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Doc#: 0612418079 Fee: \$36.50
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 05/04/2006 02:54 PM Pg: 1 of 7

PREPARED BY:

Name: William G. Dickett
Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603

RETURN TO:

Name: William G. Dickett
Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603

THE ABOVE SPACE FOR RECORDER'S OFFICE

AGREEMENT AND RELEASE

THIS AGREEMENT AND RELEASE ("Agreement") is made and entered into, on the last date set forth opposite a party's signature below (the "Effective Date"), by and between G Dog's Enterprises, Inc. ("Owner"), and BP Products North America Inc., f/k/a Amoco Oil Company ("BP"), a Maryland corporation. (BP and Owner may sometimes hereinafter be individually referred to as "Party" and collectively be referred to as "Parties.")

WITNESSETH:

WHEREAS, G Dog's Enterprises, Inc. is the owner of certain real property located at 10985 Archer Avenue, Lemont, Illinois (the "Property"), which is legally described as follows:

That part of the Southwest $\frac{1}{4}$ of Section 13, Township 37 North, Range 11, East of the Third Principal Meridian described as follows:

Beginning at the intersection of the West line of said Southwest $\frac{1}{4}$ and the South line of a one (1) acre tract of Lot 3 in Canal Trustee's Subdivision in the said Southwest $\frac{1}{4}$, said South line being 660.0 feet North of and parallel with the South line of said Southwest $\frac{1}{4}$;

Thence North along said West line of Southwest $\frac{1}{4}$ to the Southwesterly line of Route 83 as dedicated by Document No. 12010923 and recorded on June 11, 1937;

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Thence Southeasterly along said Westerly line to the aforesaid South line of the one (1) acre tract;

Thence West along said South line of the one (1) Acre tract to the point of beginning, in Cook County, Illinois.

(Excepting the West 33 feet thereof and also excepting therefrom that part portion falling within Route 83), in Cook County, Illinois.

P.I.N. No: 22-13-302-009-0000; and

WHEREAS, prior to Owner's acquisition of the Property, BP owned the Property; and

WHEREAS, pursuant to a Special Warranty Deed dated December 5, 2000 ("the Special Warranty Deed"), BP conveyed the Property to Owner; and

WHEREAS, the Special Warranty Deed included the following restrictive covenant:

The Grantee hereby covenants and agrees, for itself, and its grantees, successors, and assigns, that no water wells, either for potable or for other use, with the exception of remediation, monitoring, or investigation wells, shall be installed on any part of the real estate herein conveyed.

This restriction binds and restricts the Property as a covenant and restriction running with the land and is deemed to benefit Grantor as an owner or lessee of lands in Cook County, Illinois, or as the operator of retail operations in Cook County, Illinois. This restrictive covenant will remain in full force and effect for a term of twenty-five (25) years from the date of this Special Warranty Deed whereupon this restrictive covenant will automatically lapse and terminate and be of no further force or effect.

(the "Restrictive Covenant"); and

WHEREAS, in 2000, BP, through its consultant Delta Environmental Consultants ("Delta"), notified the Illinois Environmental Protection Agency ("IEPA") of a release that had occurred at the Property. IEPA assigned this release as Incident No. 20002164 ("the Incident"). In January of 2003, IEPA notified BP that the Incident was not subject to the Part 731 or 732 underground storage tank ("UST") regulations and that the IEPA Leaking UST Section had no reporting requirements regarding the Incident. As a result, Delta entered the Property into the Illinois Site Remediation Program ("SRP"). On March 31, 2004, IEPA issued a Focused No Remediation ("NFR") Letter for the Property, with a restriction not to construct, install, maintain, or operate a well at the Property. However, Owner did not sign the SRP Property Owner Certification Form, and thus the NFR Letter was never recorded; and

WHEREAS, in 2004, SITE Environmental Services Inc. was retained to undertake certain further corrective action activities at the Property on behalf of Owner in order to obviate the need for a groundwater use restriction at the Property; and

WHEREAS, on August 23, 2005, IEPA issued an NFR Letter for the Property that did not contain a groundwater use restriction. This NFR Letter was recorded on August 29, 2005 as Doc. # 0524145072 with the Cook County Recorder of Deeds; and

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WHEREAS, Owner is proposing to construct, among other things, a restaurant at the Property; and

WHEREAS, Owner has requested that BP agree to release the Restrictive Covenant in the Special Warranty Deed recorded as Doc. # 0010750940 with the Cook County Recorder of Deeds, effective on the Effective Date; and

WHEREAS, BP is agreeable to such a contract modification and release under the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration for the foregoing, and the mutual promises, agreements and understanding set forth below, and other good and valuable consideration, the receipt and sufficiency of which his hereby acknowledged, the Parties hereto agree and covenant as follows:

1. The recitals to this Agreement are hereby incorporated into and made a part of this Agreement.
2. Owner represents and warrants that, at all times since December 5, 2000, it is, and presently remains, the sole and absolute legal and equitable owner of the Property and all rights, claims, demands and causes of action covered by this Agreement, and that Owner has not made or suffered any assignment or transfer of any such right, claim, demand or cause of action covered by this Agreement, nor has any such right, claim, demand or cause of action been subrogated to any third party or otherwise encumbered.
3. The Restrictive Covenant relating to the use of groundwater at the Property appearing in the Special Warranty Deed is hereby released on the Effective Date, and is a no further force and effect from and after said date.
4. Nothing in this Agreement abrogates any of Owner's other obligations under the Special Warranty Deed or the Real Estate Contract between Gus Tingos, Stavros Kottos and George Gavrielides and BP dated September 20, 2000.
5. Owner (for itself and for its officers, directors, shareholders, employees and affiliates) hereby waives, releases, acquits and forever discharges BP and its officers, directors, employees, affiliates, shareholders, agents, successors and assigns ("Released BP Parties") from any claims, demands, actions, causes of action and suits for any liabilities, obligations, responsibilities, losses, damages, punitive damages, penalties, fines, interest, economic damages, consequential damages, natural resource damages, damage or threat to the environment, natural resources or public health or welfare, toxic tort liability, personal injury, property damage, costs and expenses (including without limitation attorney, expert, engineering and consulting fees and costs and any fees and costs associated with any investigation, response action, removal action, remediation, corrective action or cleanup), known or unknown, absolute or contingent, past, present or future, arising under any law or regulation (including without limitation statutory law or common law) (collectively "Liabilities") that Owner might now have, or ever had, or might but for this Agreement have in the future, against the Released BP Parties related in any way to the Property.

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6. Owner (for itself and for its officers, directors, shareholders, employees and affiliates) agrees to defend, indemnify and hold harmless the BP Released Parties from any claims, demands, actions, causes of action and suits by any person (including without limitation workers, off-site property owners, invitees, and current and future owners and occupants of the Property) for Liabilities related to any future use of a groundwater well at the Property.

7. Without limiting any of Owner's other obligations under this Agreement, Owner agrees to: (i) cease using any groundwater wells at the Property if required by IEPA; and (ii) take all measures to replace the groundwater use restriction in a new or amended no further remediation letter if required by IEPA. If Owner fails to timely replace the groundwater use restriction in a new or amended no further remediation letter to the extent required by IEPA, BP may, at its sole option, act as Owner's agent in fact and take all measures (including without limitation recording any documents to the title to the Property) to replace the groundwater use restriction without notice to Owner.

8. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of Owner or any transferees of Owner and any future owners of the Property. Owner shall provide BP with written notice thirty (30) days prior to the transfer of ownership of the Property, stating the name and address of the proposed transferee. Upon any transfer or conveyance of the Property, the transferor and transferee shall tender to BP in a form reasonably acceptable to BP an assignment of the Agreement, signed by the transferor and transferee stating, among other things, that the transferee accepts the terms of the Agreement and shall be bound by and deemed to have assumed the obligations of Owner as set forth in the Agreement. The obligations of Owner under this Agreement shall run with the land.

9. All notices or other communications required or permitted hereunder shall be in writing, and shall be delivered personally, by overnight air express service or by registered or certified mail, postage prepaid, return receipt requested, addressed to the parties hereto at their respective addresses set forth below. Such notice or other communication shall be deemed given (a) upon receipt of upon refusal to accept delivery if delivered personally, (b) one (1) business day after tendering to an overnight air express service, and (c) seven (7) business days after mailing if by registered or certified mail.

To Owner:

Gus Tingos
7737 Lyman Avenue
Darien, Illinois 60561

With a copy to:

Schwartz, Cooper, Greenberger & Krauss, Chtd.
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Joseph R. Podlewski, Esq.

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To BP:

BP Products North America Inc.
HSSE
4101 Winfield Road
Mail Code 4W
Warrenville, Illinois 60555
Attn: Janice McLain or Environmental Attorney

With a copy to:

BP Products North America Inc.
Remediation Management
28100 Torch Parkway
Warrenville, IL 60555
Attn: Harold Primack or Environmental Business Manager

and

To BP's then current registered agent for service of process on file with the Illinois Secretary of State's Office.

Notice of change of address shall be given by written notice in the manner detailed in this section.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

11. Owner, at Owner's expense, shall record this Agreement within seven days of the Effective Date by delivering same to the Cook County Recorder of Deeds. If this Agreement is not properly recorded by Owner within such seven-day period, BP may, at its sole option, record this Agreement at Owner's expense.

12. This Agreement may be executed in multiple counterparts, each of which shall be treated as an original.

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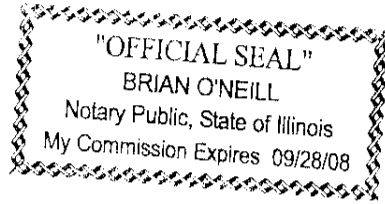
IN WITNESS WHEREOF, each of the Parties has executed the Agreement by duly authorized representatives.

G DOG'S ENTERPRISES, INC.

By: [Signature]
Its: President

Dated: 4
4-11-06
G.T. By J.P.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)



On this 11 day of APRIL, 2006, GOS TINGOS, being personally known to me, executed the foregoing instrument on behalf of G Dog's Enterprises, Inc.

[Signature]
Notary Public

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IN WITNESS WHEREOF, each of the Parties has executed the Agreement by duly authorized representatives.

BP PRODUCTS NORTH AMERICA INC.

By: *[Signature]*
Its: Environmental Business Mgr

Dated: 4-26-06

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 27 day of April, 2006, JOSEPH SONTANI, being personally known to me, executed the foregoing instrument on behalf of BP Products North America Inc.

[Signature]
Notary Public



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