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Recording Requested and  
When Recorded Return To:

Doc#: 0908329018 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/24/2009 12:00 PM Pg: 1 of 10

BP PRODUCTS NORTH AMERICA INC.  
c/o BP WEST COAST PRODUCTS LLC  
4 Centerpointe Dr., LPR 4-243  
La Palma, CA 90623-1066  
Attn: Jean Smith  
Facility: 15680  
SCDB: 50021  
Location: 2401 Sanders Road  
Northbrook, IL 60062

APN: 04-15-291-020-0000

*NES 388640  
2562 SK/DEC*

## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT ("Agreement") is made and entered into as of January 15, 2009, by and among 2401 WILLOW REAL ESTATE LLC, an Illinois limited liability company ("Borrower"), holder of a fee estate in the land described on Exhibit "A" attached to and made a part of this Agreement (together with any improvements now or hereafter situated thereon, collectively the "Real Property"), FIRST MIDWEST BANK, an Illinois banking corporation ("Senior Lender"), and BP PRODUCTS NORTH AMERICA INC., a Maryland corporation ("Subordinate Lender"). Each of Senior Lender and Subordinate Lender is referred to herein as a "Lender."

### Recitals

A. Substantially concurrently herewith, Subordinate Lender is making a loan to Borrower in the original maximum principal amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00) ("Subordinate Loan") pursuant to a loan agreement dated as of even date herewith between Borrower and Subordinate Lender ("Subordinate Loan Agreement"). The Subordinate Loan is evidenced by a promissory note dated as of even date herewith executed by Borrower to the order of Subordinate Lender ("Subordinate Note"). The Subordinate Loan is secured by, among other things, that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of even date herewith ("Subordinate Mortgage"), executed by Borrower in favor of Subordinate Lender, which Subordinate Mortgage shall be recorded substantially concurrently herewith in the Official Records of Cook County, Illinois ("Official Records"). The Subordinate Mortgage shall encumber the Real Property. The Subordinate Loan Agreement, Subordinate Note, Subordinate Mortgage and any other instruments and agreements executed by Borrower in connection with the Subordinate Loan are collectively referred to herein as "Subordinate Loan Documents."

B. Senior Lender previously made a loan to Borrower in the aggregate original principal amount of Three Million Three Hundred Thousand and No/100 Dollars (\$3,300,000.00) ("Senior Loan"), evidenced by that certain promissory note (together with any renewals and extensions thereof or substitutions therefor, the "Senior Note") dated October 10, 2008, executed by Borrower to the order of Senior Lender. The Senior Note is secured by, among other things, a construction mortgage (the "Senior Mortgage") dated October 10, 2008 executed by Borrower in favor of Senior Lender and recorded on October 22, 2008 as Instrument No. 0829610065 in the Official Records. The Senior Mortgage encumbers the Real Property. The Senior Note is also secured by a separate assignment of rents and leases ("Assignment of Rents") executed by Borrower in favor of Senior Lender and recorded October 22, 2008 as Instrument No. 0829610066 in the Official Records; all references in this Agreement to the "Senior

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Mortgage” shall include without limitation any such Assignment of Rents, fixture filings and other instruments and agreements executed by Borrower to further secure the Senior Loan or otherwise perfect a security interest granted in connection therewith. The Senior Note, Senior Mortgage and any other instruments and agreements executed by Borrower in connection with the Senior Loan are collectively referred to herein as “Senior Loan Documents.”

C. Borrower has previously entered into and caused to be recorded in favor of Subordinate Lender that certain Memorandum of Franchise Agreement and Dealer Supply Agreement for Dealer-Owned, Franchisee-Operated Facility Illinois dated October 17, 2008 and recorded on October 22, 2008 as Instrument No. 0829610063 in the Official Records (“Memorandum”). The Memorandum memorializes a right of first refusal to purchase Borrower’s interest in the Real Property (“Right of First Refusal”) granted to Subordinate Lender pursuant to the terms of that certain Dealer Supply Agreement –Franchise dated as of August 20, 2008 (“Supply Agreement”). Borrower and Subordinate Lender also previously entered into that certain *ampm* Mini Market Franchise Agreement East of Rockies dated August 20, 2008 (the “Mini Market Agreement”).

D. Each Lender has requested that the other Lender make certain certifications to, and agreements with such Lender as conditions to making its respective loan, and desire to confirm their understandings regarding their respective loan documents.

## Agreement

NOW, THEREFORE, for a good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce the parties hereby agree as follows:

1. Consent. Each Lender consents to the following:

(a) the use of the Real Estate as a gasoline station, including without limitation the sale, use and storage of petroleum products on the Real Estate; and

(b) the encumbrance of the Real Estate by the Senior Mortgage and Subordinate Mortgage, respectively.

2. Subordination. The Senior Mortgage, and any renewals, extensions or modifications thereof, shall be and at all times remain a lien on the Real Property prior and superior to the lien of the Subordinate Mortgage.

3. Protection of Certain Rights.

(a) Senior Lender hereby agrees that (notwithstanding anything to the contrary contained in the Senior Loan Documents) it shall have no security interest in the following property: (i) computer software and hardware, counter merchandising systems and point of sale systems, (ii) PayQuick® island terminals (together with any proprietary point of sale equipment furnished by Subordinate Lender), (iii) the service mark and service name “*ampm*” (or any variation thereof) and any other service marks, trademarks and service names used in connection with *ampm* mini markets, (iv) *ampm* store copyrighted materials, (v) the exterior *ampm* sign (excluding the sign structure) and interior signage, (vi) all written manuals, specifications, data and instructions provided by Subordinate Lender to its franchisee, and (vii) all tradenames, trademarks and trade dress of BP/Amoco, Subordinate Lender and their respective affiliates.

(b) Pursuant to the Supply Agreement and Mini Market Agreement (collectively, the “Franchise Agreements”), Borrower is obligated to pay Subordinate Lender (a) certain royalties, license or franchise fees, and other similar fees; and (b) for goods, materials, services, inventory and other similar items (collectively, the “Franchise Payment Obligations”). The Franchise Payment Obligations shall be governed exclusively by the Franchise Agreements, shall not be included in any collateral pledged to

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Senior Lender under the Senior Loan Documents, and Subordinate Lender's rights to receive the Franchise Payment Obligations are and shall not be not affected by any provisions of the Senior Loan Documents.

4. Subordinate Lender Rights Upon Default. Upon the occurrence of any event of default which would permit Senior Lender to undertake any enforcement action ("Enforcement Action") against the Real Property under the terms of the Senior Loan Documents, Senior Lender shall notify Subordinate Lender of such event in writing at the address set forth below. Within thirty (30) days after receiving any such notice ("Subordinate Lender Cure Period"), Subordinate Lender shall have the right, but not the obligation, to cure all such defaults and to perform all of Borrower's obligations under the Senior Loan Documents required to maintain the Senior Loan current and in good standing. If the default is a non-monetary default which cannot be reasonably cured by Subordinate Lender within said 30 day cure period and Subordinate Lender has commenced efforts to cure said non-monetary default within the required time and is diligently proceeding in good faith to cure the default, and provided that no monetary default then exists under the Senior Loan Documents (or the same is cured by Subordinate Lender), Senior Lender shall allow Subordinate Lender such additional time (up to a maximum of sixty (60) additional days, for a total of ninety (90) days to complete such cure) as is required to cure the default and the Subordinate Lender Cure Period shall be extended accordingly. In no event shall Senior Lender record a notice of default with respect to the Senior Mortgage, accept a deed in lieu of foreclosure or otherwise take any Enforcement Action against the Real Property prior to expiration of the Subordinate Lender Cure Period. The provisions of this Section shall not affect the relative priorities of Senior Lender's and Subordinate Lender's security interests in the Real Property or their rights established by this Agreement or under their respective loan documents, except as otherwise provided in this Agreement.

5. Intentionally Omitted.

6. Notices. Any notice required or permitted under this Agreement shall be given in writing and shall be effective for all purposes if hand delivered to the party designated below, or if sent by (a) certified United States mail, postage prepaid, or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, addressed in either case as follows:

To Senior Lender: First Midwest Bank  
300 N. Hunt Club Road  
Gurnee, IL 60031  
Attention: Commercial Lending Department – Joseph Zoeller

To Subordinate Lender: BP Products North America Inc.  
c/o BP West Coast Products LLC  
P.O. Box 5077  
Buena Park, California 90622-5077  
Attention: Contract Dealer Loan Administration

To Borrower/Owner: 2401 Willow Real Estate LLC  
2401 Sanders Road  
Northbrook, IL 60062  
Attention: Mejinder Bhambra

or to such other address and persons as shall be designated from time to time by any party in a written notice to the other in the manner provided for in this Section. The notice shall be deemed to have been given at the time of delivery if hand delivered, or, in the case of certified mail, three (3) business days after deposit in the United States mail, or if by expedited prepaid delivery, upon first attempted delivery on a business day.

7. Entire Agreement. This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter of this Agreement. All prior oral or written promises, representations, agreements or understandings, express or implied, in connection with the subject matter of this Agreement are expressly merged herein and superseded hereby.

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8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed one and the same instrument.

9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Senior Lender, Subordinate Lender, Borrower and their separate and respective heirs, legal representatives, successors, and assigns.

10. Governing Law. This Agreement shall be governed and construed according to the laws of the State of Illinois.

11. Interpretation. Each party has been represented by counsel and this Agreement and every provision hereof has been freely and fairly negotiated. Consequently, all provisions of this Agreement shall be interpreted according to their fair meaning and shall not be strictly construed against any party.

12. Time of Essence. Time is of the essence of this Agreement and of each provision hereof in which time of performance is established.

13. Attorney's Fees. If any action, suit or other proceeding is brought to enforce the obligations of a party to this Agreement, the prevailing party shall be entitled to receive all of such party's costs and expenses of suit, including attorneys' fees, incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions therefrom. As used herein, "attorneys' fees" shall mean the full and actual cost of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual fee charged by the attorneys performing such services and shall not be limited to "reasonable attorneys' fees" as defined in any statute or rule of court.

14. Severability. If any term or provision of this Agreement or any application thereof shall be held invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

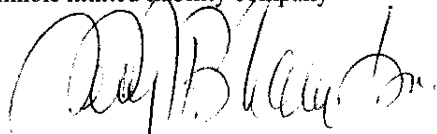
[Signatures on following page]

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IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

“BORROWER”

2401 WILLOW REAL ESTATE LLC,  
an Illinois limited liability company

By:   
 Name: Menjinder Bhambra  
 Its: Manager

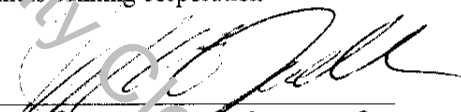
“SUBORDINATE LENDER”:

BP PRODUCTS NORTH AMERICA INC.,  
a Maryland corporation

By: \_\_\_\_\_  
 Its: \_\_\_\_\_  
 [Printed Name and Title]

“SENIOR LENDER”:

FIRST MIDWEST BANK,  
an Illinois banking corporation

By:   
 Name: SARINA VICK  
 Title: SENIOR LENDER

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IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

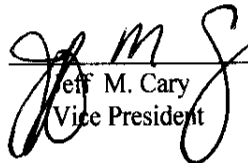
“BORROWER”

2401 WILLOW REAL ESTATE LLC,  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

“SUBORDINATE LENDER”:

BP PRODUCTS NORTH AMERICA INC.,  
a Maryland corporation

By:  \_\_\_\_\_  
Name: Jeff M. Cary  
Its: Vice President

“SENIOR LENDER”:

FIRST MIDWEST BANK,  
an Illinois banking corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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STATE OF Illinois )  
 )  
COUNTY OF Lake ) ss.

On January 15, 2009 before me, Michelle Christofalos, Notary Public, personally appeared Menjinder Bhambra, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ <sup>Illinois</sup> that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Michelle Christofalos (Seal)  
Notary Public



STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public (Seal)

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STATE OF Illinois )  
 ) ss.  
 COUNTY OF Lake )

On January 15, 2009 before me, Michelle Christofalos Notary Public, personally appeared Joseph H. Zoeller, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ <sup>Illinois</sup> that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Michelle Christofalos (Seal)  
 Notary Public





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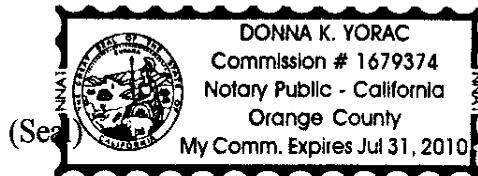
STATE OF CALIFORNIA )  
 )  
 ) ss.  
COUNTY OF ORANGE )

On JANUARY 19, 2009 before me, DONNA K. YORAC, Notary Public, personally appeared JEFF M. CARY, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Donna K. Yorac  
Notary Public



STATE OF \_\_\_\_\_ )  
 )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public (Seal)

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## EXHIBIT "A" Legal Description of the Property

The following real property located in the City of Northbrook, County of Cook, State of Illinois:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH LIES SOUTHERLY OF THE SOUTHERLY LINE OF WILLOW ROAD, AS DEDICATED BY DOCUMENT 11248487 AND EASTERLY OF THE EASTERLY LINE OF SANDERS ROAD, AS WIDENED BY DOCUMENT NO. 20658894 AND ALSO LYING NORTH AND WEST OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT IN THE EASTERLY LINE OF SAID SANDERS ROAD, 196.48 FEET SOUTHERLY OF THE ANGLE POINT IN SAID EASTERLY LINE; THENCE EASTERLY, PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST 1/4, A DISTANCE OF 184.30 FEET, MORE OR LESS TO A POINT IN A LINE DRAWN AT RIGHT ANGLES TO SAID NORTH LINE OF THE NORTHEAST 1/4 AND PASSING THROUGH A POINT IN SAID SOUTHERLY LINE OF WILLOW ROAD THAT IS 196.48 FEET EAST OF THE POINT OF INTERSECTION OF SAID SOUTHERLY LINE AND THE DIAGONAL EASTERLY LINE OF SAID WIDENED SANDERS ROAD, THENCE NORTH ALONG SAID RIGHT ANGLE LINE, 193.75 FEET MORE OR LESS, TO THE SAID SOUTHERLY LINE OF WILLOW ROAD, IN COOK COUNTY, ILLINOIS.

EXCEPT THEREFROM ANY PART FALLING WITHIN THE FOLLOWING:

THAT PART OF LOT 1 IN ASSESSORS DIVISION OF THE NORTH HALF OF SECTION 19 AND THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING SOUTHERLY OF THE SOUTHERLY RIGHT OF WAY LINE OF WILLOW ROAD AND EASTERLY OF THE EASTERLY RIGHT OF WAY LINE OF SANDERS ROAD DESCRIBED AS FOLLOWS: BEGINNING AT THE ANGLE POINT ON THE EASTERLY RIGHT OF WAY LINE OF SANDERS ROAD; THENCE ON AN ASSUMED BEARING OF NORTH 42 DEGREES 10 MINUTES 37 SECONDS EAST ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF SAID SANDERS ROAD, A DISTANCE OF 19.47 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF WILLOW ROAD; THENCE EASTERLY 196.48 FEET ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF WILLOW ROAD ON A CURVE TO THE RIGHT HAVING A RADIUS OF 2242.01 FEET, THE CHORD OF SAID CURVE BEARS SOUTH 85 DEGREES 35 MINUTES 26 SECONDS EAST, 196.42 FEET TO THE NORTHEAST CORNER OF THE GRANTOR; THENCE SOUTH 0 DEGREES 09 MINUTES 12 SECONDS EAST ALONG THE EAST LINE OF THE GRANTOR A DISTANCE OF 15.00 FEET; THENCE NORTH 74 DEGREES 26 MINUTES 42 SECONDS WEST 2.72 FEET; THENCE EASTERLY 114.45 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2416.12 FEET, THE CHORD OF SAID CURVE BEARS NORTH 82 DEGREES 51 MINUTES 00 SECONDS WEST 114.44 FEET; THENCE SOUTH 44 DEGREES 22 MINUTES 04 SECONDS WEST, 80.96 FEET; THENCE SOUTH 7 DEGREES 19 MINUTES 29 SECONDS EAST, A DISTANCE OF 137.33 FEET TO THE SOUTH LINE OF THE GRANTOR; THENCE SOUTH 89 DEGREES 50 MINUTES 48 SECONDS WEST ALONG THE SOUTH LINE OF THE GRANTOR A DISTANCE OF 28.48 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SANDERS ROAD; THENCE NORTH 7 DEGREES 22 MINUTES 10 SECONDS WEST ALONG THE SAID EASTERLY RIGHT OF WAY LINE OF SANDERS ROAD, A DISTANCE OF 196.48 FEET TO THE POINT OF BEGINNING.

**FATIC has made an accommodation  
recording of the instrument.  
First American Title Insurance Company**