENT & CONTRACTS  
BUSINESS ADMINISTRATION DIVISION  
PORT EVERGLADES  
\_\_\_\_\_  
(print name and title)

By Joni Armstrong Coffey 2/4/15  
John E. Naclerio III (Date)  
Assistant County Attorney

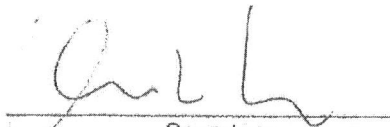
By Russell J. Morrison 2/4/15  
Russell J. Morrison (Date)  
Sr. Assistant County Attorney

JEN/dh  
MSC-SubordinationAgrmt.2-03-15  
#10-3033.08


**SUBORDINATION AGREEMENT BETWEEN BROWARD COUNTY, PORT EVERGLADES  
TERMINAL, LLC, MEDITERRANEAN SHIPPING COMPANY S.A., AND TD BANK, N.A.**

TENANT:

ATTEST:

  
\_\_\_\_\_  
, Secretary

MEDITERRANEAN SHIPPING COMPANY S.A.,  
a Switzerland corporation

By:   
\_\_\_\_\_  
DRESCHOL - FORMISANO PERSONALS  
(print name and title)

30 day of JANUARY, 2015

(CORPORATE SEAL)

BORROWER:

PORT EVERGLADES TERMINAL, LLC,  
a Florida Limited Liability Company

By:   
\_\_\_\_\_

(CORPORATE SEAL)

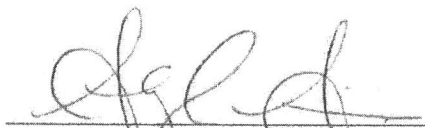
Richard Rovirosa  
\_\_\_\_\_  
Richard Rovirosa,  
Chief Executive Officer

30 day of JANUARY, 2015


SUBORDINATION AGREEMENT BETWEEN BROWARD COUNTY, PORT EVERGLADES  
TERMINAL, LLC, MEDITERRANEAN SHIPPING COMPANY S.A., AND TD BANK, N.A.

SECURED PARTY:

ATTEST:

  
SHERYL SIMON, Secretary WITNESS  
VP, TD BANK

TD BANK, N.A.,  
a national banking association

By:   
Spencer Davis Vice President  
(print name and title)

2 day of February, 2015

(CORPORATE SEAL)