

This Document Prepared by
and After Recording Return To:

2007 047541

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
(FIVE)

This **TEMPORARY CONSTRUCTION EASEMENT AGREEMENT** (this "Agreement") is made and entered into as of this 9th 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 reconstruction and grading of driveway to transition to new roadway profile (the "**Project**"). The Construction Easement shall include (without limitation) the right of entry

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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.

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

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

with a copy to:

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: [Signature]
Name: Daniel J Sykowski
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. Sajkowski, 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)



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

GRANTOR:

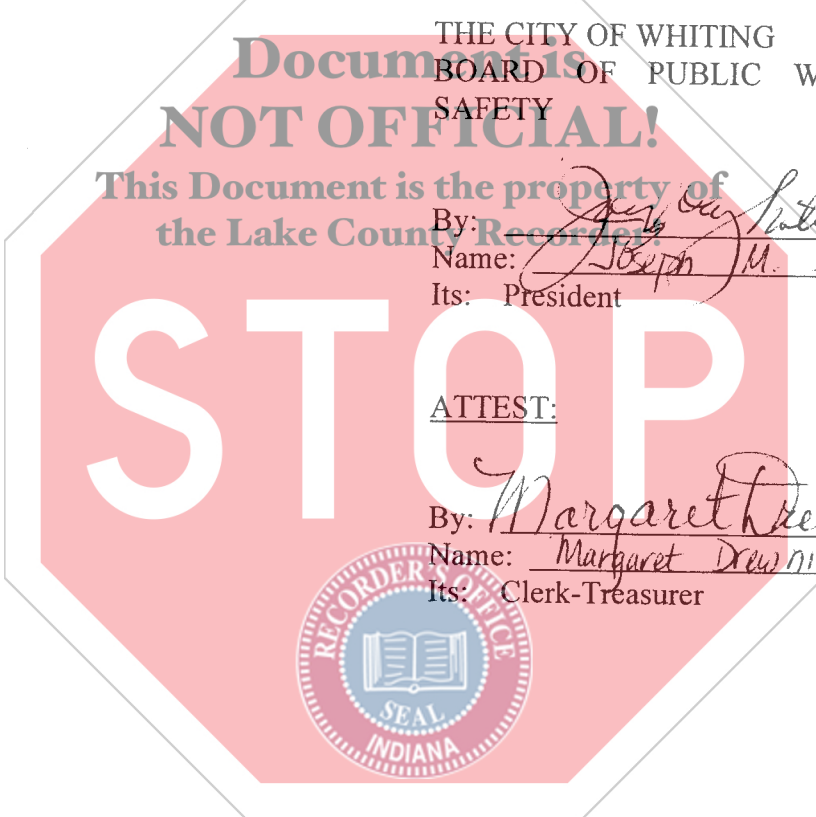
BP PRODUCTS NORTH AMERICA INC.,
a Maryland corporation

By: _____
Name: _____
Its: _____

GRANTEE:

THE CITY:

THE CITY OF WHITING
BOARD OF PUBLIC WORKS AND
SAFETY



By: Joseph M. Stahura
Name: Joseph M. Stahura
Its: President

ATTEST:

By: Margaret Drewmak
Name: Margaret Drewmak
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)

Before me, a Notary Public in and for said County and State personally appeared the above named THE CITY OF WHITING, by JOSEPH M. STAHURA, its MAYOR/PRESIDENT who acknowledged that he/she did sign the foregoing instrument, and that the same is his/her free act and deed individually and as such officer.

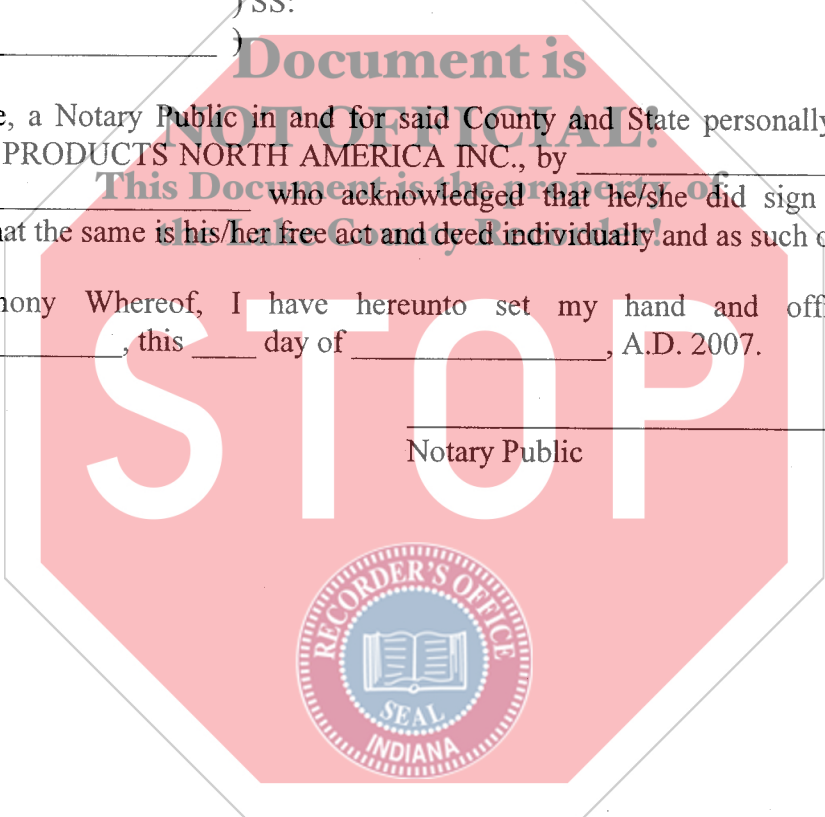
In Testimony Whereof, I have hereunto set my hand and official seal, at Whiting IN, this 9th day of May, A.D. 2007.
Margaret Krewniak
Notary Public

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State personally appeared the above named BP PRODUCTS NORTH AMERICA INC., by _____, its _____ who acknowledged that he/she did sign the foregoing instrument, and that the same is his/her free act and deed individually and as such officer.

In Testimony Whereof, I have hereunto set my hand and official seal, at _____, this _____ day of _____, A.D. 2007.

Notary Public



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

Charlene Sims

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR'S PARCEL

That part of the Northeast 1/4 of the Southwest 1/4 and the Northwest 1/4 of the Southeast 1/4 of Section 8, Township 37 North, Range 9 West of the Second Principal Meridian, in Lake County, Indiana, being bounded and described as follows:

Commencing at the Southwest corner of said Section 8; thence North 00 degrees 17 minutes 34 seconds West (bearing based upon the Indiana State Plan 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 said 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, 1306.03 feet to the centerline of Front Street as presently occupied and monumented, said point bearing North 88 degrees 45 minutes 47 seconds West, 1260.24 feet from the Southeast corner of the Northwest 1/4 of said Section 8, as monumented by the Office of Lake County, Indiana Surveyor; thence South 88 degrees 45 minutes 57 seconds East, 20.00 feet, to a line 20.00 feet East of and parallel to said centerline of Front Street as presently occupied and monumented and the East right of way line of Front Street, as presently occupied and monumented; thence South 00 degrees 16 minutes 56 seconds West, along said parallel line, 12.00 feet; thence South 88 degrees 45 minutes 47 seconds East, 41.23 feet to a non-tangential curve to the right; thence Easterly along said non-tangential curve to the right, having a radius of 645.00 feet, an arc length of 197.683 feet, a chord length of 196.911 feet and a chord bearing of North 83 degrees 31 minutes 19 seconds East to a tangential line; thence South 87 degrees 41 minutes 52 seconds East, along said tangential line, 388.00 feet; thence South 02 degrees 18 minutes 08 seconds West, at right angles to said tangential line, 7.50 feet, to a line 7.50 feet Southerly of and parallel to said tangential line; thence South 87 degrees 41 minutes 52 seconds East, along said parallel line, 56.15 feet, to a tangential curve to the right; thence Southeasterly along said tangential curve to the right, having a radius of 397.00 feet, an arc length of 263.490 feet, a chord length of 258.680 feet and a chord bearing of South 68 degrees 41 minutes 03 seconds East to a tangential line; thence South 49 degrees 40 minutes 14 seconds East, along said tangential line, 384.50 feet, to the point of beginning; thence South 40 degrees 19 minutes 46 seconds West, at right angles to said tangential line, 27.00 feet, to a line 27.00 feet Southwesterly of and parallel to said tangential line; thence South 49 degrees 40 minutes 14 seconds East, along said parallel 56.50 feet; thence North 40 degrees 19 minutes 46 seconds East, at right angles to said parallel line, 27.00 feet, to the aforementioned tangential line; thence North 49 degrees 40 minutes 14 seconds West, along said tangential line, 56.50 feet to the point of beginning. Said parcel containing 0.0350 acres (1,525.5 square feet) more or less.

