

# RESOLUTION OF THE CITY COUNCIL

No. 454

Approved August 9, 2002

RESOLVED, that His Honor, the Mayor, is hereby authorized to execute an Amendment to the Lease which was passed on August 2, 2001 and approved on August 10, 2001 for the land owned by the City of Providence and located along Allens Avenue as part of Assessor's Plat 55 of Lot 136, a legal description is included in the attached Lease Agreement, to Stephen Broomfield, d/b/a J. Broomfield & Sons, Inc., for a period of three years with two three-year option terms available. The rent for the first three-year term shall be \$150.00 per month, for the second three-year term, the rent shall be \$175.00 per month; and for the third three-year term, the rent shall be negotiated, but shall not be less than the rent for the first three-year term, in accordance with the attached Lease. The terms and conditions, as amended, and included in the attached Lease have been approved by the Committee on City Property of the City Council and are subject to such other terms and conditions as may be prescribed by His Honor, the Mayor, and the City Solicitor.

IN CITY COUNCIL  
AUG 11 2002  
READ AND PASSED

PRES.

Michael B. Clement  
CLERK

APPROVED

AUG 09 2002

MAYOR

Vincent A. Cianci  
MAYOR

THE COMMITTEE ON  
CITY PROPERTY  
Approves Passage of  
The Within Resolution

*Ann M. Stein*

7-17-02

Clerk:

APPROVED  
AND  
RECORDED

APPROVED  
AND  
RECORDED

APPROVED  
AND  
RECORDED

## LEASE

THIS INDENTURE OF LEASE made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between the CITY OF PROVIDENCE, a municipal corporation, created by the General Assembly of the State of Rhode Island, (hereinafter referred to as the "LESSOR") and STEPHEN BROOMFIELD, D/B/A J. BROOMFIELD & SONS, of Providence, Rhode Island, a corporation organized and existing under the laws of the State of Rhode Island, having its principal place of business at 473 Allens Avenue, Providence, Rhode Island (hereinafter referred to as the "LESSEE").

This Lease is upon the following covenants, terms and conditions:

### 1. DESCRIPTION

1.1. The LESSOR, in consideration of the rents and charges, does hereby grant, demise and lease unto the LESSEE, subject to the conditions, terms and covenants hereinafter specified, that certain tract and parcel of land situated along Allens Avenue as part of Assessor's Plat 55 of Lot 136, in the City of Providence (hereinafter described as the "Demised Premises"), bounded and described as follows:

All of the real property owned by the P&W lying in, under, above, along contiguous to, adjacent and connecting to that line of railroad owned by P&W being formerly the Penn Central Transportation Company's line of railroad known as the "Harbor Junction Industrial Track" and identified as Line Code 4168 in the records of the United States Railway Association and also identified in the Recorder's Office of the City of Providence in Book 1237 at Page 72.

1.2. The Demised Premises are demised and let subject to the rights of any parties thereof and the state of the title thereof as of the commencement of this Lease, and to any state of facts which an accurate survey or physical inspection thereof might show, and to all zoning regulations, restrictions, easements, rules and ordinances, building restrictions, easements, rules and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction.

1.3. LESSEE has examined the title to the Demised Premises and has found the same to be satisfactory to it.

2. TERM

2.1. The original term of this Lease shall be for a three (3) year period, commencing on \_\_\_\_\_ and expiring on \_\_\_\_\_.

2.2. Option to Renew - At the expiration of the initial term, if this Lease shall then be in full force and effect and LESSEE shall have fully performed all of its terms and conditions, the LESSEE shall have an option to renew this Lease upon the same terms and conditions, excluding the provision of the stipulated rent, for an extended term of three (3) years. The option for such extended term shall be exercised by the LESSEE by giving written notice to the LESSOR not less than six (6) months, and not more than twelve (12) months prior to the expiration of the then current term. The stipulated rental shall be agreed upon by the parties prior to the commencement of the extended term. In the event of the parties' inability to agree upon a stipulated rental, the rent shall be established by the Property Committee of the City Council upon majority vote. Subject to the conditions stated in this paragraph, the LESSEE may elect to exercise an option for a three-year term.

3. RENT

3.1. LESSEE agrees to pay to the LESSOR, without any prior demands therefor and, except as expressly provided herein, without deduction or set-off whatsoever, the following base rent:

|                         |  |                     |
|-------------------------|--|---------------------|
| First three-year term:  | \$150.00 monthly,  | \$1,800.00 annually |
| Second three-year term: | \$175.00 monthly,  | \$2,100.00 annually |
| Third three-year term:  | To be negotiated by the parties ninety (90) days prior to the termination of the original term but, in no event shall the rent be less than the rent stated for the first three-year term of this Lease. |                     |

3.2 All rent shall be payable in advance on the first business day of each calendar month during the term hereof.

#### 4. USE AND OCCUPANCY

4.1 Use - The premises are let for use by the LESSEE as a storage area for scrap metal and re-cycling of materials as defined in the State of Rhode Island Department of Environmental Management regulation Number 1, General Requirements Section 1.3.47. LESSEE hereby agrees that it will not cause any hazardous and/or dangerous items, substance, liquids and/or solid to be stored or re-cycled on these premises. LESSEE further agrees to only recycle those materials as authorized under the said State of Rhode Island Department of Environmental Management regulation Section 1.3.47. If any item is discovered thereon, not in accordance with Section 1.3.47, then this Lease shall forthwith be terminated and LESSEE for itself, its successors, heirs and/or assigns, and/or receivers or trustees shall be held responsible and liable to clean and/or remove said hazardous and/or dangerous materials as defined by the Department of Environmental Management for the State of Rhode Island.

4.2. Occupancy - The LESSEE accepts said premises in their present condition. LESSEE agrees to enclose the property with a fence and properly police it.

4.3. The premises shall be open at all reasonable times to the inspection of the LESSOR, its agents, or servants.

4.4. Nothing herein shall imply any duty upon the part of the LESSOR to do any work, and performance thereof by LESSOR shall not constitute a waiver of LESSEE'S default in failing to perform same.

4.5. The Lessee shall not mutilate, damage, misuse or suffer waste in the premises, but shall keep the same, and, upon the termination hereof, deliver them up in as good condition as they are now in, or may be put in, by the LESSOR, ordinary wear and tear expected.

4.6. The LESSEE shall keep the leased premises in a neat and orderly condition at all times according to the requirements of the Department of Public Property of the City of Providence, and no refuse or discarded materials shall be allowed to accumulate.

## 5. UTILITY

The LESSEE agrees it will pay for all utility costs used or consumed upon the premises as and when the charges for the same become due and payable.

## 6. TERMINATION AND CANCELLATION

6.1 Termination - Upon the termination of the terms hereof, or of any extensions thereof, the LESSEE covenants to surrender and yield up peacefully and quietly to the LESSOR possession of the premises in as good condition as they were at the time of delivery of possession as herein provided, reasonable wear and tear excepted.

6.2. On the termination of this Lease for any cause, the LESSOR may re-enter and take possession of the whole or any part of the premises and expel all persons therefrom and remove their effects without being taken or deemed guilty of any manner of trespass, without prejudice to its other rights or remedies against the LESSEE, and demand for rent and notice to quit or of intention to re-enter is hereby expressly waived on the part of the LESSEE.

6.3. In case the LESSEE shall fail to perform any stipulation or condition herein, or shall be declared bankrupt, or insolvent according to law or shall make an assignment for the benefit of creditors, then and in either of said cases, this LEASE shall be terminated and the premises shall automatically revert to the LESSOR.

6.4. Upon termination or expiration of this Lease for whatsoever cause, or the vacating of the premises by LESSEE, the LESSEE shall have the privilege to remove and upon the request of the LESSOR shall remove (at the LESSEE'S own expense) its movable business fixtures, trade fixtures, furniture, machinery, equipment, signs, insignia and other indica of the LESSEE'S tenancy or use.

6.5. Any property not immediately removed by the LESSEE upon the expiration or other termination of this Lease shall, upon such termination or expiration, become the absolute property of the LESSOR, and the LESSOR may sell or dispose of the same as it may see fit.

6.6. Cancellation - Upon a finding by two thirds of the City Council that the Demised Premises are needed for public use, the City Council may cancel this Lease; provided, that LESSEE is given at least six (6) months notice prior to the date of cancellation. Said cancellation operates as a termination of this Lease.

## 7. BREACH OR DEFAULT

7.1. In the event of any failure on the part of the LESSEE to pay said rent and charges at the time and in the manner aforesaid, or in case of failure on its part to perform any or all of the covenants and agreements herein contained on its part to be kept and performed, and if such failure shall continue for twenty (20) days after written notice thereof, the LESSOR, by any agent duly authorized, shall be at liberty to declare this Lease at an end, and may thereupon enter and take immediate and full possession of said premises and repossess the same as of its former estate, without prejudice to its right to recover full rent and charges for the time for which the LESSEE has been in possession, and any damages, including but not limited to costs and attorneys' fees, which the LESSOR may have suffered by reason of any breach of the terms or conditions of this Lease on the part of the LESSEE

7.2 No such expiration or termination of this Lease shall relieve LESSEE of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination.

## 8. CLAIMS, INDEMNIFICATION AND INSURANCE

8.1. LESSEE shall make no claim against LESSOR for any loss, damage or injury to LESSEE or LESSEE'S property arising out of any fire, theft or casualty in the Demised Premises except in cases of the omission, fault, negligence or other misconduct of the LESSOR'S servants, agents or employees subsequent to the execution of this Lease.

8.2 The LESSEE shall indemnify, protect and accept all liability of the LESSOR, if any, from and against all demands, claims, actions, cost, expense or losses resulting from any and all personal injuries or property damage sustained by any person or persons on or about the Demised Premises which occurs during the term of this Lease, and indemnifying the City of Providence from any and all claims of individuals claiming right to said property under their rights of redemption or any other legal claim to title to said real estate.

8.3. LESSEE shall apply for and cause to be issued a public liability insurance policy in the name of the LESSEE. Such insurance policy shall be issued by a reputable insurance company licensed to do business in the State of Rhode Island, and shall be in the sum of not less than \$500,000.00 in case of damage or injury to any one person, not less than \$500,000.00 for any one accident and \$100,000.00 with respect to damage to property, such policy or policies insuring both the LESSEE and LESSOR from liability imposed by law upon the LESSOR or LESSEE, or both, for any damages suffered by any

person or persons for injuries to their person or persons or property in and about the premises.

8.4. Certificates evidencing the existence of the insurance coverage shall be delivered to the LESSOR upon request prior to the commencement of the term of the Lease and thereafter at least thirty (30) days prior to the expiration of any existing policy. Such policies shall provide that the LESSOR shall receive thirty (30) days notice of any material change or cancellation thereof. Such policies shall also name the LESSOR as an additional party insured on the Certificate of Insurance.

8.5. In the event of any damage or destruction of the premises resulting from a cause of casualty covered by insurance as hereinbefore provided, the LESSEE shall promptly notify the LESSOR and the insurer and within sixty (60) days file proof of the loss with the insurer and proceed with the collection of the claim without delay.

## 9. REPAIRS, ALTERATIONS OR IMPROVEMENTS

9.1. The LESSEE accepts said premises in their present condition, and it is further understood and agreed that it shall be the sole duty of the LESSEE, at the LESSEE'S own sole cost and expense for any and all repair, renovations, modifications, alterations, improvements or additions made in the premises, which alterations shall, upon LESSEE'S default or termination or expiration of said Lease, become the property of the LESSOR.

9.2. LESSEE shall notify and obtain written consent from the LESSOR before it makes any improvements or alterations in or to the premises.

9.3. LESSEE shall promptly pay all amounts owing to its contractors and materialmen, so as to avoid the possibility of a lien attaching to the Demised Premises, and should any such lien be made or filed, the LESSEE shall bond against or discharge the same within thirty (30) days after written notice by the LESSOR.

In the event that LESSEE does not bond against or discharge any lien filed against the Demised Premises by contractors or materialmen supplying labor or materials to the Demised Premises on behalf of LESSEE, LESSEE shall reimburse the LESSOR for attorneys' fees incurred in defense of proceedings to enforce or foreclose such lien(s).

9.4. LESSEE shall, at his sole expense, keep the interior of the premises clean, neat and in good order, repair and condition and keep all refuse, rubbish and debris in covered containers.

9.5. LESSEE shall not injure, overload, deface or otherwise harm the Demised Premises or commit any nuisance thereon.

9.6. LESSEE hereby waives any rights to make repairs at the expense of LESSOR which it may have under any present or future laws, ordinances, orders, rules and regulations of all federal, state and municipal governments.

#### 10. SUBLETTING AND ASSIGNMENT

LESSEE shall not assign nor in any manner transfer this Lease or any estate or interest therein, nor permit any transfer thereof by operation of law, nor permit any use or occupancy of the same other than by LESSEE, nor sublet the Demised Premises or any part thereof, nor grant any license, concession or other right of occupancy of any portion of the Demised Premises. However, the LESSOR, in its sole discretion, may agree to an assignment or sublease by the LESSEE. Such agreement must be in writing. No assignment, sublease or transfer of the whole or any part of the Demised Premises nor the permitting of other use or occupancy of the same shall in any way affect or reduce LESSEE'S obligations under this LEASE.

#### 11. INTEREST OF PUBLIC OFFICIALS

No member of the City Council of the City of Providence and no other public official or employee of Providence who exercises any functions or responsibilities in the

review or approval of the carrying out of this Lease shall have any financial interest, direct or indirect, in the Lease. Nor shall any of the above mentioned be employed by the LESSEE.

## 12. TAXES

LESSEE represents that all real estate and personal property taxes assessed by the City of Providence against LESSEE are current as of the date of the execution of this Lease and that as a condition to this Lease, LESSEE must remain current in his payment of all taxes assessed against said real and personal property. A failure to be current or remain current in the payment of taxes owed to the City of Providence shall constitute a breach of this Lease.

## 13. NOTICES

13.1 All notices to the LESSEE shall be sent by registered or certified mail addressed to the LESSEE at its business offices at 473 Allens Avenue, Providence, Rhode Island 02905, or at such other address as the LESSEE shall designate in writing to LESSOR, with a copy to Valentino D. Lombardi, Esquire, 128 Dorrance Street, Providence, RI 02903.

NOTICE: Contact Person - Stephen Broomfield.

13.2. All notices to the LESSOR shall be sent by registered or certified mail addressed to the LESSOR at the Office of the Controller, Providence City Hall, 25 Dorrance Street, Providence, Rhode Island 02903, a copy to the Providence Law Department, 100 Fountain Street, Providence, Rhode Island 02903.

13.3. Notwithstanding any provisions in this Lease to the contrary concerning modifications, a change in address may be effected by a registered or certified letter sent by either party to the other.

#### 14. MISCELLANEOUS

14.1 Holding Over - If LESSEE shall hold possession of the Demised Premises beyond the term specified herein, LESSEE shall pay to LESSOR, for each month or portion thereof as LESSEE shall retain possession, 150% of the rent and other charges specified herein, and shall be liable to the LESSOR for any and all lost rentals and other damages sustained by LESSOR by virtue of such continued occupancy. In the absence of any express, written agreement between LESSOR and LESSEE, no act or failure to act by LESSOR shall be deemed an acceptance of LESSEE'S occupancy for any fixed term (beyond the term fixed herein) in excess of one month. Nothing herein shall preclude LESSOR from the exercise of any right of re-entry or other remedy under this Lease or under law.

14.2 Relationship - It is understood and agreed by the parties hereto that this Lease does not create a fiduciary relationship between them, that LESSEE shall be an independent contractor, and that nothing in this agreement is intended to constitute, either party an agent, legal representative, subsidiary, joint venture, partner, employee, or servant of the other for any purpose whatsoever, and neither shall have power to bind or obligate the other except as set forth herein.

14.3. Construction - All reference herein to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, where applicable.

14.4. Original Copies - This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same agreement.

14.5. Captions - The captions appearing in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit or construe or describe the scope or intent of any provisions of this Lease nor in any way affect this Lease.

14.6 Binding Effect - The terms, covenants and conditions contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns and any person or persons, natural or corporate, claiming through or under them, or any of them; provided, however, that as used herein, "LESSOR" shall mean the owner for the time being of the LESSEE'S estate and the property in the Demised Premises. If such estate and property is sold or transferred, the seller or transferor shall thereupon be relieved of all obligations and liabilities thereafter arising or occurring under this Lease, and the purchase or transferee shall thereupon be deemed to have assumed and agreed to perform and observe all obligations and liabilities thereafter arising or occurring under this Lease, or based upon occurrences or situations thereafter arising or occurring.

14.7 No Accord and Satisfaction - No acceptance by LESSOR of a lesser sum than the stipulated rental provided for herein, or any other change then due shall be deemed to be other than on account of the earliest installment or such rent or charge due, nor shall any endorsement or statement or any check or letter accompanying any check or payment as rent or other charge be deemed an accord and satisfaction, and LESSOR may accept such check or payment without prejudice or LESSOR'S right to recover the balance of such installment or pursue any other remedy in this Lease provided.

14.8 - Condemnation - If the whole of the Demised Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then this Lease shall automatically terminate as of the date that possession has been taken, neither party hereto incurring any liability to the other therefore, and LESSEE shall not be entitled to any monies for any portion of the Lease term which would exist but for the condemnation of the Demised Premises.

14.9 Waiver - That the failure of the LESSOR to insist in any one or more instance upon the strict and literal performance of any of the covenants, terms or conditions of this Lease, or to exercise any option or election of the LESSOR therein contained shall not be construed as a waiver or a relinquishment for the future of such convenient, term, condition, option or election, but the same shall continue and remain in full force and effect. The receipt by the LESSOR of rent with knowledge of the breach of any covenant, term or condition hereof by the LESSEE shall not be deemed to be a waiver of such breach and no waiver by the LESSOR of any covenant, term or condition or other provision of this Lease of the breach thereof shall be deemed to have been made by the LESSOR, unless in writing signed on behalf of LESSOR.

14.10. Bankruptcy - This Lease is made on the express condition that if the LESSEE shall become bankrupt or insolvent according to law, or if any assignment shall be made, or receiver shall be appointed due to its financial condition, then the LESSOR, unless and only to the extent restrained by law, may immediately, or at any time thereafter and without notice or demand, enter upon said premises or any part thereof, in the name of the whole, and declare ended, and thereby end this Lease and repossess said premises and expel therefrom the LESSEE and those claiming under it, and remove their effects, if necessary, without being guilty of any manner of trespass, and without prejudice to any remains which may be used for the recovery of rent or damages for breach of covenant.

14.11 Severability - In the event any provision or clause of this Lease be declared invalid by act of any public authority or in the course of judicial or arbitration proceedings, such invalidity shall not affect the continuing validity of the remaining clauses and paragraphs hereof.

14.12 Written Modifications - No modifications of any provisions of this Lease shall be of any force or effect unless in writing signed by the parties hereto.

14.13 Governing Law - This Lease shall be governed by and construed in accordance with the laws of the State of Rhode Island.

## 15. DISPUTE

15.1 In the event that any dispute shall arise regarding the interpretation of or the performance of any of the terms of this Lease which cannot be resolved between LESSOR and LESSEE, then a determination of the dispute shall be made upon majority vote of the Property Committee of the Providence City Council which shall be binding upon the parties and may be entered in a court of competent jurisdiction; provided that LESSEE shall have an opportunity to be heard before the full Property Committee prior to its determination. LESSOR and LESSEE must provide each other with at least thirty (30) day notice of any hearing before said Property Committee.

## 16. COVENANT OF QUITE ENJOYMENT

16.1. LESSEE, upon the performance of all the terms of this Lease, shall at all times during the Lease term, if not earlier due to terminated, canceled or to condemnation proceedings, peaceably and quietly enjoy the Demised Premises without disturbance from the LESSOR.

IN WITNESS WHEREOF, the CITY OF PROVIDENCE has caused these presents to be executed in duplicate, and its corporate seal to be thereunto affixed by VINCENT A. CIANCI, JR., its MAYOR, duly authorized, by City Council Resolution, No. \_\_\_\_\_ approved \_\_\_\_\_, and J. BROOMFIELD & SONS has caused its corporate seal to be hereunto affixed by STEPHEN BROOMFIELD the day and year first above written.

CITY OF PROVIDENCE

BY: \_\_\_\_\_  
Vincent A. Cianci, Jr., Mayor

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

In Providence on this \_\_\_\_ day of \_\_\_\_\_, 2002, personally appeared before me the above named VINCENT A. CIANCI, JR., MAYOR, to me known and known by me to be the party executing the foregoing instrument, and he acknowledge the said instrument, by him executed on behalf of the CITY OF PROVIDENCE, to be his free and voluntary act and deed individually, and his free act and deed as Mayor of the CITY OF PROVIDENCE.

\_\_\_\_\_  
Notary Public

J. BROOMFIELD & SONS

BY: \_\_\_\_\_  
STEPHEN BROOMFIELD

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

In Providence on this \_\_\_\_ day of \_\_\_\_\_, 2002, personally appeared before me the above named STEPHEN BROOMFIELD to me known and known by me to be the party executing the foregoing instrument, and he acknowledged the said instrument, by him executed on behalf of J. BROOMFIELD & SONS to be his free and voluntary act and deed.

\_\_\_\_\_  
Notary Public

CORRECT IN FORM AND SATISFACTORY TO ME

\_\_\_\_\_