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Doc#: 1007641039 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/17/2010 10:13 AM Pg: 1 of 9

This Instrument Was Prepared By
And after recording, return to:

Michael Sanchez
Shannon, Martin, Finkelstein & Alvarado, P.C.
1001 McKinney Street
Suite 1100
Houston, Texas 77002

Tax Parcel ID No. 17-07-324-022; 17-07-324-023; 17-07-324-024

Cook

ASSIGNMENT AND ASSUMPTION OF LEASE

STATE OF ILLINOIS

COUNTY OF COOK

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This **Assignment and Assumption of Lease** ("**Assignment**"), dated as of the *8th* day of March, 2010 ("**Effective Date**"), is by and between Equilon Enterprises LLC d/b/a Shell Oil Products US, a Delaware limited liability company ("**Seller**"), with a place of business at Pennzoil North Tower, 700 Milam Street, Office 2000A, Houston, Texas 77002 and True North Energy, LLC, a Delaware limited liability company ("**Buyer**"), with a place of business at 5565 Airport Highway, Toledo, Ohio 43615.

RECITALS

WHEREAS, Seller and Buyer are parties to that certain Asset Purchase and Sale Agreement dated as of the *8th* day of March, 2010 (the "**Purchase Agreement**"), pursuant to which Seller has agreed to transfer to Buyer and Buyer has agreed to accept from Seller, all of Seller's right, title and interest in and to the Assumed Leases set forth on **Schedule 2.1(b)(ii)** of the Purchase Agreement and to fully perform Seller's obligations under the Assumed Leases;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby assign, transfer and set over to Buyer all of Seller's right, title and interest as tenant in and under that certain lease agreement set forth on **Schedule 1** (each such lease being hereinafter referred to as a "**Lease**") and the leasehold estate created thereby, affecting the real property described in **Schedule 2** (such real property being hereinafter referred to as the "**Premises**") including, without limitation, any security or other deposit thereunder, and any options contained in any Lease to purchase fee title to the respective Premises, to expand the respective Premises and to renew such Lease;

TO HAVE AND TO HOLD the same unto Buyer, its successors and assigns, forever, subject to the terms, covenants, conditions and provisions of the Lease and the following restrictions and covenants:

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M.G.R. TITLE

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1. From and after the Effective Date until December 31, 2030 ("**Termination Date**"), if motor fuel is stored, advertised or sold at or from the Premises, the motor fuel stored, advertised or sold shall be sold under the "Shell" trademark ("**Brand Covenant**"), all as more fully set forth in that certain Branding and Product Purchase Commitment Agreement dated as of the Effective Date, by and between Seller and Buyer ("**Branding Agreement**"). The Brand Covenant shall expire automatically on the Termination Date without need for filing a release, or other action of either Seller or Buyer. The Premises and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered and conveyed subject to the Brand Covenant. The Brand Covenant and the remedies for breach thereof, as provided in the Branding Agreement, shall run with the land, and pass with each and every portion of the Premises, and shall apply to and bind the respective successors, assigns and transferees and subsequent owners in interest thereof. The Brand Covenant is imposed upon the entire Premises.

Buyer agrees to include the Brand Covenant in any conveyance or assignment of the Premises to a successor grantee and, as a condition of any conveyance of the Premises, to require successor grantees to enter into an agreement assuming all obligations of Buyer under the Branding Agreement.

2. Pursuant to the terms of the Branding Agreement, until the Termination Date, Seller retains a right to re-acquire the Lease and Buyer's interest in and to the Premises ("**Right of First Refusal**"). The Right of First Refusal shall expire automatically on the Termination Date, without need for filing a release, or other action of either Seller or Buyer. The terms of the Right of First Refusal are set forth on "**Exhibit A**". Notwithstanding anything contained herein to the contrary, the Right of First Refusal shall not apply to a transfer of the Premises (or any portion thereof) (i) at a foreclosure sale or similar liquidation sale or (ii) by deed, transfer, assignment or other conveyance in-lieu of foreclosure (each a "**Foreclosure Event**") and a Foreclosure Event shall terminate the Right of First Refusal. Such grantee in a Foreclosure Event, whether the transferee is a mortgagee, a party claiming through a mortgagee, or a third party shall hereinafter be referred to as a "**Foreclosure Grantee**". For clarification purposes, a Foreclosure Event shall not terminate the Brand Covenant and such Brand Covenant shall continue to apply to a Foreclosure Grantee.

3. Buyer has granted a right of access to the Premises to Seller pursuant to the terms of an Access Agreement, dated as of the date hereof, and recorded on the same day as this Assignment.

4. Buyer covenants and agrees that it shall not install and, it shall prevent any subsequent purchaser or permitted assignee of the Premises from installing, any well or other tank, pump or related equipment at the Premises for the use or storage of potable water at the Premises. Buyer further covenants and agrees that it shall not improve or use, and shall prohibit any subsequent purchaser or assignee of the Premises from using or improving, the Premises for residential purposes (including multi-family residential uses), or for any hospital, school, elder care or day care center or for a park or playground. Buyer further covenants and agrees that it shall not materially change the use of the Premises in such a way as to increase the level of clean-up required by any Governmental Entity for any Environmental Condition which had affected the Premises as of the Effective Date. Each of these covenants shall run with the Premises, and pass with each and every portion of the Premises, and shall apply to and bind the respective successors in interest thereof.

In addition, the Parties agree as follows:

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1. Buyer hereby accepts this Assignment and assumes and agrees to perform and comply with all of the covenants, duties and obligations of Seller under the Lease arising on or after the date hereof, including, without limitation, the obligation to pay the rent specified therein.

2. This Assignment is delivered pursuant to the Purchase Agreement and is subject to its provisions, including, without limitation, provisions relating to indemnification by Seller and by Buyer, and the limitations in respect of such indemnification set forth therein. Any successor in interest, grantee or assignee of Buyer shall not be entitled to the rights or benefits of the Purchase Agreement, which rights and benefits are personal to Buyer and do not run with the Premises.

3. All disputes between Seller and Buyer arising out of, relating to, or in connection with this Assignment, including, without limitation, any Claim or question relating to its negotiation, performance, non-performance, interpretation or termination, or the relationship between Seller and Buyer contemplated or established by this Assignment, shall be referred to and finally resolved pursuant to the dispute resolution provisions of **Schedule B** of the Purchase Agreement. This Section 3 shall survive indefinitely.

4. This Assignment shall be construed in accordance with the internal laws of the State of Delaware, excluding any conflict of law principles that would direct application of the laws of another jurisdiction. This Section 4 shall survive indefinitely.

5. Unless the context shall otherwise require, terms used and not defined herein shall have the meanings set forth in **Schedule A** of the Purchase Agreement, and all procedures and other provisions set forth in **Schedule B** of the Purchase Agreement shall govern this Assignment, unless otherwise provided herein.

SIGNATURES APPEAR ON FOLLOWING PAGE

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Schedule 1

Lease Description

Cost Center 136973: 45 North Western Avenue, Chicago, Illinois

That certain Ground Lease dated July 1, 2002 between LaSalle Bank National Association (as successor trustee to American National Bank & Trust Co. of Chicago, as Trustee and not personally under Trust U/T/A dated 4/21/70 Trust #29692, a national banking association, as Lessor, and Equilon Enterprises LLC, a Delaware limited liability company, as Tenant, a Memorandum of which was recorded on January 9, 2003 as Document 0030041467.

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Legal DescriptionFinal
136973**CHICAGO TITLE INSURANCE COMPANY**

ORDER NUMBER: 1401 008426104 D1

STREET ADDRESS: 45 NORTH WESTERN

CITY: CHICAGO

COUNTY: COOK

TAX NUMBER: 17-07-324-022-0000, 17-07-324-023-0000, 17-07-324-024-0000

LEGAL DESCRIPTION:

THE ESTATE OF INTEREST IN THE LAND DESCRIBED BELOW AND COVERED HEREIN IS: THE LEASEHOLD ESTATE (SAID LEASEHOLD ESTATE BEING DEFINED IN PARAGRAPH 1.c. OF THE ALTA LEASEHOLD ENDORSEMENT(S) ATTACHED HERETO), CREATED BY THE INSTRUMENT HEREIN REFERRED TO AS THE GROUND LEASE DATED JULY 1, 2002 BETWEEN LASALLE BANK NATIONAL ASSOCIATION (AS SUCCESSOR TRUSTEE TO AMERICAN NATIONAL BANK & TRUST CO. OF CHICAGO, AS TRUSTEE AND NOT PERSONALLY UNDER TRUST U/T/A DATED 4/21/70 TRUST #29692, A NATIONAL BANKING ASSOCIATION, AS LESSOR, AND EQUILON ENTERPRISES LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS TENANT, A MEMORANDUM OF WHICH WAS RECORDED ON JANUARY 9, 2003 AS DOCUMENT 0030041467

ASSIGNMENT OF LEASE TO TRUE NORTH ENERGY, LLC RECORDED - AS DOCUMENT -.

LOTS 26 THROUGH 31 (EXCEPT THE WEST 17 FEET OF LOT 26) IN BLOCK 57 IN C.FOLLANSBEE'S SUBDIVISION OF BLOCK 57 IN CANAL TRUSTEE'S SUBDIVISION OF SECTION 7 TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, WHICH PROPERTY HAS NET DIMENSIONS EXCLUSIVE OF ANY AND ALL RADII AND/OR RIGHT OF WAYS OF 125.14 ON WESTERN AVENUE AND 127.12 ON WARREN BOULEVARD.

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EXHIBIT A

Right of First Refusal

Until the Termination Date, if at any time, Buyer or any individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, trust, estate, unincorporated organization, Governmental Entity or their successors in title or permitted assigns ("Person") owning the Premises other than a Person owning the Premises after the Premises has been released from the Brand Covenant pursuant to the Branding Agreement ("Premises Owner") (i) receives an acceptable bona fide offer to purchase or lease from a ready, willing and able purchaser or lessee which Buyer or any Premises Owner desires to accept, or (ii) makes a bona fide offer to sell, lease or otherwise transfer to such a purchaser or lessee, all of Buyer's or any Premises Owner's right, title and interest in and to the Premises, or any interest therein ("Offer"), Buyer or such Premises Owner shall provide written notice to Seller, specifying the name and address of the buyer or lessee and the price and complete terms of the Offer, accompanied by Buyer's or any Premises Owner's affidavit that the proposed sale or lease transaction described in the Offer is in good faith. Seller will then have the prior option to purchase or lease the Premises at the price and on the terms of the Offer, but subject to the terms provided below.

Seller shall provide written notice to Buyer or such Premises Owner, as applicable, of Seller's election to exercise its Right of First Refusal within 30 days after Seller receives such Person's written notice of the Offer. Within 20 days after the date of the notice provided to such Person of Seller's election to exercise its Right of First Refusal, Seller shall designate a title company and provide written notice to such Person of the same. Such Person shall deposit with the title company a recordable special warranty deed or lease, as applicable, to Seller, in form satisfactory to Seller, for the Premises. Seller shall deposit with the title company any earnest money required by the Offer. Promptly thereafter, such Person shall (or Seller may), at Seller's expense, order from the title company a report on title to (or leasehold interest in) the Premises and a commitment for an owner's or lessee's (as applicable) policy of title insurance. Upon written notice from Seller to such Person and the title company that title is acceptable, the title company shall deliver to Seller the deed or lease executed by such Person, together with the owner's or lessee's (as applicable) policy of title insurance, against payment by Seller of the purchase price (which shall include payment of any costs, fees, expenses, documentary, transfer and like taxes required to be paid by Seller), less any earnest money, as such allocation of costs, fees and expenses may be set forth in the Offer. Thereafter, the title company shall deliver to such Person the purchase price required by the Offer less the amount of any liens accepted by Seller and less the amount of any and all costs, fees, expenses, documentary, transfer and like taxes required to be paid by such Person as set forth in the Offer. Taxes and rent will be prorated as of the date of delivery of the deed (or the assignment of lease, as applicable) from the title company to the Seller. Upon receipt from Seller of written notice that the title is not acceptable, Buyer or such Premises Owner, as applicable, shall use commercially reasonable efforts to cure such title objections by the closing, including, without limitation, insuring against or providing a bond or suitable escrow for, any lien or other encumbrance that represents a liquidated amount or sum of money. If such Person is unable to cure the title to Seller's satisfaction, Seller may elect not to purchase the Premises, in which case the title company shall return the deed (or assignment of lease) to such Person, and the earnest money to Seller. If Seller elects to not exercise its Right of First Refusal for any reason, Buyer or such Premises Owner, as applicable, may sell the Premises under the terms described in the notice of the Offer provided to Seller, provided, that such sale is concluded within ninety (90) days of Seller's election to not exercise its Right of First Refusal, otherwise the Premises shall again be subject

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to the Right of First Refusal provisions described herein. Any proposed sale of any Premises under different terms than those described in such notice of the Offer is subject to the Right of First Refusal provisions described herein.

The Right of First Refusal is not limited by any other rights Seller has under the Branding Agreement or elsewhere, if any, to acquire the Premises. The Right of First Refusal runs with the land or leasehold interest, inures to the benefit of, and binds the respective successors in interest and assigns thereof.

The Right of First Refusal shall not apply to any lease or sublease by Buyer to any Person other than Seller or Buyer and their respective affiliates ("**Third-Party**") or other Person operating a retail motor fuel facility at the Premises using the "Shell" brand and any other trademark or distinctive name identifying branded fuel offered for resale at retail outlets approved by Seller (the "**Brand**") pursuant to a written agreement with Buyer or any affiliate of Buyer, provided, Buyer retains ownership and control of, and full contractual and regulatory responsibility for, the underground storage tanks, piping, leak detection devices and any related equipment, including "inground" hoists, direct and remote vapor and fill lines/buckets used for the storage and dispensing of petroleum products, used oil and/or heating oil, and other equipment related to the operation of a motor fuel service station which are, were or may be present on the Premises, not including any concrete or other slab or platform upon which such equipment may be stationed ("**UST System**") throughout the term of the lease or sublease with such Third-Party or Person and Buyer complies with the provisions of Section 9.6 (*Future Conveyances*) of the Purchase Agreement.

County Clerk's Office