

**ASSIGNMENT OF LEASE AGREEMENT AND
CONSENT TO ASSIGNMENT**

THIS ASSIGNMENT OF LEASE AGREEMENT AND CONSENT TO ASSIGNMENT (the "Assignment") is made and entered into, and is effective as of the 13th day of February, 2012, with the CITY OF MILWAUKEE, a Wisconsin municipal corporation, by and through its Board of Harbor Commissioners ("City"), EDWARD E. GILLEN COMPANY, a Wisconsin corporation ("Assignor"), and GILLEN FOUNDATIONS, INC. (f/k/a Altum, Inc.), a Wisconsin corporation ("Assignee") that is an affiliate of Michels Corporation, a Wisconsin corporation ("Michels").

RECITALS

A. Assignor currently leases that certain real property and improvements of 3.44 acres at the south end of Harbor Drive extended of the South Harbor Tract of the City of Milwaukee (the "Property") pursuant to the terms and conditions contained in that certain Lease Agreement dated as of October 19, 2000, between City, as Landlord, and Assignor, as Tenant (as amended, supplemented or modified from time to time, collectively the "Lease"). A copy of the Lease is attached hereto and made a part hereof as Exhibits A-1 through A-3, consisting of the following:

- (1) Exhibit A-1: Original Lease dated October 19, 2000
- (2) Exhibit A-2: First Amendment to Lease dated October 24, 2005 and Letter Agreement of Extension dated October 18, 2006
- (3) Exhibit A-3: Second Amendment to Lease dated March 24, 2011

B. Assignor presently operates a marine contracting business on the Property.

C. Assignor and Assignee are parties to that certain Assignment and Assumption Agreement dated February 13, 2012, pursuant to which Assignor assigned to Assignee all of Assignor's right, title and interest in and to various leases to which Assignor is currently the lessee, including but not limited to all of Assignor's right, title and interest in, under and to the Lease, and Assignee has accepted such assignment and assumed Assignor's liabilities that arise or accrue under the Lease on or after February 13, 2012.

D. By execution of this Assignment, the City, Assignor, and Assignee mutually desire (i) that Assignor assign all of its right, title, and interest in, under and to the Lease to Assignee, and (ii) that City consent to the assignment contemplated hereby, all on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the Recitals set forth above, which by reference are made a part of this Assignment, the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, Assignor and Assignee do hereby agree as follows:

1. **Assignment.** Assignor hereby transfers, assigns and sets over to Assignee all of Assignor's right, title and interest in and to the Lease and in and to the Property, effective as of February 13, 2012 (the "Effective Date"). Assignor hereby represents and warrants to Assignee and to City that Assignor is the owner of all right, title and interest of Tenant under the Lease, and has all right, power and authority to assign its right, title and interest in the Lease to Assignee pursuant to this Assignment.

2. **Acceptance of Assignment.** Assignee hereby accepts the assignment and transfer of the Lease as contemplated by this Assignment, and assumes all of the obligations of Assignor under the Lease arising from and after the Effective Date, except as otherwise expressly provided in this Assignment.

3. **Guaranty by Michels.** Michels shall guarantee the full performance of Assignee's obligations under the Lease as more fully set forth in the instrument of Guaranty, a true, correct and complete copy of which is attached to this Assignment as Exhibit B and is made a part of this Assignment. Upon Assignee's receipt of an original of this Assignment executed by all of the parties hereto, Assignee shall promptly deliver to City an original of the Guaranty, executed by Michels.

4. **Liabilities Retained by Assignor.** Notwithstanding anything in this Assignment to the contrary, Assignor acknowledges that it is not assigning to Assignee, and that Assignee is not assuming, any obligation or liability under the Lease arising or accruing prior to the Effective Date. This Assignment shall not operate to relieve Assignor from any of its obligations to City under said Lease arising or accruing prior to the Effective Date.

5. **Representations and Warranties by City and Assignor.** City and Assignor represent and warrant to Assignee that:

- A. The Lease is in full force and effect and has not been modified as of the date hereof.
- B. Assignor is not in default under the Lease, Assignor has not received any notice of default under the Lease, and, to its best knowledge, there are no events which have occurred that, with the giving of notice or the passage of

- time or both, would result in a default by Assignor under the Lease.
- C. Attached hereto is a true and correct copy of the Lease as modified, amended and extended as of the date hereof.
- D. The following is an enumeration of certain provisions of the Lease:
1. Commencement date: January 1, 2011 (date of current extension, see Exhibit A-3)
 2. Expiration date: December 31, 2036
 3. Current annual base rent: \$47,705.40
 4. Next rent increase: January 1, 2013
Annual Base Rent after increase: \$ not yet determined
 5. Square footage/Acreage of the Property: 3.44 acres
 6. Security deposit paid to City: \$ 0
 7. Renewal options: 2 successive additional terms of 15 years each.
 8. There are no options to terminate the Lease, except as described below:
 - (a) The Lease may be terminated pursuant to Section 1 (“Term”) Paragraph (B) of the Second Amendment to Lease dated March 24, 2011 (Exhibit A-3);
 - (b) Additionally, the Lease may be terminated for default as provided in the Lease.
- E. The Lease is in full force and effect and is the entire agreement between Assignor and City with respect to the Property.
- F. The Lease has not been assigned by City.
- G. No installment of rent or other charges under the Lease other than current monthly rent has been paid more than 30 days in advance and Assignor is not in arrears on any rental payment or other charges. (NOTE: Assignor is in arrears for certain charges not associated with the Lease.)
- H. Assignor has not been granted any options or rights of first refusal to purchase the Property.
- I. City is not aware of, and has not received notice of, any violation of any federal, state, county or municipal laws, regulations, ordinances, orders or directives relating to the use or condition of the Property.

6. **Assignee's Use of Property**. Assignee will use the Property for its own business operations and to support the various business sectors of Michels and their respective affiliates related to construction contracting, engineering, energy development, transportation and the power industry.

7. **Insurance**. Assignee shall obtain the insurance coverages and limits as specified in Section 3 of the Second Amendment to Lease, dated March 24, 2011 (Exhibit A-3) attached hereto and made a part hereof. Additionally, the insurance provisions set forth in Exhibit A-3 shall govern throughout the term of the Lease and City's approval of this Assignment is contingent in part upon City receiving confirmation that Assignee has sufficient insurance coverage (including environmental insurance) in force to satisfy the requirements specified in Exhibit A-3.

All such policies shall be of a form and content satisfactory to City. In addition, the Board of Harbor Commissioners of the City of Milwaukee and the City will be designated on the General Liability, Property Insurance, Automobile and Umbrella policies as Additional Named Insureds. All policies shall be with companies licensed to do business in the State of Wisconsin and rated A or better in the most current issue of Best's Key Rating Guide. Assignee shall furnish City with certificates of insurance for all policies showing that insurance has been written as required. Such evidence shall be provided by Assignee prior to City's execution of this Assignment; and further, such policies shall provide that no less than thirty (30) days written notice be given to City before any such policies are cancelled or substantially changed to reduce the insurance provided thereby. Said certificates of insurance shall remain in effect for the duration of the Lease. Assignee shall not act in any manner that may make void or voidable any insurance required herein. Upon written demand, Assignee shall provide City with full, complete and accurate copies of the insurance policies required by the Lease. Once in every three (3)-year period during the term of the Lease, City shall review the extent and limits of the insurance coverage required therein. After said review, should City determine that an increase in the extent and/or limits of insurance coverage is required, Assignee shall be so notified in writing and Assignee shall cause such increases to be placed in effect within thirty (30) days of receiving such notice. In no event shall the extent and limits of insurance coverage be reduced from the amounts shown in the Lease.

8. Environmental Compliance & Obligations.

A. Assignee shall pay for a “baseline” report of the environmental condition of the Property, to be conducted within ninety (90) days following the Effective Date by Stantec Consulting Ltd. (“Stantec”). Notwithstanding any contrary provision in the Lease or in this Assignment, if Stantec determines the presence upon, about or beneath the Property of any “hazardous material” or “hazardous substance” (as those terms are defined in Section 4 of the Second Amendment to Lease dated March 24, 2011 (Exhibit A-3)) or determines that there has been a violation of Environmental Requirements or Environmental Laws (as those terms are defined in Section 4 of the Second Amendment to Lease dated March 24, 2011 (Exhibit A-3)) by Assignor prior to February 13, 2012, then

(i) Assignor shall be responsible, at its sole cost and expense, for promptly taking all actions to remediate the environmental condition of the Property which may be required by any federal, state or local governmental agency or political subdivision, and to bring the Property into compliance with Environmental Requirements and Environmental Laws; and

(ii) in no event and under no circumstances shall Assignee be responsible for remediating any environmental conditions existing with respect to the Property as of February 13, 2012 or for paying any costs or expenses associated with any such remediation which may be required by any federal, state or local governmental agency or political subdivision; nor shall Assignee be responsible for the payment of any fines or penalties that may be imposed with respect to any violation of Environmental Requirements or Environmental Laws that has occurred prior to February 13, 2012.

B. Assignee’s obligations respecting environmental compliance are set forth in Section 4 of the Second Amendment to Lease dated March 24, 2011 (Exhibit A-3), which shall govern throughout the term of the Lease. Assignee’s obligations respecting environmental compliance shall be modified by and subject to the provisions of Section 8.a. above.

9. **Inspection of Property.** Assignor and Assignee mutually agree to waive their right to a joint inspection of the Property with City.

10. **Indemnity.** Assignee hereby agrees to indemnify, defend, and hold harmless Assignor from and against any and all losses, costs, claims, or expenses (including reasonable attorneys’ fees, court costs and ancillary expenses) relating to any obligation

or liability of Assignee as the Tenant under the Lease that arises or accrues on or after the Effective Date. Assignor hereby agrees to indemnify, defend, and hold harmless Assignee from and against any and all losses, costs, claims, or expenses (including reasonable attorneys' fees, court costs and ancillary expenses) relating to any obligation or liability of Assignor as the Tenant under the Lease that arises or accrues prior to the Effective Date.

11. **Notices.** Whenever in this Assignment it shall be required or permitted that notice be given by any party to any other party, such notice shall be delivered in person or sent by U.S. Certified Mail, postage prepaid, return receipt requested, as follows:

To Assignor:
Edward E. Gillen Company
218 W. Becher Street
Milwaukee, WI 53207
Attention: _____

To Assignee:
Gillen Foundations, Inc.
P.O. Box 128
817 W. Main Street
Brownsville, WI 53006
Attention: David Stegeman

To City:
Board of Harbor Commissioners
2323 S. Lincoln Memorial Drive
Milwaukee, WI 53207
Attention: Municipal Port Director

If notice is delivered personally, such notice shall be deemed received when received by the party to whom it is directed. If notice is sent by mail as provided above, such notice shall be deemed received three days after mailing.

12. **Consent by City.**

A. City, upon execution of this Assignment, hereby consents to the making of this Assignment and to all of the terms and conditions hereof, and acknowledges that all conditions required for such consent contained in the Lease have been fulfilled or are hereby waived.

B. Effective as of the Effective Date, City hereby agrees to recognize Assignee as the Tenant under the Lease and thereby establish direct privity of contract with Assignee, and further grants to Assignor a novation in respect of all liabilities and

obligations under the Lease arising or accruing on or after the Effective Date.

13. **Open Records Law.** Assignee acknowledges and understands that City is bound by the Wisconsin Public Records Law and Assignee agrees to comply with the obligations of Tenant under Section 6 of the Second Amendment to Lease dated March 24, 2011 (Exhibit A-3).

14. **No Slavery Affidavit.** Assignee shall execute the Affidavit of Compliance attached hereto as Exhibit C contemporaneously with its execution of this Assignment.

15. **Binding Effect.** This Assignment shall be binding upon and inure to the benefit of City, Assignor and Assignee and their respective successors and assigns.

16. **Headings.** The section headings used herein are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Assignment.

17. **Governing Law.** This Assignment shall be governed by, and construed and enforced in accordance with, the laws of the State of Wisconsin, without giving effect to its conflict of laws principles.

18. **Counterparts.** This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

19. **Relationship to Lease.** As modified by this Assignment, the Lease shall continue in full force and effect. In the case of any direct conflict between the terms and conditions of this Assignment and the Lease, the terms and conditions of this Assignment shall govern.

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

ASSIGNOR:
EDWARD E. GILLEN COMPANY

By _____
Andrea Jackson, President

ASSIGNEE:
GILLEN FOUNDATIONS, INC.

By _____
Brian P. Johnson, Vice President

CITY:
CITY OF MILWAUKEE

By _____
Its Authorized Signatory

In the Presence of:
CITY OF MILWAUKEE

Tom Barrett, Mayor

Michael Daun, Deputy City Clerk

COUNTERSIGNED:

Martin Matson, City Comptroller

In the Presence of:
BOARD OF HARBOR COMMISSIONERS

Timothy K. Hoelter, President

Eric C. Reinelt, Secretary

STATE OF WISCONSIN
_____ **COUNTY**

Personally came before me this _____ day of _____, 2012, Andrea Jackson, President of EDWARD E. GILLEN COMPANY, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

STATE OF WISCONSIN
_____ **COUNTY**

Personally came before me this _____ day of _____, 2012, Brian P. Johnson, the Vice President of GILLEN FOUNDATIONS, INC., who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

[Acknowledgments should be inserted to notarize the signatures of the representatives of the City of Milwaukee and the Board of Harbor Commissioners]

APPROVED as to Form and Execution this
_____ day of _____, 2012.

Assistant City Attorney

GUARANTY

(MICHELS CORPORATION)

This Guaranty relates to the foregoing Assignment of Lease Agreement and Consent to Assignment dated as of February 13, 2012 (the "Assignment"), by and among the City of Milwaukee ("City"), Edward E. Gillen Company ("Assignor") and Gillen Foundations, Inc. ("Assignee"), pursuant to which Assignor assigned to Assignee all of Assignor's right, title and interest in, under and to the Lease (as defined in the Assignment). For value received, in consideration for and as an inducement to City to consent to the Assignment, the undersigned, Michels Corporation ("Guarantor"), unconditionally and irrevocably guaranties to City and its assigns, the full, faithful, and prompt performance and observance of all obligations and covenants under the Lease to be performed and observed by Assignee, including, but not limited to, the payment of the Rent, all without requiring any notice of non-payment, non-performance or non-observance or proof, or any other notice or demand whatsoever, all of which the undersigned waives. The undersigned further covenants and agrees that this Guaranty shall remain and continue in full force and effect as to any renewal, waiver, amendment, modification, sublease, assignment or extension of the Lease, and the undersigned waives any notice thereof. This Guaranty shall not be diminished by any payment of Rent or performance of the terms and conditions of the Lease until each and every obligation of Assignee under the Lease has been fully discharged. City may, without notice or demand and without affecting Guarantor's liability hereunder, from time to time, compromise, extend or otherwise modify any or all terms of the Lease.

The liability of Guarantor under this Guaranty will not be affected by the release or discharge of Assignee from, or the impairment, limitation or modification of, Assignee's obligations under the Lease in bankruptcy, receivership or other debtor proceeding or the cessation from any cause whatsoever of the liability of Assignee under the Lease. If any payment made by Assignee to City is later set aside, avoided, recovered, rescinded, or required to be returned for any reason (including, but not limited to, the avoidance as a preferential payment under the Bankruptcy Code or any state insolvency or receivership laws), the obligation to which such payment was applied shall, for the purposes of this Guaranty, be deemed to have continued in existence, notwithstanding such application, and this Guaranty shall be enforceable as to such obligation as fully as if such application had never been made.

This is a continuing, irrevocable, absolute and primary guarantee of payment and not of collection and City shall not be obligated, as a condition to exercise any of its remedies under this Guaranty, to first proceed against Assignee or to exhaust any or all remedies under the Lease. If suit or collection proceedings are brought pursuant to this Guaranty, the undersigned agrees to pay reasonable attorneys' fees and all court costs incurred by City in connection therewith.

GUARANTOR:
MICHELS CORPORATION

By: _____

Name: Brian P. Johnson
Title: Executive Vice President
Address: P.O. Box 128
817 West Main Street
Brownsville, WI 53006
Phone Number: (920) 924-4321
Email: bjohnson@michels.us

Received and acknowledged on behalf
of the City of Milwaukee, acting
by and through its Board of Harbor Commissioners

By: _____

Print Name: _____

Title: _____

Address: _____

Phone Number: _____

Email: _____

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ASSIGNMENT OF LEASE AGREEMENT

and

CONSENT TO ASSIGNMENT

among

THE BOARD OF HARBOR COMMISSIONERS,
CITY OF MILWAUKEE

and

EDWARD E. GILLEN COMPANY

and

GILLEN FOUNDATIONS, INC.

For 3.44 acres of property located on the South Harbor
Tract at the south end of Harbor Drive Extended

Date of Assignment: February 13, 2012

Original Date of Lease: October 19, 2000

Last Extended Date of Lease: March 24, 2011