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This Document Prepared by
and After Recording Return To:

2007 047539

Denise L. Sejna (Attorney ID #2175-45)
1443--119th Street
Whiting, Indiana 46394

FILED

JUN - 8 2007

PEGGY HOLINGA KATONA
LAKE COUNTY AUDITOR

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT
(THREE)

This **TEMPORARY CONSTRUCTION EASEMENT AGREEMENT** (this "Agreement") is made and entered into as of this 7th day of May, 2007, by and between **BP PRODUCTS NORTH AMERICA INC.**, a Maryland corporation ("Grantor"), and the **CITY OF WHITING**, an Indiana municipal corporation ("Grantee").

RECITALS:

A. Grantor holds fee simple title to that certain parcel of land, located in Whiting, Indiana, which is legally described on Exhibit A attached hereto ("**Grantor's Parcel**").

B. Grantee desires to obtain from Grantor a temporary easement upon, over, under, through and across Grantor's Parcel, and Grantor has agreed to grant such easement to Grantee, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of Ten Dollars and no cents (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the mutual covenants and undertakings of the parties and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby covenant and agree as follows:

ARTICLE 1

EASEMENT GRANT AND OBLIGATIONS

1.1. **Grant of Construction Easement.** Grantor hereby declares and grants and conveys to Grantee a temporary construction and access easement (the "**Construction Easement**") for the benefit of Grantee, upon, over, under, through and across Grantor's Parcel, for the purpose of removing the existing security fence and replacing it with a new security fence and grading of existing ground to the new roadway profile (the "**Project**"). The Construction

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TICOR TITLE INSURANCE

Easement shall include (without limitation) the right of entry over and across Grantor's Parcel and the right to restrict access to the affected portions of Grantor's Parcel during periods of use.

1.2. **Term of Easement.** Grantee shall provide written notice to Grantor at least five (5) business days prior to entering onto Grantor's Parcel for the use of the Construction Easement under this Agreement from time to time. The term of the Construction Easement shall be extinguished, become void and revert to the Grantor and/or the Grantor's successors in title upon completion of the Project but in no event later than June 30, 2008.

1.3. **Restoration of Grantor's Parcel.** Promptly after completing the Project, Grantee shall remove any and all temporary improvements installed on Grantor's Parcel and shall restore the affected portions of Grantor's Parcel to substantially the same condition that existed immediately prior to the use of the Construction Easement and entry onto Grantor's Parcel by Grantee, or to an improved condition, all at the sole cost and expense of Grantee. Notwithstanding anything to the contrary herein, Grantor shall be responsible for all costs associated with the installation of a security fence along Grantor's Parcel, subject to the terms of that certain agreement entered into by and between Grantor and Walsh and Kelly, Inc. related to such work.

ARTICLE 2

INDEMNITY, LIENS AND INSURANCE

2.1. **Indemnity.** To the extent permitted by law, Grantee shall indemnify, defend and hold harmless the Grantor from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage to the extent arising out of or resulting from the use of the Construction Easement under this Agreement, except, however, to the extent same is caused by the willful misconduct of Grantor.

2.2. **Liens.** Without limiting Section 2.1, Grantee shall not cause or permit any liens to attach to Grantor's Parcel by reason of any work performed by or on behalf of Grantee pursuant to the Construction Easement. Grantee shall indemnify, defend and hold Grantor and Grantor's Parcel harmless from and against any and all liability, loss, damage, cost, expense (including reasonable attorneys' fees) on account of claims of lien of laborers, materialmen or suppliers for work performed or materials or supplies furnished to or on behalf of Grantee in connection with the Construction Easement.

2.3. **Insurance.**

(a) **General Insurance Requirements.** Grantee shall obtain and maintain in full force and effect, during and with respect to the period(s) while Grantee is using the Construction Easement, Commercial General Liability Insurance (or the substantial equivalent) with combined single limits of liability of not less than \$3,000,000.00 written on an occurrence basis for bodily or personal injury or death, and for property damage, arising out of work conducted by or on behalf of Grantee upon Grantor's Property. Grantor and shall be named as an "additional insured" under such policies.

(b) **Specific Insurance Requirements.** All insurance required by this Section 2.3 shall be procured from companies licensed in the State of Indiana. To the extent any deductible is included as a part of any insurance policy carried by a party in compliance with this Section 2.3, the insured shall be deemed to be covering the amount thereof under an informal plan of self-insurance. Grantee shall furnish to Grantor upon request, a certificate of insurance evidencing that the insurance required to be carried by Grantee is in full force and effect. The insurance required pursuant to this Section 2.3 shall: (i) provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days' prior written notice by the insurer to each named insured and to each additional insured; (ii) be written on an occurrence basis, as opposed to a claims-made basis; (iii) provide that an act or omission of one of the named insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other named or additional insureds; and (iv) provide for contractual liability coverage with respect to the indemnity obligations set forth herein.

ARTICLE 3

NOTICES

3.1. **Notices.** Any notice, request, demand, instruction or other document to be given or served hereunder, or under any document or instrument executed pursuant hereto, shall be in writing and shall be delivered personally or sent by United States registered or certified mail, return receipt requested, or by overnight express courier, postage prepaid and addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt (or refusal of delivery) if delivered personally, or three (3) business days after posting in the United States mail, if mailed, or one (1) business day after deposit with a reputable overnight courier service. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If intended for Grantor:

BP Products North America Inc.
Whiting Refinery
2815 Indianapolis Blvd
Whiting, IN 46394
Fax: (219) 473-5379
Attn: Ron Dippo

with a copy to:

BP Products North America Inc.
4101 Winfield Road
Mail Code 5 West
Warrenville, IL 60555
Fax: (630) 821-3396
Attn: Corporate/Real Estate Legal

If intended for the Grantee

with a copy to:

City of Whiting
1443 – 119th Street
Whiting, IN 46394
Fax: (219) 473-4452
Attn: Joseph M. Stahura, President,
Board of Public Works & Safety

Denise L. Sejna, City Attorney
1443 119th Street
Whiting, Indiana 46394
Fax: (219) 473-4452

ARTICLE 4

MISCELLANEOUS

4.1. **Covenants Running with the Land.** All covenants, terms and provisions of this Agreement, including the benefits and burdens set forth herein, shall run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

4.2. **Incorporation of Recitals and Exhibits.** The Recitals set forth above in this Agreement and all exhibits attached to this Agreement are hereby incorporated into this Agreement as if the same had been fully set forth in this Agreement.

4.3. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of any easement area to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no right or privilege of any party hereto shall inure to the benefit of any third party. No third party be deemed to be a beneficiary of any of the provisions contained herein.

4.4. **Severability.** Invalidation of any provisions contained in this Agreement or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

4.5. **Captions.** The captions preceding the text of each article and section are included for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement.

4.6. **Time of the Essence.** Time is of the essence under this Agreement.

4.7. **No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

4.8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

4.9. **Attorneys' Fees.** In the event that Grantor or Grantee brings any suit or other proceeding for the enforcement of this Agreement, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover attorneys' fees, expenses and costs of investigation as actually incurred (including without limitation court costs, expert witness fees, costs and expenses of investigation, and all attorneys' fees, costs and expenses in any such suit or proceeding).

4.10. **Amendment and Termination.** This Agreement may be modified, amended or terminated prior to the dates set forth in Section 1.2 above only by recorded written instrument executed by Grantor and Grantee (or their respective successors or assigns).

4.11. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one completed document.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

GRANTOR:

BP PRODUCTS NORTH AMERICA INC.,
a Maryland corporation

By: *Daniel J. Sajkowski*
Name: Daniel J. Sajkowski
Its: Business Unit Leader

GRANTEE:

THE CITY:

THE CITY OF WHITING
BOARD OF PUBLIC WORKS AND
SAFETY

**Document is
NOT OFFICIAL!**

**This Document is the property of
the Lake County Recorder!**

By: _____
Name: _____
Its: President

ATTEST:

By: _____
Name: _____
Its: Clerk-Treasurer



STATE OF INDIANA)
)ss.
COUNTY OF Lake)

On May 24, 2007 before me Marilynn Garzella, personally appeared Daniel J. Jaykowski, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s), whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Marilynn Garzella (Seal)



STATE OF INDIANA)
)ss.
COUNTY OF _____)

On _____, 2007 before me _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s), whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

Seal:



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

GRANTOR:

BP PRODUCTS NORTH AMERICA INC.,
a Maryland corporation

By: _____

Name: _____

Its: _____

GRANTEE:

THE CITY:

THE CITY OF WHITING
BOARD OF PUBLIC WORKS AND
SAFETY

Document is NOT OFFICIAL!

This Document is the property of
the Lake County Recorder!

By: Joseph M. Stahura

Name: Joseph M. Stahura

Its: President

ATTEST:

By: Margaret Drewniak

Name: Margaret Drewniak

Its: Clerk-Treasurer



STATE OF INDIANA)
)ss.
COUNTY OF _____)

On _____, 2007 before me _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s), whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)



STATE OF INDIANA)
)ss.
COUNTY OF LAKE)

On MAY 9, 2007 before me LISA B. FURTO, personally appeared JOSEPH STAHURA & MARGARET DREWNIAK personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s), whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Lisa B. Furto* (Seal)

Seal:



"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." Charlene Simko

Charlene Simko

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR'S PARCEL

Commencing at the Southwest corner of said Section 8; thence North 00 degrees 17 minutes 34 seconds West (bearing based upon the Indiana State Plane Western Zone Coordinate System), along the West line of the Southwest 1/4 of said Section 8, 2644.29 feet, to the Southwest corner of the Northwest 1/4 of said Section 8 and the centerline of 121st Street as presently occupied and monumented, said Southwest corner bearing North 88 degrees 59 minutes 30 seconds West, 2566.25 feet from the Southeast corner of the Northwest 1/4 of said Section 8, as monumented by the Office of the Lake County, Indiana Surveyor; thence South 89 degrees 12 minutes 35 seconds East, along the centerline of 121st Street as presently occupied and monumented, 1006.00 feet; thence North 00 degrees 47 minutes 25 seconds East, at right angles to said centerline, 32.00 feet to a line 32.00 feet North of and parallel to said centerline for the point of beginning; thence South 89 degrees 12 minutes 35 seconds East, along said parallel line, 158.67 feet to Curve "A", being a tangential curve to the left; thence Northeasterly along said tangential Curve "A" to the left, having a radius of 171.00 feet, an arc length of 72.159 feet, a chord length of 71.624 feet, and a chord bearing of North 78 degrees 42 minutes 05 seconds East, to Curve "B", being a tangential compound curve to the left; thence Northeasterly along said tangential compound Curve "B" to the left, having a radius of 51.00 feet, an arc length of 42.824 feet, a chord length of 41.577 feet, and a chord bearing of North 42 degrees 33 minutes 26 seconds East, to a tangential compound curve to the left; thence Northerly along said tangential compound curve to the left, having a radius of 100.00 feet, an arc length of 31.727 feet, a chord length of 31.594 feet, and a chord bearing of North 09 degrees 24 minutes 47 seconds East, to a line, 38.00 feet West of and parallel to the centerline of Front Street as presently occupied and monumented; thence North 00 degrees 19 minutes 26 seconds East, along said parallel line, 407.00 feet; thence South 89 degrees 40 minutes 34 seconds East, at right angles to said parallel line, 3.00 feet to a line 35.00 feet West of and parallel to the centerline of Front Street as presently occupied and monumented; thence North 00 degrees 19 minutes 26 seconds East along said parallel line, 83.00 feet; thence South 89 degrees 40 minutes 34 seconds East, at right angles to said parallel line, 2.00 feet to a line 33.00 feet West of and parallel to the centerline of Front Street as presently occupied and monumented; thence North 00 degrees 19 minutes 26 seconds East, along said parallel line, 54.74 feet, to the Southwesterly line of a parcel conveyed by Consolidated Rail Corporation to the City of Whiting, Indiana as described in document number 95026816 recorded May 16, 1995, in the Office of the Recorder of Lake County, Indiana.; thence North 49 degrees 40 minutes 14 seconds West, along said Southwesterly line, 18.28 feet, to a line 47.00 feet West of and parallel to the centerline of Front Street as presently occupied and monumented; thence South 00 degrees 19 minutes 26 seconds West, along said parallel line, 43.49 feet; thence South 89 degrees 40 minutes 34 seconds East, at right angles to said parallel line, 7.00 feet, to a line 40.00 feet West of and parallel to the centerline of Front Street as presently occupied and monumented; thence South 00 degrees 19 minutes 26 seconds West, along said parallel line, 58.00 feet; thence North 89 degrees 40 minutes 34 seconds West, at right angles to said parallel line, 2.00 feet, to a line 42.00 feet West of and parallel to the centerline of Front Street as presently occupied and monumented; thence South 00 degrees 19 minutes 26 seconds West, along said parallel line, 48.00 feet; thence North 89 degrees 40 minutes 34 seconds West, at right angles to said parallel line, 3.00 feet, to a line 45.00 feet West of and parallel to the centerline of Front Street as presently occupied and monumented; thence South 00 degrees 19 minutes 26 seconds West, along said parallel line, 125.00 feet; thence North 89 degrees 40 minutes 34 seconds West, at right angles to said parallel line, 2.00

feet to a line 47.00 feet West of and parallel to the centerline of Front Street as presently occupied and monumented; thence South 00 degrees 19 minutes 26 seconds West, along said parallel line, 218.00 feet; thence North 89 degrees 40 minutes 34 seconds West, at right angles to said parallel line, 2.00 feet, to a line 49.00 feet West of and parallel to the centerline of Front Street as presently occupied and monumented; thence South 00 degrees 19 minutes 26 seconds West, along said parallel line, 51.00 feet; thence South 89 degrees 40 minutes 34 seconds East, at right angles to said parallel line, 3.00 feet, to a line 46.00 feet West of and parallel to the centerline of Front Street as presently occupied and monumented; thence South 00 degrees 19 minutes 26 seconds West, along said parallel line, 7.46 feet, to a tangential curve to the right; thence Southerly along said tangential curve to the right having a radius of 92.00 feet, an arc length of 38.698 feet, a chord length of 38.413 feet, and a chord bearing of South 12 degrees 22 minutes 27 seconds West, to a tangential compound curve to the right being 10.00 feet Northwesterly of and parallel to said Curve "B"; thence Southwesterly along said tangential and parallel curve to the right, having a radius of 41.00 feet, an arc length of 30.189 feet, a chord length of 29.512 feet, and a chord bearing of South 45 degrees 31 minutes 06 seconds West, to a tangential compound curve to the right being 10.00 feet Northwesterly of and parallel to said Curve "A"; thence Southwesterly along said tangential, parallel and compound curve to the right having a radius of 161.00 feet, an arc length of 67.939 feet, a chord length of 67.436 feet, and a chord bearing of South 78 degrees 42 minutes 05 seconds West, to a line 42.00 feet North of and parallel to the centerline of 121st Street as presently occupied and monumented; thence North 89 degrees 12 minutes 35 seconds West, along said parallel line, 158.67 feet; thence South 00 degrees 47 minutes 25 seconds West, at right angles to said parallel line, 10.00 feet, to the point of beginning. Said parcel containing 0.1756 acres (7647.8 square feet) more or less.

