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Doc#: 0633520008 Fee: \$40.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/01/2006 08:07 AM Pg: 1 of 9

8359272 DZ SC\$ 2004

Property of Cook County Clerk's Office



Space Above This Line For Recorder's Use

ACCESS AGREEMENT GRANTING RIGHT OF ENTRY

This Agreement is made as of November 22nd, 2006 by and between the following entities, referred to herein as the Parties.

EQUILON ENTERPRISES LLC
Attn.: Property & Planning
12700 Northborough, Ste. 100
Houston, Texas 77067
Phone: 281-874-7000
Fax: 281-874-2294

Attn.: John Robbins
603 Diehl Road, Suite 103
Naperville, Illinois 60563
Phone: 630-276-4206
Fax: 281-212-3256
E-mail: john.robbs@shell.com
("Equilon")

and

1201 CHICAGO AVENUE INC.
Attn.: Warren Fellingham
1201 Chicago Avenue
Evanston, Illinois 60202
Phone: 312-259-7866
Fax: 847-475-7797
E-mail: N/A
("Purchaser")

Purchaser desires to purchase the property located at 1201 Chicago Avenue, Evanston, Cook County, IL 60202 CC# 137027 as described in Exhibit A ("Property") and Equilon desires

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to sell the Property pursuant to the terms of a certain Retailer Offer To Purchase Premises previously executed by the Parties (the "Purchase and Sale Agreement"), and

WHEREAS, after the transaction has closed, the term "Owner" shall mean the "Purchaser," and

WHEREAS, an underground storage tank system as defined in 40 CFR Part 280 or supplanting federal regulations owned by Equilon or its predecessors in interest ("UST System") may be/is present on the Property, and

WHEREAS, petroleum hydrocarbons, including gasoline additives (collectively "Substances"), may be present on the Property, and

WHEREAS, the Parties desire to investigate and, if necessary, perform remediation of Substances to bring the Property into compliance with applicable law; and

WHEREAS, Purchaser is willing to purchase the Property with full knowledge of the potential for or actual presence of subsurface Substances.

NOW, THEREFORE, in exchange for the mutual promises and considerations stated herein the Parties agree as follows:

1. GRANT OF LICENSE. Owner/Tenant hereby grant(s) a nonexclusive irrevocable license from the date of this Agreement to Equilon, its employees, authorized agents and contractors, and any relevant governmental agency with jurisdiction ("Agency"), 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 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 the UST System and Corrective Action related to the UST System. If Owner/Tenant fail(s) to provide reasonable access to Equilon, or Owner/Tenant unreasonably interfere(s) with Equilon's activities on the Property, such failure shall constitute waiver of any right, claim or cause of action Owner/Tenant 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. This Agreement is intended and shall be construed only as a temporary license to enter and conduct the Corrective Action upon the Property and not a grant of easement or any other interest in the Property. Owner/Tenant shall, as soon as possible, but not later than thirty (30) days after damage or destruction, replace or repair, at its sole expense, all monitoring wells, monitoring well pads, remediation equipment or piping installed by Equilon on the Property and damaged or destroyed by Owner/Tenant.

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, Owner/Tenant agree(s) Equilon is under no obligation to Owner/Tenant to remedy or respond to any environmental liability or condition on the Property that cannot be attributed to the UST System on the Property.

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3. REGULATIONS. Purchaser hereby agrees to comply with all existing and future applicable laws and regulations pertaining to underground storage tank systems, including but not limited to those requiring insurance, inventory records, leak detection devices, system inspections, tank and line tests and tank field monitoring well tests. Purchaser 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, Purchaser shall make available all records required by applicable laws for review by Equilon at the Property during normal business hours.

4. CONSTRUCTION ON PROPERTY. Owner/Tenant shall provide Equilon with written notification at least thirty (30) days in advance of the date on which Owner/Tenant plan(s) to begin excavation at the Property for development ("Development"). Equilon shall be responsible for costs and expenses associated with the disposal of contaminated soil and disposal or treatment of contaminated groundwater caused by the UST System on the Property and encountered during the Development, in accordance with the following guidelines and requirements:

4.1 Owner/Tenant's written notification to Equilon shall state the dates during which the construction work will be performed and contain detailed work plans;

4.2 During the thirty (30) day period following the notice from Owner/Tenant, the Parties will coordinate and cooperate with each other in planning the simultaneous performance of the Development and activities Equilon's at the Property in such a manner as to minimize cost and time for each Party, including agreeing upon the scope and schedule of the removal activities and the schedule of the transporters and trucks needed for disposal. Owner/Tenant shall not commence excavation activities on the Property until the expiration of the thirty (30) day notice period;

4.3 Owner/Tenant shall notify Equilon no later than forty-eight (48) hours in advance of excavation of any soils at the Property. For purposes of this sub-section, notification may be made by facsimile or electronic mail. Equilon will screen excavated soils for the presence of Substances using a Photo Ionization Detector ("PID") or other similar method. Equilon will collect representative soil samples for analysis of Substances. Soil with Substances levels below the applicable State cleanup standard for commercial/industrial property use will be considered "clean." Soil determined to be "clean" shall be used by Owner/Tenant for back-filling or other Development purpose at the Property. Owner/Tenant shall, at its cost and expense, remove and properly dispose of any such clean soil if Owner/Tenant decide not to use such clean soil for back-filling or other Development purpose. Soil with levels of Substances above the applicable State cleanup standard for commercial/industrial property use will be considered "contaminated." Owner/Tenant, under the direction of Equilon, shall segregate contaminated soil from clean soil. Owner/Tenant shall place, at its sole cost and expense, contaminated soil in trucks provided by Equilon. Equilon shall, at its sole cost and expense, transport and properly dispose of any such contaminated soil at a permitted treatment, storage and disposal facility, or any other facility legally capable of accepting such soil.

4.4 Owner/Tenant shall notify Equilon no later than forty-eight (48) hours in advance of the removal of any liquids at the Property. For purposes of this sub-section, notification may be made by facsimile or electronic mail. Liquids with Substances levels below the applicable State cleanup standard for commercial/industrial property use will be considered "clean." Owner/Tenant shall, at its cost and expense remove and properly dispose of any such clean liquids. Liquids with levels of Substances above the applicable State cleanup standard for

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commercial/industrial property use will be considered "contaminated." Owner/Tenant shall place, at its sole cost and expense, such contaminated liquids in trucks or tanks provided by Equilon. Equilon shall, at its sole cost and expense, transport and properly dispose of any such contaminated liquids at a permitted treatment, storage and disposal facility, or any other facility legally capable of accepting such liquids.

4.5 Failure of Owner/Tenant to give Equilon notice of Development activities as required herein shall relieve Equilon from any responsibility or liability to Owner/Tenant for any costs, expenses or consequential damages that may result from Owner/Tenant undertaking such Development activities. For purposes of this section, all notifications shall be made to John Robbins, 603 Diehl Road, Suite 103, Naperville, Illinois 60563, Phone: 630-276-4206, Fax: 281-212-3256, E-mail: john.robbins@shell.com.

5. TERMINATION. Upon completion of its Corrective Action at the Property, this Agreement shall terminate and Equilon shall have no further obligation or responsibility to perform Corrective Action at the Property. Owner/Tenant agree(s) that Equilon will have completed its Corrective Action upon the earliest of (a) a determination by the Agency (i) that no further action is required by Equilon, or (ii) that the Corrective Action taken by Equilon at the Property has been completed; or (b) one year following the date Equilon submitted its written and supporting documentation to the Agency that Equilon considers its Corrective Action at the Property to be complete; or (c) one year following the date that the Agency directs Equilon to monitor only at the Property, regardless of whether Equilon has provided written notice (as provided in (a) above).

6. MUTUAL COOPERATION. Equilon agrees to coordinate its activities with Owner/Tenant to minimize any inconvenience to or interruption of the conduct of Owner/Tenant's business or development of the Property including, but not limited to, providing reasonable notice prior to all activities which Equilon believe may interrupt the conduct of Owner/Tenant's business. Owner/Tenant agree(s) to cooperate with Equilon, and execute any additional documents including, without limitation, permit applications, which may reasonably be required to effectuate the purpose of this Agreement. Owner/Tenant further agree(s) not to interfere with the activities conducted by Equilon on the Property.

7. PERMITS. Equilon, with the reasonable cooperation of Owner/Tenant, but at no expense to Owner/Tenant, shall obtain any and all permits which may be required for the Corrective Action it conducts pursuant to this Agreement.

8. REPORTS. Equilon agrees to provide Owner/Tenant with copies of reports that are submitted to the Agency outlining the results of Equilon's Corrective Action performed pursuant to this Agreement.

9. 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. Equilon shall not be responsible for the repair or replacement of underground utilities (except for public underground utilities damaged by Equilon) or other structures (including canopies) on the Property.

10. INDEMNITIES. Equilon agrees to indemnify, defend and hold Owner/Tenant (collectively referred to as "Indemnified Party[ies]") harmless from any and all liabilities, losses,

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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 one or more of the Indemnified Parties. 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 this Agreement and be of no further force or effect.

If underground or above ground storage tank systems are used for any purpose on the Property at any time subsequent to the execution of this Agreement, then Purchaser agrees to indemnify, defend and hold harmless Equilon, their respective parents, 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 attorney's fees, litigation costs, money damages, fines 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 or removal or abandonment of underground or above ground storage tank systems at the Property by Purchaser or any person allowed by Purchaser to install, use, maintain, operate, remove or abandon underground or above ground storage tank systems at the Property ("Third Party") which may be found to be contributing to or causing: a) personal injury, disease or death; b) damage or loss to property; or c) 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 Purchaser 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.

11. RELEASE. In exchange for Equilon's commitments as set forth in this Agreement, Owner/Tenant hereby release(s), acquit(s), holds harmless and forever discharge(s) Equilon, and its parents, predecessors, subsidiaries, affiliates, officers, directors, employees, agents, and each of their predecessors, successors, heirs and assigns of and from any and all claims, rights, causes of action, demands the Owner/Tenant, its/their heirs, predecessors, successors and assigns may have whether directly or indirectly, whether accrued in the past, present, or future, whether known or unknown, whether for damages or equitable relief of any sort including, without limitation, claims for personal injury, attorneys' fees, consulting and expert fees, Corrective Action costs, diminution in the value of the Property, loss of use or damage to the Property, loss of profits, rentals and other business opportunity, increased development costs, and any and all other property damages and damages to natural resources on the Property or other property owned by Owner/Tenant and located adjacent to the Property, which could be shown to arise from the purchase, use, operation, maintenance, installation or removal or abandonment of UST System or petroleum hydrocarbon contamination at the Property. **OWNER/ TENANT REPRESENT(S) AND WARRANT(S) THAT IT/THEY HAS/HAVE READ THIS RELEASE AND HAS/HAVE CONSULTED ITS/THEIR ATTORNEY(S) OR HAS/HAVE HAD THE OPPORTUNITY TO CONSULT AN ATTORNEY AND FREELY CHOSE NOT TO DO SO.**

12. ASSIGNMENT AND REIMBURSEMENT FROM TRUST FUNDS. Owner/Tenant hereby assign(s) to Equilon any and all rights it/they 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 System sites. Owner/Tenant agree(s) 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

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federal government to fund or reimburse cleanups, assessments, remediations, or satisfaction of claims at UST System sites and that any moneys obtained from said fund shall belong solely to Equilon.

13. 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.

14. 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. Owner/Tenant represent(s) and warrant(s) that it/they is/are the Owner/Tenant of the Property or that it/they has/have full lawful authority to grant access to the Property for the purposes described herein.

15. ASSIGNMENT, SUCCESSOR AND ASSIGNS. The foregoing The foregoing covenants, conditions, restrictions and agreements (i) shall run with the land, (ii) shall bind Owner, Owner's heirs, administrators, executors, successors and assigns, and subsequent owners, lessees and occupants of the Property, and (iii) are made for, and shall inure to, the benefit of Equilon and its successors and assigns. Equilon's waiver of any breach of the foregoing covenants, conditions, restrictions and agreements shall not constitute a waiver thereof nor of any subsequent breach thereof.

16. 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 7 above. Facsimile copies shall be sufficient.

17. 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.

18. NO ADMISSIONS. Nothing contained in this Agreement shall be construed as an admission of any fact or liability of any Party to this Agreement.

19. 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.

20. 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.

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State of Illinois)
) §
County of _____)

Before me Walter F. Kelly III (here insert the name and character of the officer) on this day personally appeared _____, known to me (or proved to me on the oath of _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 22 day of January, 2006.

Lawrence H. Leavitt
Notary Public
"OFFICIAL SEAL"
LAWRENCE H. LEAVITT
Notary Public, State of Illinois
Prepared by, and when recorded expires Nov. 30, 2008

Joseph A. Girardi
Henderson & Lyman
Suite 240
175 W. Jackson
Chicago, IL 60604

COOK County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1:

THAT PART OF LOT 13 IN BLOCK 76 OF ORIGINAL VILLAGE (NOW CITY OF EVANSTON) DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 13, THENCE EASTERLY ALONG THE SOUTH LINE OF SAID LOT, 85 FEET 1 INCH; THENCE NORTH 64 FEET 6 1/4 INCHES TO NORTH LINE OF SAID LOT; THENCE SOUTHWESTERLY ALONG THE NORTH LINE OF SAID LOT 93 FEET, 11 7/8 INCHES TO A POINT IN THE WEST LINE OF SAID LOT 50 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE SOUTHERLY ALONG WEST LINE OF SAID LOT 50 FEET TO POINT OF BEGINNING IN SUBDIVISION OF NORTHWESTERN UNIVERSITY OF THE NORTH 1/2 OF THE NORTH 1/2 EAST OF CHICAGO AVENUE (OR GREEN BAY ROAD) (EXCEPT 15 1/2 ACRES IN THE NORTH EAST CORNER OF SAID TRACT) OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

PARCEL 2:

LOT 14 IN BLOCK 76 IN NORTHWESTERN UNIVERSITY SUBDIVISION OF THE NORTH 1/2 OF THE NORTH 1/2 EAST OF CHICAGO AVENUE (OR GREEN BAY ROAD) (EXCEPT 15 1/2 ACRES IN THE NORTH EAST CORNER OF SAID TRACT) OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

PARCEL 3:

THE SOUTH 25 FEET OF LOT 15 IN NORTHWESTERN UNIVERSITY SUBDIVISION OF THE NORTH 1/2 OF THE NORTH 1/2 EAST OF CHICAGO AVENUE (OR GREEN BAY ROAD) (EXCEPT 15 1/2 ACRES IN THE NORTH EAST CORNER OF SAID TRACT) OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

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