RECEPTION#: 7 357, 01/28/2008 at
02:27:15 PM, 1 C. 9, CVNT R $46.00
FRANCINE TIPTON-LONG, MONTROSE
COUNTY, CO CLERK AND RECORDER

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

Lawrence Miskol grants an Environmental Covenant ("Covenant") this 11th day of January, 2008 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, Lawrence Miskol is the owner of certain property commonly referred to as Sampler Square, formerly known as the Hill Petroleum building, also formerly known as Burtis Brothers packing plant, located in T49N, R9W, Section 28, SE, SW, SE, also known as Lots 1 –5, and Lots 26 –32 of Block 12 of the Willerup's Subdivision, also known as 66 South Grand Ave., Montrose, CO, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"). Affected areas of the property subject to this covenant are Lots 1,2,3, and 4, also described as the 3-story section and adjoining stairwell at the north end of the building complex, and soil-grass areas and portions of the parking lot to the north and west of the 3-story section "the Addition") and shown on Figure 1; and

WHEREAS, pursuant to Colorado Provisional Radioactive Materials License 9015-01, the Property is the subject of enforcement and remedial action pursuant to the Colorado Radiation Control Act, § 25-11-101, et. seq.; and

WHEREAS, portions of the property were leased from the Western Colorado Power Company and used by the Radium Ore Sampling Co from 1918 to 1929 to process ores containing radioactivity, and

WHEREAS, the Radium Ore Sampling Co made improvements to the property; and

WHEREAS, radioactive materials were incorporated into portions of the foundation of the building as part of those improvements; and

WHEREAS, radioactive materials are also present in exterior soils around portions of the Property and shown in Figure 2; and

WHEREAS, radioactive materials were discovered and partially remediated to standards of the day during remodeling in the 1970s; and

WHEREAS, radioactive materials remained in and around the building subsequent to remodeling of the Property in the 1970s; and

WHEREAS, the allowable limits of radioactivity and radiation exposure to the public (Colorado Rules and Regulations Pertaining to Radiation Control, Part 4, § 4.14) were lowered in the 1990s; and

WHEREAS, radioactive materials remaining at the Property were exposing members of the public to radiation levels greater than allowed by current regulation; and

WHEREAS, additional cleanup of radioactive material in the structure was conducted in 2007; and

WHEREAS, structural and economic considerations precluded complete removal of radioactive material from the Property as described in the Final Report, Sampler Square Building Limited Removal Action dated July 2007 by New Horizons Environmental Consultants; and

WHEREAS, the Property is used as a commercial enterprise; and

WHEREAS, additional remediation of radioactive material will be required for free release of the property or for unrestricted use; and

WHEREAS, safe remediation and disposition of radioactive material requires special equipment and management; and

WHEREAS, controls will need to be maintained to keep radiation exposures to members of the public below regulatory limits; and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by limiting the time spent in the affected portions of the Property, restricting access to the contaminated material, and to preclude excavation of contaminated soils to keep members of the public below regulatory limits to exposure of radioactive material;

WHEREAS, Lawrence Miskol 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 Lawrence Miskol 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, as described herein, for the benefit of the Department.

NOW, THEREFORE, Lawrence Miskol 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 requirements set forth in paragraphs 1 through 10, below, which shall run with the Property in perpetuity and be binding on Lawrence Miskol 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, as described herein. As used in this Environmental Covenant, the term OWNER means the record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

1) Use restrictions

a) The Addition may not be used for residential occupancy. The Addition may be used as a commercial property.

b) The 1st floor offices and the loft of the Addition may be used for business purposes by any individual for up to 2,000 hours per year; they shall not be used as residences.

c) Access to the basement area of the Addition is limited to necessary access for routine maintenance and storage and shall be determined and controlled by the building Superintendent.

d) Any uses or activities that would in any manner interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed at the Property are prohibited.

e) Owner shall maintain a fence around the electrical service panel and window casing on the SW corner of the Addition to reduce access to elevated gamma exposure rates on the outside of the building. Owner shall inspect the fence quarterly, and complete any necessary repairs within 2 weeks of the inspection.

f) Construction of any building, structure, facility or fixture on Lots 1,2,3, and 4 is prohibited.

g) No tilling, excavation, grading, construction, or any other activity that disturbs the ground or asphalt surface such that underlying potentially contaminated soils could be exposed on the surface is permitted on Lots 1,2,3, and 4 without modification of this Covenant pursuant to paragraph 2, below.

h) The Addition shall be required to have active venting that reasonably reduces the migration of hazardous levels of radon from the contamination in the structure into the occupied areas of the Addition, including the basement, 1st floor and loft.

i) The Addition may not undergo intrusive renovation (i.e., any work that could expose contaminated material in the subfloor of the main level or the affected basement/ foundation walls) without modification of this Covenant pursuant to paragraph 2. Plumbing, telecommuniations and/or electrical work that penetrates the affected areas are included in the scope of this requirement. The request for modification shall demonstrate through plans and procedures that only qualified contractors possessing a radioactive materials license oversee the work and that any waste generated as a result of the renovation of the Addition is properly characterized, packaged, and disposed,

that public safety and the environment are protected, and that radon mitigation is properly incorporated into the design of the structure. Basic maintenance (e.g., painting, cleaning, carpeting on the first floor, new partitions) is exempt from this requirement.

j) Steel and lead shielding installed by New Horizons Environmental Consultants on the 1st floor offices walls and floors shall not be compromised or defeated.

k) A Department-approved radiological characterization of the loft will be required prior to any change in the use of the loft from commercial to residential occupancy.

l) Any time-critical (i.e., emergency) activity that could involve exposure to radioactive materials in the Addition (e.g., repair of utilities) shall include immediate notification to the Department.

m) The Addition may not be demolished without modification of this Covenant pursuant to paragraph 2. The request for modification shall demonstrate through plans and procedures that only qualified contractors possessing a radioactive materials license oversee the work and that any waste generated as a result of the demolition of the Addition is properly characterized, packaged, and disposed.

n) Owner shall monitor and maintain indoor air quality, including compliance with Part 4.14 of the Colorado Rules and Regulations Pertaining to Radiation Control, to be protective of human health from radon exposures. Radon measurements shall be collected semi-annually in the basement, first floor offices, and the loft and submitted to the Department for review.

o) Personnel from CDPHE shall be allowed access to the site for the purposes of environmental sampling, inspecting the remedy, and inspecting Owner's compliance with this Environmental Covenant.

2) 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 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 an engineered feature or structure is no longer necessary;
e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
f) other appropriate supporting information.

3) Conveyances OWNER shall notify the Department at least fifteen (15) days in advance of any proposed transfer of ownership of some or all of the real property subject to the Environmental Covenant.

4) 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 Property that may be affected by the Environmental Covenant.

5) 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.

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 §25-15-322. C.R.S. Lawrence Miskol may file suit in district court to enjoin actual or threatened violations of this Covenant.

9) 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.

10) Notices Any document or communication required under this Covenant shall be sent or directed to:

Steve Tarlton, Unit leader
Radiation Management Unit
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Lawrence Miskol, has caused this instrument to be executed this 11 day of Jan, 2008

Lawrence Miskol

By: Lawrence Miskol

Title: Owner

STATE OF Colorado)
) ss:
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 11th day of January, 2008 by Lawrence Miskol on behalf of Lawrence Miskol

Alice L. Huber
Notary Public

4300 Cherry Creek Drive South
Address

Denver Co 80246

My commission expires: 2-29-2008

Accepted by the Colorado Department of Public Health and Environment this 11th day of January, 2008.

By: Cheryl D. Baugh

Title: Director, HMWMD

STATE OF Colorado)
) ss:
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 11th day of January, 2008 by Gary Langhman on behalf of the Colorado Department of Public Health and Environment.

Notary Public

4300 Cherry Creek Drive South
Address

Denver Co 80246

My commission expires: 2-29-2008

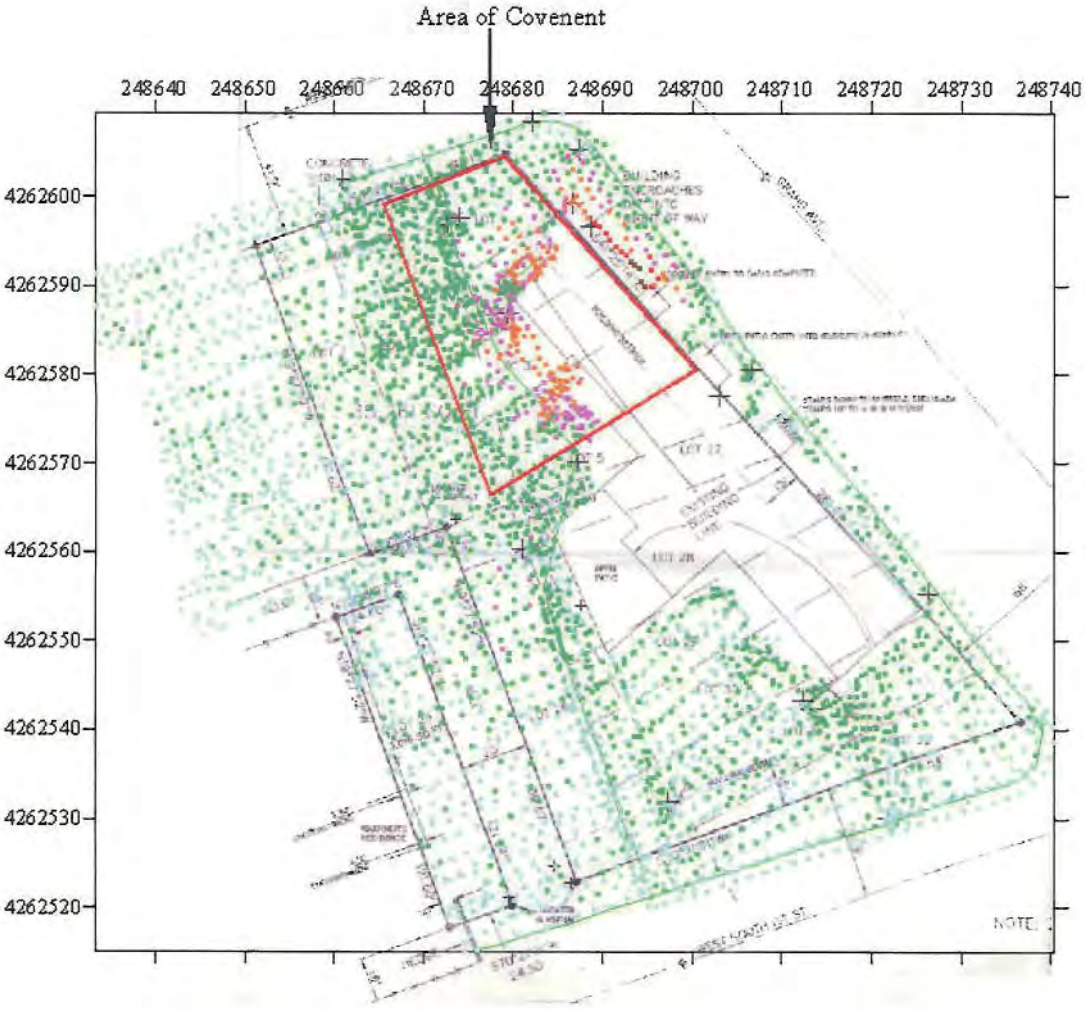
Sampler Square
66 S. Grand Ave.
Montrose, CO
Environmental Covenent:
Lots 1, 2, 3, 4
Block 12
Willarup Subdivision

Coordinates for boundary of coveanent:

Northing	Easting
4262603.69	248666.40
4262611.10	248684.24
4262564.98	248677.89
4262581.74	248706.11

(NAD 83 UTM Zone 13N)

Figure 1. Map of Property and Area Affected by the Environmental Covenant.



Sampler Square
66 S. Grand Ave.
Montrose, CO
Environmental Covenent
Gamma Count Rate Map

Gamma Count Rate, cpm

- 11500 to 14999
- 15000 to 19999
- 20000 to 24999
- 25000 to 49999
- 50000 to 99999
- 100000 to 180000

N

Figure 2. Gamma Exposure Rate Survey Map Indicating Areas Containing Soil Contamination.