



FMC Agreement No. 200860-004

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SETTLEMENT AGREEMENT AND FOURTH AMENDMENT OF LEASE AND OPERATING AGREEMENT

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THIS SETTLEMENT AGREEMENT AND FOURTH AMENDMENT OF LEASE AND OPERATING AGREEMENT ("Amendment") is made as of the 1st day of March, 2007, by the 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 Pennsylvania corporation.

BACKGROUND:

A. Lessor and Lessee are parties to that certain Lease and Operating Agreement dated April 1, 1994 (the "Original Lease"), which Original Lease was filed with the Federal Maritime Commission ("FMC") and became effective on April 25, 1994 (FMC Agreement No. 301-200860) respecting Lessee's lease and occupancy of certain Premises (defined in the Agreement) consisting of Pier 84 South, Philadelphia, PA, together with certain improvements thereon and appurtenances thereto, excluding the southside berthing area.

B. As of the 31st day of March, 2000, Lessor and Lessee entered into a First Amendment of Lease and Operating Agreement ("First Amendment"), which First Amendment was filed with the FMC and became effective on April 25, 2000 (FMC Agreement No. 301-200860-001).

C. As of the 5th day of August, 2002, Lessor and Lessee entered into a Second Amendment of Lease and Operating Agreement ("Second Amendment"), which Second Amendment was filed with the FMC and became effective on August 5, 2002 (FMC Agreement No. 301-200860-002).

D. As of the ___ day of April, 2006, Lessor and Lessee entered into a Third Amendment of Lease and Operating Agreement ("Third Amendment"), which Third Amendment was filed with the FMC on May 22, 2006 (FMC Agreement No. 200860-003). The

Original Lease, as amended by the First, Second and Third Amendments, is hereinafter collectively referred to as the "Lease".

E. Lessee having timely exercised its option to extend the term of the Lease for the second Renewal Period (as defined in the Lease), the parties are executing this Amendment to confirm the terms of such renewal and to set forth the settlement of all outstanding obligations with respect to the compensation terms of the second Renewal Period.

NOW, THEREFORE, intending to be legally bound hereby and in exchange for good, valuable and sufficient consideration received, Lessor and Lessee 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 through E 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 Lease shall have the meanings ascribed to them in the Lease when used in this Amendment.

3. **Renewal.** Pursuant to Section 2.3 of the Lease, the term of the Lease is hereby extended to include the thirteenth (13th) through eighteenth (18th) Lease Years, on all of the terms and conditions of the Lease, as amended hereby. The second Renewal Term shall expire on April 30, 2012.

4. **Settlement.** The parties hereby acknowledge that, despite their good faith efforts to determine the compensation terms payable during the second Renewal Term prior to the commencement thereof, this Amendment is being executed after the commencement date of the second Renewal Term. The compensation the parties have agreed shall be payable during the second Renewal Term equals that which Lessee has been paying during this period of negotiation. Therefore, the parties hereby agree that there are currently no outstanding amounts of Base Rent or other compensation payable pursuant to the terms of the Lease, as amended hereby, as of the date of execution of this Amendment by Lessee.

5. **Third Renewal Term.**

(a) Lessor and Lessee hereby agree that Lessee shall have the option to extend this Lease for an additional six (6)-year period (the "**third Renewal Term**"), such option to be exercised in accordance with Section 2.3.1 of the Lease and which third Renewal Term, if properly exercised, shall begin on May 1, 2012 and shall expire on April 30, 2018.

(b) Annual Base Rent, Tonnage Fees and Dockage Fees payable for the third Renewal Term shall be determined in accordance with Section 2.3.2 of the Lease.

(c) It shall be a condition to the exercise of Lessee's option to extend this Lease for a third Renewal Term that during such third Renewal Term, Lessee shall comply with Lessor's prevailing wage policy then in effect, if any.

6. **Base Rent.** Section 3.1.1 of the Lease is amended to provide that the annual Base Rent for the second Renewal Term shall be as follows:

5/1/2006 - 4/30/2007	\$301,364.98
5/1/2007 - 4/30/2008	\$351,364.98*
5/1/2008 - 4/30/2009	\$401,364.98*
5/1/2009-4/30/2010	451,364.98*
5/1/2010-4/30/2011	Same as Prior Year*
5/1/2011-4/30/2012	Same as Prior Year*

*subject to annual increase as provided for in Section 3.1.3 of the Lease.

7. **Tonnage Fee.** Section 3.1.2 of the Lease is amended to provide that during the first year of the Second Renewal Term, commencing as of May 1, 2006, the Tonnage Fee shall be One Dollar and Eighty-Six Cents (\$1.86) per ton. During the second through sixth years of the second Renewal Term, the Tonnage Fee shall be subject to increase in accordance with Section 3.1.3 of the Lease.

8. **Dockage Fee.** The first (and only) sentence of Section 3.1.4 of the Lease is hereby replaced in its entirety with the following sentence:

Lessee shall also pay to Lessor as additional rent a dockage fee equal to fifty percent (50%) of the applicable Port of Philadelphia Marine Terminal Association tariff rate or any successor tariff rate for all dockage fees and lay berth charges, when vessels dock or

moor at the Premises during the term (the “**Dockage Fee**”).

9. **Payment of Dockage and Tonnage Fees.** Section 3.1.5 of the Lease is hereby amended to provide that, notwithstanding anything contained in the Lease, Tonnage Fees and Dockage Fees shall be billed to Lessee on a calendar month basis. Invoices for the preceding calendar month’s activities will be issued by the 15th day of the current month. The remainder of this Section shall not be amended hereby.

10. **Loss of Storage Space.** A new section 3.7 is hereby added to the Lease, as follows:

3.7 **Loss of Storage Space.** Lessor and Lessee agree that the current storage space at the Premises is approximately 540,000 square feet. If, as a result of renovations to Pier 84, there is a reduction of said storage space of more than twenty thousand (20,000) square feet, Base Rent shall be reduced on a prorated basis, from the date of such reduction until such time as the storage space is reinstated or relocated and increased so that the overall reduction is less than said twenty thousand (20,000) square feet.

11. **Property Insurance.** It shall be a condition to the exercise of Lessee’s option to extend this Lease for a third Renewal Term that the following provisions regarding insurance for the Premises be substituted for the current Article 5 of the Lease:

Article V INSURANCE; INDEMNIFICATION

5.1 **Property Insurance**

5.1.1 Lessor maintains property insurance through the Commonwealth Insurance Program. Lessee agrees to pay to Lessor the cost of insurance premium paid to cover the premises by Lessor and/or the Commonwealth of Pennsylvania as additional rent. Payment of the Insurance Cost will become due once Lessor provides Lessee notice of the annual premium cost paid by or to be paid for the property insurance under the Commonwealth Insurance Program (“**Premium Notice**”). Payment of the Insurance Cost by Lessee to Lessor will be made in twelve (12) equal payments with payment being due monthly by the first of the month. For purposes of determination of amounts owed, the Insurance Cost shall be calculated by taking the insurance premium, including but not limited to brokerage and financing charges, paid by Lessor or the Commonwealth for coverage on all of Lessor’s facilities divided by the acreage of the Premises.

5.1.2 Lessor may from time to time cause an engineer, appraiser or other

representative of Lessor to inspect the Premises to determine the replacement value of the Premises and, upon written notice of any valuation so determined in excess of the amount specified in Section 5.1.1, the amount of insurance therein specified shall, at Lessor's option, be increased upon notice to Lessee to an amount not to exceed the valuation so determined, and Lessee shall in that event promptly cause the insurance required by Section 6.1.1 to be increased appropriately in such amount at Lessee's expense.

5.1.3 Lessee shall keep the contents of the Premises, including without limitation the property of others and improvements and betterments, and "contractor's equipment", continuously insured during the Term against "all risks" of direct physical loss, on a legal liability basis with respect to property of others, and on an actual cash value basis with respect to all other contents, improvements and betterments, and "contractor's equipment". Lessee shall cause the policy evidencing such insurance to name Lessor and the Commonwealth as additional insureds and loss payees, as their interests may appear.

5.1.4 No policy of insurance maintained by Lessee under this Section 5.1 shall contain a deductible feature in excess of TWENTY THOUSAND DOLLARS (\$20,000.00) unless otherwise approved by Lessor.

5.2 Liability Insurance. During the Term, Lessee shall continuously keep in effect comprehensive general liability insurance of at least TEN MILLION DOLLARS (\$10,000,000.00), single limit, as to personal injury, death or property damage. Lessee shall cause the policy evidencing such insurance to name Lessor and the Commonwealth as additional insureds, and shall cause such policy to incorporate a cross liability endorsement provision as follows (or a substantially identical provision satisfactory to Lessor): "Cross Liability - it is understood and agreed that the insurance afforded by this policy for more than one named insured shall not operate to increase the limits of the Company's liability, but otherwise shall not operate to limit or void the coverage of any one named insured with respect to claims against the said named insured by any other named insured or the employees of any such other named insured". Lessee shall also cause any and all contractors, subcontractors, stevedores or other agents it uses to name Lessor and the Commonwealth as additional insureds on said party's liability insurance policies.

5.3 Workers' Compensation Insurance. During the Term, Lessee itself shall maintain, and shall also require that any and all contractors, subcontractors, stevedores or other agents with which it contracts for services at the Premises maintain, in full force and effect at all times during the Term of this Agreement, statutory worker's compensation insurance and employers' liability insurance, United States Longshoremen's and Harbor Workers' Compensation Act

insurance, Jones Act insurance, Occupational Disease Act insurance, and any Disability Benefits Act insurance required by federal, state or local law.

5.4 Automobile Insurance. During the Term, Lessee shall continuously keep in effect comprehensive automobile liability insurance in the amount of FIVE MILLION DOLLARS (\$5,000,000.00) per each accident for bodily injury and property damage combined, naming Lessor and the Commonwealth as additional insureds.

5.5 Insurance; General.

5.5.1 Lessor's Purchase. If Lessee fails to maintain any insurance required in this Agreement to be maintained by it, Lessor may, at its option, procure same wherever available at a reasonable price and at Lessee's expense, and Lessee shall pay to Lessor the cost thereof, and such other costs incurred by Lessor in connection therewith, including without limitation Lessor's reasonable attorney's fees, on demand as Rent.

5.5.2 Requirements. Every policy of insurance required by this Agreement to be maintained by Lessee shall contain a provision prohibiting cancellation thereof or changes therein without at least thirty (30) calendar days prior written notice to Lessor and the Commonwealth at the addresses designated from time to time in writing by Lessor and the Commonwealth, respectively. On or before the Commencement Date, and thereafter at least ten (10) calendar days before expiration of any policy, Lessee shall deliver to Lessor two copies of the certificates of insurance and within a reasonable time period thereafter two copies of the policies evidencing each of the coverages that it is required to carry under this Article V whether carried by Lessee, its contractors, subcontractors, stevedores, or other agents.

5.5.3 Form of Policy. All policies required hereunder and any renewals thereof (1) shall be in form satisfactory to Lessor, including as to the amount of the deductible, (2) shall be issued by companies satisfactory to Lessor authorized to engage in the insurance business in the Commonwealth or otherwise satisfactory to Lessor, and (3) shall be maintained in full force and effect during the Term of this Agreement.

5.5.4 Additional Insurance. Lessee shall also provide such additional types of insurance in such amounts as Lessor shall from time to time reasonably require. In the event that any such additional insurance is required, Lessee shall deliver two copies of each policy to Lessor.

5.5.5 Use of Premises. Lessee agrees not to use the Premises in any manner that will result in the cancellation or increase in cost of any insurance policy that Lessee is required to carry hereunder.

5.5.6 Separate Insurance. Lessee shall not take separate insurance that is concurrent in form with, or which contributes to an event or events of loss which are covered by, either the insurance required to be furnished by Lessee under this Article V, or the insurance Lessee may reasonably be required to furnish under this Article V, unless Lessor and Commonwealth are named in such policies as insureds, with loss payable as provided in this Agreement. Lessee shall immediately notify Lessor of the taking out of any such separate insurance and shall cause the policies therefor to be delivered to Lessor as required herein.

5.5.7 Claims Made Policies. Lessee shall not obtain any insurance through policies written on a "claims made" basis without Lessor's prior express written consent, which consent shall not unreasonably be withheld if the proposed policy and Lessee satisfy all of the following requirements: (1) the policy retroactive date shall coincide with or precede Lessee's occupancy or use of any portion of the Premises; and (2) Lessee shall maintain such policy for at least four years following the termination or expiration of the Term (whichever is later); and (3) if such insurance is prematurely terminated for any reason, Lessee shall, in addition to securing immediate replacement coverage for such insurance, purchase an extended reporting provision of at least four years duration to report claims arising from this Agreement or Lessee's occupancy; and (4) the policy shall allow for the report of circumstances or incidents which might give rise to future claims.

5.5.8 Blanket Policies. Any insurance required of Lessee under this Article V may be effected by a blanket or multi-peril or all-risk policy or policies issued to Lessee or to any person with which Lessee is affiliated, and covering the Premises as well as other properties owned by or leased to Lessee or affiliated person, provided that (1) such policy or policies shall be satisfactory to and approved by Lessor and shall comply in all respects with the provisions of this Agreement and (2) the amount of insurance allocated thereunder to Lessee' property located in the Premises shall be specified either in such policy or policies or in an endorsement thereto and shall equal the amounts required under this Agreement.

5.6 Accident Reports. Lessee shall provide a report to Lessor in writing, as soon as practicable but in any event within two (2) calendar days after Lessee, its officers, employees or agents have knowledge of any accident or occurrence involving death of or injury to any person or persons or loss or damage in excess of TEN THOUSAND DOLLARS (\$10,000.00) to the Premises or property of any person other than Lessee occurring upon or about the Premises. All such reports shall include, to the extent available and appropriate: (1) the names and addresses of the persons involved; (2) a general statement as to the nature and extent of the injury or damage; (3) the date and hour of the occurrence; (4) the names and addresses of witnesses; and (5) such other information, reasonably requested by

Lessor, as may be known to Lessee, its officers, employees or agents.

5.7 Liability for Damages Caused by Third Parties. Lessee shall maintain the necessary security on the Premises to assure that the Premises is not used by anyone not having the permission of Lessee or Lessor. Lessee is and shall be solely liable for all damage to the Premises which is caused by third parties not authorized to be upon the Premises, or by Lessee' employees, agents, contractors, invitees or licensees if said damage is due to the negligence or misconduct of Lessee.

5.8 Release and Indemnification.

5.8.1 Lessee agrees that Lessor, its successors and assigns, and the Commonwealth, and their respective agents, employees, officers, directors, shareholders and partners shall not be liable to Lessee and Lessee hereby releases said parties from any liability, for any personal injury, loss of income or damage to or loss of persons or property, or loss of use of any property, in or about the Premises from any cause whatsoever unless such damage, loss or injury results from Lessor's failure to perform its obligations or the negligence or willful misconduct of Lessor, its officers, employees or agents. Furthermore, Lessor and the Commonwealth, and their respective agents, employees, officers, directors and partners shall not be liable to Lessee for any such damage or loss, whether or not such damage or loss so results from their negligence, to the extent Lessee is compensated therefore by Lessee's insurance.

5.8.2 Lessee shall defend, indemnify, save and hold harmless Lessor, the Commonwealth, and their respective agents, employees, officers, directors, shareholders, partners from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses, including reasonable attorneys' fees, court costs, administrative costs and costs of appeals which may be imposed upon or incurred by or asserted against any of them by reason of the following which shall occur during the Term of this Agreement, during any holdover period after expiration or termination of the Term, or during any period of time prior to the Commencement Date when Lessee may have been given access to or possession of all or any portion of the Premises:

- (1) any work or act done in, on or about the Premises or any part thereof at the direction of or caused by Lessee, its agents, contractors, subcontractors, servants, employees, subtenants, licensees or invitees;
- (2) any negligence, tort or other wrongful act or omission on the part of Lessee or any of its agents, contractors, subcontractors, servants, employees, subtenants, licensees or invitees;
- (3) any accident, injury or damage to any persons or property occurring in, on or about the Premises or any part thereof, unless caused by

Lessor's failure to perform its obligations or the negligence or willful misconduct of Lessor, its employees or agents; and

(4) any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Agreement.

5.8.3 The obligation of Lessee to indemnify contained in Section 5.8.2 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Lessee, its agents or contractors under workers' or workman's compensation acts, disability benefit acts or other employee benefits acts, or under any other insurance coverage Lessee may obtain.

5.8.4 The release and indemnification given in this Section 5.8 shall survive the expiration or termination of this Agreement.

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

When the Lease shall have terminated (whether pursuant to Article 15 of the Lease or otherwise) and also when and as soon as the term of the Lease 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 Lease 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.

THIS SECTION 11 OF THIS AMENDMENT PROVIDES FOR THE CONFESSION OF JUDGMENT AGAINST LESSEE IN 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 RIGHT 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.

 _____ (Initials)

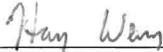
13. **Lease Remains in Effect.** The Lease, as amended hereby, shall remain in full force and effect and time remains of the essence of the Lease and this Amendment. In the event of any conflict or any inconsistencies between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall govern and control.

14. **Execution in Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon and all of which shall constitute one and the same instrument.

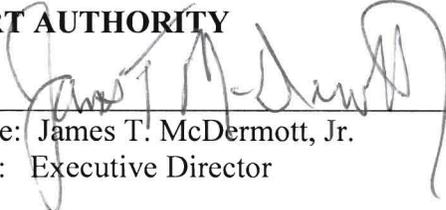
[Signatures on following page]

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

DEPENDABLE DISTRIBUTION SERVICES INC.

By: 
Name: Gregory Weiner
Title: President

PHILADELPHIA REGIONAL PORT AUTHORITY

By: 
Name: James T. McDermott, Jr.
Title: Executive Director

Approved as to Legality and Form:

PHILADELPHIA REGIONAL PORT AUTHORITY

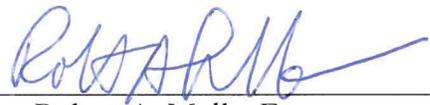
By: 
Name: Gregory V. Iannarelli, Esq.
Title: Chief Counsel

Approved as to Propriety and Availability of Funds:

PHILADELPHIA REGIONAL PORT AUTHORITY

By: 
Name: Edward G. Henderson
Title: Director of Finance & Capital Funding

OFFICE OF THE ATTORNEY GENERAL

By: 
Name: Robert A. Mulle, Esq.
Title: Chief Deputy Attorney General

OFFICE OF THE BUDGET

By: 
Name: Joseph Lawruk
Title: Comptroller