



Dedicated to protecting and improving the health and environment of the people of Colorado

Covenant Information:

Covenant Date 6/3/2008
Last Modified 2/26/2016
Self Reporting

Media of Concern:

Surface Water:
Ground Water:
Air:
Soil:
Other:

Contaminants of Concern:

PCBs, Lead

Institutional Control ID: HMC0V00049

Site Contact Information:

Owner Corp: Arnold Holdings and Sophicoll, LLC
Contact Name: Jack F. Fox
Contact Address: 1200 17th Street, Suite 3000
Contact City: Denver
Contact State: CO
Contact Zip: 80202
Contact Phone:

Property Restrictions:

- 1: Groundwater restrictions only: No person shall remove or utilize groundwater on the property by well or other means for any use.
- 2:
- 3:
- 4:
- 5:

Site Information:

ID: COD000823492
Name: Former Texaco Bulk Plant
Address: 805 West 38th Avenue
City: Denver
State: CO
Zip: 80211
Legal Description:
See Covenant

FORMER CHEVRON TEXACO BULK PLANT

104°59'50"W

Featured Institutional Control



39°46'20"N

39°46'20"N

Galapago

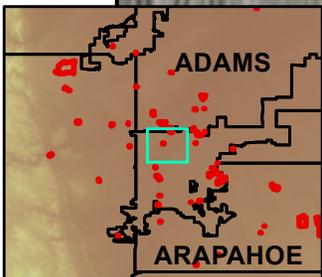
40th

HMCOV00049

39th

Galapago

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



104°59'50"W

HMCOV00049



COLORADO
Hazardous Materials
& Waste Management Division
Department of Public Health & Environment



This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

AMENDED AND RESTATED ENVIRONMENTAL COVENANT

THIS AMENDED AND RESTATED ENVIRONMENTAL COVENANT amends, restates and supersedes in its entirety that certain Environmental Covenant dated June 3, 2008 by Chevron in favor of the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment (the “**Department**”) and recorded on November 4, 2008 under Reception No. 2008150962 of the real property records of Denver County, Colorado (the “**Original Covenant**”).

The Original Covenant is hereby withdrawn, null and void and of no further force and effect (including, without limitation, those terms and conditions therein which otherwise were intended to survive termination, and which shall now be terminated and no longer survive termination of such agreements), and are restated in their entirety as follows:

Arnold Holdings, LLC, a Colorado limited liability company and Sophicoll, L.L.C, a Colorado limited liability company (collectively referred to as “**Arnold**”), grants an Environmental Covenant (“**Covenant**”) this 26th day of February, 2016 to the Department pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, et seq.

WHEREAS, Arnold is the owner of certain property commonly referred to as the former Texaco Bulk Plant, located at 689 W. 39th Avenue and 7800 W. 40th Avenue, Denver Colorado 80216, as more particularly described in Attachment A attached hereto and incorporated herein by reference as though fully set forth herein (hereinafter referred to as the “**Property**”); and

WHEREAS, the Department, which is located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, is authorized to approve Environmental Covenants pursuant to § 25-15-320 of the Colorado Hazardous Waste Act, § 25-15-101, et seq., C.R.S.; and

WHEREAS, for purposes of indexing in the County Clerk and Recorder’s office Grantor-Grantee index only, Arnold shall be considered the **Grantor**, and the Colorado Department of Public Health and Environment shall be considered the **Grantee**. Nothing in the preceding sentence shall be construed to create or transfer any right, title or interest in the Property; and

WHEREAS, Grantors acquired the Property from Chevron on September 30, 2014; and

WHEREAS, pursuant to the Integrated Corrective Action Plan dated September 28, 2006, which was closed by the Department on October 30, 2008, between the Department and Chevron, and the Original Covenant, the Property is the subject of enforcement and remedial action under the Colorado Hazardous Waste Act, § 25-15-101, et seq; and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by restricting certain uses that could cause releases of new contamination or otherwise interfere with previously completed remedial actions at the Property; and

WHEREAS, Arnold desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind Arnold and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein, for the benefit of the Department and Arnold.

NOW, THEREFORE, Arnold hereby grant this Environmental Covenant to the Department, and declares that the Property shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 12, below, which shall run with the Property in perpetuity and be binding on Arnold and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein. As used in this Environmental Covenant, the term “**Owner**” means the then current record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

(1) Use Restrictions.

- a. No person shall remove or utilize groundwater on the property, by well or other means, for any use, including but not limited to domestic, agricultural, and/or commercial use, except as authorized in a remedial decision document approved by the Department. For the purpose of this restriction, "groundwater" means subsurface waters in a zone of saturation that are or can be brought to the surface of the ground or to the surface waters through wells, springs, seeps or other discharge areas. There shall be an exemption from this limitation that applies to a qualified environmental professional, who obtains groundwater samples for analysis from existing monitoring wells located on the property or other future monitoring wells installed on the property.

- 1) Modifications. This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

- a) a proposal to perform additional remedial work;
- b) new information regarding the risks posed by the residual contamination;

- c) information demonstrating that residual contamination has diminished;
 - d) information demonstrating that an engineered feature or structure is no longer necessary;
 - e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
 - f) other appropriate supporting information.
- 3) Conveyances. OWNER shall notify the Department at least fifteen (15) days in advance of the closing on any proposed sale or other conveyance of any interest in any or all of the Property. Within thirty (30) days after any such conveyance, OWNER shall provide the Department with the name, mailing address and telephone number of the new OWNER.
 - 4) Notice to Lessees. OWNER agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.
 - 5) Notification for proposed construction and land use. OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.
 - 6) Inspections. The Department, including its authorized employees, agents, representatives and independent contractors, shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant.
 - 7) Third Party Beneficiary. The OWNER of the Property is a third party beneficiary with the right to enforce the provisions of this Covenant as provided in § 25-15-322, C.R.S.
 - 8) No Liability. The Department does not acquire any liability under State law by virtue of accepting this Covenant.
 - 9) Enforcement. The Department may enforce the terms of this Covenant pursuant to § 25-15-322, C.R.S. Arnold may file suit in district court to enjoin actual or threatened violations of this Covenant
 - 10) Owner's Compliance Certification. OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNER's compliance, and any lack of compliance, with the terms of this Covenant.
 - 11) Severability. If any part of this Covenant shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.
 - 12) Notices. Any document or communication required under this Covenant shall be sent or directed to:

Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Attention: Charles Adams

With a copy to:

Arnold Holdings, LLC
C/O The Fox Company
1200 17th St. #3000
Denver, CO 80202

Sophicoll, L.L.C
C/O The Fox Company
1200 17th St. #3000
Denver, CO 80202

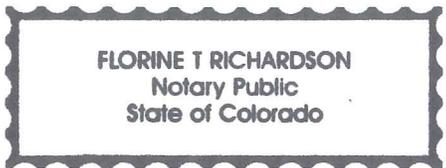
Arnold has caused this instrument to be executed this 17th day of February, 2016.

Arnold Holdings, LLC, a Colorado limited liability company

By: [Signature]
Name: Guy Arnold
Title: owner

STATE OF COLORADO)
) s.s.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 17th day of February, 2016 by Guy Arnold as owner, on behalf of Arnold Holdings, LLC.



[Signature]
Notary Public

Address 1200-17th Street Suite 3000
Denver, CO 80202

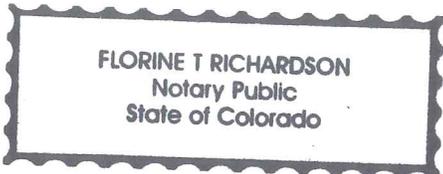
My commission expires: April 21, 2017

Sophicoll, L.L.C, a Colorado
limited liability company

By: [Signature]
Name: Jack F. Fox
Title: manager

STATE OF COLORADO)
) s.s.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 17th day of February, 2016 by Jack F. Fox as Manager, on behalf of Sophicoll, L.L.C.



Florine T. Richardson
Notary Public
Address 1800-17th Street, Suite 300
Denver, CO 80202

My commission expires: April 21, 2017

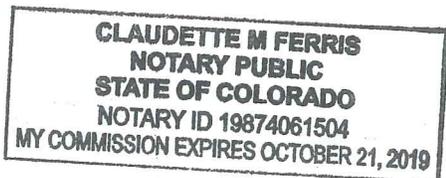
Accepted by the Colorado Department of Public Health and Environment this 26th day of February, 2016 by Gary W. Baughman, as Director, HAWMD.

STATE OF COLORADO)
) s.s.
COUNTY OF)

The foregoing instrument was acknowledged before me this 26 day of FEBRUARY, 2016, by GARY W. BAUGHMAN as DIVISION DIRECTOR, on behalf of the Colorado Department of Public Health and Environment.

Claudette M. Ferris
Notary Public
Address 4300 Cherry Creek Dr So
Denver, CO 80246

My commission expires: October 21, 2019



ATTACHMENT A to the Environmental Covenant

Property Description

All of blocks numbered thirty-seven (37) and forty-four (44) in Viaduct Addition to Denver; also an unplatted strip of land on the West side of and adjoining said blocks, which said strip is particularly described as follows, to wit: Beginning at the Southwest corner of said block numbered forty-four (44); thence Westerly on the extended Southerly line of said Block forty-four (44), fifty-three and fifty-three hundredths (53.53) feet, more or less, to the East line of the right of way of the Denver, Utah and Pacific Railroad as fixed and described in Book 607 at Page 230 of the Records of the City and County of Denver; thence Northerly along the East line of said railroad company's right of way, eight hundred and fifteen (815) feet to an intersection with the North line of said Block thirty seven (37) extended Westerly; thence Easterly along the extended Northerly line of said Block thirty-seven (37), fifty-three and fifty-three hundredths (53.53) feet, more or less, to the Northeast corner of said Block thirty-seven (37); thence Southerly along the West line of said Blocks thirty-seven (37) and forty-four (44), eight hundred and fifteen (815) feet to the Place of Beginning; together with that portion (now vacated) of West 39th Avenue lying between Blocks thirty-seven (37) and forty-four (44), Viaduct Addition to Denver, and together with the South half of West 40th Avenue (now vacated) adjacent to Lot 30, Block 37 also together with the West half of Galapago Street (now vacated) adjacent to Lots 16 through 30, Block 37 and the West half of Galapago lying within vacated West 40th Avenue, City and County of Denver, State of Colorado, except that portion conveyed in Deed recorded September 10, 1992 at Reception No. 920105968.

Also excepting therefrom Parcel No. CM-11 of the RTD CRMF Site Corridor Light Rail Project, as contained in the Rule and Order recorded October 5, 2011 at Reception No. 2011111736.

Parcel Two:

A part of the Southwest Quarter of Section Twenty-two (22), Township Three (3), Range Sixty-eight (68) West of the 6th Principal Meridian, City and County of Denver, State of Colorado, more particularly described as follows:

Commencing 415 feet South of the Northwest corner of Block Twenty-eight (28), Viaduct Addition, thence West 53.53 feet to the East line of the Chicago, Burlington and Quincy Railway Right-of-way, thence South 40 feet to the South line of West 40th Avenue produced, thence East 53.53 feet to the produced West line of said Block Twenty-eight (28), thence North at right angles 40 feet to the place of beginning.

Excepting therefrom Parcel No. CM-12 of the RTD CRMF Site Corridor Light Rail Project, as contained in the Rule and Order recorded October 5, 2011 at Reception No. 2011111736.

Parcel One and Parcel Two of the above land also being described as:

A PARCEL OF LAND BEING A PART OF LOT 23, ALL OF LOTS 24 THROUGH 30, BLOCK 37, VIADUCT ADDITION TO DENVER, PART OF THE SOUTH HALF OF VACATED 40TH AVENUE, AS VACTED BY ORDINANCE NUMBER 115-1926, PART OF THE WEST HALF OF VACATED GALAPAGO STREET, AS VACATED BY ORDIANCE NUMBER 116-1947, AND A PORTION OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED UPON A 20 FOOT RANGE LINE LOCATED WITHIN ELATI STREET BETWEEN 39TH AVENUE AND 40TH AVENUE, LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY AND COUNTY OF DENVER, STATE OF COLORADO, SAID LINE BEING MONUMENTED AT THE INTERSECTION OF SAID 40TH AVENUE AND ELATI STREET BY A FOUND .75" NAIL AND BRASS TAG SET IN A RANGE BOX AND AT THE INTERSECTION OF SAID 39TH AVENUE AND

ELATI STREET BY A FOUND 3.25" COLORADO DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MARKER STAMPED P.L.S. # 2352, SAID LINE BEARING SOUTH 00°01'12" EAST A DISTANCE OF 455.00 FEET WITH ALL BEARINGS CONTAINED HEREIN BEING RELATIVE THERETO.

COMMENCING AT SAID 20' RANGE POINT LOCATED AT THE INTERSECTION OF 40TH AVENUE AND ELATI STREET; THENCE NORTH 89°59'17" WEST ALONG THE SAID 20 FOOT RANGE LINE IN 40TH AVENUE BETWEEN SAID ELATI STREET AND FOX STREET A DISTANCE OF 346.03 FEET TO A RANGE POINT, SAID POINT BEING A FOUND 3.25" ALUMINUM CAP STAMPED 20680 IN A RANGE BOX; THENCE CONTINUING ALONG SAID 20 FOOT RANGE LINE NORTH 89°59'17" WEST A DISTANCE OF 325.70 FEET TO A POINT; THENCE DEPARTING SAID 20 FOOT RANGE LINE SOUTH 00°01'12" EAST A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING, SAID POINT BEING THE INTERSECTION OF THE CENTERLINES OF VACATED GALAPAGO STREET AND VACATED 40TH AVENUE;

THENCE CONTINUING SOUTH 00°01'12" EAST ON SAID CENTERLINE OF VACATED GALAPAGO STREET A DISTANCE OF 230.71 FEET TO A SET #5 REBAR AND 2" ALUMINUM CAP STAMPED P.L.S. # 37929; THENCE DEPARTING SAID CENTERLINE NORTH 89°59'37" WEST A DISTANCE OF 209.91 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND DESCRIBED AT RECEPTION NUMBER 2006159668 AND A SET #5 REBAR AND 1.25" YELLOW PLASTIC CAP STAMPED P.L.S #37929; THENCE ALONG THE EASTERLY SIDE OF SAID RECEPTION NUMBER 2006159668 THE FOLLOWING THREE COURSES;

1.) NORTH 04°04'53" EAST A DISTANCE OF 86.74 FEET; THENCE 2.) NORTH 03°02'19" EAST A DISTANCE OF 33.46 FEET TO A POINT OF CURVE; 3.) THENCE ON THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 2761.61 FEET, AN ARC LENGTH OF 70.94 FEET, A CENTRAL ANGLE OF 01°28'19", AND A CHORD WHICH BEARS NORTH 02°18'10" EAST A DISTANCE OF 70.94 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND DESCRIBED IN RECEPTION NUMBER 2011111736; THENCE ALONG THE EASTERLY LINE OF SAID RECEPTION NUMBER 2011111736 THE FOLLOWING TWO COURSES 1.) CONTINUING ON SAID CURVE HAVING A RADIUS OF 2761.61 FEET, AN ARC LENGTH OF 29.57 FEET, A CENTRAL ANGLE OF 00°36'49" AND A CHORD WHICH BEARS NORTH 01°14'16" EAST A DISTANCE OF 29.57 FEET; 2.) THENCE NORTH 00°55'52" EAST A DISTANCE OF 10.35 FEET ; THENCE SOUTH 89°59'17" EAST A DISTANCE OF 198.21 FEET TO THE POINT OF BEGINNING.

[CITY-DIV MTK TBR EAB KEW EGH PGL] SYR-85 MTK TBR EAB KEW EGH PGL
Project (Project #)
H:\Colorado\Chevron\ECBoundary.mxd - 8/22/2007 @ 9:40:42 AM



LEGEND:

----- ECBoundary

DRAFT

FORMER CHEVRON TEXACO BULK PLANT
805 WEST 38TH AVENUE, DENVER COLORADO

ENVIRONMENTAL COVENANT BOUNDARY

NOTE:

1. 2002 AERIAL PHOTOGRAPHY DOWNLOADED
FROM ftp://rockyftp.cr.usgs.gov/ngtoc/colo_naip/



FIGURE

X



COMMERCIAL REAL ESTATE AND DEVELOPMENT, L.L.C.

February 17, 2016

Charles Adams, CPG
Corrective Action Unit
Colorado Hazardous Materials &
Waste Management Division
Department of Public Health and Environment
4300 Cherry Creek Drive South, B2
Denver, CO 80246-1530

Re: Environmental Covenant for 689 West 39th Avenue, Denver, CO

Dear Charley:

As per Jennifer Robbins' instructions, please find enclosed three owner executed and notarized originals of the Amended and Restated Environmental Covenant for the land that we own. Please execute and return two originals to me. Would you please also let me know when the recording takes place?

Again, it has been a pleasure working with you on this project. Your practical approach and quick turnaround on reviewing our work was much appreciated. Just as important to us was your willingness to work collaboratively with OPS on this site. This should stand as a model for future projects between the agencies.

All the best.

Sincerely,

Jack Fox

JFF:fr

Enclosures

cc: Guy M. Arnold
Douglas Mosteller
Larry Wolk, MD, Executive Director, CDPHE

