

Exhibit A

**ASSIGNMENT OF LEASE AGREEMENT  
AND SECOND AMENDMENT TO LEASE AGREEMENT**

Between

*Innovation Fuels, Inc., IFI Terminal Milwaukee, LLC*

and the

**BOARD OF HARBOR COMMISSIONERS**

**City of Milwaukee**

For lease of approximately 10 acres of real property exclusive of improvements at 1626 S Harbor Drive

Term: August 17, 1990 – August 16, 1995 with four extensions through August 16, 2015

Date of Agreement:

## SECOND AMENDMENT TO LEASE AGREEMENT

This Assignment of Lease Agreement and Second Amendment to Lease Agreement (the "Second Amendment") is made as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between, Innovation Fuels, Inc., a New York corporation (hereinafter referred to as "Innovation"), IFI Terminal Milwaukee, LLC, a Wisconsin limited liability company (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").

### WITNESSETH:

**WHEREAS**, SUPPORT TERMINALS OPERATING PARTNERSHIP, L.P., a Delaware Limited Partnership ("STOP") and the City previously entered into a Lease Agreement dated October 30, 1990 (hereinafter referred to as the "Lease Agreement") whereby the City leased to STOP certain real property (hereinafter referred to as the "Property"), located on the South Harbor Tract of the City of Milwaukee, consisting of an initial term commencing on August 17, 1990 and terminating on August 16, 1995 (hereinafter referred to as the "Initial Term") and up to four (4) successive periods of five (5) years each, at the option of STOP commencing on August 17, 1995 (hereinafter referred to as "Extended Terms"); and

**WHEREAS**, STOP and the City previously entered into an Amendment to Lease on the 7<sup>th</sup> day of May, 1992 (the "First Amendment"); and

**WHEREAS**, STOP's name was legally changed on March 31, 2008 to NuStar Terminals Operations Partnership L.P. ("NuStar"); and

**WHEREAS**, the Lease Agreement and First Amendment were assigned by NuStar to Innovation on August 6, 2008, with the City's consent; and

**WHEREAS**, Innovation has on October 2, 2008 created Tenant as an operating project entity and Innovation now desires to assign the Lease Agreement and First Amendment to Tenant; and

**WHEREAS**, the City is willing to consent to the assignment by Innovation of the Lease Agreement and First Amendment to Tenant, provided that Innovation guaranties and agrees to be liable for all duties, obligations and liabilities of the Tenant under the Lease Agreement, the First Amendment, this Second Amendment and any future amendments to the Lease Agreement; and

**WHEREAS**, the parties agree to further amend the Lease Agreement as set forth below.

**NOW, THEREFORE**, it is mutually agreed by and between Innovation, the Tenant and the City as follows:

1. Innovation hereby assigns the Lease Agreement and First Amendment to Tenant. Tenant hereby accepts such assignment and agrees to perform all of the obligations of the tenant under the Lease Agreement, the First Amendment, this Second Amendment and any future amendments to the Lease Agreement.

2. Innovation hereby personally guaranties and agrees to be liable for all duties, obligations and liabilities of the Tenant under the Lease Agreement, the First Amendment, this Second Amendment and any future amendments to the Lease Agreement.

3. The City hereby consents to the assignment by Innovation of the Lease Agreement and all amendments to Tenant.

4. The Lease Agreement is hereby further amended to include the following three sections as new inserts. They are inserted as Sections 28, 29, and 30:

*28. Rights and Obligations of Leasehold Mortgagees. Tenant shall have the right to mortgage its leasehold interest (but not the City's interest, or title to the fee, or the Property itself) to a financial institution, and on terms and conditions meeting the City's reasonable consent. If Tenant, or Tenant's permitted successors or assigns, shall mortgage its leasehold interest, after obtaining the City's consent (a "Leasehold Mortgage"), such Leasehold Mortgage shall be subject to the provisions of this Lease, and, as long as any such Leasehold Mortgage shall remain unsatisfied the following provisions shall apply:*

*A. The Tenant shall provide a full and complete copy of any such Leasehold Mortgage and any note, or amendment relating thereto within five (5) business days of execution.*

*B. If the holder of any Leasehold Mortgage ("Tenant's Mortgagee") shall provide the City with written notice of its name and address in accordance with Section 22 of this Lease, no notice of default by City to Tenant shall be deemed to have been duly given unless and until a copy thereof has been mailed to the Tenant's Mortgagee by registered or certified mail at the address provided to the City.*

*C. In the event Tenant shall be in default hereunder, the Tenant's Mortgagee shall, prior to the termination of this Lease (which termination can occur only after notice to Tenant's Mortgagee and an opportunity to cure in accordance with this Article), without payment of any penalty, and in accordance with reasonable deadlines to be established by the City in light of the prevailing circumstances, have the right upon written notice to the City, but not the obligation, to: (1) pay all of the Rent and other sums due hereunder, to effect any insurance, to pay any taxes and assessments*

*(subject to City's right to cure under this Lease); (2) to make any repairs and improvements, to do any other act or thing required or permitted of Tenant hereunder; (3) and to do any other thing which may be necessary and proper to be done in the performance and observation of the agreements, covenants and conditions hereof to prevent termination of this Lease. All payments so made and all things so done and performed by such Tenant's Mortgagee shall be accepted by City if satisfactorily done and performed and shall be effective to prevent a termination of this Lease as the same would have been if made, done and performed by Tenant instead of such Tenant's Mortgagee. Tenant hereby constitutes and appoints the Tenant's Mortgagee as Tenant's agent and attorney in fact with full power coupled with an interest, in Tenant's name, place and stead, and at Tenant's cost and expense, to enter upon the Property and the Improvements, and perform all acts required to be performed herein and in strict accordance with the provisions of this Lease. If the Tenant's Mortgagee fails to provide written notice to the City of its exercise of its right to assume the obligations of the Tenant under this Lease within 20 days of the Tenant's Mortgagee's receipt of notice of the Tenant's default, the City shall have the right to terminate this Lease as set forth in Section 10 herein.*

*D. In the event that the holder of any Mortgage obtained in accordance with this Lease remedies or causes to be remedied, within the times specified in this Lease, all monetary defaults of Tenant and all non-monetary defaults of Tenant which by their nature are capable of being remedied by such Tenant's Mortgagee, and provided that Tenant has no further rights to possession of any portion of the Property, such Mortgagee may request within thirty (30) days after all such defaults are remedied to request that City promptly execute and deliver to such Tenant's Mortgagee, an amendment to this Lease which shall name such Tenant's Mortgagee for the remainder of the term of this Lease with the same agreements, covenants and conditions (except for any requirements which have been fulfilled prior to execution of the Lease) as are contained herein; provided, however, that if more than one Tenant's Mortgagee requests an amended Lease, the Tenant's Mortgagee holding the most senior Leasehold Mortgage shall prevail. The City shall not unreasonably withhold or delay its consent to such a request.*

*E. In the event of default by Tenant of its obligations under this Lease, as specified in Section 10, or in the event of any other circumstances that would result in termination of this Lease, Tenant's Mortgagee may request that the City consent to an assignment of this Lease in accordance with the provisions of Section 13 hereof. In the event of any such request, the Provisions of Section 13 of this Lease shall govern except that the City shall not unreasonably withhold or delay its consent to such an assignment.*

*29. Performance on Behalf of Tenant. In the event that Tenant shall fail to make any payment or perform any act required hereunder to be made or performed by Tenant, then City may, (in addition to, and not in limitation of, any other rights accruing to the City hereunder or at law or in equity), but shall be under no obligation to, after such notice to Tenant, if any, as may be reasonable under the circumstances, make such payment or perform such act with the same effect as if made or performed by Tenant. Entry by City upon the Property for such purpose shall not waive or release Tenant from any obligation or default hereunder Tenant shall reimburse City (with interest at the Default Rate) for all sums so paid by City and all costs and expenses*

incurred by City in connection with the performance of any such act.

30. Estoppel Certificates. At the request of Tenant or any proposed or existing Leasehold Mortgagee, but subject to the provisions of Section 20 hereof, City shall within a reasonable time execute and deliver an estoppel certificate certifying the status of this Lease and Tenant's interest herein. Such estoppel certificate shall include, but not be limited to, certification, if true, that (a) this Lease is unmodified and in full force and effect (or, if modified, state the nature of such modification and certify that this Lease, as so modified, is in full force and effect), (b) all Rent currently due under the Lease has been paid, (c) there are not, to City's knowledge, any uncured defaults on the part of Tenant under the Lease or facts, acts or omissions which with the giving of notice or passing of time, or both, would constitute a default.

5. The provisions of Section 17 of the Lease Agreement entitled "Status of Improvements" shall be amended by adding the following sentence at the end of Section 17:

*"The provisions of this Section (referred to in the Lease Agreement as "Paragraph 17") shall be subject to the provisions of Sections 28, 29, and 30 of the Lease Agreement, which have been added thereto pursuant to Section 4 of the Second Amendment to Lease Agreement dated \_\_\_\_\_, 20 \_\_."*

6. In all other respects, the terms and conditions of the Lease Agreement are hereby reaffirmed and shall continue unchanged and in full force and effect.

7. It is further agreed and understood that, notwithstanding the date of this document noted above, this Second Amendment must be submitted to the Common Council of the City of Milwaukee and 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 Second Amendment under seal 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:

Innovation Fuels, Inc., a New York corporation

\_\_\_\_\_

\_\_\_\_\_

In the Presence of:

IFI Terminal Milwaukee, LLC, a  
Wisconsin limited liability company

\_\_\_\_\_

\_\_\_\_\_

**STATE OF WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, Tom Barrett, Mayor of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My Commission Expires \_\_\_\_\_

**STATE OF WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, Ronald D. Leonhardt, City Clerk of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My Commission Expires \_\_\_\_\_

**STATE OF WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, W. Martin Morics, City Comptroller of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My Commission Expires \_\_\_\_\_

**STATE OF WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_,  
Timothy K. Hoelter, President, and Donna C. Luty, Secretary of the Board of Harbor  
Commissioners, who by its authority and on its behalf executed the foregoing  
instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My Commission Expires \_\_\_\_\_

**STATE OF NEW YORK  
WESTCHESTER COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_,  
\_\_\_\_\_, \_\_\_\_\_ of Innovation Fuels, Inc., who by its  
authority and on its behalf executed the foregoing instrument and acknowledged the  
same.

\_\_\_\_\_  
NOTARY PUBLIC, State of \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**STATE OF \_\_\_\_\_  
\_\_\_\_\_ COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_,  
\_\_\_\_\_, \_\_\_\_\_ of IFI Terminal, LLC, who by its  
authority and on its behalf executed the foregoing instrument and acknowledged the  
same.

\_\_\_\_\_  
NOTARY PUBLIC, State of \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

APPROVED as to Form and Execution this  
\_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
STUART S. MUKAMAL  
Assistant City Attorney

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