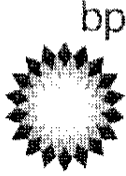


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Doc#: 1009229022 Fee: \$60.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 04/02/2010 12:06 PM Pg: 1 of 13



Doc#: 1009929099 Fee: \$60.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 04/09/2010 03:21 PM Pg: 1 of 13

OPTION AGREEMENT Illinois

Prepared by:

BP Products North America Inc.
4101 Winfield Road
Warrenville, Illinois 60555
Attn: Real Estate Attorney

This Option Agreement (this "**Agreement**") dated March 31, 2010, is made by and between **MARKHAM ALL STAR PROPERTIES, INC.**, an Illinois corporation ("**Owner**") and **BP PRODUCTS NORTH AMERICA INC.**, a Maryland corporation ("**Holder**").

RECITALS

A. Holder sold the Real Estate to Owner and Owner owns the fee or leasehold interest in the real property located at 16655 Crawford Avenue, Markham, IL 60428, and described in the attached **Exhibit A** (the "**Real Estate**").

B. The Quit Claim Deed or the Prime Lease Assignment by which Holder conveyed the Real Estate to Owner and the Memorandum of Franchise Agreement and Dealer Supply Agreement will be recorded in the Official Records of the county in which the Real Estate lies (the "**Official Records**"), immediately before this Agreement is recorded.

C. By this Agreement, Owner intends to grant to Holder certain rights to reacquire the Real Estate and certain other property upon the terms and conditions set forth therein.

D. Holder and Owner have signed a certain Dealer Supply Agreement dated on or about March 31st, 2010, (as may be amended, assigned or replaced from time to time, the "**Supply Agreement**") and a certain *ampm* Mini Market Franchise Agreement dated on or about March 31st, 2010 (as may be amended, assigned or replaced from time to time, the "**Franchise Agreement**") whereby Owner shall operate the Property as a

This document is being re-recorded to correct the order of recording.

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First American Title Order # 331460-076

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BP-branded motor fuel sales facility and *ampm* mini market (collectively the "**Business Operations**").

AGREEMENT

THEREFORE, Owner and Holder agree as follows:

1. Grant of Purchase Option. Owner grants to Holder the right to buy ("**Purchase Option**") the Real Estate, Improvements and any Business Property owned by Owner (collectively the "**Option Property**"), upon the termination of the Lease, the Supply Agreement, or the Franchise Agreement. The Purchase Option will be in effect during the period beginning on the date this Agreement is recorded ("**Recordation Date**") in the Official Records of the county in which the Option Property lies and end on the earlier of (i) the 20th anniversary of the Recordation Date or (ii) the Option Early Termination Date (as defined below).

1.1 Option Consideration. The price that Holder has accepted from Owner for Holder's conveying the Real Estate to Owner is less than the price that Holder would have required if Owner did not grant the Purchase Option to Holder; and the difference between those two prices is the consideration for Owner's granting the Purchase Option.

1.2 Exercise Notice. If the Supply Agreement or the Franchise Agreement is terminated, Holder shall immediately give Owner written notice of the termination ("**BP Termination Notice**"). Holder may exercise the Purchase Option by giving Owner written notice of Holder's exercise of the Purchase Option (the "**Exercise Notice**") within 60 days ("**Exercise Period**") after the date the termination of the Supply Agreement or Franchise Agreement becomes effective. During the Exercise Period, Holder and its agents, employees, contractors, and consultants may enter on the Real Estate to conduct reasonable and customary environmental assessments and tests of the Real Estate.

1.3 Early Termination of Option; Termination Document. If Holder does not exercise the Option within the Exercise Period, the Purchase Option will terminate on the day after the Exercise Period expires ("**Option Early Termination Date**"). Upon Owner's written request made after the Option Early Termination Date, Holder shall sign, acknowledge, and deliver to Owner a recordable document confirming that this Agreement and the Purchase Option have terminated.

1.4 Real Estate Value. Holder shall have the option to purchase the Real Estate at a price equal to its fair market value as agreed to by Holder and Owner, or failing their agreement, as determined in accordance with Sections 1.6 and 1.7 below (the "**Real Estate Value**").

1.5 Business Property Value. Holder shall have the option to purchase the Business Property (if any is owned by Owner) at a price equal to its fair market value

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as agreed to by Holder and Owner, or failing their agreement, as determined in accordance with Sections 1.6 and 1.7 below (the "**Business Property Value**").

1.6 Appointing Appraisers. If Holder and Owner cannot agree on the Real Estate Value or, if applicable, the Business Property Value, the Real Estate Value and Business Property Value will be determined in accordance with the appraisal procedures contained in this Section 1. Within fifteen (15) days after Holder or Owner receives a demand from the other for an appraisal in accordance with this Section 1.6, Holder and Owner shall each appoint a "**Qualified Appraiser**", which is defined as a member of the Appraisal Institute who (i) is unaffiliated with Owner, Operator, Holder, and the third party under the Tendered Agreement and (ii) has at least five-years' full-time experience in appraising commercial real property in the area of the Real Estate. If the Appraisal Institute ceases to exist, a reasonably comparable, nationally recognized organization of real estate appraisers will be substituted in the definition of Qualified Appraiser. If one of them fails to timely appoint a Qualified Appraiser, the Qualified Appraiser appointed by the other will determine the Real Estate Value and Business Property Value.

1.7 Determination of Values. If only one appraiser is appointed, the appraiser must deliver a signed report (an "**Appraisal Report**") to Holder and Owner within thirty (30) days after his or her appointment. An Appraisal Report must set forth the appraiser's determination of the Real Estate Value and Business Property Value and the considerations on which his or her opinion is based. If two appraisers are appointed and they agree on the Real Estate Value and Business Property Value, they must deliver a signed joint Appraisal Report to Holder and Owner within thirty (30) days after the appointment of the second appraiser. If two appraisers are appointed and they fail to agree on the Real Estate Value, Business Property Value, or both, each appraiser must deliver his or her signed Appraisal Report to Holder and Owner within 35 days after his or her appointment. If the lower of either appraiser's determinations as to Real Estate Value and Business Property Value is at least ninety percent (90%) of the higher, the applicable value will be the average of the two determinations. If not, then within ten (10) days after Holder or Owner requests the two appraisers to do so, they must mutually appoint a third appraiser who is a Qualified Appraiser. Within ten (10) days after his or her appointment, the third appraiser must select one of the two determinations as being the same as or closer to the amount that he or she determines as the Real Estate Value and/or the Business Property Value; and the selected determination will be the value to be used herein.

1.8 Appraisal Fees. Holder and Owner shall each bear the cost of the appraiser that it appoints and one-half of the cost of the third appraiser.

1.9 Excluded Business Property. Holder may elect not to buy all or part of the Business Property. If Holder wishes to exercise this election, Holder must give notice to Owner on or before the fifth day before Escrow closes. Holder's notice must (i) state that it is electing not to buy the Excluded Business Property and (ii) identify the items of the Excluded Business Property with sufficient particularity to allow Owner

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to remove from the Real Estate the items of the Excluded Business Property that are tangible personal property. Owner shall remove those items of tangible personal property from the Real Estate within two business days before Escrow closes.

1.10 Escrow and Closing Date. The Transaction will occur through an escrow with a title insurance company acceptable to Holder ("**Title Company**"). The escrow will close on or before the later of (i) the 90th day after the date on the Exercise Notice is given ("**Exercise Date**"), (ii) the date on which Holder receives notice from the applicable governmental authority that the authority has transferred to Holder (or an affiliate of Holder) any Alcoholic Beverage License that is included in the Business Property, or (iii) the tenth (10th) business day following the final determination of the Real Estate Value (pursuant to the provisions of Section 1.4).

1.11 Escrow Procedures. If Holder exercises the Purchase Option, Holder and Owner shall promptly sign escrow instructions and open the escrow ("**Escrow**"). Owner shall apply to the Title Company for a preliminary title report on the condition of title of the Real Estate. The following will apply to the consummation of the Transaction through the Escrow:

(a) Deed and Title Insurance. Owner shall provide the Title Company with a deed conveying title to the Real Estate, free of encumbrances, except those that Holder elects to accept. Owner shall provide Holder with an ALTA Standard Coverage Owner's Policy of Title Insurance insuring title, subject only to the printed exceptions of the policy and those encumbrances that Holder elects to accept. The policy must be issued by the Title Company (or another insurer acceptable to Holder) and have a liability amount equal to the portion of the purchase price of the Option Property ("**Purchase Price**") that is attributable to the Real Estate. Closing will be considered effected when the County Recorder accepts the deed for recording.

(b) Bill of Sale. Owner shall provide the Title Company with a bill of sale conveying title to the Business Property (if any) to Holder, free of encumbrances.

(c) Taxes and Rent. Taxes, rentals, and other items of income and expense related to the property that Holder is buying will be prorated as of the date that Escrow closes.

(d) Closing Costs. Owner and Holder shall each pay one half of the Title Company's ("**Escrow Agent**") fee for handling the Escrow. Owner shall pay the premium for Holder's title insurance policy. Owner and Holder shall pay all other closing costs in accordance with the custom in the County. But if there is no custom for a particular closing cost, each shall pay one half of that cost.

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(e) Extended Coverage Title Policy: Survey. Notwithstanding the provisions of Section 1.11(a), Holder may require that the title policy be an ALTA extended coverage owner's policy of title insurance ("**Extended Coverage Title Policy**"). In that event, Holder shall (i) obtain and provide to the title insurer any survey that the title insurer might require in order to issue the title policy as an Extended Coverage Title Policy and (ii) pay the increase in the premium attributable to the extended coverage. Within three days after the Escrow opens, Owner shall send to Holder a copy of the most recent survey (if any) of the Real Estate that Owner has in its possession.

(f) Deductions by Holder. Holder may deduct from the Purchase Price or from any other amounts that Holder is required to pay to Owner in connection with the Transaction any or all of the following: (i) Any trade payables or other amounts that an Owner Entity (defined below) owes to Holder or any of its affiliates with respect to (A) the operation of the business conducted at the Real Estate or (B) all or any part of the Real Estate, (ii) any transfer fee that an Owner Entity is required to pay to Holder under any of the Dealer Agreements pertaining to the business conducted at the Real Estate, (iii) the unpaid balance of principal and accrued interest on any loan that is payable to Holder or any of its affiliates and that is secured, wholly or partially, by any property that Holder is buying in the Transaction, whether or not the deducted amounts would otherwise be due when Escrow closes and (iv) the unpaid balance of principal and accrued interest on, and all other amounts due in connection with, any Secured Obligation (as defined in Section 2.1) as of the date that Escrow closes. If Holder elects to buy the Option Property, upon the close of Escrow, the Title Company shall use the funds that Holder deposits into Escrow first to pay in full the Secured Obligation. For purposes of this Agreement an Owner Entity is individually and collectively, (i) each person named as Owner in this Agreement ("**Constituent Owner**") and (ii) each person that controls a Constituent Owner, is controlled by a Constituent Owner, or is under common control with a Constituent Owner, in each case whether the control is direct or indirect.

1.12 Environmental Indemnification. If Holder acquires the Real Estate in accordance with this Agreement, the person transferring the Real Estate to Holder shall sign and deliver to Holder through the Escrow an indemnification agreement containing the following provision:

Transferor shall indemnify and defend Holder from all claims, liabilities, damages, losses, costs, and expenses (including reasonable attorneys' fees) that Holder incurs arising from any environmental contamination occurring or hazardous materials existing at the Real Estate, to the

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extent that the contamination or hazardous materials (i) are present at concentrations that any governmental agency will require to be remediated or otherwise are not in compliance with all applicable statutory and regulatory requirements and (ii) are known or discovered before Holder begins its operations at the Real Estate. This agreement to indemnify and defend will survive the closing of Transferor's transfer of the Real Estate to Holder.

2. Default on Obligations Secured by Junior Liens.

2.1 Definitions for Section 2. When used in this Section 2, each underlined capitalized term set forth below in this Section 2.1 has the meaning set forth beside it.

- (a) Accelerated Amount: Any amount that became due on or under the Secured Obligation because Lender exercised an acceleration right arising from the Loan Default.
- (b) Default Amounts: All amounts that were added to the balance of the Secured Obligation by reason of the Loan Default, whether those amounts have been paid or remain unpaid. "Default Amounts" include without limitation, (i) late charges, (ii) the excess of any interest that accrued at a default rate over the interest that would have accrued if Lender had not imposed the default rate, (iii) any prepayment penalty, and (iv) any interest that accrued on any of the amounts described in clauses (i) through (iii) of this sentence.
- (c) Elected Property: The items of real property and personal property that Holder intends to buy from Owner and/or Operator, as appropriate, in accordance with this Section 2 after giving a Foreclosure Exercise Notice.
- (d) Foreclosure Exercise Notice: A notice from Holder to Owner and/or Operator, as appropriate, and Lender stating that Holder elects to buy the Real Estate in accordance with this Section 2.
- (e) Foreclosure Purchase Right: The right to buy the Real Estate in accordance with this Section 2.
- (f) Lender: A person for whose benefit a particular Lien exists. "Lender" includes, without limitation, (i) the beneficiary under a deed of trust, (ii) a mortgagee, and (iii) a judgment lien holder.

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- (g) Lien. A lien that (i) encumbers an interest in the Real Estate, (ii) secures a monetary obligation, and (iii) is junior to Holder's rights under this Agreement.
- (h) Lien Enforcement Notice: A notice from Lender to Holder notifying Holder of Lender's intent to enforce its Lien. The Lien Enforcement Notice must include (i) a copy of the recorded lien document, (ii) a copy of the promissory note or other document evidencing the Secured Obligation, (iii) a statement of the amount of the unpaid balance of the Secured Obligation, (iv) a description of the Loan Default, (v) an itemization of the portion of the unpaid balance of the Secured Obligation that is in default, (vi) an itemization of the Default Amounts, and (vii) a statement of any Accelerated Amount.
- (i) Loan Default: The breach for which Lender intends to foreclose its Lien.
- (j) Secured Obligation: The monetary obligation secured by a Lien.

2.2 Coverage of this Section 2. The provisions of this Section 2 will apply with respect to each Lien and to each Lender who holds a Lien.

2.3 Lender's Lien Enforcement Notice to Holder. Before Lender begins enforcement of its Lien (whether by private power of sale, judicial foreclosure, or otherwise), Lender shall send a Lien Enforcement Notice to Holder.

2.4 Holder's Right to Buy. Before Lender begins enforcement of its Lien, Holder will have the Foreclosure Purchase Right.

2.5 Holder's Exercise Notice to Owner and Lender. If Holder wishes to exercise the Foreclosure Purchase Right, Holder must send a Foreclosure Exercise Notice to Owner and Lender within 30 (thirty) days after Holder actually receives the Lien Enforcement Notice.

2.6 Holder's Purchase of Real Estate. If Holder exercises the Foreclosure Purchase Right, the Foreclosure Purchase Right will include the right to buy the Real Estate and all Improvements, together with any Business Property that Holder wishes to buy and in which Owner as appropriate, holds an interest.

2.7 Procedures for Holder's Purchase. If Holder exercises the Foreclosure Purchase Right, the purchase and sale transaction will be consummated in accordance with the procedures described in Section 1. Holder will have a period of time to close the purchase that is equal to the longer of (i) 60 days after the opening of Escrow, or (ii) the date on which Holder receives notice from the applicable governmental authority that the authority has transferred to Holder (or an affiliate of Holder) any

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Alcoholic Beverage License that is included in the purchase, but under no circumstances longer than 120 (one hundred twenty) days following Lender's delivery of the Lien Enforcement Notice.

2.8 Purchase Price for the Elected Property Resulting From Holder's Exercise of the Foreclosure Purchase Right; Reduction and Credits. The purchase price for the Elected Property resulting from Holder's exercise of the Foreclosure Purchase Right arising under this Section 2 will be equal to the Purchase Price, reduced by the total costs (including attorneys' fees) that Holder incurs in connection with the purchase and sale of the Elected Property. If Holder elects to buy the Elected Property subject to a lien that secures a monetary obligation other than the Secured Obligation that was the subject of the Lien Enforcement Notice, Holder will receive a credit against the Purchase Price for the unpaid balance of that monetary obligation as of the date that Escrow closes. If Holder elects to buy the Elected Property, upon the close of Escrow, the Title Company shall use the funds that Holder deposits into Escrow first to pay in full the Secured Obligation that was the subject of the Lien Enforcement Notice, including all unpaid Default Amounts.

2.9 No Impairment of Lien. Holder's exercise of the Foreclosure Purchase Right will not defeat, discharge, or impair any Lien or the Secured Obligation. No Lien will be released of record or otherwise extinguished until the Secured Obligation, including all unpaid Default Amounts, is paid in full.

3. Liens.

3.1 Coverage of this Section 3. The provisions of this Section 3 will apply with respect to each Lien and to each Lender who holds a Lien.

3.2 No Impairment of Lien. Anything in this Agreement to the contrary notwithstanding, (i) Holder's Right, Lease Option, and Purchase Option (collectively "**Options**") and the exercise thereof shall not defeat, discharge, or impair any Lien or Secured Obligation, and (ii) in the event Holder exercises any of its Options and elects to buy or lease the Real Estate, no Lender shall be obligated to release of record its Lien unless and until the entire Secured Obligation with respect thereto is paid and discharged in full.

3.3 Foreclosure. If an event shall occur entitling Holder to exercise any of the Options and in connection therewith a Lender commences foreclosure of its Lien and for any reason Holder does not pay to such Lender the amount required to terminate the foreclosure within the time and in the manner required thereby, then such Lender may proceed to foreclose its Lien and the Options and all other rights of Holder under this Agreement shall automatically terminate and be of no further force and effect and Holder shall execute and furnish to such Lender within ten (10) days after such Lender's written request therefor, a written release and termination of the Options and all other rights of Holder under this Agreement in recordable form and otherwise in form and substance satisfactory to such Lender, which such Lender may record in the real

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estate records for the county(ies) where the Real Estate is located to give record notice thereof.

3.4 Effect of Options on Liens. If an event shall occur entitling Holder to exercise any of the Options, and Holder elects to proceed with the exercise of the relevant Option, and the Real Estate is subject to a Lien or Liens for which the Lender(s) does not initiate a foreclosure, Holder may elect to either: (A) direct the Escrow Agent to apply the Purchase Price first to payment in full of any or all Secured Obligations, the Lender(s) of such Secured Obligation(s) shall release of record its Lien(s), and Holder shall acquire fee title to the Real Estate free and clear of all such Secured Obligation(s), or (B) direct the Escrow Agent to apply a portion of the Purchase Price necessary to cure any defaults, if any, under any or all Secured Obligations, and Holder shall assume such Secured Obligations upon Holder's acquisition of the fee title to the Real Estate.

4. Notices. Notices relating to this Agreement must be in writing and sent to the addresses set forth below. But a party may change its address for notices by giving notice as required by this Section 4. A written notice will be considered given (i) when personally delivered, (ii) two business days after deposit in the United States Mail as first class mail, certified or registered, return receipt requested, with postage prepaid, (iii) one business day after deposit with a reputable overnight delivery service for next business day delivery, or (iv) on the business day of successful transmission by electronic facsimile. The parties' addresses for notices are as follows:

To Owner: Markham All Star Properties, Inc.
8060 Kristof Lane
Orland Park, IL 60462
Attn: Tom M. Thomas

Facsimile: (708) 403-1366

To Holder: BP Products North America Inc
4101 Winfield Road, MC 5E
Warrenville, IL 60555
Attn: Real Estate Legal

Facsimile: _____

5. Entire Agreement; Modification; Waiver. This Agreement (including any attached Exhibits) contains the entire agreement between Owner and Holder with respect to Holder's rights to acquire Offered Parcels. Any modification of this Agreement must be in writing and signed by all the parties to this Agreement. Any waiver of a provision of this Agreement by a party must be in writing.

6. Governing Law. The internal laws of the State where the Land lies govern this Agreement.

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7. Interpretation. The captions appearing in this Agreement are for convenience of reference only, and they do not affect the meanings of the provisions of this Agreement. In this Agreement, each gender includes the other gender. Words in the singular include the plural and vice versa, when appropriate. The word "person" includes natural individuals and all other entities. The word "cost" includes any cost or expense. The word "term" includes any covenant, condition, representation, warranty, or other provision that is part of an agreement. Whenever a provision of this Agreement requires a party to this Agreement to perform an act, that person must do so at its sole cost (unless otherwise stated in connection with that provision).

8. Dates. If the date by which an event is to occur under this Agreement falls on a Saturday, Sunday, or other legal holiday under United States or Federal law, the event may occur on the next business day.

9. Successors and Assigns. The rights and obligations under this Agreement bind and benefit the successors and assigns of each party to this Agreement. For example, the covenants and obligations of Owner contained in this Agreement will bind each future owner or tenant of all or part of the Real Estate; and each of those persons will be considered "Owner" under this Agreement with respect to the applicable part of the Real Estate while that person is the owner or tenant.

10. Further Acts. Each party to this Agreement shall do all things that another party reasonably requests to carry out the purpose of this Agreement.

11. Attorneys' Fees. If a dispute arises between Owner and Holder with respect to this Agreement and if Holder prevails in the dispute, then Holder will be entitled to recover from Owner the reasonable costs and expenses that Holder incurred in enforcing its rights under this Agreement, including reasonable attorneys' fees.

12. Counterparts. The parties may sign this Agreement in counterparts. The signature pages from the separately signed counterparts may be attached to one copy of this Agreement to form a single document.

(Signature Page Follows)

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EXHIBIT A LEGAL DESCRIPTION OF THE REAL ESTATE

Site No. 15710
16655 Crawford Avenue
Markham, IL 60428
P.I.N.: 28-23-300-020-0000

The West 235 of the South 184.75 feet of Lot 7 in A.T. McIntosh's Crawford Avenue Farms, a subdivision of the West half of the South West quarter of Section 23, Township 36 North, Range 13, East of the Third Principal Meridian, lying South of the Indian Boundary line, in the County of Cook, State of Illinois.

EXCEPTING therefrom the land conveyed to the County of Cook by Warranty Deed recorded on October 16, 1974 as document number 22878309, described as: That part of the West 235 feet of the South 184.75 feet of Lot 7 in Arthur T. McIntosh's Crawford Avenue Farms, being a subdivision of the West half of the Southwest Quarter of Section 23, Township 36 North, Range 13 East of the Third Principal Meridian, South of the Indian Boundary Line, bounded and described as follows: Beginning at the Southwest corner of said Lot 7; thence East of the South line of said Lot 7 to the East line of the West 235 feet aforesaid; thence North on said East line to its intersection with a line 17 feet North of and parallel with said South line of Lot 7; thence West on said parallel line to a point 27 feet East of the West line of Lot 7 aforesaid (as measured on said parallel line); thence Northwesterly to a point 27 feet North of and 17 feet East of the place of beginning (as measured on the West line of Lot 7 aforesaid and on a line at right angles thereto); thence North parallel with the West line of Lot 7 aforesaid to the North line of the South 184.75 feet of Lot 7 aforesaid; thence West on said North line to the West line of Lot 7 aforesaid; thence South to the place of beginning.