

# UNOFFICIAL COPY

0020319442

2604/0083 55 001 Page 1 of 9

2002-03-21 10:07:31

Cook County Recorder 37.00

SS# 5073

## RELEASE AND RIGHT OF ENTRY AGREEMENT



### Prepared by and Return to After Recording:

Sidley Austin Brown & Wood  
Bank One Plaza  
10 S. Dearborn  
Chicago, Illinois 60603  
Attn: Samuel P. Gussis

## RELEASE AND RIGHT OF ENTRY AGREEMENT

THIS RELEASE AND RIGHT OF ENTRY AGREEMENT is made as of the 13th day of March, 2002, by and between BP PRODUCTS NORTH AMERICA INC., a Maryland corporation, f/k/a Amoco Oil Company ("Seller"), with offices at c/o BP Amoco, 28100 Torch Parkway, Suite 300, Warrenville, Illinois 60555, and Ansemoss Haddad ("Purchaser"), whose address is: 534 W. Roosevelt, Chicago, Illinois 60607.

### WITNESSETH.

WHEREAS, Seller and Purchaser entered into a Purchase and Sale Agreement dated March 4, 2002 (as the same may have been amended, the "Sale Agreement"), pursuant to which Seller agreed to sell to Purchaser, and Purchaser agreed to purchase from Seller, all of Seller's right, title and interest in and to the real estate legally described on **Exhibit A** attached hereto and made a part hereof, together with Seller's right, title and interest in and to certain improvements and personal property located thereon, as more specifically set forth in the Sale Agreement (collectively, the "Property"); and

WHEREAS, Seller has agreed to sell and assign and Purchaser has agreed to purchase and accept the Property "as is" in its present condition without any representations or warranties regarding its fitness for any purpose, as set forth in the Sale Agreement; and

WHEREAS, Seller has provided to Purchaser copies of certain documents and disclosures regarding the environmental condition of the Property, as set forth in the Sale Agreement; and

WHEREAS, Seller has further provided to Purchaser access to and the opportunity to inspect the Property and to perform such soil, groundwater or other tests upon the Property as Purchaser deemed necessary or appropriate; and

**BOX 333-CTI**

2002  
67520  
7988178

# UNOFFICIAL COPY

**WHEREAS**, Seller has agreed to perform certain environmental assessment, monitoring and remediation measures pursuant to the Sale Agreement to address hydrocarbon contamination, if any, of the Property resulting from Seller's use prior to the date of transfer of title of the Property (all as set forth in, and subject to, the terms of the Sale Agreement), and Purchaser has agreed to assume all responsibility and liability for any and all hydrocarbons or other contaminants or regulated substances which occur after the date of transfer of title of the Property, as set forth in the Sale Agreement; and

**WHEREAS**, Purchaser and Seller desire to provide a continuing right of access to the Property to allow Seller to perform assessment, monitoring and remediation measures after conveyance of the Property.

**NOW, THEREFORE**, in consideration of the mutual covenants of the parties herein and the parties' respective duties and obligations set forth in the Sale Agreement, Seller and Purchaser do hereby agree as follows:

1. Purchaser, for itself, and for its heirs, grantees, successors and assigns, and their respective heirs, grantees, successors and assigns (including, without limitation, all successors to Purchaser in title to the Property) (collectively, the "Purchaser Parties"), hereby agrees that, from and after September 30, 2002, or such earlier date as Amoco vacates the Property (the "Effective Date"), the Purchaser Parties shall be responsible and liable for compliance with all environmental laws and regulations and for any environmental assessment, inspection, monitoring and remediation arising out of, relating to or resulting from the use or occupancy of the Property by or on behalf of Purchaser or any other Purchaser Party (or any of their respective employees, agents, representatives, invitees, licensees, tenants or contractors), which may include, without limitation, responsibility and liability for maintaining eligibility for reimbursement under applicable state petroleum remediation or reimbursement programs, to the extent applicable. The Purchaser Parties shall, at Seller's request, provide to Seller assurance of compliance with all environmental laws and regulations, including, without limitation, the results of all future tank and line tightness tests, product inventory data, tank gauging data and tank leak detection data, and shall promptly notify Seller of all leaks, spills or releases of hydrocarbons or other regulated substances or contaminants at or from the Property which occur or of which Purchaser or any other Purchaser Party become aware, it being the intent of the parties that Purchaser and the other Purchaser Parties shall be responsible and liable for any and all spills, leaks or releases of hydrocarbons or other contamination occurring on or at the Property subsequent to the Effective Date and/or any migration thereof. From and after the Effective Date, Purchaser and the other Purchaser Parties, for themselves and their respective employees, agents, representatives, invitees, licensees, tenants and contractors (collectively, the "Purchaser Indemnifying Parties"), shall indemnify, defend (with counsel reasonably acceptable to Seller) and hold harmless Seller, and Seller's parents, subsidiaries, affiliates and each of their respective agents, employees, officers, directors, shareholders, successors and assigns (collectively, the "Indemnified Seller Parties"), from and against any and all damages, liabilities, judgments, penalties, suits, actions, losses, demands, claims, costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees) (collectively, "Claims and Losses") resulting or arising from the presence of hydrocarbon and/or other contamination occurring on, at

20319442

# UNOFFICIAL COPY

or migrating from the Property after the Effective Date; provided, however, that, from and after the "Ending Date" (as defined in the Sale Agreement), Purchaser and the other Purchaser Parties, for themselves and on behalf of the other Purchaser Indemnifying Parties, shall indemnify, defend (with counsel reasonably acceptable to Seller) and hold harmless Seller and the other Indemnified Seller Parties from and against all Claims and Losses resulting or arising from any and all contamination present at or migrating from the Property, regardless of whether such presence or migration occurred after, on or prior to the Effective Date.

2. Purchaser and the other Purchaser Parties, collectively and jointly and severally, for themselves and on behalf of the other Purchaser Indemnifying Parties, and all persons claiming by, through or under Purchaser, the other Purchaser Parties and/or the other Purchaser Indemnifying Parties, hereby:

(a) release and forever discharge the Indemnified Seller Parties from any and all Claims and Losses whatsoever, that may now exist or hereafter accrue with respect to contamination of the Property existing as of the Effective Date or occurring after the Effective Date, except for any such Claims and Losses which are covered by Seller's duties, obligations and liabilities to Purchaser expressly set forth in the Sale Agreement, and

(b) covenant and agree to forever refrain and desist from instituting or asserting against the Indemnified Seller Parties, any claim, demand, action or suit whatsoever, either directly or indirectly, arising or resulting from contamination or alleged contamination of the soil or groundwater of the Property (or migration therefrom), or from the environmental condition of the Property, except to enforce Seller's express duties, obligations and liabilities set forth in the Sale Agreement.

3. Purchaser hereby grants to Seller, its agents, employees, successors and assigns, the irrevocable right to enter upon the Property, from time to time and at any time from and after the Effective Date, for the purpose of: (i) engaging in environmental assessments, inspection and remediation, including but not limited to the installation of such facilities and the conduct of such activities as deemed necessary or advisable by Seller, in its sole discretion, or as are required by governmental authorities having jurisdiction, for a period of time required to comply with any applicable environmental law or regulation affecting the Property and/or Seller's duties, obligations and liabilities under the Sale Agreement, and (ii) removing from the Property any property and equipment not sold pursuant to the Sale Agreement (including, without limitation, any remediation equipment, monitoring equipment and observation equipment, and any signage and trade dress of Seller).

4. Purchaser and the other Purchaser Parties agree to reasonably cooperate with Seller and reasonably maintain the Property in a manner which does not unreasonably interfere with Seller's performance of any of Seller's duties or obligations under the Sale Agreement, and in a manner which shall not impair Seller's eligibility and/or ability to recover funds from any UST reimbursement program and/or the Seller's ability to comply with any applicable laws. Purchaser and the other Purchaser Parties agree to reasonably cooperate and assist Seller in obtaining any approvals, consents or permits required for Seller's performance of its duties and

20319442

# UNOFFICIAL COPY

obligations under the Sale Agreement, and/or Seller's UST fund reimbursement requests. Purchaser and the other Purchaser Parties agree to cooperate fully with Seller in the performance of the activities authorized herein so as to minimize the time and expense to Seller, which cooperation shall include, without limitation, the granting of access to on-site utilities (e.g., electricity, sewer, and water) if required for such activities. Purchaser and the other Purchaser Parties further agree that, during any period within which Seller is performing remediation, assessment or monitoring of environmental contamination or the environmental condition of the Property (or the migration of contamination from the Property), no construction or improvements shall be made upon the Property which would unreasonably impede or restrict access to Seller's monitoring wells, remediation or monitoring equipment, or any hydrocarbon plume, or which would modify or affect the size, location or nature of any hydrocarbon plume, without the prior written consent of Seller, which consent shall not be unreasonably withheld. Purchaser and the other Purchaser Parties shall be solely responsible for any damage to, or destruction of, any monitoring wells (or related facilities) and/or any remediation or monitoring equipment caused by Purchaser or such Purchaser Party (as applicable), or any of the other Purchaser Indemnifying Parties. Without limiting the foregoing, in the event that Purchaser or any other Purchaser Party desires to perform any work or activity at the Property which may in any way affect Seller's monitoring wells (or related facilities), remediation or monitoring equipment, or any hydrocarbon plume, Purchaser or such Purchaser Party (as applicable) shall provide Seller with at least thirty (30) days' prior written notice thereof, together with plans and specifications therefor.

5. Purchaser acknowledges that no promise or inducement with respect to the Property has been offered by Seller or any other Indemnified Seller Party except as set forth herein and in the Sale Agreement (and the other documents and instruments executed and delivered by Seller and Purchaser pursuant to the Sale Agreement); that this Release and Right of Entry Agreement is executed by Purchaser without reliance upon any statement or representation by Seller, its agents or employees, concerning the measure or extent of any contamination or the legal liability therefor; that Purchaser is of legal age, legally competent to execute this Release and Right of Entry Agreement and accepts full responsibility therefor; that this Release and Right of Entry Agreement, the Sale Agreement and the other documents and instruments executed and delivered by Seller and Purchaser pursuant to the Sale Agreement contain the entire agreement between Purchaser and Seller with respect to this matter; and that the terms of this Release and Right of Entry Agreement are contractual and not merely recital. By taking title to the Property (or otherwise succeeding, directly or indirectly, to any of Purchaser's right, title or interest in or to the Property), each Purchaser Party shall be conclusively deemed to have agreed to and accepted each and all of the terms, provisions and conditions of this Release and Right of Entry Agreement, and to have agreed to be bound thereby. This Release and Right of Entry Agreement may be executed in any number of counterparts, each of which shall constitute an original but which when taken together shall be deemed one instrument. It is the intention of Purchaser and Seller that the terms, provisions, covenants and restrictions set forth in this Release and Right of Entry shall be deemed to have vested upon the execution and delivery of this Release and Right of Entry by Purchaser and Seller. If any of the terms or provisions contained herein shall be unlawful, void or voidable for violation of the rule against perpetuities, then any such terms or provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of George W. Bush. If any of the terms or provisions contained herein

20319442

# UNOFFICIAL COPY

shall be unlawful, void or voidable for violation of any other statutory or common law rule(s) or regulation(s) imposing time limits, then any such terms and provisions shall continue only for the longest period permitted under such statutory or common law rule(s) or regulation(s). If any term or provision in this Release and Right of Entry shall, to any extent, be invalid or unenforceable, the remainder of this Release and Right of Entry (or the application of such term or provision to persons or circumstances other than in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term and provision set forth in this Release and Right of Entry shall be valid and enforceable to the fullest extent permitted by law.

THIS RELEASE AND RIGHT OF ENTRY AGREEMENT, and each of the covenants herein contained shall run with the land and be binding upon Purchaser and the other Purchaser Parties.

Property of Cook County Clerk's Office

20319442

# UNOFFICIAL COPY

IN WITNESS WHEREOF, Seller and Purchaser have caused this Release and Right of Entry Agreement to be executed and delivered as of the date and year first above written.

SELLER:

BP PRODUCTS NORTH AMERICA INC.,  
a Maryland corporation,  
f/k/a Amoco Oil Company

By: Marcelo Amala  
Its: Real Estate Manager

PURCHASER:

  
ANSEMOSS HADDAD

SSN: 571-55-8002

Property of Cook County Clerk's Office

20319442

# UNOFFICIAL COPY

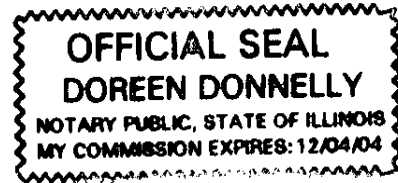
STATE OF ILLINOIS            )  
  )SS  
COUNTY OF DUPAGE         )

I, Doreen Donnelly, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Marcelo Ariola personally known to me to be the Real Estate Manager of BP Products North America Inc., a Maryland corporation, f/k/a Amoco Oil Company, and personally known to me to be the same person whose names is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Marcelo Ariola, he/she signed and delivered such instrument pursuant to authority given by the Board of Directors of such corporation, as his/her free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 11<sup>th</sup> day of March, 2002

Doreen Donnelly  
Notary Public

My Commission Expires: 12/04/04



Property of Cook County Clerk's Office

20319442





# UNOFFICIAL COPY

**EXHIBIT A  
TO  
RELEASE AND RIGHT OF ENTRY AGREEMENT**

**(Legal Description)**

LOTS 21 (EXCEPTING THE WEST 20 FEET THEREOF AS SAME HAS BEEN DEEDED TO THE CITY OF CHICAGO), 22, 23, 24, 25, 26 AND 27 AND PART OF THE VACATED ALLEY LYING NORTH OF AND ADJOINING SAID LOTS 26 AND 27 IN GIBSON'S SUBDIVISION OF BLOCK 60 IN SCHOOL SECTION ADDITION TO CHICAGO; ACCORDING TO MAP RECORDED ON JUNE 19, 1866, IN BLOCK 163 OF MAPS, PAGE 155; IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN.

Property of Cook County Clerk's Office

20319442