

FIRST AMENDMENT TO LEASE AND OPERATING AGREEMENT

THIS FIRST AMENDMENT TO LEASE AND OPERATING AGREEMENT (this "Amendment") is made this 31st day of August, 2001, by and between **THE PHILADELPHIA REGIONAL PORT AUTHORITY**, a body corporate and politic created as a public authority and instrumentality of the Commonwealth of Pennsylvania ("Lessor"), and **PENN CITY INVESTMENTS, INC.**, a corporation incorporated under the laws of the Commonwealth of Pennsylvania ("Lessee").

WITNESSETH:

WHEREAS, pursuant to a certain Lease and Operating Agreement between Lessor and Lessee (the "Lease") filed with the Federal Maritime Commission (the "FMC") effective October 15, 1998 (FMC No.: 224-201062), Lessor leased to Lessee and Lessee leased from Lessor Pier 38-40 South, Pier 78 South, Pier 78 South Annex, Pier 80 South and a Portion of Pier 80 South Annex; and

WHEREAS, Lessor and Lessee desire to amend the Lease as hereinafter more particularly set forth;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the parties hereby agree as follows:

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

2. Definitions. 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. 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 April 30, 2001 an annual Base Rent which shall be FOUR HUNDRED THIRTY-FIVE THOUSAND NINE HUNDRED TWELVE DOLLARS AND FORTY EIGHT CENTS (\$435,912.48) 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-SIX THOUSAND THREE HUNDRED TWENTY-SIX AND FOUR CENTS DOLLARS (\$36,326.04) each. If the Effective Date is

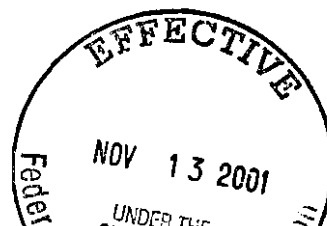
other than the first day of a calendar month, Base Rent shall be prorated from the Effective Date through the end of the calendar month in which the Effective Date occurs, based on the number of days in such month, and shall be payable on the first day of the calendar month next following, together with the installment of Base Rent owing for such month.

Tenant, in consideration of this Agreement, shall pay to Landlord for the period commencing on May 1, 2001 through June 30, 2003 an annual Base Rent which shall be THREE HUNDRED THIRTY-FIVE THOUSAND NINE HUNDRED TWELVE DOLLARS AND FORTY-EIGHT CENTS (\$335,912.48) per annum, payable in equal monthly installments in advance, on the first day of each calendar month commencing on May 1, 2001 in the amount of TWENTY-SEVEN THOUSAND NINE HUNDRED NINETY-TWO DOLLARS AND SEVENTY-ONE CENTS (\$27,992.71) each.

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

4. 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 sentence 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 the 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.



Effective Date (i.e., October 15, 1998) through October 14, 2000, the cargo fee per ton is:

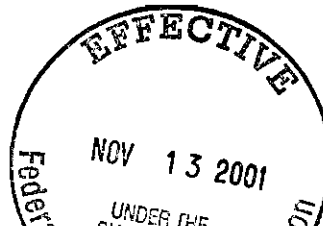
<u>TONNAGE PER YEAR</u>	<u>RATE PER METRIC TON</u>
1 through 725,000	\$0.95
725,000 through 749,999	\$0.91
750,000 through 774,999	\$0.88
775,000 through 799,999	\$0.87
800,000 through 824,999	\$0.86
825,000 through 849,999	\$0.85
850,000 through 874,999	\$0.84
875,000 through 899,999	\$0.83
900,000 through 924,999	\$0.82
925,000 through 949,999	\$0.81
950,000 through 974,999	\$0.80
975,000 through 999,999	\$0.79
1,000,000 and up	\$0.77

October 15, 2000 through June 30, 2003, the cargo fee per ton is:

<u>TONNAGE PER YEAR</u>	<u>RATE PER METRIC TON</u>
1 through 100,000	No Charge
100,001 through 749,999	\$0.95
750,000 through 774,999	\$0.91
775,000 through 799,999	\$0.90
800,000 through 824,999	\$0.89
825,000 through 849,999	\$0.88
850,000 through 874,999	\$0.87
875,000 through 899,999	\$0.86
900,000 through 924,999	\$0.85
925,000 through 949,999	\$0.84
950,000 through 974,999	\$0.83
975,000 through 999,999	\$0.82
1,000,000 and up	\$1.76

Example: If tenant does not bring in 650,000 tons of cargo during the required period, the charge would be \$522,500 $[(100,000 * 0) + (550,00 * 0.95) = 522,500]$.

Example: If tenant brings in 774,000 tons of cargo during the required period, the charge would be \$693,339.96 $[(100,000 * 0) + (649,999 * 0.95) + (24,001 * 0.91) = 693,339.96]$.



These rates shall be subject to increase as provided in Section 3.1(d) below.

Tenant shall pay the Cargo Fee to Landlord monthly in arrears 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 Agreement shall be due and payable on the fifteenth (15th) day of the month immediately following the termination or expiration of this Agreement.

5. Lease Remains in Effect. As amended hereby, the 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.

6. Execution in Counterparts. This Amendment 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.

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

ATTEST:

By: David A. Dambly
Name: David A. Dambly
Title: Assistant Secretary

**THE PHILADELPHIA REGIONAL
PORT AUTHORITY**

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

ATTEST:

By: _____
Name: _____
Title: _____

PENN CITY INVESTMENTS, INC.

By: John Brewer Jr.
Name: John Brewer Jr.
Title: President



Approved as to Legality and Form

Approved as to Propriety and
Availability of Funds:

**THE PHILADELPHIA REGIONAL
PORT AUTHORITY**

**THE PHILADELPHIA REGIONAL
PORT AUTHORITY**

By: *Peter Tucci*
Name: Gregory V. Iannarelli *Peter Tucci*
Title: Chief Counsel
acting

By: *Bruce J. Colucci*
Name: Bruce J. Colucci
Title: Administrator of Fiscal Services

**OFFICE OF THE ATTORNEY
GENERAL**

OFFICE OF THE BUDGET

By: *David J. John*
Name:
Title:

By: *Larry L. Long*
Name: Larry L. Long
Title: ASST Compt



Commonwealth of Pennsylvania
Office of Attorney General

October 25, 2001

RECEIVED

OCT 29 2001

SUBJECT: CONTRACT APPROVAL
TO: VERONICA A. BOTTS
PHILA REG. PORT AUTHORITY

CLERK OF THE COURT
To send To: ~~DeVries~~

FROM: David J. DeVries
Chief Deputy Attorney General
Review and Advice Section

The referenced contract(s) has been approved for form and legality pursuant to the Commonwealth Attorneys Act, 71 P.S. Section 732.101 et seq.

No approval or opinion is offered as to the manner of execution if the document was submitted in proposed form. No approval or opinion is offered concerning any document referenced but not submitted or any events or other occurrences giving rise to the contract's creation or submission. Our review does not extend to compliance with the laws of other jurisdictions. To the extent, if any, that such other laws may be applicable to the making or performance of the contract in any respect, the agency may want to consult with counsel in that jurisdiction.

DJD:jn
ATTACHMENTS
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