

ASSIGNMENT OF LEASE AGREEMENT

and

CONSENT TO ASSIGNMENT

between

**THE BOARD OF HARBOR COMMISSIONERS,
CITY OF MILWAUKEE**

and

JACOBUS ENERGY, INC.

and

SOUTH HARBOR MILWAUKEE, LLC

**For lease of 4.6 acres of property located
on the South Harbor Tract at
1726 S. Harbor Drive**

**Initial Term: January 3, 2010 through
December 31, 2011**

ASSIGNMENT OF LEASE AGREEMENT AND CONSENT TO ASSIGNMENT

This Assignment of Lease Agreement and Consent to Assignment (“Assignment”), made and entered into at Milwaukee, Wisconsin as of this ____ day of _____, 2009, by and between JACOBUS ENERGY, INC., a Wisconsin corporation (hereinafter referred to as the “Assignor”), SOUTH HARBOR, LLC, a Wisconsin limited liability company (hereinafter referred to as the “Assignee”), and the CITY OF MILWAUKEE, a Wisconsin municipal corporation, by and through its Board of Harbor Commissioners (hereinafter referred to as the “City”),

RECITALS

A. The City and the Tenant have entered into a Lease Agreement dated October 3, 2001, as amended by the Amendment to and Extension of Lease Agreement dated December 6, 2001 (hereinafter collectively referred to as the “Lease”) for the lease of approximately 10.0 acres of real property located on the Port’s South Harbor Tract at 1726 S. Harbor Drive in the City of Milwaukee. A copy of the Lease is attached hereto and made a part hereof as Exhibit A;

B. The City and the Assignee entered into a subsequent Amendment to and Extension of Lease Agreement (hereinafter referred to as the “Lease Extension”) whereby the Assignor returned to the City as bare ground approximately 5.4 acres of the original leasehold during 2009 (the “5.4 Acre Parcel”);

C. The Lease Extension included an additional extension of the Lease Agreement for three (3) years for the remaining 4.6 acres that were originally within the

coverage of the Lease (the “4.6 Acre Parcel”), with a final expiration date of December 31, 2011;

D. Assignor presently operates a bulk liquids storage terminal (the “Terminal”) on the 4.6 Acre Parcel;

E. Assignor and Assignee are parties to that certain Asset Purchase Agreement dated _____, (the “Purchase Agreement”) pursuant to which, subject to the terms and conditions set forth herein, Assignee will purchase substantially all of Assignor’s assets located at the Terminal, including all of Assignor’s right, title and interest in, under and to the Lease Agreement, and assume certain of Assignor’s liabilities in connection with Assignor’s operation of the Terminal;

F. Contemporaneous with the closing of the transactions contemplated by the Purchase Agreement, the City, the Assignor, and the Assignee mutually desire that: (i) Assignor assign all of its right, title and interest in, under and to the 4.6 Acre Parcel remaining within the scope of the Lease to the Assignee; and (ii) that the City consent to the assignment contemplated hereby, all on the terms and conditions hereinafter set forth.

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, the City, the Assignor and the Assignee hereto do hereby agree as follows:

1. **Assignment.** The Assignor hereby transfers, assigns and sets over to the Assignee all of the Assignor's right, title and interest in and to the Lease and in and to the 4.6 Acre Parcel, except as otherwise expressly provided in Paragraphs 3 and 4 hereafter, effective as of January 31, 2010 (the "Effective Date"). The Assignor hereby represents and warrants to the Assignee and to the City that the 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 the Assignee pursuant to this Assignment.

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

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

4. **Representation and Warranties by the City and the Assignor.** The City and the Assignor represent and warrant to the Assignee that:

a. The Lease is in full force and effect and has not been modified as of the date hereof; and

b. The Assignor is not in default under the Lease, the 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 the Assignor under the Lease.

5. **The Assignee's Use of Property.** The Assignee will utilize the 4.6 Acre Parcel for and in conjunction with those business functions associated with the operation of a liquid cargo storage and distribution terminal.

6. **Insurance.** The Assignee shall provide the City with insurance coverages and limits as specified in Exhibit B attached hereto and made a part thereof. Additionally, the insurance provisions set forth in Exhibit B shall govern throughout the term of this Assignment and shall supersede Section 14 of the Lease.

Such approval is contingent in part upon said Board receiving confirmation prior to approval that the Assignee has sufficient insurance coverage (including environmental insurance coverage) in force to satisfy all of the requirements specified in Exhibit C.

7. **Environmental Compliance & Obligations.**

a. **Compliance with Environmental Regulations.** The Assignee 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 4.6 Acre Parcel and/or with respect to any activities or operations that the Assignee may conduct upon the 4.6 Acre Parcel (hereinafter referred to as "Environmental Requirements"). The Assignee shall not cause, permit or suffer the existence or commission by the Assignee,

its agents, employees, contractors or invitees, or by any other person of any violation of any Environmental Requirements upon, about or beneath the 4.6 Acre Parcel or any portion thereof.

b. Hazardous Material; Environmental Liens. Except to the extent commonly used in the day-to-day operation of the 4.6 Acre Parcel, and in strict compliance with all Environmental Requirements (including those relating to storage, use and disposal), the Assignee 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 4.6 Acre Parcel or any portion thereof by the Assignee, its agents, employees, contractors, tenants or invitees, or any other person without the prior written consent of the City. Any request by the Assignee 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 substance” is necessary to the conduct of the business of the Assignee and will be stored, used, and disposed of in a manner that complies with all applicable Environmental Requirements. The Assignee shall not create or suffer to exist with respect to the 4.6 Acre Parcel any lien, security interest, or other charge or encumbrance of any kind relating to the environmental condition of the 4.6 Acre Parcel, including (without limitation) any lien imposed pursuant to Sec. 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9607(L)) or any similar State Statute.

c. Obligations to Investigate and/or Remediate. The Assignee 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 4.6 Acre Parcel 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 4.6 Acre Parcel of any “hazardous material” or “hazardous substance” or any violation of Environmental Requirements caused by the presence of and/or activities or operations conducted by the Assignee upon the 4.6 Acre Parcel. Any such investigation and/or remediation shall be performed by and under the direction of a qualified environmental consulting or engineering firm approved by the City in advance of the commencement of the work. The Assignee agrees to allow entry upon the 4.6 Acre Parcel 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 the Assignee’s presence and/or activities or operations upon or with respect to the 4.6 Acre Parcel upon the environmental condition thereof. In the event that the Assignee 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. Existing Environmental Contamination. Notwithstanding anything to the contrary in the Lease of in this Assignment, the Assignee shall have no responsibility or obligation whatsoever, with respect to the environmental condition of the 4.6 Acre Parcel on or before the Effective Date of this Assignment, and as described in the November 16,

2009 Results Report of Baseline Environmental Assessment completed by Sigma Group, Inc. It is, however, understood and agreed that the Assignee shall be fully responsible for those environmental obligations and liabilities resulting from its operations on the 4.6 Acre Parcel and from the actions or omissions of its employees, agents, contractors, tenants and invitees.

e. Survival of Obligations. The Assignee's obligations with respect to the environmental condition of the 4.6 Acre Parcel (as more fully set forth in Subsections (A) through (C) above) shall survive the expiration or termination of this Agreement.

8. **Termination and Vacation: Default.** Paragraph 8.A. of the Lease entitled "Termination and Vacation Date" is amended by changing the second sentence thereof to read:

"The 4.6 Acre Parcel shall be returned to the City by the Assignee as bare ground, with no improvements thereon, normal wear and tear excepted."

9. **Financial Guarantee.** Prior to the Effective Date of this Assignment, Assignee shall furnish either a bond or a bank standby 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 payable to the City by Assignee, as Tenant under the assigned Lease. In the event Assignee is unable, after exercising every reasonable effort, to procure such instrument, Assignee, at the sole option of the City, may furnish to City written personal guarantees of its members or other persons or entities, in a form and in amounts approved by the City. In the event that the City ever draws upon any financial

guarantee instrument furnished under this Section, Assignee shall immediately post a new or equivalent financial guarantee instrument in the form and amount specified by this Section.

10. **Term of Assignment: Successor Lease.** This Assignment shall remain effective for the remaining duration of the Lease term, which term shall expire on December 31, 2011. The Assignee and the City agree to negotiate in good faith with respect to attaining agreement on the terms and conditions of a successor lease, to take effect as of January 1, 2012.

11. **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 the Assignor:

Jacobus Energy, Inc.
11815W. Bradley Road
Milwaukee, WI 53224
Attn: Mr. Eugene T. Jacobus

To the Assignee:

South Harbor, LLC
1726 S. Harbor Drive
Milwaukee, WI 53207

To the City:

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.

12. **Consent by the City.**

a. The City, 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.

b. Effective as of the Effective Date, the City hereby agrees to recognize the Assignee as the Tenant under the Lease and thereby to establish direct privity of contract with the Assignee.

c. This Assignment remains in effect only if the closing of the property sale between the Assignor and the Assignee occurs on or before the Effective Date.

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

14. **Headings.** The section headings used herein are inserted for convenience only and shall not affect any way the meaning or interpretation of this Assignment.

15. **No Slavery Affidavit.** The Assignor and Assignee shall execute the Affidavit of Compliance attached hereto as Exhibits C-1 and C-2, contemporaneously with its execution of this Lease Assignment.

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

17. **Governing Law.** This Assignment shall be governed by, and construed and enforced in accordance with, the laws of the State of Wisconsin.

18. **Counterparts.** This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

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

ASSIGNOR:
JACOBUS ENERGY, INC.

ASSIGNEE:
SOUTH HARBOR MILWAUKEE, LLC

By _____
Eugene T. Jacobus, President

By _____
John Fox, President

LANDLORD:
CITY OF MILWAUKEE

By _____
Tom Barrett, Mayor

By _____
Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

By _____
W. Martin Morics, Comptroller

BOARD OF HARBOR COMMISSIONERS

By _____
Timothy K. Hoelter, President

By _____
Donna Luty, Secretary

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

STATE OF WISCONSIN
MILWAUKEE COUNTY

Personally came before me this _____ day of, _____, 20____,
Eugene T. Jacobus, President, of JACOBUS ENERGY, INC., who by its authority and on
its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

PLEASE NOTE: CORPORATIONS MUST COMPLETE THE FOLLOWING:

(Note: Someone other than the individual who executed this Lease must certify the following):

CERTIFICATE RE: CORPORATION

I, _____ certify that I am the _____ of the
(print name) (print title)

above ASSIGNOR named herein; that _____, who
(print signator of tenant)

executed this Lease on behalf of the ASSIGNOR was then _____
(official capacity of signator)

of said corporation, and in said capacity, duly signed said Lease for and on behalf of said corporation, being duly authorized so to do under its bylaws or is authorized so to do by action of its duly constituted board, all of which is within the scope of its corporate powers.

Dated at _____ this _____ day of _____, 20____.
(location)

(Signature)

STATE OF WISCONSIN
_____ COUNTY

Personally came before me this _____ day of, _____, 20____,
John Fox, President, 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: LIMITED LIABILITY COMPANIES 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 ASSIGNEE named herein; that _____, who
(print signator of tenant)

executed this Lease on behalf of the ASSIGNEE was then _____
(official capacity of signator)

of said corporation, and in said capacity, duly signed said Lease for and on behalf of said
corporation, being duly authorized so to do under its Operating Agreement or is
authorized so to do by action of its members, all of which is within the scope of its
limited liability company powers.

Dated at _____ this _____ day of _____, 20____.
(location)

(Signature)

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

Assistant City Attorney

1122-2009-3195:152414

EXHIBIT A

(Lease-jacobuslse01-07.doc)

EXHIBIT B

Insurance. The Assignee shall maintain in full force and effect throughout the term of this Assignment, and thereafter, to the extent specified below, the following insurance covering any and all liability or obligations which may result from operations by the Assignee, the Assignee'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 overage perils, vandalism, sprinkler leakage, water damage, collapse and other special extended perils) to the extent of the replacement cost of the Assignee's personal property and improvements as well as goods or property in the Assignee'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 the Assignee'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" following expiration of this Assignment.

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 Names 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. The Assignee shall furnish the City with certificates of insurance for all policies showing that insurance has been written as required. Such evidence shall be provided by the Assignee 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 the 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. The Assignee shall not act in any manner that may make void or voidable any insurance required herein. Upon written request, the Assignee shall provide the 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, the City shall review the extent and limits of the insurance coverage required herein. After said review, should the City determine an increase in the extent and/or limits of insurance coverage is required, the Assignee shall be so notified in writing and the Assignee 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 or 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.

The limits and adequacy of said insurance shall be determined by the City and the form and proof of insurance shall also be approved by the City. Failure of the Assignee to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation under this Lease. The City shall have the right to review policies providing the required coverage.

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 is receiving any premium, commission, fee, or other thing of value on account of furnishing said policy of insurance.

EXHIBIT C-1 & C-2
(Affidavit of Compliance)