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Jefferson County, Colorado

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

46.00
QB

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CATHOLIC HEALTH INITIATIVES COLORADCHIC ("CHIC") grants an Environmental Covenant ("Covenant") this 8th day of March, 2011 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, CHIC is the owner of certain property commonly referred to as the Hospital Phase II Area Landfill Cover, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, pursuant to Compliance Order on Consent Number 97-07-18-01, the Property is the subject of enforcement and remedial action pursuant to the Colorado Hazardous Waste Act, § 25-15-301, *et. seq.* ("CHWA"); and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by restricting the use of the groundwater beneath the Property for any purpose and restricting the disturbance of the engineered landfill cover on the Property. In addition, the Covenant will ensure continued operation, maintenance and monitoring of the corrective measures as described in Paragraph 1 of this covenant.

WHEREAS, CHIC 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 CHIC and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein, for the benefit of the Department and OWNER.

NOW, THEREFORE, CHIC 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 CHIC and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, 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

- a) Restriction on Use of Groundwater. The groundwater beneath the Property shall not be withdrawn for any use. This limitation does not apply to the installation or use of any monitoring or treatment well installed on the Property for use solely to obtain samples for analysis and/or to conduct remediation. This restriction also does not preclude groundwater extraction/management arising from construction dewatering which is conducted in compliance with applicable Department regulations. Owner shall secure a Construction Dewatering Permit in accordance with the Colorado Water Quality Control Act (25-8-101 et. seq. CRS, 1973 as amended) prior to any dewatering activities.
- b) Protection of the Integrity of the Corrective Measures. There shall be no disturbance of the engineered landfill cover within the area marked Landfill Cover on Attachment B that is not in accordance with, the most recent Department approved version of the Hospital Phase II Area Operations and Maintenance Plan (O&M Plan) (dated July 30, 2008) and the most recent Department approved version of the Hospital Phase II Area Materials Management Plan (Materials Management Plan) (dated August 13, 2008), both of which are incorporated by reference as if set forth in full herein. The most recent approved version of the O&M Plan and the Materials Management Plan are on file at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, Record Center and may be obtained from the Department at the address provided in Section 11 herein.
- c) Inspection and Maintenance of the Corrective Measure. The owner of the Property Hospital Phase II Area maintains an affirmative obligation to monitor and maintain the Landfill Cover in accordance with the most recent approved version of the O&M Plan. No person shall alter the corrective measures to render the Landfill Cover in any condition other than that set forth in the as built drawings set forth in the Final Hospital Phase II Area Corrective Measures Completion Report (dated August 11, 2010). Landfill cover maintenance activities performed in accordance with the O&M Plan could result in encountering waste material. Waste material encountered during intrusive activities shall be managed and disposed of in accordance with the most recent Department approved Materials Management Plan.
- d) Protection From Landfill Gas. Soil gas monitoring shall be performed within the building footprint of all future structures to be constructed on the Property. The soil gas monitoring shall be conducted at the rate of 1 soil gas sample per 10,000 square feet of building footprint. The soil gas shall be analyzed for methane. If methane is present in excess of 10% of the lower explosive limit, the Owner shall develop and submit a Vapor Mitigation Plan to Department for review and approval. The Vapor Mitigation Plan will include design requirements for a subslab depressurization system that will be installed concurrent with building construction,

- 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

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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, or not materially reduce the protection of human health and the environment afforded by the Covenant without such modification or termination, 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 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 granting a right to use the 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.
 - 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 Beneficiary The OWNER of the Property is a third party beneficiary with the right to enforce the provisions of this Covenant as provided in § 25-15-322, C.R.S.
 - 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 §25-15-322. C.R.S. CHIC 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.

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Accepted by the Colorado Department of Public Health and Environment this 14th day of March, 2011.

By: Gary W. Baughman

Title: Director, HMA/MD

STATE OF COLORADO)
) ss:
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 14 day of March, 2011 by GARY W. BAUSHMAN on behalf of the Colorado Department of Public Health and Environment.

Claudette M. Ferris
Notary Public

4300 Cherry Creek Rd So
Address

Denver, CO 80246

My commission expires: October 21, 2011



ATTACHMENT A
LEGAL DESCRIPTION OF PROPERTY

A parcel of land lying in the Southeast One-Quarter of Section 8 and the Southwest One-Quarter of Section 9, Township 4 South, Range 69 West of the 6th Principal Meridian, City of Lakewood, County of Jefferson, State of Colorado, being further described as follows:

All of Lot 2, Block 2, DENVER FEDERAL CENTER SUBDIVISION FILING No. 1, the plat of which is recorded at Reception No. 2007108299, of the records of the Jefferson County Clerk and Recorder,

EXCEPT the following described parcel conveyed as Routt Street right-of-way;

COMMENCING at the Southwest corner of said Section 9; thence N 00°05'30" W along the west line of said Section 9, a distance of 50.00 feet, more or less, to a point lying on the North right-of-way line of West Alameda Avenue said North right-of-way line being in common with the South line of said Lot 2; thence N 89°23'51" E along said North right-of-way line and said South line, a distance of 117.31 feet to the **True Point of Beginning**; thence N 01°03'19" W, a

distance of 160.55 feet to a point of curvature; thence along the arc of a curve to the left having a radius of 480.00 feet, a central angle of 20°15'45" (the long chord of which bears N 11°11'11" W, a chord length of 168.87 feet), an arc distance of 169.75 feet to a point of tangency; thence N 21°19'04" W, a distance of 214.86 feet to a point of curvature; thence along the arc of a curve to the right having a radius of 580.00 feet, a central angle of 22°14'18" (the long chord of which bears N 10°11'55" W, a chord length of 223.71 feet), an arc distance of 225.12 feet to a point of tangency; thence N 00°55'14" E, a distance of 214.37 feet to a point of curvature; thence along the arc of a curve to the right having a radius of 560.00 feet, a central angle of 31°06'50" (the long chord of which bears N 16°28'39" E, a chord length of 300.38 feet), an arc distance of 304.10 feet to a point of tangency; thence N 32°02'04" E, a distance of 14.70 feet, more or less, to a point on the North line of said Lot 2 said point being in common with the Southwest corner of that tract of land for Routt Street right-of-way conveyed to the City of Lakewood at Reception No. 2008102194, of said records; thence N 89°59'49" E along said North line and along the South line of said tract of land, a distance of 100.27 feet, more or less, to the East line of said Lot 2 and the Southeast corner of said tract of land; thence along said East line the following seven (7) courses:

S 32°02'04" W, a distance of 67.89 feet to a point of curvature;

Thence along the arc of a curve to the left having a radius of 475.00 feet, a central angle of 31°06'50" (the long chord of which bears S 16°28'39" W, a chord length of 254.79 feet), an arc distance of 257.94 feet to a point of tangency;

Thence S 00°55'14" W, a distance of 214.37 feet to a point of curvature;

Thence along the arc of a curve to the left having a radius of 495.00 feet, a central angle of 22°14'18" (the long chord of which bears S 10°11'55" E, a chord length of 190.92 feet), an arc distance of 192.13 feet to a point of tangency;

Thence S 21°19'04" E, a distance of 214.86 feet to a point of curvature;

Thence along an arc of a curve to the right having a radius of 565.00 feet, a central angle of 20°15'45" (the long chord of which bears S 11°11'11" E, a chord length of 198.77 feet), an arc distance of 199.81 feet to a point of tangency;

Thence S 01°03'19" E, a distance of 161.23 feet, more or less, to South line of said Lot 2 and said North right-of-way of West Alameda Avenue; thence S 89°23'51" W, a distance of 85.00 feet to the **True Point of Beginning**, said parcel containing an area of 2.5481 acres, more or less.

Bearings are based on the west line of the Southwest Quarter of the Southwest Quarter of Section 9, Township 4 South, Range 69 West of the 6th Principal Meridian bearing S00°05'30" E and being monumented on the North end at the South sixteenth corner common to Sections 8 and 9 by a 1 ½" aluminum cap stamped "LS 9133" and on the South end at the Southwest corner of Section 9 by a 3 ¼" aluminum cap stamped "Engineering Surveying, Inc. PLS 17669".

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The foregoing legal description was prepared by:

Nathan A. VanRaemdonck, PLS
Farnsworth Group, Inc.
8055 East Tufts Avenue, Suite 850
Denver, Colorado 80237

The above described Property contains an area of 20.4702 acres, more or less.

