

AMENDMENT TO AND EXTENSION OF LEASE AGREEMENT

Between

MILWAUKEE INTERMODAL TERMINAL, LLC

and the

BOARD OF HARBOR COMMISSIONERS

City of Milwaukee

For Lease of the Container Yard at 1225 S. Carferry Drive

Effective Date: January 1, 2011 – December 31, 2014

## AMENDMENT TO AND EXTENSION OF LEASE AGREEMENT

Amendment to and Extension of Lease Agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between MILWAUKEE INTERMODAL TERMINAL, LLC, a Wisconsin Limited Liability Company, (hereinafter referred to as "Tenant"), and the CITY OF MILWAUKEE, a Wisconsin corporation, by and through its Board of Harbor Commissioners (hereinafter collectively referred to as the "City").

### W I T N E S S E T H :

WHEREAS, the City and the Tenant have entered into a Lease Agreement effective January 1, 2007 (hereinafter referred to as "Lease Agreement"), for the lease of 10.1 acres of real property located at 1225 S. Carferry Drive in the City of Milwaukee (hereinafter referred to as "Property") which is depicted in the diagram attached hereto as Exhibit A and which is incorporated herein by reference; and

WHEREAS the Lease Agreement terminates on December 31, 2010; and

WHEREAS the City and the Tenant have agreed to further extend the term of the Lease Agreement and to amend certain parts of its terms and conditions, as specified in this Amendment to and Extension of Lease Agreement; and

WHEREAS the Tenant has at no time elected to terminate the Lease Agreement and that, consequently, the Lease Agreement has continued to be, and remains, in full force and effect;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the City and the Tenant agree to amend the Lease Agreement dated August 30, 2007 as follows:

#### **1. Term.**

A) The term of this Lease will commence at 12:01 A.M. on January 1, 2011 and will terminate at 11:59 P.M. on December 31, 2011 (the "Initial Term").

The term of this Lease shall be extended for three (3) additional one (1) year periods (the "First, Second and Third Extension Terms") each successively under the same terms and conditions unless either party shall deliver to the other party a written notice of termination within one hundred eighty (180) days prior to expiration of the then current term.

B) This Lease may be terminated prior to the date of its stated expiration date by the mutual written consent of the Port Director and the Tenant.

**2. Base Rent.**

A) As and for rental of the Property during the Initial Term of this Lease, Tenant shall pay to City an annual “Base Rental” equal to \$5.75 per unit of container on flat car (COFC) and \$2.75 per unit of trailer on flat car (TOFC) received or delivered by rail, on the basis of a minimum of 7,500 COFC units per year.

B) On January 1, 2013 the base rental shall be adjusted to the amount determined by applying to it the percentage increase if any, in the “All Commodities” line (Code 2500) of the “Producer Price Indexes” published by the United States Bureau of Labor Statistics (or its successor organization ( (1982=100) for the prior two-year period; provided, however, that in no event shall the new base rental, as adjusted by the foregoing method, be decreased to an amount below that for the rental during the Initial Term.

3. **No Slavery Affidavit.** The Tenant shall execute the Affidavit of Compliance attached hereto as Exhibit \_\_\_\_\_ contemporaneously with its execution of this Lease.

4. **Open Records Law.** Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Lease Agreement are subject to and conditioned on the provisions of Wis. Stat. §19.21, et. seq. Tenant acknowledges that it is obligated to assist the City in retaining and producing records that are subject to The Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Lease Agreement, and that the Tenant must defend and hold the city harmless from liability under the law. Except as otherwise authorized by law, those records shall be maintained for a minimum period of seven years.

5. **Incorporation by Reference.** All other terms and conditions of the original Lease Agreement and Lease Extensions between the City and the Tenant are incorporated herein and are to continue in full force and effect insofar as they are not inconsistent with the terms and conditions of this Extension and Amendment. In any case of inconsistency, the terms and conditions of this Extension and Amendment will govern.

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

In the Presence of:

CITY OF MILWAUKEE

\_\_\_\_\_  
Tom Barrett, Mayor

\_\_\_\_\_  
Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

\_\_\_\_\_  
W. Martin Morics, City Comptroller

In the Presence of:

BOARD OF HARBOR COMMISSIONERS

\_\_\_\_\_  
Timothy K. Hoelter, President

\_\_\_\_\_  
Donna Luty, Secretary

In the Presence of:

MILWAUKEE INTERMODAL TERMINAL, LLC

\_\_\_\_\_  
Mr. Roy Cook, President

**STATE OF WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Roy Cook, the President, of Milwaukee Intermodal Terminal, 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: Limited Liability Company

I, \_\_\_\_\_ certify that I am the \_\_\_\_\_ of the above Tenant  
(print name) (print title)  
named herein; that \_\_\_\_\_, who executed this Lease on behalf of the Tenant was then  
(print signator of tenant)

\_\_\_\_\_ of said limited liability company, and in said capacity, duly signed said Lease  
(official capacity of signator)

for and on behalf of said limited liability company, 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