

# UNOFFICIAL COPY

RECORDED AT THE REQUEST OF:  
The Premcor Refining Group Inc.  
1700 East Putnam Ave., Suite 500  
Old Greenwich, CT 06870

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN  
TO:

Bruce E. Lowry, Jr.  
Bryan Cave LLP  
211 North Broadway, Suite 3600  
St. Louis, Missouri 63102-2750

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Cook County Recorder of Deeds  
Date: 02/23/2006 07:39 AM Pg: 1 of 6

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## MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT is made effective as of February 7, 2006, by and among BELL FUELS, INC., a Nevada corporation ("**Landlord**"), and THE PREMCOOR REFINING GROUP INC., a Delaware corporation formerly known as Clark Refining & Marketing, Inc. ("**Tenant**").

### WITNESSETH:

WHEREAS, by Lease dated March 5, 1996 (the "**Lease**"), a memorandum of which is recorded in the Cook County Records as Instrument 96261556, Tenant leased from Landlord certain premises (the "**Premises**") situated at 1001 E. Algonquin Road, Arlington Heights, Illinois, as more particularly described in the Lease; and

WHEREAS, pursuant to that certain Assignment of Lease dated July 6, 1999, Tenant assigned all its right, title and interest in and to the Lease to OTG (Holdings), Inc., a Delaware corporation, k/n/a Clark Retail Enterprises, Inc. ("**CRE**") said Assignment of Lease being recorded August 5, 1999 in the Cook County Records as Instrument 99746801; and

WHEREAS, CRE assigned its interest to Tomy Joseph and Siny Thomas pursuant to that certain Assignment dated August 21, 2003, approved by order of the United States Bankruptcy Court for the Northern District of Illinois in Case Number 02-40045 (the "**Assignment**"); and

WHEREAS, by Sublease Agreement dated April 1, 2004 (as amended by those certain letter agreements dated July 12, 2004 and October 20, 2004, the "**Sublease**"), Tenant agreed to terminate the Assignment;

WHEREAS, without admitting any fact, responsibility, fault or liability in connection with the Lease, the Assignment, the Premises or otherwise, Landlord and Tenant desire to terminate the Lease and to release each other from any past, present or future obligations arising thereunder upon the terms and conditions set forth in that certain Termination and Settlement Agreement (the "**Agreement**"); and

WHEREAS, all capitalized terms not otherwise defined herein shall have the same meanings

*Lease and Sublease Termination Agreement  
Unit 72097 - 1001 E. Algonquin Road, Arlington Heights, Illinois*

**BOX 333-CT**

*Bell*

*Robert*

*8286461/25131573*

*bllc*

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assigned to such terms in the Agreement unless the context clearly requires otherwise; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements of the parties set forth herein and in the Agreement, the parties have agreed as follows:

1. The parties hereto acknowledge and agree that the recitals above and in the Agreement are true and accurate, and may be used as binding admissions in a court of law or equity.

2. Subject to the terms and conditions of the Agreement and as more particularly described therein, Tenant has forever fully released and discharged Landlord from any and all obligations, claims, demands or causes of action whatsoever arising out of or in connection with the Lease and/or the Premises.

3. Subject to the terms and conditions of the Agreement and as more particularly described therein, Landlord has forever fully released and discharged Tenant from any and all obligations, claims, demands or causes of action whatsoever arising out of or in connection with the Lease and/or the Premises.

4. Pursuant to the Agreement and as more particularly described therein, the parties have agreed to promptly execute and deliver any and all documents necessary to effectuate the releases and agreements contemplated under the Agreement.

5. The provisions of the Agreement are binding upon, inure to the benefit of and are enforceable by or against the parties to the Agreement and their respective legal representatives and successors and assigns.

6. The purpose of this Memorandum of Agreement is to create a record of the Agreement, the terms and conditions of which are fully set forth in the Agreement, and which Agreement and any and all amendments thereto are, by this reference, made a part hereof the same as fully rewritten herein.

7. Notwithstanding anything contained herein to the contrary, Landlord and Tenant agree that (i) the Agreement, and the covenants and agreements of the parties thereto, are the result of settlement negotiations between the parties in connection with disputed liabilities related to the Lease in an effort to avoid the costs of litigation, (ii) the covenants and agreements of Landlord and Tenant relate only to the Lease and to no other agreement or course of conduct between the parties or alleged liability, including without limitation, any other lease, (iii) the Agreement and the covenants and agreements thereunder shall not be used in court and shall not be admitted as evidence in support of (a) any alleged liability of either party (or otherwise) under any other agreement, including without limitation, any other lease, or (b) any course of conduct or precedent related to any other agreement, including without limitation, any other lease, and (iv) nothing herein is an admission by any party hereto of any wrongdoing, either in violation of any applicable law or otherwise. The parties hereto, and each of them, hereby reserve any and all rights related to any other agreement, or alleged liability, including the right to contest any alleged liability under any other lease or agreement.

*[Remainder of this page intentionally left blank]*

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Agreement on the day and year first above written.

**LANDLORD:**

BELL FUELS, INC.

By: *Paul F. Conarty*  
Name: PAUL F. CONARTY  
Title: ATTORNEY IN FACT

STATE OF ILLINOIS )  
COUNTY OF DU PAGE )

On this 20 day of FEBRUARY, 2006, before me appeared PAUL F. CONARTY, to me personally known, who, being by me duly sworn, did say that he is the ATTORNEY IN FACT of BELL FUELS, INC., a Nevada corporation, and said instrument was signed on behalf of said corporation, by authority of its board of directors; and acknowledged said instrument to be the fee act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year written above.

*Julie A. Ebbert*  
Notary Public  
My Commission: \_\_\_\_\_



*Tenant's Signature and Acknowledgment on Following Page]*

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TENANT:

THE PREMCOR REFINING GROUP INC.

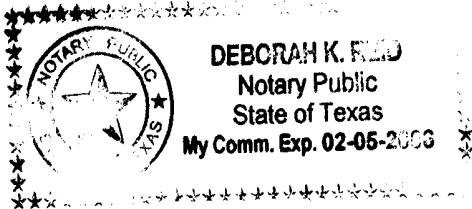
By: *Douglas M. Miller*  
Douglas M. Miller, its Vice President *gms*

STATE OF TEXAS    )  
                          )  
COUNTY OF BEXAR )

On this 20<sup>th</sup> day of December, 2005, before me appeared Douglas M. Miller to me personally known, who, being by me duly sworn, did say that he is the Vice President of THE PREMCOR REFINING GROUP INC., a Delaware corporation, and said instrument was signed on behalf of said corporation, by authority of its board of directors, and acknowledged said instrument to be the fee act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year written above.

*Deborah K. Reed*  
Notary Public  
My Commission 2-5-06



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## Premises

THAT PART OF THE WEST HALF OF THE NORTH WEST QUARTER LYING SOUTH OF CENTER LINE OF ALGONQUIN ROAD OF SECTION 23, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT INTERSECTION OF WEST LINE OF NORTH WEST QUARTER OF SAID SECTION 23, WITH CENTER LINE OF ALGONQUIN ROAD; THENCE SOUTH ALONG WEST LINE OF SAID NORTH WEST QUARTER, 257 FEET; THENCE EAST, AT RIGHT ANGLES TO LAST DESCRIBED LINE, 156.70 FEET MORE OR LESS TO A POINT ON A LINE DRAWN AT RIGHT ANGLES TO CENTER LINE OF ALGONQUIN ROAD THROUGH A POINT 257 FEET SOUTHEASTERLY (AS MEASURED ON SAID CENTER LINE) OF POINT OF BEGINNING; THENCE NORTH EASTERLY ON LAST DESCRIBED LINE 156.70 FEET MORE OR LESS TO CENTER LINE OF ALGONQUIN ROAD; THENCE NORTHWESTERLY ALONG CENTER LINE OF ALGONQUIN ROAD 257 FEET TO PLACE OF BEGINNING (EXCEPT FROM SAID PARCEL THAT PART HERETOFORE DEDICATED OR USED OR TAKEN FOR PUBLIC ROADS AND EXCEPTING THAT PART OF THE LAND CONDEMNED IN CASE NO. 68L14541 DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF BUSSE ROAD, SAID LINE BEING 25 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 23 TOWNSHIP 41 NORTH RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS AND THE SOUTHWESTERLY LINE OF ALGONQUIN ROAD, SAID SOUTHWESTERLY LINE BEING 50 FEET NORMALLY DISTANT FROM THE AFORESAID MENTIONED CENTER LINE OF ALGONQUIN ROAD, THENCE SOUTH ALONG SAID EAST LINE OF BUSSE ROAD A DISTANCE OF 187.83 FEET TO A POINT ON THE SOUTH LINE OF THE ABOVE DESCRIBED TRACT, THENCE EAST ALONG SAID SOUTH LINE A DISTANCE OF 25 FEET TO A POINT, THENCE NORTH PARALLEL TO AND 50 FEET DISTANT FROM SAID WEST LINE OF THE NORTHWEST 1/4 OF SECTION 23 TOWNSHIP 41 NORTH RANGE 11 A DISTANCE OF 145 FEET TO A POINT, THENCE NORTHEASTERLY ALONG A STRAIGHT LINE A DISTANCE OF 30.60 FEET TO A POINT ON SAID SOUTHWESTERLY LINE OF ALGONQUIN ROAD SAID POINT BEING 57 FEET SOUTHEASTERLY AS MEASURED ALONG SAID SOUTHWESTERLY LINE OF ALGONQUIN ROAD OF THE POINT OF BEGINNING, THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF ALGONQUIN ROAD A DISTANCE OF 57 FEET TO THE POINT OF BEGINNING)

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## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENT that the undersigned, Bell Fuels, Inc. a Nevada corporation qualified to do business in the State of Illinois hereby makes, appoints and constitutes Paul F. Conarty, attorney at law, of the City of Geneva, Kane County, Illinois as the true and lawful attorney for Bell Fuels, Inc. for and in the name, place and stead of ell Fuels, Inc. for the sole, express and limited purpose of executing any documents and taking all other actions that may be necessary to close the sale of the property commonly known as 1001 Algonquin Road, Mt. Prospect, Illinois and legally described in Exhibit A attached hereto to M.S.N. Marathon, Inc. and Bell Fuels, Inc. does hereby ratify and affirm all actions taken by Paul F. Conarty pursuant to the powers granted in this Power of Attorney. This Power of Attorney shall be a plenary and continuing Power of Attorney with respect to the matters described herein..

This Power of Attorney has been duly authorized by the Board of Directors of Bell Fuels, Inc.

IN TESTIMONY WHEREOF, Bell Fuels, Inc. has executed this Power of Attorney on January 30, 2006.

BELL FUELS, INC.

Witness: [Signature] By: [Signature]  
President

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF DUPAGE )

The undersigned, a Notary Public in and for, and residing in said County, in the State aforesaid do hereby certify that Robert W. Troch, Jr., personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, and the free and voluntary act of Bell Fuels, Inc. for the uses and purposes therein set forth.

Given under my hand and notarial seal this 30th day of January 2006.

[Signature]  
Notary Public

This instrument prepared by:

Paul F. Conarty  
419 S. Second Street  
Geneva, IL 60134  
Phone (630) 262-1222

