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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 Durango grants an Environmental Covenant ("Covenant") this 6th day of March, 2003 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 of Durango is the owner of certain property commonly referred to as the Durango Mill Site North Parcel, located in Durango, La Plata County, 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, uranium mill tailings had been previously disposed on the Property by a previous owner; and

WHEREAS, pursuant to the Site Observational Workplan for the Durango, Colorado UMTRA Project Site, dated September 2001, the Property is the subject of remedial action pursuant to the Uranium Mill Tailings Radiation Control Act, P.L. 95-604 ("UMTRCA") and UMTRCA regulations, 40 C.F.R. § 192 Subpart B, and;

WHEREAS, the City of Durango 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 of Durango, its heirs, successors, assigns, and any grantees of the Property, their heirs, successors, assigns and grantees, and any users of the Property, for the benefit of the Department.

NOW, THEREFORE, the City of Durango 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 of Durango 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. The City of Durango declares that the United States Department of Energy shall be a third party beneficiary of this Environmental Covenant. The City of Durango, its successors, and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns shall hereinafter be referred to in this covenant as OWNER.

1. Use restrictions

- A. No habitable structure may be constructed on the property without properly designed radon mitigation.
- B. No wells or drilling or pumping whatsoever shall be permitted or allowed, without the express written consent of the Department. The only exception to the foregoing is for monitoring and remedial wells installed by the Department of Energy, in connection with the on-going, approved remedial activities at the Property.
- C. No tilling, 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.
- D. No activities that will in any way damage any monitoring or remedial wells installed by the Department of Energy, or interfere with the maintenance, operation, or monitoring of said wells is allowed, without the express written consent of the Department.

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 any hazardous substance, hazardous waste, hazardous constituents, and/or solid waste that remains 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. 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. The Department shall consult with the United States Department of Energy before making any determination on the request for modification. 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 OWNER 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.
5. Incorporation 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.
6. 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.
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, nor does any other named beneficiary of this Covenant acquire any liability under State law by virtue of being such a beneficiary.
9. Enforcement The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.R.S. City of Durango and any named beneficiaries of this Covenant may file suit in district court to enjoin actual or threatened violations of this Covenant.
10. Owner's Compliance Certification OWNER shall submit an annual form or letter to the Department, detailing OWNER's compliance, and any lack of compliance, with the terms of this Covenant. Such form will be due to the Department 45 days after OWNER's receipt of such form from the Department.
11. Notices Any document or communication required under this Covenant shall be sent or directed to:

Don Metzler
U.S. Department of Energy
Grand Junction Office
2597 B ¾ Road
Grand Junction, CO 81503

City Manager
City of Durango
949 East 2nd Avenue
Durango, Colorado 81301

Jeffrey Deckler
Remedial Programs Manager
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

City of Durango, has caused this instrument to be executed this 6th day of March, 2003.

City of Durango

By: Robert F. Ledger Jr.

Title: City Manager
City of Durango
949 East 2nd Avenue
Durango, CO 81301

STATE OF COLORADO)
) ss:
COUNTY OF LA PLATA)

The foregoing instrument was acknowledged before me this 6th day of March, 2003, by Robert F. Ledger, Jr., as City Manager of the City of Durango, Colorado.

Witness my hand and official seal.

My commission expires: 12-9-03

Zorena Anderson
Notary Public

Accepted by the Colorado Department of Public Health and Environment this 14th day of April, 2003.

By: Howard Roitman

Title: HMWMD Director

STATE OF COLORADO)
) ss:
City and County of Denver)

The foregoing instrument was acknowledged before me this 14 day of April, 2003 by Howard Roitman on behalf of the Colorado Department of Public Health and Environment.

Witness my hand and official seal.

My commission expires: October 21, 2003

Claudette M. Ferris
Notary Public