

LEASE AGREEMENT

Between

SOUTH HARBOR, LLC

and the

BOARD OF HARBOR COMMISSIONERS/

City of Milwaukee

For 4.6 acres of property located at 1726 S. Harbor Drive

Term: January 1, 2011 – December 31, 2015

LEASE AGREEMENT

Lease Agreement made as of the ____ day of _____, 20____, by and between SOUTH HARBOR, 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").

W I T N E S S E T H :

City hereby leases, demises and lets unto Tenant the real property comprised of approximately four and 6/10 (4.6) acres (hereinafter referred to as the "Property"), located at 1726 S. Harbor Drive of the City of Milwaukee. The Property is more particularly described in Exhibit A, 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 five (5) years (the "Initial Term") commencing 12:00 a.m. January 1, 2011 and terminating at 11:59 p.m. December 31, 2015.

Tenant shall have the right to extend the term of this Lease for four (4) successive periods of five (5) years each, the First Extension Term commencing 12:00 a.m. January 1, 2016 and terminating at 11:59 p.m. December 31, 2020; and the Second Extension Term commencing 12:00 a.m. January 1, 2021 and terminating at 11:59 p.m. December 31, 2025; and the Third Extension Term commencing 12:00 a.m. January 1, 2026 and terminating at 11:59 p.m. December 31, 2030; and the Fourth Extension Term commencing 12:00 a.m. January 1, 2031 and terminating at 11:59 p.m. December 31, 2035. 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 during the Initial Term shall be Seventeen Thousand and 00/100th Dollars (\$17,000) per acre per year or Seventy Eight Thousand Two Hundred and 00/100th Dollars (\$78,200) per year for the total leasehold. Rent shall be payable quarterly, in advance, on January 1, April 1, July 1, and October 1.

(B) Annual Rent during the first year of the First, Second, Third, and Fourth Extension Terms starting January 1, 2016 and on each January anniversary dated thereafter during each Extension Term, 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 year 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 previous period.

(D) **Throughput Charges:** In addition to Rent during the Initial Term of this Lease, Tenant shall pay City, monthly, a throughput charge of Eighteen and One-half cents (18.5¢) per metric ton (2,204 pounds) for petroleum products, including petroleum blend stocks/additives, received or delivered by pipeline, tank car or tank truck to Tenant at the Property. Tenant shall further pay City, monthly, a throughput charge for non-petroleum products received or delivered by Tenant at the Property, which shall be calculated as follows:

- 0-25,000 gross tons – 35¢ per metric ton
- 25,001-50,000 gross tons – 25¢ per metric ton
- over 50,000 gross tons – 15¢ per metric ton

During any Extension Periods to this Lease, the throughput charges shall be escalated annually each January 1 according to the term specified in Sub-Section 2(B).

In addition to Rent and the throughput charges set forth above, Tenant shall pay City, monthly, wharfage and dockage. Wharfage and dockage charges apply to all liquid bulk cargo which Tenant receives or ships by water. Wharfage and dockage shall be paid in accordance with the rates set forth in the Municipal Port Tariff in effect at the time the charge is made during the Initial Term of this Lease, and any extended term of this Lease.

3. **Rail Track Usage.**

(A) Tenant shall have exclusive use of the spur track serving the southwest portion of the Property, shown in yellow on Exhibit “A” attached hereto.

(B) Upon application to, and approval of the City, Tenant shall have non-exclusive but preferential use of Tracks 13 and 14, as designated as such on Exhibit “A” attached hereto.

(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.

(D) Tenant agrees to pay the annual cost of track maintenance on the spur track as itemized and invoiced by City; and its prorated share (on a car count basis) of the annual maintenance of tracks 13 and 14, as itemized and invoiced.

4. **Berthing.** Upon application to and approval of the City, Tenant shall have use of sufficient berthing space at Municipal South Pier #5 for its operations. Tenant’s use shall be non-exclusive, however, City shall grant Tenant preferential berthing rights at said pier provided Tenant gives City a minimum twenty-four (24) hours notice that a berth shall be needed at said pier.

5. **Records.** Tenant shall maintain completed, accurate and verifiable books and records of its business conducted on the Property relative thereto, in order to determine Tenant’s compliance with its

obligation under this Lease, the form of such books and records to be subject to the approval of the Board of Harbor Commissioners and the City Comptroller and to be made available to properly accredited representatives of the Board of Harbor Commissioners and of the City of Milwaukee, at any reasonable time after request at Tenant's office, for audit or for such other inspection as may be deemed desirable by the City. Tenant shall maintain adequate books and records for determination of all amounts due City under this Lease; such books and records shall be kept in accordance with generally-accepted accounting principles. Tenant's books and records are its private property, and City shall endeavor to keep confidential all information which it derives therefrom to the fullest extent allowed by law.

6. **Security Deposit.** Tenant shall deposit with the Landlord, a security deposit in the amount of Seventy-Five Thousand and 00/100th Dollars (\$75,000) either in cash, accounts, bond or as a letter of credit in a form reasonably acceptable to Landlord (the "Security") on or before December 31, 2010. In the event that Tenant fails to provide the Security on or before December 31, 2010, this Lease may be terminated at any time thereafter, at the Landlord's option, upon written notice from the Landlord to the Tenant. In the event that the Security is a deposit of cash, the Security shall be placed into an interest-bearing escrow account and held by the Landlord in such account throughout the term of this Lease or until returned as set forth below, in order to secure the Tenant's performance of its obligations under this Lease. To the extent that all or any part of the cash Security is used by the Landlord to satisfy any of the Tenant's obligations under this Lease, the Tenant shall immediately replenish the Security following written notice from the Landlord. In the event that the Security is provided in the form of a bond or letter of credit, Tenant shall ensure that the same continues in effect and is fully funded throughout the term of this Lease or until returned as set forth below. The Security shall be returned to the Tenant upon the earliest to occur of the following events: (a) receipt by Landlord of documentation showing that Tenant has completed at least \$1 million of the plan improvements to the Property; or (b) Tenant's on time payment of all amounts due hereunder for a period of 24 months; or (c) the expiration or termination of this Lease.

7. **Use of the Property.**

(A) Tenant shall use the Property for operating a liquid bulk facility for the receipt, production, processing, handling, storage, shipping, and distribution of bulk liquid materials, including without limitation petroleum and renewable fuels, which shall include the liquid materials and all raw materials, proceeds and ingredients related thereto.

(B) **Right of First Refusal Option.** The Property, being 4.6 acres, is adjoined on the north by a 5.4 acre parcel of vacant land (the 5.4 Acre Parcel). These two parcels were, until 2009, combined as one

10 acre property under long term lease to the Jacobus Energy Company. It is the desire of Tenant sometime during the Initial Term of this lease to conclude additional business arrangements that will allow Tenant to request City to include, through a lease amendment, the 5.4 Acre Parcel, into this Lease Agreement.

Tenant is hereby granted a first right of refusal during the Initial Term of this Lease should City be offered an alternate Tenant for this land. If Tenant exercises this right within sixty (60) days of the date of transmission of a written notice by the City to Tenant ("60-Day Period") that City wishes to lease the 5.4 Acre Parcel to another party or otherwise provides written notice to City of its desire to exercise this option on the 5.4 Acre Parcel at any time during the Initial Term of this Lease other than during a 60-Day Period, if the City has not been offered an alternate Tenant, the 5.4 acres will immediately be added to the Property subject to this Lease at the same rental rate as for the Property if Tenant fails to exercise this right within the aforesaid period, City shall be free to lease the 5.4 Acre Parcel to another party.

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

9. **Termination and Vacation; Default.**

(A) **Termination and Vacation Date.** Tenant shall vacate the Property on or before the expiration of this Lease. The Property shall be returned to City by Tenant as bare level ground unless otherwise agreed to by City in writing, in accordance with Section 15. 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) **Early Termination.** This Lease may be terminated prior to the date of its stated expiration date only by the mutual written consent of the Port Director and the Tenant.

(C) **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 15. In the event that Tenant fails to vacate the Property in the prescribed state of clearance, as determined by City, after thirty (30) 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.

10. **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 ten (10) 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 thirty (30) 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 thirty (30) days, and if notice thereof in writing shall have been given to

Tenant, and if Tenant prior to the expiration of said thirty (30) 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.

11. **Maintenance and Housekeeping.** All improvements situated upon the Property are owned by Tenant for its own use. Tenant agrees to maintain these improvements and any other improvements that it may hereafter erect upon the property, along with the Property in a reasonable and appropriate state of appearance, cleanliness and repair. Maintenance and housekeeping of the Property shall be the sole 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. City shall endeavor to give prior notice of such inspections to Tenant and shall make all reasonable efforts to minimize interruptions to Tenant's business during such inspections.

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.

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

13. **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.

14. **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.

15. **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 and Tenant 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.

16. **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.

17. **Alterations & Improvements.** Tenant shall not make any substantial alterations, additions, buildings or improvements to the Premises or Property without the prior written consent of City. Notwithstanding the aforesaid, Tenant, at Tenant's sole cost and expense, may install such trade fixtures as Tenant may deem necessary. Tenant shall furnish, upon City's request, plans, specifications, drawings and/or renderings of any proposed alterations, additions buildings or improvements.

Tenant or its contractors agree to properly secure all necessary permits and licenses required by any state, federal or local departments or agencies for the construction and operation of Tenant's business and improvements. A copy of each such permit license shall be sent to the Port of Milwaukee for its record file.

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 within the Property; and, upon such removal, Tenant shall restore the Property to a level bare ground condition. However, notwithstanding the aforesaid, upon City's written election received by Tenant no later than six (6) month prior to the expiration or termination of this Lease, such alterations, additions, buildings and improvements shall revert to City and shall remain within 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.

18. **Destruction**. If the improvements upon the Property are damaged in whole or in part by casualty so as to render the Property untenable, and if the damages cannot be repaired within one hundred eighty (180) days from the date of said casualty, this Lease shall terminate as of the date of such casualty. If the damages can be repaired within said one hundred eighty (180) days, and Tenant does not elect within sixty (60) days after the date of such casualty to repair same, then either party may terminate this Lease by written notice served upon the other effective upon the date of the casualty. In the event of any such termination, the parties shall have no further obligations to the other, except for those obligations accrued through the effective date of such termination; and, upon such termination, Tenant shall immediately surrender possession of the Property to City. Should Tenant elect to make such repairs, this Lease shall remain in full force and effect, and Tenant shall proceed with all due diligence to repair and restore the improvements to a condition acceptable to Tenant and in full compliance with Tenant's obligations under all other provisions of this lease. Tenant shall not be required to pay any rent for any period in which the Property is untenable. In the event only a portion of the Property is untenable, Tenant's rent shall be equitably abated in proportion to that portion of the Property, which is so unfit. However, there shall be no rent abatement if said damage is due to fault or negligence of Tenant or Tenant's agents, employees or invitees.

19. **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.

20. **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.

“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.”

21. **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) **Environmental Laws.** The term "Environmental Laws" shall mean and include (a) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984; (b) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601-9657; (c) the Hazardous Materials Transportation Act of 1975, 49 U.S.C. § 1801-1812; (d) the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq.; (e) the Clean Air Act, 42 U.S.C. § 7401, et. seq.; (f) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136, et. seq.; (g) Chapters 280-299 of Wisconsin Code; and all similar federal, state, or local environmental laws, ordinances, rules, codes and regulations, and as any of the foregoing may have been amended, supplemented, or supplanted and any other federal, state or local laws, ordinances, rules, codes and regulations now existing relating to the

environment or the regulation or control or imposing liability or standards of conduct concerning toxic or hazardous waste, substances or materials.

(C) 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.

(D) 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.

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

F) Nothing in this agreement shall be deemed to be or constitute a waiver by the City of any defense available to it as a governmental entity pursuant to 42 U.S.C. § 9601 (35) (A) (ii) and § 9607 (b) (3) or Wis. Stat. § 292.11(9)(e), 292.23(2), 292.24(2) and 292.26.

22. 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 thirty (30) 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. Notwithstanding the foregoing, City acknowledges that Tenant intends to issue a leasehold mortgage, including an assignment of rents and security agreement, against the Property, this Lease and/or the improvements thereon. City shall cooperate with Tenant and execute agreements with Tenant's lender(s) acknowledging that City will authorize, upon Tenant's uncured default to its lender, the assignment of this Lease to a third party (including without limitation said lender or its designees) upon receipt of documentation reasonably acceptable to City, or other proof reasonably acceptable to City, that said assignee has the ability, **intention**, knowledge, experience and financial resources to operate the Property and improvements in conformity with this Lease.

23. 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.

24. **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.

25. **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.

26. **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
IFI Terminal Milwaukee, LLC
1626 S. Harbor Drive
Milwaukee, WI 53207

27. **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. Tenant 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 Tenant 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.

28. **Authorization**. The undersigned signatories to this instrument represent that they are duly authorized to contract on behalf of their respective entities.

29. **No Slavery Affidavit**. The Tenant shall execute the Affidavit of Compliance attached hereto as Exhibit ____ contemporaneously with its execution of this Lease.

30. **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.

31. **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.

32. **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.

CITY OF MILWAUKEE

Tom Barrett, Mayor

Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

W. Martin Morics, City Comptroller

BOARD OF HARBOR COMMISSIONERS

Timothy K. Hoelter, President

Donna Luty, Secretary

In the Presence of:

SOUTH HARBOR, LLC

Richard H. Sawall, President

Randy Barnhill, Vice President

STATE OF WISCONSIN
MILWAUKEE COUNTY

Personally came before me this _____ day of _____, 20____,
_____, the _____, and _____, the
_____ of South Harbor, 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 _____

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
(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)

limited liability company, and in said 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

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