

The Honorable Mary Jo Heston
Chapter 11
Tacoma, Washington
Hearing Date: July 27, 2017
Hearing Time: 9:00 a.m.
Response Date: July 20, 2017

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

In Re:)	Case No. 11-42290
)	
ISMAIL ARSLANGIRAY,)	Chapter 11 Proceeding
)	
)	MOTION TO SELL REAL
)	PROPERTY PURSUANT
Debtor.)	TO 11 USC §363 (b)(1)&(f)
_____)	

COMES NOW MARK D. WALDRON, the Court-appointed Plan Administrator for the Bankruptcy Estate of Ismail Arslangiray, and moves the Court for an Order authorizing Plan Administrator to sell, other than in the ordinary course of business, the Estate's interest in the unimproved real property commonly referred to as Barksdale Avenue and Steilacoom Road in the City of Dupont, Washington, designated as Tax Parcel Nos. 0119362043, 0119362009, 0119362039 and 0119362012.

This property consists of approximately 21.42 acres of unimproved land owned by Dupont Town Square Development LLC, a Limited Liability Company in which Debtor holds a one-third ownership interest. The confirmed Chapter 11 Plan contemplates the sale of this property and the other two members of the LLC, John Dhane and William

LAW OFFICES
ORLANDINI & WALDRON
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MOTION TO SELL REAL PROPERTY -1-

1 Cotter, each holding an equal one-third interest, consent to and support the sale of the
2 subject real property and encourage the Court to approve this sale.

3 The 2016 tax assessed value for the 2017 tax year is \$2,023,100.00, however the
4 assessed value is not an accurate reflection of the fair market value, as more fully set forth
5 in the Declaration of Mark D. Waldron filed concurrently herewith. The property has been
6 on the market off and on since 2013, with a current list price of \$1,199,000.00. Plan
7 Administrator has now received an offer of \$860,000.00 from BP West Coast
8 Products LLC and/or Assigns and requests that the Court enter an Order authorizing
9 Plan Administrator to sell this real property to BP West Coast Products LLC and/or
10 Assigns, or to any third party buyer who is unrelated to Debtor or anyone connected with
11 the case and who will actually complete the sale, for the sum of \$860,000.00 or higher, all
12 cash at closing.

13 There is no underlying debt on this real property and the property taxes are current.
14 The sale shall be conveyed free and clear of all liens, claims of creditors, and
15 encumbrances. This sale is subject to the Real Estate Purchase & Sale Agreement and
16 certain addenda signed between the parties, a copy of which is attached hereto and
17 incorporated herein by reference as Exhibit A. The sale is subject to a 6-month feasibility
18 study and due diligence period, however the buyer can extend the period beyond the initial
19 feasibility period by paying additional non-refundable extension fees, as set forth on
20 Exhibit A. It is reasonable to allow this feasibility period because of the development and
21 use challenges associated with the subject property, as more fully set forth in the
22 Declaration of Plan Administrator filed concurrently herewith.

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25 MOTION TO SELL REAL PROPERTY -2-

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1 This motion does not contain all terms of the sale. The Plan Administrator believes
2 that this sale is in the best interest of the estate and its creditors. The property is sold as
3 is and where is. Plan Administrator makes no representations or warranties herein and this
4 sale is without recourse against said Plan Administrator, either individually or as Plan
5 Administrator. Dupont Town Square Development LLC will warrant title at closing.

6 A Listing Agreement with Neil Walter Company was signed by John Dhane,
7 Managing Member on behalf of the LLC, and approved by Mark D. Waldron as Plan
8 Administrator for Ismail Arslangiray Chapter 11 Estate, agreeing to pay a five percent (5%)
9 commission on the gross sales price. The commission will be shared with the purchaser's
10 broker, Zahler Commercial Realty, LLC, and Plan Administrator does hereby request
11 authority to pay the same at closing.

12 The Plan Administrator and Dupont Town Square Development LLC request
13 authority to pay, at closing from proceeds of the sale, costs of sale, including commissions,
14 escrow fees, title insurance and real property taxes. Debtor's net share of the remaining
15 sale proceeds shall be held in Trust by the Plan Administrator, and will eventually be
16 distributed in the Arslangiray Chapter 11 proceeding according to the terms of the Plan.

17 The Court should also note that, in order to facilitate the sale through the Plan
18 Administrator's efforts and time, rather than hiring outside representation, John Dhane and
19 William Cotter have agreed that the Dupont Town Square Development LLC entity will pay
20 the Plan Administrator's fees and costs associated with this sale, to be divided equally
21 among the three LLC members, including the Arslangiray Estate, in an amount not to
22 exceed \$5,000.00. Since Plan Administrator's fees and costs associated with this sale will
23

1 be paid at closing, Plan Administrator will not include those fees and costs in future
2 applications for compensation in this proceeding.

3 The Plan Administrator requests Court approval to complete the above-referenced
4 sale.

5 **DATED** this 26 day of June, 2017.

6
7 ORLANDINI & WALDRON, P.S.

8
9 By: 

10 MARK D. WALDRON, WSBA# 9578
11 Plan Administrator, Bankruptcy Estate
12 of Ismail Arslangiray
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25 MOTION TO SELL REAL PROPERTY -4-

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "**Agreement**") is entered into as of the 25th day of May, 2017 (the "**Effective Date**"), by and between **DUPONT TOWN SQUARE DEVELOPMENT, LLC**, a Washington limited liability company having an address at 6711 Regents Blvd. W., Tacoma, WA 98466 ("**Seller**"), and **BP WEST COAST PRODUCTS LLC**, a Delaware limited liability company with offices at 30 South Wacker Drive, Suite 900, Chicago, IL 60606 ("**Purchaser**"). Purchaser and Seller are each sometimes referred to herein as a "**Party**" and together, the "**Parties**". Capitalized terms shall have the meanings set forth in this Agreement.

RECITALS

WHEREAS, Seller is the fee owner of that certain real property located in the County of Pierce, City of Dupont and State of Washington, commonly known as NWC of Barksdale Ave & Steilacoom-Dupont Rd. SW, Dupont, Washington, as more particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Land**"), together with all buildings, improvements, fixtures, and other facilities located thereon, all rights, alleys, rights of way, easements, appurtenances thereunto belonging or otherwise appertaining, all rights of Seller in and to any public or private thoroughfare abutting the above-described premises and any air, zoning or development rights (collectively, referred to in this Agreement as the "**Real Property**");

WHEREAS, Seller also owns personal property and other interests as described in the Bill of Sale (the "**Personal Property**"); collectively, the Real Property and Personal Property are referred to herein as the "**Property**";

WHEREAS, Seller wishes to sell, and Purchaser wishes to purchase, all of Seller's right, title and interest in and to the Property (such sale and purchase, the "**Transaction**").

NOW, THEREFORE, in consideration of the agreements and the mutual covenants and conditions hereinafter contained, and other good and valuable consideration in hand paid by Seller to Purchaser and by Purchaser to Seller upon the execution of this Agreement, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Sale and Purchase.** Seller agrees to sell to Purchaser, and Purchaser agrees to buy from Seller, all of Seller's right, title and interest in and to the Property.

2. **Purchase Price.** The purchase price for the Property is **Eight Hundred Sixty Thousand Dollars and 00/100 Cents (\$860,000.00)** (the "**Purchase Price**"), and payable as follows:

2.1 Within fifteen (15) days of the Effective Date, Purchaser shall deposit the sum of Forty Thousand Dollars and 00/100 Cents (\$40,000.00) (the "**Deposit**"), in an interest bearing escrow account with First American Title Insurance Company, 4707 South 19th Street., Suite 101, Tacoma, WA 98405 (253-752-3600) (the "**Escrow Agent**" and sometimes referred to herein as the "**Title Company**") to be held by Escrow Agent hereunder. Except as expressly otherwise set forth herein, the Deposit shall be applied against the Purchase Price at Closing and shall otherwise be held and delivered by Escrow Agent in accordance with the provisions of **Exhibit B**. All interest earned on the Deposit, if any, shall accrue to the benefit of the Party entitled to receive the Deposit under this Agreement.

2.2 Purchaser shall pay, at the Closing, the balance of the Purchase Price, subject to adjustments, closing costs and prorations referred to herein, in cash, by bank certified or bank cashier's check, by wire transfer, or by title insurance company check.

3. **Title.** Seller shall deliver to Purchaser good, marketable and insurable title to the Real Property, and marketability and insurability will be determined as of Closing. Seller shall convey title in fee simple by a good and sufficient deed in the form attached hereto as Exhibit C (the "**Deed**"), duly executed and acknowledged with all state and local documentary stamps, if any, affixed, free of all encumbrances whatsoever except as set forth in the Policy, including, without limitation, liens, leases, conditions, restrictions, easements which would interfere with Purchaser's Intended Use and improvements and taxes and assessments (except general real estate taxes not yet due and payable).

4. **Title Insurance.**

4.1 Purchaser has ordered or will order a commitment for title insurance from the Title Company (a "**Title Commitment**"). It is a condition to Purchaser's obligation to close hereunder that the Title Commitment contains an agreement to furnish an owner's ALTA title insurance policy in the amount of the Purchase Price hereunder at the Closing (the "**Policy**"), and Purchaser shall, within a reasonable time after receiving the Title Commitment (and after Purchaser receives the Survey as contemplated hereunder), but in any event before the expiration of the Due Diligence Period, deliver to Seller a written statement of objections to title and survey, if any ("**Title Objections**"). In the event Purchaser has Title Objections, Seller will have thirty (30) days after receipt of Purchaser's written statement of Title Objections to cure or satisfy, or covenant to cure or satisfy, such Title Objections at or prior to Closing. The Title Company shall deliver to Purchaser at the Closing the Policy (with any such defects corrected or waived and showing no new exceptions) in extended coverage form with standard exceptions deleted in the full amount of the Purchase Price. Purchaser's obligation to close is contingent upon Purchaser's receipt of the Policy, dated down to the Closing Date.

4.2 In the event Seller cannot or does not cure the defects in title within the time period stated in this Section, Purchaser may: (i) waive the defects and accept title as is, or (ii) terminate this Agreement by written notice to Seller, in which event Seller shall instruct Escrow Agent to immediately deliver to Purchaser the Deposit, together with all interest thereon, if any, in which event thereafter neither Party hereto shall have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement (option (iii), when used in this Section or elsewhere in this Agreement, is referred to as Purchaser's "**Right of Termination**"). Seller shall pay any and all expenses of curing defects in title to Purchaser's satisfaction that Seller elects to cure. However, should Seller determine, in Seller's sole discretion, that such cure is costly to Seller, Seller may elect to terminate this Agreement.

4.3 Whether or not Purchaser shall have furnished to Seller any notice of Title Objections pursuant to the foregoing provisions of this Agreement, Purchaser may at or prior to Closing notify Seller in writing of any defects in title arising between the earlier of (i) the effective date of the Title Commitment and (ii) the expiration of the Due Diligence Period, and the Closing Date; with respect to any defects in title set forth in such notice, Purchaser shall have the same rights as those which apply to any notice of defects in title resulting from a notice of title defects by Purchaser on or before the expiration of the Due Diligence Period and Seller shall have the same rights and obligations to cure the same at or prior to Closing. If necessary, the date for Closing and Closing Deadline shall be automatically extended (by not more than five (5) days) to allow Seller to cure such pre-closing "gap" defects.

5. **Survey.** Purchaser may, at its option, obtain a survey by a licensed surveyor showing the legal description, locations, dimensions and area of the Real Property to the nearest monument, streets, easements and private drives on all sides of the Real Property, the topography, the location of available utilities, the location of all recorded easements against or appurtenant to the Real Property, the location of all improvements or encroachments, and disclosing any condition which may render the Real Property unusable for the Purchaser's purposes (the "**Survey**"). Seller hereby grants to Purchaser, its agents and

contractors, the right to enter upon the Real Property to make such Survey. If a Survey ordered by Purchaser discloses any encroachment(s), violation(s), exceptions to title or matters indicating possible rights of third parties, or any other state of facts which would in Purchaser's sole and absolute judgment impair Purchaser's title or render the Real Property unfit for Purchaser's Intended Use and contemplated improvements, this shall be deemed a defect in title and Section 4 shall apply.

6. Purchaser Inspection; Due Diligence.

6.1 Due Diligence Period. During the period (the "**Due Diligence Period**") commencing on the Effective Date and ending on the date that is six (6) months thereafter, which Due Diligence Period may be extended for three (3) additional one (1) month periods at Purchaser's sole and absolute discretion by the delivery of written notice from Purchaser to Seller and by the deposit, prior to the expiration of such current Due Diligence Period, of an additional deposit with Escrow Agent of **Five Thousand Dollars and 00/100 Cents (\$5,000.00)** for each such extension, which amount(s) shall be nonrefundable to Purchaser and applicable to the Purchase Price, Seller grants to Purchaser the right to enter upon the Real Property to investigate the feasibility and desirability of purchasing the Property and to inspect the Property, make such percolation tests, hydrocarbon tests, asbestos tests, soil and groundwater contamination tests, environmental tests, surveys and borings, drive such test piles, inspect existing improvements, if any, and make such soil bearing or other tests as deemed necessary to determine the suitability of the Property for Purchaser's purposes, and to review all of the Property Documents, as defined in the Bill of Sale, and any and all contracts and agreements (if any, the "**Existing Contracts**") as set forth on Exhibit D and made a part hereof with respect to the Property (such tests, inspections and review, collectively, Purchaser's "**Due Diligence**"), provided that such rights shall not be exercised so as to materially damage the Property or any improvements thereon, or substantially interfere with its present use or occupancy. Purchaser waives a seller disclosure statement pursuant to RCW 64.06.013.

6.2 Termination Right. Should Purchaser's Due Diligence indicate matters that in Purchaser's sole and absolute judgment are unsatisfactory, including without limitation, interfering with Purchaser's Intended Use or contemplated improvements or increasing Purchaser's risk for environmental liability, then in such event, Purchaser may on or before the last day of the Due Diligence Period exercise the Right of Termination.

6.3 Indemnity. Purchaser shall, and does hereby agree to, indemnify, defend and hold Seller harmless from and against any and all claims, liabilities, costs, and expenses (including reasonable attorneys' fees and litigation costs) (a "**Loss**") arising out of the exercise of such inspection privileges by Purchaser or the failure of Purchaser to perform its obligations with respect thereto (including, without limitation, any rights or claims of materialmen or mechanics to liens on the Property), except to the extent such is a result of any acts or omissions of Seller or Seller's officers, employees, agents or representatives, and except to the extent of any Loss relating to (a) existing conditions at the Property which are revealed by Purchaser's investigations, including any contamination existing, on, in, above or around the Real Property at the time Purchaser exercises its rights granted under this Agreement, (b) disclosures required to be made to any governmental authorities as a result of such inspection, or (c) the discovery of, or the non-negligent accidental or inadvertent release of, any Hazardous Substance wholly and directly caused by Purchaser and resulting from Purchaser's inspection (unless and to the extent that the Hazardous Substance is brought onto the Property by Purchaser in violation of Environmental Laws), which indemnity, defense and hold harmless agreement shall survive Closing hereunder and any termination of this Agreement.



7. Intended Use; Land Contingencies.

7.1 Intended Use. For purposes of this Agreement, the following or any combination thereof, as determined by Purchaser in Purchaser's sole judgment, is collectively defined as Purchaser's "**Intended Use**"): a twenty-four (24) hour motor fuel pumper facility; a twenty-four (24) hour convenience store selling items as would normally be sold in a convenience store (including, if desired by Purchaser, with the sale of beer and wine); and a twenty-four (24) hour automatic car-wash.

7.2 Land Contingencies. Purchaser's obligation to close the Transaction shall be contingent on the receipt and/or existence of the following, satisfactory to Purchaser in Purchaser's sole and absolute judgment (collectively, the "**Land Contingencies**"):

(i) Permits, zoning, subdivision, land use, site plan, signage and curb cut permits and other approvals (governmental or otherwise) determined necessary by Purchaser (the "**Approvals**"), which Approvals shall authorize layouts, placement and number of curb cuts, restrictions and conditions, and plans and specifications satisfactory to Purchaser in Purchaser's sole and absolute discretion;

(ii) rights of direct access to and from the Real Property onto all streets or roads contiguous to the Real Property from all state, county, municipal and local authorities as may be satisfactory to Purchaser in Purchaser's sole and absolute discretion; and

(iii) availability (for a standard "tap-on" fee) and adequacy, in Purchaser's sole judgment, for Purchaser's Intended Use and improvements, of all facilities (including, without limitation, water, natural gas, electricity and sanitary storm sewers) to the edge of or within the boundaries of the Real Property.

7.3 Cooperation. Seller agrees to cooperate with Purchaser and sign all applications and related transfer documentation for all petitions, licenses and permits determined by Purchaser to be reasonably necessary for Purchaser to own and use the Property for Purchaser's Intended Use so long as Purchaser bears all expenses incidental to them.

7.4 Termination. If, before Closing, the Land Contingencies have not been satisfied in Purchaser's sole and absolute discretion, Purchaser may, at its option, exercise its Right of Termination.

8. Closing Conditions; Closing; Escrow.

8.1 Closing Conditions. It is understood and agreed that each of the conditions, covenants, representations and warranties of Seller in this Agreement and as detailed below in this Section (collectively, the "**Closing Conditions**") are conditions precedent to the Purchaser's obligation to close the Transaction, and Purchaser is not obligated to close unless and until each such Closing Conditions is satisfied in full. In the event the Transaction is not closed because of the failure of any such Closing Condition, Purchaser may, at its option, exercise its Right of Termination.

8.1.1 Purchaser shall have determined that all of the Land Contingencies have been satisfied, including but not limited to receipt of all Approvals;

8.1.2 Purchaser shall have received all necessary internal approvals;

8.1.3 Purchaser shall have received from the Title Company a "pro forma" version of the Policy, and certificates or other evidence satisfactory to Purchaser ("**UCC**")

Examinations”), indicating that there are no Uniform Commercial Code filings against Seller either in the Office of the County Recorder of Deeds, or the Office of the Secretary of State which would be a lien on the Property;

8.1.4 Seller’s representations and warranties contained in this Agreement being true, correct and complete as of the Effective Date and as reaffirmed as of the Closing Date;

8.1.5 Purchaser shall have secured and entered into any third-party agreements necessary for Purchaser’s operations of the Property.

8.1.6 Closing of this Transaction shall have been approved in writing by the United States Bankruptcy Court for the Western District of Washington at Tacoma, Chapter 11 Case No. 11-42290 (the “**Court**”), as well as the members of Seller.

8.2 **Closing.** Unless otherwise agreed to by the parties, the closing (the “**Closing**”) of the Transaction contemplated by this Agreement shall occur on the date (the “**Closing Date**”) that is thirty (30) days after the delivery of a notice from Purchaser to Seller of the fulfillment or waiving of all Closing Conditions in this Agreement (the “**Closing Deadline**”). The Closing shall be effectuated via Escrow with the Title Company, with the concurrent delivery to the Escrow Agent of the executed documents, necessary funds, instruments and other items required pursuant to this Agreement, and the delivery of the Purchase Price to Seller shall occur substantially at the same time as recordation of the Deed. At Purchaser’s option, the Parties shall “dry close” not more than five (5) business days in advance of disbursement. Neither Purchaser nor Seller shall be obligated to attend any Closing or dry close in person, but shall be entitled to submit its deposits via mail, wire transfer, electronic delivery, overnight courier, or similar means or by its counsel on or before the applicable time periods described in this Agreement.

9. **Closing Documents.** In addition to the other documents required in this Agreement, Seller shall, at the Closing, deliver or cause to be delivered to Purchaser each of the following “**Closing Documents**”:

9.1 The Deed, and, the Parties agree that the final legal description of the Land may, at Purchaser’s option, be as set forth by a Survey as described in Section 5 above.

9.2 The Bill of Sale in the form set forth as **Exhibit E** (the “**Bill of Sale**”), The Parties further agree that the Personal Property will be identified and transferred by Seller to Purchaser free and clear of any liens, claims, and encumbrances whatsoever, by the Bill of Sale, which Personal Property is included in this sale and no part of the Purchase Price is attributed thereto.

9.3 State, County, and local transfer tax returns, if any, duly completed, signed and sworn by Seller including any information required by the Title Company to complete the Real Estate Excise Tax Affidavit, which Seller authorizes Title Company to execute as agent of Seller as and to the extent required and to file in connection with the recording of the Deed.

9.4 An Affidavit of Title in the form set forth as **Exhibit F**.

9.5 A certificate in the form of **Exhibit H** with respect to Section 1445 of the Internal Revenue Code stating whether or not Seller is a foreign person as defined in said Section 1445 and applicable regulations thereunder. Seller shall otherwise comply with all requirements under Section 1445 of the Internal Revenue Code and other provisions thereof with respect to sales of real property. In addition, Seller shall execute and deliver any withholding statements or certificates required under other applicable Law in connection with the Transaction.

9.6 A Settlement Statement which shall, among other items, set forth the Purchase Price, all credits against the Purchase Price, the amounts of all prorations and other adjustments to the Purchase Price and all disbursements made at Closing by the Closing Agent on behalf of Purchaser and Seller; Seller and Purchaser shall authorize and instruct the Closing Agent to file, as the "reporting person," Internal Revenue Service Form 1099-B ("Proceeds from Real Estate, Broker, and Barter Exchange Transactions"), if and as required by Section 6045(d) of the Code.

9.7 A reaffirmation of the representations, warranties and covenants set forth in Section 11 hereof in the form of Exhibit I and made a part hereof.

9.8 Evidence that Seller and any affiliate of Seller executing any Closing Documents have the requisite power and authority to execute and deliver, and perform under, this Agreement and all Closing Documents to be signed by such parties in connection herewith, including, but not limited to, the following: (i) if such party is a limited liability company or partnership, a certified copy of the operating agreement or partnership agreement and any filed certificate with respect thereto, together with duly executed and delivered consents of any applicable members, managers or partners thereof with respect to the Transaction; and (ii) if such party is a corporation, an incumbency certificate duly executed by the secretary or assistant secretary of the corporation with respect to the offices held by the persons who at Closing execute documents on behalf of such corporation and a certificate (duly certified by the secretary or assistant secretary of such corporation) with respect to the resolution of the Board of Directors of such corporation authorizing the corporation to enter into this Transaction, which certificate shall also recite that the resolution has been duly and unanimously adopted by the Board of Directors and remains in full force and effect.

9.9. Such other forms or documents as are customary or necessary to close this transaction in accordance with this Agreement, or as required by the Title Company in order to furnish the title insurance contemplated by Section 4 hereof.

The Parties shall cooperate to deliver applicable drafts of all proposed Closing Documents to each other not later than seven (7) days prior to Closing. Purchaser shall, at the Closing, deliver or cause to be delivered to Seller the net Purchase Price due at Closing under this Agreement, and executed counterparts of any of the Closing Documents described in this Section which are to be signed by Purchaser and any information required by the Title Company to complete the Real Estate Excise Tax Affidavit, which Purchaser authorizes Title Company to execute as agent of Purchaser as and to the extent required and to file in connection with the recording of the Deed.

10. Prorations and Closing Costs.

10.1. Taxes. All state, county, school, municipal and other general real estate and personal property taxes, ground rent, if any, water and sewer charges and all other public charges and private assessments payable against the Property shall be apportioned as of the Closing Date, at which time possession shall be given, except that Seller shall pay and discharge all special and/or benefit assessments for improvements levied or imposed prior to the date of Closing. Any tax proration based on an estimate may, at the request of Purchaser, be subsequently readjusted upon receipt of the actual tax bill. In the event that there are any outstanding delinquent taxes owed by Seller at Closing, such taxes shall be satisfied by Escrow. In no event shall Purchaser be responsible for any delinquent taxes outstanding as of Closing.

10.2. Utilities. Intentionally Omitted.

10.3. Closing Costs. Seller shall pay the following: (a) the fees and expenses of Seller's attorneys, (b) the costs (including recording costs) of any cure of title defects required of Seller hereunder,

subject to the provisions of Paragraph 4.2 of this Agreement (c) half of all escrow agent fees (if any are charged in connection with this Transaction), (d) the costs, expenses and premiums for the Title Commitment, standard Title Policy and UCC Examinations (including the title examinations and reports in connection therewith, and all endorsements reasonably required by Purchaser), (e) all transfer, documentary, excise, recording or other taxes or assessments imposed by virtue of the Transaction; and (f) costs of termination of all Existing Contracts. Purchaser shall pay the following: (a) the costs of any investigations, studies and appraisals ordered by Purchaser, (b) the fees and expenses of Purchaser's attorneys, (c) half of all escrow agent fees (if any are charged in connection with this Transaction), (d) the costs of the Survey, (e) the additional costs of an extended Title Policy if requested by Purchaser, and (f) all recording charges due on recordation of any Closing Documents.

10.4. Post-Closing Reprorations. This Section 10 shall survive Closing. If the actual amounts of any of the aforesaid proration items are unavailable as of the Closing Date, then such proration shall be made on the basis of an amount reasonably estimated by Purchaser and Seller at Closing and Purchaser and Seller shall thereupon reprorate such items at such times as the exact amounts for such proration items become available (but such prorations will be made within sixty (60) days after the Closing Date or upon such earlier date as the exact amounts for such proration become available); provided however, that no reproration adjustment shall be made if the net amount due is \$100 or less.

11. Representations and Warranties. In addition to those warranties contained elsewhere in this Agreement, Seller represents, warrants and covenants the following to Purchaser, and the representations and warranties made by Seller are true and correct as of the Effective Date of the Agreement and shall be true and correct and deemed repeated as of the Closing Date and shall survive the Closing hereunder and continue in full force and effect without limitation:

11.1 Authorization; Validity and Effect. Seller is duly organized, validly existing and in good standing under the Laws of the State of its organization or incorporation and is, to the extent required by Law, duly qualified to do business in the State in which the Property is located. Seller has the requisite power and authority to execute, deliver and perform its obligations under this Agreement, and to consummate the transactions contemplated hereby, including the requisite power and authority to convey the Property in accordance with the terms, provisions and conditions herein. This Agreement has been duly and validly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, in accordance with its terms.

11.2 No Conflict. Neither the execution and delivery of this Agreement by Seller, nor the performance by Seller of its obligations hereunder, nor the consummation of the transactions contemplated hereby, will: (i) conflict with the certificate of incorporation or bylaws of Seller; (ii) violate any statute, law, ordinance, rule or regulation, applicable to Seller, or any of its properties or assets; or (iii) violate, breach, be in conflict with or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or permit the termination of any provision of, or result in the termination of, the acceleration of the maturity of, or the acceleration of the performance of any obligation of Seller, or result in the creation or imposition of any lien upon any properties, assets or business of Seller under, any contract or any order, judgment or decree to which Seller is a party or by which it or he or any of its or his assets or properties is bound or encumbered

11.3 Consents. The execution and delivery of this Agreement by Seller does not, and the performance of this Agreement by Seller will not, require any consent with respect to Seller.

11.4 Title; Liens. Seller has and will have at Closing good and marketable fee simple title to the Real Property and good title to the Personal Property, free and clear of any liens, claims, encumbrances, tenancies and occupants whatsoever except as set forth in the Title Commitment. There are

no pending eminent domain proceedings against all or any part of the Real Property, nor is there any threat thereof known to Seller.

11.5 Litigation. There are no notices, suits, third-party claims or judgments pending or threatened against Seller or relating to the Property which have or might in the future create a lien against the Property, nor to Seller's knowledge are there any circumstances, disputes, or other disagreements that may result in a proceeding being brought relating to Seller or the Property. Seller shall, from and after the date of this Agreement, give promptly to Purchaser copies of any such notices received by Seller.

11.6 Zoning. Seller has not filed, nor received, any pending requests, applications or proceedings to alter or restrict the zoning or other use restrictions applicable to the Property.

11.7 Leases, Contracts, and Agreements. Except for the Existing Contracts, if any, there are no leases, contracts, commitments, options or understandings connected with the Property in existence as of the date hereof. There shall be no leases, contracts, commitments, options or understandings that will be binding on Purchaser from and after the Closing, as the Existing Contracts, if any, must be terminated not later than Closing.

11.8 Taxes. Seller has timely paid (or has had paid on its behalf) all taxes, assessments or levies due and owing by it with respect to the Property, and there are no liens for taxes upon the Property. Seller shall pay, when due, any and all taxes and/or assessments levied against the Property and due prior to Closing.

11.9 Compliance. Seller's and any tenant's operations on the Real Property have been in compliance in all material respects with all foreign, federal, state and local laws and regulations of any governmental authority relating to the Property ("Laws"). Seller has not received any notice asserting a failure, or possible failure, to comply with any such Laws or regulation, the subject of which notice has not been resolved as required thereby or otherwise to the satisfaction of the party sending the notice. Seller does not, and is not required to, hold any permits, licenses or franchises from governmental authorities except for those listed on Exhibit J and made a part hereof. Seller has not received any notice that the Property is the subject of any investigation by any governmental authority investigating whether remedial action is needed to respond to a release or threatened release of any waste, pollutant, hazardous or toxic substance or waste, special waste, petroleum, petroleum-based substance or waste product or by-product, or any constituent of any such substance, waste or product (collectively, "Contaminant") into the indoor or outdoor environment. Neither Seller or any occupant of the Property has filed any notice under any federal or state law indicating past or present treatment, storage or disposal of any Contaminant on the Real Property or off site, or into the indoor or outdoor environment of the Real Property or off site. Seller has not received any notice to the effect that it may be liable as a result of a release or threatened release of a Contaminant from the Real Property and Seller has no material contingent liability, including, without limitation, third-party claims, in connection with any such release or threatened release.

11.10 "As Is Sale". Plan Administrator's Addendum, attached hereto, is hereby incorporated as if fully set forth herein.

12. Default. If Seller defaults in any one of the covenants, representations or warranties of Seller contained in this Agreement, and such default continues for ten (10) days after the date of receipt of written notice from Purchaser demanding cure of such default, then (a) Purchaser may, at its option, exercise its Right of Termination, and Seller shall reimburse Purchaser for Purchaser's actual costs of title examination, Survey and environmental and other Due Diligence, or (b) Purchaser may enforce this Agreement by specific performance, and (c) Purchaser is entitled to any and all other remedies available to it at law or in equity. If Purchaser defaults in any one of the covenants, representations or warranties of



Purchaser contained in this Agreement, and such default continues for ten (10) days after the date of receipt of written notice from Seller demanding cure of such default, then Seller shall be entitled, as its sole and exclusive remedy hereunder, to terminate this Agreement by written notice to Purchaser of such termination and, if such default consists of the failure of Purchaser to acquire the Property at Closing in violation of this Agreement, to receive payment of the Deposit as full liquidated damages for such default of Purchaser (and Escrow Agent shall deliver such payment within ten (10) days after such demand of Seller), the parties hereto acknowledging the difficulty of ascertaining the actual damages in the event of such a default, that it is impossible more precisely to estimate the damages to be suffered by Seller upon Purchaser's default, that such forfeiture of the Deposit is intended not as a penalty, but as full liquidated damages and that such amount constitutes a reasonable good faith estimate of the potential damages arising therefrom, it being otherwise difficult or impossible to estimate Seller's actual damages which would be suffered by Seller in the event of default by Purchaser.

13. **Risk of Loss.** The risk of loss, damage, condemnation, or destruction of the Property by fire or otherwise prior to delivery of the Deed or settlement hereunder shall be borne by Seller. If, prior to Closing, any portion of the improvements on the Property is damaged or destroyed by fire or other casualty or eminent domain proceedings have been instituted or threatened whereby all or any part of the Property (including without limitation rights of access thereto) has been or would be taken for public purposes, Purchaser may, at its option, exercise its Right of Termination. However, if Purchaser elects to close the purchase, Seller shall assign, transfer and set over to Purchaser all of Seller's right, title and interest in and to any insurance proceeds or award that has been or will be made as a result of such fire or other casualty or such proceedings or threat of same.

14. **Real Estate Commissions.** Each Party ("**indemnifying party**") represents and warrants to the other Party ("**indemnified party**") that it has not dealt with any broker in connection with, and that no broker brought about, this transaction except for Zahler Commercial Realty, LLC ("**Purchaser's Broker**") and Neil Walter Company ("**Seller's Broker**", and collectively with Purchaser's Broker, the "**Brokers**"). The indemnifying party hereby indemnifies and agrees to hold the indemnified party harmless from and against any and all claims, liabilities, costs, and expenses (including reasonable attorneys' fees and litigation costs) which the indemnified party may suffer or incur by reason of any breach by the indemnifying party of the foregoing representation and warranty. Seller acknowledges that Purchaser's Broker is representing Purchaser in connection with this Transaction, and Purchaser acknowledges that Seller's Broker is representing Seller in connection with this Transaction. Seller agrees to pay Brokers an aggregate commission of five percent (_5%) of the Purchase Price at Closing, for which Brokers shall each receive half of the aggregate commission paid. The provisions of this Section shall survive the Closing or sooner termination of this Agreement.

15. **Successors and Assigns; Survival.** The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns. This Agreement may be assigned and/or transferred by Purchaser at Purchaser's discretion and without the consent of Seller. Any provisions of this Agreement which by their nature require performance or observance after the Closing Date will survive Closing and shall continue in full force and effect.

16. **Indemnity.** This Section 16 shall survive the Closing and transfer of the Deed to the Real Property. Seller hereby agrees to indemnify, defend and hold Purchaser and its successors, assigns, affiliates, and representatives (each individually, a "**Purchaser Indemnitee**," and collectively, the "**Purchaser Indemnitees**") harmless from and against all liability, claims, suits, losses, damages, costs and demands, including legal expenses and reasonable attorneys' fees connected therewith, suffered or incurred by any Purchaser Indemnitee which is caused by, results from or arises out of:



16.1 the breach of any (a) representation or warranty of Seller contained in this Agreement or any certificate, schedule, exhibit or writing delivered by Seller to Purchaser with respect hereto or thereto (which breach shall be determined for purposes of this Section without regard to any qualification by terms such as "material" contained in any such representation or warranty) or (b) covenant of Seller contained in this Agreement, or any certificate or writing delivered by Seller to Purchaser with respect hereto or thereto;

16.2 any taxes (i) imposed on any Seller with respect to any taxable period, or (ii) imposed with respect to the Real Property for any taxable year or period ending on or prior to the Closing Date and the portion through the end of the Closing Date for any taxable period that includes but does not end on the Closing Date;

16.3 any claim directly or indirectly arising out of or relating to Seller's conduct, operation or use of the Property, in each case on or prior to the Closing Date; and

16.4 any ownership claims by, or liens of, any persons, in all cases attributable to the period prior to the Closing Date.

17. **Entire Agreement; Modification; Waiver.** This Agreement, including the exhibits and schedules attached hereto and the agreements to be delivered in connection herewith, contain the entire agreement between Purchaser and Seller with respect to the Transaction, including all representations and warranties between them, and supersedes all prior understandings and agreements. The Schedules and Exhibits described herein and attached hereto constitute an inseparable part of this Agreement and are incorporated herein for all purposes as if fully set forth herein. This Agreement may be amended by the Parties hereto at any time by execution of an instrument in writing signed on behalf of each of the Parties hereto. Any waiver of a provision of this Agreement, must be in writing and signed by the waiving Party. No failure or delay on the part of either Party in exercising any of their respective rights hereunder upon any failure by the other Party to perform or observe any condition, covenant, or provision herein shall operate as a waiver thereof, nor shall any single or partial exercise of any of such rights preclude any other or further exercise thereof or the exercise of any other right hereunder.

18. **Partial Invalidity.** If any portion of this Agreement as applied to either Party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way diminish or otherwise impair or affect the validity or enforceability of the remaining portions of this Agreement.

19. **Seller's Obligations.** Purchaser acknowledges that Closing of this Transaction is subject to the approval of the Court, and that the Court will approve the highest/best offer received by Seller. In the event that Seller receives any offer after the Effective Date of this Agreement that the Court deems to be better than the terms of this Agreement with respect to purchase price and/or timing of closing, Seller shall provide written notice to Purchaser of such offer, which notice shall include a copy of the offer and the specific term(s) (purchase price and/or timing of closing) which the Seller deems to be better than those terms in the Agreement (the "Offer Notice"). Purchaser shall have fifteen (15) days from its receipt of the Offer Notice to elect to match such term(s) by notifying Seller in writing of such election. In the event that Purchaser elects to match the specific term(s) identified in the Offer Notice, Purchaser and Seller shall promptly amend this Agreement to reflect the matching of such specific term(s), and the Offer subject to the Offer Notice shall be denied by the Court. Seller shall not do or permit to be done any physical act with respect to the Property that would adversely affect or make more expensive Purchaser's contemplated development thereof, and if, at Closing, there exists any adverse change in the condition of the Property not caused solely by Purchaser, Seller shall, if required by Purchaser, restore the Property to the condition in which it existed on the earlier of the date of Seller's or Purchaser's execution hereof.

20. **Notices.** Whenever either Party wishes to give any notice, request, or document to the other (whether required by this Agreement or otherwise), such notice, request, or document (a) shall be sent by a nationally recognized overnight courier delivery service for next day delivery, property addressed to the last address previously specified in writing by the Party to whom the written notice is given, and (b) shall be sent by emailing to the email address listed below (provided that a copy of such notice is also delivered by the method listed herein in clause (a) above). If no other address has been specified, all notices, requests, or documents directed to Seller shall be sent to it as follows:

Mark D. Waldron, Plan Administrator
6711 Regents Blvd. W.
Tacoma, WA 98466
(253) 565-5800 ext. 4
mark@orlandini-waldron.com
diana@orlandini-waldron.com

With a copy to:

Tom Quinlan
Attorney at Law
1501 Dock Street
Tacoma, WA 98402
(253) 627-1091
tom@smithalling.com

All notices, requests or documents directed to Purchaser shall be sent to it as follows:

BP West Coast Products LLC
30 South Wacker Drive, Suite 900
Chicago, IL 60606
Attention: Real Estate & Property Manager
Telephone: 312.809.4525
Email: Eric.Schlesinger@bp.com

With a copy to:

BP America Inc.
150 W. Warrenville Rd.
Mail Code 200-1W
Naperville, Illinois 60563
Attention: Real Estate Attorney
Telephone: 331.702.3192
Email: William.Lockhart@bp.com

With a copy to:

Zahler Commercial Realty
21822 Lassen Street, Unit N
Chatsworth, CA 91311
Attention: Warren Zahler
Telephone: 818.387.8048
Email: warren@zahlercommercial.com

All notices, requests or documents directed to Escrow Agent shall be sent to it as follows:

First American Title Insurance Company
4707 South 19th St., Suite 101
Tacoma, WA 98405
(253) 752-3600

Notices, requests and documents given in the manner prescribed shall constitute sufficient notice of the contents thereof for all purposes and shall be deemed to have been given when the same have been received by the addressee thereof, when delivery thereof shall be refused by such addressee, or when the same is returned to the giver thereof as undeliverable (as the case may be), as set forth in the business records of the applicable overnight courier delivery service. Seller and Purchaser shall have the right to designate changes to their respective notice addresses, effective five (5) days after the delivery of written notice thereof.

21. No Negative Inference Headings. The Parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of this Agreement and that this Agreement shall not be subject to the principle of construing their meaning against the Party which drafted same. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

22. Further Action; No Third Party Beneficiaries. At any time after the date of this Agreement, each Party shall execute and deliver to each other such other instruments or take such other actions as each Party may reasonably request in order to carry out the intent and purpose of this Agreement. This Agreement shall not confer any rights or remedies upon any Person other than Purchaser and Seller, and their respective successors and permitted assigns, other than explicitly set forth herein.

23. Recording; Confidentiality. At Purchaser's request, a memorandum or short form of this Agreement in recordable form shall be executed and delivered by each Party to the other; provided further that Purchaser shall release by quitclaim deed or other appropriate instrument of record, any memorandum or short form of agreement upon the termination of this Agreement. Except as aforesaid, Seller hereby agrees that it will not release or cause or permit to be released any press notices, publicity (oral or written) or advertising promotion relating to this sale. However, Seller is specifically authorized to disclose any and all information necessary to the Bankruptcy Court, the United States Trustee's Office, the Debtor, the creditors in the bankruptcy case, and all parties in interest in order to obtain Bankruptcy Court approval for this sale.

24. Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE, IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL

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ADMIN/21438781v3/sl

Purchase Agreement
Address, _County_, _State_ (MOJO Form Acquisition Documents)

BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (III) IT MAKES SUCH WAIVERS VOLUNTARILY AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 24.

25. **Attorneys' Fees.** A Party to this Agreement who is the prevailing Party in any legal proceeding against any other Party brought under or with respect to this Agreement or the transaction contemplated hereby shall be additionally entitled to recover court costs and reasonable attorneys' fees from the non-prevailing Party. The provisions of this Section shall survive the Closing or termination of this Agreement.

26. **Governing Law.** This Agreement shall be governed in all respects solely by the substantive laws of the State in which the Real Property is located, without regard to conflicts of laws or the choice of law principles of any jurisdiction.

27. **Counterparts and Electronic Execution.** This Agreement may be executed in multiple counterparts, all of which when taken together shall constitute one Agreement. For purposes of executing this Agreement, a document signed and transmitted by facsimile machine or e-mail shall be treated as an original document. The signature of any Party thereon shall be considered as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of either Party, any facsimile or e-mail document shall be re-executed by the other Party in original form. No Party hereto may raise the use of a facsimile machine or e-mail as a defense to the enforcement of this Agreement or any amendment executed in compliance with this Section. This Section does not supersede the requirements of the "Notices" provisions of this Agreement.

[SIGNATURE PAGES FOLLOW]



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

SELLER:
DUPONT TOWN SQUARE DEVELOPMENT,
LLC, a Washington limited liability company

By: 

MARK D. WALDRON, Chapter 11 Plan
Administrator for the Bankruptcy Estate
of Ismail Arslangiray, Managing Member

MARK D. WALDRON
Chapter 11 Plan Administrator
Estate of Ismail Arslangiray, Case #11-42290
6711 Regents Blvd. W.
Tacoma, WA 98466
Phone: 253-565-5800
FAX: 253-564-2998
Email: mark@orlandini-waldron.com

PURCHASER:
BP WEST COAST PRODUCTS LLC, a Delaware
limited liability company

By: 

Name: Daniel R. Fiden

Title: Vice President

AGREEMENT OF ESCROW AGENT

The undersigned has executed this Agreement solely to confirm its agreement to hold the Escrow Deposits in escrow in accordance with the provisions and otherwise comply with the provisions of **Exhibit B** to this Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date of the within Agreement.

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE CO.

By: _____
Name: _____
Title: _____



ADMIN/21438781v3/s1

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Purchase Agreement
Address, _County_, _State_ (MOJO Form Acquisition Documents)

EXHIBIT A

LEGAL DESCRIPTION EXHIBIT

The land referred to is situated in the County of Pierce, City of Dupont, State of Washington, and is described as follows:

PARCEL A:

That portion of the Southwest quarter of Section 25 and of the Northwest quarter of Section 36, Township 19 North, Range 1 East, W.M., City of Dupont, Pierce County, Washington, being more particularly described as follows:

Commencing at Fort Lewis Monument No. 262, being a 6"x6" concrete monument with lead and tack, as shown on that Record of Survey by ESM, Inc., recorded under Pierce County Recording No. 9303050249;

THENCE South 87°57'04" East, 572.46 feet to the Westerly right-of-way margin of Dupont-Stellacoom Road;

THENCE along said Westerly margin, South 01°42'01" West 1,488.92 feet to the Southeasterly corner of the plat of "BELL HILL" as recorded under Pierce County Recording No. 9109060562 and the True Point of Beginning;

THENCE continuing along said Westerly margin the following courses:

South 01°42'01" West, 74.27 feet to a point of curvature;

Southwesterly 589.42 feet along the arc of a tangent curve to the right, having a radius of 1846.32 feet, through a central angle of 19°49'02" to a point of tangency;

South 21°31'03" West, 234.08 feet;

South 31°28'47" West, 758.44 feet to the Southerly line of a 15 foot wide easement granted to Pierce County School District No. 7 for a path by instrument recorded under Pierce County Recording No. 1604647;

THENCE along said Southerly line, the following courses:

North 73°58'12" West, 6.14 feet;

North 76°55'56" West, 137.26 feet;

North 80°45'26" West, 149.55 feet;

North 83°19'26" West, 83.52 feet to the Southeasterly corner of Block "L" as shown on the "REPLAT OF THE VILLAGE OF DUPONT" as recorded in Volume 15, page 66, records of Pierce County, Washington;

THENCE along the Southeasterly line of said Block "L" and along the Easterly line of that tract of land conveyed by Deed recorded under Recording No. 8609160527, North 37°31'09" East, 421.17 feet;

THENCE along the Easterly and Northeasterly lines of said Tract, the following courses:

North 50°54'48" West, 39.71 feet;

North 20°15'28" East, 177.79 feet;

North 08°06'30" East, 148.69 feet;

North 18°28'36" East, 97.46 feet;

North 10°27'09" West, 109.27 feet;

North 10°49'00" East, 83.70 feet;

North 39°55'59" West, 402.16 feet;

North 49°44'03" West, 138.48 feet;

North 41°21'42" West, 83.79 feet;

MJH

North 47°49'04" West, 99.24 feet to the Southerly line of said Plat of "Bell Hill";
THENCE along said Southerly line, the following courses:
North 86°09'51" East, 566.26 feet;
South 30°02'50" East, 56.31 feet;
North 81°03'07" East, 56.42 feet;
North 76°19'50" East, 49.78 feet;
South 80°24'24" East, 25.68 feet;
South 86°11'31" East, 41.36 feet;
South 77°20'45" East, 37.53 feet;
North 82°37'33" East, 40.92 feet;
North 83°03'30" East, 29.71 feet;
South 71°21'32" East, 35.46 feet;
South 73°42'35" East, 28.67 feet;
South 61°30'59" East, 58.65 feet;
North 87°41'02" East, 42.60 feet;
South 37°31'32" East, 35.01 feet;
North 74°09'45" East, 57.08 feet;
South 88°17'59" East, 24.03 feet to the True Point of Beginning;

EXCEPT any portion thereof lying within Dupont-Stellacoom Road.

PARCEL B:

That portion of the Northwest quarter of Section 36, Township 19 North, Range 1 East, W.M., in Pierce County, Washington, described as follows:

Commencing at a bronze monument at the intersection of the centerline of Barksdale Avenue and the Northerly line of the Northern Pacific Railroad Company's Right of Way, as shown on the Plat of REPLAT OF THE VILLAGE OF DUPONT, according to the plat recorded in Volume 15 of Plats, page 66;

THENCE North 69°47'46" East 41.36 feet along said Railroad Right of Way to the Northerly line of said Barksdale Avenue;

THENCE along said Northerly line of Avenue, North 63°41'54" West 679.50 feet to the True Point of Beginning;

THENCE North 54°19'24" West 6.81 feet to the Southeasterly corner of Block "L" in said REPLAT OF THE VILLAGE OF DUPONT;

THENCE North 35°40'36" East 45.10 feet to the Southerly line of a 15 foot easement granted to the Pierce County School District 7 for path;

THENCE on said Southerly line of easement, Easterly 521.53 feet to the Westerly line of Dupont-Stellacoom Highway, as established in Deed recorded December 11, 1942 under Recording No. 1311721;

THENCE Southerly along said Westerly line 219 feet, more or less, to the Northerly line of Barksdale Avenue;

THENCE North 63°41'54" West, along said Northerly line to the Point of Beginning;

EXCEPT that portion as condemned in Decree of Appropriation entered March 11, 1988, in Pierce County Superior Court No. 87-2-08756-1;

EXCEPT any portion thereof lying within Dupont-Stellacoom Road.

BOTH SITUATE in the County of Pierce, State of Washington



PLAN ADMINISTRATOR'S ADDENDUM
TO
REAL ESTATE PURCHASE AND SALE AGREEMENT

This Addendum to Real Estate Purchase and Sale Agreement ("Addendum") is entered into this 25th day of May, 2017, by and between DUPONT TOWN SQUARE DEVELOPMENT, LLC, a Washington Limited Liability Company, Seller, by managing members John Dhane and Mark D. Waldron, Chapter 11 Plan Administrator for the Bankruptcy Estate of Ismail Arslangiray, member of Dupont Town Square Development, LLC, United States Bankruptcy Court for the Western District of Washington at Tacoma, Case No. 11-42290 ("Seller") and BP WEST COAST PRODUCTS LLC, a Delaware Limited Liability Company ("Purchaser"). To the extent the terms of this Addendum contradict or conflict with the terms of the Sale Agreement, this Addendum controls.

1. This is an Addendum to the Real Estate Purchase and Sale Agreement dated May 25, 2017, and any and all addenda thereto ("Sale Agreement") concerning property designated as Pierce County Tax Parcel Nos. 0119362009, 0119362012, 0119362039, and 0119362043, held in title by Dupont Town Square Development LLC, in the City of Dupont, County of Pierce, State of Washington.

2. By Order entered on January 8, 2013 under Docket Number 291 in the Chapter 11 bankruptcy proceeding of Ismail Arslangiray, United States Bankruptcy Court for the Western District of Washington at Tacoma, Case No. 11-42290, ("Arslangiray Bankruptcy"), Mark D. Waldron is the court-appointed Plan Administrator and as such may sell real property owned by any limited liability company or other legal entity owned wholly or in part by Ismail Arslangiray, including Dupont Town Square Development, LLC. The sale of the property addressed herein is subject to bankruptcy court approval in the Arslangiray Bankruptcy upon notice and hearing, and the Seller's rights and obligations hereunder are subject to Seller obtaining bankruptcy court approval to sell and transfer the property subject hereto, free and clear of liens and encumbrances, with liens and encumbrances to attach to the proceeds thereof as evidenced by a final, non-appealed order.

3. Seller has not occupied the subject property and makes no warranties or representations, of any kind or nature, either expressed or implied, as to the condition of the property, including but not limited to square footage, zoning, roof, foundation, building materials, siding, roofing, ceiling, insulation, drainage, leakage, pest, rot, mold problems, sewage, septic, plumbing, electrical, heating, furnace, hazardous substances, above, upon or below the subject property, lead paint, asbestos, and/or the quality or condition of the improvements thereon or other defects arising therefrom, including possible building defects or health hazards, encroachments, including fences, rockeries, buildings or otherwise. For purposes of this Addendum, hazardous substances means to include any and all oil, or petrochemical products, PCBS, pesticides, asbestos, urea

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formaldehyde, flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substance now or hereafter defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal, state or local law or regulations.

4. The property subject hereto is being sold and is accepted by Purchaser "AS IS, WHERE IS" without any warranties or representations of any kind or nature, either expressed or implied, except as expressly provided in the Addendum.

5. Purchaser may not rely on Seller, Seller's agents, Purchaser's agents, or the bankruptcy debtor, Ismail Arslangiray, as to the condition of the property and no person acting on behalf of Seller is authorized to make any such representation, agreement, statement, warranty, guaranty or promise regarding the property or any aspect of the property.

6. Title to the property shall be conveyed by Plan Administrator's Quit Claim Deed and the property shall be subject only to the warranties of title provided in a standard form owner's policy of title and Purchaser shall look to the title company issuing said policy for any claim or damage.

7. In the event of Seller's default hereunder, Purchaser's recourse is limited to return of the earnest money, less applicable charges or costs of Purchaser.

8. The purchase price shall be paid in cash at closing. Seller shall not carry any portion of the purchase price. Purchaser shall be responsible to pay any and all of Purchaser's expenses associated with Purchaser's loan or financing, including loan costs, creditor report, appraisal charge, lender's title policy and other associated expenses or costs.

9. The property and the grounds will not be maintained by Seller pending closing.

10. The United States Bankruptcy Court for the Western District of Washington at Tacoma retains exclusive jurisdiction over the property subject hereto and any and all issues arising hereunder, including but not limited to any dispute between the parties under the Sale Agreement and the Addendum.

11. Purchaser accepts the property subject to any and all conditions disclosed in any inspection or pest inspection regarding the property and Seller is under no obligation to make any repairs to the property.

12. The property subject to this sale consists of the real property identified above and does not include any personal property, unless specifically identified. In the event the property contains personal property, said items will be included in the transfer for no consideration. Seller makes no warranties or representations as to the existence



of such items. The included items identified in the Sale Agreement shall be only those items which are located at or in the property at closing.

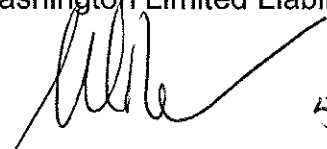
13. Seller shall not provide a Seller's Disclosure, a Real Property Disclosure Statement, Disclosure of Information on Lead Base Paint, Lead Based Paint Hazard Statement or any other similar or related notices. Seller makes no warranties or representations concerning the existence of lead based paint located on the property.

14. Regarding the Financing Addendum to Purchase and Sale Agreement, Optional Clauses Addendum to Purchase and Sale Agreement, Inspection Addendum to Purchase and Sale Agreement, Purchaser's Satisfaction, and any and all other addenda to the Sale Agreement, Seller is not responsible for any costs or expenses associated therewith and in the event any of said addenda address, identify or require Seller to respond thereunder indicating Seller's agreement or rejection to changes or modifications thereof, and Seller does not give timely notice or response thereto, Seller will be deemed to have rejected such and Purchaser may terminate the Sale Agreement within three (3) days after the deadline for Seller's response or notice.

SELLER:

Dupont Town Square Development, LLC,
a Washington Limited Liability Company

By:



5/25/17

MARK D. WALDRON, Chapter 11 Plan
Administrator for the Bankruptcy Estate
of Ismail Arslangiray, Managing Member
6711 Regents Blvd. W.
Tacoma, WA 98466
Phone: 253-565-5800
Facsimile: 253-564-2998
Email: mark@orlandini-waldron.com

PURCHASER:

BP West Coast Products LLC,
a Delaware Limited Liability Company

By: _____

Its _____

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9 IN THE UNITED STATES BANKRUPTCY COURT
10 FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

11 In Re:) **Case No. 11-42290**
12 ISMAIL ARSLANGIRAY,) **Chapter 11 Proceeding**
13) **ORDER ON MOTION TO SELL**
14 Debtor.) **REAL PROPERTY**
15 _____)

16 **THIS MATTER** having come on regularly before the above-entitled Court upon the
17 motion of MARK D. WALDRON, the Court-appointed Plan Administrator for the
18 Bankruptcy Estate of Ismail Arslangiray, to sell certain real property of the Debtor's estate;
19 more than twenty (20) days have elapsed since the mailing of the notice to all creditors and
20 parties in interest and the Court finding that notice to creditors and other parties in interest
21 was sufficient; and no objections having been filed or served upon the Plan Administrator,
22 as evidenced by the Declaration of No Objections on file herewith, or objections having
23

24 **LAW OFFICES**
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25 ORDER ON MOTION TO SELL REAL PROPERTY -1-

1 been filed and said objections having been incorporated into this Order; and the Court
2 deeming itself fully advised of the premises and determining that the sale of the subject
3 real property is in the best interest of the estate, now, therefore, it is hereby

4 **ORDERED** that, pursuant to 11 USC §§ 105(a) and 363(b)(1)(f), the Plan
5 Administrator is hereby authorized to sell the Estate's interest in Dupont Town Square
6 Development LLC, which owns unimproved land commonly referred to as Barksdale
7 Avenue and Steilacoom Road in the City of Dupont, Washington, designated as Tax Parcel
8 Nos. 0119362043, 0119362009, 0119362039 and 0119362012, for \$860,000.00, all cash
9 at closing, and pursuant to the additional terms of sale as set forth in the Real Estate
10 Purchase & Sale Agreement, to BP West Coast Products LLC and/or Assigns, or to any
11 third party buyer who is unrelated to Debtor or anyone connected with the case and who
12 will actually complete the sale at that price or higher, as determined by the Plan
13 Administrator. It is further

14 **ORDERED** that the sale of this real property shall be free and clear of any interest
15 in such property, including but not limited to liens and encumbrances, all record owners,
16 their predecessors and/or successors in interest, including any unrecorded equitable or
17 legal interests in the properties, except as specifically set forth above. Unless paid at
18 closing and satisfied thereby, each lien or encumbrance shall attach to the proceeds, after
19 payment of costs of sale and the like. However, the property shall not be transferred free
20 and clear of real property tax liens related to tax years 2017 and 2018 not yet due and
21 owing. It is further

22 **ORDERED** that the Plan Administrator, at closing, is authorized but not required to
23
24
25

1 pay all costs of sale, including commissions, escrow fees, title insurance, real property
2 taxes, and the like. After payment of all closing costs and reconciliation of the accounting
3 by Dupont Town Square Development LLC, including payment by the LLC entity of the
4 Plan Administrator's fees and costs associated with this sale, to be divided equally among
5 the three LLC members, as set forth in Plan Administrator's Motion, the Debtor's one-third
6 share of the net proceeds shall be distributed to Plan Administrator for distribution to
7 creditors according to the confirmed Chapter 11 Plan. It is further

8 **ORDERED** the validity of the sale approved hereby shall not be affected by the
9 appointment of a Successor Plan Administrator, the dismissal of the above-captioned case,
10 or its conversion to another chapter under title 11 of the United States Code. It is further

11 **ORDERED** This Court shall and hereby does retain jurisdiction to (1) enforce and
12 implement the terms and provisions of the Agreement, all amendments thereto, any
13 waivers and consents thereunder, and any other supplemental documents or agreements
14 executed in connection therewith; (2) compel delivery and payment of the consideration
15 provided for under the Agreement; (3) resolve any disputes, controversies or claims arising
16 out of or relating to the Agreement; and (4) interpret, implement and enforce the provisions
17 of this Order. It is further

18 **ORDERED** that this sale is subject to that certain Order confirming the Chapter 11
19 Plan of Ismail Arslangiray, Docket Number 291, and therefore exempt from excise taxes.
20 It is further

21 **ORDERED** notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective
22 immediately after its entry, absent a stay pending appeal. It is further

ORDERED pursuant to 11 USC §363(m), absent a stay of this order pending appeal, the reversal or modification on appeal of this Order, or any provision thereof, shall not affect the validity of the sale transactions approved hereby which are consummated prior to such stay, reversal or modification on appeal.

Presented by:

By: /s/ MARK D. WALDRON

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