

**SETTLEMENT AGREEMENT AND SECOND AMENDMENT
 TO
 LEASE AND OPERATING AGREEMENT
 BETWEEN
 PHILADELPHIA REGIONAL PORT AUTHORITY
 AND
 PENN CITY INVESTMENTS, INC.**



This **SETTLEMENT AGREEMENT AND SECOND AMENDMENT TO LEASE AND OPERATING AGREEMENT** (“**Agreement**”) is made as of this 1st day of October 1, 2007, by and between the PHILADELPHIA REGIONAL PORT AUTHORITY (“**Landlord**”), a body corporate and politic and an independent agency of the Commonwealth of Pennsylvania and PENN CITY INVESTMENTS, INC. (“**Tenant**”), a Pennsylvania Corporation.

I. Background:

A. Landlord and Tenant are parties to that certain Lease and Operating Agreement dated September 15, 1998 (the “**Original Lease**”), which Original Lease was filed with the Federal Maritime Commission (“**FMC**”) and became effective on October 16, 1998 (FMC Agreement No. 224201062) respecting Tenant’s lease, occupancy and use of certain Premises (as defined in the Original Lease) consisting of Piers 38-40, Pier 78 South, Pier 78 South Annex, Pier 80 South and a Portion of Pier 80 South Annex, Philadelphia, PA, together with certain improvements thereon and appurtenances thereto.

B. As of the 31st day of August, 2001, Landlord and Tenant entered into the First Amendment to Lease and Operating Agreement (“**First Amendment**”) which First Amendment was filed with the FMC and became effective on November 13, 2001 (FMC Agreement No. 224-201062).

C. On or about October 13, 2005 Landlord acquired 15.59 +/- acres including fast land and riparian rights adjacent to Pier 78 South and Pier 78 South Annex. Landlord has contracted for the design and construction of a One Hundred Fifteen Thousand Square Foot Paper Warehouse (“**Pier 74 South Annex Paper Warehouse**”) to be constructed upon the acquired property. Tenant desires to lease the adjacent land and warehouse from Landlord.

D. During the term of the Lease, Landlord and Tenant have disagreed upon the amount of rental owed. Landlord and Tenant desire to resolve all outstanding issues arising under the Original Lease and First Amendment thereto (“**Lease**”).

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

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II. Effective Date:

This Amendment shall become effective on the last event to occur:

- i. The date on which an executed copy hereof is filed with the FMC in accordance with the Shipping Act of 1984;
- ii. The date on which the office of Attorney General of the Commonwealth of Pennsylvania approves this Agreement;
- iii. The date physical construction of the Pier 74 South Annex Paper Warehouse commences at Pier 74 South Annex; or
- iv. August 1, 2007.

Landlord shall cause this Amendment to be filed with the FMC promptly following the execution and delivery hereof.

III. Background and Definitions:

Paragraphs I.A. through I.D. 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.

IV. Definitions:

The terms defined in this section shall have the meanings specified herein and apply to both the Lease and this Agreement:

Pier 74 South Annex shall mean the fast land identified in Parcel 1 as more fully shown on the Boundary Survey of Pier 72.5 performed by Pennoni Associates, Inc. dated September 9, 2005 and made a part of Exhibit A hereof. Pier 74 South Annex does not include any riparian rights, water or berthing areas adjacent thereto.

Piers shall mean Piers 38-40 South, Pier 74 South Annex, Pier 78 South, Pier 78 South Annex, Pier 80 South and a portion of Pier 80 South Annex, together with all improvements now or in the future thereon, each as more fully shown on the respective plans attached hereto and made a part hereof as Exhibit A (each individually a "**Pier**" and collectively the "**Piers**").

Warehouse Piers shall mean Piers 38-40 South, Pier 74 South Annex, Pier 78 South, Pier 78 South Annex and the Portion of Pier 80 South Annex leased to Tenant.

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V. Use of Pier 74 South Annex:

Tenant shall use Pier 74 South Annex solely as a warehouse facility as defined in Section 1.4 of the Lease.

VI. Renewal Options:

Landlord and Tenant hereby agree that Tenant shall have the option to extend this Lease for two additional five (5) year periods (the “**fourth and fifth Renewal Term**”), such option to be exercised in accordance with Section 2.3(a) of the Lease and which fourth Renewal Term, if properly exercised, shall begin on July 1, 2018 and shall expire on June 30, 2023.

Renewal Period Rent shall be determined in accordance with Section 2.3(b) of the Lease. It shall be a condition to the exercise of Tenant’s option to extend this Lease for a fourth and fifth Renewal Term that during such fourth and fifth Renewal Term, Tenant shall comply with Landlord’s prevailing wage policy then in effect, if any.

VII. Settlement of Outstanding Issues:

The parties agree that FORTY-ONE THOUSAND FOUR HUNDRED SIXTY SIX DOLLARS AND THIRTY-NINE CENTS (\$41,466.39) is due and owing for Base Rent and Cargo Fees for all cargo that was discharged though the end of February 2007 (“**Outstanding Rental**”) Payment of the Outstanding Rental shall be made immediately upon execution of this Agreement.

VIII. Rent; Payment:

A. Upon the Effective Date of this Amendment, Section 3.1(a) of the Lease is amended in its entirety to read as follows:

(a) Base Rent. Tenant, in consideration of this Agreement, shall pay to Landlord for the period commencing on the Effective Date through June 30, 2008, an annual Base Rent which shall be FOUR HUNDRED FIFTY-ONE THOUSAND FIVE HUNDRED SIXTY DOLLARS AND THIRTY SIX CENTS (\$451,560.36) per annum, payable in equal monthly installments in advance, on the first day of each calendar month commencing on the Effective Date if the Effective Date is the first day of a calendar month, otherwise on the first day of the first calendar month following the Effective Date, in the amount of THIRTY-SEVEN THOUSAND SIX HUNDRED THIRTY DOLLARS AND THREE CENTS (\$37,630.03) each. If the Effective Date is other than the first day of a calendar month, Base Rent shall be prorated from the Effective Date through the end of the calendar month in which the Effective Date occurs, based on the number of days in such month, and shall be payable on the first day of the calendar month next following, together with the installment of Base Rent owing for such month.

Base rent shall be subject to increase as provided in Section 3.1(d) below.

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B. Upon the Effective Date of this Amendment, Section 3.1(b) of the Lease is amended in its entirety to read as follows:

(b) Cargo Fee. In addition to the Base Rent, Tenant shall pay to Landlord, as rent, the monthly cargo fee listed below (the “**Cargo Fee**”) for all cargo which has been discharged from or loaded onto a water-borne vessel in a given month which is received, shipped, stored, or otherwise handled at the Piers, excluding only IT’s (defined below), in an amount equal to the number of metric tons of such cargo multiplied by the applicable cargo rates set forth below. Notwithstanding the foregoing, and subject to the last section of Section 6.12(a) below, Tenant agrees to pay to Landlord each Lease Year, at a minimum, the Cargo Fee with respect to six hundred fifty thousand (650,000) tons of cargo per Lease Year even if the amount of cargo received, shipped, stored or otherwise handled at the Piers during a given Lease Year is a lesser number (the “**Minimum Cargo Fee**”). Tenant shall pay the Cargo Fee each month with respect to actual tonnage of cargo shipped or received at the Piers during such month and, if the aggregate of Tenant’s monthly payments for the twelve (12) months of a given Lease Year do not aggregate the Minimum Cargo Fee, Tenant’s payment for the twelfth (12th) month of such Lease Year shall be increased by the amount of such deficiency (without demand from Landlord), so that Landlord shall receive the Minimum Cargo Fee for such Lease Year.

The Cargo Fee for the period of March 1, 2007 through October 14, 2007 shall be calculated at the following rates:

<u>TONNAGE PER YEAR:</u>	<u>RATE PER METRIC TON:</u>
1st ton through 724,999 tons	\$1.00 per ton
725,000 tons through 749,999 tons	\$0.94 per ton
750,000 tons through 774,999 tons	\$0.91 per ton
775,000 tons through 799,999 tons	\$0.90 per ton
800,000 tons through 824,999 tons	\$0.89 per ton
825,000 tons through 849,999 tons	\$0.88 per ton
850,000 tons through 874,999 tons	\$0.87 per ton
875,000 tons through 899,999 tons	\$0.86 per ton
900,000 tons through 924,999 tons	\$0.85 per ton
925,000 tons through 949,999 tons	\$0.84 per ton
950,000 tons through 974,999 tons	\$0.83 per ton
975,000 tons through 999,999 tons	\$0.82 per ton
1,000,000 tons and above	\$0.79 per ton

The Cargo Fee for October 15, 2007 and every year thereafter are subject to increase as provided in Section 3.1 (d) below.

Tenant shall pay the Cargo Fee to Landlord monthly in based upon activity during the preceding month, on or before the fifteenth (15th) day of each month, without prior demand, set-off or notice. The Cargo Fee for the last month of the Term of this

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Agreement shall be due and payable on the fifteenth (15th) day of the month immediately following the termination or expiration of this Agreement.

IX. Property Insurance:

It shall be a condition to the exercise of Lessee's option to extend this Lease for the two additional Renewal Terms set forth in Section VI above, that the following provision regarding insurance for the Premises be substituted for the current Article V 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 5.1.1 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.

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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".

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

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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 be carried 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. Upon receipt of policies required hereunder and any renewals thereof from Lessee, Lessor shall have four (4) business days to review and provide comments. If no comments are received within four (4) business days required hereunder, the renewals submitted shall be deemed satisfactory .

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. [Intentionally Deleted]

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

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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 security on the Piers in a manner reasonably designed to assure that the Piers are not used by anyone not having the permission of Lessee or Lessor; provided that if Lessor shall provide security at other piers leased to any third party, then Lessor shall also provide security services of a substantially similar scope at the Piers, on the same terms and conditions which govern the provision of security services to such third party. Lessee is and shall be liable for all damage to the Piers which is caused by third parties not authorized to be upon the Piers, or by Lessee, Lessee's employees, agents, contractors, invites, or licensees, but Lessee shall not be liable for damage to Piers directly cause by Lessor or its agents, employees or invitees.

5.8 [Intentionally Omitted]

X. Preservation of Remedy:

The Parties acknowledge and agree that the remedy of confession of judgment in ejectment set forth in Section 15.1.1 of the Lease remains in full force and effect.

XI. Lease Remains in Effect:

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As amended hereby, the Original Lease remains in full force and effect. In the event of any conflict or inconsistency between the terms of this Amendment and those of the Lease, the terms of this Amendment shall govern and control.

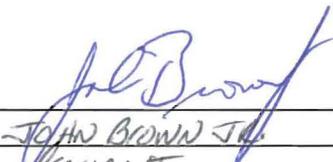
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XII. Execution in Counterparts:

This Settlement Agreement and Second Amendment to Lease and Operating Agreement may be executed in identical 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.

PENN CITY INVESTMENTS, INC.:

By: 
Name: John Brown, Jr.
Title: PRESIDENT

**Approved as to Legality
and Form:**

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

**OFFICE OF THE ATTORNEY
GENERAL**

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

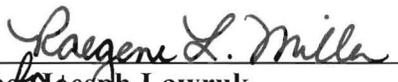
**THE PHILADELPHIA
REGIONAL PORT AUTHORITY**

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

**Approved as to Propriety and
Availability of Funds:**

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

OFFICE OF THE BUDGET

By: 
Name: **Joseph Lawruk**
Title: **Comptroller**