



**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**

SWH Central City LLC grants an Environmental Covenant ("Covenant") this 30<sup>th</sup> day of September, 2009 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, SWH Central City LLC is the owner of certain property ("the Property") which includes an area commonly referred to as Hampton Lode MS #581, West American Boy Lode MS #16779, Rainbow Lode MS #770, Black Bear Lode MS #17397, and Louise Lode MS #17029, located in Gilpin County, Colorado, as legally described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth.

WHEREAS, the Property is located within the Central City/Clear Creek Superfund Site Study Area ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register in 1983; and

WHEREAS, in the Central City/Clear Creek Superfund Site Operable Unit 4 Record of Decision dated September 29, 2004 (the "ROD"), the EPA Region VIII Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions:

- a. Mine waste pile remediation including erosion control measures or removal of certain mine waste rock piles;
- b. Stream restoration/stabilization actions;
- c. Sedimentation controls such as construction of drop control structures, catchment basins and sediment dams;
- d. Maintenance related to all construction components;
- e. Institutional controls (e.g., an environmental covenant) to ensure the long-term integrity of the remedial action; and

WHEREAS, the Property as described includes a portion where erosion control measures will be constructed on or around a mine waste rock pile, which includes remedial actions such as regrading, construction of run-on/run-off control structures, placement of rock covers over mine waste or riprap along the base of mine waste piles and revegetation of disturbed areas. The actions may also include stream restoration/stabilization and sediment control measures. The area affected by these remedial actions is defined in Attachment B (hereinafter referred to as the "Subject Property"); and;



WHEREAS, pursuant to the ROD, the Subject Property is the portion of the Property where the remedial action will be constructed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601. *et seq.* ("CERCLA"); and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by ensuring that constructed portions of the remedial action remain intact and functioning as designed, and

WHEREAS, SWH Central City LLC 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 SWH Central City LLC 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, SWH Central City LLC hereby grants this Environmental Covenant to the Department, and declares that the Property 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 SWH Central City LLC 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) No person shall till, excavate, grade, construct, or take any other activity that disturbs the ground surface of the Subject Property without modification of this Covenant pursuant to paragraph 2, below.
- b) No person shall make any uses or take any 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 Subject Property.
- c) No person shall prohibit or deny CDPHE personnel, including its representatives, agents and contractors, access to the Subject Property for the purposes of environmental sampling, inspecting the remedy, conducting maintenance, 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 grant, transfer or conveyance of any interest in any or all of the Subject Property.
  - 4) Notice to Lessees OWNER shall 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 Subject Property.
  - 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 affecting the Subject Property.
  - 6) Inspections The Department shall have the right of entry to the Subject Property at reasonable times with prior notice for the purposes described in 1c. To the extent reasonably possible, the Department shall access the Subject Property utilizing a route which causes the least disturbance to the uses and improvements then located on the Property. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Subject Property.
  - 7) No Liability The Department does not acquire any liability under State law by virtue of accepting this Environmental Covenant.
  - 8) Enforcement The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.R.S. SWH Central City LLC 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.





Accepted by the Colorado Department of Public Health and Environment this 30<sup>th</sup> day of September, 2009.

By: Gary W. Baughman

Title: Director, HAWARD

STATE OF COLORADO (of) )  
ARAPAHOE )

COUNTY OF ARAPAHOE ) ss:

The foregoing instrument was acknowledged before me this 29 day of SEPTEMBER 2009 by GARY BAUGHMAN on behalf of the Colorado Department of Public Health and Environment.

Claudette M. Ferris  
Notary Public

4300 Cherry Creek Dr S  
Address

Denver, CO 80246

My commission expires: October 21, 2011





**ATTACHMENT A  
TO ENVIRONMENTAL COVENANT**

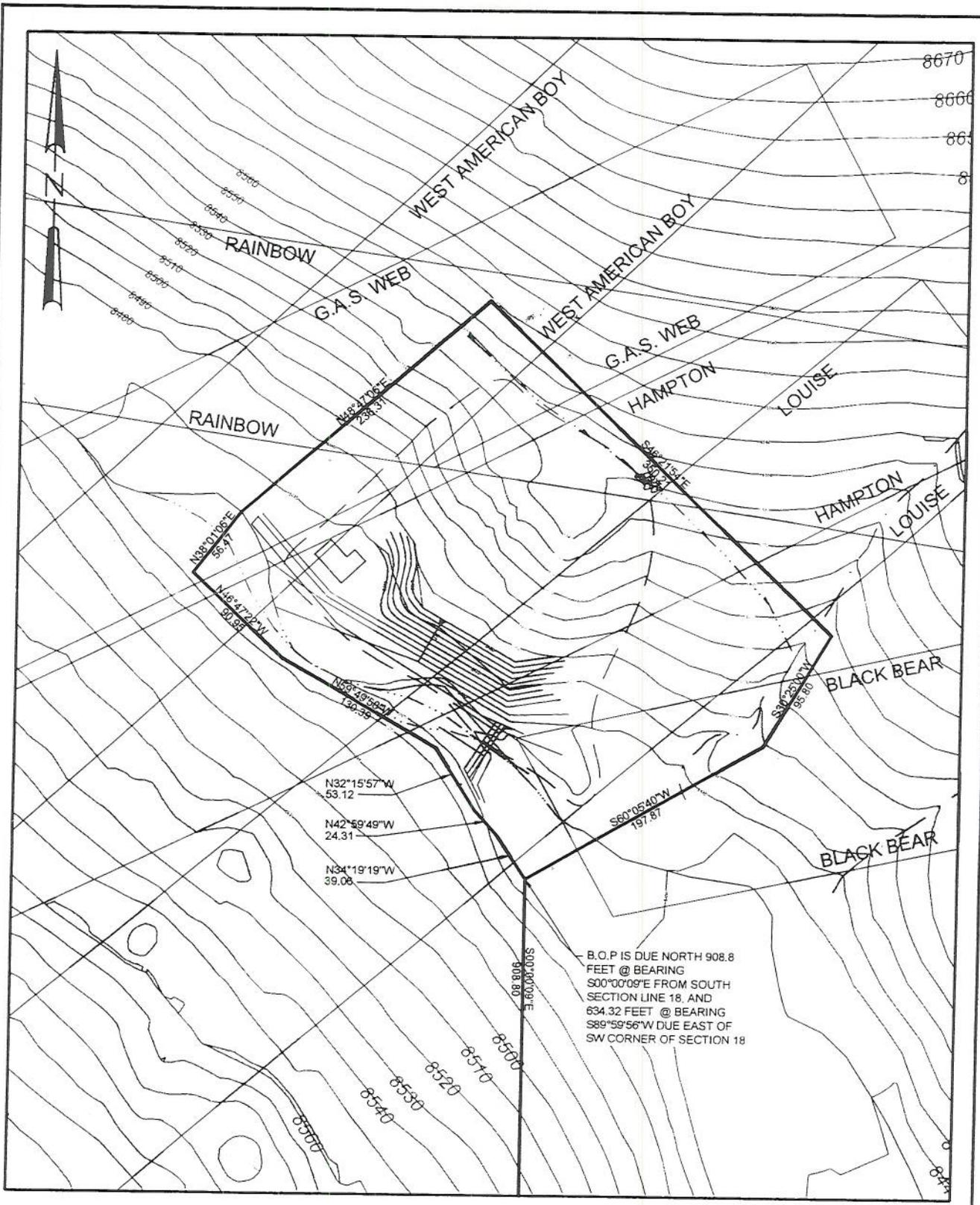
LEGAL DESCRIPTION

1. HAMPTON LODE MINING CLAIM, SURVEY NO. 581, DESCRIBED IN U.S. PATENT RECORDED DECEMBER 11, 1882 IN BOOK 93 AT PAGE 9, EXCEPTING AND EXCLUDING ALL THAT PORTION OF THE SURFACE GROUND EMBRACED BY SURVEY NO. 124, COUNTY OF GILPIN, STATE OF COLORADO.
2. WEST AMERICAN BOY LODE MINING CLAIM, SURVEY NO. 16779, DESCRIBED IN U.S. PATENT RECORDED APRIL 12, 1916 IN BOOK 187 AT PAGE 9, EXCEPTING AND EXCLUDING ALL THAT PORTION OF THE GROUND EMBRACED IN SAID MINING CLAIMS OR SURVEYS NOS. 520, 581, 731, 769, 770, 870, 871, 883, 5280, 6638, 6037, 7069 AM., 13338, 15742, 16262, 13048, 15922, 16329, SAID PARTNER NEWCOMB LODE CLAIM SURVEY NO. 6033 AND SAID NEBULA AND LA PLACE LODE CLAIMS SURVEY NO. 6003, THAT PORTION OF SAID SURVEY NO. 15740 IN CONFLICT WITH SAID SURVEY NO. 870, THAT PORTION OF SAID G.A.S. NO. 5 LODE CLAIM IN CONFLICT WITH SAID NEBULA LODE CLAIM SURVEY NO. 6003, THOSE PORTIONS OF SAID G.A.S. NO. 3 LODE CLAIM IN CONFLICT WITH SAID SURVEYS NOS. 769, 770, AND 16262 AND THOSE PORTIONS OF SAID G.A.S. NO. 2 LODE CLAIM IN CONFLICT WITH SAID SURVEY NOS. 581 AND 16262, AND ALSO ALL VEINS, LODES AND LEDGES THROUGH THEIR ENTIRE DEPTH, THE TOPS OR APEXES OF WHICH LIE INSIDE OF SUCH EXCLUDED GROUND, COUNTY OF GILPIN, STATE OF COLORADO.
3. RAINBOW LODE MINING CLAIM, SURVEY NO. 770, DESCRIBED IN U.S. PATENT RECORDED JANUARY 3, 1903 IN BOOK 101 AT PAGE 189, EXCEPTING AND EXCLUDING ALL THAT PORTION OF THE SURFACE GROUND EMBRACED BY SAID LOTS NOS. 124, 581 AND 769, COUNTY OF GILPIN, STATE OF COLORADO.
4. BLACK BEAR LODE MINING CLAIM, SURVEY NO. 17397, DESCRIBED IN U.S. PATENT RECORDED APRIL 6, 1906 IN BOOK 162 AT PAGE 3, EXCEPTING AND EXCLUDING ALL THAT PORTION OF THE GROUND EMBRACED IN SAID MINING CLAIMS OR SURVEYS NOS. 550, 770, 17029, 4969, 15777 AND SAID HARD TO BEAT LODE CLAIM AND ALSO ALL THAT PORTION OF SAID BLACK BEAR VEIN OR LODE AND OF ALL VEINS, LODES AND LEDGES THROUGHOUT THEIR ENTIRE DEPTH, THE TOPS OR APEXES OF WHICH LIE INSIDE OF SUCH EXCLUDED GROUND, COUNTY OF GILPIN, STATE OF COLORADO.
5. LOUISE LODE MINING CLAIM, SURVEY NO. 17029, DESCRIBED IN U.S. PATENT RECORDED APRIL 6, 1906 IN BOOK 162 AT PAGE 4, EXCEPTING AND EXCLUDING ALL THAT PORTION OF THE GROUND EMBRACED IN SAID MINING CLAIMS OR SURVEYS NOS. 124, 550, 581, 584, 591, 770, 16262 AND 16537 AND ALSO THAT PORTION OF SAID LOUISE VEIN OR LODE AND OF ALL VEINS, LODES AND LEDGES THROUGHOUT THEIR ENTIRE DEPTH, THE TOPS OR APEXES OF WHICH LIE INSIDE OF SUCH EXCLUDED GROUND, COUNTY OF GILPIN, STATE OF COLORADO.

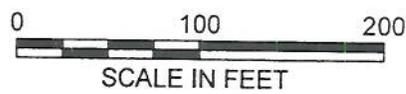


**ATTACHMENT B  
TO COVENANT**

**LEGAL DESCRIPTION OF THE SUBJECT PROPERTY (DEPICTING THE PORTION OF  
THE PROPERTY SUBJECT TO THE USE RESTRICTIONS)**



R:1149\_047DWGAS-BUILTS-12-07FIGURES FOR ENVIRONMENTAL COVENANTHAMPTON.DWG, HAMPTON, 2/7/2008 4:52:09 PM, STEVE GALLEGOS



CLEAR CREEK / CENTRAL CITY SUPERFUND SITE OU4		
ENVIRONMENTAL COVENANT BOUNDARY HAMPTON WASTE ROCK PILE		
DATE: 2/7/2008	BY: JB	SCG
JOB NO: 1149-047.07		



FIGURE:  
 1

