

**AMENDMENT TO AND EXTENSION OF LEASE AGREEMENT**

Between

JACOBUS ENERGY, INC.

and the

BOARD OF HARBOR COMMISSIONERS

City of Milwaukee

For lease of 4.6 Acres of Property, located on the  
South Harbor Tract at 1726 S. Harbor Drive

**AMENDMENT TO AND EXTENSION OF LEASE AGREEMENT**

This Amendment to and Extension of Lease Agreement (“Lease Extension”), made and entered into at Milwaukee, Wisconsin as of this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between JACOBUS ENERGY, INC., a Wisconsin 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 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 3, 2001, as amended by the Amendment to and Extension of Lease Agreement dated December 6, 2001 (hereinafter collectively referred to as the “Lease Agreement”) for the lease of approximately 10.0 acres of real property located on the Port’s South Harbor at 1726 S. Harbor Drive in the City of Milwaukee (and hereinafter referred to as the “Property”); and

WHEREAS, the Lease Agreement provides for a term of seven (7) years commencing on January 1, 2001, which was extended for one additional year with a final expiration date of December 31, 2008; and

WHEREAS, the Tenant is returning to the City as bare ground approximately 5.4 acres of the original leasehold during 2009 (the “5.4 Acre Parcel”); and

WHEREAS, the Tenant has requested an additional lease extension for three (3) years for the remaining 4.6 acres that were originally within the coverage of the Lease Agreement (the “4.6 Acre Parcel”); and

WHEREAS, the City and the Tenant have agreed to extend the term of the Lease Agreement as further specified in this Amendment to and Extension of Lease Agreement;

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

1. Term. The term of this Lease Extension shall be extended from January 1, 2009 commencing at 12:00 a.m. and terminating at 11:59 p.m. on December 31, 2011. Thereafter, the term of this Lease Extension will continue on a month-to-month basis, which may be terminated by either party upon thirty (30) days prior written notice. Notwithstanding the foregoing, upon providing the City with 90 days advance written notice, the Tenant may terminate this Lease Extension prior to December 31, 2011

without liability to the City for payment of rent for the remainder of the Lease Extension in the event that the Tank Lease between the Tenant and Safety-Kleen Systems, Inc. is terminated.

2. Rent.

(A) Rent for the Property is set in the Lease Agreement at \$8,500 per acre per year. This rental rate will continue until such time when the Tenant completes its removal of oil storage tanks and other improvements, and returns the 5.4 Acre Parcel to the City as bare ground.

Annual rent for the 4.6 Acre Parcel under this Lease Extension shall thereupon be increased to Thirteen Thousand Dollars (\$13,000) per acre, payable monthly in advance.

(B) On January 1, 2011, the annual rent for the 4.6 Acre Parcel shall be adjusted to the amount determined by applying 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) during the previous 12-month rental period, to the annual rent payable during the previous 12-month period 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 rent during the preceding year.

(C) Throughput in lieu of Wharfage. In addition to the foregoing Rent, the Tenant shall also pay the City throughput charges during the term of this Lease for cargo, product, or ingredients shipped from the property by vessels, barges, rail cars, trucks or other conveyances as specified in the following schedule:

Throughput Charge	
<u>Calendar Year</u>	<u>per Metric Ton</u>
2009	\$.30
2010	\$.30
2011	\$.35

The Tenant agrees to a minimum annual throughput revenue equal to 10,000 tons of actual receipts of petroleum products.

3. Rail Track Usage. Section 4.C of the Lease Agreement shall be amended as follows:

C. The Tenant, as track rental for such trackage, shall pay the City the sum of Five Hundred Dollars (\$500) per month, payable quarterly in arrears, which amount shall be prorated based upon the Tenants actual use of such trackage during such quarters.

The Tenant will provide the Harbor Master with a 14-day advance notice of its intention to use rail tracks.

4. Insurance. Section 14 of the Lease Agreement shall be amended as follows:

(A) The Tenant shall maintain Commercial General Liability and Excess Liability coverage as defined in Section 14 of the Lease Agreement in the amount no less than \$2,000,000 per occurrence; \$10,000,000 in the aggregate. A Certificate of Insurance evidencing this coverage shall be provided annually to the Lessor during the term of this Lease Extension. Such Certificate of Insurance shall show the address of the 4.6 Acre Parcel and include Additional Insured status for the Board of Harbor Commissioners and the City of Milwaukee.

(B) The Tenant and the City acknowledge that a Phase II assessment has been performed upon the entire Property, including the 5.4 Acre Parcel and the 4.6 Acre Parcel. The City retains the right to further test the 4.6 Acre Parcel during the term of this Lease Extension and within one hundred eighty (180) days following the date of its expiration or other termination. The Phase II assessment of the Property has been performed by an environmental consultant approved by both the City and the Tenant for the environmental testing of the Property, i.e. both the 5.4 Acre Parcel and the 4.6 Acre Parcel. The testing has not been limited as to any product. The test results shall be reported in a Phase II environmental site assessment report to be prepared by the environmental consultant conducting the testing, which will serve as a baseline environmental survey for present and future users of the Property. The cost of the testing and preparation of the Phase II environmental assessment report will be shared between the City and the Tenant in accordance with the following ratio: 35% Port, 25% DCD, and 40% (to a maximum of \$16,000) Tenant. Any cleanup of either the 5.4 Acre Parcel or the 4.6 Acre Parcel, that is indicated by the results of the environmental testing will be determined and conducted in accordance with the terms of the Lease Agreement.

(C) The Tenant shall maintain Environmental Impairment Liability coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate upon the 5.4 Acre Parcel and the 4.6 Acre Parcel as set forth below.

(1) The Tenant shall maintain environmental insurance coverage upon the 5.4 Acre Parcel throughout the period of any environmental remediation deemed necessary due to the Phase II assessment of the Property already performed and until such time as the Wisconsin Department of Natural Resources (“WDNR”) issues a “no further action” letter for that parcel. If the WDNR issues a partial closure letter for said parcel, the City and the Tenant shall meet and confer in good faith with respect to any obligation on the Tenant’s part to maintain environmental insurance thereon and shall endeavor to reach an equitable adjustment.

- (2) Regardless of the results of the environmental testing, Environmental Liability (EIL) coverage must be continued upon the 4.6 Acre Parcel throughout the term of this Lease Extension. EIL coverage must also be continued for four years thereafter, or through out the period of any environmental remediation deemed necessary due to Phase II assessment of the Property, referenced in this section, whichever is longer, until such time as the Wisconsin Department of Natural Resources (WDNR) issues a “no further action letter” for the parcel.
- (3) A Certificate of Insurance showing respective addresses of the 4.6 Acre Parcel and of the 5.4 Acre Parcel must be provided during the respective periods for which EIL coverage must be maintained for each parcel as specified in this section. Such Certificate of Insurance shall show the address of each parcel and include Additional Insured status for the Board of Harbor Commissioners and the City of Milwaukee.

5. Continuation of Lease Agreement. Except as otherwise provided for in this Lease Extension, all other terms and conditions of the Lease Agreement shall remain unchanged and continue in full force and effect.

6. Approval. It is further agreed and understood that this Lease Extension 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 caused this Lease Extension 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**

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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:

**JACOBUS ENERGY, INC.**

\_\_\_\_\_  
Eugene T. Jacobus, President

\_\_\_\_\_  
Fred Regenfuss, Executive Vice President

STATE OF WISCONSIN  
MILWAUKEE COUNTY

Personally came before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Eugene T. Jacobus, the President, and Fred Regenfuss, the Executive Vice President, of JACOBUS ENERGY, INC., 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:** TENANT 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  
(print name) (print title)  
above TENANT named herein; that \_\_\_\_\_, who executed this  
(print signator of tenant)

Lease on behalf of the TENANT was then \_\_\_\_\_ of said  
(official capacity of signator)  
corporation, and in said 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)

APPROVED as to Form and Execution this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Assistant City Attorney