



Doc#: 1235615036 Fee: \$56.00
Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/21/2012 01:51 PM Pg: 1 of 10

56652 -CH 2/15

This instrument prepared by: *and mailed to:*
Patricia G. Lyden, Esq.
Lyden, Liebenhal & Chappell, Ltd.
5470 Main Street, Suite 300
Sylvania, Oh 43560

ACCESS AGREEMENT

This Access Agreement ("Agreement"), dated as of the ²⁷ day of November, 2012, is by and among True North Energy, LLC, a Delaware limited liability company ("Seller"), with offices located at 5565 Airport Highway, Suite 100, Toledo, Ohio 43615; Equilon Enterprises, LLC d/b/a Shell Oil Products US, a Delaware limited liability company ("Equilon"), with offices at Pennzoil North Tower, 700 Milam Street, Office 2069A, Houston, Texas 77002, and FB Holdings, LLC, an Illinois limited liability company, with offices located at 4647-57 South Pulaski Road, Chicago, IL 60632 ("Buyer").

RECITALS

WHEREAS, Seller and Equilon are parties to that certain Asset Purchase and Sale Agreement ("Equilon PSA") dated as of the 8th day of March, 2010 for the transfer from Equilon to Seller of the real property commonly known as 4647-57 South Pulaski Road, Chicago, IL 60632 and described in Exhibit A attached hereto (the "Premises"), as well as that certain Access Agreement, dated as of the 8th day of March, 2010 and recorded as Document No. 1007026323 in the Cook County Illinois Recorder's office, providing for access and rights of entry to the Premises.

WHEREAS, Seller and Buyer are parties to that certain Agreement of Sale dated as of the 18th day of October, 2012 (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 certain assets, including without limitation the Premises;

WHEREAS, in accordance with the Access Agreement, Equilon may require access to the Premises in connection with certain post-closing activities contemplated or required by the Equilon PSA.

10

UNOFFICIAL COPY

WHEREAS, in accordance with the Purchase Agreement, Seller may require access to the Premises in connection with certain post-closing activities contemplated or required by the terms of the Purchase Agreement; and

NOW, THEREFORE, in exchange for the mutual promises and considerations stated herein and in the Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller, Equilon and Buyer agree as follows:

ARTICLE 1. **DEFINITIONS AND PROCEDURES**

1. Unless defined in this Agreement or the context shall otherwise require, terms used and not defined herein shall have the meanings set forth in the Purchase Agreement and in Schedule A to the Equilon PSA, and unless otherwise provided in this Agreement, all rules as to usage and procedural conventions set forth in Schedule B to the Equilon PSA shall govern this Agreement.

ARTICLE 2. **GRANT OF LICENSE**

2. Buyer, as owner of the Premises, hereby grants a nonexclusive irrevocable license from the date of this Agreement to Seller and Equilon, their employees, authorized agents, contractors and any relevant governmental agency with jurisdiction ("Agency"), its employees, authorized agents and contractors, to enter the Premises 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 Seller or Equilon deem 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 solely to the extent required by the Equilon PSA or the Purchase Agreement. If Buyer, as owner of the Premises, fails to provide reasonable access to Seller or Equilon, or Buyer as owner of the Premises unreasonably interferes with Seller's or Equilon's activities on the Premises, such failure shall constitute waiver of any right, claim or cause of action Buyer may have against Seller to perform or continue Corrective Action on the Premises. 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 Corrective Action upon the Premises and not a grant of easement or any other interest in the Premises. Buyer, as the owner of the Premises, 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 Seller or Equilon on the Premises and damaged or destroyed by Buyer, its employees, agents or invitees.

ARTICLE 3. **REGULATIONS**

3. Buyer 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

UNOFFICIAL COPY

requiring insurance, inventory records, leak detection devices, system inspections, tank and line tests and tank field monitoring well tests. Buyer further agrees to copy Seller and Equilon, within fifteen (15) days of the date request is made by Seller or Equilon, with any records pertaining to the above. Further, upon written request by Seller or Equilon, Buyer shall make available all records required by applicable environmental laws for review by Seller and Equilon at the Premises during normal business hours.

ARTICLE 4. CONSTRUCTION ON PROPERTY.

4. Buyer shall provide Seller and Equilon with written notification at least thirty (30) days in advance of the date on which Buyer plans to begin excavation at the Premises for development ("Development"). Buyer's written notification to Seller shall state the dates during which the construction work will be performed and contain detailed work plans. During the thirty (30) day period following the notice from Buyer, the Parties will coordinate and cooperate with each other in planning the simultaneous performance of the Development and Seller's or Equilon's activities at the Premises in such a manner as to minimize cost and time for each Party, including agreeing upon the scope and schedule of any removal activities and the schedule of the transporters and trucks needed for disposal. Buyer shall not commence excavation activities on the Premises until the expiration of the thirty (30) day notice period. Failure of Buyer to give Seller and Equilon notice of Development activities as required herein shall relieve Seller and Equilon from any responsibility or liability to Buyer for any costs, expenses or consequential damages that may result from Buyer undertaking such Development activities. For purposes of this section, all notifications shall be made to the addresses set forth above.

ARTICLE 5. TERMINATION

5. This Agreement shall terminate, without any further action of Seller, Equilon or Buyer, upon the later to occur of the following:

a. As to Seller: upon completion of any Corrective Action at the Premises, this Agreement shall terminate and Seller shall have no further obligation or responsibility to perform Corrective Action at the Premises. Buyer agrees that Seller will have completed its Corrective Action upon the earliest of (i) a determination by the Agency (y) that no further action is required by Seller, or (z) that the Corrective Action taken by Seller at the Premises has been completed; (ii) one year following the date Seller submitted its written and supporting documentation to the Agency that Seller considers its Corrective Action at the Premises to be complete; or (iii) one year following the date that the Agency directs Seller to monitor only at the Premises, regardless of whether Seller has provided written notice (as provided in (i) above); or

b. As to Equilon: upon (i) termination of Equilon's rights and obligations under Section 4.6 of the Equilon PSA (UST System Matters) or (ii) termination of Equilon's obligations to indemnify Seller or perform Remediation pursuant to Article 12 (Environmental Indemnification) and/or Article 13 (Cooperation and Performance of Environmental Remediation and Indemnification) of the Equilon PSA.

UNOFFICIAL COPY

ARTICLE 6. MUTUAL COOPERATION

6. Seller and Equilon agree to coordinate their activities on the Premises to minimize any inconvenience to or interruption of the conduct of Buyer's business or development of the Premises including, but not limited to, providing reasonable notice prior to all activities which Seller or Equilon believes may interrupt the conduct of Buyer's business. Buyer agrees to cooperate with Seller and Equilon, and execute any additional documents including, without limitation, permit applications, which may reasonably be required to effectuate the purpose of this Agreement. Buyer further agrees not to interfere with the activities conducted by Seller or Equilon on the Premises.

ARTICLE 7. PERMITS

7. Seller or Equilon, as applicable, with the reasonable cooperation of Buyer, but at no expense to Buyer, shall obtain any and all permits which may be required for the Corrective Action it conducts pursuant to this Agreement.

ARTICLE 8. SITE RESTORATION

8. Seller and Equilon agree, upon completion of the Corrective Action contemplated by the Purchase Agreement and the Equilon PSA, respectively, to restore the surface of the Premises 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. Seller shall not be responsible for the repair or replacement of underground utilities (except for public underground utilities damaged by Seller) or other structures (including canopies) on the Premises.

ARTICLE 9. INDEMNITIES

9. This Agreement is delivered pursuant to the Purchase Agreement and the Equilon PSA and is subject to the provisions, including without limitation, provisions relating to indemnification by Seller, Equilon and Buyer, and the limitations in respect of such indemnifications. Buyer agrees to assume the obligations of Seller to indemnify Equilon pursuant to Section 12.2 of the Equilon PSA from and after the date of this Agreement.

ARTICLE 10. RELEASE

10. In exchange for Seller's and Equilon's commitments as set forth in this Agreement, Buyer hereby releases, acquits, holds harmless and forever discharges Seller, Equilon, and their subsidiaries, affiliates, officers, directors, employees, agents, and each of their predecessors, successors, and assigns of and from any and all claims, rights, causes of action,

UNOFFICIAL COPY

demands the Buyer, 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 Premises, loss of use or damage to the Premises, 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 Premises or other property owned by Buyer and located adjacent to the Premises, 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 Premises. **BUYER REPRESENTS AND WARRANTS THAT IT HAS READ THIS RELEASE AND HAS CONSULTED ITS ATTORNEY OR HAS HAD THE OPPORTUNITY TO CONSULT AN ATTORNEY AND FREELY CHOSE NOT TO DO SO.**

ARTICLE 11. **ASSIGNMENT AND REIMBURSEMENT FROM TRUST FUNDS**

11. Buyer hereby assigns to Seller or Equilon, as applicable, any and all rights it 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. Buyer agrees to cooperate with Seller or 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 Seller or Equilon.

ARTICLE 12. **DISPUTE RESOLUTION**

12. 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.

ARTICLE 13. **EXECUTION OF AGREEMENT**

13. 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. Buyer represents and warrants that it is the Buyer of the Premises or that it has full lawful authority to grant access to the Premises for the purposes described herein.

UNOFFICIAL COPY

ARTICLE 14. **ASSIGNMENT, SUCCESSOR AND ASSIGNS**

14. In the event Buyer's interests in the Premises 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, Buyer 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 Seller and Equilon. This Agreement shall be assignable by Buyer or by operation of law only with the prior written consent of Seller and Equilon, which consent may be withheld by Seller for any reason whatsoever. Buyer hereby assigns to Seller or Equilon, as their interests may appear, any and all claims, causes of action and suits it may have against any third party who may have financial responsibility for any environmental response costs or other damages at the Premises including but not limited to any rights to recover any insurance policy that may name Buyer as a beneficiary or against which Buyer may have a right of recovery. Buyer agrees to cooperate with Seller and Equilon in determining whether such claims exist.

ARTICLE 15. **NOTICE**

15. 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.

ARTICLE 16. **MODIFICATIONS**

16. 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.

ARTICLE 17. **NO ADMISSIONS**

17. Nothing contained in this Agreement shall be construed as an admission of any fact or liability of any Party to this Agreement.

ARTICLE 18. **GOVERNING LAW**

18. 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.

UNOFFICIAL COPY

SELLER:

True North Energy, LLC

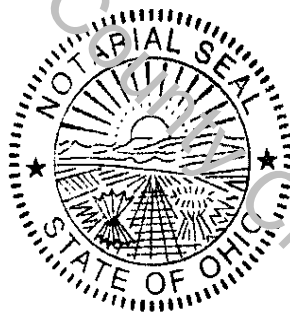
By: True North Holdings, Inc. fka
The Lyden Company, Member

By: *W. G. Lyden III*
W. G. Lyden, III, CEO

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

The foregoing instrument was acknowledged before me this 26th day of November, 2012, by W G. Lyden, III, CEO of True North Holdings, Inc., fka The Lyden Company, Member of True North Energy, LLC, a Delaware limited liability company, on behalf of said company.

Ann M Bella
NOTARY PUBLIC

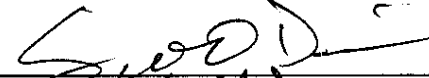


Ann M Bella
Notary Public State of Ohio
Lucas ~~Wood~~ County
My Commission Expires
July 15, 2016

UNOFFICIAL COPY

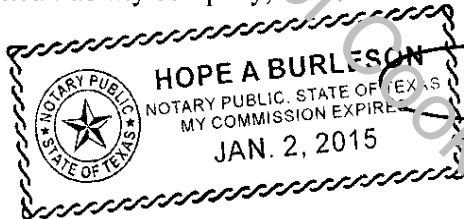
EQUILON:


Equilon Enterprises LLC
dba Shell Oil Products US

By: 
Name: Scott David
Its: _____

STATE OF TEXAS)
) SS:
COUNTY OF HARRIS)

The foregoing instrument was acknowledged before me this 26th day of November, 2012, by Scott David, the Portfolio + PLO Mgr of Equilon Enterprises LLC, dba Shell Oil Products US, a Delaware limited liability company, on behalf of said company.




NOTARY PUBLIC

This Instrument Prepared By:
Patricia G. Lyden, Esq.
Lyden, Liebenthal & Chappell, Ltd.
5470 Main Street, Suite 300
Sylvania, OH 43560

County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "A" LEGAL DESCRIPTION OF PURCHASED PREMISES

4647-57 South Pulaski Road, Chicago, IL 60632
Parcel No. 19-02-309-044-0000

Lots 61 to 65 both inclusive (except that part of Lot 65, aforesaid, lying West of a line 50 feet East of and parallel with the West line of Section 2, Township 38 North, Range 13, East of the Third Principal Meridian taken for widening of Crawford now Pulaski Road) in Berman and Wessel's Subdivision of Block 7 in James Gillett's Subdivision of the West half of the South West Quarter of Section 3, Township 38 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois

Property of Cook County Clerk's Office