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Cheri Brunvand-Summit County Recorder 11/1/2007 10:49 DF:

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

THE TOWN OF BRECKENRIDGE, a Colorado Municipal Corporation, and the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (collectively, "OWNER") grant an Environmental Covenant ("Covenant") effective the 20th day of September, 2005, to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment (the "Department") pursuant to Section 25-15-321 of the Colorado Hazardous Waste Management Act, §§ 25-15-101 *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, OWNER is the owner of certain property upon which voluntary cleanup actions covering approximately 4.5 acres will be taken in the area of former Jessie Mine and Mill site, located in Summit County, Colorado. The location of such property is generally depicted on the GIS map attached hereto and incorporated herein as Attachment A. The property shall hereinafter be referred to as the "Jessie Property" or the "Property";

WHEREAS, pursuant to the Settlement Agreement, Covenants Not To Sue and Consent Decree entered into between the United States, the State and The B&B Mines, Inc. *et al.*, Civil Action No. 05-CV-992 (D. Colo.) (the "Consent Decree"), the Jessie Property is the subject of a Voluntary Cleanup Action and Plan ("VCUP") under the Colorado Voluntary Clean-up and Redevelopment Act, C.R.S. §§ 26-16-301 *et seq.*, as set forth in the Consent Decree and the VCUP attached to the Consent Decree;

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by providing for maintenance, monitoring, or operation in accordance with the VCUP, and of restricting future uses of the Jessie Property as set forth herein for as long as any residual contamination remains hazardous, and by assuring that the Jessie Property will be used as "public open space" (as hereafter defined) in perpetuity; and

WHEREAS, OWNER desires to subject the Jessie Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Jessie Property and bind OWNER and all parties having any right, title or interest in the Jessie Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein, for the benefit of the Department.

NOW, THEREFORE, OWNER hereby grants this Environmental Covenant to the Department, and declares that the Jessie Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in Sections I, II and III below, which shall run with the Jessie Property in perpetuity and be binding on OWNER and all parties having any right, title or interest in the Jessie Property, or any part thereof, their heirs, successors and assigns, as described herein. As used in this Environmental

Covenant, the term OWNER means the record owner of the Jessie Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Jessie Property or placement of encumbrances on the Jessie Property, other than by the exercise of eminent domain.

I. ENVIRONMENTAL USE RESTRICTIONS

A. **Prohibition on Residential Use**. Owner shall not allow, permit or construct any residential building, including but not limited to, any single family or multi-family residential dwelling or living unit, whether permanent or temporary, at the Jessie Property, and OWNER shall not permit any overnight camping to occur at the Property.

B. **Prohibition on Agricultural Use**. OWNER shall not allow or permit any agricultural use of the Jessie Property, including but not limited to, the cultivation or storage of any crop or the grazing, feeding or keeping of any animal for agricultural or commercial purposes.

C. **Restriction on Excavation**. OWNER shall not make or allow any excavation on or under the Property, except as provided for under the approved VCUP, attached hereto and incorporated herein as if set forth in full and as may be necessary to implement and/or maintain any of the actions specified under the VCUP, or as provided in the attached Materials Handling Plan, attached hereto and incorporated herein by reference as if set forth in full.

D. **Prohibition on Use of Water**. OWNER shall make no use of either groundwater under or surface water on the Property, except as provided for under the approved VCUP and as may be necessary to implement and/or maintain any of the actions specified under the VCUP or as provided in the attached Materials Handling Plan. For example, use of water may be necessary for revegetation, planting or restoration efforts under the VCUP. OWNER shall not allow such waters to be developed for any other purpose.

E. **Prohibition on Well Construction**. OWNER shall not dig, bore or drill any well for the production of water or from which water is produced on the Property, except as provided for under the approved VCUP and as may be necessary to implement and/or maintain any of the actions specified under the VCUP, or as provided in the attached Materials Handling Plan, attached hereto and incorporated herein by reference as if set forth in full.

F. **Protection of the Integrity and benefits of VCUP Action**. OWNER shall not use the Property in any way that interferes with the operation and/or maintenance of the VCUP action, including but not limited to, any groundwater monitoring wells, any equipment or infrastructure constructed or used for the VCUP action, or any cap or other covering intended to prevent contact with contaminated materials in the ground or at the surface.

1. Hiking trails will be routed away from the surface of the waste-rock piles on the Jessie Property. The Gold Run Gulch road runs through the site and is utilized for hiking, skiing, snowmobiling and 4WD vehicles. Such uses may continue when Gold Run Gulch is re-routed under the VCUP.

2. OWNER shall ensure that appropriate and effective signage is erected and maintained at the Property that warns recreational users of the Property to avoid contact with the waste-rock and tailings materials and the adit discharge on the Property.

3. OWNER declares that the Jessie Property shall be maintained and used, that cleanup actions and maintenance activities shall be performed, and that use restrictions shall be maintained in accordance with the approved VCUP, which is attached hereto and incorporated herein by reference.

II. PUBLIC OPEN SPACE

A. Jessie Property To Be Maintained and Used As Public Open Space. OWNER hereby declares that the Jessie Property shall be maintained and used by the OWNER and any person now or hereafter having any right, title or interest in the Jessie Property or any part thereof, and their heirs, successors, personal representatives and assigns as Public Open Space in perpetuity for the benefit of the residents of the Town of Breckenridge, the County of Summit, the State and the United States.

B. "Public Open Space" Defined. As used in this Environmental Covenant, the term "Public Open Space" shall mean land that is left in predominantly an undeveloped state and which provides for one or more of the following community benefits as determined by OWNER: (i) extensions to existing undeveloped open space lands; (ii) buffers to developed areas; (iii) view corridors; (iv) access to trails, trailheads, water bodies or National Forest area; (v) passive recreation uses; (vi) active recreation uses, including but not limited to recreational trails, consistent with the open space character of the Jessie Property under the Town of Breckenridge's and Summit County's Open Space Plans and determined in accordance with the Town of Breckenridge's and Summit County's public processes; (vii) unique ecological habitats; and (viii) historical sites. The term "Public Open Space" shall include those uses provided from time to time: (i) in the "Town of Breckenridge Open Space Plan" as adopted and amended from time to time by the Town Council of the Town of Breckenridge pursuant to Section 3-5-2 of the Breckenridge Town Code or any successor ordinance; and (ii) in the "Summit County Open Space Protection Plan," or its equivalent, as adopted and amended from time to time by the Board of County Commissioners of Summit County. The term "Public Open Space" shall exclude the following: golf course (this exclusion does not apply to Frisbee golf), swimming pool, or a substantial recreation center building, *i.e.,* over 10,000 square feet.

III. MISCELLANEOUS

A. 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. 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, but is not limited to, one or more of the following:

a) a proposal to perform additional or alternative response actions;
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
e) other appropriate supporting information.

B. 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 Jessie Property.

C. Notice to Lessees. 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 Jessie Property.

D. 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.

E. Inspections. The Department shall have the right of entry to the Jessie 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 Jessie Property.

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

G. Enforcement. The Department may enforce the terms of this Covenant pursuant to Section 25-15-322, C.R.S. OWNER may file suit in district court to enjoin actual or threatened violations of this Covenant.

H. OWNER's Compliance Certification. OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNER's compliance, and any lack of compliance, with the terms of this Covenant.

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

Kevin Mackey
Colorado Department of Public Health and the Environment
Hazardous Materials and Waste Management Division
Remedial Programs Section
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Todd Robertson
Summit County Open Space and Trails Director
P.O. Box 5660
Frisco, Colorado 80443

Timothy J. Gagen
Town Manager
Town of Breckenridge
P.O. Box 168
Breckenridge, Colorado 80424

J. Recording and Filing. This Environmental Covenant and the Consent Decree, including the approved VCUP, shall be placed in the real property records in the office of the Clerk and Recorder of Summit County, Colorado.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____

Title: _____
Timothy J. Gagen, Town Manager

STATE OF Colorado)
) ss:
COUNTY OF Summit)

NOTARY PUBLIC
KAREN L. BAILEY
STATE OF COLORADO

The foregoing instrument was acknowledged before me this 22 day of August, 2007 by Timothy J. Gagen, on behalf of the Town of Breckenridge

Karen L. Bailey
Notary Public

322 Idlewild Dr., Dillon 80435
Address

My commission expires: 04-25-08

BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO

By: _____
Stephen V. Hill

Title: Interim County Manager

STATE OF Colorado)
) ss:
COUNTY OF Summit)

The foregoing instrument was acknowledged before me this 21 day of August, 2007 by Stephen Hill on behalf of the Board of County Commissioners of Summit County, Colorado.

NOTARY PUBLIC
KAREN L. BAILEY
STATE OF COLORADO

_____
Notary Public

322 Idlewild Dr.
Address

Dillon CO 80435

My commission expires: 04-25-08

Accepted by the Colorado Department of Public Health and Environment this 28th day of September, 2007.

By: Gary W. Baughman

Title: Director, HMWMD

STATE OF COLORADO)
) ss:
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 28 day of SEPTEMBER, 2007 by GARY BAUGHMAN on behalf of the Colorado Department of Public Health and Environment.

Claudette M. Faris
Notary Public

4300 Cherry Creek Dr So
Address

Denver, CO 80246

My commission expires: October 21, 2007

This map is for display purposes only.
Do not use for legal conveyance.
Not necessarily accurate by surveying standards and
does not comply with National Mapping Accuracy Standards.
© 2005 Summit County Government, Open Space and Trails Department.

Covenant Area

NORTH

0 90 180 360 Feet

Materials Handling Plan

Jessie Mine and Mill Site

Submitted: November 14, 2005
By: Summit County Government and Town of Breckenridge

No offsite transport or disposal of materials is anticipated as part of reclamation of historic mining activities at the Jessie Millsite, as outlined in the Voluntary Cleanup Plan approved by the Colorado Department of Health and Environment on November 24, 2004. All materials within the environmental covenant area will be handled in accordance with the Voluntary Cleanup Plan.

In the event that future site activities result in the generation of potentially hazardous materials, or that offsite transport or disposal becomes necessary, all materials will be handled, stored, transported, and disposed of in full compliance with all applicable State and Federal laws and in accordance with the objectives and goals detailed in the approved Voluntary Cleanup Plan for the site. The State Voluntary Cleanup program will be informed in writing no less than 30 days prior to any offsite transport or disposal of mine wastes or other potentially hazardous materials.