



200860-002

SECOND AMENDMENT OF LEASE AND OPERATING AGREEMENT

THIS SECOND AMENDMENT (this "Amendment") is made and entered into as of <sup>July</sup>~~May~~ 23, 2002 by and between PHILADELPHIA REGIONAL PORT AUTHORITY ("Lessor"), a body corporate and politic and an independent agency of the Commonwealth of Pennsylvania, and DEPENDABLE DISTRIBUTION SERVICES INC. ("Lessee"), a corporation incorporated under the laws of the Commonwealth of Pennsylvania.

A. Lessor and Lessee are parties to that certain Lease and Operating Agreement dated April 1, 1994, as amended by that certain First Amendment of Lease and Operating Agreement dated as of March 31, 2000 (as so amended, the "Agreement") respecting Lessee's lease and occupancy of certain Premises (as defined in the Agreement), consisting of Pier 84 South, together with certain improvements thereon and appurtenances thereto, excluding the southside berthing area.

B. Oldendorff Indotrans, Inc. ("Oldendorff") has agreed to discharge vessels at an adjacent terminal, and Oldendorff's customers desire to utilize Lessee's warehouse services at the Premises. In order to accommodate Oldendorff's cargo of cocoa beans, the parties desire to amend the Agreement to provide for Lessor's construction of a temporary storage building on the Premises on the terms and conditions hereinafter set forth.

NOW, THEREFORE, intending to be legally bound hereby and in exchange for good, valuable and sufficient consideration received, Lessor and Lessee mutually covenant and agree as follows:

1. Effective Date. This Amendment shall become effective on the date on which an executed copy hereof is filed with the FMC in accordance with the Shipping Act of 1984. Lessor shall cause this Amendment to be filed with the FMC promptly following the execution and delivery hereof.

2. Background and Definitions. Paragraphs A and B, above, are hereby incorporated within and form a part of the agreements contained in this Amendment. Unless otherwise defined in this Amendment, all terms defined in the Agreement shall have the meanings ascribed to them in the Agreement when used in this Amendment.

3. Construction of New Structure.

3.1 Subject to the provisions of this Section 3, Lessor agrees to construct upon Pier 84 South, at a location approved by both Lessor and Lessee (which approval shall not be unreasonably withheld, conditioned or delayed), a one-story modular temporary storage building containing a minimum of 40,000 square feet of space (the "New Structure") of a design and from a manufacturer approved by both Lessor and Lessee (which approval shall not be unreasonably withheld, conditioned or delayed); provided, however, that the parties intend that the total cost of purchase and construction of the New Structure shall not exceed One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00) in the aggregate, and it shall be

unreasonable for Lessee to propose that Lessor purchase and install a New Structure if the aggregate cost thereof would exceed One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00). Lessor shall expend a maximum aggregate sum of \$800,000.00 of Lessor's capital funds on the purchase and construction of the New Structure ("Lessor's Contribution"). Simultaneously with Lessee's execution and delivery of this Amendment, Lessee shall tender to Lessor Lessee's good bank check in the sum of \$350,000.00 ("Lessee's Contribution"), which Lessor agrees to expend upon the costs of the purchase and construction of the New Structure. In addition, if Lessor determines at any time that the costs of the purchase and construction of the New Structure will exceed \$1,150,000.00, then, in addition to Lessee's Contribution, Lessee shall pay to Lessor, as additional Lessee's Contribution, within thirty (30) days after receipt of Lessor's bill, that portion of the costs of purchasing and constructing the New Structure in excess of \$1,150,000.00; provided, however, that the maximum aggregate sum payable by Lessee in addition to Lessee's Contribution hereunder shall not exceed \$50,000.00.

3.2 Lessor will use all reasonable efforts to cause the New Structure to be constructed promptly. Lessee recognizes that its operations will be affected during the time construction of the New Structure is being performed. Lessee agrees that Lessor shall not be liable to Lessee as a result of any interference with Lessee's operations upon the Premises by reason of the construction of the New Structure, and Lessor shall use all reasonable efforts to prevent unreasonable interference with Lessee's operations upon the Premises by reason of the construction of the New Structure (however, nothing in this Agreement shall be deemed to require Lessor to conduct such work at night or at times other than normal business hours except on an occasional and infrequent basis as deemed necessary by Lessor to prevent significant interference with terminal operations).

3.3 Lessee recognizes that Lessor reserves total control over the construction of the New Structure, the award of any contracts respecting same, and the supervision of contractors for work undertaken by Lessor. During construction of the New Structure, Lessee shall give no orders to any contractors unless first requested or permitted in writing by Lessor to do so. Lessee agrees to fully cooperate with contractors in providing all necessary access to the Premises and otherwise.

4. Ownership of New Structure. Upon completion of construction, the New Structure shall form a part of the Premises for all purposes under the Agreement; provided, however, that (a) Lessor shall at all times be the owner of the New Structure, and (b) in the event that Oldendorff cargo hereafter ceases to be delivered to the Premises for any reason (an "Oldendorff Termination"), then Lessor may, in its sole discretion upon at least ninety (90) calendar days advance written notice to Lessee, elect to remove the New Structure from Pier 84 at Lessor's sole expense, in which event Lessee shall tender possession of the New Structure to Lessor, in broom swept condition and otherwise in the condition in which the Premises is required to be maintained by Lessee during the Term, on or before the date specified in Lessor's notice, and upon Lessor's removal of the New Structure, the New Structure shall cease to be part of the Premises. In the event of any such removal, the provisions of Sections 3.2 and 3.3 of this Amendment shall be fully applicable to such removal (and all references to "construction" therein shall be deemed references to "removal").

5. Tonnage Fee.

5.1 Without limiting the generality of Section 3.1.2 of the Agreement, Lessee agrees that the Tonnage Fee (presently \$1.67 per metric ton) shall be payable with respect to all cocoa cargo entering the Premises from Oldendorff vessels (Tonnage Fees payable with respect to cocoa cargo discharged from Oldendorff vessels are herein referred to as "Oldendorff Tonnage Fees"). In consideration of Lessor's agreements contained in this Amendment, Lessee agrees to pay to Lessor throughout the Term (except as hereinafter otherwise expressly provided), Oldendorff Tonnage Fees based upon the greater of (a) 25,000 tons per annum (prorated for any partial year within the Term, based on the number of days of such year falling within the Term) or (b) the actual number of tons of cocoa cargo discharged from Oldendorff vessels per annum, commencing on the date on which Lessor tenders possession of the completed New Structure to Lessee.

5.2 Notwithstanding the foregoing, each year for the next four years Lessee will receive a Tonnage Credit in an amount equal to the greater of (a) 25,000 tons of cocoa beans discharged from Oldendorff vessels and entering the Premises per annum or (b) the actual number of tons of cocoa beans discharged from Oldendorff vessels and entering the Premises per annum. After the end of the fourth Tonnage Credit year, the difference between Lessee's Contribution and the sum of the four years of Tonnage credits will be calculated (herein referred to as "Remaining Credit"). Thereafter Lessee will receive a Tonnage Credit in equal monthly installments of the Remaining Credit for the next twenty-four months. If the Agreement is not renewed, the Lessor will reimburse Lessee in equal monthly installments of the Remaining Credit for the next twelve months.

5.3 Lessee will provide Lessor with a separate monthly accounting of Oldendorff cocoa bean cargo in addition to Lessee's normal required accounting pursuant to the Agreement.

6. Preservation of Remedy. In order to reserve to Lessor the benefit of the remedy of confession of judgment for ejectment set forth in Section 15.1.1 of the Agreement, Lessee agrees as follows:

*When the Agreement shall have terminated (whether pursuant to Article 15 of the Agreement or otherwise) and also when and as soon as the term of the Agreement shall have expired, it shall be lawful for any attorney, as attorney for Lessee, and without liability to Lessee, to appear for Lessee in any competent court and there to confess judgment in ejectment against Lessee and all persons claiming by, through or under Lessee, without any stay of execution or appeal, for the recovery by Lessor of possession of the Premises, for which this Amendment or a copy hereof shall be a sufficient warrant, whereupon, if Lessor so desires, a writ of possession may issue forthwith without any prior writ or proceedings whatsoever, and if for any reason after such action*

*has been commenced or judgment confessed as aforesaid, the same shall be discontinued and possession of the Premises remain in or be restored to Lessee, Lessor shall have the right upon any subsequent defaults or terminations of this Agreement to confess judgment in ejectment one or more further times in the manner and form as hereinbefore set forth, without liability to Lessee, in order to recover possession of the Premises for such subsequent default or as a result of such subsequent termination.*

7. Effect of Amendment. As amended hereby, the Agreement continues in full force and effect and time remains of the essence of both the Agreement and this Amendment. In the event of any conflict or any inconsistency between the terms of this Amendment and remaining terms of the Agreement, the terms of this Amendment shall govern and control.

**SECTION 6 OF THIS AMENDMENT PROVIDES FOR THE CONFESSION OF JUDGMENT AGAINST LESSEE FOR EJECTMENT. IN CONNECTION THEREWITH, LESSEE, KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND UPON ADVICE OF SEPARATE COUNSEL, UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY FOR HEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE COMMONWEALTH OF PENNSYLVANIA. WITHOUT LIMITATION OF THE FOREGOING, LESSEE HEREBY SPECIFICALLY WAIVES ALL RIGHTS LESSEE HAS OR MAY HAVE TO NOTICE AND OPPORTUNITY FOR A HEARING PRIOR TO EXECUTION UPON ANY JUDGMENT CONFESSED AGAINST LESSEE BY LESSOR HEREUNDER.**

**LESSEE (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF LESSOR HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LESSOR WILL NOT SEEK TO EXERCISE OR ENFORCE ITS RIGHTS TO CONFESS JUDGMENT HEREUNDER, AND (II) ACKNOWLEDGES THAT THE EXECUTION OF THIS AMENDMENT BY LESSOR HAS BEEN MATERIALLY INDUCED BY, AMONG OTHER THINGS, THE INCLUSION IN THIS AMENDMENT OF SAID RIGHTS TO CONFESS JUDGMENT AGAINST LESSEE. LESSEE FURTHER ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS SAID PROVISIONS WITH LESSEE'S INDEPENDENT LEGAL COUNSEL AND THAT THE MEANING AND EFFECT OF SUCH PROVISIONS HAVE BEEN FULLY EXPLAINED TO LESSEE BY SUCH COUNSEL, AND AS EVIDENCE OF SUCH FACT AN AUTHORIZED OFFICER OF LESSEE SIGNS HIS OR HER INITIALS IN THE SPACE PROVIDED BELOW.**

\_\_\_\_\_  
**(Lessee's Initials)**

IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the date first above written.

[Corporate Seal]

Attest: \_\_\_\_\_

[Corporate Seal]

Attest: *[Signature]*

Date: 7/25/02

Date: \_\_\_\_\_

Date: \_\_\_\_\_

PHILADELPHIA REGIONAL PORT  
AUTHORITY

By: *[Signature]*  
James T. McDermott  
Executive Director

DEPENDABLE DISTRIBUTION  
SERVICES, INC.

By: *[Signature]*  
Harvey A. Weiner  
President

CONSENT AS TO PROPRIETY AND  
AVAILABILITY OF FUNDS:

By: *[Signature]*  
Comptroller,  
Philadelphia Regional Port Authority

By: *[Signature]*  
Fiscal Administrator,  
Philadelphia Regional Port Authority

APPROVED AS TO FORM AND  
LEGALITY:

By: *[Signature]*  
Office of the Attorney General of  
the Commonwealth of Pennsylvania

By: *[Signature]*  
Gregory V. Iannarelli  
Chief Counsel, Philadelphia  
Regional Port Authority