

AMENDMENT TO LEASE AGREEMENT

Between

EDWARD E. GILLEN COMPANY

and the

BOARD OF HARBOR COMMISSIONERS

City of Milwaukee

For the addition of (4.385 acres) of bare ground
adjacent to Gillen's Leasehold located at the Port's
Grand Trunk Property at South Marina Drive

Term: July 1, 2011 through December 31, 2036

AMENDMENT TO LEASE AGREEMENT

Amendment to Lease Agreement made as of the ____ day of _____, 20____, by and between Edward E. Gillen Company, a Wisconsin corporation, (hereinafter referred to as the "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 at South Marina Drive 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 further amended and extended this Lease Agreement on March 24, 2011; and

WHEREAS, the City and the Tenant desire to further 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 amend the Lease Agreement dated October 24, 2005 as amended as follows:

1. **Property.**

A) An additional (4.385 acres) of bare ground adjacent to Gillen's leasehold of 7.615 acres of bare ground of the Port's Grand Trunk Property at South Marina Drive as detailed on attached Exhibit A. With this addition total acreage of the Property is 12.0 acres.

B) As a condition of use for the entire leasehold Property, Tenant will provide an approximate 30-foot wide right of way roadway access (easement) through the Property to the Kinnickinnic River dockwall from the southern unleased portion of the Grand Trunk property. This right-of-way will provide access to the river for a future potential tenant for the remaining unleased land at the Grand Trunk Property. The Tenant reserves the right to approve or reject any potential use of that easement as it may conflict with or restrict Tenant's use of the Property and dockwall. The access is not for general public use, but rather for the exclusive use of a potential future tenant at the adjoining south property. Exact location of the easement to be determined, but presumably would run along the western boundary of the Property.

C) Tenant agrees that part or all of the area along the southern boundary of the entire 12.0 acre Property, not to exceed 50 feet in width (the "Buffer Zone"), shall be surrendered and returned to the City, at the City's option, at any time during the term of this Lease, if the City determines that the Buffer Zone is needed to offset the wetland area south of the Property. To the extent that the City requires Tenant to surrender the Buffer Zone, the parties agree that the total acreage of the Property and the total annual rent payable by the Tenant shall be adjusted accordingly.

2. **Term.** The Initial Term of the Lease Agreement as hereby amended shall commence on July 1, 2011 and terminate at 11:59 p.m. on December 31, 2036 for a total "Initial Term" of 24.5 years.

3. **Rent.**

A) The rental rate for the additional (4.385 acres) will be \$13,533 per acre per year. This amount is the rent currently paid by the Tenant for comparable land under lease with the City on Harbor Drive Extended (lease dated December 20, 2000 as amended).

Total annual additional rent for the added (4.385 acres) will be (\$59,342.00). Current annual rent for the original 7.615 acres in the Lease Agreement is \$76,150.00.

Therefore, total annual rent for the total Property (4.385 acres plus 7.615 acres or 12.115 acres) is (\$135,492.00) payable quarterly in advance. This equates to \$11,291.00 per acre per year.

B) At the commencement of this Agreement, rent shall be prorated to reflect the percentage of occupation of the Property until such time as the Tenant is fully occupying the Property. It is anticipated that Tenant will occupy the Property in stages as it consolidates its operations from other harbor leaseholds. An "Occupation Schedule" will be proposed and agreed upon by the Tenant and City. Rent will reflect only land that is occupied. Relocation to the Property should be completed by December 31, 2012.

4. **Incorporation by Reference.** All other terms and conditions of the original Lease Agreement and Lease Extension 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.

5. **No Slavery Affidavit.** The Tenant acknowledges the No Slavery Affidavit executed under the Lease Agreement of February 22, 2011 as attached and agrees that it applies to this Amendment.

6. **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 Lease Agreement to be executed by the properly 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