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Doc#: 0935818023 Fee: \$60.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 12/24/2009 12:03 PM Pg: 1 of 13

Space Above This Line For Recorder's Use

## ACCESS AGREEMENT GRANTING RIGHT OF ENTRY

This Agreement is made as of December 23 2009 by and between the following entities, referred to herein as the Parties:

EQUILON ENTERPRISES LLC  
Attn.: Property & Planning  
250 Meadowfern Drive, Suite 154  
Houston, Texas 77067  
Phone: 713-425-6426  
Fax: 281-876-0380

Attn.: John Robbins  
603 E. Diehl Road, Suite 103  
Naperville, Illinois 60563  
Phone: 630-276-4206  
Fax: 713-423-0544  
E-mail: John.robbins@shell.com  
("Equilon")

and

SCP REALTY FUND-1 ASHLAND, LLC  
Attn.: Samuel I. Ankin  
3201 Old Glenview Rd., Suite 301  
Wilmette, Illinois 60091  
Phone: (847) 256-8800  
Fax: (847) 256-2572  
E-mail: [sankin@shinergrp.com](mailto:sankin@shinergrp.com)

and

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WAS PNC ASHLAND, LLC  
 Attn: William A. Shiner  
 3201 Old Glenview Road, Suite 301  
 Wilmette, Illinois 60091  
 Phone: (847) 256-8800  
 Fax: (847) 256-2572  
 E-mail: [wshiner@shinergroup.com](mailto:wshiner@shinergroup.com)

(SCP Realty Fund – I Ashland, LLC and WAS PNC Ashland, LLC shall collectively be referred to herein as “Purchaser”)

**WHEREAS**, Purchaser desires to purchase the property located at 3552 North Ashland Avenue, Cook County, Chicago, IL 60657; CC#: 136947 as described in Exhibit A (“Property”) and Equilon desires to sell the Property pursuant to the terms of a certain 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 previously 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 removal or 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 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 UST Systems and Corrective Action related to the UST System. If Owner fail(s) to provide reasonable access to Equilon, or Owner unreasonably interfere(s) with Equilon’s activities on the Property, such failure shall constitute waiver of any right, claim or cause of action Owner 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 shall, as soon as possible, but not later

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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.

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 agree(s) Equilon is under no obligation to Owner to remedy or respond to any environmental liability or condition on the Property that cannot be attributed to the UST System on the Property unless required by law or government agency.

3. **REGULATIONS.** In the event Purchaser re-installs underground storage tanks at a future date after Closing, 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 shall provide Equilon with written notification at least thirty (30) days in advance of the date on which Owner 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'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, the Parties will coordinate and cooperate with each other in planning the simultaneous performance of the Development and Equilon's activities 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 shall not commence excavation activities on the Property until the expiration of the thirty (30) day notice period;

4.3 Owner 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 for back-filling or other Development purpose at the Property. Owner shall, at its cost and expense, remove and properly dispose of any such clean soil if Owner 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, under the direction of Equilon, shall segregate contaminated soil from clean soil. Owner

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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. Any such soils or material removed from the Property will be manifested and transported in Equilon's name.

4.4 Owner 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 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 commercial/industrial property use will be considered "contaminated." Owner 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 to give Equilon notice of Development activities as required herein shall relieve Equilon from any responsibility or liability to Owner for any costs, expenses or consequential damages that may result from Owner undertaking such Development activities. For purposes of this section, all notifications shall be made to John Robbins, 603 E. Diehl Road, Suite 103, Naperville, Illinois 60563 Phone: 630.276.4206, Fax: 713.423.0544, 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 agree(s) that Equilon will have completed its Corrective Action upon the issuance of the NFR Letters (as that term is defined in the Purchaser and Sale Agreement) in connection with the removal of the UST system.

**6. MUTUAL COOPERATION.** Equilon agrees to coordinate its activities with Owner to minimize any inconvenience to or interruption of the conduct of Owner'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's business. Owner 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 further agree(s) not to interfere with the activities conducted by Equilon on the Property.

**7. PERMITS.** Equilon, with the reasonable cooperation of Owner, but at no expense to Owner, 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 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

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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 (collectively referred to as the "Indemnified Party[ies]") harmless from any and all liabilities, losses, claims, demands, or orders arising out of the Corrective Action Equilon performs pursuant to this Agreement, except to the extent that any said liabilities, losses, claims, demands, or orders may be attributed in whole or in part to the negligence, gross negligence or intentional act of the Indemnified 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 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, its 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 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 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 hereby assign(s) to Equilon any and all rights it/they may have against the applicable state and federal

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fund established by the state or federal government to fund or reimburse cleanups, assessments, remediations or satisfaction of claims at UST System sites. Owner agrees to cooperate with Equilon, including execution of additional documents, if necessary, in obtaining any allowable reimbursement from a state and federal fund established by the state or federal government to fund or reimburse cleanups, assessments, remediations, or satisfaction of claims at UST 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 represents and warrants that it/they is/are the Owner 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.** In the event Owner's interests in the Property are conveyed, transferred or in any way assigned in whole or in part to any other person or entity, whether by contract, operation of law or otherwise, Owner shall take any and all reasonable actions to render any such conveyance, transfer or assignment subject to the terms of this Agreement and shall provide notice thereof to Equilon. This Agreement shall be assignable by Owner in accordance with Article 13 of the Purchase and Sale Agreement. Owner hereby assigns to Equilon any and all claims, causes of action and suits it/they may have against any third party who may have financial responsibility for any environmental response costs or other damages at the Property including but not limited to any rights to recover any insurance policy that may name Owner as a beneficiary or against which Owner may have a right of recovery. Owner agrees to cooperate with Equilon in determining whether such claims exist.

**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 1 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.


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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.

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

**EQUILON ENTERPRISES LLC**

By: \_\_\_\_\_



Name: \_\_\_\_\_

Gary J. Ragusa  
NA Real Estate Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

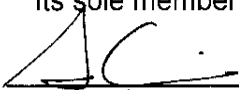
September 2, 2009

Property of Cook County Clerk's Office

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## SCP REALTY FUND-1 ASHLAND, LLC

By: Shiner Capital Partners, LLC  
Its sole member

By:   
Title: member  
Date: 12-17-09

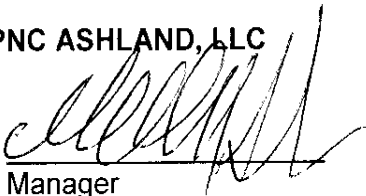
Property of Cook County Clerk's Office



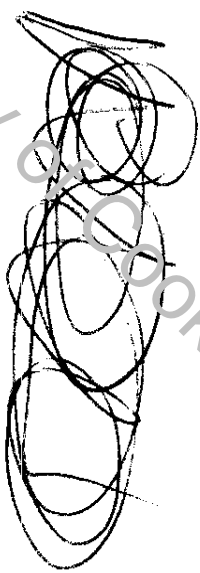


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WAS PNC ASHLAND, LLC

By:   
Title: Manager  
Date: December 22, 2009

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State of Texas            )  
                                  ) §  
County of Harris        )

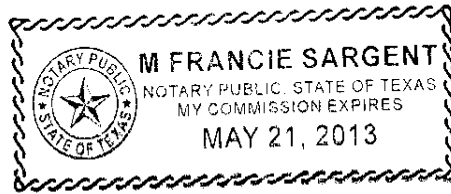
The within and foregoing instrument was acknowledged before me this 2nd day of September, 2009, by Cary J. Rayson who is the NA Real Estate Manager of EQUILON ENTERPRISES LLC, a Delaware limited liability company, on behalf of the company.

Witness my hand and official seal.

M. Francie Sargent

NOTARY PUBLIC

My commission expires:



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State of IL )  
County of D. Page )

§

The within and foregoing instrument was acknowledged before me this 17<sup>th</sup> day of December, 2009, by Samuel Ankin who is the Member of **SCP REALTY FUND-1 ASHLAND, LLC**, an Illinois limited liability company, on behalf of the company.

Witness my hand and official seal.

*Annita Mitchell*

NOTARY PUBLIC

My commission expires: 6/29/13

"Official Seal"  
Annita Mitchell  
Notary Public, State of Illinois  
My Commission Exp. 06/29/2013

PROPERTY OF COOK COUNTY CLERK'S OFFICE

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State of IL )  
County of COOK )

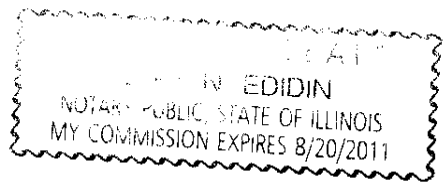
§

The within and foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of Dec, 2009, by WILLIAM A SHINA who is the MANAGER of **WAS PNC Ashland, LLC**, an Illinois limited liability company, on behalf of the company.

Witness my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: 8/20/11



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## EXHIBIT A

**STREET ADDRESS:** 3552 North Ashland Avenue

**CITY:** Chicago

**COUNTY:** Cook

**PERMANENT TAX IDENTIFICATION NUMBER:** 14-19-408-023-0000, 14-19-408-024-0000, 14-19-408-025-0000, 14-19-408-026-0000, 14-19-408-027-0000 and 14-19-408-028-0000.

LOTS 1 TO 7 (EXCEPT THAT PART LYING WITHIN EAST 50.00 FEET SECTION) IN BLOCK 1 OF L. TURNER'S RESUBDIVISION OF BLOCKS 1 TO 6, INCLUSIVE IN L. TURNER'S SUBDIVISION OF THE NORTHEAST 1/4 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.