MODIFICATION OF ENVIRONMENTAL COVENANT HELD BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-15-321, COLORADO REVISED STATUTES

1. This instrument modifies the Environmental Covenant ("Covenant") from the Colorado Department of Transportation, as **grantor,** to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department"), as **grantee,** pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.* The Covenant was recorded on April 28, 2004, at Reception No. 2004097043 in Denver County, Colorado. The Department's address is 4300 Cherry Creek Drive South, Denver, CO 80246-1530.

2. The Colorado Department of Transportation is the owner of that certain property commonly referred to as 2000 south Holly Street, Denver, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property").

3. Pursuant to Compliance Order No. 98-06-05-01, the Property was the subject of enforcement and remedial action pursuant to the Colorado Hazardous Waste Act, § 25-15-301, et seq. ("CHWA"),and the Resource Conservation and Recovery Act, 42 U.S.C. § § 6926, et seq. ("RCRA"); and

4. The Colorado Department of Transportation requested that the Department modify the Covenant in accordance with § 25-15-321, C.R.S. and Paragraph 2 of the Covenant. On October 19, 2010, the Department approved the proposed modification with certain conditions. Except as explicitly provided in paragraphs 5, 6 and 7 below, all provisions of the Covenant remain in full force and effect.

5. The third paragraph on page 1 of the Covenant is modified in its entirety to read as follows:

> WHEREAS, the purpose of this Covenant is to prevent public exposure to affected groundwater at the Property; and

6. Paragraph 1 of the Covenant is modified in its entirety to read as follows:

<u>Use restrictions</u> - The following uses are prohibited on the property:

a) Groundwater on the property shall not be removed by well or other means for any use, including but not limited to domestic, agricultural, and/or commercial use. 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. This limitation shall not apply to a qualified environmental professional, obtaining groundwater samples for analysis from existing monitoring wells located on the property or other future monitoring wells installed on the property.

b) Water storage, including stormwater detention/retention ponds and man-made lakes or ponds.

7. Paragraph 2 of the Covenant is modified in its entirety to read as follows:

   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 groundwater.

8. This modification is effective as of the date of execution of this instrument.

The Colorado Department of Public Health and the Environment has caused this instrument to be executed this 2nd day of February, 2011.

Colorado Department of Public Health and the Environment

By: Gary L. Baughman

Title: Director, HMWMD

STATE OF COLORADO)
) ss:
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 2 day of FEBRUARY, 2011 by GARY W. BAUSHMAN on behalf of the Colorado Department of Public Health and the Environment.

Witness my hand and official seal.

Claudette M. Ferris
Notary Public

4300 Cherry Creek Dr So
Address
Denver, CO 80246

My commission expires: October 21, 2011

CLAUDETTE M. FERRIS NOTARY PUBLIC STATE OF COLORADO

[OWNER] hereby attests that it owns the Property and that it requested approval for the modifications set forth herein from the Department.

By: Pamela Hutton

Title: Chief Engineer

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 16 day of December, 2010 by Pamela Hutton on behalf of the [OWNER].

Witness my hand and official seal.

BEVERLY E NICKERSON
Notary Public
State of Colorado

Beverly E. Nickerson
Notary Public

15285 South Golden Rd.
Address Golden CO 80401

My commission expires: 9-16-13

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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. 2002 as Amended

ENVIRONMENTAL COVENANT

The Colorado Department of Transportation, (the CDOT) grants an Environmental Covenant ("Covenant") this 30th day of October, 2003 to the Hazardous Materials and Waste Management Division of 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 CDOT is the owner of certain property commonly referred to as 2000 SOUTH HOLLY STREET, DENVER, 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, the purpose of this Covenant is to prevent public exposure to affected groundwater and soil with elevated levels of arsenic at the Property; and

WHEREAS, pursuant to COMPLIANCE ORDER NO., 98-06-05-01, the Property is the subject of enforcement and remedial action pursuant to the Colorado Hazardous Waste Act § 25-15-301, *et. seq.* ("CHWA"), and the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6926, *et. seq.* ("RCRA"); and

WHEREAS, the CDOT 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 CDOT its 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 CDOT hereby grants this 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 CDOT 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.

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City & County Of Denver COV R26.00 D0.00

CERTIFICATION
The Clerk and Recorder for the CITY AND COUNTY OF DENVER State of Colorado does hereby certify this document to be a full, true and correct copy of the original document recorded in my office.
Clerk and Recorder
by _____
Deputy County Clerk
Date 7/28/04

1. Use restrictions

A. The CDOT will notify contractors of the potential for contact with affected groundwater and soil prior to any ground disturbing activities on the Property. The CDOT and all contractors at the site shall comply with the approved "Final Health and Safety Plan for the Colorado Department of Transportation Region 6 Headquarters" and any approved addendum thereto.

B. The CDOT shall notify the Department simultaneously with submitting any application to a local government for a building permit or change in land use or prior to any proposed reconstruction or change in land use on the Property.

C. The CDOT shall notify the Department prior to any planned installation of wells or drilling or pumping activities in any groundwater or aquifer within the Property, except for monitoring and remedial wells installed by the CDOT, in connection with the on-going, Department approved remedial activities at the Property.

D. The CDOT shall notify the Department prior to any tilling, excavation, grading, construction, or any other activity that disturbs the ground surface on the Property.

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. The CDOT 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. The CDOT 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 CDOT 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. 2002 as amended, any person or entity who acquires any right, title or interest in all or any part of the Property shall be conclusively deemed to have consented and agreed to the provisions of this Covenant, 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. 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.

7. No Liability The Department does not acquire any liability under State law by virtue of accepting this Covenant.

8. Enforcement The Department may enforce the terms of this Covenant pursuant to §25-15-321. C.R.S. 2002 as amended, at 2000 South Holly Street and may file suit in district court to enjoin actual or threatened violations of this Covenant.

9. Notices Any document or communication required under this Covenant shall be sent or directed to:

Hazardous Waste Corrective Action Unit Leader
Hazardous Materials and Waste Management Leader
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

The CDOT has caused this instrument to be executed this 30th day of October, 2003.

Colorado Department of Transportation

By: Craig Siracusa
Craig Siracusa

Title: Chief Engineer

STATE OF Colorado)
) ss:
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 30th day of October, 2003 by Craig Siracusa on behalf of the, Colorado Department of Transportation.

BONNY S. WIDDIFIELD NOTARY PUBLIC STATE OF COLORADO
My Commission Expires 12/21/2004

Notary Public Bonny S. Widdifield

Address 1553 Quince St.
Denver, CO 80220

My commission expires: 12/21/04

Accepted by the Colorado Department of Public Health and Environment this 19th day of February, 2004.

By: Cheryl D. Bruyle

Title: Division Director, HMWMD

STATE OF COLORADO)

COUNTY OF DENVER) ss:)

The foregoing instrument was acknowledged before me this 19 day of FEBRUARY, 2003 by GARY W. BAUGHMAN on behalf of the Colorado Department of Public Health and Environment.

Claudette M. Friis
Notary Public

Address
4300 Cherry Creek Dr S
Denver, CO 80246

My commission expires: October 21, 2007

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