

AMENDMENT TO AND EXTENSION OF LEASE  
AGREEMENT

Between

EDWARD E. GILLEN COMPANY

and the

BOARD OF HARBOR COMMISSIONERS

City of Milwaukee

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

Effective: January 1, 2011 – December 31, 2036

## AMENDMENT TO LEASE AGREEMENT

This Amendment to and Extension of Lease Agreement made and entered into at Milwaukee, Wisconsin as of this \_\_\_\_\_ 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 December 20, 2000 on a month-to-month basis (hereinafter referred to as the "Lease Agreement") for the lease of 2.0 acres of real property located at Harbor Drive Extended in the City of Milwaukee (and hereinafter referred to as the "Property"); which is depicted in the diagram attached hereto as Exhibit A and which is incorporated herein by reference; and

WHEREAS the Lease Agreement was amended October 24, 2005 again on a month-to-month basis, at which time the Property was expanded to 2.9 acres; and

WHEREAS on October, 2006 the City and Tenant, by letter agreement, expanded the Property to comprise 3.44 acres; and

WHEREAS the City and Tenant have agreed to further extend the term of the Lease Agreement (as amended) and to further 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 affect;

NOW, THEREFORE in consideration of the mutual covenants and conditions set forth herein, the City and Tenant agree to amend the Lease Agreement dated October 19, 2000 as follows:

1. **Term.**

A) The term of this Lease Agreement shall be extended for twenty-five (25) years commencing at 12:00 a.m. on January 1, 2011 and terminating at 11:59 p.m. on December 31, 2036 (the "Extended Term"). .

B) This Lease may be terminated prior to the date of its stated expiration date by 90 day written notice of tenant, Landlord or by mutual consent of the Port Director and the Tenant. This Lease may be extended for two additional fifteen (15)-year extension terms (the “First Extended Term” and the “Second Extended Term” respectively) at Tenant’s option, which must be delivered to the City in writing on hundred eighty (180) days prior to the expiration of the then current term.

2. **Rent.**

A) Tenant shall pay to City during the extended term, the sum of Thirteen Thousand Five Hundred Thirty Three and 00/100ths Dollars (\$13,533) per acre per year or \$46,553.52 for the entire Property payable quarterly in arrears.

B) On January 1, 2012 and on each anniversary date thereafter during the terms of this Lease, 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.

3. **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

4. **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) 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.

(C) 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.

(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.

F) Nothing in this agreement shall be deemed to be or constitute a waiver by the City of any defense available to it as a governmental entity pursuant to 42 U.S.C. § 9601 (35) (A) (ii) and § 9607 (b) (3) or Wis. Stat. § 292.11(9)(e), 292.23(2), 292.24(2) and 292.26.

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

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. **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 property 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

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Tom Barrett , Mayor

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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  
(print name) (print title)

above TENANT named herein; that \_\_\_\_\_, who executed this Lease  
(print signator of tenant)  
on behalf of the TENANT was then \_\_\_\_\_ of said limited liability  
(official capacity of signator)  
company, and in said 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