

Second Amendment To and Extension of Lease Agreement

This Second Amendment To and Extension of Lease Agreement (hereinafter referred to as the “Second Extension of Lease”) made and effective as of the ____ day of _____, 2013, by and between FEDERAL MARINE TERMINALS, INC., an Illinois Corporation, (hereinafter referred to as the “Tenant”), and the CITY OF MILWAUKEE, a Wisconsin municipal 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, and extended and amended on October 21, 2008, (together hereinafter referred to as the “Lease Agreement”), whereby the City leased to the Tenant certain real property, located on the South Harbor Tract of the Port of Milwaukee; as defined the Lease Agreement, (hereafter referred to as the “Property”), through to December 31, 2013, with options to extend; and

WHEREAS, the Tenant, by written notice dated October 26, 2012, (a copy of which is attached hereto as Appendix “A” and incorporated herein by reference), has notified the City of its intention, pursuant to Section 2 of the Lease Agreement, to extend the Lease Agreement for the First Extension Term commencing on January 1, 2014 and terminating December 31, 2018; and

WHEREAS, the parties agree to extend the Lease Agreement pursuant to Section 2 of the Lease Agreement for the First Extension Term, to expire on December 31, 2018, and amend the base rental provisions and add an additional annual tonnage assessment and minimum annual tonnage guarantee.

Now therefore, it is agreed by the City and the Tenant as follows:

1. **The Preamble shall form part of this Second Extension of Lease.**
2. **Base Rent.** The base rental amounts during the First Extension term shall be as follows:

2014 - \$200,000

2015 - \$205,000

2016 - \$210,000

2017 - \$220,000

2018 - \$230,000

Base rental shall be due and payable in equal quarterly installments, on the first business days of April, July, and October, and on the last business day of December of each calendar year.

2. **Tonnage Assessments Per Metric Ton (“mt”).** In addition to the base rental described in Section 1 of this Second Extension of Lease, the Tenant shall pay to the City an assessment fee (the “Fee”) for each ton of cargo, including but not limited to steel and general cargo, to or from vessels and/or barges, handled by the Tenant across the docks at the Property. This Fee shall be as follows:

a. 0 - 100,000 = \$0.50 /mt

b. 100,001 = \$0.75/mt

All references to tons pursuant to this Section shall mean metric tons.

For the purpose of this Section, any cargoes which are transshipped from barge to vessel, or vice versa, either directly or via the docks at the Property, shall be counted only once so long as the cargo remains the same and does not undergo any substantial transformation. The date the vessel or barge arrives at the docks at the Property shall be determinative of the time period to which the cargo is allocable.

The City shall invoice the Tenant quarterly for all amounts due for the Fees, pursuant to the terms of this paragraph, and the Tenant shall pay such invoices within 30 calendar days of the Tenant’s receipt of such invoice. The City’s invoices will be based on the terms of this Section and the vessel manifests. The Tenant shall report tonnage associated with the Fees on a monthly basis to the City.

3. **Minimum Annual Tonnage Guarantees (measured in metric tons, “mt”).**

The Tenant guarantees minimum annual tonnages, as follows:

2014 - 110,000 mt

2015 - 115,000 mt

2016 - 120,000 mt

2017 - 125,000 mt

2018 - 130,000 mt

4. **Further Extension of Lease Term.** The Tenant may make a request in writing, that the term of the Lease Agreement be extended beyond the terms of this

Second Extension of Lease for one (1) additional five (5) year period (the “Second Extension Term” commencing on January 1, 2019, and terminating on December 31, 2023), under the same terms and conditions, save and except for the Base Rent, Tonnage Assessment, and Minimum Annual Tonnage Guarantees. Such a request for extension of the Lease Agreement must be delivered to the City, in accordance with the notice provisions of the Lease Agreement, no later than November 1, 2017. The City must provide the Tenant, in writing, with its response to any request by Tenant for extension of the Lease Agreement within ninety (90) days after City’s receipt of Tenant’s request for extension.

If the Tenant requests an extension of the Lease Agreement, the Base Rent, Tonnage Assessment, and Minimum Annual Tonnage Guarantees shall be negotiated by the City and the Tenant in good faith and commercially reasonable terms and agreed to no later than ninety (90) days after the City’s consent to the Tenant’s request. Failure to reach agreement shall cause the Lease Agreement to automatically expire on the expiration date of this Second Extension of Lease, unless otherwise agreed to by both parties in writing.

5. **Incorporation by Reference.** All other terms and conditions of the Lease Agreement are incorporated herein and shall continue in full force and affect except to the extent that they are altered by, or inconsistent with, the terms and conditions of this Second Extension of Lease. In any case of inconsistency, the terms and conditions of this Second Extension of Lease will govern. All capitalized terms in this Second Extension of Lease shall have, unless the context otherwise dictates, the same meaning as in the Lease Agreement.

6. **Approval.** It is agreed and understood that this Second Extension of Lease must be submitted to the Common Council of the City of Milwaukee and that the same must be approved by the Common Council and its execution authorized.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized officers executed this Second Extension of Lease under seal as of the day and year first above written.

CITY OF MILWAUKEE

Tom Barrett, Mayor

Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

W. Martin Morics, City Comptroller

BOARD OF HARBOR COMMISSIONERS

Timothy K. Hoelter, President

Lawrence Sullivan, Interim Secretary

In the Presence of:

FEDERAL MARINE TERMINALS, INC.

Michel Tosini, Vice President & General Mgr.

STATE OF WISCONSIN
MILWAUKEE COUNTY

Personally came before me this _____ day of _____, 20_____,
_____, the _____, and _____, the
_____ 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 Wisconsin
My Commission Expires _____

PLEASE NOTE: TENANTS MUST COMPLETE THE FOLLOWING:

(Note: Someone other than the individual who executed this Lease must certify the following):

CERTIFICATE RE: Corporation

I, _____ certify that I am the _____ of the above
(print name) (print title)

Tenant named herein; that _____, who executed this Lease on behalf of the
(print signator of tenant)

Tenant was then _____ of said Corporation, and in said
(official capacity of signator)

capacity, duly signed said Lease for and on behalf of said Corporation, being duly authorized so to do under its operating agreement and/or articles, or is authorized so to do by action of its members and members, all of which is within the scope of its powers.

Dated at _____ this _____ day of _____ 20 ____
(location)

(signature)

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

Assistant City Attorney

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6/6/13

SECOND AMENDMENT TO & EXTENSION OF
LEASE AGREEMENT

Between

FEDERAL MARINE TERMINALS, INC.

and the

BOARD OF HARBOR COMMISSIONERS/
CITY OF MILWAUKEE

TERM: January 1, 2014 – December 31, 2018