

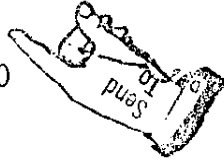
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13/07/0024 03 001 Page 1 of 8
2001-04-06 11:09:02
Cook County Recorder 35.50

When recorded, return by
mail to:

Equilon Enterprises LLC
c/o First American Title Company
Attention: Maricela Garcia
3200 Southwest Freeway, Suite 3050
Houston, TX 77027



γ

ACCESS AGREEMENT

This Agreement is made as of December 14, 2000 by and between the following entities, referred to herein as the Parties:

Equilon Enterprises LLC,
A Delaware limited liability company ("Equilon")
c/o Equiva Services LLC
12700 Northborough
Houston, Texas 77067
Attn: Director Safety, Health & Environment/Science &
Engineering

And

Cherokee Festival Holdings, LLC,
A Delaware limited liability company ("Licensor")
9841 Airport Boulevard, Suite 700
Los Angeles, California 90045
Attn: Aaron J. Swerdlow

WHEREAS, Licensor desires to purchase the property located at

15901 South Dixie Highway, Harvey, Illinois

as described in **Exhibit A** ("Property") and Equilon desires to sell the Property pursuant to the terms of the Agreement previously executed by the parties (the "Purchase and Sale Agreement"): and

WHEREAS, petroleum underground storage tanks as defined in 40 CFR Part 280 or supplanting federal regulations owned or previously owned by Equilon or its predecessors in interest ("USTs") are or were present on the Property, and

WHEREAS, petroleum hydrocarbons may be present on the Property, and

WHEREAS, the Parties desire to investigate and, if necessary, perform UST abandonment, removal and/or remediation of petroleum hydrocarbons to bring the Property into compliance with applicable law,

WHEREAS, Licensor is willing to purchase the Property with full knowledge of the presence of actual or potential subsurface petroleum hydrocarbons.

NOW, THEREFORE, in consideration of the sale of the Property from Equilon to Licensor, and the mutual promises and considerations stated herein the Parties agree as follows:

- 1. Grant of License.** Licensor hereby grants a nonexclusive irrevocable license from the date of this Agreement to Equilon, its employees, authorized agents and contractors to enter the Property to perform all monitoring well installations, tests, inspections, borings, engineering studies, surveys, appraisals, environmental studies, remediation operations and/or other activities hereinafter referred to as "Corrective Action" that Equilon deems necessary to comply with all applicable federal, state and local statutes, regulations, ordinances directives, orders and standards for removal of USTs and Corrective Action related to USTs. If Licensor fails to provide reasonable access to Equilon, or Licensor unreasonably interferes with Equilon's activities on the Property, such failure shall constitute waiver of any right, claim or cause of action Licensor may have against Equilon, to perform or continue Corrective Action on the Property. Such waiver shall not constitute the sole remedy for breach of this provision which remedies may include without limitation, consequential damages.
- 2. Environmental Investigation and Remediation.** For as long as this Agreement remains in effect, Equilon, at its sole expense, agrees to conduct any necessary Corrective Action at the Property in accordance with all applicable federal, state and local statutes, regulations, ordinances and standards; however, Licensor agrees Equilon is under no obligation to Licensor to remedy or respond to any environmental liability or condition on the Property that cannot be attributed solely to the alleged ownership or operation of the USTs by Equilon on the Property.
- 3. Regulations.** Licensor hereby agrees to comply with all existing and future applicable laws and regulations pertaining to underground storage tanks, including but not limited to liability and insurance requirements, inventory records, leak detection devices, system inspections, tank and line tests and tank field monitoring well tests. Licensor further agrees to copy Equilon, within fifteen (15) days of the date request is made by Equilon, with any records pertaining to the above. Further, upon written request by Equilon, Licensor shall make available all records required by applicable laws for review by Equilon at the Property during normal business hours.
- 4. Termination.** Upon the completion of the Corrective Action, Equilon shall provide notice and appropriate documentation to the relevant government

agencies having jurisdiction ("Agency") and to Licensor that Equilon considers the Corrective Action to be complete. Determination by the Agency that no further action is required or that the Corrective Action has been completed shall be conclusive and binding on Licensor and Licensor's successors and assigns. In the event that the Agency does not, for a period of one (1) year following the date of submission of Equilon's written notice, express objections to the notice, then the Corrective Action shall likewise be conclusively presumed to be complete. Once the Corrective Action is complete, Equilon shall have no further obligation or liability to Licensor or Licensor's successors and assigns for Corrective Action.

5. **Mutual Cooperation.** Equilon agrees to coordinate its activities with Licensor to minimize any inconvenience to or interruption of the conduct of Licensor's business or development of the Property including, but not limited to, providing reasonable notice prior to all activities which may interrupt the conduct of Licensor's business. Licensor agrees to cooperate with Equilon, and execute any additional documents, without limitation, permit applications, which may reasonably be required to effectuate the purpose of this Agreement. Licensor further agrees not to interfere with the activities conducted by Equilon on the Property.
6. **Permits.** Equilon, with the reasonable cooperation of Licensor, but at no expense to Licensor, shall obtain any and all permits which may be required for the Corrective Action it conducts pursuant to this Agreement.
7. **Periodic Reports.** Equilon agrees to provide Licensor with periodic reports which are submitted to the Agency regarding Equilon's Corrective Action performed pursuant to this Agreement.
8. **Site Restoration.** Equilon agrees, upon completion of the Corrective Action contemplated by this Agreement, to restore the surface of the Property to as near the approximate grade and pavement as existed prior to said Corrective Action as is reasonably possible, including proper plugging, abandonment, or removal of any monitoring well as may be required in accordance with applicable law.
9. **Indemnities.**
 - a) Equilon agrees to indemnify, defend and hold Licensor, and its officers, directors, shareholders, employees, agents, insurers, representatives, successors, and assigns (collectively referred to as "Indemnified Party") harmless from any and all liabilities, losses, claims, demands, or orders arising out of the Corrective Action Equilon performs pursuant to this Agreement, except to the extent that any said liabilities, losses, claims, demands, or orders may be attributed in whole or in part to the negligence, gross negligence or intentional act of the Indemnified Party. Equilon's indemnification obligation shall not include direct or indirect economic loss attributable to short term business interruptions as a result of Equilon's activities on the Property. This

indemnity shall terminate at the time the Corrective Action is complete as set forth in paragraph 4 of this Agreement and be of no further force or effect.

b) If underground storage tanks are used for any purpose on the Property at any time subsequent to the execution of this Agreement, then Licensor agrees to indemnify, defend and hold harmless Equilon, its members, predecessors, subsidiaries, affiliates, officers, directors, employees, agents, and each of their predecessors, successors, heirs and assigns from any and all liabilities, losses, claims, demands, or orders, including without limitation attorneys fees, litigation costs, money damages, fines and/or penalties, environmental response costs, natural resource damage assessments or awards (collectively referred to as "Liabilities"), arising out of the purchase, use, operation, maintenance, installation and/or removal or abandonment of underground storage tanks at the Property by Licensor or any person allowed by Licensor to install, use, maintain, operate, remove and/or abandon underground storage tanks at the Property ("Third Party") which may be found to be contributing to or causing: 1) personal injury, disease or death; 2) damage or loss to property; or 3) the need for Corrective Action at the Property or any other property, regardless of whether or not such Liabilities are caused by the sole negligence, concurrent negligence, gross negligence, or intentional conduct of Licensor or Third Party, and regardless of whether or not such Liabilities are strictly imposed by operation of law with or without fault. This indemnity shall survive the termination of this Agreement.

10. **Assignment and Reimbursement from Trust Funds.** Licensor hereby assigns to Equilon any and all rights it may have against the applicable state and federal fund established by the state or federal government to fund or reimburse cleanups, assessments, remediations or satisfaction of claims at UST sites. Licensor agrees to cooperate with Equilon, including execution of additional documents, if necessary, in obtaining any allowable reimbursement from a state and federal fund established by the state or federal government to fund or reimburse cleanups, assessments, remediations, or satisfaction of claims at UST sites and that any moneys obtained from said fund shall belong solely to Equilon

10. **Dispute Resolution.** The Parties agree that should any dispute arise under this Agreement which cannot be amicably resolved, the dispute shall be submitted to mediation prior to being submitted to Arbitration under the rules and procedures of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any mediator or arbitrator selected by the parties shall be knowledgeable in environmental law and/or remediation technologies.

11. **Execution of Agreement.** Each of the undersigned hereby represents and warrants that it is authorized to execute this Agreement on behalf of the respective Party to the Agreement and that this Agreement, when executed by those Parties, shall become a valid and binding obligation, enforceable in accordance with its terms. Licensor represents and warrants that it is the owner

of the property described in Exhibit A1 or that it has full lawful authority to grant access to the Property for the purposes described herein.


12. **Assignment, Successor and Assigns.** In the event Licensor's interests in the Property are conveyed, transferred or in any way assigned in whole or in part to any other person or entity, whether by contract, operation of law or otherwise, Licensor shall take any and all actions necessary at Licensor's sole cost to render any such conveyance, transfer or assignment subject to the terms of this Agreement and shall provide notice thereof to Equilon. Except as set forth hereinafter, this Agreement cannot be assigned by either Party without the prior written consent of the other, which consent shall not be unreasonably withheld. Licensor hereby assigns to Equilon any and all claims, causes of action and suits it may have against any third party who may have financial responsibility for any environmental response costs or other damages at the Property including but not limited to any rights to recover any insurance policy that may name Licensor as a beneficiary or against which Licensor may have a right of recovery. Licensor agrees to cooperate with Equilon in determining whether such claims exist. This Agreement is binding upon all heirs, successors and assigns of the Parties.
13. **Notice.** Any notice, consent, request, report, demand, or other document required to be given to one Party by the other shall be in writing and be delivered to or mailed to the receiving Party at its address, referenced on page 1 above. Facsimile copies shall be sufficient.
14. **Modifications.** This Agreement contains the entire understanding of the Parties. Any change, amendment, or alteration must be in writing and signed by both Parties to this Agreement to be effective. This Agreement supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof.
15. **No Admissions.** Nothing contained in this Agreement shall be construed as an admission of any fact or liability of any Party to this Agreement.
16. **GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE IN WHICH THE CORRECTIVE ACTION IS PERFORMED WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.**
17. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and of equal force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

SIGNATURES CONTINUE ON NEXT PAGE

ACCESS AGREEMENT
SIGNATURE PAGE

EQUILON ENTERPRISES LLC,
a Delaware limited liability company

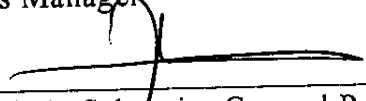
By: 
Laura D. Styslinger, Attorney-in-Fact

Date: 12/12/2000

CHEROKEE FESTIVAL HOLDINGS, LLC,
a Delaware limited liability company

By: FESTIVAL OPERATING PARTNERS, LLC,
a California limited liability company,
its Managing Member

By: NOTEL PARTNERS,
a California general partnership,
its Manager

By: 
Mark A. Schurgin, General Partner

Date: 12-11-00

Property of Court County Clerk's Office

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STATE OF TEXAS

)
) ss.
)

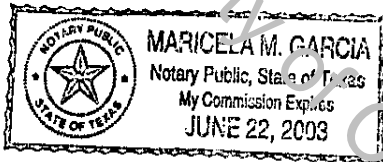
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COUNTY OF HARRIS

I, Maricela M. Garcia, the undersigned Notary Public, do hereby certify that on the 12 day of December, 2000, Linda D. Styslinger, as Attorney-in-Fact for Equilon Enterprises LLC, a Delaware limited liability company, personally appeared before me and being first duly sworn by me acknowledged that she signed the foregoing document in her capacity therein set forth and declared the statements therein contained are true.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

Maricela M. Garcia
Notary Public



My Commission Expires: _____

STATE OF CALIFORNIA

)
) ss.
)

COUNTY OF LOS ANGELES

I, Pam Balfe, the undersigned Notary Public, do hereby certify that on the 14th day of December, 2000, Mark A. Shurgin, General Partner of Notel Partners, Manager of Festival Operating Partners, LLC, Managing Member of Cherokee Festival Holdings, LLC, a Delaware limited liability company, personally appeared before me and being first duly sworn by me acknowledged that he signed the foregoing document in his capacity therein set forth and declared the statements therein contained are true.

In Witness Whereof, I have hereunto set my hand and seal the day and year before written.

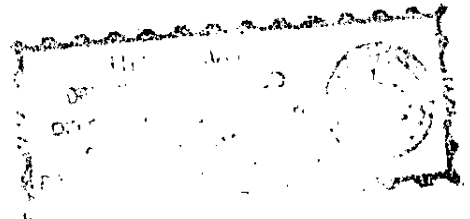
P Balfe
Notary Public



My Commission Expires: 09-25-03

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EXHIBIT A

0010278039

File No.: CC194384

LEGAL DESCRIPTION:

THE NORTH 5 ACRES OF THAT PART OF THE NORTH 1/2 OF THE NORTH WEST 1/4 OF SECTION 19, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO AND VINCENNES ROAD, EXCEPTING THAT PART THEREOF BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF 159TH STREET AND THE EASTERLY LINE OF DIXIE HIGHWAY AS PRESENTLY LOCATED AND ESTABLISHED; THENCE EAST ALONG SAID SOUTH LINE OF 159TH STREET, A DISTANCE OF 75.0 FEET TO A POINT OF TANGENCY OF A CURVE CONCAVE TO THE SOUTH EAST HAVING A RADIUS OF 58.83 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE, A DISTANCE OF 106.55 FEET TO A POINT OF TANGENCY IN SAID EASTERLY LINE OF DIXIE HIGHWAY, SAID POINT BEING 75.0 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

15901 S. Dixie Hwy

Harvey, IL

29-19-106-001