



MEMORANDUM

TO: Mayor and City Council
FROM: John Brunelle, Director, Economic Development
DATE: August 24, 2012
SUBJECT: Ground Lease between City of Boise and Transfuels LLC.

ACTION REQUIRED: Approval of R-297-12

RECOMMENDATION: That Council approve and Mayor sign R-297-12

FISCAL IMPACT/BUDGET IMPLICATIONS: A 20-year ground lease for 13.88 acres of unimproved industrial land will generate \$1,624,617 in revenue for the City of Boise. The rent in Year One will be \$60,461. The lease rate in Year One is calculated with a 10% rate of return on value, with the value of \$1.00 per square foot. The rate used to increase the monthly rent on each anniversary of the lease (escalation rate) is 3% per annum. There is a 90 day due diligence period for investigation and permitting.

BACKGROUND: The 13.88 acre parcel is located on Eisenman Road and has been owned by the City of Boise for approximately 12 years. The land been unused during this entire period and was declared surplus in 2010. This was one of three parcels offered at auction in October of 2010, with none receiving the required minimum bid of \$1.50 per square foot. It has since been listed with a local commercial broker at \$1 per square foot.

Transfuels LLC is a Provo, Utah based company and plans to construct and operate a fueling station for on road vehicles on this property. Under the brand identity of "Blu," this will be a natural gas fueling station similar to other locations in Utah. The primary user of the station will be commercial vehicles, particularly tractor trailer rigs. Transfuels' stated objective with clean fuel is to empower commercial fleets and individual vehicle owners to take personal responsibility to reduce their environmental impact.

RESOLUTION NO. _____

BY THE COUNCIL:

CLEGG, EBERLE, JORDAN, MCLEAN,
QUINTANA AND THOMSON

A RESOLUTION APPROVING A GROUND LEASE AND ACCOMPANYING DOCUMENTS BETWEEN TRANSFUELS LLC AND BOISE CITY (ECONOMIC DEVELOPMENT) FOR PROPERTY LOCATED ALONG EISENMAN ROAD IN BOISE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Boise City owns 13.3+/- acres near Eisenman Road and Interstate 84; and,

WHEREAS, Transfuels, LLC seeks to develop an on-road natural gas fueling facility upon the property owned by the City under a long term lease; and,

WHEREAS, the parties have negotiated an agreement for said long term lease.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE CITY, IDAHO:

Section 1. That the Ground Lease Agreement, attached hereto and incorporated herein by reference, be, and the same is hereby, approved as to both form and content.

Section 2. That the Mayor and City Clerk be, and they hereby are, authorized to respectively execute and attest said Ground Lease Agreement for and on behalf of the City of Boise City.

Section 3. That this Resolution shall be in full force and effect immediately upon its adoption and approval.

ADOPTED by the Council of the City of Boise, Idaho, this ___ day of August, 2012.

APPROVED by the Mayor of the City of Boise, Idaho this ___ day of August, 2012.

APPROVED:

ATTEST:

David H. Bieter
MAYOR

Debbie Broughton
EX-OFFICIO CITY CLERK

GROUND LEASE TERM SHEET

This Ground Lease Term Sheet is made and entered into as of _____, 2012 (“**Effective Date**”) by and between the City of Boise, an Idaho municipal corporation, as landlord (“**Landlord**”), and Transfuels LLC, a Delaware limited liability company, or assignee, as tenant (“**Tenant**” and together with Landlord, individually, a “**Party**” and, collectively, the “**Parties**”) (this “**Term Sheet**”).

This Term Sheet is attached to and forms a part of that certain Ground Lease dated as of even date herewith between the Parties (the “**Lease**”). Each term used but not otherwise defined in this Term Sheet shall have the meaning ascribed thereto in the Lease. The terms and conditions of this Term Sheet are subject to the terms and conditions of the Lease. For good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties enter into this Term Sheet and agree as follows:

1. **Demised Premises.** The premises to be leased by Landlord to Tenant consist of the Demised Premises (as defined in Exhibit A to the Lease) which are located in the City of Boise, County of Ada, State of Idaho which the Parties understand contain approximately 579,394.39 square feet (the “**Agreed Square Footage**”).
2. **Rental.** The monthly amount due as payment for the rental of the Demised Premises (the “**Rent**”) shall be equal to (a) during the Due Diligence Period, one-twelfth (1/12) of the product obtained by multiplying (i) the Agreed Square Footage by (ii) \$.05 per square foot and (b) from and after the end of the Due Diligence Period, one-twelfth (1/12) of the product obtained by multiplying (i) the Agreed Square Footage by (ii) \$.10 per square foot. Assuming that the Agreed Square Footage is as set forth in **Section 1** of this Term Sheet, the monthly Rent from and after the end of the Due Diligence Period shall be Five Thousand Thirty Eight and 42/100 Dollars (\$5,038.42) per month (subject to adjustment as provided in the Lease). The monthly amount of the Rent shall be adjusted from and after the end of the Due Diligence Period if the square footage of the Demised Premises as shown on the Survey is different from the Agreed Square Footage (such adjustment being equal to one-twelfth of \$.10 per square foot, or portion thereof, in difference). The rate used to increase the monthly Rent on each anniversary of the Effective Date shall be three percent (3%) per annum (the “**Escalation Rate**”).
3. **Due Diligence.** Tenant shall have the period of ninety (90) days commencing on the Effective Date, including any extension of such period as provided in the Lease (the “**Due Diligence Period**”) to conduct Tenant’s due diligence as provided in the Lease (which shall be subject to, among other things, Tenant’s right to terminate the Lease under **Section 7** of the Lease).
4. **Commencement Date, Termination Date and Renewal Options.** The term of the Lease shall (a) commence on the Effective Date (the “**Commencement Date**”) and (b) terminate on the date that is the twentieth (20th) anniversary of November 15, 2012 (the “**Termination Date**”). Subject to **Section 2(b)** of the Lease, Tenant shall have the option to extend the Lease for up to three (3) option periods of ten (10) years each (each such period being a “**Renewal Option Period**” and each such option being a “**Renewal Option**”).
5. **Broker.** The broker representing Landlord in the transactions contemplated by the Lease is Colliers Paragon, LLC, George Iliff, Broker, acting through its agents, John M. Starr and Jimmy Roumanis (the “**Broker**”).

6. **Addresses for Notice.** The address designated for a Party below in this **Section 6** of this Term Sheet (including the address for such Party’s representative to be copied) shall constitute the “**Address for Notice**” of such Party).

To Landlord: City of Boise
Office of the Mayor
Boise City Hall
150 N. Capitol Blvd.
PO Box 500
Boise, ID 83701-0500
Attn: Economic Development

To Tenant: Transfuels LLC
4752 California Ave.
Building A, Ste 500
Salt Lake City, UT 84104-4478
Attn: Paul Judge

With a copy to: Holland & Hart LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
Attn: Eric D. Bawden, Esq.

7. **Addenda and Exhibits.** The following addenda and exhibits are attached to and made a part of the Lease (together with this Term Sheet, the “**Addenda and Exhibits**”):

- Exhibit A (Description of the Demised Premises)
- Exhibit B (Memorandum of Lease)
- Exhibit C (Real Estate Option and Exchange Agreement)
- Nondisclosure Addendum

[Remainder of term sheet intentionally left blank; Signature page follows this page]

IN WITNESS WHEREOF, by their execution below, the Parties indicate their agreement to the terms of this Term Sheet with the intent to be bound by this Term Sheet.

LANDLORD:

TENANT:

City of Boise an Idaho municipal corporation

Transfuels LLC, a Delaware limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

GROUND LEASE

THIS GROUND LEASE, dated as of _____, 2012 (the “*Effective Date*”), is between the City of Boise, an Idaho municipal corporation (“*Landlord*”), and Transfuels LLC, a Delaware limited liability company (“*Tenant*” and together with Landlord, individually, a “*Party*” and, collectively, the “*Parties*”) (this “*Lease*”). Certain terms used in this Lease are defined in that certain Ground Lease Term Sheet dated as of even date herewith between the Parties (the “*Term Sheet*”) or Exhibit A attached to this Lease and incorporated into this Lease by this reference (“*Exhibit A*”) which terms shall have the meaning ascribed thereto in the Term Sheet or Exhibit A as indicated in this Lease. For good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties enter into this Lease and agree as follows:

1. **Demised Premises.** Landlord does hereby demise and lease unto Tenant, and Tenant does hereby lease from Landlord, the Demised Premises (as defined on Exhibit A attached hereto and incorporated herein by this reference). The Parties agree to execute an amendment to this Lease incorporating the exact legal description of the Parcel (as defined on Exhibit A to this Lease), based upon the Survey. References to the “Demised Premises” include any and/or each portion thereof and/or interest therein.
2. **Lease Term.**
 - (a) **Initial Term.** Tenant shall have and hold the Demised Premises for an initial term (the “*Initial Term*”) commencing on the Commencement Date and ending on the Termination Date (as such Initial Term is extended through exercise of one or more of the Renewal Options, as defined below, the “*Term*”). When the Commencement Date occurs or is otherwise determined by agreement between the Parties, the Parties shall execute a notice of the Commencement Date (the “*Notice of Commencement Date*”), suitable for recording, which shall specify the Commencement Date and the actual date for the expiration of the Term. Landlord shall execute and return such Notice of Commencement Date within fifteen (15) days after delivery of such Notice of Commencement Date to Landlord by Tenant.
 - (b) **Renewal Options.** The Term shall be extended, automatically, for each Renewal Period upon the same terms and conditions as contained in this Lease for up to the total number of Renewal Options specified in the Term Sheet. No notice or act, whatsoever, shall be required by Tenant to exercise a Renewal Option. Tenant shall provide, however, a written notice to Landlord at least one hundred eighty (180) days prior to the expiration of the Initial Term or any extension thereof, if Tenant elects to terminate this Lease as of the end of the Initial Term or any extension thereof, whichever is applicable. No Renewal Option shall be exercised while Tenant is in default under this Lease and such default has not been cured or waived.
3. **Rent.** Tenant’s liability for Rent shall first accrue as of the Commencement Date. Tenant, in consideration of the covenants made by Landlord, shall pay the Rent to Landlord (at Landlord’s address as specified below) during the Term, without offset or demand, except as otherwise set forth herein. During the Term, the Rent shall increase on each anniversary of the Commencement Date to an amount equal to the product obtained by multiplying (A) the Rent in effect for the month immediately preceding such anniversary by (B) the Escalation Rate. If the Commencement Date is other than the first day of a month, the first payment of Rent and the last payment of Rent shall be adjusted for the proportionate fraction of the whole month. Rent for a month shall be due and payable on the first day of such month or if the Lease commences after the first of a month, on the Commencement Date.
4. **Landlord’s Representations, Warranties and Covenants.** Landlord covenants, represents and warrants for the benefit of Tenant as follows:
 - (a) **Title.** Landlord has good, marketable and insurable title to the Demised Premises and all Improvements located on it as of the Effective Date. Landlord shall defend the title to the Demised Premises. Other

than this Lease, there are no leases, subleases, licenses, concessions or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Demised Premises. Except for that certain Real Estate Option and Exchange Agreement which expires on November 9, 2012 (the “*Option Expiration Date*”), a copy of which is set forth on *Exhibit C* attached hereto (the “*Option Agreement*”), there are no outstanding options or rights to purchase the Demised Premises or any portion thereof or interest therein. Tenant will take possession of the Demised Premises subject to the Option Agreement. There are no liens, mortgages, deeds of trust or similar security interests in or encumbering the Demised Premises. Landlord shall not place any encumbrances on the Demised Premises or Landlord’s interest in this Lease or any part of the Demised Premises or this Lease or interest in the Demised Premises or this Lease without the prior written consent of Tenant.

- (b) **Noncontravention; Binding Agreement.** Landlord has all requisite power and authority to carry on its business and enter into and perform under this Lease, and Landlord’s execution of and performance of its obligations under this Lease will not (i) violate or breach any agreement to which Landlord is a party or to which the Parcel is subject, (ii) result in, or require the creation or imposition of, any lien or encumbrance upon or with respect to the Parcel or (iii) give rise to any right of termination, cancellation or acceleration under any agreement to which Landlord is a party or to which the Demised Premises are subject. This Lease constitutes the legal, valid and binding agreement of Landlord enforceable against Landlord in accordance with its terms.
- (c) **Proceedings.** Neither Landlord nor the Demised Premises are a party to or the subject of any threatened or filed litigation, order, decree, claim, liability, investigation, violation, assessment, action, petition or other proceeding that may affect the Demised Premises or Tenant’s right to occupy the Demised Premises consistent with Tenant’s business plan (including any proceeding relating to condemnation, superfund matters, cleanup, removal or remediation).
- (d) **Environmental.**
- (i) To Landlord’s knowledge (A) the Demised Premises are free of Hazardous Materials, (B) there has not been any release of Hazardous Materials on, under or at the Demised Premises or any past or current migration of any Hazardous Materials onto or under the Demised Premises from any adjoining property, (C) all previous activity involving Hazardous Materials on the Demised Premises has been conducted in compliance with applicable Law, and (D) the Demised Premises and the uses conducted on the Demised Premises are in compliance with all applicable Laws. Neither Landlord nor any of Landlord’s employees, agents or contractors has taken any action and has not otherwise caused or permitted any event or condition that would make any of the statements in *Section 4(d)(i)(A)* through *Section 4(d)(i)(D)* of this Lease not to be true or correct without regard to Landlord’s knowledge. For purposes of this Lease, the term “*Landlord’s knowledge*” shall mean the knowledge of Landlord and the knowledge of any Person that is an agent, employee or contractor of Landlord, all after due inquiry and investigation.
- (ii) By entering into this Lease, Tenant will not incur or be subject to any liability for the cleanup, removal, or remediation of any Hazardous Materials from the Demised Premises to the extent such Hazardous Materials existed prior to the Effective Date. Landlord shall be responsible to remediate each violation of applicable Laws and all liability related to the presence, manufacture, generation, treatment, remediation, transport or disposal of Hazardous Materials at or in relation to the Demised Premises that is not the result of Tenant’s actions.
- (iii) For purposes of this Lease, “*Hazardous Material*” means the following as defined in any Law: (1) hazardous waste, (2) hazardous substance, (3) petroleum, oil and their by-products, other than minor surface accumulations of such products that result from minor leakage and spills which are, upon written request of Landlord, promptly cleaned up; and (4) any substance that is or becomes regulated by any federal, state or local governmental authority or any Law

(including (i) asbestos, including all friable asbestos; (ii) polychlorinated biphenyls; (iii) underground storage tanks, whether empty, filled or partially filled with any substance, (iv) arsenic and (v) lead). “**Law**” means all present and future laws, codes, ordinances, orders, decrees, regulations, acts, rules, requirements, covenants, directions, and/or regulations, ordinary and extraordinary, foreseen or unforeseen, as amended from time to time and all successors thereto, of any federal, state, municipal or other public department, bureau, officer or authority or of the National Fire Protection Association, or other body having similar functions or jurisdiction over the Parcel, or of any liability, casualty or other insurance company having policies to be maintained with respect to the Demised Premises (or any portion thereof), including each of the foregoing relating to environmental matters, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Americans with Disabilities Act, the condition or use of the Demised Premises, or the streets adjacent to it.

- (e) **Taxes.** Landlord is an Idaho municipal corporation and exempt from taxation by virtue of Idaho law.
- (f) **Bankruptcy.** Landlord has not (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition for bankruptcy or suffered the filing of a voluntary petition by Landlord’s creditors, (c) suffered the appointment of a receiver to take possession of all or substantially all of Landlord’s assets, or (d) made an offer of settlement, extension or composition to its creditors generally.
- (g) **Quiet Enjoyment.** Landlord agrees and ensures that Tenant shall have sole and actual possession of the Demised Premises and exclusive possession of the Demised Premises at all times during the Term (subject only, for the period commencing on the Effective Date and ending on the Option Expiration Date, to the Option Agreement). Within thirty (30) days of a written request for such by Tenant, Landlord shall provide Tenant with any and all non-disturbance agreements, in form acceptable to Tenant, from each underlying lessor and each holder of an encumbrance relating to the Demised Premises.
- (h) **Cooperation.**
- (i) Landlord shall cooperate reasonably with Tenant and take such actions reasonably requested by Tenant to accomplish the satisfaction of Tenant’s rights under this Lease, including satisfaction of the Conditions (as defined below), including providing information related to the Demised Premises, executing consents and dedicating or granting any easements for public ways.
- (ii) Tenant shall reimburse Landlord for Landlord’s reasonable out-of-pocket expenses incurred in performing Landlord’s obligations under **Section 4(h)(i)** of this Lease to the extent that such expenses have been approved in writing by Tenant prior to Landlord incurring such expenses. Tenant’s refusal to approve such expenses shall excuse Landlord from any obligation to perform such obligations. The value of any easement that is dedicated or granted pursuant to **Section 4(h)(i)** shall not constitute an out-of-pocket expense incurred by Landlord for purposes of this **Section 4(h)(ii)**.
- (iii) Landlord shall refrain from any communication or action that could reasonably be foreseen to have any negative impact on Tenant’s ability to accomplish the following (being, collectively, the “**Development**”): development, construction, ownership, operation, financing, repair, reconstruction, restoration, acquisition, permitting, commercialization, marketing, abandonment, demolition, removal, reclamation, exchange, expansion, relocation, use or sale or other disposition of an on-road natural gas fueling facility in accordance with Tenant’s plans for the Demised Premises (such facility being a “**Fueling Facility**”).
- (i) **Limitation on Surrounding Uses.** Landlord covenants and agrees that during the Term and each extension thereof no property (other than the Demised Premises) now or hereafter owned, leased or

controlled, directly or indirectly, by Landlord or any subsidiary or other affiliate of Landlord, adjacent or contiguous to the Demised Premises, including the Parcel, shall be leased, used or occupied as an on-road natural gas fueling facility. In the event of any breach of the covenant in this **Section 4(i)**, Tenant shall be entitled, without further notice or action, to, together with all other remedies available to Tenant at law or in equity, the abatement of one-half (1/2) of all Rent for so long as such breach continues. Such a breach would cause Tenant proximate and substantial damages, of which the amount would be very difficult, if not impossible, to ascertain. As such, Tenant's remedies shall include injunctive and other appropriate relief without the need to post a bond or other security or to prove damages.

- (j) **Disclosure.** Neither this Lease nor any document delivered pursuant hereto by Landlord contains any untrue statement of material fact or omit a material fact pertaining to any fact or circumstance the existence of which has or might reasonably be foreseen to have, any material adverse effect on the current use, condition or value of the Demised Premises including any matters relating to compliance with laws and title to the Demised Premises.

(k) **Indemnification of Tenant.**

- (i) Landlord shall defend, indemnify and hold Tenant harmless from and against any and all claims, demands, causes of action, cost (including reasonable attorney fees), liability, penalties, fines, damages, expenses, judgments and loss arising from injury to persons or property of any nature as a result of any Landlord Default (as defined below), unless caused by the gross negligence or intentional misconduct of Tenant or its agents or contractors. Notwithstanding anything in this **Section 4(k)** to the contrary, nothing in this **Section 4(k)** shall be construed as a waiver of Landlord's sovereign immunity or any other protection afforded to Landlord as a political subdivision of the State of Idaho vis-à-vis any party other than Tenant, including but not limited to the protections afforded Landlord under the Idaho Tort Claims Act; provided, however, the preceding protections, including sovereign immunity or any other protection afforded to Landlord as a political subdivision of the State of Idaho shall not in any way limit Landlord's indemnification obligations to Tenant under this Lease and said protections may only be asserted by Landlord against Landlord's contractors, servants, agents, employees, guests and business invitees. A defense shall be provided by counsel retained by Landlord, at Landlord's cost, which counsel shall be reasonably acceptable to Tenant. Landlord may not agree to any settlement or resolution of any proceeding with respect to which Landlord is indemnifying Tenant without Tenant's prior written approval. In the event of an adverse judgment against Tenant on such claims, the judgment having become final, and the time for all appeals having expired, Landlord agrees to cause such judgment to be satisfied in full within thirty (30) days after such judgment becomes final, and agrees to indemnify and hold Tenant harmless from and against any and all losses, costs, expenses, damages, liabilities or attorney fees that arise if such judgment is not so satisfied.

Tenant agrees to provide written notice to Landlord of such complaint or claim within fifteen (15) days of Tenant becoming aware of any such complaint or claim. The delivery of such written notification shall include a copy of all correspondence and exhibits if a claim is made and all pleadings if a complaint is filed. Tenant's failure to provide such notice shall not excuse Landlord from its obligations under this Lease, including this **Section 4(k)** except that Landlord shall not be obligated for any increase in liability resulting from such failure. The provisions of this **Section 4(k)** shall survive the termination of this Lease.

- (l) **Tenant's Remedies.** Landlord acknowledges that Tenant is relying upon all of the above covenants, representations and warranties in executing this Lease and that each matter so represented and warranted is a material inducement to Tenant to enter into this Lease. The term "**Landlord Default**" as used in this Lease shall include any default under this Lease by Landlord and any failure of or misstatement or omission in any representation or any breach of any covenant or warranty of Landlord set forth in this Lease. If Landlord fails to cure any Landlord Default under this Lease within thirty (30) days after

written notice from Tenant of such Landlord Default, any such Landlord Default shall be grounds for Tenant to elect, at its option, to terminate this Lease or cure such Landlord Default and deduct Tenant's costs to cure such Landlord Default from Rent. These remedies are in addition to all other remedies Tenant may have in law or equity.

5. **Tenant's Covenants.** Tenant covenants and agrees, from and after the Commencement Date and through the end of the Term and for such further time as Tenant, or any person claiming under it, shall hold the Demised Premises or any part of it:
- (a) **Rent.** Tenant shall pay, without offset or demand, except as otherwise expressly set forth herein, the Rent due and payable under this Lease on the days and in the manner as provided in this Lease.
 - (b) **Liens and Encumbrances.** Except as provided for in this Lease, Tenant shall keep the Demised Premises free and clear of all liens of persons validly claiming by, through or under Tenant, and shall not allow Landlord's interest in the Demised Premises at any time during the Term to become subject to any such lien. Tenant reserves the right to remove or bond over any such lien within thirty (30) days of written notice of such lien from Landlord.
 - (c) **Insurance.** At its own expense, Tenant shall obtain and keep in force such insurance or a self-insurance program to the extent Tenant deems necessary to protect Tenant's interest in the Demised Premises and the Tenant Improvements. Any commercial general liability insurance maintained by Tenant with respect to the Demised Premises shall name Landlord as an additional insured, and, subject to the rights of the holder of any Approved Lienholder (as defined below), shall be for the mutual and joint benefit and protection of the Parties. All other insurance, including casualty and extended coverage policies shall be payable in case of loss only to Tenant.
 - (d) **Repairs.** Tenant shall keep the Demised Premises in materially safe and good condition and repair, subject to (i) ordinary wear and tear, (ii) **Section 10** below and (iii) Landlord's obligations under this Lease.
 - (e) **Utilities.** Tenant shall pay when due all charges for all utility services used on the Demised Premises.
 - (f) **Compliance with Law.** Tenant shall comply in all material respects with all governmental laws, rules and regulations applicable to the use, development or operation of the Demised Premises.
 - (g) **Taxes.** Any and all general real estate taxes and assessments imposed at any time during the Term, upon or against the Demised Premises including the Parcel and all Improvements now or later located on the Parcel, that are lawfully assessed, shall be paid by Tenant promptly and before they become delinquent whether in the name of the Landlord, fee owner or Tenant. Landlord shall not be under any obligation to pay any part of any tax of any nature which is or may become payable by Tenant or which may be imposed against Tenant. Any contest or dispute of such taxes by Tenant in accordance with applicable law shall not constitute a default under this Lease.
 - (h) **Landlord's Remedies.** Tenant acknowledges that Landlord is relying upon all of the above covenants, representations and warranties of Tenant in executing this Lease and that matters so covenanted, represented and warranted are material inducements to Landlord to enter into this Lease. The term "**Tenant Default**" as used in this Lease shall include any default under this Lease by Tenant and any failure of or misstatement or omission in any representation or any breach of any covenant or warranty of Tenant set forth in this Lease. If Tenant fails to cure any Tenant Default under this Lease within one hundred twenty (120) days after written notice from Landlord of such Tenant Default, any such Tenant Default shall be grounds for Landlord to elect, at its option, to terminate this Lease or cure such Tenant Default and deduct Landlord's costs to add such Tenant Default to Rent due from Tenant. These remedies are in addition to all other remedies Landlord may have in law or equity, including the right to (a) expel Tenant or any person occupying the same in or upon the Demised Premises and repossess and

enjoy the Demised Premises as part of Landlord's estate; and/or (b) re-let the Demised Premises, applying the rent from the new tenant on this Lease, and Tenant shall be responsible for no more than the balance that may be due, should a balance exist. Anything contained in this Lease to the contrary notwithstanding, if any default shall occur other than in the payment of money, which cannot with due diligence be cured within a period of one hundred twenty (120) days, and Tenant, prior to the expiration of one hundred twenty (120) days from and after the giving of the notice, commences to eliminate the cause of such default, then Landlord shall not have the right to declare the term ended and/or relet the Demised Premises by reason of such default. Landlord shall use commercially reasonable efforts to mitigate any damages due to a Tenant Default.

(i) **Indemnification of Landlord.**

- (i) Tenant shall defend, indemnify and hold Landlord harmless from and against, unless caused by the gross negligence or intentional misconduct of Landlord or its agents or contractors, any and all claims, demands, causes of action, cost (including reasonable attorney fees), liability, penalties, fines, damages, expenses, judgments and loss arising from injury to persons or property of any nature as a result of any Tenant Default or, to the extent arising out of Tenant's actions, (A) incident to this Lease and/or (B) the use or occupancy of the Demised Premises. Such defense shall be provided by counsel retained by Tenant, at Tenant's cost, which counsel shall be reasonably acceptable to Landlord. Tenant may not agree to any settlement or resolution of any proceeding with respect to which Tenant is indemnifying Landlord without Landlord's prior written approval. In the event of an adverse judgment against Landlord on such claims, the judgment having become final, and the time for all appeals having expired, Tenant agrees to cause such judgment to be satisfied in full within thirty (30) days after such judgment becomes final, and agrees to indemnify and hold Landlord harmless from and against any and all losses, costs, expenses, damages, liabilities or attorney fees that arise if such judgment is not so satisfied.
- (ii) Landlord agrees to provide written notice to Tenant of such complaint or claim within fifteen (15) days of Landlord becoming aware of any such complaint or claim. The delivery of written notification shall include a copy of all correspondence and exhibits if a claim is made and all pleadings if a complaint is filed. Landlord's failure to provide such notice shall not excuse Tenant from its obligations under this Lease, including this **Section 5(i)** except that Tenant shall not be obligated for any increase in liability resulting from such failure. The provisions of this **Section 5(i)** shall survive the termination of this Lease.

6. **Waiver of Subrogation.** Without affecting any other rights or remedies, to the extent of their agreed insurance coverage, each of the Parties (each a "**Waiving Party**") hereby releases and relieves the other, and waives for the Waiving Party and each of the Waiving Party's insurers, mortgagees, lenders, successors and assigns, all right to recover damages (whether in contract or in tort) against the other, for loss of or damage to the Waiving Party's property, arising out of or incident to the perils required to be insured against hereunder; provided, however, this release shall be in force and effect only with respect to loss or damage occurring during such time as the Waiving Party's policies of property insurance shall contain a clause to the effect that this release shall not affect such policies or the right of the Waiving Party to recover thereunder. The effect of such releases and waivers of the right to recover damages shall not be limited by the amount of insurance carried or by any deductibles applicable thereto. The Parties agree to include in their insurance policies a clause permitting this release, so long as the same is obtainable and is includible without extra cost, or if such extra cost is chargeable therefor, so long as the other Party pays such extra cost. Except as provided above, nothing contained in this Lease shall be deemed to release either Party hereto from liability for damages resulting from the fault or negligence of that Party or its agents, contractors or employees.

7. **Inspection Rights.**

- (a) **Due Diligence Period.** Tenant shall have until and including the expiration of the Due Diligence Period to determine the feasibility of Development of the Fueling Facility at the Demised Premises and to conduct all types of investigations and inspections relating to the Demised Premises. Tenant shall have the right to terminate this Lease for any or no reason by providing to Landlord written notice of such termination that is effective on or before the last day of the Due Diligence Period. Landlord hereby grants to Tenant, its agents and contractors, the right to enter upon the Demised Premises to perform such investigations and inspections.
- (b) **Property Documents.** Landlord shall make available for Tenant’s review at Tenant’s address below all engineering, construction, soils, geotechnical, environmental, site and master plans, storm drainage, utility plans, government authorizations and notices, and other reports and studies related to the Parcel, or any portion thereof, to the extent they are in Landlord’s possession or control (all of such documents referenced in this *Section 7(b)*, together with the recorded documents referenced in the Leasehold Commitment, being, collectively, the “*Property Documents*”). To the extent that any reports of the type described in this *Section 7(b)* have not been prepared or are not in the possession or control of Landlord, then Tenant shall have the right to obtain, at Tenant’s cost, such reports and such reports shall be considered Property Documents. Tenant shall have the right to cause an ALTA/ACSM Land Title Survey to be prepared by a licensed surveyor (the “*Survey*”).
- (c) **Conditions.** All conditions identified by Tenant on or before the end of the Due Diligence Period (the “*Conditions*”) shall be conditions precedent to Tenant’s obligations under this Lease; provided, however, that Tenant shall have the right, but not the obligation, in Tenant’s sole discretion to waive the Conditions and/or undertake any and all actions necessary to cause the Conditions to be satisfied.
- (d) **Evidence of Title.** Tenant may, at its discretion, cause a policy of leasehold title insurance with extended coverage on a form and in an amount acceptable to Tenant, to be issued by a title company acceptable to Tenant (the “*Title Company*”), with such policy being effective as of the date of recording of the Memorandum of Lease, showing title to the Demised Premises and appurtenant easements (other than those created by this Lease) in Landlord and with Tenant as the named insured with respect to the leasehold estate to the Demised Premises subject only to the following (the “*Permitted Encumbrances*”) non delinquent property taxes, matters of record approved by Tenant in writing and matters arising by, through or under Tenant (such policy being the “*Leasehold Policy*”). The effective date of the Leasehold Policy shall be a date that is acceptable to Tenant. On or before the tenth (10th) day following the Effective Date, Lender shall deliver to Tenant a commitment from the Title Company to issue the Leasehold Policy (the “*Leasehold Commitment*”). Landlord, in its discretion, shall execute any reasonably necessary instruments required by the Title Company as a condition to issuance of the Leasehold Policy with extended coverage. Landlord shall provide notice to Tenant if Landlord will not execute and deliver any such instrument within five days of Tenant providing a copy of such instrument to Landlord. To the extent that Landlord fails to provide such notice of its intent not to execute and deliver such instrument, Landlord shall be deemed to have agreed to execute and deliver such instrument at or before the time that the Leasehold Policy is to be issued. Tenant shall pay the premiums for a standard coverage Leasehold Policy.
- (e) **Failure of Condition.** In the event Tenant disapproves of any matter disclosed in or by the Leasehold Commitment, the Property Documents or other report, study, survey or examination obtained by Tenant or any matter disclosed in Tenant’s due diligence review of the Parcel including the Demised Premises or any of the Conditions shall not have been satisfied, Tenant may, in addition to Tenant’s other remedies at law or in equity, (i) terminate this Lease on or before the last day of the Due Diligence Period without any liability or obligation under this Lease; or (ii) agree to accept the Demised Premises subject to such matter.

8. **Use, Alterations and Title to Improvements.**

(a) **Use.** Notwithstanding any other provision in this Lease to the contrary, Tenant shall initially occupy and open the Demised Premises for business to the public as a Fueling Facility. Tenant shall have the right thereafter to change the use of the Demised Premises from time to time in Tenant’s discretion.

(b) **Alterations and Title to Improvements.**

(i) During the Term, Tenant shall have the right, at its sole cost and expense, to construct on all or any part of the Demised Premises the Improvements to be constructed on the Demised Premises, including Improvements required for Tenant’s planned Fueling Facility, for Tenant’s benefit and to make, alterations, additions and improvements to such Improvements (the “*Tenant Improvements*”), from time to time, provided that the same shall at all times comply with all then applicable laws, building codes and ordinances. Any construction or height obstructions required by the Federal Aviation Administration will be the sole responsibility of Tenant, at its sole expense.

(ii) All of the Tenant Improvements shall be and remain the property of Tenant at all times during the Term of this Lease and any extensions or renewals. Tenant shall have the right, but not the obligation, to remove any of the Tenant Improvements during the Term or at any time up to thirty (30) days following the expiration or earlier termination of the Term. Tenant intends to remove the storage tanks, the pumps, the portable control building, the personal property and the trade fixtures from the Demised Premises; provided, however, recognizing the potential impact on Tenant of FASB Statement 143 (Accounting for Asset Retirement Obligations) and FASB Interpretation No. 47 (Accounting for Conditional Asset Retirement Obligations), each as issued by the Financial Accounting Standards Board of the Financial Accounting Foundation, Tenant shall not be obligated to remove such items from the Demised Premises at expiration or earlier termination of the Lease. Tenant’s only obligation when surrendering the Demised Premises to Landlord will be to leave the Demised Premises (and any Tenant Improvements not removed) in a broom-clean condition and to remove Tenant’s unattached property. During the Term, Landlord may reasonably require Tenant to conduct reasonable, commonly accepted testing procedures at Tenant’s expense to demonstrate that the Demised Premises do not violate the terms or conditions of this Lease.

(iii) Tenant agrees herein, and will further agree in writing, and if requested, to the imposition of an Avigation Easement or Avigation Deed Restriction upon the Demised Premises, or similar encumbrance upon the Demised Premises, reflecting the Demised Premises proximity to the Boise Airport and the aviation operations conducted there; and reserving unto Landlord, its successors and assigns, for the use and benefit of the public:

(A) a right of flight for the passage of aircraft in the airspace above the surface of the Demised Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on Boise Airport, and reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right to enter upon the Demised Premises after reasonable notice to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at Boise Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations; and

(B) the right to prevent any use of the Demised Premises which would interfere with aircraft landing on or taking off from Boise Airport and the right to prevent any other use of the Demised Premises which would constitute an airport hazard.

9. **Assignment and Subletting.** Tenant may, without the consent of Landlord, sublease or assign this Lease at any time. To the extent that an assignment is made to any of the following (each a “*Designated Assignee*”) such assignment shall constitute a novation of Tenant’s obligations and liabilities and Tenant shall be released from all obligations and liabilities under this Lease to the extent that any such obligation or liability arises from and after the date of such assignment or sublease: any Affiliate of Tenant, any holder of any leasehold mortgage or any assignee that has assets (after giving effect to the assignment and including the Tenant Improvements) with a fair market value at least equal to the fair market value of Tenant’s assets (prior to giving effect to the assignment). Landlord may assign Landlord’s interest in the Lease to a purchaser or subsequent owner of the Parcel in which case the assignment shall constitute a novation of Landlord’s obligations and liabilities and Landlord shall be released from all obligations and liabilities under this Lease to the extent that any such obligation or liability arises from and after the date of such assignment.

10. **Condemnation and Casualty.**

- (a) If, during the Term, the whole or any part of the Demised Premises is taken or condemned by any competent authority for any public use or purpose or damaged as a result of any cause, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for an award or damages for such taking, condemnation or casualty based upon its leasehold interest and ownership of Improvements without impairing any rights of Landlord for the taking of or injury to Landlord’s reversionary interest.
- (b) If a part of the Demised Premises shall be taken, condemned or damaged which, in the reasonable judgment of Tenant, is sufficient to render the remaining portion unsuitable for its continued use or occupancy, then Tenant may, at any time, within a period of sixty (60) days after the date when possession of the Demised Premises shall be required by the condemning authority or one hundred eighty (180) days of such casualty, elect to terminate this Lease.
- (c) If Tenant shall fail to exercise any option to terminate this Lease, then and in either such event, this Lease shall continue in effect. Tenant shall, with all due diligence and at its own cost and expense, repair and restore the Demised Premises or what may remain of the Demised Premises to a condition suitable for Tenant’s use of the Demised Premises.
- (d) Each Approved Lienholder shall have the right, at its own expense, to appear in any condemnation proceeding related to the Demised Premises and to participate in any and all related hearings, trials and appeals.

11. **Trade Fixtures, Machinery and Equipment.** Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed in the Demised Premises by Tenant shall not become the property of Landlord or a part of the realty no matter how affixed to the Demised Premises and may be removed, modified, or improved by Tenant at any time and from time to time during the entire Term, and will be removed in accordance with this Lease upon its expiration or earlier termination. Upon the request of Tenant or any Approved Lienholder, Landlord shall execute and deliver any real estate consent or waiver forms in form acceptable to Tenant setting forth the fact that Landlord waives any lien, claim, interest or other right superior to that of such Approved Lienholder.

12. **Recording.** Neither Party shall record this Lease; however, the Parties agree to execute and record a Memorandum of Lease in the form attached hereto as *Exhibit B* (the “*Memorandum of Lease*”) upon demand of Tenant at any time after the Effective Date.

13. **Subordination.** Tenant agrees to subordinate this Lease to any mortgage or trust deed entered into by Landlord, upon receipt of a nondisturbance agreement from the lender under such mortgage or trust deed in a form reasonably acceptable to Tenant.

14. **Leasehold Financing.**

- (a) **Right to Lien.** Tenant shall have the right from time to time to encumber, with one or more Approved Liens, Tenant's interest in one or more of the following (the "**Financeable Interests**"): this Lease, the Tenant Improvements and each other right, title, interest, property and/or benefit of Tenant arising under or in relation to this Lease. Any Approved Lien shall be subject to the terms and conditions of this Lease. The limitations in this **Section 14(a)** shall not apply, in any event, to any personal property of Tenant or any property of a type that is governed by Article 9 of the Uniform Commercial Code as adopted in any jurisdiction where the Demised Premises are located. Purchase money second mortgages taken back by Tenant in connection with an assignment or sublease of this Lease (or any portion thereof or interest therein) shall constitute an Approved Lien and Tenant shall constitute an Approved Lienholder.
- (b) **No Subordination of Fee.** Except as otherwise specifically set forth herein, at no time shall Landlord's fee simple interest or reversionary interest in the Demised Premises or Landlord's interest in this Lease be subordinated to the interests of an Approved Lienholder. No subsequent execution of any subordination document shall constitute a waiver of this provision by Landlord.
- (c) **Approved Lienholder's Right to Take Possession.** An Approved Lienholder, during the term of its Approved Lien, shall have the right to enter upon and take possession of the Demised Premises and the Improvements, upon the happening of any event of default specified in the terms and conditions of such Approved Lien. Notice of such entry and possession shall be sent to Landlord. Such entry, by itself, shall not be deemed to be a default under this Lease.
- (d) **Right of Approved Lienholder to Cure Defaults.** An Approved Lienholder shall have the benefit of the following provisions in addition to those elsewhere provided in this Lease, provided that such Approved Lienholder shall have given written notice to Landlord of the address to which notices are to be sent to such Approved Lienholder:
- (i) all notices or copies of notices which are by the terms of this Lease to be sent to such Approved Lienholder shall be provided as requested by such Approved Lienholder;
 - (ii) no notice of default or termination given by Landlord to Tenant shall be effective until a copy thereof shall also have been sent to such Approved Lienholder;
 - (iii) after the occurrence of a Tenant Default and receipt by such Approved Lienholder from Landlord of a notice of the occurrence of such Tenant Default, such Approved Lienholder shall have the same time period subsequent to the receipt of such notice to cure any such Tenant Default or cause the same to be cured as shall be permitted under this Lease to the Tenant after notice to Tenant of such Tenant Default; and
 - (iv) after the occurrence of any Tenant Default, this Lease shall not be terminated or cancelled by reason of such Tenant Default without first giving to an Approved Lienholder such time as may reasonably be required to obtain possession of the Demised Premises (including possession by a receiver) or to foreclose on Tenant's interest in the Financeable Interests or otherwise to acquire such interest and to cure such default, provided that such forbearance with respect to such termination or cancellation shall extend for only so long as such Approved Lienholder shall be pursuing such remedies with diligence and continuity and shall be sending notices to Landlord at least monthly informing Landlord of such Approved Lienholder's actions in pursuing such remedies.
- (e) **Limit on Forbearance.** Nothing contained in **Section 14(d)** shall require an Approved Lienholder to begin or continue such possession or foreclosure proceedings or preclude Landlord from exercising any

rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance or preclude the Landlord from exercising any rights or remedies under this Lease other than termination or cancellation of the Lease during any period of such forbearance.

- (f) **Protection of Interests of Approved Lienholder.** If an Approved Lienholder, through the operation of its contract to finance the Tenant Improvements, or by entry as a mortgagee in possession or by foreclosure, or by acceptance of an assignment in lieu of foreclosure, acquires the Tenant's interest in the Demised Premises or the Tenant Improvements, such Approved Lienholder shall have the right, at its option, to exercise the rights and remedies specified in the terms and conditions of the Approved Lien, including:
- (i) completing construction of such improvements substantially and operate such improvements; or
 - (ii) assigning or transferring Tenant's interest in the Demised Premises, this Lease, the Tenant Improvements, to (i) a Controlled Entity of such Approved Lienholder or (ii) any other assignee or transferee, subject to the terms and conditions of this Lease.

No such action by the Approved Lienholder shall relieve Tenant of any of its obligations hereunder.

- (g) **Obligations and Rights of an Approved Lienholder in Possession.** Entry upon or possession of the Demised Premises by an Approved Lienholder shall be subject to the terms and conditions of this Lease; provided, however, that if any default or breach of covenant or other condition justifying termination or cancellation of this Lease shall have been cured within the period provided in this Lease and Tenant shall resume possession, the Approved Lienholder, upon restoring Tenant to full possession of the Demised Premises and its rights under this Lease, shall thereafter not be so bound; and provided further, however, that if after such entry upon and taking possession of the Demised Premises, the Landlord and the Approved Lienholder shall accept, in writing, another tenant or subtenant in place of Tenant or if after such entry and taking possession the Approved Lienholder shall assign its Approved Lien, the right to performance of the obligations secured thereby and its possession of the Demised Premises to another Approved Lienholder in place of the original Approved Lienholder, the original Approved Lienholder shall not be so bound.
- (h) **No Modification or Termination by Tenant.** During the term of any Approved Lien (to the extent Tenant has notified Landlord that the holder of such Approved Lien is to obtain the benefit of this **Section 14(h)**), this Lease shall not be (i) amended or modified or (ii) terminated or cancelled by reason of the exercise of any option or election by Tenant hereunder, or by the giving of any notice by Tenant hereunder, unless such amendment, modification, termination or cancellation is assented to in writing by the Approved Lienholder. Any such attempted amendment or modification, termination or cancellation without such assent shall be void.
- (i) **Approved Lienholder's Rights To New Lease.** If an Approved Lienholder has acquired Tenant's interest in the Demised Premises, this Lease, the Tenant Improvements, or upon any termination of this Lease with the Tenant, at the request of the Approved Lienholder, the Landlord shall, upon compliance with the requirements of this **Section 14(i)**, enter into a new lease with the Approved Lienholder or a Controlled Entity of the Approved Lienholder upon the same terms and conditions contained in this Lease with appropriate revisions to reflect the rights of such Approved Lienholder or Controlled Entity, for what would otherwise be the remainder of the Term but for such termination; such new lease shall have the same priority as this Lease with Tenant and shall provide that title to the Tenant Improvements shall automatically vest in the Approved Lienholder or such Controlled Entity, and that Landlord shall assign to the Approved Lienholder or such Controlled Entity all leases whose occupants have attorned to Landlord. Landlord shall not be required to enter into such new lease unless prior to the execution and delivery of such new lease the Approved Lienholder shall have paid, or caused to be paid, Rent and other sums that would be due and payable by Tenant under this Lease through the date of

commencement of the new lease (without giving effect to any claims to Rent that would not have accrued but for a Tenant Default).

- (j) **Refinancing.** Tenant shall have the right to refinance any debt secured by any Approved Lien at any time and from time to time, provided that such refinancing is by means of an Approved Lien.
- (k) **Definitions.** For purposes of this Lease, each of the following terms shall have the meaning ascribed thereto as follows:
 - (i) “**Affiliate**” means any individual, corporation, joint venture, partnership, trust or other entity which is a partner with or member of Tenant, or which owns or controls Tenant, or any partner or beneficiary or shareholder of any entity which owns or controls Tenant; or any corporation, joint venture, partnership, trust or other entity owned or controlled, directly or indirectly, by Tenant or by any of the partners or members of Tenant or under common ownership of any type with Tenant.
 - (ii) “**Approved Lien**” means a mortgage, trust deed or other lien granted on Tenant’s leasehold interest in the Demised Premises (or any portion thereof or interest therein) to an Approved Lienholder or where an Approved Lienholder is the beneficiary.
 - (iii) “**Approved Lienholder**” means any lender, vendor, lessor, chattel mortgagee or owner with respect to the Demised Premises, the Improvements and/or any personal property of Tenant.
 - (iv) “**Controlled Entity**” when used in connection with any entity shall mean a parent that owns a majority of the voting capital stock of such entity or a subsidiary of such entity of which such entity owns a majority of the voting capital stock.

15. **Miscellaneous Provisions.**

- (a) **Invalidity.** If any term or provision of this Lease or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons whose circumstances other than those as to which it is held invalid or unenforceable, shall not be affected.
- (b) **Successors, etc.** The terms, conditions and covenants of this Lease shall be binding upon and shall inure to the benefit of each of the parties, their heirs, personal representatives, successors or assigns, and shall run with the land; and where more than one party shall be lessors under this Lease, the word “**Landlord**” whenever used in this Lease shall be deemed to include all lessors jointly and severally. The term “**Tenant**” shall be deemed to include each assignee and each subtenant of Tenant to the extent specified in any agreement between Tenant and such assignee or subtenant.
- (c) **Writing.** No waivers, alterations or modifications of this Lease, any rights under this Lease or any breaches of this Lease or any agreements in connection with this Lease shall be valid unless in writing duly executed by both of the Parties.
- (d) **Construction.** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this Lease or in any way affect this Lease. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular. The word “include”, “includes”, and “including” when used in the Lease shall be deemed to be followed by the words “without limitation”, unless otherwise specified.

- (e) **Notice.** If at any time after the execution of this Lease, it shall become necessary or convenient for one of the parties to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing signed by the party serving notice, delivered in person or sent by nationally recognized courier or registered or certified United States mail, return receipt requested and postage prepaid. If intended for Landlord, the notice shall be addressed to the Address for Notice of such Party or such other address as such Party may have furnished to the other Party in writing as a place for the service of notice. Any notice so delivered shall be deemed to have been given as of the time, if delivered in person, such notice is received by the intended recipient or, if sent by nationally recognized courier or U.S. mail, at the time that the records of such nationally recognized courier or the return receipt indicate that such notice has been received at the address to which such notice was properly sent.
- (f) **Conflicts of Interest.** Landlord and (if Landlord is not an individual) each party executing this Lease for or on behalf of Landlord, or as a representative of Landlord, hereby represent that, to the best of Landlord or such party's knowledge, neither Landlord, such party, nor any Affiliate of Landlord is or is related to an agent, employee, servant, supplier, licensee or officer of Tenant or any Affiliate of Tenant. Landlord acknowledges that the foregoing representations are and shall be relied upon by Tenant as a material inducement to enter into this Lease.
- (g) **Authority to Sign.** No employee or agent of Tenant (other than an authorized officer) has authority to make a lease or any other warranty, representation, agreement or undertaking. The submission of this document for examination and negotiation does not constitute an offer to lease or a reservation of or option for the Demised Premises, and this document will become effective and binding only upon execution and delivery by Landlord and an authorized officer of Tenant. All negotiations, considerations, representations and understandings between the parties are incorporated in this document and may be modified or altered only by agreement in writing between the parties, and no act or omission of any employee or agent of the parties or any broker, if any, shall alter, change or modify any of the provisions of this Lease. Each of the Parties represent that the respective persons executing this lease on the behalf of such Party has authority and power to sign this Lease on behalf of such Party.
- (h) **Addenda and Exhibits.** This Lease includes the Addenda and/or Exhibits, which shall take precedence over conflicting provisions (if any) of this Lease, and are made an integral part of this Lease and fully incorporated by reference. All references to this Lease include references to any and/or each term of each exhibit and addendum described in this *Section 15(h)* and any and/or each portion thereof and/or interest therein.
- (i) **Attorney Fees.** If any party hereto brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorney fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "prevailing party" includes a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorney fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. Each Party shall be entitled to attorney fees, costs and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such default.
- (j) **Brokers.** Other than the brokers identified on the Lease Addendum attached hereto, each Party represents and warrants to the other Party that such representing Party has had no dealings with any person, firm, broker or finder in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and that no broker or other person, firm or entity is entitled to any commission or finder's fee in connection with said transaction. Each Party shall be responsible for

and shall pay the compensation, fees and costs for the respective broker retained by such Party arising out of this Lease and/or the consummation of the transaction contemplated hereby.

- (k) **Non-Merger.** There shall be no merger of this Lease, the leasehold estate created hereby with the fee estate in and to the Demised Premises by reason of the fact that this Lease, the leasehold estate created thereby or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in and to the Demised Premises, or any portion thereof, and no such merger shall occur unless and until all persons at the time having any interest in the fee estate and all persons having any interest in this Lease, the leasehold estate including the holder of any mortgage upon the fee estate in and to the Demised Premises, shall join in a written instrument effecting such merger.
- (l) **No Joint Venture.** The relationship between the Parties at all times shall remain solely that of Landlord and Tenant and shall not be deemed a partnership or joint venture.
- (m) **Estoppel Certificates.** Each Party shall, at any time and from time to time upon not less than ten (10) days prior request by the other Party, execute, acknowledge, and deliver to such other Party a statement in writing certifying that (i) this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications) and, if so, the dates to which the Rent and any other charges have been paid in advance, and (ii) that no default hereunder on the part of such other Party exists (except that if any such default does exist, the certifying Party shall specify such default), it being intended that any such statement delivered pursuant to this section may be relied upon by any prospective purchaser or encumbrancer (including assignees) of the Demised Premises.
- (n) **Covenants Run With the Land.** Each of the covenants set forth in this Lease shall run with the Demised Premises. Landlord agrees to provide legal descriptions of all property involved and execute recordable documents, if required by Tenant, to effectuate the foregoing. Notwithstanding anything to the contrary contained herein, however, these covenants shall automatically terminate upon the termination of this Lease without further action of any party.
- (o) **Counterparts.** This Lease may be executed in one or more counterparts. Each such counterpart shall be deemed an original but all such counterparts shall constitute one single agreement. This Lease may be delivered by facsimile transmission, and facsimile copies of executed signature pages shall be binding as originals.
- (p) **Agreement Made in Idaho.** The laws of the State of Idaho shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts of Ada County, Idaho.

[Remainder of Page Intentionally Left Blank; Signatures on Following Page]

IN WITNESS WHEREOF, by their execution below, the Parties indicate their agreement to the terms of this Lease with the intent to be bound by this Lease.

LANDLORD:

TENANT:

City of Boise, an
Idaho municipal corporation

Transfuels LLC, a Delaware limited liability
company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Landlord's Federal Taxpayer Identification Number: _____

EXHIBIT A

TO

LEASE

DESCRIPTION OF THE DEMISED PREMISES

The “*Demised Premises*” mean the following parcel of real property located in Ada County, State of Idaho (the “*Parcel*”):

AS-SURVEYED LEGAL DESCRIPTION:

BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF EISENMAN ROAD, A 110 FOOT PUBLICLY DEDICATED RIGHT-OF-WAY, SAID POINT BEING NORTH 89°43'35" EAST ALONG THE SECTION LINE 681.40 FEET AND NORTH 01°02'04" EAST 30.03 FEET FROM THE FOUND ALUMINUM CAP FOR THE SOUTHWEST CORNER OF SECTION 7, TOWNSHIP 2 NORTH, RANGE 3 EAST, BOISE MERIDIAN; AND RUNNING THENCE ALONG THE EAST RIGHT-OF-WAY LINE OF EISENMAN ROAD THE FOLLOWING TWO (2) COURSES: NORTH 01°02'04" EAST 1557.45 FEET TO A POINT ON A 1055 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE 84.74 FEET THROUGH A CENTRAL ANGLE OF 04°36'09" (WHICH LONG CHORD BEARS NORTH 01°16'14" WEST 84.72 FEET); THENCE SOUTH 26°58'11" EAST 1039.75 FEET; THENCE SOUTH 17°38'39" EAST 26.74 FEET; THENCE SOUTH 00°03'59" WEST 687.33 FEET; THENCE SOUTH 89°43'35" WEST 505.10 FEET TO THE POINT OF BEGINNING.

together with, for the use and benefit of the Parcel, including the Improvements to be erected on the Parcel, and Tenant (a) all easement rights, Rights-of-Way and other appurtenances to the Parcel, and (b) all Improvements now located on the Parcel, if any. For purposes of this Lease, each of the following terms has the meaning ascribed thereto as follows: (i) “*Improvements*” means gravel, asphalt, concrete, striping, curb, gutter, sidewalks, walkways, signage, landscaping, perimeter walls and fences, lighting, utilities (whether for sewers, water, gas, drainage, electricity, telephone or internet), facilities, systems, pipes, conduits, cable, wire, meters, fill dirt, lateral supports, pumps, pump housing, foundations, canopies, fixtures, buildings and/or other improvements or any nature or type; and (ii) “*Rights-of-Way*” means (whether public or private) easements, rights-of-way, roadways, common areas, malls, sidewalks, walkways, aisles, driveways, parking areas, streets, roads, lanes and highways, including, without limitation, those for the installation, maintenance, operation and service of Improvements.

EXHIBIT B

TO

LEASE

MEMORANDUM OF LEASE

[See document attached hereto]

WHEN RECORDED, RETURN TO:

Eric D. Bawden, Esq.
HOLLAND & HART LLP
222 South Main Street, Suite 2200
Salt Lake City, Utah 84101

MEMORANDUM OF LEASE

1. The undersigned, CITY OF BOISE, an Idaho municipal corporation (“**Landlord**”), and TRANSFUELS LLC, a Delaware limited liability company (“**Tenant**”), have entered into that certain Lease, dated as of _____, 2012 (the “**Lease**”). Pursuant to the Lease, Landlord has leased to Tenant the Demised Premises (as defined in the Lease), including that certain parcel of real property which is located in the City of Boise County of Ada State of Idaho and related rights more particularly described in **Exhibit A**.

2. Unless the address for notice under the Lease is changed in accordance with the terms of the Lease, notice shall be sent as follows:

To Landlord:

City of Boise
Office of the Mayor
Boise City Hall
150 N. Capitol Blvd.
PO Box 500
Boise, ID 83701-0500
Attn: Economic Development

To Tenant:

Transfuels LLC
4752 California Ave.
Building A, Ste 500
Salt Lake City, UT 84104-4478
Attn: Paul Judge

With a copy to:

Holland & Hart LLP
222 South Main Street, Suite 2200
Salt Lake City, Utah 84101
Attn: Eric D. Bawden, Esq.

3. The initial term of the Lease is twenty (20) years commencing on November 15, 2012. Tenant retains the right to extend the initial term of the Lease for three (3) renewal option periods of ten (10) years each.

4. In the event of a conflict between this Memorandum of Lease and the Lease, the terms and conditions of the Lease shall control. Reference is made to the Lease for a complete description of all rights, easements and reservations identified in this Memorandum of Lease.

[Remainder of Page Intentionally Left Blank; Signature on Following Page]

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Lease.

DATED: _____, 2012.

LANDLORD:

City of Boise, an Idaho municipal corporation

By: _____

Name: _____

Title: _____

TENANT:

Transfuels LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)

: ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2012,
by _____ as _____ of
_____.

Notary Public

STATE OF IDAHO)
) ss:
County of Ada)

On this ____ day of _____ 2012, before me, the undersigned notary public for said state, personally appeared _____, known or identified to me (or proven on the basis of satisfactory evidence) to be the _____ of the City of Boise, an Idaho municipal corporation, that executed the within instrument, or the person that executed the within instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public
Residing at _____
Comm. Expires _____

EXHIBIT A
TO
MEMORANDUM OF LEASE
DEMISED PREMISES

The following parcel of real property located in Ada County, State of Idaho (the "*Parcel*"):

AS-SURVEYED LEGAL DESCRIPTION:

BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF EISENMAN ROAD, A 110 FOOT PUBLICLY DEDICATED RIGHT-OF-WAY, SAID POINT BEING NORTH 89°43'35" EAST ALONG THE SECTION LINE 681.40 FEET AND NORTH 01°02'04" EAST 30.03 FEET FROM THE FOUND ALUMINUM CAP FOR THE SOUTHWEST CORNER OF SECTION 7, TOWNSHIP 2 NORTH, RANGE 3 EAST, BOISE MERIDIAN; AND RUNNING THENCE ALONG THE EAST RIGHT-OF-WAY LINE OF EISENMAN ROAD THE FOLLOWING TWO (2) COURSES: NORTH 01°02'04" EAST 1557.45 FEET TO A POINT ON A 1055 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE 84.74 FEET THROUGH A CENTRAL ANGLE OF 04°36'09" (WHICH LONG CHORD BEARS NORTH 01°16'14" WEST 84.72 FEET); THENCE SOUTH 26°58'11" EAST 1039.75 FEET; THENCE SOUTH 17°38'39" EAST 26.74 FEET; THENCE SOUTH 00°03'59" WEST 687.33 FEET; THENCE SOUTH 89°43'35" WEST 505.10 FEET TO THE POINT OF BEGINNING.

together with, for the use and benefit of the Parcel, including the Improvements to be erected on the Parcel, and Tenant (a) all easement rights, Rights-of-Way and other appurtenances to the Parcel, and (b) all Improvements now located on the Parcel, if any. For purposes of this Lease, each of the following terms has the meaning ascribed thereto as follows: (i) "***Improvements***" means gravel, asphalt, concrete, striping, curb, gutter, sidewalks, walkways, signage, landscaping, perimeter walls and fences, lighting, utilities (whether for sewers, water, gas, drainage, electricity, telephone or internet), facilities, systems, pipes, conduits, cable, wire, meters, fill dirt, lateral supports, pumps, pump housing, foundations, canopies, fixtures, buildings and/or other improvements of any nature or type; and (ii) "***Rights-of-Way***" means (whether public or private) easements, rights-of-way, roadways, common areas, malls, sidewalks, walkways, aisles, driveways, parking areas, streets, roads, lanes and highways, including, without limitation, those for the installation, maintenance, operation and service of Improvements.

NONDISCLOSURE ADDENDUM

THIS NONDISCLOSURE ADDENDUM is entered into as of _____, 2012 (“**Effective Date**”) by and between CITY OF BOISE, an Idaho municipal corporation (“**Landlord**”), and Transfuels LLC, a Delaware limited liability company (“**Tenant**”) (this “**Addendum**”).

This Addendum is attached to and forms a part of that certain Lease dated as of the Effective Date by an between Landlord and Tenant (the “**Lease**”). Each term used but not otherwise defined in this Addendum shall have the meaning ascribed thereto in the Lease. For good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties enter into this Addendum and agree as follows:

1. **Confidential Information.** For purposes of this Addendum, the “**Confidential Information**”:
 - (a) means all and/or any portion of the financial, commercial, business, technical, confidential or proprietary information of Tenant (whether written or oral), received or obtained by Landlord and/or delivered by Tenant.
 - (b) does not include information that: (i) was generally known to the general public prior to the disclosure thereof to Landlord or, if through no fault of Landlord or the Landlord Parties (as defined below) or any other Person under any obligation of confidentiality or non-disclosure, after the disclosure thereof to Landlord; or (ii) is disclosed pursuant to, and only to the extent required under, the lawful, final, non-appealable order of a court or governmental agency.

2. **Duties of Landlord.** Tenant may have already disclosed and may disclose to Landlord Confidential Information pursuant to this Addendum. Whether or not Confidential Information has been or will be disclosed or otherwise made available to Landlord by Tenant prior to or pursuant to this Addendum, Landlord shall (a) protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Landlord uses to protect Landlord’s own Confidential Information of a like nature; (b) use the Confidential Information solely for a purpose reasonably related to the Lease and not use such Confidential Information for any other purpose, including, without limitation, (i) to compete, directly or indirectly, with Tenant, (ii) to engage in the business of Tenant, (iii) to solicit or otherwise deal with any Person associated with Tenant in any manner designed to (or that could) take business away from Tenant, or (iv) to induce such Person to terminate or change his, her or its association with Tenant; (c) not disclose such Confidential Information to any Person, except as expressly permitted under this Addendum; and (d) except as expressly permitted in advance in writing by Tenant, not interfere, directly or indirectly, with Tenant’s Development of the Demised Premises by, directly or indirectly, doing any one or more of the following (other than with respect to Landlord’s reversionary interest in the Demised Premises): (i) interfering in Tenant’s Development of any interest in the Demised Premises or any other property within a 10-mile radius of the Demised Premises (together with the Demised Premises, collectively, the “**Subject Property**”), (ii) objecting or commenting with respect to any application by Tenant with respect to the Subject Property, (iii) lobbying (whether such lobbying would give rise to an obligation to register as a lobbyist or otherwise), influencing or soliciting an action by any official (elected or otherwise), (iv) petitioning government (or any branch, official, agency, division, department, political subdivision or body thereof) or (v) otherwise participating in the process of government.

3. **Authorized Disclosure.** Notwithstanding the provisions of **Sections 1** and **2** of this Addendum, Landlord may disclose Confidential Information disclosed under this Addendum to Landlord’s respective officers, managers and financial, legal and/or accounting advisors (together with Landlord, collectively, the “**Landlord Parties**”) solely for the purpose of complying with applicable legal requirements and

generally accepted accounting principles; provided, however, that prior to any disclosure of the Confidential Information (or any part thereof) to any of the Landlord Parties, the Landlord Parties shall enter into a non-disclosure agreement substantially in the form of this Addendum or otherwise acceptable to Tenant for the benefit of the Tenant and that for purposes of this Section, the Landlord Parties shall not include any Person, or any affiliate of such Person, engaged in the on-road natural gas fueling business. Landlord agrees to take all commercially reasonable measures to restrain the Landlord Parties from taking any action or omitting to take any action to the extent that such action or omission would constitute a breach of the terms of this Addendum if such action were taken or omitted, as applicable, by Landlord. In any event, Landlord shall be responsible for all actions and omissions by the Landlord Parties that would constitute a breach of this Addendum if such action or omission, as applicable, were committed by Landlord.

4. **Compelled Disclosure.** If Landlord or any of the Landlord Parties believes that any such Person will be required by a court or other authority pursuant to a subpoena or court order to disclose any Confidential Information, Landlord shall (a) give Tenant prompt and timely written notice so that Tenant may take steps to oppose such disclosure, but in any event Landlord shall not be prohibited from complying with the subpoena or court order and (b) cooperate with Tenant in Tenant's attempts to oppose such disclosure, provided that such opposition is reasonable in light of applicable law or regulation. If Landlord complies with the above, Landlord shall not be prohibited from complying with such requirements to disclose, but shall cooperate with Tenant to take all reasonable steps to make such disclosure subject to a suitable protective order or otherwise prevent unrestricted or public disclosure.

5. **Ownership of and Restrictions on Confidential Information.** All of the Confidential Information shall be and remain the property of Tenant. Nothing contained in this Addendum shall be construed as granting or conferring any rights by license or otherwise, expressed, implied, or otherwise for any invention, discovery or improvement made, conceived or acquired prior to or after the date of this Addendum. Nothing in this Addendum shall restrict Tenant from using, disclosing, or disseminating the Confidential Information or any portion thereof in any way. All documents and other tangible objects containing or representing Confidential Information which have been disclosed by Tenant to Landlord, and all copies thereof which are in the possession of Landlord, shall be and remain the property of Tenant and shall be promptly destroyed or returned to Tenant upon Tenant's written request. LANDLORD ACKNOWLEDGES AND AGREES THAT ALL CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS, WHERE IS" BASIS AND THAT TENANT HAS NOT MADE AND WILL NOT MAKE ANY WARRANTY WHATSOEVER WITH RESPECT TO SUCH CONFIDENTIAL INFORMATION, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ENFORCEABILITY, COMPLETENESS, ACCURACY OR NON-INFRINGEMENT. Tenant shall not have any liability to Landlord resulting from any use of the Confidential Information. Without impairing any other provision hereof, Landlord will promptly advise Tenant of any breaches of this Addendum by Landlord, any of the Landlord Parties.

6. **Term.** This Addendum shall be effective from and after the Effective Date and shall continue until the mutual written agreement of the Parties to terminate this Addendum. This Addendum shall survive any termination of the Lease.

7. **Specific Performance.** If Landlord proposes or attempts to violate any other term or provision of this Addendum, Tenant may apply to any court of competent jurisdiction for an injunctive order prohibiting such proposed or attempted actions, and Tenant may institute and maintain a proceeding against Landlord to compel the specific performance of this Addendum. Any such application may be made, proceeding instituted and maintained and order or injunction issued without the requirement that Tenant post any bond or other security or prove harm or damages. Landlord hereby waives the claim or

defense that an adequate remedy at law exists, and Landlord shall not argue in any such action or proceeding that such remedy at law exists. These remedies shall not be deemed to be the exclusive remedies for a violation of the terms of this Addendum but shall be in addition to all other remedies available to Tenant at law or equity.

8. **Entire Agreement.** This Addendum supersedes all prior written and oral and all contemporaneous oral agreements entered into by the Parties in connection with the treatment of the Confidential Information or any portion thereof.

[Remainder of Page Intentionally Left Blank; Signatures on Following Page]

IN WITNESS WHEREOF, by their execution below, the Parties indicate their agreement to the terms of this Addendum with the intent to be bound by this Addendum.

LANDLORD:

TENANT:

City of Boise, an Idaho municipal corporation

Transfuels LLC, a Delaware limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT C

TO

LEASE

REAL ESTATE OPTION AND EXCHANGE AGREEMENT

[See document attached hereto]