

# UNOFFICIAL COPY



Doc#: 0932731039 Fee: \$66.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 11/23/2009 12:13 PM Pg: 1 of 16

*9,000.00*  
*Collector's Office*

## QUITCLAIM DEED

THE GRANTOR, **PAV2, LLC**, an Illinois limited liability company ("Grantor"), with its principal office address 24501 Ecorse Road, Taylor, Michigan, for the consideration of One U.S. Dollar and No/100ths (U.S. \$1.00) and other good and valuable consideration in hand paid, by these presents does hereby QUITCLAIM to **P & J AMOCO, INC.**, ("Grantee"), an Illinois corporation with a notice address of 6749 Ogden, Berwyn, Illinois, as of November 19, 2009 (the "Transfer Date"), the following described real estate (the "Property") situated in the City of Chicago, County of Cook, State of Illinois, more particularly described as follows, to wit:

See legal description set forth on Exhibit A attached hereto and incorporated herein.

Address of Real Estate: 6749 Ogden, Berwyn, Illinois

Tax Identification Number(s): 16-31-230-021

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever, of Grantor, either in law or equity, of, in and to the Property, with the hereditaments and appurtenances; **TO HAVE AND TO HOLD** the Property as above described, with the appurtenances, unto Grantee, its successors and assigns forever.

### 1. Use and Operating Restrictions.

This conveyance is made by Grantor and accepted by Grantee upon the express condition and subject to the use and operating restrictions, notices, acknowledgments, and covenants described on **Exhibit B** attached hereto (collectively, the "Use and Operating Restrictions"). Grantor may, in Grantor's sole and absolute discretion (but shall in no event be obligated to), release and/or waive any or all of the Use and Operating Restrictions at any time, by written instrument duly executed and delivered by Grantor. This Quitclaim Deed does not create any right to reversion of title to the Property from Grantee to Grantor for any violation of the Use and Operating Restrictions.

### 2. Grantee's Indemnification of Grantor.

Grantee, for and on behalf of itself and its successors and assigns (including, without limitation, all successors in title to the Property or any portion thereof (collectively, the "Grantee Parties"), by

First American Title Order #  
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acceptance of this Quitclaim Deed ("Deed"), hereby agrees, except as may otherwise be provided in the Agreement (as hereinafter defined), to assume responsibility for, and shall protect, indemnify, defend (with counsel reasonably acceptable to the Grantor Parties (as hereinafter defined)), and hold harmless, and does hereby waive, release and discharge, Grantor, its parents, affiliates and subsidiaries, and their respective directors, officers, partners, members, shareholders, employees, contractors, agents, representatives, successors and assigns (collectively, the "Grantor Parties"), from and against any claim for liabilities, any and all actions or causes of action at law or in equity, claims, demands, obligations, losses, damages, liabilities, suits, judgments, fines, penalties, payments, costs and expenses (including reasonable attorneys' fees) of whatever kind or nature, sustained, suffered or incurred by any of the Grantor Parties directly or indirectly arising out of, resulting from, relating to or connected with (a) any use of the Property which is in violation of or inconsistent with the Use and Operating Restrictions; (b) the use or operation of any of the Property on or after the Closing Date (as defined in the Agreement); (c) any act or omission on the part of any Grantee Party during such Grantee Party's presence or activity on or about the Property prior to the Closing Date; (d) any legal or equitable claim or cause of action against Grantor arising from or relating to the environmental condition of the Property; and (e) changes in, modifications to or amendments of Laws (as defined in the Agreement) that were in effect prior to the Closing Date or Laws promulgated, made or enacted on or after the Closing Date irrespective of whether the events giving rise to such liabilities occurred prior to, on or after the Closing Date.

### 3. Condition of Property.

(a) Grantee agrees and acknowledges that pursuant to the Land Contract (as defined herein), Grantee accepted the Property as of the Closing Date, and does hereby accept the Property as of the Transfer Date, with an express waiver and disclaimer by Grantor with respect to any warranty (oral or written) concerning (i) the nature and condition of the Property and the suitability thereof for any and all activities and uses that Grantee may elect to conduct thereon, (ii) the manner, construction, condition and state of repair or lack of repair of any improvements located thereon, (iii) the nature and extent of any right-of-way, lien, encumbrance, license, reservation, condition or otherwise, (iv) the compliance of the Property or its operation with any laws, rules, ordinances, or regulations of any government or other body, and (v) any other matter whatsoever except as expressly set forth in the Agreement. Grantee agrees and acknowledges that pursuant to the Land Contract, Grantee accepted the Property as of the Closing Date, and does hereby accept the Property as of the Transfer Date, on a strictly "**AS IS**" "**WHERE IS**" basis. Grantee expressly acknowledges that, in consideration of the agreements of Grantor in the Agreement and the Land Contract, **SELLER MADE AND HEREBY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY IMPROVEMENTS LOCATED THEREON OR ANY SOIL CONDITIONS RELATED THERETO. GRANTEE SPECIFICALLY ACKNOWLEDGES THAT GRANTEE IS NOT RELYING ON (AND GRANTOR HEREBY DISCLAIMS AND RENOUNCES) ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF GRANTOR OF ANY KIND OR NATURE WHATSOEVER, EXCEPT AS IS OTHERWISE EXPRESSLY SET FORTH IN THE AGREEMENT (AS DEFINED BELOW). FURTHER, GRANTEE, FOR GRANTEE AND GRANTEE'S SUCCESSORS AND ASSIGNS, HEREBY RELEASES GRANTOR FROM AND WAIVES ANY AND ALL CLAIMS AND LIABILITIES AGAINST GRANTOR FOR, RELATED TO, OR IN**

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CONNECTION WITH, ANY ENVIRONMENTAL CONDITION AT THE PROPERTY (OR THE PRESENCE OF ANY MATTER OR SUBSTANCE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY), INCLUDING, BUT NOT LIMITED TO, CLAIMS AND/OR LIABILITIES RELATING TO (IN ANY MANNER WHATSOEVER) ANY HAZARDOUS, TOXIC OR DANGEROUS MATERIALS OR SUBSTANCES LOCATED IN, AT, ABOUT OR UNDER THE PROPERTY, OR FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION (ACTUAL OR THREATENED) BASED UPON, IN CONNECTION WITH OR ARISING OUT OF CERCLA (THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, 42 U.S.C. 9601 *ET SEQ.*, AS AMENDED BY THE SUPERFUND AMENDMENT AND REAUTHORIZATION ACT OF 1986, AND AS MAY BE FURTHER AMENDED FROM TIME TO TIME), THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, 42 U.S.C. 6901 *ET SEQ.*, OR ANY OTHER CLAIM OR CAUSE OF ACTION (INCLUDING ANY FEDERAL OR STATE BASED STATUTORY, REGULATORY OR COMMON LAW CAUSE OF ACTION) RELATED TO ENVIRONMENTAL MATTERS OR LIABILITY WITH RESPECT TO OR AFFECTING THE PROPERTY.

4. **Grantor's Right of Access and Entry Upon the Property; Cooperation.**

Grantor hereby reserves for itself and the other Grantor Parties the right to enter upon and access the Property (free from any charge or fee) from time to time to remove certain personal property and conduct certain inspections, remediation and other activities, as may be required or appropriate pursuant to the terms of the Transaction Documents (as defined in the Agreement). Such access shall not be interrupted by any transfer, assignment, conveyance, mortgage, lease, hypothecation or pledge by Grantee of the Property or any of Grantee's interests therein. In the event Grantor is involved in any remediation efforts or in obtaining environmental site closure with respect to the Property for any reason whatsoever, Grantee and each of the other Grantee Parties agrees to cooperate with Grantor and with all local, state, and federal environmental agencies having jurisdiction over the Property (the "Government") in obtaining environmental site closure to commercial standards for any environmental contamination relating to or arising out of Grantor's prior use of the Property.

5. **Further Assurances.**

Grantor and Grantee shall execute, acknowledge and deliver to the other party at the reasonable request of the other party such instruments and take such other actions, in addition to the instruments and actions specifically provided for herein at any time and from time to time whether before or after the Transfer Date in order to effectuate the provisions of this Quitclaim Deed or the transaction contemplated herein or to confirm or perfect any right or restriction to be created or transferred hereunder or pursuant to this transaction, provided that the party being requested to deliver such instruments or take such other actions shall not be required to incur any material expense in connection therewith.

6. **Entire Understanding.**

All of the provisions of this Deed, including without limitation, the Use and Operating Restrictions, shall run with the land and each portion thereof, shall bind and restrict the Property and each portion thereof, and shall be binding upon and inure to the benefit of the parties,

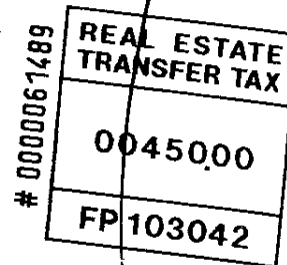
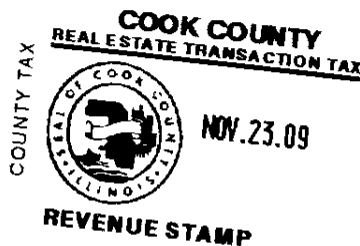
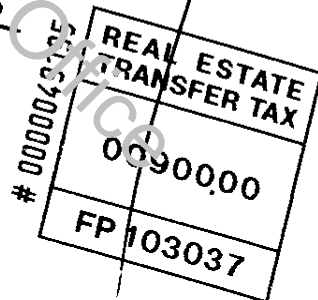
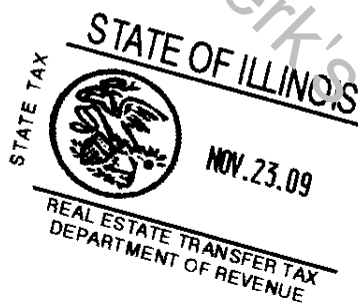
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including without limitation, Grantor, the other Grantor Parties, Grantee, and the other Grantee Parties, as the case may be, and their respective heirs, devisees, representatives, successors and assigns, and any other person or entity (if any) so expressly noted herein, but no other. This Deed, the exhibits annexed hereto, that certain Agreement of Purchase and Sale, dated as of June 12, 2009 (and any attachments and exhibits thereto) between Grantor and Grantee (the "Agreement"), that certain Land Contract, dated as of June 17, 2009 (and any attachments and exhibits thereto) between Grantor and Grantee (the "Land Contract"), and the other Transaction Documents (as defined in the Land Contract) contain the entire understanding and agreement between the parties hereto relative to the subject matter hereof. No representations or statements, other than those expressly set forth herein, were relied upon by the parties in entering into this Deed. No modification, waiver of, addition to, or deletion from the terms of this Deed shall be effective unless reduced to writing and signed by Grantor and Grantee or their respective successors and assigns, each of whom expressly waives, releases and forever forswears any right under the law in the State in which the Property is located which permits a contract, by its terms amendable only in writing, to be orally amended.

7. **Corporate Authority.**

This Quitclaim Deed has been duly authorized, executed and delivered by Grantor as of the Transfer Date.

[The remainder of this page is intentionally left blank.]



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**IN WITNESS WHEREOF**, said Grantor has caused this Quitclaim Deed to be executed by an authorized representative of Grantor this 16<sup>th</sup> day of November, 2009.

PAV2 LLC, an Illinois limited liability company

By: [Signature]

Name: David E. Barnes

Title: Authorized Agent

STATE OF Michigan )

) SS

COUNTY OF Wayne )

I, Bridget Campion, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that David E. Barnes personally known to me to be the Authorized Agent of PAV2, LLC, an Illinois limited liability company, and 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 as such David E. Barnes he/she signed and delivered such instrument, as their free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 16<sup>th</sup> day of November, 2009.

[Signature]  
Notary Public

BRIDGET CAMPION  
NOTARY PUBLIC, OAKLAND COUNTY, MI  
MY COMMISSION EXPIRES NOVEMBER 12, 2015

My Commission Expires: 11-12-15

When Recorded, Return To: Philip Lukose, 4536 N. Meade, Chicago, IL 60630

Mail Subsequent Tax Bills To: P+J Amoco, INC -  
6947 Ogden Ave.  
Berwyn, IL 60402

This instrument was prepared by and after recordation return to: Eric M. Kociba, 24501 Ecorse Road, Taylor, Michigan 48180.

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**EXHIBIT A  
TO  
QUIT CLAIM DEED**

**Legal Description**

LOTS FIFTEEN (15), SIXTEEN (16) AND SEVENTEEN (17) IN BLOCK TWENTY-ONE (21) IN BERWYN, A SUBDIVISION OF PART OF SECTION THIRTY-ONE (31), TOWNSHIP THIRTY-NINE (39) NORTH, RANGE THIRTEEN (13), EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

Permanent index Number: 16-31-230-021 Vol No. 007

Property of Cook County Clerk's Office

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## EXHIBIT B TO QUIT CLAIM DEED

### Use and Operating Restrictions, Notices, Acknowledgments, and Covenants

Grantee covenants and agrees, for and on behalf of itself and the other Grantee Parties, that the following use and operating restrictions, notices, acknowledgments, and covenants shall run with the land and each portion thereof, shall bind and restrict the Property and each portion thereof, and shall be binding upon and inure to the benefit of the parties, including without limitation, Grantor, the other Grantor Parties, Grantee and the other Grantee Parties, as the case may be, and their respective heirs, devisees, representatives, successors and assigns, and any other person or entity (if any) so expressly noted herein, but no other, and shall bind and restrict the Property for the time periods set forth herein:

I. **Acknowledgment of BP Restrictions.** The Property is subject to certain use and operating restrictions made by BP Products North America Inc., for its benefit and for the benefit of other parties and persons as set forth in a certain Quit Claim Deed, recorded with the Office of the Recorder of Cook County on the 22<sup>nd</sup> day of June, 2009, and having Document No. 0917318066 (the "BP Deed" and the "BP Restrictions"), all of which are hereby incorporated as if the same were fully set forth herein. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a recital acknowledging the BP Restrictions and the additional restrictions made by Grantor and set forth herein, substantially in the following form: "The real property described herein is subject to: (i) the Environmental Restrictions made by BP Products North America Inc., as Grantor, for its benefit and for the benefit of other parties and persons as set forth therein, recorded with the Office of the Recorder of Cook County on the 22<sup>nd</sup> day of June, 2009, and having Document No. 0917318066 as if the same were fully set forth herein; and (ii) the restrictions made by E&R Oil Company, Inc., an Indiana corporation, as Grantor, for its benefit and for the benefit of other parties and persons as set forth therein, and recorded with the Office of the Recorder of \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, in \_\_\_\_\_ County Deed Records at Volume \_\_\_\_, Page \_\_\_\_ and having Document No. \_\_\_\_\_ as if the same were fully set forth herein." Notwithstanding the foregoing, any failure to include such notice shall not, in and of itself, create any right or claim that any of the BP Restrictions or the restrictions set forth herein are void, voidable or otherwise unenforceable in accordance with their terms.

II. **Petroleum and Convenience Store Restriction:**

A. No part of the Property shall be used by Grantee or any other Grantee Party, directly or indirectly, for an automobile service station, petroleum station, gasoline station, automobile repair shop, convenience store, or car wash, or for the purpose of conducting or carrying on the business of selling, offering for sale, storage, handling, distributing or dealing in petroleum, gasoline, motor vehicle fuel, diesel fuel, kerosene, benzol, naphtha, greases, lubricating oils, any fuel used for internal combustion engines, lubricants in any form, automobile parts or accessories, tires, batteries, or other petroleum or petroleum-related products or convenience store items, except for the personal use or

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consumption of such products by Grantee or its lessees of the Property, unless any such use is in connection with the operation of the Property as a Grantor branded service station. For purposes hereof, "Grantor branded service station" shall mean a motor fuel sales facility operating under the brand BP, Amoco, Arco or any other brand of Grantor or any of its affiliates or their respective successors and assigns. For purposes hereof, "convenience store" shall be defined as any retail store or outlet that sells any of the following items: cigarettes, chewing tobacco, snuff or other tobacco products; prepackaged soda, juice, water or other drinks; prepackaged beer, wine, spirits or other liquor; fountain drinks; coffee; donuts; muffins or other pastries; or candy.

F. Grantee agrees that the Property shall not be used for the sale of petroleum, hydrocarbon or other vehicular fuel products except for those products distributed to the Property by Grantor or its affiliates (the "Fuel Supply Restriction").

C. Grantor and Grantee expressly acknowledge and agree that in the event Grantee fails to comply with the Fuel Supply Restriction or any other obligation in the Product Supply Agreement, Grantor shall have the right to seek specific performance of the Fuel Supply Restriction, the right to pursue any remedy under the Product Supply Agreement, or the right to enforce the reverter of fee simple title to the Property to Grantor (collectively, the "Recovery Rights"). Grantor shall have the right to elect which, if any, of the Recovery Rights that are granted hereunder or in the Product Supply Agreement. Grantor and Grantee hereby acknowledge, and give record notice of, the existence of the Recovery Right. If Grantor elects the right of reverter described above, the environmental indemnification in Section V(C)(4.6) and the provisions of Section V(C)(5) of this Use and Operating Restrictions, Notices, Acknowledgments, and Covenants shall be considered material terms of the reverter and binding on Grantee.

The above covenants and use restrictions bind and restrict the Property as covenants and restrictions running with the land and each portion thereof, and are deemed to benefit Grantor as a user of, operator of, or supplier of Grantor branded fuels to lands or retail operations in the County in which the Property is located. These restrictive covenants will remain in full force and effect for a term of twenty five (25) years from the date of this conveyance whereupon these restrictive covenants will automatically lapse and terminate and be of no further force or effect.

### III. Environmental Matters.

A. Environmental Restrictions. To reduce risks to human health and/or the environment and to permit application of environmental corrective action standards or other protective activities that are consistent with applicable law, this conveyance is made by Grantor and accepted by Grantee on the express condition and subject to the following restrictions, notices, acknowledgments and covenants:

1. Groundwater Exposure Restriction. No water supply wells of any kind (including, without limitation, water wells used for drinking, bathing or other human consumption purposes and water wells used for livestock, farming or irrigation)



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shall be installed or used on the Property (collectively, the "Groundwater Exposure Restriction"); provided, however, that the Groundwater Exposure Restriction does not prohibit the installation or use of any compliance wells or any groundwater monitoring, recovery or extraction wells or similar devices used for or related to the performance of any remediation or environmental corrective action work on the Property now or in the future.

2. **Residential Use Restriction.** The Property shall not be used or occupied (if used or occupied at all) for residential purposes, and additionally, no part of the Property shall be used for the purpose of operating a child care or elder care facility, a nursing home facility or hospice, a medical or dental facility, a school, a church or other place of worship, a park or a hospital (collectively, the "Residential Use Restriction"). If applicable state environmental laws and regulations define residential use, any use that is deemed to be a residential use by such laws and regulations will also be a residential use as the terms are used herein.

3. **Construction and Excavation Restrictions.**

3.1 **Engineered Barriers and Below-grade Restriction.** Grantee shall place any engineered barrier on the Property as may be required by the Government. Any building or other improvements constructed on the Property shall have a slab-on-grade foundation, with the top of the slab at or above surface level, except for any building footings and/or underground utilities (the "Below-grade Restriction").

3.2 **Construction Workers' Caution Statement.** Prior to conducting any intrusive activities with respect to the Property, Grantee and the other Grantee Parties shall cause all construction workers performing or assisting with such activities to be notified of possible petroleum hydrocarbon encounters and appropriately trained and certified in accordance with all environmental, health and safety laws, rules, regulations and ordinances, including, without limitation, any and all Occupational Safety and Health Administration (OSHA) Hazardous Waste Operations and Emergency Response (HAZWOPER) requirements (including, without limitation, those set forth in 29 CFR 1910.120) (collectively, the "Construction Workers' Caution Restriction"). Such training shall at a minimum include both an initial 40 hour and future 8 hour refresher training and certifications in compliance with OSHA HAZWOPER requirements and any similar applicable requirements (whether existing as of the date of this conveyance or enacted or promulgated in the future).

3.3 **Removal and Disposal of Soil and Groundwater.** No soils shall be excavated at or removed from the Property, unless the soil is excavated and/or removed (as applicable) in a manner and (in the case of removal of soils) to a disposal facility approved in writing in advance by Grantor, and any management, excavation and removal of soil at or from the Property must be governed by a written soil management plan in form and substance acceptable to Grantor ("Soil Management Plan") that will be developed at the time of Grantee's (or any other Grantee Party's) request for removal or excavation of soil. Grantee and the other Grantee Parties shall be solely

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responsible for the proper and lawful performance and payment of (a) any and all soil excavation, hauling, transportation and disposal pursuant to the Soil Management Plan and (b) any extraction, dewatering and disposal of any groundwater to be extracted or removed from the Property arising out of or resulting from any development or other construction activities at the Property, including any required testing and treatment of such water (collectively, the "Soil and Groundwater Removal Restriction"). Except as may be otherwise expressly provided in the Soil Management Plan that has been approved by Grantor or in the Agreement, Grantor shall not be obligated to pay any costs related to such soil excavation or groundwater extraction or any soil or groundwater removal or disposal, and/or any development of the Property.

**3.4 Relocation of Corrective Action Equipment; Development.** In the event that monitoring wells or other remediation equipment and any related improvements (collectively, the "Corrective Action Equipment") owned by Grantor are: (a) present at the Property on the date of this conveyance in connection with Grantor's Retained Environmental Liabilities (as defined in the Land Contract); (b) subsequently required to be present on the Property after the date of this conveyance by the Government in connection with Grantor's Retained Environmental Liabilities; or (c) otherwise installed at the Property by or on behalf of Grantor in connection with Grantor's Retained Environmental Liabilities or otherwise, no Grantee Party will interfere with the use or operation of the Corrective Action Equipment, or damage or destroy (or permit the damage or destruction of) any Corrective Action Equipment. In the event Grantee or any other Grantee Party damages or destroys any Corrective Action Equipment, Grantee or such other Grantee Party (as applicable) shall pay, upon demand, Grantor's costs in repairing or replacing it.

Grantee shall submit to Grantor a copy of plans for any construction or relocation of any improvements on the Property, or any excavation, demolition, regrading, repaving, landscaping or other development activity at the Property performed by any person on the Property (excluding work by Grantor and any renovations solely to the interior of buildings that have no impact on Seller's Work) at the Property ("Development") for Grantor's review and consent at least thirty (30) days prior to the commencement by anyone of any Development activities on the Property. No Grantee Party shall remove or relocate any Corrective Action Equipment without the prior written consent of Grantor. In the event that Grantor consents to any such removal or relocation, then either (at Grantor's sole election): (y) Grantee (or such other Grantee Party (as applicable)) shall perform such removal and/or relocation at its sole cost and expense, pursuant to plans and specifications which have been approved in writing by Grantor, and using contractors acceptable to Grantor (in which event Grantor and its contractors and consultants shall have the right to be present at, and supervise, such removal or relocation); or (z) Grantor shall perform (or cause to be performed) such removal and/or relocation, but all costs and expenses of such removal or relocation shall be borne solely by Grantee or such other Grantee Party (as applicable), and Grantee or such other Grantee Party (as applicable) shall promptly reimburse Grantor for any such costs or expenses paid, sustained or incurred by Grantor.

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3.5 **Cooperation.** Grantee and each of the other Grantee Parties agrees to cooperate with Grantor and with the Government in obtaining a "No Further Action Determination" based on standards applicable to future commercial use of the Property for any "Release" (as those terms are defined in the Land Contract) relating to or arising out of Grantor's prior use of the Property in connection with Seller's Retained Environmental Liabilities. Said cooperation may include, but not be limited to, the following: (a) cooperation with Grantor and assistance to Grantor in obtaining any approvals, consents, reimbursements or permits associated with Grantor's remediation efforts on the Property (and/or any Hydrocarbons that may have migrated from the Property to adjacent properties); (b) cooperation so as to minimize the time and expense associated with Grantor's remediation efforts on the Property (and/or any Hydrocarbons that may have migrated from the Property to adjacent properties) including, without limitation, the granting of access to on-site utilities (e.g., electricity, sewer, and water) if required for such activities, with the proration of any such utility costs to be based upon Grantor's actual use thereof; (c) execution of any and all documentation as may be necessary, in Grantor's sole discretion, to obtain a No Further Action Determination for the Property and may include any state-specific or Government-required form of environmental restrictions and/or covenants, deed notices, or any similar site closure documentation or forms required or authorized by the Government or Laws (which documentation may impose further use and operating restrictions similar to those set forth in this Exhibit B on the use of the Property by Grantee and the other Grantee Parties); (d) attendance at any meetings requested by Grantor relating to a Release and remediation efforts on the Property (and/or any Hydrocarbons that may have migrated from the Property to adjacent properties); and/or (e) such other further acts as may be required in order to obtain a No Further Action Determination for any environmental incident relating to the Property. Grantee and each of the other Grantee Parties authorizes Grantor to record one or more "No Further Action Determinations", any state-specific or Government-required form of environmental restrictions and/or covenants, deed notices, deed acknowledgments, Government orders or any similar site closure documentation or forms required or authorized by the Government or the Environmental Laws against the Property, if and when the same is/are issued by the Government.

3.6 **Notice.** Any notices required to be given to Grantor shall be given using the following address:

PAV2, LLC  
 24501 Ecorse Road  
 Taylor, Michigan 48180  
 Attn: General Counsel

B. **Duration.** The Groundwater Exposure Restriction, the Residential Use Restriction, the Below-grade Restriction, the Construction Workers' Caution Restriction, and the Soil and Groundwater Removal Restriction, including their related restrictions, notices, acknowledgments and affirmative covenants, and those restrictions, notices, acknowledgments and covenants set forth in Sections 3.4 and 3.5 above (collectively, the "Environmental Restrictions"), shall run with land and each portion thereof and shall be binding upon and inure to the benefit of Grantor, the other Grantor Parties, Grantee and

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the other Grantee Parties, and shall remain in full force and effect and bind and restrict the Property, unless and until the Environmental Restrictions (or any portion thereof) are either: (1) waived in writing by Grantor under conditions which, in Grantor's sole discretion, demonstrate that specific risks to human health and the environment are, have been, and/or will be appropriately reduced; or (2) released in writing by Grantor. Grantor may, at Grantee's request, release a portion or portions of the Environmental Restrictions from the Property upon Grantor's receipt from Grantee of an acknowledgment from the Government, obtained by Grantee at its sole cost and expense, that test results demonstrate that the Property meets the then-current soil and groundwater standards for the Property without that portion or portions of the Environmental Restrictions and that the Government approves the releasing of that portion or portions of the Environmental Restrictions.

#### IV. Certain Environmental Acknowledgments, Covenants and Notices.

A. **Prior Use.** Grantee acknowledges that the Property has been used as a service station or for related purposes for the storage, sale, transfer and distribution of motor vehicle fuels, petroleum products or derivatives containing hydrocarbons.

B. **USTs.** Grantee acknowledges that underground storage tanks and associated product piping systems ("USTs") included in, on or under the Property may contain explosive gases and may have been used for the storage of motor fuels containing tetraethyl lead or other "antiknock" compounds which have made such USTs unfit for the storage of water or any other article or commodity intended for human or animal contact or consumption. Grantee expressly agrees not to use or permit the use of any such USTs for such purposes.

#### V. Grant of Right of First Refusal; Other Rights/Agreements.

A. **Grant.** Grantor hereby reserves a right of first refusal (the "Right") to purchase the Property or any portion thereof on the same terms and conditions as any proposed assignment or transfer, except as may otherwise be expressly provided below. The Right is governed by the terms of this Deed and will continue for twenty five (25) years (the "**Right Duration**") after the date this Deed is recorded with the Office of the County Recorder for the County in which the Property is located (the "**Recording Date**").

B. **Other Rights/Agreements.** The Right is superior to any right of first refusal that Grantee or any third party operator or any affiliate of either of them or any other third party might hold with respect to the Property. The Right is subject to potential waiver, but in no event shall the Right be construed so as to modify, waive, release or otherwise affect the Recovery Right.

#### C. Procedures for Notice and Exercise.

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1. Transfer Notice. If Grantee enters into a bona fide agreement (a "**Tendered Agreement**") to transfer to a third party any interest in the Property or any portion thereof, Grantee ("**Seller**"), shall promptly notify Grantor of the intended transfer. The notice (the "**Transfer Notice**") must be in writing and must include (i) a copy of the signed Tendered Agreement, (ii) the total purchase price, including a breakdown of the amount for real property, equipment and goodwill, with copies of purchase and sale agreements and leases associated with the real property, improvements and equipment and (iii) the name and address of the third party and all information in Seller's possession about the ultimate beneficial Grantee of the third party. No one other than Seller can satisfy the obligation to give the Transfer Notice, and the Transfer Notice will not have been given until complete legible copies of the information described in items (i), (ii) and (iii) above is received by Grantor. Grantor will have the right to acquire the Property, instead of the third party.

2. Exercise Notice. If Grantor wishes to exercise the Right for a transaction covered by a Transfer Notice, Grantor must notify Seller within thirty (30) days after Grantor receives the Transfer Notice. Grantor's notice (the "**Exercise Notice**") must state that Grantor elects to acquire the Property at the price and on the other terms contained in the Tendered Agreement or at another price and on other terms that are mutually acceptable to Seller and Grantor. During said thirty (30) day period, Grantor may conduct environmental testing at the Property.

3. Right Includes Related Property. "**Related Property**" means Improvements and Business Property. If (i) the Tendered Agreement covers both an intended transfer by Seller of the Property and an intended transfer by Seller of any Related Property or (ii) in connection with the Tendered Agreement, Seller enters into a separate agreement to transfer any Related Property, the Right will include the right to acquire the Property and the Related Property that is to be transferred. If such a separate agreement exists, it will be considered a Tendered Agreement, and a copy of that signed separate agreement must be included in the Transfer Notice.

4. Additional Purchase Terms. If Grantor's exercise of the Right is for the purchase of the Property, the purchase will be at the price and on the other terms contained in the Tendered Agreement, but subject to the following:

4.1 Variation of Terms. Seller and Grantor may vary the price and other terms in any manner that is mutually acceptable to them.

4.2 Closing Date. Grantor will have a period of time to close the transfer of the Property that is equal to the longer of (i) the period of time given to the third party in the Tendered Agreement, but the period will begin on the date of the Exercise Notice, or (ii) 60 days after the opening of the Escrow (as defined herein).

4.3 Price Allocation When Business Property Is Offered. If (i) the Right is for the purchase of both the Property and any business property and

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(ii) the purchase price in the Tendered Agreement is allocated between the Property and the business property, Grantor may buy the Property and not the business property by paying only the consideration allocated to the Property. Or if (i) the Right is for the purchase of both the Property and any business property and (ii) the purchase price is not so allocated, Grantor may buy only the Property by paying consideration that is equitable for only the Property, considering the total purchase price to be paid by the third party for the Property and the business property.

4.4 Cash Instead of Delayed Payment Terms. If the Tendered Agreement provides for delayed payment terms, Grantor may pay the total purchase price in cash at the closing of the purchase.

4.5 Noncash Consideration. If the Tendered Agreement provides for any noncash consideration, Grantor may substitute cash for any non-cash consideration (in an amount determined by Grantor reasonably and in good faith as the approximate equivalent value of the non-cash consideration), or Grantor may pay cash equal to the fair market value of the noncash consideration, as agreed to by Seller and Grantor.

4.6 Environmental Indemnification. If Grantor acquires an Property covered by a Transfer Notice, the person transferring the Property to Grantor ("**Transferor**") shall sign an indemnification agreement containing the following provision:

*Transferor shall indemnify and defend Grantor from all claims, liabilities, damages, losses, costs, and expenses (including reasonable attorneys' fees) that Grantor incurs arising from any environmental contamination occurring or hazardous materials existing at the real property that Transferor is concurrently conveying to Grantor (the "**Real Property**"), to the extent that the contamination or hazardous materials (i) are present at concentrations that any governmental agency will require to be remediated or otherwise are not in compliance with all applicable statutory and regulatory requirements and (ii) are known or discovered before Grantor begins its operations at the Real Property. This agreement to indemnify and defend will survive the closing of Transferor's transfer of the Real Property to Grantor.*

4.7 Offer to Lease or Sublease. The Right includes the right to match the terms of any lease or sublease that Grantee enters into during the Right Duration covering (i) an Property or (ii) part of any Property when that part includes all or part of the Real Estate. The Right will exist whether the leasehold or subleasehold is to begin during or after the Right Duration.

4.8 Seller's Transfer Rights. If Grantor does not exercise the Right for a transaction covered by a Transfer Notice, Seller may then transfer the interest in the Property and any Related Property to the third party but (i) only for the price and on the other terms contained in the Tendered Agreement; (ii) only to the third party named in the Tendered Agreement; (iii) only within one hundred

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eighty (180) days after Grantor receives the Transfer Notice; and (iv) SUBJECT TO GRANTOR'S RIGHTS UNDER THIS DEED, WHICH WILL CONTINUE THROUGHOUT THE RIGHT DURATION WITH RESPECT TO EACH FUTURE INTENDED TRANSFER OF AN PROPERTY BY ANY GRANTEE OR TENANT OF THE PROPERTY. Any change in (i) the identity of the third party or the ultimate beneficial Grantee of the third party or (ii) in the price or other terms of the Tendered Agreement will give rise to a new Right exercisable by Grantor. Any further request for assignment or transfer will again trigger the Right.

4.9 Survival of Grantor's Rights. Grantor's failure to exercise the Right with respect to a Tendered Agreement covered by a Transfer Notice will not relieve Seller from the obligation to comply with this Deed in connection with any later Tendered Agreement that Seller enters into during the Right Duration. Grantor may void any transfer that Seller makes without complying with the Right.

5. Escrow. If Grantor exercises the Right, Seller shall apply to a title insurance company ("**Escrow Agent**") acceptable to Grantor for a preliminary title report on the condition of title of the Property that Grantor is buying. Seller and Grantor shall promptly sign escrow instructions and open escrow (the "**Escrow**") with Escrow Agent. Despite anything to the contrary in the Tendered Agreement or elsewhere:

5.1 Transfer Document and Title Insurance. Seller shall provide Escrow Agent with a deed, or other appropriate document transferring title to the Property that Grantor is buying, free of encumbrances, except those that Grantor elects to accept. The policy must be issued by an insurer acceptable to Grantor and have a liability amount equal to the purchase price of the Property and any purchased Improvements. Closing will be considered effected when the county recorder accepts the transfer document for recording.

5.2 Taxes and Rent. Taxes, rentals, and other items of income and expense related to the Property or any purchased Improvements will be prorated as of the date that the Escrow closes.

5.3 Closing Costs. Seller and Grantor shall each pay one half of Escrow Agent's fee for handling the Escrow. Seller shall pay the premium for Grantor's title insurance policy. Seller and Grantor shall pay all other closing costs in accordance with the custom in the county where the Real Estate is located. But if there is no custom for a particular closing cost, each shall pay one half of that cost.

## VI. Defined Terms; Successors; Other.

Unless otherwise expressly noted herein, all initially capitalized terms used in this **Exhibit B** shall have the meanings ascribed to such terms as set forth in the Deed to which this **Exhibit B** is attached. By taking title to the Property (or otherwise

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succeeding, directly or indirectly, to any of Grantee's right, title or interest in or to the Property), each Grantee Party shall be conclusively deemed to have agreed to and accepted each and all of the terms, provisions and conditions of this **Exhibit B**, and to have agreed to be bound thereby. It is the intention of Grantor and Grantee that the terms, provisions, covenants and restrictions set forth in this **Exhibit B** shall be deemed to have vested upon the execution and delivery of this Deed by Grantor. If any of the covenants or restrictions contained herein shall be unlawful, void or voidable for violation of the rule against perpetuities, then any such covenants and restrictions shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of President Franklin Delano Roosevelt. If any of the covenants or restrictions contained herein shall be unlawful, void or voidable for violation of any other statutory or common law rule(s) or regulation(s) imposing time limits, then any such covenants and restrictions shall continue only for the longest period permitted under such statutory or common law rule(s) or regulation(s). If any term, provision, condition, covenant or restriction in this **Exhibit B** shall, to any extent, be invalid or unenforceable, the remainder of this **Exhibit B** (or the application of such term, provision, condition, covenant or restriction to persons or circumstances other than in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision, condition, covenant and restriction set forth in this **Exhibit B** shall be valid and enforceable to the fullest extent permitted by law. Grantee acknowledges, for itself and the other Grantee Parties, that the breach of any of the covenants or restrictions contained in this **Exhibit B** on the part of Grantee or any other Grantee Party will result in irreparable harm and continuing damages to Grantor and Grantor's business, and that Grantor's remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available to Grantor at law or in equity in the event of any such breach, any court of competent jurisdiction may issue an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant or restriction by Grantee or any other Grantee Party. In the event that Grantee or any other Grantee Party shall breach any of the covenants or restrictions set forth in this **Exhibit B**, then Grantee or such other Grantee Party (as applicable) shall pay all of Grantor's costs and expenses (including reasonable attorneys' fees) incurred in enforcing such covenants and restrictions.

[End of Exhibit B to Deed]