

Return Address:



200608310107  
Skagit County Auditor

8/31/2006 Page 1 of 13 11:47AM

LAND TITLE OF SKAGIT COUNTY

120246-7

<b>Document Title(s) (for transactions contained therein):</b> 1. OPTION AGREEMENT 2. 3. 4.
<b>Reference Number(s) of Documents assigned or released:</b> (on page of documents(s))
<b>Grantor(s)</b> 1. BP WEST COAST PRODUCTS LLC 2. 3. 4.
<b>Additional Names on page</b> of document.
<b>Grantee(s)</b> 1. 2. 3. 4.
<b>Additional Names on page</b> of document.
<b>Legal Description (abbreviated i.e. lot, block, plat or section, township, range)</b>  LOT 1 MV SP 8-86 in SE 1/4 of NE 1/4 in 17-34-4
<b>Additional legal is on page</b> of document.
<b>Assessor's Property Tax Parcel/Account Number</b>  3404017-1-014-0702
<b>The Auditor/Recorder will rely on information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.</b>

Order No.: 120246-T  
Escrow No.: 10823337

RECORDING REQUESTED BY  
LAND TITLE COMPANY OF SKAGIT COUNTY  
AND WHEN RECORDED, RETURN TO:

BP West Coast Products LLC  
4 Centerpointe Drive, LPR 4-224  
La Palma, California 90623-1066  
Attn: Ken Tucker

ARCO Facility No.: 05373  
BP SCDB No.: 30953  
Location: 2125 E. College Way  
Mount Vernon, WA 98273-2319

FOR RECORDER'S USE  
LAND TITLE OF SKAGIT COUNTY

### OPTION AGREEMENT

This Option Agreement (this "Agreement") dated August 18, is made by KUMAR, INC., a Washington corporation ("Owner"), for the benefit of BP WEST COAST PRODUCTS LLC, a Delaware limited liability company ("Holder").

#### RECITALS

A. Holder is the former owner of the real property in the County of Skagit (the "County"), State of Washington, described in the attached Exhibit "A" (the "Real Estate"). In connection with signing and recording this Agreement, Holder conveyed the Real Estate to Owner.

B. By this Agreement, Owner intends to grant to Holder an option to buy the Real Estate and certain other property.

\\bp1\pris001\group\RE\ADMIN\PNW DECAP 2006\WA\05373 - ENV 3; SCP 1\05373 Exhibit E Option Agreement kk Clean 04-18-06.DOC



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## AGREEMENT

THEREFORE, Owner agrees as follows:

1. Definitions. When used in this Agreement, each underlined, capitalized term set forth below in this Section 1 has the meaning set forth beside it. Other terms are also defined elsewhere in this Agreement.

Alcoholic Beverage License: A transferable license for the sale of alcoholic beverages at the Real Estate.

Business Property: All tangible and intangible personal property that Owner owns or leases from a third party (to the extent of the leasehold interest) and that is used in the operation of any business conducted at the Real Estate. "Business Property" includes, without limitation, (i) equipment, furnishings, and trade fixtures, (ii) resalable inventory, (iii) supplies, and (iv) transferable licenses and transferable permits, including without limitation any Alcoholic Beverage License. "Business Property" excludes the good will, if any, associated with the Owner's business operation located at the Real Estate.

Business Property Purchase Price: An amount equal to the value of the Business Property (other than the Excluded Business Property) located at the Real Estate on the day that Escrow closes, as that value is determined by Holder in accordance with its customary procedures for valuing business personal property in connection with an operator's transfer of its interest under a non-lessee am/pm Mini Market Agreement between Holder and the operator.

Constituent Owner: Any person named as Owner in this Agreement.

Dealer Agreement: Each of the following: (i) A Contract Dealer Gasoline Agreement between Holder and an Owner Entity pertaining to business operations at any real estate that Holder sold to an Owner Entity, and (ii) a non-lessee am/pm Mini Market Agreement between Holder and an Owner Entity pertaining to business operations at any real estate that Holder sold to an Owner Entity, in each case as that agreement is amended or replaced from time to time and as that agreement is in effect between the parties' respective successors and assigns from time to time.

Escrow: Each escrow for the Transaction.

Escrow Agent: Individually, the Title Company and any escrow holder for the separate business property escrow contemplated by Section 8.

Excluded Business Property: Business Property that Holder elects not to buy in accordance with Section 7.



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**Exercise Date:** The date on which the Exercise Notice is considered given in accordance with Section G1.

**Exercise Notice:** A notice from Holder to Owner in which Holder states that it is exercising the Option.

**Exercise Period:** The 30-day period beginning on the Triggering Event Date.

**Extended Coverage Title Policy:** An ALTA Extended Coverage Owner's Policy of Title Insurance.

**Improvements:** All improvements on or under the land of the Real Estate.

**Option:** The right to buy the Option Property for the Purchase Price and on the other terms contained in this Agreement.

**Option Early Termination Date:** The day after the Exercise Period expires, if Holder does not exercise the Option within the Exercise Period.

**Option Property:** The Real Estate and the Business Property.

**Option Term:** The period beginning on the Recordation Date and ending on the earlier of (i) the 20th anniversary of the Recordation Date or (ii) the Option Early Termination Date.

**Owner Entity:** Individually and collectively, (i) each 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.

**Purchase Price:** An amount equal to the sum of (i) the Real Estate Value and (ii) the Business Property Purchase Price.

**Real Estate:** The Real Estate includes land, the Improvements, and all appurtenant rights and privileges.

**Real Estate Value:** The value of the Real Estate as determined in accordance with Section 6.

**Recordation Date:** The date that this Agreement is recorded in the Official Records of the County.

**Title Company:** A title insurance company acceptable to Holder.

**Transaction:** The purchase and sale transaction resulting from Holder's exercise of the Option.



**Triggering Event:** A termination of any Dealer Agreement by Holder in accordance with any provision of the Dealer Agreement under which Holder has the right to terminate. But "Triggering Event" does not include a termination of a Dealer Agreement by Holder based on a determination made by Holder in good faith and in the normal course of business to withdraw from (i) the marketing of motor fuel through retail outlets in the relevant geographic market area in which the Real Estate is located, or (ii) the marketing of franchises for convenience stores in that market area. A Triggering Event will be considered to have occurred on the applicable Triggering Event Date.

**Triggering Event Date:** The date that the Triggering Event becomes effective for the applicable Dealer Agreement.

2. **Grant of Option; Option Term.** Owner grants to Holder the Option. The Option is governed by the terms of this Agreement. The Option will be in effect during the Option Term.

3. **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 Option to Holder; and the difference between those two prices is the consideration for Owner's granting the Option.

4. **Exercise Notice; Holder's Environmental Assessment Rights.** Upon the occurrence of a Triggering Event during the Option Term, Holder may exercise the Option. If Holder wishes to exercise the Option, Holder must give an Exercise Notice to Owner on or before the last day of the Exercise Period. 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.

5. **Early Termination of Option; Termination Document.** If Holder does not exercise the Option within the Exercise Period, this Agreement and the Option will terminate on the 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 Option have terminated.

6. **Purchase of Real Estate at Fair Market Value.**

6.1 **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 Section 6.2 below (the "Real Estate Value").

6.2 **Appointing Appraisers.** If Holder and Owner cannot agree on the Real Estate Value, the Real Estate Value will be determined in accordance with the appraisal procedures contained in this Section 6. Within fifteen (15) days after Holder or Owner receives a demand from the other for an appraisal in accordance with this Section 6.2, Holder and Owner shall each appoint a Qualified Appraiser (as defined in Section 6.3). If one of them fails



to timely appoint a Qualified Appraiser, the Qualified Appraiser appointed by the other will determine the Real Estate Value.

**6.3 Qualified Appraiser.** "Qualified Appraiser" means a real estate appraiser who (i) is a member of the Appraisal Institute, (ii) is unaffiliated with Holder or Owner, and (iii) has had full-time experience, during each of the immediately preceding five years, 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.

**6.4 Determination of Values.** If only one appraiser is appointed, the appraiser must deliver a signed report (an "Appraisal Report") to Holder and Owner within 30 days after his or her appointment. An Appraisal Report must set forth the appraiser's determination of the Real Estate 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, they must deliver a signed joint Appraisal Report to Holder and Owner within 40 days after the appointment of the second appraiser. If two appraisers are appointed and they fail to agree on the Real Estate Value, 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 the two determinations is at least 95% of the higher, the Real Estate Value will be the average of the two determinations. If not, then within 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 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 the selected determination will be the Value to be used as the Real Estate Value herein.

**6.5 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.

**7. 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 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 after Escrow closes.

**8. Escrow and Closing Date.** The Transaction will occur through an Escrow with the Title Company. But if required by law or if Holder so wishes, the purchase and sale of some or all of the Business Property will occur through a separate Escrow with an escrow company that specializes in business property escrows and that is acceptable to Holder. The Escrow will close on or before the later of (i) the 60th day after the 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 (10<sup>th</sup>) business day following the final determination of the Real Estate Value (pursuant to the provisions of Section 6.1).

9. **Escrow Procedures.** If Holder exercises the Option, Holder and Owner shall promptly sign escrow instructions and open the 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 that is attributable to the Real Estate. Closing will be considered effected when the County Recorder accepts the deed for recording.
- (b) **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.
- (c) **Closing Costs.** Owner and Holder shall each pay one half of Escrow Agent's 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.
- (d) **Extended Coverage Title Policy, Survey.** Notwithstanding the provisions of Section 9(a), Holder may require that the title policy be an 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.
- (e) **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 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



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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 11.1(j)] 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.

10. 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 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.

11. Liens.

11.1 Definitions for Section 11. When used in this Section 11, each underlined, capitalized term set forth below in this Section 11.1 has the meaning set forth beside it.

- (a) 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.
- (b) 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.
- (c) Secured Obligation: The monetary obligation secured by a Lien.



11.2 Coverage of this Section 11. The provisions of this Section 11 will apply with respect to each Lien and to each Lender who holds a Lien.

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

11.4 Foreclosure. If a Triggering Event shall occur 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 as provided under Section 18.2 of the Contract Dealer Gasoline Agreement between Holder and Owner and under Section 17.01 of the am/pm Mini Market Agreement between Holder and Owner with respect to the Real Estate within the time and in the manner required thereby, then such Lender may proceed to foreclose its Lien and the Option 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 Option 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 estate records for the county(ies) where the Real Estate is located to give record notice thereof.

11.5 Effect of Option on Liens. In the event that a Triggering Event occurs, and Holder elects to proceed with the exercise of the 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 Holder 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 reconvey 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 Holder 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.

#### GENERAL PROVISIONS

G1. Notices. Notices relating to this Agreement must be in writing and sent to the addresses set forth below in this Section G1. But a party may change its address for notices by giving notice as required by this Section G1. A written notice will be considered given (i) when personally delivered, (ii) two business days after deposit in the U.S. 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 Holder:

BP West Coast Products LLC  
4 Centerpointe Drive, LPR 4-235  
La Palma, California 90623-1066  
Attn: Manager, Real Estate and Dealer Acquisitions

Facsimile: (714) 670-5439

To Owner:

Kumar, Inc.  
2125 E. College Way  
Mount Vernon, WA 98273-2319  
Attn: Veer Kumar

Facsimile: \_\_\_\_\_

G2. Further Acts. Holder and Owner shall each do everything that the other reasonably requests to carry out the purpose of this Agreement.

G3. Successors and Assigns. The rights and obligations under this Agreement bind and benefit the respective successors and assigns of Holder and Owner. 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.

G4. Time of Essence; Business Day; Dates. Time is of the essence of each provision of this Agreement in which time is a factor. In this Agreement, the term "business day" means days other than Saturdays, Sundays, and holidays observed by the United States or the State of California. If the date by which an event is to occur under this Agreement falls on a day that is not a business day, the event may occur on the next business day.

G5. Uncontrollable Events. The date by which a party is to perform an obligation (other than the payment of money) under this Agreement will be extended for the period during which the party is prevented from performing by an event beyond its reasonable control (including, without limitation, acts of God, work stoppage, riots, and other similar events) (an "Uncontrollable Event"). If (i) a party who has the right to exercise a right under this Agreement has not done so by the last date allowed under this Agreement and (ii) on that date, the party is prevented from exercising the right due to an Uncontrollable Event, the date will be extended until the third business day after the Uncontrollable Event ends.

G6. Entire Agreement; Modification; Waiver. This Agreement (including any attached Exhibits) contains the entire agreement between Holder and Owner with respect to the Option. Any modification of this Agreement must be in writing and signed by Holder and Owner. Any waiver of a provision of this Agreement by Holder or Owner must be in writing.

G7. Governing Law. The internal laws of the State of California govern this Agreement.



G8. 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 genders. 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 Holder or Owner to perform an act, that person must do so at its sole cost (unless otherwise stated in connection with that provision).

G9. Attorneys' Fees. If a dispute arises 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.

OWNER:

KUMAR, INC.,  
a Washington corporation

By: V. K. Kumar

Printed Name: VEER KUMAR

Printed Title: PRESIDENT

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

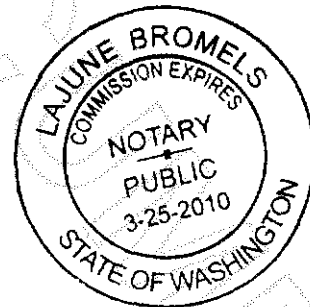
Printed Title: \_\_\_\_\_

(ATTACH NOTARY ACKNOWLEDGMENTS)

SIGNED BEFORE ME, A NOTARY PUBLIC IN  
AND FOR THE STATE OF WASHINGTON, ON  
THIS 18<sup>th</sup> DAY OF Aug 2006  
MY COMMISSION EXPIRES 3-25-2010

*Lajune Bromels*

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**LEGAL DESCRIPTION OF THE REAL ESTATE**

(See Exhibit "A" following this cover sheet.)

**EXHIBIT "A"**

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Lot 1, City of Mount Vernon Short Plat No. 8-86, approved December 23, 1986, recorded December 23, 1986 in Book 7 of Short Plats, page 150, under Auditor's File No. 8612230042 and being a portion of the Southeast ¼ of the Northeast ¼ of Section 17, Township 34 North, Range 4 East, W.M.,

EXCEPT the South 10 feet thereof deeded to the City of Mount Vernon by instrument recorded May 11, 1987, under Auditor's File No. 8705110008.

TOGETHER WITH an easement for ingress, egress and regress, in common with other owners, over, upon and across Parcel "B" as shown on the face of said Short Plat.

Situate in the County of Skagit, State of Washington.



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