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Doc#: 1321418032 Fee: \$82.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/02/2013 09:37 AM Pg: 1 of 23

**This Instrument Was Prepared By
And when recorded, return to:**

Reesa D. Hedrick, Esq.
Shannon, Martin, Finkelstein & Alvarado, P.C.
1001 McKinney Street, Suite 1100
Houston, Texas 77002

Tax Parcel No.: 10-17-431-045-0000

CC No. 137105

201340916/8923104AH
4 of 10 by CT1

ACCESS AGREEMENT

This Access Agreement ("Agreement"), dated as of the 26th day of July, 2013, is by and between Equilon Enterprises LLC d/b/a Shell Oil Products US, a Delaware limited liability company ("Equilon"), with offices located at 700 Milam Street, Office 2069A, Houston, Texas 77002 and MY SAFI, LLC, an Illinois limited liability company, with offices located at 8060 Lawndale Avenue, Skokie, Illinois 60076 ("Licensor").

RECITALS

WHEREAS, Equilon and Riteline Properties LLC an Illinois limited liability company ("Riteline") are parties to that certain Asset Purchase and Sale Agreement dated as of the 19th day of May, 2010 (the "Purchase Agreement"), pursuant to which Equilon transferred to Riteline and Riteline accepted from Equilon, all of Equilon's right, title and interest in and to certain assets, including without limitation the real property and assets located at **5600 Dempster, Morton Grove, Illinois** as more particularly described on **Exhibit A** attached hereto (the "Premises") and all pertinent section/provisions of the Purchase Agreement referenced in this Agreement are set out in **Exhibit B** attached hereto;

WHEREAS, as part of the transaction pursuant to the Purchase Agreement, Riteline and Equilon are parties to that certain Access Agreement dated May 19, 2010, recorded on May 25, 2010, recorded with the Cook County Recorder of Deeds as Document No. 1014541009 affecting the Premises ("Riteline Access");

WHEREAS, Licensor and Riteline have entered into a Real Estate Sale Contract pursuant to which Licensor shall contemporaneously herewith acquire the Premises by deed from Riteline;

WHEREAS, in accordance with the Purchase Agreement, Riteline is obtaining this Agreement, as Riteline is required to obtain a right of access for Equilon over the Premises, to run directly to Equilon, contain the grants provided in the Riteline Access and be binding upon Riteline's transferee, its successors and assigns; and

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WHEREAS, Equilon may require access to the Premises in connection with certain post-closing activities contemplated by the terms of the Riteline Access.

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

ARTICLE 1. GRANT OF LICENSE

1.1 Grant of License. (a) Licensor, as owner or tenant of the Premises, hereby grants a nonexclusive irrevocable license from the date of this Agreement to Equilon, its employees, authorized agents and contractors, to enter the Premises to perform any and all post Closing activities contemplated by Section 4.6 (*UST System Matters*), Section 9.6 (*Future Conveyances/Leases*), Article 12 (*Environmental Indemnification*) and Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*) of the Purchase Agreement, which activities include, but are not limited to, tank removal or closure activities, remediation activities, monitoring, and engineering or environmental studies, tests, survey, appraisals or inspections ("Corrective Action").

(b) This Agreement is intended and shall be construed only as a temporary license and is not intended to be a grant of an easement or any other interest in the Premises.

ARTICLE 2. COVENANTS

2.1 Assignment, Successor and Assigns. In the event Licensor's interest in the Premises is 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, Licensor shall (a) provide prior written notice to Equilon of such conveyance or transfer and receive Equilon's prior written consent to such conveyance or transfer; and (b) comply with the provisions of Section 9.6 of the Purchase Agreement (*Future Conveyances/Leases*).

ARTICLE 3. CONSTRUCTION/EXCAVATION

3.1 Construction/Excavation On Property. Licensor shall provide Equilon with written notification at least thirty (30) days in advance of the date on which Licensor 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:

3.2 Licensor's written notification to Equilon shall state the dates during which the construction work will be performed and contain detailed work plans;

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

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

3.5 Licensor 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." Licensor 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." Licensor 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.

Failure of Licensor to give Equilon notice of Development activities as required herein shall relieve Equilon from any responsibility or liability to Licensor for any costs, expenses or consequential damages that may result from Licensor undertaking such Development activities. For purposes of this section, all notifications shall be made to John Robbins, Environmental Program Manager, Shell Oil Products US, Soil and Groundwater FDG, 1511 North Convent 700-293, Bourbonnais, Illinois 60914, Phone: +1815-468-8824, Fax: +1 713-423-0544, E-mail: john.robbins@shell.com.

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ARTICLE 4. TERMINATION

4.1 Termination. This Agreement shall automatically terminate, without any further action of either Equilon or Licensor, upon the earlier to occur of (a) termination of Equilon's rights and obligations under Section 4.6 of the Purchase Agreement (*UST System Matters*); or (b) completion of its Corrective Action at the Property. Upon termination of this Agreement Equilon shall have no further obligation or responsibility to perform Corrective Action at the Property. Licensor agrees that Equilon will have completed its Corrective Action upon the earliest of (a) a determination by the Agency (i) that no further action is required by Equilon, or (ii) that the Corrective Action taken by Equilon at the Property has been completed; or (b) one year following the date Equilon submitted its written and supporting documentation to the Agency that Equilon considers its Corrective Action at the Property to be complete; or (c) one year following the date that the Agency directs Equilon to monitor only at the Property, regardless of whether Equilon has provided written notice (as provided in (a) above).

ARTICLE 5. INDEMNITIES

5.1 Indemnities. Equilon agrees to indemnify, defend and hold Licensor (collectively referred to as "Indemnified Party") 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 one or more of the Indemnified Parties. Equilon's indemnification obligation shall not include direct or indirect economic loss attributable to short term business interruptions as a result of Equilon's activities on the Property. This indemnity shall terminate at the time the Corrective Action is complete as set forth in this Agreement and be of no further force or effect.

If underground or above ground storage tank systems are used for any purpose on the Property at any time subsequent to the execution of this Agreement, then Licensor 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 Licensor or any person allowed by Licensor 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 Licensor 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.

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ARTICLE 6. MISCELLANEOUS

6.1 Dispute Resolution. All disputes between Equilon and Licensor arising out of, relating to, or in connection with this Agreement, including, without limitation, any Claim or question relating to this Agreement's negotiation, performance, non-performance, interpretation or termination or the relationship between Equilon and Licensor contemplated or established by this Agreement, shall be referred to and finally and exclusively resolved by arbitration in accordance with the CPR Rules for Non-Administered Arbitration as such rules may be in effect on the date this Agreement. This Section 6.1 shall survive indefinitely.

6.2 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 set out in the introductory paragraph of this Agreement or such other address as one party may provide to the other by written notice hereunder and be deemed to have been received only if and when (a) personally delivered or (b) on the third day after mailing, by United States mail, first class, postage prepaid, by certified mail return receipt requested, or (c) one day after deposit with a reputable overnight courier, addressed in each case to the address set forth above.

6.3 Environmental Investigation and Remediation. **Licensor agrees that Equilon is under no obligation to Licensor to remedy or respond to any Environmental Condition at the Premises for which Equilon is not responsible under the Purchase Agreement. Equilon and Licensor agree that no provision of this Agreement shall expand Equilon's obligations to respond to Environmental Conditions not specifically identified in the Purchase Agreement and shall not be construed to be an admission of liability, wrongdoing or violation of any Law by Equilon or Licensor or their predecessors, successors or permitted assigns.**

6.4 Governing Law. This Agreement shall be construed in accordance with the internal laws of the State of Illinois, excluding any conflict of law principles that would direct application of the laws of another jurisdiction.

6.5 Waiver. No waiver by any party of any breach of the covenants and/or agreements set forth herein, or any rights or remedies provided hereunder and no course of dealing shall be deemed a continuing waiver of the same or any other breach, right or remedy, unless such waiver is in writing and signed by the party sought to be bound. The failure of a party to exercise any right or remedy shall not be deemed a waiver of such right or remedy in the future.

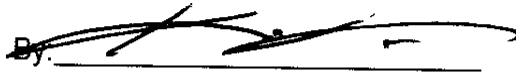
[Signatures on Following Pages]

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IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date set forth above.

"EQUILON":

EQUILON ENTERPRISES LLC
d/b/a Shell Oil Products US

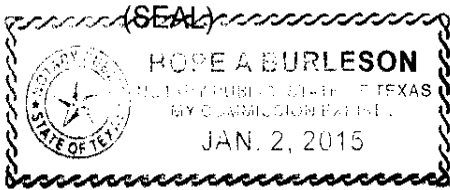
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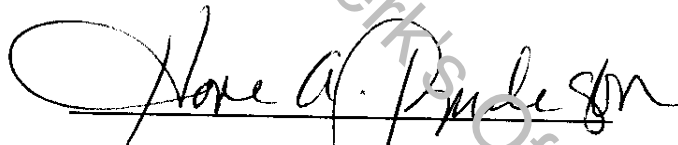
Name: Kevin Wood

Title: Business Manager

State of Texas §
 §
County of Harris §

The foregoing instrument was acknowledged before me this 26 day of July, 2013, by Kevin Wood, the Business Manager of Equilon Enterprises LLC, a Delaware limited liability company, on behalf of the company.




Notary Public in and for the State of Texas

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“LICENSOR”:

MY SAFI, LLC

By: *M. Tahir*

Name: Mohammad Tahir

Title: Member

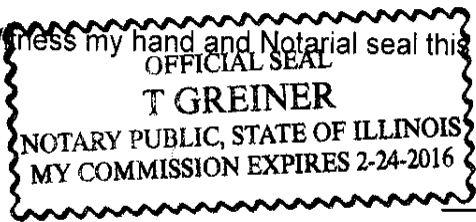
State of Illinois

County of Cook

§
§
§

BEFORE ME, a Notary Public in and for said County and State, personally appeared Mohammad Tahir of My Safi, LLC, who acknowledged the execution of the foregoing Access Agreement, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial seal this 30 day of July, 2013.



T Greiner
NOTARY PUBLIC

My Commission Expires: 2/24/16

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Exhibit A Legal Description

CC# 137105

Address: 5600 Dempster Street, Morton Grove, Illinois

Tax Parcel No.: 10-17-431-045-0000

LOTS 21, 22, 23 AND 24 IN BLOCK 13 (EXCEPT THE SOUTH 7 FEET CONDEMNED FOR WIDENING OF DEMPSTER STREET) IN HIELD AND MARTIN'S DEMPSTER STREET TERMINAL SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHWEST 1/4 OF SECTION 16, AND IN THE SOUTH EAST 1/4 OF SECTION 17, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AND BEING ALL OF THAT CERTAIN TRACT 125 DESCRIBED IN DEED FROM SHELL OIL CO. TO EQUILON ENTERPRISES LLC RECORDED UNDER DOCUMENT NO. 98748469.

SURVEYOR'S DESCRIPTION

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 24; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, ALONG THE EASTERLY LINE OF SAID LOT 24, A DISTANCE OF 118.00 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF DEMPSTER (VARYING WIDTH) STREET; THENCE SOUTH 88 DEGREES 48 MINUTES 00 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 107.00 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 21; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG SAID WESTERLY LINE, A DISTANCE OF 118.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 21; THENCE NORTH 99 DEGREES 48 MINUTES 00 SECONDS EAST, ALONG THE NORTHERLY LINE OF SAID LOT 21 AND ITS PROLONGATION THEREOF, A DISTANCE OF 107.00 FEET TO THE POINT OF BEGINNING, CONTAINING 12,623 SQUARE FEET, OR 0.29 ACRES, MORE OR LESS.

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Exhibit B Purchase Agreement Provisions/Sections

SEE ATTACHED.

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EXECUTION COPY

ASSET PURCHASE AND SALE AGREEMENT

BY AND AMONG

EQUILON ENTERPRISES LLC

d/b/a SHELL OIL PRODUCTS US,

RITELINE PROPERTIES LLC,

AND

RM PETROLEUM, INC

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4.6 UST Systems Matters.

(a) USTs To Be Removed or Upgraded. Schedule 4.6(a)(i) of the Disclosure Schedules identifies the Purchased Premises on which there are UST Systems that constitute Excluded Assets (collectively, the "Pre-Closing Removal Premises"), and Schedule 4.6(a)(ii) of the Disclosure Schedules identifies the Purchased Premises on which there are UST Systems that are included in the Assets to be conveyed at Closing but which Seller and Buyers have agreed will be removed by Buyers following the Closing (collectively, the "Post-Closing Removal Premises") and the Purchased Premises on which there are UST Systems that are included in the Assets to be conveyed at Closing for which Seller and Buyers have agreed that Buyers will remove and/or perform other upgrades as set forth in such Schedule 4.6(a)(ii) following the Closing (collectively, the "Post-Closing Upgrade Premises").

(b) Timing of UST Systems to be Removed. UST Systems located at Pre-Closing Removal Premises shall be removed by Seller, at any time as determined by Seller, prior to the Closing. Seller shall notify Buyers of the date for removal of the UST System at each Pre-Closing Removal Premises. UST Systems located at Post-Closing Removal Premises or Post-Closing Upgrade Premises shall be removed or upgraded, as applicable, by Buyers at a date following Closing mutually agreed to by Seller and Buyers, provided such UST System is removed or upgraded before the deadline for removal or upgrading, as applicable, identified in Schedule 4.6(a)(ii) of the Disclosure Schedules.

(c) Changes to UST Systems to be Removed and Dropped Premises Due to UST Systems. Based on further reviews of UST Systems which may be performed by Seller after the Execution Date, changes may be made to the UST Systems to be removed, upgraded and/or Seller may drop a Purchased Premises as described below.

(i) Sale of UST System Previously Identified to be Removed. From and after the Execution Date until the Closing, Seller, in its sole discretion, may elect to sell to Riteline Properties as part of the Assets a UST System previously identified as an

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Excluded Asset on **Schedule 4.6(a)(i)** of the Disclosure Schedules or to delete a UST System which was to be removed following the Closing Date as identified on **Schedule 4.6(a)(ii)** of the Disclosure Schedules. If Seller so elects, Seller shall notify Buyers in writing and the UST System shall be removed from the applicable **Schedule 4.6(a)(i)** or **Schedule 4.6(a)(ii)**, as the case may be, and the Purchase Price shall be increased by the amount of **\$125,000.00** (the "**UST Removal Amount**") per UST System included.

(ii) **Removal of UST System Previously Identified as Asset.** From and after the Execution Date until the Closing, Seller, in its sole discretion, may elect to remove or require Buyers to remove, as applicable, a UST System that was not previously identified on either **Schedule 4.6(a)(i)** or **Schedule 4.6(a)(ii)** of the Disclosure Schedules as a UST System to be removed. If Seller shall so elect to remove or require Buyers to remove, as applicable, such UST System pursuant to Section 4.6(a)(ii), Seller shall give written notice of such election to Buyers and identify the Purchased Premises where the UST System is to be removed, together with the date specified for removal. **Schedule 4.6(a)(i)** and/or **Schedule 4.6(a)(ii)** as the case may be, shall be amended and updated to identify the additional UST System to be removed and the Purchase Price shall be reduced by the amount of the UST Removal Amount per UST System.

(iii) **Decisions Regarding Upgrading.** From and after the Execution Date until the Closing, Seller, in its sole discretion, may elect to not require Buyers to perform the upgrades identified in **Schedule 4.6(a)(ii)** following the Closing for a Purchased Premises previously identified as a Post-Closing Upgrade Premises. If Seller so elects, Seller shall notify Buyers in writing and the UST System shall be removed from **Schedule 4.6(a)(ii)** and the Purchase Price shall be increased by the amount of \$125,000 (the "**UST Upgrade Amount**") per UST System included.

(iv) **Additional Post-Closing Upgrade Premises.** From and after the Execution Date until the Closing, Seller may elect in its sole discretion to require Buyers to perform upgrades following the Closing for a Purchased Premises not previously identified on **Schedule 4.6(a)(ii)** as a UST System for which upgrading was required. If Seller shall so elect upgrading for such UST System pursuant to Section 4.6(b), Seller shall give written notice of such election to Buyers and identify the Purchased Premises where the UST System is to be upgraded, together with the date specified for upgrading. **Schedule 4.6(a)(ii)** shall be amended and updated to identify the additional UST System to be upgraded and the Purchase Price shall be reduced by the amount of the UST Upgrade Amount per UST System, provided in the event the upgrade is solely replacing an individual tank line such UST Upgrade Amount with respect to such individual tank line only shall be \$70,000.00.

(v) **Dropped Premises Due to UST System.** From and after the Execution Date until the Closing, Seller may determine in its sole discretion that based on its review of the UST Systems, it is appropriate to drop a Purchased Premises associated with a certain UST System. If Seller makes such a determination, the Purchased Premises shall be dropped pursuant to the provisions in Section 2.3 (**Dropped Premises**).

(vi) **Timing Change for Removal of UST System.** If, pursuant to Section 4.6(c)(ii) above, Seller shall elect to require Buyers to remove a UST System on **Schedule 4.6(a)(i)** following the Closing, Seller shall give written notice of such election to Buyers and identify the Pre-Closing Removal Premises where the UST System is now to be removed by Buyers following the Closing Date, including therewith the date specified for removal. Thereafter, (A) Seller shall amend **Schedule 4.6(a)(i)** to delete such Pre-Closing

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Removal Premises, (B) Seller shall amend **Schedule 4.6(a)(ii)** to include such Pre-Closing Removal Premises as a Post-Closing Removal Premises (including therewith the date identified for removal); (C) the Purchase Price shall automatically be reduced by the amount of **\$125,000.00** for each such UST System, provided in the event the an upgrade is only required and such upgrade is solely replacing an individual tank line such amount with respect to such individual tank line only shall be \$70,000.00; and (D) Seller shall deliver to Buyers revised Disclosure Schedules to reflect the changes to **Schedule 4.6(a)(i)** and **Schedule 4.6(a)(ii)**.

(d) Conditions and Procedures Applicable to Pre-Closing Removal Premises. The following shall apply to the removal of UST Systems at the Pre-Closing Removal Premises:

(i) For the Pre-Closing Removal Premises, Seller, at Seller's expense, shall select (A) the contractor to be used to remove the UST System and (B) the environmental consultant to oversee and document UST System closure activities. With respect to any Pre-Closing Removal Premises, Seller will backfill any completed excavation with uncompacted fill of Seller's own choosing.

(ii) The area to be excavated for removal of a UST System at a Pre-Closing Removal Premises shall be determined in the sole discretion of Seller. The area to be excavated following the Closing for any UST System replacement by Buyers is subject to Seller's prior approval.

(iii) With respect to the Pre-Closing Removal Premises, Seller shall be permitted to conduct and document the UST Systems' closure assessment in Seller's sole discretion pursuant to Seller's customary policies and procedures, which may include, without limitation, testing and sampling of soil, soil vapor extraction, removal and proper disposal of contaminated soil, if any, and the "deregistration" of the UST System.

(iv) Pursuant to the Access Agreement to be executed between Seller and Buyers, Buyers grant Seller access following the Closing Date to each of the Pre-Closing Removal Premises for the purpose of completing any and all actions necessary or advisable relating to the removed UST System, including, without limitation, the right to inspect and monitor Buyers' replacement of the UST System after the Closing Date, the right to inspect, monitor activities, the right to review inventory reconciliation records and UST permits or insurance records, and the right to inspect any tank closure activities following the Closing Date at the Pre-Closing Removal Premises.

(v) Following Closing, each Party shall cooperate with the other Party to file any and all closure documents with the applicable Governmental Entity. Buyers will provide Seller with a copy of any and all correspondence and written documents provided to and received from any Governmental Entity regarding or relating to the tank closure and deregistration of any UST System.

(vi) Buyers and Seller acknowledge that, except with respect to an addition of a UST System to **Schedule 4.6(a)(i)** as contemplated by Section 4.6(c)(ii), the Purchase Price has already been reduced to take into account removal of the UST Systems at the Pre-Closing Removal Premises and Buyers' replacement of such UST System following the Closing.

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(e) Conditions and Procedures Applicable to Post-Closing UST Removals. The following shall apply to the removal of UST Systems at the Post-Closing Removal Premises and Post-Closing Upgrade Premises:

(i) Buyers and Seller acknowledge and agree that, except with respect to an addition of a UST System removal or upgrading to **Schedule 4.6(a)(ii)** as contemplated by Section 4.6(c)(ii) and Section 4.6(c)(iv), as applicable, the Purchase Price has already been reduced to take into account Buyers' estimate of costs associated with removal or upgrading of the UST Systems at the Post-Closing Removal Premises and Post-Closing Upgrade Premises. As such, notwithstanding the provisions of Article 12 (*Environmental Indemnification*) or Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*), Seller shall not be responsible under Article 12 (*Environmental Indemnification*) or Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*) to perform such work or pay for the costs and expenses of performing such work. All UST Systems identified on **Schedule 4.6(a)(ii)** shall be removed or upgraded, as applicable, by Buyers no later than the date identified for removal or upgrading as set forth on **Schedule 4.6(a)(ii)**.

(ii) For the Post-Closing Removal Premises and Post-Closing Upgrade Premises, Buyers, at Buyers' expense, shall select (A) a contractor to be used to remove or upgrade, as applicable, the UST System and (B) an environmental consultant to oversee and document UST System closure or upgrading activities, as applicable, in any case pre-approved in writing by Seller. Buyers shall give Seller at least ten (10) days prior written notice of the date scheduled for Buyers' removal or upgrading of a UST System at a Post-Closing Removal Premises or Post-Closing Upgrade Premises. Seller may, at Seller's expense, have Representatives present at the removal or upgrading of the UST Systems at the Post-Closing Removal Premises or Post-Closing Upgrade Premises.

(iii) The area to be excavated for removal and/or replacement of a UST System at a Post-Closing Removal Premises or Post-Closing Upgrade Premises, as applicable, shall be limited to that ground area reasonably necessary to remove the UST System and is subject to Seller's prior approval. Buyers, at Buyers' sole cost and expense, agrees to perform or cause to perform the removal of the UST System (including, but not limited to, removal and disposal of displaced soil and any groundwater encountered) at each Post-Closing Removal Premises and Post-Closing Upgrade Premises, as applicable. In connection with such removal, Buyers shall be responsible for all costs and expenses which are incurred by Buyers to (A) remove, replace or restore any above ground surface cover or soil (of any nature) in connection with UST System removal and replacement, (B) remove any concrete pad or anchor slab (or portion thereof) for the UST System and, to the extent necessary, repair, replace or restore any concrete pad or anchor slab (or portion thereof), and (C) transport the removed UST System to an appropriate disposal site (collectively, the "**Unreimbursable Excavation or Restoration Activities**"). Notwithstanding the provisions of Article 12 (*Environmental Indemnification*) or Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*), Seller shall not be responsible under Article 12 (*Environmental Indemnification*) or Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*) to perform or pay for any Unreimbursable Excavation or Restoration Activities.

(iv) Pursuant to the Access Agreement to be executed between Seller and Buyers, Buyers grant Seller Post-Closing access to each of the Post-Closing Removal Premises and Post-Closing Upgrade Premises for the purpose of completing any and all actions necessary or advisable relating to the removal or upgrading of any UST

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System, including, without limitation, the right to inspect and monitor UST System operation after the Closing Date, the right to inspect and monitor maintenance and removal and upgrading activities, the right to review inventory reconciliation records, UST System permits or insurance records, the right to inspect the UST System for tank closure assessments and the right to inspect and monitor replacement of the UST System. Until removal or upgrading, Seller shall have the right to inspect and monitor operations, activities and records relating to a UST System to be removed or upgraded following the Closing, either through testing, visual inspection or remote monitoring in accordance with the Access Agreement.

(v) Following Closing, Seller shall be permitted to require Buyers to conduct and document, the UST Systems closure assessment or assessment related to the completion of the upgrading, as applicable, in Seller's sole discretion pursuant to Seller's customary policies and procedures, which may include, without limitation, testing and sampling of soil, soil vapor extraction, removal and proper disposal of contaminated soil, if any, and the "deregistration" of the UST System, as applicable.

(vi) Buyers (A) shall maintain existing satellite communication services until Buyers install its frame relay system or DSL providing comparable access to information by Seller and shall be responsible for all monitoring and inspection of the UST Systems, (B) shall continue to properly operate and maintain existing leak detection systems and all associated hardware components; and (C) shall be responsible for monitoring and daily petroleum inventory reconciliation of the UST System. At Seller's request, Buyers shall provide Seller with a monthly reconciliation of the petroleum inventory at each of the Post-Closing Removal Premises and Post-Closing Upgrade Premises until the UST System is removed or removed and upgraded, as applicable. Buyers shall notify Seller within twenty-four (24) hours after becoming aware of (1) any condition that requires or otherwise warrants inspection or repair of the UST System; (2) any and all releases from a UST System at the Post-Closing Removal Premises or Post-Closing Upgrade Premises, as applicable; (3) any UST System tests and or inspections conducted by a Third-Party that identify a leak or other failure of tank tightness; (4) any corrective actions associated with the UST System at any Post-Closing Removal Premises or Post-Closing Upgrade Premises; and (5) any and all regulatory notices received for the UST Systems at a Post-Closing Removal Premises or Post-Closing Upgrade Premises; provided, that failure to so notify Seller of any such condition shall not waive Seller's right to control and direct repair or monitoring of any condition in respect of a UST System at a Post-Closing Removal Premises or Post-Closing Upgrade Premises.

(vii) Any Environmental Condition encountered or discovered during any removal, replacement or upgrading of a UST System at a Post-Closing Removal Premises or Post-Closing Upgrade Premises shall be reported by Buyers in accordance with the provisions of Article 12 (*Environmental Indemnification*), and any Claim in respect thereof shall be made by Buyers pursuant to the provisions, including those with respect to termination and limitation, of Article 12 (*Environmental Indemnification*) of this Agreement. To the extent Buyers seek indemnification from Seller for any Claim or Seller is otherwise performing Remediation pursuant to Section 12.1 (*Seller's Environmental Indemnification*) in response to any Environmental Condition encountered at any Post-Closing Removal Premises or Post-Closing Upgrade Premises, Seller, in accordance with Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*), reserves the right to require additional excavation, segregation of soil, or request any such other activities at such Post-Closing Removal Premises or Post-Closing Upgrade Premises. The incremental costs associated with additional excavation, segregation of soil or other activities specifically requested by Seller, shall be borne by Seller.

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(viii) In the event that Buyers fail to comply with this paragraph (e) and remove or upgrade any UST System at a Post-Closing Removal Premises or Post-Closing Upgrade Premises, Seller reserves the right to enter the Post-Closing Removal Premises or Post-Closing Upgrade Premises and remove or upgrade, as applicable, such UST System in accordance with the Access Agreement and the provisions of this Section 4.6.

(ix) Each Party shall cooperate with the other Party to file any and all closure documents with the applicable Governmental Entity. Buyers will provide Seller with a copy of any and all correspondence and written documents provided to and received from any Governmental Entity regarding or relating to the tank closure and deregistration of a UST System

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and Enforcement of Environmental Remediation and Restoration;

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9.6 Future Conveyances/Leases. (a) Subject to subparagraphs (d) and (e) below, if Riteline Properties intends to convey fee title, lease or sublease any of the Purchased Premises (including any conveyance to Seller pursuant to any Right of First Refusal) or Riteline Properties intends to convey or lease any UST System for a Purchased Premises, Buyers shall before making such transfer, lease or conveyance:

- (i) obtain a Phase II Environmental Assessment and provide a copy to Seller, and, if required by applicable Laws, report any Environmental Condition that is determined to be present at such Purchased Premises to the applicable Governmental Entity;
- (ii) obtain in writing from any subsequent grantee or lessee of Riteline Properties a right to access for Seller over such Purchased Premises, such right of access to run directly to Seller and contain the grants

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provided in **Exhibit G** and which right of access is acceptable to Seller, which Access Agreement shall be binding on any transferee, and its successors or assigns, and shall be recorded with, or the contents thereof shall be contained in, the deed, lease or assignment transferring the Purchased Premises; and

- (iii) make any such future conveyance of a Purchased Premises or any lease of a Purchased Premises (during the period that Seller is obligated to take any action pursuant to Article 12 (*Environmental Indemnification*) or Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*)), expressly subject to all the terms and conditions of this Section 9.6, and the affirmative obligations relating to Buyers' obligations set forth in Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*) relating to regulatory compliance, maintenance of insurance (substantially similar to Buyers' Environmental Insurance) and permits, annual testing, inventory reconciliation and notification requirements set forth herein.

(b) The provisions of Section 9.6(a)(i) shall not apply to any lease or sublease by Riteline Properties to any Third-Party or other Person, operating a retail motor fuel facility at a Purchased Premises using the Brand pursuant to a written agreement with Buyers or any Affiliate of Buyers, provided, (i) Buyers retain ownership and control of, and full contractual and regulatory responsibility for, the UST System throughout the term of the lease or sublease with such Third-Party or Person, (ii) the term of any such lease or sublease is not more than twenty (20) years, and (iii) any such lease or sublease transaction is completed on or before the first (1st) annual anniversary of the Closing Date.

(c) Section 9.6(a)(ii) and (a)(iii) shall not apply to any conveyance to Seller pursuant to the Right of First Refusal set forth in the Branding Agreement. Buyers acknowledge their obligation to comply with the provisions of Section 9.6(a)(i) in connection with a sale, transfer or assignment of the Purchased Premises to Seller pursuant to the Right of First Refusal set forth in the Branding Agreement.

(d) No future transfer, lease or conveyance of a Purchased Premises, shall release Buyers or their permitted successors or assigns from any obligations under this Agreement.

(e) Notwithstanding any provision of this Section 9.6, Buyers shall not transfer, assign, convey, lease or sublease any Post-Closing Removal Premises until the UST System has been removed from such Post-Closing Removal Premises.

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ARTICLE 12. ENVIRONMENTAL INDEMNIFICATION

12.1 Seller's Environmental Indemnification. In consideration of Buyers' performance of its obligations under the Branding Agreement and the Access Agreements, Seller shall indemnify, defend, discharge, release, save, and hold harmless the Buyer Indemnified Parties from and against all Losses asserted against, resulting to or imposed upon or incurred by the Buyer Indemnified Parties relating to the Purchased Premises and resulting from:

- (a) any Environmental Condition to the extent arising from Seller's operations at the Purchased Premises prior to the Closing Date; and
- (b) any Remediation to the extent arising from Seller's operations at the Purchased Premises prior to the Closing Date;

which in either case arise as a result of a violation or alleged violation of Environmental Law in effect and as enforced on the Closing Date, provided that:

- (i) Seller's indemnification under this Section 12.1 shall be limited as provided in Section 14.2 (*Monetary Limitation on Seller's Indemnification*) and Section 14.7 (*No Punitive or Consequential Damages*);
- (ii) Seller's indemnification under this Section 12.1 in respect of a Purchased Premises shall be limited as provided in Section 14.10 (*Non-Required Investigation*);
- (iii) Seller's indemnification obligations under this Section 12.1 shall terminate as provided in Section 14.3 (*Time Limitation on Seller Indemnification*), Section 14.4 (*Termination of All of Seller's Indemnification*) and Section 14.5 (*Termination of Seller's Environmental Indemnification at a Particular Purchased*

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Premises) and Section 14.6 (Termination of Seller's Environmental Indemnification at All Purchased Premises); and

- (iv) In addition to the termination provision described in subparagraph (iii) above, Seller's indemnification obligations under this Section 12.1 in respect of a Purchased Premises affected by a Known Remediation Order shall terminate as provided in Section 13.1 (Termination of Seller's Indemnification Activities Regarding Known Remediation Orders).

Buyers acknowledge that it is not entitled to indemnification under this Section 12.1 for any Losses related to the Unreimbursable Excavation or Restoration Activities.

Buyers further acknowledge that in accordance with Section 12.2(c) of this Agreement (Buyer's Environmental Indemnification), Buyers have agreed to indemnify, defend, save, hold harmless, discharge and release Seller for certain Environmental Conditions and Remediation arising from events occurring prior to the Closing Date.

12.2 Buyers' Environmental Indemnification. Each Buyer shall indemnify, defend, discharge, release, save and hold harmless the Seller Indemnified Parties, from and against all Losses asserted against, resulting to or imposed upon or incurred by the Seller Indemnified Parties relating to the Purchased Premises or the Assets and resulting from:

- (a) any Environmental Condition arising from events or conditions on or after the Closing Date;
- (b) any Remediation arising from events or conditions on or after the Closing Date; and
- (c) **ANY ENVIRONMENTAL CONDITION OR REMEDIATION TO THE EXTENT ARISING FROM EVENTS OCCURRING PRIOR TO THE CLOSING DATE OR CONDITIONS EXISTING PRIOR TO THE CLOSING DATE, TO THE EXTENT NOT INDEMNIFIED BY SELLER UNDER SECTION 12.1 (SELLER'S ENVIRONMENTAL INDEMNIFICATION), WHETHER OR NOT ARISING FROM THE SOLE NEGLIGENCE, CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL CONDUCT OR OTHER FAULT OF AN INDEMNIFIED PARTY;**

provided, that Buyers' indemnification obligation under this Section 12.2 shall be limited as provided in Section 14.7 (No Punitive or Consequential Damages).

ARTICLE 13. COOPERATION AND PERFORMANCE OF ENVIRONMENTAL REMEDiation AND INDEMNIFICATION

13.1 Termination of Seller's Indemnification Activities Regarding Known Remediation Orders. Seller's obligation to indemnify any Buyer Indemnified Party, with respect to any Known Remediation Order and any Losses related to the Environmental Condition which is the subject of such Known Remediation Order, shall terminate upon the earliest to occur of (any such occurrence being the "Remediation Completion Date");

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- (a) the date of any closure letter, "no further action" letter, or similar evidence of approval or concurrence from the Governmental Entity overseeing such Remediation that such Remediation has been completed or that no further action is required ("**Closure Letter**");
- (b) if such applicable Governmental Entity fails to provide a Closure Letter, the date of the report prepared by Seller's environmental consultant certifying that the Remediation has been completed in satisfaction of all applicable Environmental Laws; or
- (c) two (2) years after the date Seller has submitted written notice and supporting documentation to such applicable Governmental Entity indicating that the Seller considers its Remediation to be complete.

13.2 Control of Remediation Activities Arising From Known Remediation Orders and Unknown Environmental Conditions. If Remediation covered in whole or in part by Seller's indemnification obligation described in Section 12.1(a) or 12.1(b) (*Seller's Environmental Indemnification*) is required to be conducted after the Closing Date, Seller shall have the right, at its sole option, to take exclusive control of the Remediation. If Seller has the right to control Remediation as provided above for an Environmental Condition not the subject of a Known Remediation Order, but fails to do so, Buyers shall have the right to assume control of the Remediation, subject to the Buyers taking the following actions:

- (a) consult with Seller in advance of issuing any material documents, attending any material meetings or hearings or taking any material step or action in relation to the relevant activities;
- (b) provide Seller with reasonable (at least thirty (30) days) notice of, and a reasonable opportunity to attend any meeting or hearing or the carrying out of any activities with respect to any such Remediation;
- (c) provide to Seller any documents, information, assistance or access which Seller may reasonably request;
- (d) provide Seller with a reasonable opportunity to audit the costs of such Remediation;
- (e) implement the lowest cost alternative available consistent with applicable Environmental Laws, unless an alternative is approved by Seller; and
- (f) comply with any other reasonable requests of Seller.

13.3 Notice; Access; Cooperation; Post-Closing Releases. (a) Buyers shall cooperate with Seller's activities in respect of any Remediation which is being conducted or controlled by Seller pursuant to this Article 13, including but not limited to entering into restrictive covenants or similar land restrictions required by the applicable Governmental Entity overseeing such Remediation as a condition to securing a Closure Letter. Further, on the Closing Date, Buyers shall enter into an Access Agreement as provided in Section 4.9 (*Access Agreement*). Seller agrees that, to the extent practicable, Seller will conduct all Remediation in a manner which minimizes any disruption to ongoing business activity at the Purchased Premises. Following the Closing Date, to the extent reasonably practicable, Seller shall use its reasonable

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efforts to give Buyers prior notice of any activity at the Purchased Premises involving any excavation or activity that obstructs access to any Purchased Premises. Buyers shall refrain from conducting any operations which unreasonably interfere with such Remediation.

(b) Within 72 hours of any Release (or evidence that a Release may have occurred, whether such evidence is obtained or discovered by Seller or Buyers), Buyers shall provide Seller with written notice of any such Post-Closing Release and submit to Seller all documentation relating to such Post-Closing Release including correspondence, description of the release or loss, operating records, tests and inventory records. In connection with any Post-Closing Release, Buyers, at Buyers' expense, shall cause a reputable environmental consultant to conduct environmental testing related to such release as reasonably requested by Seller and provide the results thereof to Seller.

(c) In addition, Buyers shall provide Seller with prompt written notice of any Environmental Condition discovered by Buyers following the Closing for which Buyers intend to seek indemnification, from Seller pursuant to Section 12.1 (*Seller's Environmental Indemnification*), including with such notice all information necessary or relevant to support such Claim for indemnification.

13.4 Seller's Environmental Equipment. The Assets transferred to Buyers hereunder do not include any groundwater monitoring wells or other environmental equipment now located on the Purchased Premises or hereafter installed on the Purchased Premises by Seller (collectively "Seller's Environmental Equipment"). Seller shall at all times retain title to Seller's Environmental Equipment and shall be responsible for maintenance of and repairs occasioned by any ordinary wear and tear in respect of such Seller's Environmental Equipment. Seller shall have the right at any time subsequent to the Closing Date to add new monitoring wells at Seller's expense at any Purchased Premises at mutually agreeable locations, which new monitoring wells shall automatically be deemed to be a part of Seller's Environmental Equipment, and to remove Seller's Environmental Equipment and/or to abandon Seller's Environmental Equipment in such manner as may be permitted by applicable laws and regulations. Upon any removal or abandonment, such pieces of equipment shall no longer constitute a part of Seller's Environmental Equipment. If any of Seller's Environmental Equipment becomes damaged including, but not limited to, any damage as a result of any modification at the Purchased Premises pursuant to Section 13.5 (*Buyers Modifications to Premises*), Buyers shall immediately notify Seller of the existence of such condition and shall immediately compensate Seller for the cost of proper abandonment, relocation, replacement and/or repair of Seller's Environmental Equipment.

13.5 Buyers Modifications to Premises. Buyers acknowledge that any construction or other modification at a Purchased Premises may affect Seller's Remediation activities at that Purchased Premises. Prior to any excavation, construction or other activity at any Purchased Premises where Seller is conducting or controlling Remediation or where Seller is then indemnifying Buyers pursuant to Section 12.1 (*Seller's Environmental Indemnification*), Buyers shall give Seller prior written notice of any such activities and permit Seller the full, timely and reasonable opportunity at Seller's option to (a) change the location of or remove Seller's equipment and install new equipment at locations on the Purchased Premises mutually agreeable to the Parties and (b) close any affected monitoring wells in accordance with the requirements of applicable Laws. The costs of such work shall be at Buyers' expense.

13.6 Restoration/Reimbursement Programs. Seller, at its sole discretion, may satisfy its indemnification obligations by participating in, or complying with, a state administered

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restoration program or a state reimbursement program. Buyers shall, at their expense, cooperate with Seller to seek reimbursement under any such state administered restoration program or state reimbursement program. Buyers hereby assign to Seller any and all rights it may have against any such state program to the extent Seller has performed work or expended funds related to the matters for which reimbursement from such program occurs. To the extent Buyers receive any such reimbursement, Buyers shall promptly pay such reimbursement to Seller.

13.7 Remediation Obligation. Seller and Buyers agree that notwithstanding any provision of this Agreement, Seller shall not be obligated, pursuant to the terms of this Agreement or otherwise, to perform Remediation at any Purchased Premises to achieve any standard or standards other than applicable federal standards or the State's cleanup standards, in each case, for commercial/industrial property use.

13.8 Additional Covenant Relating to Institutional Controls. In addition to the covenants set forth in Section 9.7 (*Future Use of Premises*), Seller and Buyers agree to cooperate with the other and any applicable Governmental Entity to execute, file and record any deed notice, restriction or similar restrictive covenant in the real property records of a Purchased Premises, to the extent such deed notice, restriction or restrictive covenant is necessary or advisable under to achieve a Closure Letter at any Purchased Premises which is the subject of a Known Remediation Order.

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