RECEPTION # 2522396, BK 4975 PG 655 02/04/2010 at 11:32:08 AM, 1 OF 59, R $310.00 S $1.00
Janice Rich Mesa 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, Colorado Revised Statutes

ENVIRONMENTAL COVENANT

Mesa Denver Associates, LLC, ("MDA") grants an Environmental Covenant ("Covenant") this 3RD day of DECEMBER, 2009 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to section 321 of the Colorado Hazardous Waste Act, C.R.S. § 25-15-101, *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, CO 80246-1530.

WHEREAS, MDA is the OWNER of certain commercial property, commonly referred to as the Teller Arms Shopping Center, located at 2401 North Avenue, Grand Junction, CO, more particularly described in Exhibit A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, pursuant to the May 22, 2008 Integrated Corrective Action Plan, COD983793647, approved on June 3, 2008, as amended in the February 13, 2009 Request For No-Action Determination letter, attached hereto as Exhibit B and incorporated herein by reference as though fully set forth (hereinafter referred to as "the ICAP"), the Property is subject to remedial action pursuant to Part 3 of the Colorado Hazardous Waste Act, C.R.S. § 25-15-301, *et seq.*

WHEREAS, the purpose of this Environmental Covenant is to ensure protection of human health and the environment by imposing certain use restrictions on the Property.

WHEREAS, MDA desires to subject the Property to certain covenants and restrictions as provided in C.R.S. §§ 25-15-317 - 327, which covenants and restrictions shall burden the Property and bind MDA and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the Property, as described herein, for the benefit of the Department and OWNER.

NOW THEREFORE, MDA hereby grants this Environmental Covenant to the Department and declares that the Property as described in Exhibit A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 11 below, which shall run with the Property in perpetuity (until terminated as hereafter provided), and bind MDA and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the Property, as described herein. As used in this Environmental Covenant, the term "OWNER" means the then current 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. The OWNER's use of the Property is subject to the following restrictions:

a) Groundwater beneath the Property shall not be removed; however, monitoring of groundwater constituents via monitoring wells is permitted;

b) Any activity resulting in the removal of greater than one (1) cubic yard of soil from an area within a twenty-five (25) foot radius of SB-1/MW-8 (the "Site") must be done in accordance with the Materials Management Plan, attached hereto as Exhibit C and incorporated herein by reference as though fully set forth (hereinafter referred to as the "Materials Management Plan");

c) Any activity that generates excess soil that cannot be returned to the original excavation must be done in accordance with the Materials Management Plan;

d) No activity shall be conducted that results in the breach or removal of building foundation, pavement or any other permanent fixture at the Site that causes soil to be exposed to the elements for more than 48 hours; and

e) No activity shall be conducted that violates or interferes with the activities specified in the ICAP.

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, based on the Department's published rules, regulations and guidelines, 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 (in recordable form). 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 the closing on any proposed sale or other conveyance of any interest in any or all of the Property.

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 that grant the right to disturb the soils on the Site.

5) Notification for Proposed Construction and Land Use. If the OWNER intends to obtain (a) a change in land use with respect to the Site, or (b) a building permit for use in connection with construction activities on the Site, that in either case would result in the disturbance of soils within the Site, OWNER shall notify the Department simultaneously when submitting any such 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) Third Party Beneficiaries. The OWNER of the Property is a third party beneficiary with the right to enforce the provisions of this Covenant as provided in C.R.S. § 25-15-322.

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

9) Enforcement. The Department may enforce the terms of this Covenant pursuant to C.R.S. § 25-15-322. MDA may file suit in district court to enjoin actual or threatened violations of this Covenant.

10) 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.

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

Walter Avramenko
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Mesa Denver Associates, LLC, has caused this instrument to be executed this 3RD day of DECEMBER, 2009.

MESA DENVER ASSOCIATES, LLC

By: Theodore Pomeranz
Theodore Pomeranz, Manager

STATE OF COLORADO)
)
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 3RD day of DECEMBER, 2009, by Theodore Pomeranz as Manager of Mesa Denver Associates, LLC.

DONALD A. NEUMAN NOTARY PUBLIC STATE OF COLORADO
My Commission Expires 02/14/2010

Notary Public
My Commission expires: 2/14/10

Accepted by the Colorado Department of Public Health and Environment this 30th day of December, 2009.

By: Gary W. Baughman
Title: Division Director, HMWMD

STATE OF COLORADO)
)
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 30th day of December, 2009, by Gary W. Baughman on behalf of the Colorado Department of Public Health and Environment.

Notary Public
My Commission expires: 2-29-2012

EXHIBIT A

Access & Maintenance Easement

An access and maintenance easement situated in the NE¼NE¼ Section 13, Township 1 South, Range 1 West of the UTE Meridian, Mesa County, Colorado, being described as follows:

Commencing at the NE Corner of Section 13, Township 1 South, Range 1 West of the Ute Meridian, and considering the North Line of the NE¼ NE¼ of said Section 13 to bear N89°54'12"W and all bearings contained herein to be relative thereto;

Thence S74°11'01"W 1287.74 feet to the True Point of Beginning, being the center point of a circular area with a radius of 25.00 feet.

in Grand Junction, Mesa County, Colorado.

Authored by Richard L. Mulliken
LS #33201
Q.E.D. Surveying Systems, Inc.