

## FOURTH AMENDMENT TO AND EXTENSION OF LEASE AGREEMENT

This Fourth Amendment to and Extension of Lease Agreement (hereinafter referred to as the “Fourth Extension of Lease”) made as of this \_\_\_\_ day of \_\_\_\_\_, 2022, 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, and further amended on September 28, 1999 (together hereinafter referred to as the “Lease Agreement”), whereby the City leased to the Tenant certain real property through December 31, 2008, (hereafter referred to as the “Property”), located on the South Harbor Tract of the Port of Milwaukee; and

WHEREAS, the Lease Agreement was extended by the City and the Tenant by a lease extension on November 13, 2008, for a five (5) period commencing January 1, 2009 up through and including December 31, 2013; and a Second Extension, on January 1, 2014 up through and including December 31, 2018; and a Third Extension, on January 1, 2019, up through and including December 31, 2023; and

WHEREAS, the Tenant, by written notice dated September 20, 2022, (a copy of which is attached hereto as Appendix “A” and incorporated herein by reference) has notified the City of its intension, pursuant to Section 2 of the Lease Agreement, to extend the Lease Agreement for an additional five (5) year period commencing on January 1, 2024 and terminating December 31, 2028, under the same terms and conditions as contained in the Lease Agreement, except for the modifications of the base rental figure and additional tonnage assessments specified herein.

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

1. **Term.** The term of this Fourth Extension of Lease shall commence on January 1, 2023, to include the last year of the Third Amendment, and terminate on December 31, 2028, subject to the Lease Agreement being extended per Section 5 herein.
2. **Base Rent.** The base rental amounts for the Property during the five-year term of this Fourth Extension of Lease shall be as follows:

2023 - \$247,000

2024 - \$250,000

2025 - \$253,000

2026 - \$256,000  
2027 - \$259,000  
2028 - \$263,000

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.

3. **Tonnage Assessments per metric ton (“mt”).** In addition to the base rental described in Section 1 of this Fourth 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 = \$0.75 /mt
- b. 100,001 = \$0.50 /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.

4. **Minimum Annual Tonnage Guarantees. (measured in metric tons, “mt”).**  
Tenant will pay all tariff rates applicable at the below minimums to the City if actual tonnage falls below these levels.

2023 - 140,000 MT  
2024 - 140,000 MT  
2025 - 145,000 MT  
2026 - 145,000 MT  
2027 - 150,000 MT  
2028 - 150,000 MT

5. **Storm Water & Snow/Ice Management Fees.** In addition to Base Rent, Tonnage Assessment and Minimum Annual Tonnage Guarantees the Tenant shall pay a Storm Water Management and Port Facilities Maintenance Fee (“Storm Fee”) of Thirty Three Cents (\$.33) per metric ton for each metric 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. 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. Tenant agrees to pay the Storm Fee based on a minimum annual tonnage of 150,000 metric tons. The Tenant shall collect the Storm Fee on behalf of the Port. The Storm Fee shall be paid in lieu of any charge under Wis. Stat. § 66.0627 and § 309-83 MCO, or any other Storm Water Maintenance or similar legislation, which will be paid to the City by the Port of Milwaukee. City may adjust this fee in years 2024, 2026 and 2028 by no more than 5% in each respective year.

6. **Further Extension of Lease Term.** The Tenant may make a request in writing, the term of the Lease Agreement be extended beyond the terms of this amendment for one (1) additional five (5) year period (terminating on December 31, 2033), under the same terms and conditions, save and except for the Base Rent, Tonnage Assessment, and Minimum Annual Tonnage Guarantees and the Storm Fee. 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, 2027. The City must provide the Tenant, in writing, with its response to any request by Tenant for extension of the Lease Agreement within one hundred eighty (180) days after City’s receipt of Tenant’s request for extension.

If the Tenant requests a further extension of the Lease Agreement, the Base Rent, Tonnage Assessment, Minimum Annual Tonnage Guarantees, and the Storm Fee shall be negotiated by the City and the Tenant in good faith and commercially reasonable terms and agreed to no later than one hundred eighty (180) 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 Fourth Extension of Lease, unless otherwise agreed to by both parties in writing.

7. **Incorporation by Reference.** All other terms and conditions of the original Lease Agreement, Lease Assignment, and Lease Extensions between the City and the Tenant are incorporated herein and shall continue in full force and effect except to the extent that they are altered by, or inconsistent with, the terms and conditions of this Fourth Extension of Lease. In any case of inconsistency, the terms and conditions of this Fourth Extension of Lease will govern.

8. **Approval.** It is agreed and understood that this Fourth 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 Fourth Extension of Lease under seal as of the day and year first above written.

In the Presence of:

CITY OF MILWAUKEE

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Cavalier Johnson, Mayor

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Jim Owczarski, City Clerk

COUNTERSIGNED:

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Aycha Sawa, Comptroller

BOARD OF HARBOR COMMISSIONERS

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Timothy K. Hoelter, President

\_\_\_\_\_  
Jackie Q. Carter, Interim Secretary

FEDERAL MARINE TERMINALS, INC.

\_\_\_\_\_  
Louis Saint-Cyr, President

PROVINCE OF QUEBEC  
CITY OF MONTREAL

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, Louis Saint-Cyr, the President, of Federal Marine Terminals, Inc. who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Commissioner for Oaths, Province of Quebec

My Commission Expires: \_\_\_\_\_

APPROVED as to Form and Execution this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Alex Carson, Assistant City Attorney

**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  
(print signator of tenant)

the above 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 bylaws or is authorized so to do by action of its duly constituted board, all of which is within the scope of its corporate powers.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_  
(location)

\_\_\_\_\_  
(signature)

FOURTH AMENDMENT TO & EXTENSION OF  
LEASE AGREEMENT

Between

FEDERAL MARINE TERMINALS, INC.

and the

BOARD OF HARBOR COMMISSIONERS/  
CITY OF MILWAUKEE

TERM: January 1, 2023 through December 31, 2028