

AMENDMENT TO AND EXTENSION OF  
LEASE AGREEMENT

Between

EDWARD E. GILLEN COMPANY

and the

BOARD OF HARBOR COMMISSIONERS

City of Milwaukee

For 7.615 acres of bare ground located in the northeast  
corner of the Port's Grand Trunk Property at South Marina Drive

Term: January 1, 2011 – December 31, 2036

## AMENDMENT TO AND EXTENSION OF LEASE AGREEMENT

Amendment to and Extension of Lease Agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Edward E. Gillen Company, a Wisconsin corporation, (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 dated October 24, 2005 for the period from March 1, 2005 through December 31, 2007 (hereinafter referred to as the "Lease Agreement") as amended for the lease of 7.615 acres of real property located on the Grand Trunk Property of the City of Milwaukee, but at all times excluding any property identified as wetlands (hereinafter referred to as the "Property"); and

WHEREAS, the city and the Tenant desire to further extend and amend their Lease Agreement in the manner hereinafter set forth; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the City and the Tenant agree to further extend and amend the Lease Agreement dated October 24, 2005 as amended as follows:

1. **Term.** The Initial Term of this Lease Agreement shall be for a period of twenty-five (25) years (the "Initial Term") commencing on January 1, 2011 and terminating at 11:50 p.m. on December 31, 2036.

Tenant shall have the right to extend the term of this Lease Agreement for two (2) successive periods of (15) years each (the "First Extension Period" and the "Second Extension Period" respectively). In order to exercise each option to extend this Lease Agreement, Tenant shall provide City with written notice of its intent to do so no less than twelve (12) months prior to the expiration of the Initial Term or any extended term as applicable.

Tenant shall have the right to terminate this Agreement in the event: (1) that the Tenant reasonably believes that the Purpose of the Agreement, as set forth herein, cannot be fulfilled, or (2) Tenant is sold in an arms-length transaction or ceases operations.

Tenant will give City a six-month prior written notice of its intent to terminate this Agreement. Also, Tenant will contact and consult with the Municipal Port Director sixty days before sending such notice to allow City the opportunity to rectify, if possible, the situation necessitating termination.

2. **Purpose of Agreement.** To provide Tenant sufficient land space to consolidate its various operations at one location, including the construction of a new company headquarters building of approximately 10,000 square feet upon financial terms satisfactory to the Tenant. Tenant will also operate a dockside reception and load out facility for stone rip rap and other common construction aggregate materials, and general marine construction work. Property will be used for the storage, erecting and maintenance of materials and equipment related to the Tenants marine contracting business. No hazardous materials are to be handled on the Property. Other operations may be performed provided the express written consent for said operations is obtained from the Municipal Port Director.

City agrees to cooperate with Tenant in attempting to secure Harbor Grant Funds or other federal, state, or other funds, including entering into TIF or other taxing or other agreements to finance the required improvements to the leased Property.

3. **Conditions of Use of Property.**

A) Due to weight limitations necessitated by the dockwall construction, Tenant will maintain a 50-foot setback from the dockwall when handling or storing stone products or other materials and cargo. Tenant will cooperate with City during any repairs to the dockwall, and will be responsible for all dockwall damages caused by its operations and incurred after the date of this Agreement, excluding improvements required by the City which increase or maintain the value of the land. Tenant also agrees not to load more than 600 pounds per square foot without permission of the Port's Harbor Engineer.

B) Tenant's Barge Fleet Berth. With reference to the barge docking agreement between City and Tenant dated July 26, 2005, this Agreement also allows the Tenant to pay an amount yearly for the right to utilize dockwalls adjacent to this Property and Tenant's Property at 1801 South Carferry Drive for mooring of its Barge and Tug Fleet. Tenant shall repair any damages to a dockwall caused by its fleet. If the Tenant elects to reserve this right for any given year, Tenant shall only pay the amount set forth in Section 4(A).

C) Tenant shall have preferential, but not exclusive use of the berthing space on dockwall adjacent to the Property.

4. **Rent.**

A) The rental rate under this Agreement shall be Ten Thousand and no/100<sup>th</sup> Dollars (\$10,000) per acre per year or Seventy Six Thousand One Hundred Fifty and no/100<sup>th</sup> Dollars (\$76,150) for total leasehold. Rent shall be payable quarterly, in advance on January 1, April 1, July 1, and October 1. Each rent payment shall be for the immediately succeeding quarter.

B) On January 1, 2012 and on each anniversary date thereafter during the terms of this Agreement, the annual rent for the Property shall be adjusted to the amount determined by applying the percentage increase, if any, of the "Consumer Price Index" published by the United States Bureau of Labor Statistics (or its successor organization) (1982=100) for the one-year period prior to the beginning of the new rental period, to the rental figure payable during the previous year of this Lease; 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 previous period.

C) Throughput on Stone Products. Tenant further agrees to pay City a throughput charge of forty cents (\$.40) per metric ton (2,204 pounds) of material, as described in Paragraph 2 above that is received upon the Property. Tenant agrees to throughput a minimum tonnage of 7,500 metric tons per year during the term of this Agreement. Throughput shall be escalated annually according to Section 3(B).

D) Wharfage on Other Cargo. Tenant agrees to pay City the wharfage fee based upon the appropriate provision of the Municipal Port Tariff (Item 215) in effect at the time of cargo movement.

E). Tenant Fleet Dockage. Dockage charge on Tenant owned barges and tugs shall be billed at \$1,800 per month, payable quarterly as specified in Section 4(A). This charge shall be escalated annually according to Section 3(B).

5. **Possible Future Relocation**. It is anticipated that the City may determine during the term of this Agreement that it would be advantageous to lease the Property to a different tenant or sell the Property, which would require relocation of the current Tenant.

In this event, the City and Tenant must give a minimum of three (3) years advance written notice of its intent to relocate Tenant to other City waterfront real estate on a navigable waterway, in contemplation of a re-leasing or sale of the Property.

In such event, the City and Tenant shall immediately commence good faith negotiations with respect to the identification of an alternative parcel(s) on a navigable waterway to which the Tenant can relocate, which must be reasonably acceptable to Tenant.

The cost of such relocation shall be borne by the City, and the terms and conditions of this Lease Agreement shall continue in full force and effect during and following any such relocation unless otherwise agreed to by the City and the Tenant in writing, as an amendment to this Lease Agreement.

6. **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, those records shall be maintained for a minimum period of seven years after receipt of finally payment under this Agreement

7. **Insurance**. Tenant shall maintain in full force and effect throughout the currency of this Lease, the following insurance covering any and all liability or obligations which may result from operations by Tenant, Tenant's employees, agents, contractors or subcontractors as aforesaid in this Lease:

A) Property insurance coverage protecting against physical damage (including but not limited to fire, lightning, extended coverage perils, vandalism, sprinkler leakage, water damage, collapse and other special extended perils) to the extent of the replacement cost of Tenant's personal property and improvements as well as goods or property in Tenant's care, custody and/or control.

B) Comprehensive General Liability Insurance (including but not limited to Products and Completed Operations and Contractual Liability, as applicable to Tenant's obligations under this Lease) with limits not less than:

Each Occurrence Limit:	\$2,000,000
Products/Completed Operations Aggregate:	\$2,000,000
General Policy Aggregate:	\$2,000,000

C) Automotive Liability Insurance with Limits not less than:

Bodily Injury and Property Damage

Combined Single Limit: \$1,000,000 per occurrence

D) Worker's Compensation Insurance in accordance with Chapter 102, Wisconsin

Statutes and any applicable Federal law.

E) Umbrella Coverage: \$10,000,000 in aggregate

#### 8. **Environmental Compliance and Obligations.**

(A) Compliance with Environmental Regulations. Tenant shall fully comply with all statutes, regulations, or other applicable requirements imposed by any federal, state, or municipal agency with respect to the environmental condition of the Property and/or with respect to any activities or operations that Tenant may conduct upon the Property (hereinafter referred to as "Environmental Requirements"). Tenant shall not cause, permit or suffer the existence or commission by Tenant, its agents, employees, contractors or invitees, or by any other person of any violation of any Environmental Requirements upon, about or beneath the Property or any portion thereof.

(B) Hazardous Material; Environmental Liens. Except to the extent commonly used in the day-to-day operation of the Property, and in strict compliance with all Environmental Requirements (including those relating to storage, use and disposal), Tenant shall not cause, permit or suffer any "hazardous material" or "hazardous

substance" (as defined by applicable Federal or State statutes or regulations) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined, or used upon, about, or beneath the Property or any portion thereof by Tenant, its agents, employees, contractors, tenants or invitees, or any other person without the prior written consent of the City. Any request by Tenant for such consent by the City shall be in writing and shall demonstrate to the reasonable satisfaction of the City that such "hazardous material" or "hazardous substances" is necessary to the conduct of the business of Tenant and will be stored, used, and disposed of in a manner that complies with all applicable Environmental Requirements. Tenant shall not create or suffer to exist with respect to the Property any lien, security interest, or other charge or encumbrance of any kind relating to the environmental condition of the Property, including (without limitation) any lien imposed pursuant to Sec. 107(f) of the Superfund Amendments and Reauthorization Act 1986 (42 U.S.C. § 9607(L)) or any similar State Statute.

(C) Environmental Laws. The term "Environmental Laws" shall mean and include (a) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984; (b) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601-9657; (c) the Hazardous Materials Transportation Act of 1975, 49 U.S.C. § 1801-1812; (d) the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq.; (e) the Clean Air Act, 42 U.S.C. § 7401, et. seq.; (f) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136, et. seq.; (g) Chapters 280-299 of Wisconsin Code; and all similar federal, state, or local environmental laws, ordinances, rules, codes and regulations, and as any of the foregoing may have been amended, supplemented, or supplanted and any other federal, state or local laws, ordinances, rules, codes and regulations now existing relating to the environment or the regulation or control or imposing liability or standards of conduct concerning toxic or hazardous waste, substances or materials.

(D) Obligation to Remediate. Tenant shall, upon demand of the City, and at its sole cost and expense, promptly take 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, which remediation is necessitated from, or attributable to, the presence upon, about, or beneath the Property of any "hazardous material" or "hazardous substances" or any violation of Environmental Requirements caused by the Presence of and/or activities or operations conducted by the Tenant upon the Property. Any such remediation shall be performed by and under the direction of a qualified environmental consulting or engineering firm approved by City in advance of the commencement of the work. Tenant agrees to allow entry upon the Property by the City, or agents, contractors or employees of the City for purposes of conducting environmental audits and/or other tests for the purpose of determining the impact of Tenant's presence and/or activities or operations upon or with respect to the Property upon the environmental condition thereof. In the event that Tenant performs any such environmental audit and/or test on its own behalf, it shall promptly provide to the City full and complete copies of any results and/or reports that are generated in connection with the above activities.

(E) Survival of Obligations. Tenant's obligations with respect to the environmental condition of the Property (as more fully set forth in Subsections (A) through (D) above) shall survive the expiration or termination of this Lease.

9. 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.

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

11. Authorization. The undersigned signatories to this instrument represent that they are duly authorized to contract on behalf of their respective entities.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to and Extension of Lease Agreement to be executed by the property respective officers as of 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:  
EDWARD E. GILLEN CO.

\_\_\_\_\_  
Richard C. Zirbel, President

**STATE OF WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Richard C. Zirbel, the President, of EDWARD E. GILLEN CO., 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

(print name) (print title)  
TENANT named herein; that \_\_\_\_\_, who executed this Lease on  
behalf of

(print signator of tenant)

the TENANT was then \_\_\_\_\_ of said limited liability company, and  
in said

(official capacity of signator)

capacity, duly signed said Lease 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

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