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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.

ENVIRONMENTAL COVENANT

By this deed, the City of Wheat Ridge, Colorado ("City") grants an Environmental Covenant ("Covenant") as of the 26th day of August, 2002 to the Colorado Department of Public Health and the Environment ("the Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, the City is the owner of certain property commonly referred to as the Davis Brothers Florist Site, located at 3705 Jay Street, Wheat Ridge, Colorado, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, pesticide residue is found in the soil at the Property as the result of activities by prior owners of the Property (not the City); and

WHEREAS, the City acquired the Property after the pesticide residue was deposited, but is addressing the environmental condition of the Property in the process of redeveloping the Property into a park-like setting; and

WHEREAS, the Property is the subject of a Voluntary Clean-Up Plan approved by the Colorado Department of Public Health and Environment on September 12, 2002 in accordance with the Voluntary Clean-Up and Redevelopment Act, C.R.S. § 25 - 16- 301 to 310; and

WHEREAS, the City 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 the City, its heirs, successors, assigns, and any grantees of the Property, their heirs, successors, assigns and grantees, and any users of the Property (except persons using the Property as members of the public for the purpose for which the Property has been redeveloped as a park-like setting), for the benefit of the Department.

NOW, THEREFORE, the City hereby grants this Environmental Covenant to the Department, and declares that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following environmental use restrictions which shall run with the Property in perpetuity and be binding on the City and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land (except persons using the Property as members of the public for the purpose for which the Property has been redeveloped as a park-like setting).

1. Use restrictions

- A. No residential or commercial development of the Property shall be permitted or allowed without the express prior written consent of the Department; and
- B. No excavation, grading, construction, or any other activity that disturbs the ground surface is permitted on the Property, without the express written consent of the Department, subject to the exception that the City and/or its designees may disturb the ground surface for the purposes of complying with all requirements of the approved Voluntary Clean-Up Plan, maintaining the landscaping, removing sediment from surface runoff found in the catch basin to be constructed, installing and removing fences, replanting, new planting, revegetating, and other activities consistent with the approved Voluntary Clean-Up Plan. It is not the intention of the City, the Department, or this Covenant to require the Department's approval for, or to preclude, activities on the Property consistent with the acknowledged goal of enabling use of the Property for recreation in a park-like setting.

2. Purpose of this covenant The purpose of this Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to pesticide residue that remains in the soil on the Property. The Covenant will accomplish this by minimizing those activities that result in disturbing the ground surface, and by creating a review and approval process to ensure that any such intrusive activities are conducted with appropriate precautions to avoid or eliminate any hazards.

3. Modifications This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. The City or its successors and assigns 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 the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and other appropriate supporting information.

4. Conveyances This Covenant is intended to run with the land and shall be binding upon all subsequent owners of all or any part of the Property for the period of time described above.

The City shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Property. The City 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. Binding Effect Notwithstanding the foregoing, pursuant to §25-15-318(2) C.R.S., this Covenant shall, once recorded with the Clerk and Recorder for Jefferson County, Colorado, run with the land and bind any person or entity who acquires any right, title or interest in all or any part of the Property for the period of time described above, whether or not any reference to this Covenant or its provisions is contained in the deed or other conveyance instruments by which such person or entity acquires an interest in the Property.

6. Notification for proposed construction and land use The City agrees to notify the Department simultaneously when submitting for consideration any application for a building permit or change in land use.

7. Inspections The Department 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. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Property.

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 §25-15-321. C.R.S. The City may file suit in district court to enjoin actual or threatened violations of this Covenant.

10. Annual Reporting The City will receive a form on an annual basis from the Department. The suitable completion and timely return of the form to the Department will serve as an indication of current compliance with terms of this Covenant. Substitution of a similar city-generated letter will suffice, in lieu of the City not receiving the form from the Department in a timely manner.

The City has caused this instrument to be executed as of the day and year first set forth above.

CITY OF WHEAT RIDGE, COLORADO

By: Gretchen Cerveny
Gretchen Cerveny, Mayor

STATE OF COLORADO)
) ss:
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 5th day of September ,
2002 by Gretchen Cerveny on behalf of the City of Wheat Ridge, Colorado.

Barbara Delgadillo
Notary Public

Address

My commission expires: 12-23-02

Accepted by the Colorado Department of Public Health and Environment this 1 day of
October , 2002.

By: Douglas Benevento

Title: Acting Executive Director

STATE OF Colorado)
) ss:
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 1 day of October ,
2002 by Douglas H Benevento on behalf of the Colorado Department of Public Health and
Environment.

Maria S. Zepeda-Sanchez
Notary Public

5863 Magnolia St
Address

Commerce City, CO 80022

My commission expires: 4/14/03