

# LEASE AGREEMENT

Between

NORTH AMERICAN BIODIESEL, LLC

and the

BOARD OF HARBOR COMMISSIONERS

City of Milwaukee

For 2.596 acres of property located at 1414 S. Harbor Drive

Term: August 1, 2007 – July 31, 2017

## LEASE AGREEMENT

Lease Agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between NORTH AMERICAN BIODIESEL, 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 :

City hereby leases, demises and lets unto Tenant the real property comprised of 2.596 acres (hereinafter referred to as the "Property"), located at 1414 S. Harbor Drive of the City of Milwaukee. The Property is more particularly described in Addendum 1, which is affixed hereto and incorporated into this document by this reference.

This Lease is entered into by the parties under the following terms and conditions:

1. Term. The initial term of this Lease shall be for a period of ten (10) years (the "Initial Term") commencing 12:00 a.m. August 1, 2007 and terminating at 11:59 p.m. July 31, 2017.

Tenant shall have the right to extend the term of this Lease for two (2) successive periods of five (5) years each. In order to exercise each option to extend this Lease under this Section, Tenant shall provide City with written notice of its intent to do so no less than twelve (12) months prior to the expiration of the Initial Term or any extended term.

2. Rent.

(A) The rental rate under this Lease shall be \$17,000 per acre per year or Forty Four Thousand One Hundred Thirty Two and no/100<sup>th</sup> Dollars (\$44,132) per year for total leasehold. Rent shall be payable quarterly, in arrears, on January 1, April 1, July 1, and October 1. Each rent payment shall be for the immediately preceding quarter. First payment will cover rental for the months of August and September 2007.

(B) On August 1, 2008 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, 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) for the one-year period prior to the beginning of the new rental period, to the rental figure payable during the previous term 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 Initial Term.

(C) Throughput: It is anticipated that shipments from the facility will be handled by a neighboring terminal operator. Tenant will record the quantity of products transferred out of the facility in metric tons (2,204 pounds). In lieu of wharfage a throughput charge of \$0.29 per metric ton will be paid to City. Tons transferred from the facility will be reported to the City on a quarterly basis and billed by City quarterly in arrears. Throughput shall be escalated according to the terms as specified in Subsection 2(B). Starting January 1, 2009, Tenant guarantees an annual throughput of 10 million gallons (34,482 metric tons) or an equivalent throughput payment to City at the rate specified above, calculated to be Ten Thousand Dollars (\$10,000) annually.

3. Financial Guarantee. Upon the commencement of the term of this Lease and annually thereafter, Tenant shall furnish either a Bond or a standby Bank Letter of Credit or an equivalent financial guarantee instrument in a form and amount approved by the City, in an amount sufficient to fully cover one year's total estimated leasehold rental, projected throughput fees, and other financial obligations of the Tenant payable to the City. In the event Tenant is unable, after exercising every reasonable effort, to procure such instrument, Tenant, at the sole option of the City, may furnish to City written personal guarantees of its shareholders in a form and amount approved by the City. In the event that the City ever draws upon any financial guarantee instrument furnished under this Section, Tenant shall immediately post a new or equivalent financial guarantee instrument in the form and amount specified by this Section.

4. Use of the Property. Tenant shall use the Property for operating a manufacturing facility for the production, storage, and distribution of biodiesel products, and for the receipt, preparation, processing, storage, and distribution of related ingredients.

Additional uses of the Property are not permitted without the prior written approval of the Municipal Port Director. Tenant acknowledges the suitability of the Property for its intended uses and bears sole responsibility for making any determination with respect thereto.

Tenant will construct the production facility at its sole cost and expense. Should construction not begin within nine months of the start of this Lease, City will have the option of terminating this Lease. Tenant shall have the right to terminate this Lease at any time within nine (9) months of the commencement date of this Lease as specified in Section 1 above provided that it shall be liable for all rent and other obligations accruing to it under this Lease through this nine (9) month period.

5. Occupancy Subject to Existing Easements and Restrictions. Tenant's occupancy of the Property is subject to any recorded easements and restrictions of record.

6. Termination and Vacation; Default.

(A) Termination and Vacation Date. Tenant shall vacate the Property on or before the expiration of this Lease including any extension periods. The Property shall be returned to City by Tenant in substantially the same condition in which it was received. In the event that Tenant fails to vacate the Property in a timely fashion, City shall have the option to do any or all of the following: (1) cause the Property to be vacated; (2) charge Tenant twice (2x) the rent set forth in Section 2 of this Lease for all periods subsequent to the date of expiration of this Lease or of any agreed extension thereof; and (3) to assess and recover against the Tenant the actual costs of such vacation and any damages sustained by the City as a consequence of the Tenant's failure to timely vacate the Property.

(B) Property to be Vacated Clear of all Materials. Tenant shall vacate the Property free and clear of all materials and equipment and of all improvements in accordance with Section 14. In the event that Tenant fails to vacate the Property in the prescribed state of clearance, as determined by City, after ten (10) days' written notice to Tenant, City shall have the option to have such clearance and clean-up conducted as in its reasonable judgment is necessary in order to bring the Property to the prescribed state of clearance and to assess the costs of such action against Tenant.

7. Default. The occurrence of one or more of the following events shall be considered events of default under the terms of this Lease:

(A) Tenant shall be adjudged a bankrupt, or a decree or order, approving as properly filed, a petition or answer asking reorganization of Tenant under Federal Bankruptcy Laws as now or hereafter amended, or under the laws of this State, shall be entered, and any such decree, judgment or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of the entry or granting thereof; or

(B) Tenant shall file or admit the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the Federal Bankruptcy Laws as now or hereafter amended, or Tenant shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Tenant under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, or reorganization; or

(C) Tenant shall make an assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Tenant; or

(D) Tenant shall abandon the Property for a period of thirty (30) days after commencement of construction of the facility.

(E) Tenant shall be delinquent in any rental or other payments due under this Lease and such delinquency shall continue for five (5) days after notice thereof in writing to Tenant; or

(F) Tenant shall default in any of the other covenants or leases herein contained to be kept, observed and performed by Tenant, and such default shall continue for ten (10) days after notice thereof in writing to Tenant; or

(G) Tenant shall make any assignment, sublease, transfer, conveyance or other disposition of its interest in the Property without the express written consent of City.

Upon occurrence of any one or more of such events of default, it shall be lawful for City, at its election in the manner and terms herein provided, to declare this Lease ended, and to recover possession of the Property, either with or without process of law, to enter and to expel, and remove Tenant and all agents, employees and representatives of Tenant engaged in operating the Property or occupying the Property, using such force as may be necessary in so doing. If default shall be made in any covenants, agreements, conditions or undertakings herein contained, to be observed and performed by Tenant, which cannot with due diligence be cured within a period of ten (10) days, and if notice thereof in writing shall have been given to Tenant, and if Tenant prior to the expiration of said ten (10) days from and after the giving of such notice, commences to eliminate the cause of such default and proceeds diligently and with dispatch to take all steps and do all work required to cure such default and thereafter does so cure such default, then City shall not have the right to declare the term of the Lease as ended; however, that the curing of any default in such manner shall not be construed to limit or restrict the right of City to declare this Lease ended and terminated, and to enforce all of City's rights and remedies hereunder for any other default not so cured.

8. Maintenance and Housekeeping. Routine maintenance, housekeeping and cleanliness shall be the responsibility of Tenant. City retains the right to have any of its officers, agents or employees inspect the Property at all reasonable times and Tenant shall be required to grant full access to the Property at such times.

Since the Property is vacant and unimproved at the inception of this Lease, any and all buildings, fixtures or other improvements thereon that may be constructed or placed upon the

Property shall be constructed or placed at the Tenant's sole cost and expense. Except for damage caused by fire or other casualty, as specified in Section 15 of this Lease, Tenant, at Tenant's sole cost and expense, shall have the affirmative duty to periodically inspect, maintain, service, repair and replace, if necessary, all portions of the Property including all buildings and improvements thereon, and including, but not limited to, all building elements, branch plumbing and fixtures, pest extermination, fences and rail track up to and including the railroad switch leading onto Tenant's spur. In addition thereto, Tenant shall keep the Property and any dock area servicing the Property in a clean and sanitary condition, and shall keep the common parking areas, driveways and loading docks free of Tenant's debris, and shall control weeds and maintain landscaping. Tenant shall not store materials, waste or pallets outside of the Property, and shall timely arrange for the removal and/or disposal of all pallets, crates and refuse owned by Tenant which cannot be disposed of in the dumpster(s) servicing the Property.

Upon the expiration or earlier termination of this Lease, Tenant shall return the Property to City in substantially the same condition as when received, reasonable wear and tear accepted as more fully specified in Section 14 of this Lease entitled "Alterations & Improvement." Tenant shall perform all repairs and maintenance in a good and workmanlike manner, using materials and labor of the same character, kind and quality as originally employed within the Property; and all such repairs and maintenance shall be in compliance with all governmental and quasi-governmental laws, ordinances and regulations. In the event Tenant fails to properly perform any such repairs or maintenance within a reasonable period of time, City shall have the option to perform any such repairs on behalf of Tenant, in which event Tenant shall reimburse to City, as Additional Rent, the costs thereof within thirty (30) days after receipt of City's invoice for same.

9. Utilities. Tenant shall be solely responsible for the installation and purchase of all utility services required by Tenant during the term of this Lease.

10. Assignment and Subleasing. Tenant shall not assign or sublet the Premises or any portion thereof, nor allow the same to be used or occupied by any other person or for any other use than herein specified, without the prior written consent of City. For purposes of this Section, the transfer of any majority interest in any corporation or partnership shall be deemed to be an assignment of this Lease. In the event City consents to any sublease or assignment, the same shall not constitute a release of Tenant from the full performance of Tenant's obligations under this Lease. Further, in the event of any such sublease or assignment, Tenant shall reimburse City

for all reasonable attorneys' fees in connection with reviewing and/or drafting any appropriate documents to effect such transfer of Tenant's interests.

11. Indemnification. Tenant hereby agrees to indemnify and save harmless City from and against all liabilities, claims, demands, judgments, losses and all suits at law or in equity, costs and expenses, including reasonable attorney's fees, for injury to and/or death of any person or persons and/or loss and/or damage to the property of any person, firm or corporation whomsoever, including both parties hereto and their employees, arising from the construction, maintenance or operation of Tenant's improvements and equipment, or in the carrying on of its business as hereinbefore set forth, except when such liability, claim, demand, judgment or loss arises solely from a negligent act of the City, its agents, contractors or employees.

12. 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
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(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

(F) Environmental Impairment Liability Coverage with 4-year "tail."	
Each occurrence Limit	\$2,000,000
Aggregate Coverage	\$4,000,000

All such policies shall be of a form and content satisfactory to City. In addition, the Board of Harbor Commissioners of the City of Milwaukee and the City of Milwaukee will be designated on the General Liability, Property Insurance, Automobile Umbrella and Environmental Impairment Liability policies as Additional Named Insureds. All policies shall be with companies licensed to do business in the State of Wisconsin and rated A or better in the most current issue of Best's Key Rating Guide. Tenant shall furnish City with certificates of insurance for all policies showing that insurance has been written as required. Such evidence shall be provided by Tenant at least thirty (30) days prior to occupancy; and further, such policies shall provide that no less than thirty (30) days written notice be given to City before any such policies are cancelled or substantially changed to reduce the insurance provided thereby. Said certificates of insurance shall remain in effect for the duration of this Lease. Tenant shall not act in any manner that may make void or voidable any insurance required herein. Upon written demand, Tenant shall provide City full, complete and accurate copies of the insurance policies required by this Lease. Once in every three (3)-year period during the term of this Lease, City shall review the extent and limits of the insurance coverage required herein. After said review, should City determine an increase in the extent and/or limits of insurance coverage is required, Tenant shall be so notified in writing and Tenant shall cause such increases to be placed in effect within thirty (30) days of receiving such notice. In no event shall the extent and limits of insurance coverage be reduced from the amounts shown herein.

The attorney in fact or agent of any insurance company furnishing any policy of insurance shall sign and furnish an affidavit setting forth that no City official or employee has any interest, direct or indirect, or has received any premium, commission, fee or other thing of value on account of furnishing said policy of insurance.

13. Taxes. Tenant shall pay and discharge when due all taxes, if any, assessments, levies and other charges, general and special, that are or may be during the term hereof levied, assessed, imposed or charged on the Property or the improvements thereon or hereafter placed thereon.

14. Alterations & Improvements. Tenant shall not make any construction, alterations, additions, buildings or improvements to the Premises or Property without the prior written consent of City except for development of improvements in accordance with the Site



Development Agreement described in Section 16. All construction by Tenant shall be in compliance with applicable laws, ordinances, codes, regulations and permits.

On or before the date of the expiration or earlier termination of this Lease, Tenant shall remove all trade fixtures and any other alterations, additions, buildings or improvements installed by Tenant upon the Property; and, upon such removal, Tenant shall restore the Property to a condition substantially similar to that condition when received by Tenant. However, notwithstanding the aforesaid, upon City written election, such alterations, additions, buildings and improvements shall revert to City and shall remain upon the Property. In no event shall City have any right to any of Tenant's trade fixtures; and, except as otherwise set forth in this Lease, Tenant may remove such trade fixtures upon the termination of this Lease, provided Tenant repairs any damage caused by such removal.

15. Damage or Destruction. In the event that the Property is damaged or rendered untenantable for the conduct of Tenant's business or rendered inaccessible by fire or other casualty by any cause other than the intentional acts of the Tenant or its agents, employees, or invitees, in each case whether in whole or in part, then Tenant shall deliver to City an estimate prepared by a reputable contractor selected by Tenant and approved by City setting forth such contractor's estimate as to the time reasonably required to repair the damage to the Property within sixty (60) days after the date of such casualty. If the period to repair set forth in any such estimate exceeds six (6) months, Tenant may elect to terminate the Lease by notice to the City given not later than thirty (30) days following City's receipt of such estimate. If such election is made, the term of this Lease shall expire as of the thirtieth day after written notice of such election with the same effect as if that were the scheduled expiration date of this Lease, and rental and other payments shall be apportioned as of such date. If the Lease is terminated as provided herein, the Tenant agrees to vacate the Property clear of all materials in accordance with Sections 6(B) and 14 of this Lease. If this Lease is not terminated following a casualty loss within the scope of this paragraph, restoration of the Property shall be commenced within ninety (90) days after the date of such damage and diligently prosecuted to completion by Tenant. During restoration, all rent shall be equitably and proportionately suspended and adjusted according to the nature and extent of the destruction or damage, pending completion of rebuilding, restoration or repair, except that in the event the destruction or damage is so extensive as to make it infeasible for the Tenant to conduct its business on the Property, the rent shall be completely abated until the Property is restored by the Tenant or until the Tenant

resumes the conduct of its business on the Property, whichever shall first occur. If, however, the Property is damaged, destroyed or rendered untenable due to the fault or negligence of the Tenant or Tenant's agents, employees, or invitees, there shall be no rent abatement.

16. Site Development Agreements. In the event that City and Tenant agree to a specific plan for the future development of the Property, said plan shall be embodied in a Site Development Agreement which shall be approved by City in writing and shall be appended to this Lease as Addendum 1 and shall be incorporated into this Lease as though an integral part thereof. Tenant agrees to fully and continuously comply with all terms and conditions of the Site Development Agreement and further agrees that any non-compliance on its part with any of these terms and conditions shall constitute an event of default under this Lease.

17. Compliance with Laws and Orders. Tenant agrees to observe fully and to comply with any laws, statutes, regulations, ordinances, rules, requirements or directives now in force or which shall emanate from any state, federal or local departments or agencies having jurisdiction. Tenant also agrees to be fully bound and to observe the provisions of the Municipal Port Tariff in effect as of the date of commencement of this Lease and of any successor or equivalent document issued by the Board of Harbor Commissioners of the City of Milwaukee during the term of this Lease.

18. Security Compliance. Tenant agrees to conform to all national security requirements imposed by the U.S. Department of Homeland Security, the Marine Transportation Security Act and its implementing regulations, as well as any applicable state and local security rules and regulations.

Tenant also agrees to comply with any measures and obligations imposed by a Port of Milwaukee tenant consortium formed to administer security requirements. Tenant will become a member of any such consortium and pay any fees or levies imposed by that consortium or by the Port of Milwaukee to cover security costs.

“Security,” as that term is used herein shall mean “Measures designed to safeguard personnel; to prevent unauthorized access to equipment, property, buildings, harbor facilities, installations, materials, and documents; and to safeguard against espionage, sabotage, damage, and theft, or to prevent persons or organizations from engaging in any activity or using Port properties, equipment and material in a manner that would aid an effort to harm vital interests of the City of Milwaukee, the State of Wisconsin or the United States of America.”

19. 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) 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.

(C) Obligation to Investigate and/or Remediate. Tenant shall, upon demand of the City, and at its sole cost and expense, promptly take all actions to investigate and/or 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

investigation and/or 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.

(D) Survival of Obligations. Tenant's obligations with respect to the environmental condition of the Property (as more fully set forth in Subsections (A) through (C) above) shall survive the expiration or termination of this Lease.

20. Liens. Tenant shall not mortgage or otherwise encumber or allow to be encumbered its interest in this Lease or the Property (or any part thereof) without obtaining the prior written consent of City. Should Tenant cause any mortgage, lien or other encumbrance (hereinafter singularly or collectively referred to as "Encumbrance") to be filed, (including but not limited to any construction, supplier, or materialman's lien) against the Premises or the Property without City's express written consent, Tenant shall provide City with written notice of such and dismiss same within fifteen (15) days after the filing thereof. If Tenant fails to remove said Encumbrance within said fifteen (15) days, City shall have the absolute right (but not the duty) to remove said Encumbrance by whatever measures City shall deem convenient including, without limitation, payment of such Encumbrance, in which event Tenant shall reimburse City, as Additional Rent, all costs expended by City, including reasonable attorney's fees, in removing said Encumbrance. All of the aforesaid rights of City shall be in addition to any remedies which either City or Tenant may have available to them at law or in equity.

21. 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 approval. If Tenant, or Tenant's permitted successors or assigns, shall mortgage its leasehold interest, after obtaining the City's approval (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 24 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 7 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 7, 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 10 hereof. In the event of any such request, the Provisions of Section 10 of this Lease shall govern except that the City shall not unreasonably withhold or delay its consent to such an assignment.

22. 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.

23. 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.

24. Time of the Essence. It is expressly understood and agreed to by the parties hereto that time is of the essence for each term and provision of this Lease.

25. Waiver. One or more waivers by any party of any covenant or condition of this Lease shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.

26. Sole Agreement and Amendment. This shall be binding upon the parties hereto and their respective successors and assigns, and may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Lease. Each person signing this Lease warrants that this is the full, entire and complete Agreement between the parties; that the terms of this Lease supersede and nullify any and all prior discussion, negotiations or agreements between the parties and/or any of the parties' respective officers, employees or agents relating in any manner to the subject matter of this Lease; and that no promise or inducement not expressed in this Lease has been made or exists to cause or influence each such person to execute this Lease. Each person signing this Lease warrants their ability to bind the party on whose behalf each signs.

27. Notice. Any notice provided for herein or given pursuant to this Lease, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, or by receipted personal delivery to the parties as follows:

To the City:

BOARD OF HARBOR COMMISSIONERS  
2323 S. Lincoln Memorial Drive  
Milwaukee, WI 53207  
Attention: Municipal Port Director

To The Tenant:

Mr. Richard H. Sawall, PE  
President  
North American Biodiesel LLC  
N59 W14464 Bobolink Avenue  
Menomonee Falls, WI 53051

28. Governing Law. This Lease shall be governed by the internal laws of the State of Wisconsin. If any term or provision of this Lease or any exhibits hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Lease and exhibits, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by applicable 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 are subject to and conditioned on the provisions of Wis. Stat. §19.21, et seq. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Lease, and that the Contractor must defend and hold the City harmless from liability under that laws. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Lease.

29. Nondiscrimination. Tenant hereby agrees that in its use of the Property and in its activities undertaken pursuant hereto it shall not discriminate, permit discrimination or restriction on the basis of race, sexual orientation, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin.

30. Counterparts. This Lease may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Lease. The terms "Board of Harbor Commissioner" and "City" whenever used herein shall mean and include the Board of Harbor Commissioners of the City of Milwaukee and/or its successors and assigns in authority, as the context may require.

31. Approval. IT IS FURTHER AGREED AND UNDERSTOOD that this 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 Lease under seal as of the day and year first above written.

In the Presence of:

CITY OF MILWAUKEE

\_\_\_\_\_

\_\_\_\_\_

Thomas Barrett , Mayor

\_\_\_\_\_

\_\_\_\_\_

Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

\_\_\_\_\_

\_\_\_\_\_

W. Martin Molics, City Comptroller

In the Presence of:

BOARD OF HARBOR COMMISSIONERS

\_\_\_\_\_

\_\_\_\_\_

Daniel J. Steininger, President

\_\_\_\_\_

\_\_\_\_\_

Donna Luty, Secretary

In the Presence of:

NORTH AMERICAN BIODIESEL, LLC

(witness signature)

\_\_\_\_\_

Richard H. Sawall, President

(witness signature)

\_\_\_\_\_

Randy Barnhill, Vice President

**STATE OF WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Thomas 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 \_\_\_\_\_, 20\_\_\_\_, Ronald D. Leonhardt, the 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 \_\_\_\_\_, 20\_\_\_\_, W. Martin Morics the 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 \_\_\_\_\_, 20\_\_\_\_, Daniel J. Steininger, President, and Donna 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 WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
\_\_\_\_\_, the \_\_\_\_\_, and \_\_\_\_\_, the  
\_\_\_\_\_ of North American Biodiesel, LLC who by its authority and on its  
behalf executed the foregoing instrument and acknowledged the same.

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

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

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

i:nablse07.doc

6/15/07