

Environmental Covenant  
Former Amoco Site 0220  
Draft January 20, 2016

When Recorded Return to:  
Hardison Apartments, LC  
273 N. East Capitol Street  
Salt Lake City, Utah 84103

With Copies to:

Morgan Atkinson Project Manager  
State of Utah  
Division of Environmental Response and Remediation Utah Department of Environmental Quality  
195 North 1950 West, 151 Floor  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

Arcadis, U.S., Inc  
100 Montgomery Street  
Suite 300  
San Francisco, California 94104

12320747  
07/14/2016 03:21 PM \$26.00  
Book - 10452 Pg - 5175-5183  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
HARDISON APARTMENTS  
273 N EAST CAPITOL ST  
SLC UT 84103  
BY: CBP, DEPUTY - WI & P.  
11

Salt Lake County Parcel No. 16-06-202-009  
500 East South Temple Street, Salt Lake City, Utah

## ENVIRONMENTAL COVENANT

This environmental covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, et seq. (the "Utah Act"). Hardison Apartments, LC, as Grantor ("Grantor"), makes and imposes this environmental covenant upon the property more particularly described in Exhibit A attached hereto (the "Property"). The street address of the Property is 500 East South Temple Street, Salt Lake City, Utah. This environmental covenant shall run with the land, pursuant to and subject to the Utah Act.

1. Notice. Notice is hereby given that the Property is or may be contaminated with a regulated substance and therefore this environmental covenant is imposed to mitigate the risk to public health, safety and the environment.
2. Environmental Response Project. An environmental response project was conducted on the Property under the authority of the Utah Underground Storage Tank (UST) Act, Title 19, Chapter 4 of the Utah Code Ann that is administered by the Division of Environmental Response and Remediation ("DERR") within the Utah Department of Environmental Quality ("UDEQ"). The environmental response project is identified by DERR as Facility Identification No. 4000093B, Release Site FIA. The Property was used by various owners and operators as a gasoline service station from 1926 to 1989, and a release or releases of gasoline to the environment occurred during service station operations on the Property. Property structures and underground storage

tanks ("USTs") were removed, and the Property is currently a vacant lot. Chevron U.S.A., Inc. ("Chevron") was identified as the responsible party for the remediation of the upper 20 feet of soil within the footprint of the former service station building on the Property (Facility ID No. 4001975, DERR Release INF), known as the "shallow surface area" as shown on the Site Map attached as Exhibit B. DERR issued Chevron a No Further Action Letter dated September 7, 2012, for Facility ID No. 4001975, Release INF, requiring Chevron to ensure the contaminated soils within the shallow surface area are properly handled and disposed during construction or redevelopment of the Property. The Property was also impacted by a gasoline release from underground storage tanks at a former gasoline service station site ("Amoco Site") located at 479 East South Temple Street, Salt Lake City, Utah, upgradient and north of the Property. The environmental response project number for the Amoco Site is 4000093, Release FIA. Pursuant to an Administrative Agreement captioned "In Re Southern Boundary Order" for Facility No. 4000093-B, dated October 9, 1997, among Amoco Oil Company ("Amoco"), Chevron, other parties, and the Utah Solid and Hazardous Waste Control Board of the UDEQ, Chevron is responsible for impacted soils within the "shallow surface area" on the Property, shown on Exhibit B, and Amoco agreed to remediate impacted soil and groundwater on the Property outside of the "shallow surface area," shown on Exhibit B. BP Products North America Inc. ("BP")), the Grantee and Holder under this environmental covenant, is the successor in interest to Amoco.

3. Grantor. The Grantor of this environmental covenant is also an Owner as defined in Paragraph 4.
4. Owner. The "Owner" of the Property is a person who controls, occupies, or holds an interest (other than this environmental covenant) in the Property at any given time. Because this environmental covenant runs with the land, the obligations of the Owner are transferred to assigns, successors in interest, including without limitation to future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and any other person or entity who acquires any interest whatsoever in the Property, or any portion thereof, whether or not any reference to this environmental covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof ("Transferees"). Upon transfer of an Owner's interest in the Property, the Owner shall have no further rights or obligations hereunder. Notwithstanding the foregoing, nothing herein shall relieve Owner during the time it holds an interest in the Property of its responsibilities to comply with the terms hereof and all other provisions of applicable law or of responsibility for its failure to comply during the time it held an interest in the Property.
5. Holder. BP is the grantee ("Holder") of this environmental covenant as defined in Sections 57-25-102(6), 103(1), 103(3)(b). Holder may enforce this environmental covenant. Holder's obligations hereunder are limited to the specific provisions and the limited purposes described herein. Subject to the provisions hereof, Holder's rights and obligations survive the transfer of the Property.
6. Agency. The Utah Department of Environmental Quality ("UDEQ") is the Agency (as defined in the Utah Act) under this environmental covenant. The Agency may be referred to herein as the Agency, the UDEQ, or the DERR. The Agency may enforce this environmental covenant. The Agency assumes no affirmative duties through the execution of this environmental covenant.
7. Administrative Record. The environmental response project is assigned Facility Identification No. 4000093B, Release Site FIA on file with the DERR ("Administrative

Record”).

8. Activity and Use Limitations. As part of the environmental response project, the following activity and use limitations are imposed on the Property to address the remaining contamination at the Property from leaking underground storage tanks (“Remaining Contamination”):

- a. Use Limitations. Use of the Property shall prevent unacceptable exposure to the Residual Contamination in accordance with the criteria and standards required by Utah Admin. Code R311-211 Corrective Action Clean-Up Standards Policy and as approved by DERR under 8.c. and 8.d. of this environmental covenant.
- b. Groundwater Use Limitations. In order to prevent exposure to contaminated groundwater, extraction or use of ground water, except for investigation or remediation thereof or as described in subparagraph c. ii. below, is prohibited.
- c. Construction Limitations.
  - i. In the event that future construction activities involving soil excavation are planned in the petroleum-contaminated area shown on the Site Map attached Exhibit B, workers will be required to comply with the Occupational Safety and Health Administration (“OSHA”) training for hazardous materials facilities (29 CFR 1910.120).
  - ii. Petroleum-contaminated soil or water that is removed during any construction activities shall be properly treated and/or disposed in accordance with law and in accordance with the approved Pre-Construction Plan described in Paragraph 8(d)(i), below. Owner shall maintain documentation demonstrating the proper handling and disposal of contaminated soil and groundwater, including waste manifests, and submit them to the DERR with the Post-Construction Report referenced in Paragraph 8(d)(ii), below. Owner shall retain a Utah DERR certified underground storage tank consultant to oversee the removal of contaminated soil and/or groundwater, and a Utah DERR certified soil and groundwater sampler to conduct sampling.
  - iii. When constructing any structure, Owner shall install, maintain and operate vapor-related engineering controls to eliminate the potential for subsurface vapor phase petroleum to migrate into the structure, unless a vapor intrusion risk assessment is conducted and shows that there is no unacceptable vapor intrusion risk, as determined by DERR using the criteria and standards as required by Utah Admin. Code R311-211 Corrective Action Clean-Up Standards Policy – UST and CERCLA Sites, as may be amended from time to time.
- d. Pre-Construction Plan. Owner will comply with the following prior to, during, and post construction:
  - i. Prior to beginning any construction, Owner shall submit a Pre-Construction Plan to the DERR and obtain approval of said plan by the DERR. The Pre-Construction Plan shall include the following:
    - A) A description of how contaminated soils and groundwater will be handled and disposed of during construction;

- B) A description of how the post-construction use will prevent unacceptable exposure to the Residual Contamination in accordance with the criteria and standards required by Utah Admin. Code R311-211 Corrective Action Clean-Up Standards Policy – UST and CERCLA Sites;
  - C) The installation and design specifications of any vapor barriers or other corrective action measure to be implemented at the site, including providing the DERR with copies of Owner's application for a building permit with its vapor-related engineering control plan, which has been reviewed, stamped and certified by a Utah licensed Professional Engineer as adequate to protect human receptors from exposure to petroleum vapor;
  - D) A description of how Owner will perform the public notification process meeting the requirements of the DERR Leaking Underground Storage Tank Program for Corrective Action Plan approvals through DERR's adoption of 40 CFR § 280.67, which includes providing notice to those members of the public directly affected by the petroleum release and planned corrective action;
  - E) A description of the operation and maintenance of any corrective action systems installed (i.e. a vapor barrier system);
  - F) Any required permits and approvals for environmental work associated with the petroleum contamination; and
  - G) Any sampling plans.
- ii. After construction is completed and prior to occupation, Owner shall submit to the Agency a Post-Construction Report, which includes the following:
- A) A report signed by a Utah Certified UST Consultant documenting the proper handling and disposal of contaminated soil and groundwater, including waste manifests;
  - B) Documentation demonstrating that the installed vapor mitigation system provides adequate protection to human receptors from exposure to petroleum vapor, including as-built drawings of the building and vapor mitigation system, documentation prepared by a Utah Licensed Professional Engineer certifying that the vapor mitigation system was installed and is operational according to the approved plans and specifications; and
  - C) Any soil, groundwater or vapor sample results from samples taken before and in connection with the construction.
- e. Compliance Reporting. Upon request, Owner shall submit written documentation, including vapor monitoring, to the Agency verifying that the activity and use limitations remain in place and are being followed.
- f. Payment of Costs. Holder and Owner are jointly and severally responsible to reimburse UDEQ for technical reviews, inspections, other actions performed, and costs incurred by

UDEQ pursuant to the oversight and enforcement of this environmental covenant or performed at the request of the Owner.

9. Compliance Enforcement. This environmental covenant may be enforced pursuant to the Utah Act. Failure to timely enforce compliance with this environmental covenant or the activity and use limitations contained herein shall not bar subsequent enforcement, and shall not be deemed a waiver of a right to take action to enforce any non-compliance. Nothing in this environmental covenant shall restrict the Agency from exercising any authority under applicable law.
10. Rights of Access. The right of access to the Property is permanently granted to the Agency and the Holder and their respective contractors for necessary response actions, inspections, implementation and enforcement of this environmental covenant.
11. Notice upon Conveyance. Owner shall notify the Agency and Holder within 20 days after each transfer of ownership of all or any portion of the Property. Owner's notice to the Agency and Holder shall include the name, address and telephone number of the transferee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred. Instruments that convey any interest in the Property (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity who acquires the interest that the Property is subject to this environmental covenant and shall identify the date, entry no., book and page number at which this document is recorded in the records of the Salt Lake County Recorder, in the State of Utah. Failure to provide notification shall have no effect upon the enforceability and duty to comply with this environmental covenant.
12. Representations and Warranties. Grantor hereby represents and warrants to the other signatories hereto:
  - a. that it is the sole fee simple owner of the Property;
  - b. that it has the power and authority to enter into this environmental covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
  - c. that it has identified all other persons that own an interest in or hold an encumbrance on the Property, has notified such persons of its intention to enter into this environmental covenant, and has notified the Agency of the names and contact information of the persons holding such encumbrances as provided in Paragraph 16, below, entitled: "Notice;" and,
  - d. that this environmental covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which it is a party or by which it may be bound or affected.
13. Amendment or Termination. This environmental covenant may be amended or terminated pursuant to the Utah Act. Except as set forth herein, Grantor waives any and all rights to consent or notice of amendment concerning any parcel of the Property to which Grantor has no fee simple interest at the time of amendment or termination.
14. Effective Date, Severability and Governing Law. The effective date of this environmental covenant shall be the date upon which the fully executed environmental covenant has been recorded as a document of record for the Property with the Salt Lake County Recorder. If any provision of this environmental covenant is found to be unenforceable in any respect,

the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This environmental covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

15. Recordation and Distribution of Environmental Covenant. Within thirty (30) days after the date of the final required signature upon this environmental covenant, Grantor shall file this environmental covenant for recording in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office. Grantor shall distribute a file-and-date stamped copy of the recorded environmental covenant to the Agency.
16. Notice. Unless otherwise notified in writing by or on behalf of the pertinent party any document or communication required by this environmental covenant shall be submitted to:

If to the UDEQ:

Morgan Atkinson, Project Manager  
State of Utah  
Facility Identification No. 4000093B, Release Site FIA  
Division of Environmental Response and Remediation  
Utah Department of Environmental Quality  
195 North 1950 West, 1<sup>st</sup> Floor  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

If to the Grantor/Owner:

Hardison Apartments, LC  
273 N. East Capitol Street  
Salt Lake City, Utah 84103

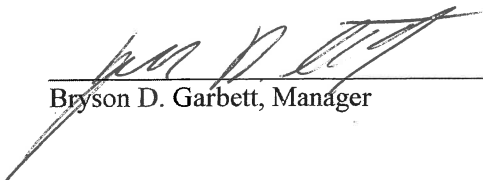
If to the Holder:

Jim L. Smith  
Contracts Manager  
Remediation Management Services Company  
On behalf of BP Products North America Inc.  
201 Helios Way  
Helios Plaza 6.370A  
Houston, TX 77079

17. Governmental Immunity. In executing this environmental covenant, the Agency does not waive governmental immunity afforded by law. The Grantor, Owner, and Holder, for themselves and their successors, assigns, and Transferees, hereby fully and irrevocably release and covenant not to sue the State of Utah, its agencies, successors, departments, agents, and employees ("State") from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this environmental covenant except for an action to amend or terminate the environmental covenant pursuant to Sections 57-25-109 and 57-25-110 of the Utah Code Ann. or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Ann.

Section 63G-7-101, et seq. or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101, et seq. or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Sections 63G-7-202 and - 902 of the Governmental Immunity Act, as determined in a court of law.

Hardison Apartments, LC, as Grantor and Owner

  
Bryson D. Garbett, Manager

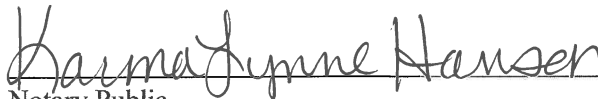
7-12-16  
Date

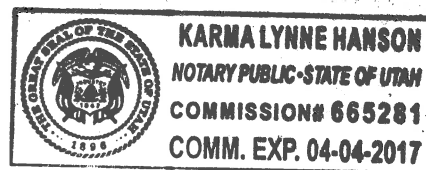
State of Utah )

:ss

County of Salt Lake )

On this 12 day of July, 2016 appeared before me Bryson Garbett, an authorized representative of Hardison Apartments personally known to me, or whose identity has been satisfactorily established to me, who executed the foregoing environmental covenant in my presence.

  
Notary Public



BP Products North America Inc., as Holder

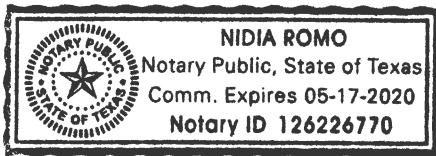
*Jim L. Smith* <sup>BP Products</sup> on behalf of *North America Inc.* *Contracts Manager*  
Jim L. Smith  
Contracts Manager

State of ~~Utah~~ *Texas* )

:ss

County of ~~Salt Lake~~ *Harris* )

On this *4* day of *JULY*, 2016 appeared before me Jim L. Smith, Contracts Manager, an authorized representative of Atlantic Richfield Company, on behalf of its affiliate, BP Products North America Inc., personally known to me, or whose identity has been satisfactorily established to me, who executed the foregoing environmental covenant in my presence.



*Nidia Romo*  
\_\_\_\_\_  
Notary Public



UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

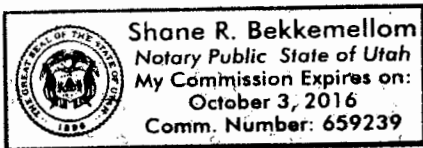
The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing environmental covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

Brent H. Everett  
Brent H. Everett, Director  
Division of Environmental Response and Remediation  
Utah Department of Environmental Quality

14 July 2016  
Date

State of Utah                    )  
  :SS  
County of Salt Lake        )

On this 14<sup>th</sup> day of July, 2016 appeared before me Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, personally known to me, or whose identity has been satisfactorily established to me, who acknowledged to me that he executed the foregoing environmental covenant.



Shane R. Bekkemellom  
Notary Public

**Exhibit A**

**Property**

500 East South Temple Street, Salt Lake City, Utah

**Legal Description**

Salt Lake County Parcel No. 16-06-202-009  
0.62 acres

Commencing at the Northeast corner of Lot6, Block 62, Plat "B". SALT LAKE CITY SURVEY; and running thence West 10 rods; thence South 10 rods, thence East 10 rods; thence North 10 rods to the place of commencement.

# Exhibit B

## Site Map

