

ASSIGNMENT & AMENDMENT OF LEASE
AGREEMENT

and

CONSENT TO ASSIGNMENT

between

THE BOARD OF HARBOR COMMISSIONERS,
CITY OF MILWAUKEE

and

NORTH AMERICAN BIODIESEL, LLC
and
INNOVATION FUELS, INC.

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

Term: August 1, 2007 – July 31, 2017

Lease Extension: 2 additional successive
periods of 7 years each

DRAFT
**ASSIGNMENT & AMENDMENT OF LEASE AGREEMENT AND
CONSENT TO ASSIGNMENT**

THIS ASSIGNMENT & AMENDMENT OF LEASE AGREEMENT AND CONSENT TO ASSIGNMENT (This “Assignment”) is made and entered into, and is effective as of this _____ day of _____, 20___, with the CITY OF MILWAUKEE, a Wisconsin municipal corporation, by and through its Board of Harbor Commissioners (“Landlord”), NORTH AMERICAN BIODIESEL, a Wisconsin Limited Liability Company (“Assignor”), and INNOVATION FUELS, INC., a New York Corporation (“Assignee”).

RECITALS

A. Assignor currently leases that certain real property on the South Harbor Tract of the City of Milwaukee (the “Property”) pursuant to the terms and conditions contained in that certain Lease Agreement dated as of October 8, 2007, between Landlord, as Landlord, and Assignor, as Tenant (the “Lease”). A copy of the Lease is attached hereto and made a part hereof as Exhibit A.

B. Assignor wishes to assign all of Assignor’s right, title and interest in and to the Lease to Assignee in accordance with the terms and conditions set forth in this Assignment.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals set forth above, which by reference are made a part of this Assignment, the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord, Assignor and Assignee hereto do hereby agree as follows:

1. **Assignment**. Assignor hereby transfers, assigns and sets over to Assignee all of Assignor’s right, title and interest in and to the Lease and in and to the Property, except as otherwise expressly provided in Sections 3 and 4 hereafter, effective as of _____, 20___ (the “Effective Date”). Assignor hereby represents and warrants to Assignee and to Landlord that Assignor is the owner of all right, title and interest of Tenant under the Lease, and has all right, power and authority to assign its right, title and interest in the Lease to Assignee pursuant to this Assignment.

2. **Acceptance of Assignment.** Assignee hereby accepts the foregoing Assignment and transfer, and assumes all of the obligations of Assignor under the Lease arising from and after the Effective Date, except as otherwise expressly provided and in Sections 3 and 4 hereinafter.

3. **Liabilities Retained by Assignor.** Notwithstanding anything in Assignment to the contrary, Assignor acknowledges that it is not assigning to Assignee, and that Assignee is not assuming, any obligation or liability under the Lease arising or accruing prior to the Effective Date. This Assignment shall not operate to relieve Assignor from any of its obligations to Landlord under said Lease.

4. **Representations and Warranties by Landlord and Assignor.** Landlord and Assignor represent and warrant to Assignee that:

a. The Lease is in full force and effect and has not been modified since its original execution.

b. Assignor is not in default under the Lease, Assignor has not received any notice of default under the Lease, and, to its best knowledge, there are no events which have occurred that, with the giving of notice or the passage of time or both, would result in a default by Assignor under the Lease.

5. **Inspection of Premises.** Assignor, Assignee and Landlord will perform a joint survey of the condition of the facilities covered by this Lease. Pursuant to Section 9 of said Lease, Assignor will, within sixty (60) days of such survey, correct all defects identified by the survey. Should Assignor fail to undertake its obligation in this regard, then Landlord, in addition to and not in lieu of any other remedies it may have under the Lease, and after notice to Assignor and Assignee, may undertake such corrections and charge the cost of same to the Assignor.

6. **Clarification to Lease Language.** As part of this Assignment, the following Lease clauses are amended as shown below:

Section 1. ("Term"): is amended to include: Tenant shall have a further **option** to extend the term of this Lease for two (2) additional successive periods of seven (7) years each, upon demonstration by Tenant to the **reasonable** satisfaction of City that, **in the City's sole opinion**, Tenant will satisfy **City's** criteria for **development and** use of the Port of Milwaukee. **City shall provide notice to Tenant as to whether it is satisfied as to this precondition for further extension(s) of this Lease pursuant to this Paragraph at least six (6) months prior to the date(s) upon which this Lease would otherwise expire.**

Clause 8. Maintenance and Housekeeping: is amended in the last paragraph by replacing “quasi-governmental” with “Port of Milwaukee.”

Clause 14. Alterations & Improvements: is amended by adding the following sentence to the second paragraph:

“Trade fixtures means all tanks, heaters, pumps, skid-mounted process equipment and racks used in the manufacture, storage and transfer of biofuels on the site.”

Clause 19. Environmental Compliance & Obligations: is amended by the inclusion of the following paragraph:

“(E) Existing Environmental Contamination. Notwithstanding anything to the contrary in this Lease, Tenant shall have no responsibility or obligation whatsoever, with respect to the environmental condition of the Property on or before the commencement date of this Lease, and as described in the May 10, 2007 Summary Report completed by Moraine Environmental Inc. It is understood and agreed that the Tenant shall be fully responsible for those environmental obligations and liabilities resulting from its operations on the Property and from the actions of its employees, agents, contractors, tenants and invitees.”

7. **Notices**. Whenever in this Assignment it shall be required or permitted that notice be given by any party to any other party, such notice shall be delivered in person or sent by U.S. Certified Mail, postage prepaid, return receipt requested, as follows:

To Assignor:

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

To Assignee:

Innovation Fuels
20 Corporate Woods Blvd.
Albany, NY 12211
Attn: Mr. John Fox

To Landlord:

Board of Harbor Commissioners
2323 S. Lincoln Memorial Drive
Milwaukee, WI 53207
Attention: Municipal Port Director

If notice is delivered personally, such notice shall be deemed received when received by the party to whom it is directed. If notice is sent by mail as provided above, such notice shall be deemed received three days after mailing.

8. **Consent by Landlord.** Landlord, upon execution of this Assignment, hereby consents to the making of this Assignment and to all of the terms and conditions hereof, and acknowledges that all conditions required for such consent contained in the Lease have been fulfilled or are hereby waived. This Assignment is subject to the approval of the Board of Harbor Commissioners of the City of Milwaukee.

9. **Binding Effects.** This Assignment shall be binding upon the successors and assigns of Assignor and shall inure to the benefit of the successors and assigns of Assignee.

IN WITNESS WHEREOF, the parties have executed this Assignment on the date first above written.

ASSIGNOR:
NORTH AMERICAN BIODIESEL, LLC

ASSIGNEE:
INNOVATION FUELS, INC

By _____
Mr. Richard H. Sawall PE, President

By _____
Mr. John Fox, President

LANDLORD:
CITY OF MILWAUKEE

By _____
Its Authorized Signatory

IN WITNESS WHEREOF, the parties hereto have by their duly authorized officers executed this Assignment under seal as of the day and year first above written.

In the Presence of:

**BOARD OF HARBOR
COMMISSIONERS**

Daniel J. Steininger, President

Donna Luty, Secretary

**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
_____ COUNTY**

Personally came before me this _____ day of _____, 20____, Mr. Richard H. Sawall PE, President, 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 _____

**STATE OF NEW YORK
_____ COUNTY**

Personally came before me this _____ day of _____, 20____, Mr. John Fox, President, of INNOVATION FUELS, 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 _____

APPROVED as to Form and Execution this
_____ day of _____, 20____.

Assistant City Attorney