

**EXTENSION & AMENDMENT TO LEASE
AGREEMENT**

Between

FEDERAL MARINE TERMINALS, INC.

and the

BOARD OF HARBOR COMMISSIONERS

City of Milwaukee

INITIAL TERM

Term: January 1, 2009 through December 31, 2013

EXTENSION & AMENDMENT TO LEASE AGREEMENT

This Extension & Amendment to Lease Agreement (hereinafter referred to as the "Extension of Lease") made as of this ____ day of _____, 20____, by and between FEDERAL MARINE TERMINALS, INC., an Illinois Corporation, (hereinafter referred to as the "Tenant"), and the CITY OF MILWAUKEE, a Wisconsin corporation, by and through its Board of Harbor Commissioners (hereinafter collectively referred to as the "City").

WITNESSETH :

WHEREAS, the Tenant and the City entered into a Lease Agreement dated August 13, 1998, as amended on August 13, 1998, and further amended on September 28, 1999 (together hereinafter referred to as the "Lease Agreement"), as attached hereto as Appendix "A", whereby the City leased to the Tenant certain real property (referred to as the "Property" as defined in the Lease Agreement), located on the South Harbor Tract of the Port of Milwaukee, with an initial term commencing January 1, 1999, and terminating December 31, 2008, with one automatic additional five (5)-year period to extend, unless one of the parties, by written notice, elects not to extend the Lease Agreement; and

WHEREAS, the Lease Agreement further provided the terms and conditions of the leasehold; and

WHEREAS, the City, per Section 2 of the Lease Agreement, by written notice dated December 12, 2007, as attached hereto as Appendix "B", indicated to the Tenant its intention to not extend the Lease Agreement, therefore effectively terminating the Lease Agreement as of December 31, 2008; and

WHEREAS, the Tenant and the City have agreed that it is their intention to reactivate the Lease Agreement, as though the City had not elected to terminate it, by way of this Extension of Lease, and to amend and add certain particular provisions to the Lease Agreement, on the terms and conditions hereinafter provided;

NOW, THEREFORE, the Tenant and the City agree to the following terms and conditions of this Extension of Lease:

A. The preamble shall form a part of this Extension of Lease as if recited herein at length.

B. The Tenant and the City agree that the Lease Agreement is hereby reactivated as though it had not been terminated by the City by its letter dated December 12, 2007.

C. The Lease Agreement is hereby amended by replacing and/or adding, as the case may be, the following terms and conditions, which shall be effective as at January 1, 2009, except as otherwise provided:

1. Term. The term of the Lease Agreement shall be extended for a period of five (5) years commencing January 1, 2009, and terminating on December 31, 2013 (the "Initial Term"); provided, however, that the term of this Lease may be extended as provided herein.

2. Further Extension of Lease Term. The Tenant may make a request in writing, that the term of the Lease Agreement be extended beyond the Initial Term for two (2) additional five (5)-year periods (the "First Extension Term" terminating on December 31, 2018, and the "Second Extension Term" terminating on December 31, 2023), under the same terms and conditions, save and except for the Base Rent. Such a request for extension of the Lease Agreement must be delivered to the City, in accordance with the notice provisions of the Lease, no later than November 1, 2012 (in the case of a request to extend the Lease Agreement into the First Extension Term) and on November 1, 2017 (in the case of a request to extend the Lease Agreement into the Second Extension Term).

The City must consent to in writing, any request by Tenant for extension of the Lease Agreement within ninety (90) days after City's receipt of Tenant's request for extension; otherwise the Lease Agreement will automatically terminate on the date of the expiration of the then-current Term.

The Base Rent for the First Extension Term and the Second Extension Term, as applicable, shall be negotiated by the parties in good faith and on commercially reasonable terms and agreed to no later than ninety days (90) after the City's receipt of Tenant's request for extension described in the preceding sentence. In no event shall a new Base Rent, as adjusted, be less than that paid in the prior rental period. Failure to reach agreement on Base Rent for any extension term shall cause the Lease Agreement to automatically expire on the applicable expiration date, unless otherwise agreed to by both parties in writing.

3. Base Rent.

A) As and for rental of the Property during the first year (January 1, 2009, to December 31, 2009) of the Initial Term of the Lease Agreement, Tenant shall pay to City a Base Rental of Three Hundred Thousand Dollars (\$300,000.00), payable in equal quarterly installments of

Seventy Five Thousand Dollars (\$75,000.00). Quarterly installments shall be due and payable on the first business days of April, July, and October, and on the last business day of December during the first year of the Extended Term.

B) The Base Rental for the second year (January 1, 2010, to December 31, 2010) of the Initial Term shall be escalated, on January 1, 2010, based on the amount determined by applying ninety percent (90%) of the percentage increase, if any, in the “All Commodities” line of the “Producer Price Index” published by the United States Bureau of Labor Statistics (or its successor organization), for the period between October 1, 2008, and October 1, 2007. Base Rental shall not be decreased to an amount below the Base Rental in effect during the prior year.

C) The Base Rental for the third year (January 1, 2011, to December 31, 2011) of the Initial Term shall be escalated, on January 1, 2011, based on the amount determined by applying ninety percent (90%) of the percentage increase, if any, in the “All Commodities” line of the “Producer Price Index” published by the United States Bureau of Labor Statistics (or its successor organization), for the period between October 1, 2009, and October 1, 2008. Base Rental shall not be decreased to an amount below the Base Rental in effect during the prior year.

D) The Base Rental for the fourth year (January 1, 2012, to December 31, 2012) of the initial Term shall be escalated, on January 1, 2012, based on the amount determined by applying ninety percent (90%) of the percentage increase, if any, in the “All Commodities” line of the “Producer Price Index” published by the United States Bureau of Labor Statistics (or its successor organization), for the period between October 1, 2010, and October 1, 2009. Base Rental shall not be decreased to an amount below the Base Rental in effect during the prior year.

E) The Base Rental for the fifth year (January 1, 2013, to December 31, 2013) of the Initial Term shall be escalated, on January 1, 2013, based on the amount determined by applying ninety percent (90%) of the percentage increase, if any, in the “All Commodities” line of the “Producer Price Index” published by the United States Bureau of Labor Statistics (or its successor organization), for the period between October 1, 2011, and October 1, 2010. Base Rental shall not be decreased to an amount below the Base Rental in effect during the prior year.

4. Training. Tenant will institute an on-going training program to improve work skills of its International Longshoremen’s Association (“ILA”) employees. This program will include training and periodic review of skill emphasizing and will include crane signaling, forklift driving, and safety in cargo handling.

The purpose of such training is to increase safety on the docks at the Property and improve productivity. Port crane operators, acting reasonably and after consultation with the Tenant's management, reserve the right to halt dock operations at the Property or elsewhere at the Port, as applicable, in connection with overflow arrangements, that they consider unsafe due to inadequately trained ILA employees of the Tenant.

5. Dock Supervision. Tenant will provide for sufficient management supervision at all Port work sites at the Property or elsewhere at the Port, as applicable, in connection with overflow arrangements, including at multiple working locations.

6. Governing Law.

A) Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all records created or maintained by the Tenant, as a result of the Lease Agreement, are subject to and conditioned on the provisions of Wis. Stat. §§ 19.31-39. Tenant acknowledges that pursuant to Wis. Stat. § 19.36(3), it shall retain and make available to the City, upon the City's request, any record produced or collected under the Lease that is subject to the Wisconsin Public Records Law, and that the Tenant must be responsible for any liability, including defense costs, arising out of the Tenant's failure to provide records referred to in this paragraph of the Lease Agreement. Except as otherwise authorized, such records shall be maintained for a period of seven years after expiration or earlier termination of the Lease Agreement.

B) Tenant or its contractors agree to properly secure all necessary permits and licenses required by any state, federal or local departments or agencies for the operation of Tenant's business and improvements.

7. Insurance.

A) Tenant will furnish a Certificate of Insurance showing insurance written by a company licensed in the State of Wisconsin, approved by City, and covering any and all liability or obligations which may result from the operation of Tenant's business at the Property by Tenant's agents, contractors, or subcontractors. Said Certificate of Insurance will name both the Board of Harbor Commissioners and the city of Milwaukee as additional insureds. The Certificate shall provide that the insurer may not cancel, non-renew, or make any material change in said coverage or policy terms unless it first furnishes City with a sixty (60) day written notice of such cancellation, non-renewal, or material change. Said insurance shall be written in comprehensive form and shall protect Tenant and City against all claims arising from injuries to members of the

public or damage to property of others arising out of any act or omission of Tenant's agents, contractors, or subcontractors, as follows:

<u>Coverage</u>	<u>Amount</u>
- Comprehensive General Liability including applicable contractual liability (specifically relating to this Agreement)	\$2,000,000.00 per occurrence \$10,000,000.00 aggregate
- Worker's Compensation	In accordance with Ch. 102, Wisconsin Statutes & Federal law.

Failure of Tenant to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation under the Lease Agreement. City shall have the right to review policies providing the required coverage. Coverage may, at Tenant's option, be pursuant to one or more umbrella policies covering risks at the Property and at other premises owned or operated by Tenant. The attorney-in-fact or agent of any insurance company furnishing any policy of insurance shall sign and furnish an affidavit setting forth that no City official or employee has an interest, direct or indirect, or is receiving any premium, commission, fee, or other thing of value on account of furnishing said policy of insurance.

B) City will be self-insured or may obtain other insurance for all improvements on the Property. City does not waive the right of itself or any of its insurers as a subrogee.

C) Once in every five (5)-year period during the term of this Extension of Lease or any extension thereof, City shall review the extent and limits of the insurance coverage required herein. After said review, and in consultation with Tenant and with City's insurance consultant, should City determine an increase in the extent and/or limits of insurance coverage is required, Tenant shall be so notified in writing and Tenant 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 herein. Tenant shall fully cooperate with the City to facilitate the filing and processing of claims pursuant to this section.

8. **Additional Parcels**. The City will make its best effort to respond to requests from Tenant regarding providing additional premises for cargo storage and handling.

9. **Security Compliance**. Tenant agrees to conform to all national security requirements imposed on the Tenant by the U.S. Department of Homeland Security, the Marine Transportation Security Act and its implementing regulations, as well as any applicable state and local security rules and regulations. The City agrees to conform to all national security requirements imposed on the City by the U.S. Department of Homeland Security, the Marine Transportation Security Act and its implementing regulations, as well as any applicable state and local security rules and regulations. Tenant will cooperate with the City to implement any temporary emergency Port-wide security measures requested or prescribed by the U.S. Coast Guard or Department of Homeland Security, provided such measures do not conflict with the Tenant's approved Facility Security Plan. "Security," as that term is used herein shall mean "Measures designed to safeguard personnel; to prevent unauthorized access to equipment, property, buildings, harbor facilities, installations, materials, and documents; and to safeguard against espionage, sabotage, damage, and theft, or to prevent persons or organizations from engaging in any activity or using Port properties, equipment and material in a manner that would aid an effort to harm vital interests of the City of Milwaukee, the State of Wisconsin or the United States of America."

D) All other terms and conditions of the Lease Agreement are hereby ratified and confirmed and are to continue in full force and effect insofar as they are not inconsistent with the terms and conditions of this Extension of Lease. In any case of inconsistency, the terms and conditions of this Extension of Lease will govern. For sake of clarity, Sections 1, 2, 3, 5(A) paragraph 3, 5(C) and 20 of the Lease Agreement shall be of no further effect, and replaced by the applicable amendments, contained herein, effective as at January 1, 2009, save and except for Section 8 of this Extension of Lease, which shall be effective as at the date as first above written.

IN WITNESS WHEREOF, the parties hereto have caused this Extension and Amendment to Lease Agreement to be executed by the proper respective officers, and their corporate seals to be affixed hereto, as of the day and year first above written.

In the Presence of:

CITY OF MILWAUKEE:

(witness signature)

Tom Barrett, Mayor

(witness signature)

Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

(witness signature)

W. Martin Morics, City Comptroller

In the Presence of:

BOARD OF HARBOR COMMISSIONERS:

Timothy K. Hoelter, President

Donna Luty, Secretary

In the Presence of:

FEDERAL MARINE TERMINALS, INC. :
an Illinois Corporation

(witness signature)

(witness signature)

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this _____ day of _____, 20__, Tom Barrett, Mayor of the above-named municipal corporation, 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
MILWAUKEE COUNTY**

Personally came before me this _____ day of _____, 20__ Ronald D. Leonhardt, City Clerk of the above-named municipal corporation, 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
MILWAUKEE COUNTY**

Personally came before me this _____ day of _____, 20__, W. Martin Morics, City Comptroller of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin

My Commission Expires _____

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this _____ day of _____, 20__, Timothy K. Hoelter, President, and Donna C. Luty, Secretary of the Board of Harbor Commissioners, 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 _____
_____ COUNTY

Personally came before me this _____ day of _____, 20__, _____,
_____ of Federal Marine Terminals, Inc., who by its authority and on its behalf
executed the foregoing instrument and
acknowledged the same.

NOTARY PUBLIC, State of _____

My Commission Expires _____

APPROVED as to Form and Execution this
_____ day of _____, 20__.

STUART S. MUKAMAL
Assistant City Attorney