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FIRST AMENDMENT TO AMENDED AND RESTATED LEASE AND OPERATING AGREEMENT FOR PIER 82 SOUTH

THIS FIRST AMENDMENT TO AMENDED AND RESTATED LEASE AND OPERATING AGREEMENT ("**Amendment**") is made as of the 3rd day of _____, 2008, by and between **PHILADELPHIA REGIONAL PORT AUTHORITY ("Lessor")**, a body corporate and politic and an independent agency of the Commonwealth of Pennsylvania, with offices at 3460 N. Delaware Avenue, Philadelphia, PA 19134, and **PENN WAREHOUSING & DISTRIBUTION, INC. ("Lessee")**, a Pennsylvania corporation, with its principal place of business at 2147 S. Delaware Avenue, Philadelphia, PA 19148.

B A C K G R O U N D:

A. Lessor and Lessee are parties to that certain Lease and Operating Agreement dated May 26, 1995 (the "**Original Lease**").

B. The Original Lease was amended and restated by Amended and Restated Lease and Operating Agreement between Lessor and Lessee dated March 12, 2001 (the "**Lease**") respecting Lessee's lease and occupancy of certain Premises (as defined in the Lease), consisting of Pier 82 South, Philadelphia, Pennsylvania, together with certain improvements thereon and appurtenances thereto.

C. The parties now desire to amend the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises herein set forth and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Effective Date.** The "**Effective Date**" of this Amendment shall be that date on which the last of the following events occurs: (a) April 12, 2008; (b) the date on

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Under the Shipping Act of 1984
Federal Maritime Commission

which the Attorney General of the Commonwealth of Pennsylvania approves this Lease; or (c) an executed copy hereof is filed with the Federal Maritime Commission ("**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. **Extension of Term.** Section 2.2 of the Lease is hereby amended to provide that the Initial Term of this Lease shall end on December 31, 2023, unless extended or sooner terminated in accordance with the terms of the Lease.

3. **Renewal Terms.**

(a) Section 2.3.1 of the Lease is amended to add the following sentence at the end of said Section:

> Lessee's option to extend the term of this Lease for the first Renewal Period is contingent upon Lessee having moved no less than One Million Seven Hundred Fifty Thousand (1,750,000) tons of perishable cargo through the Premises between the Effective Date and December 31, 2022.

(b) Notwithstanding anything contained in the Lease or this Amendment to the contrary, prior to the commencement of any Renewal Period, the parties shall use good faith efforts to reach agreement upon reasonable financial terms for such Renewal Period, including Base Rent, Tonnage Fees, Dockage Fees and Wharfage Fees (perishable and non-perishable), and Article III of the Lease shall be revised to reflect such agreement. If the parties cannot so agree prior to the end of the then applicable Term, this Lease shall automatically terminate at the end of then applicable Term.

4. **Vessel Call Guaranty.** Section 1.5 of the Lease is amended to require a

minimum number of vessel calls of thirty-five (35) vessels per annum.

5. **Rent.**

(a) Base Rent, as defined in Section 3.1.1, shall remain in effect throughout the Initial Term. The parties acknowledge that the current Base Rent is $216,805.41.

(b) A new Section 3.1.5 is added to the Lease as follows:

> 3.1.5. Dockage Fee. For each twenty-four (24) hour period or fraction thereof (a "**Day**") during the Term during which any vessel is docked at the Premises for loading and/or unloading, Lessee shall pay to Lessor as additional Rent a dockage fee of twenty-five cents ($0.25) per Day per net registered ton (based upon the highest net registered tonnage of the vessel) for each such vessel docked or moored at the Premises (the "**Dockage Fee**"). Lessee hereby guarantees a minimum of One Hundred Seventy-Five Thousand Dollars ($175,000.00) per annum in Dockage Fees.

(c) A new Section 3.1.6 is added to the Lease as follows:

> 3.1.6. Wharfage Fee. In addition to Base Rent, Lessee shall pay to Lessor as additional Rent a wharfage fee (i) for perishable cargo, (A) ninety cents ($0.90) per metric ton for the first one hundred eighty thousand (180,000) tons, and (B) sixty-five cents ($0.65) per metric ton for all tonnage above one hundred eighty thousand (180,000), and (ii) for non-perishable cargo, fifty-three cents ($0.53) per metric ton (collectively, the "**Wharfage Fee**"). For purposes hereof, "wharfage" shall mean the charges payable by Lessee with respect to the loading or discharging of cargo onto or from a vessel while docked at the Premises. "Wharfage" shall also mean and include charges which shall be payable by Lessee when cargo which is intended for discharge at the Premises is discharged at another location and transported by rail or truck to the Premises by or at the direction of Lessee, and when cargo is received at the Premises

for loading onto a vessel by or at Lessee's direction and, due to cancellation of the vessel, the cargo is transported by rail or truck to another location.

(d) A new Section 3.1.7 is added to the Lease as follows:

3.1.7. CPI Adjustment. Commencing on April 12, 2014 and on each fifth (5th) anniversary thereof during the Term (including any Renewal Period), the Dockage Fee and the Wharfage Fee shall each be adjusted (but in no event decreased) by that sum obtained by multiplying each of the total Dockage Fee and the total Wharfage Fee for the immediately preceding lease year by the cumulative positive change over said five (5) year period in the Consumer Price Index.

6. **Insurance; Indemnification.** The entire Article V of the Lease is hereby deleted and replaced with the following:

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.

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 (including the Lessor Improvements (hereinafter defined) 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.

6.5.1 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' 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.

6.5.2 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. 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 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.

6.5.4 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 VI, or the insurance Lessee may reasonably be required to furnish under this Article VI, unless Lessor and the 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 VI 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's 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's employees, agents, contractors, invitees or licensees if said damage is due to the negligence or misconduct of Lessee.

5.8 Release and Indemnification.

6.8.1 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 under Section 6.1 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 therefor by Lessee' 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 under Section 6.1 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 Lease.

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 Lease.

7. **Improvements to Be Made by Lessor.** A new Section 6.13 is hereby added to the Lease as follows:

6.13. Improvements to Be Made by Lessor. Lessor agrees to make the following improvements to the Premises (the "**Lessor Improvements**"), subject to the availability of necessary capital funds from the Commonwealth:

6.13.1 Construction of a crane pad, as set forth in Lessor's contract for PRPA Project #07-095.1.

6.13.2 Humidification of six (6) refrigerated rooms, as set forth in Lessor's contract for PRPA Project #07-096.2.

6.13.3 Upgrade insulation in "D" Box, as set forth in Lessor's contract for PRPA Project #07-094.1.

6.13.4 Install a Pallet Racking System, as set forth in Lessor's contract for PRPA Project #07-170.1.

6.13.5 Install 112 Refrigerated Container Electrical Plugs (replacement and new) , as set forth in Lessor's contract for PRPA Project #07-138.1. The parties agree that, as of the date of this Amendment, this project has been temporarily postponed. This project will be resumed at such time as the parties mutually agree to proceed.

6.13.6 Purchase used mobile harbor crane ("**Harbor Crane**"), as set forth in Lessor's contract for PRPA Project #07-137.1. The parties agree that (i) the Harbor Crane shall only be used at the Premises; (ii) Lessee shall be responsible for all maintenance of the Harbor Crane; and (iii) Lessee shall, at all times

during the Term, continuously keep in effect liability insurance with respect to the Harbor Crane in an amount acceptable to Lessor and the Commonwealth, causing the policy evidencing such insurance to name Lessor and the Commonwealth as additional insureds and loss payees, as their interests may appear, in accordance with Section 5.2 of this Lease.

8. **Lease Remains in Effect.** The Lease, as amended hereby, shall remain in full force and effect. In the event of any conflict between the terms of the Lease and the terms of this Amendment, this Amendment shall control.

9. **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.

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

PENN WAREHOUSING & DISTRIBUTION, INC.

By: _____
Name:
Title

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

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