CITY AND COUNTY OF DENVER

JOHN W. HICKENLOOPER
Mayor

DEPARTMENT OF LAW
COLE FINEGAN
CITY ATTORNEY

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DENVER, COLORADO 80202-5332
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January 29, 2004

Mr. Jeffrey Deckler
Remedial Program Manager
Colorado Department of Health & Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Re: Environmental Covenant for the Lowry Landfill Superfund Site

Dear Jeff:

I am enclosing a copy of the environmental covenant Denver has imposed as part of the remedy at the Lowry Landfill Superfund Site for inclusion on the State of Colorado's inventory of environmental covenants. This covenant covers the property described on page two of the document, which includes land in Section 6, T5S, R65W, 6th PM and a small parcel in Section 31, T4S, R65W, 6th PM. It was recorded with the Clerk and Recorder of Arapahoe County as provided by statute.

Sincerely,

T. Shaun Sullivan

cc: Diana Shannon
Dennis D. Bollmann
Katherine Dieck, Esq.

RECEIVED
FEB 03 2004
HAZARDOUS MATERIALS
AND WASTE MANAGEMENT

Return to:
Shawn Sullivan
1437 Bannock St.
Denver, Co 80202

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9/13/2002 10:40
PG: 0001-005
26.00 DOC FEE: 0.00
TRACY K. BAKER
ARAPAHOE COUNTY

AMENDED DECLARATORY STATEMENT OF ENVIRONMENTAL COVENANTS TO RUN WITH LAND FOR SECTION 6 AND A PORTION OF SECTION 31 OF THE LOWRY LANDFILL

WHEREAS, the City and County of Denver ("City") owns the property described more fully below, but commonly known as Section 6, Township 5 South, Range 65 West of the Sixth Principal Meridian and a portion Section 31, Township 4 South, Range 65 West of the Sixth Principal Meridian of the Lowry Landfill (the "Property"); and

WHEREAS, no dwelling units or residential developments exist on or within 0.5 miles of the Property; and

WHEREAS, the City, as a public service to the communities and businesses of the metropolitan area and as required by the original deed from the United States to the City, made the Property available as a sanitary landfill; and

WHEREAS, municipal solid waste, sewage sludge, and liquid and solid industrial waste were disposed at the sanitary landfill; and

WHEREAS, the Property has been declared to be a Superfund site by the United States Environmental Protection Agency ("EPA"); and

WHEREAS, EPA has determined that the remedial actions to be taken on the Property should be implemented as specified in the Record of Decision, as amended to date by subsequent EPA remedial decision documents, ("ROD") which has been placed on file with the City Clerk for the City and County of Denver; and

WHEREAS, to protect and aid in the implementation of the remedy and to limit human exposure to the contaminants thereby reducing any health or environmental risks presented by the contaminants, the City desires to restrict the use of and access to the Property through the adoption of this amended declaration of covenants to run with the land; and

WHEREAS, the City desires to amend and the Lowry Environmental Protection/Cleanup Trust Fund (Lowry Trust) has agreed to allow the City to amend, the "Declaratory Statement of Environmental Covenants to Run with Land for Section 6 and a Portion of Section 31 of the Lowry Landfill" dated June 29, 2001 and recorded in the real property records of the Arapahoe County Clerk and Recorder on June 29, 2001 at Reception No. B1106094.

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NOW THEREFORE,

I. DECLARATION. The City and County of Denver, a body politic and corporate existing under and by virtue of the constitution of the State of Colorado, being the owner of the following described real property situated, lying, and being in Arapahoe County, State of Colorado, to-wit:

Section 6

The West half (1/2), and the West half of the East half (W1/2E1/2), of Section 6, Township 5 South, Range 65 West of the Sixth Principal Meridian,
EXCEPT a strip of land 150.00 feet in width situated in the SW1/4SE1/4 of Section 6, Township 5 South, Range 65 West of the 6th P.M., lying 75.00 feet on each side of the following described centerline: Commencing at the Southwest corner of said Section 6; thence South 89°28'01" East along the South line of said Section 6 for a distance of 3,269.71 feet; thence North 00°31'59" East for a distance of 7.00 feet; thence North 15°31'59" East for a distance of 724.00 feet to the point of beginning of said center line to be described; thence back along the last described course South 15°31'59" West for a distance of 360.00 feet; and
EXCEPT that portion of the SE ¼ of said Section described in Book 5689 at Page 099 in the real property records of Arapahoe County; and
EXCEPT that portion of said Section described in Book 262 at page 59 in the real property records of Arapahoe County (Gun Club Road); and
EXCEPT that portion in the S1/2 of the S1/2 of said Section described in Book 2826 at Page 723 in the real property records of Arapahoe County (Quincy Avenue).

Portion of Section 31
Commencing at the Southeast corner of the West Half of the East Half (W1/2E1/2) of Section 31, Township 4 South, Range 65 West of the Sixth Principal Meridian; thence North 47°29'20" West for a distance of 1650.64 feet; thence South 53°25'35" West for a distance of 1831.46 feet; thence East along south line of said Section 31 for a distance of 2687.60 feet.

Together commonly known as the Lowry Landfill Superfund Site, hereby makes the following declarations as to limitations, restrictions and uses to which the Property may be put, which shall be binding upon all parties and all persons claiming under it, and which shall be for the benefit of all current and future owners of the Property and of the Lowry Trust, which owns adjacent property, or their approved successors and assigns. Denver further declares that said declarations shall constitute covenants to run with the Property for a term up to and including January 1, 2051, at which time said limitations, restrictions, and covenants shall be automatically extended for successive periods of ten years unless modified or terminated as provided for in this declaration of covenants.

II. INTENT. The purposes of these Covenants are to protect human health and the environment by restricting access to and uses of the Property so as to protect the treatment systems, the landfill cap, site drainage ways, and other remedial components and by limiting the exposure of persons and the environment to the contaminants; and to create and preserve open space, which may only be used in accordance with Paragraph III below.

III. LIMITATIONS, RESTRICTIONS, AND COVENANTS.

A. Drilling of wells -No new wells for use of groundwater shall be constructed on the Property, except for monitoring or remediation purposes necessary for implementation of the remedy for Lowry Landfill described in the ROD, or other wells that are not inconsistent with the purposes to be served by these covenants or the remedy described in the ROD.

B. Excavation – No excavation shall be conducted on the property except as necessary for landfill purposes or for monitoring or remediation necessary to implement the remedy identified in the ROD.

C. Structures – No structures shall be constructed on the Property except as necessary for landfill purposes or for monitoring or remediation necessary to implement the remedy identified in the ROD.

D. Uses - The use of the Property shall be restricted to landfilling, monitoring or remediation activities, or other uses that are not inconsistent with the purposes to be served by these covenants or the remedy described in the ROD. The Property shall not be used under any circumstances for day care centers, schools, nursing homes, hospitals, or residential purposes, including but not limited to single family or multi-family dwellings.

E. Access – Access to the Property shall be limited to persons who are authorized to be on site for uses listed in paragraph D above. Such access shall be located and used in a manner not inconsistent with the purposes to be served by these covenants or the remedy described in the ROD. Access on the Property shall be limited to areas approved by the Mayor or his designee.

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IV. ENFORCEMENT AND MODIFICATIONS.

A. If any person or entity shall violate or attempt to violate any of the covenants herein, any person or entity owning any part the Property, the Mayor of the City and County of Denver, the Lowry Trust, or its approved successors and assigns, the Colorado Department of Public Health and Environment ("CDPHE") or EPA may enforce these covenants by any means allowed by law, including §25-15-322, C.R.S., by prosecuting any proceedings at law or in equity against the person or entity violating or attempting to violate any such covenants to enjoin him or it from so doing and to recover damages and costs for such violation or attempted violation. A representative of the Lowry Trust or its approved successors and assigns shall visit the Property quarterly to insure that there are no apparent violations of these covenants.

B. These covenants shall not be terminated, revoked or modified, in whole or in part, unless such modification, revocation or termination is not inconsistent with the purposes to be served by the remedy described in the ROD and is approved by the Lowry Trust or its approved successors and assigns, and by vote of a majority of the then-owners of the Property. Owners of the Property shall have one vote for each acre, or part of an acre, owned. The City's votes shall be exercised by the Mayor or his designee. The City shall give notice to EPA and CDPHE at least 60 days prior to any termination, revocation or modification of these covenants.

C. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

D. These covenants shall not be construed to restrict or limit in any way the authority of EPA or CDPHE under federal and state law.

E. The interests and rights of the Lowry Trust under these covenants may not be transferred or assigned except to a governmental entity, or a charitable organization whose express purpose is to preserve open space, which assignments must be approved by the City.

F. These amended covenants supersede the covenants entitled "Declaratory Statement of Environmental Covenants to Run with Land for Section 6 and a Portion of Section 31 of the Lowry Landfill" dated June 29, 2001 and recorded in the real property records of the Arapahoe County Clerk and Recorder on June 29, 2001 at Reception No. B1106094.

5-5

IN WITNESS WHEREOF, the City and County of Denver has caused these covenants to be executed by its proper officers lawfully authorized so to do, on this 5th day of September 2002.

CITY AND COUNTY OF DENVER

Mayor

ATTEST:

By Sherry L. Jackson
SHERRY L. JACKSON, Clerk
and Recorder, Ex-Officio Clerk of the
City and County of Denver

TINA R. GELT NOTARY PUBLIC STATE OF COLORADO

STATE OF COLORADO)
)ss
COUNTY OF DENVER)

Subscribed and sworn to before me this 5th day of September 2002, by Wellington E Webb as Mayor and Sherry L. Jackson as City Clerk of the City and County of Denver, a municipal corporation of the State of Colorado.

Witness my hand and official seal.

My commission expires: 5-11-04

Tina R Gelt
Notary Public

9065 E. Oxford Dr.
Denver, CO 80237
Address

The Lowry Environmental Protection/Cleanup Trust Fund hereby gives its consent to the amendment of the "Declaratory Statement of Environmental Covenants to Run with Land for Section 6 and a Portion of Section 31 of the Lowry Landfill" dated June 29, 2001 and recorded in the real property records of the Arapahoe County Clerk and Recorder on June 29, 2001 at Reception No. B1106094 by this Amended Declaratory Statement of Environmental Covenants to Run with Land for Section 6 and a Portion of Section 31 of the Lowry Landfill.

LOWRY ENVIRONMENTAL PROTECTION/CLEANUP TRUST FUND

Co-Trustee

Co-Trustee