

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

PEANUT MINE, INC., a Colorado nonprofit corporation ("PMI") grants an Environmental Covenant ("Covenant") this 3<sup>rd</sup> day of August, 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. PMI's address is P.O. Box 1167, Crested Butte, CO 81224.

**WHEREAS**, PMI is the owner of certain property commonly referred to as the Peanut Mine, located approximately 1 ½ miles northwest of Crested Butte, Colorado, more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference as though fully set forth ("the Property"); and

**WHEREAS**, pursuant to the Voluntary Clean-Up and Redevelopment Act, § 25-16-302 to 310 C.R.S., the Property is the subject of an approved voluntary cleanup plan; and

**WHEREAS**, the approved voluntary cleanup plan as implemented created the combined hard rock and coal waste disposal cell and the associated structures that are necessary for implementation of the remedy, such as the hydrological controls that divert water away from the engineered cap (all of which are hereafter collectively called the "Cell Area"). The location of the Cell Area is shown on **Exhibit B** attached hereto and incorporated herein by reference.

**WHEREAS**, the purpose of this Covenant is to ensure protection of human health and the environment by assuring that those who use the Property will not come in contact with the mining waste which contains toxic metals located on the Property, and by assuring that the water which now flows through the Property will be diverted away from the combined hard rock and coal waste disposal cell; and

**WHEREAS**, PMI 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 PMI, its successors, assigns and any grantees of the Property, for the benefit of the Department.

**NOW, THEREFORE**, PMI 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 10 below, which shall run with the Property in perpetuity and be binding on PMI 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 Property. As used in this Environmental Covenant, the term OWNER means the record owner of the Property, its successors and assigns 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. Crested Butte, a home rule municipality which is the Grantee of that certain Deed of Conservation Easement recorded January 2, 2002, at Reception No. 517022 and recorded February 5, 2002 at Reception No. 517985 of the official records of

Gunnison County, is specifically designated as a third party beneficiary of this Environmental Covenant.

1. **Use Restrictions.** The use restrictions set forth in this paragraph 1 apply only to the Cell Area.

a. No person shall construct or use any buildings or other enclosed structures on the Cell Area. No storm water detention ponds or man made lakes or ponds shall be constructed on the Cell Area.

b. No person shall till, excavate, grade, construct, or engage in any other activity that exposes mine waste or changes the flow of water around the Cell Area without first modifying this Covenant pursuant to paragraph 2.

c. No person shall take any action that impairs or interferes with the growth of vegetation within the Cell Area, with the exception of actions needed to control, without digging, invasive non-native plant species, or to physically remove all deep-rooted plant species in order to maintain the integrity of the engineered cap.

d. No person shall irrigate the vegetative cover within the Cell Area at any time other than as necessary where emergency conditions require such irrigation in order to maintain the viability of such vegetative cover. Even where such emergency irrigation is permitted, such irrigation shall not cause any erosion or leaching of metals to ground water.

e. The Cell Area shall be inspected each calendar year during the summer months after runoff has occurred by PMI or its designee and sufficient maintenance performed to prevent exposure of metal contaminated soils. Inspection and maintenance includes but is not limited to making repairs to piping, ditches, outlets and erosion rills. The Voluntary Cleanup Plan approved by the Department on May 1, 2003 establishes Vegetative Success Criteria (VSC). Once the VSC's are attained, maintenance of these levels is the responsibility of the OWNER.

f. Appropriate signage shall be installed and maintained on all four sides of the engineered cap to warn users of the Property of the presence of hazardous materials and prevent activities which might damage the engineered cap. The signage should be such that it is visible, without aid, from at least 20 feet away.

2. **Modifications.** This Covenant runs with the Property 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 the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
- e) other appropriate supporting information.

Any amendments hereto shall be kept on file at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, Records Center.

3. **Conveyance.** 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 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 on the Property.

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. The Town of Crested Butte, a Colorado home-rule municipality, the Grantee of the Deed of Conservation Easement encumbering the Property, does not acquire any liability under state law as a result of being named a third party beneficiary as provided by §25-15-318(4). C.R.S.

8. **Enforcement.** The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.R.S. PMI or the Town of Crested Butte 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 along with the inspection report 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:

**Department:**

Voluntary Cleanup Unit Leader  
Hazardous Materials and Waste Management Division  
Colorado Department of Public Health and the Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

**PMI:**

Peanut Mine, Inc.  
PO Box 1167  
Crested Butte, CO 81224

**Town of Crested Butte:**  
Town Manager  
Town of Crested Butte  
PO Box 39  
Crested Butte, CO 81224

These addresses may be changed by sending the other parties the new address in writing.

PMI has caused this instrument to be executed this 3<sup>rd</sup> day of August, 2011.

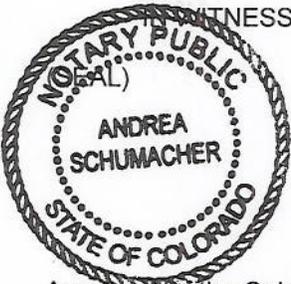
PEANUT MINE, INC.,  
a Colorado nonprofit corporation

By: James H. Starr  
President

STATE OF COLORADO )  
County of Gunnison ) ss:

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of August, 2011 by James H. Starr as President of Peanut Mine, Inc., a Colorado nonprofit corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.



Andrea Schumacher  
Notary Public  
My commission expires: 10/20/2014

Accepted by the Colorado Department of Public Health and Environment this 18<sup>th</sup> day of August, 2011

By: Carly Brough  
Title: Director, HHS/MSD

STATE OF COLORADO )  
 ) ss:



County of DEWIER )

The foregoing instrument was acknowledged before me this 18 day of AUGUST, 2011 by GARY BASHMAN on behalf of the Colorado Department of Public Health and Environment.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.



*Claudia M. Ferris*

Notary Public

My commission expires: October 21, 2011



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Exhibit A  
Peanut Mine Legal  
QUITCLAIM DEED

THIS DEED is made this 11 day of December, 2001, by and between the CRESTED BUTTE LAND TRUST, a Colorado nonprofit corporation, Grantor, and the CRESTED BUTTE LAND TRUST, a Colorado nonprofit corporation, Grantee, whose address is P.O. Box 2224, Crested Butte, Colorado 81224.

WITNESSETH, that the Grantor, for and in consideration of the sum of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, have remised, released, sold, conveyed and QUITCLAIMED, and by these presents does remise, release, sell, convey and QUITCLAIM unto the Grantee, its successors and assigns, forever, all the right, title, interest, claim and demand which the Grantor has in and to the following described real property and improvements:

A tract of land located in the South Half of the Southeast Quarter and the South Half of the Southwest Quarter of Section 28, Township 13 South Range 88 West of the Sixth Principal Meridian, described by metes and bounds as follows:

Beginning at the Southeast Corner of said Section 28, a standard brass-capped monument;

Thence following the South Line of the said Southeast Quarter, S89°46'00"W a distance of 2,558.97 feet to the South Quarter Corner of said Section 28;

Thence following the South Line of the Southwest Quarter of said Section 28, S89°42'24"W a distance of 1,960.98 feet;

Thence leaving the Section Line N 1°57'50"W a distance of 666.72 feet;

Thence N89°42'24"E a distance of 1,950.98 feet, more or less, to the N-S Quarter Line of said Section 28;

Thence following the said N-S Quarter Line N 1°57'50"W a distance of 305.16 feet;

Thence leaving the said Quarter Line N89°59'59"E a distance of 2,572.33 feet to the East Line of the Southeast Quarter of said Section 28;

Thence following the said East Line S 1°11'14"E a distance of 961.11 feet to the point of beginning,

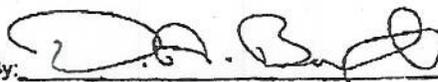
County of Gunnison,  
State of Colorado.

Basis for bearings is True North as determined from solar observation. GLO brass-cap markers in place determined bearings of Section Lines and Quarter Line.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the Grantor, either in law or equity, to the only proper use, benefit and behoof of the Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date first set forth above.

CRESTED BUTTE LAND TRUST, a Colorado nonprofit corporation

By:   
David Baxter, President

STATE OF COLORADO

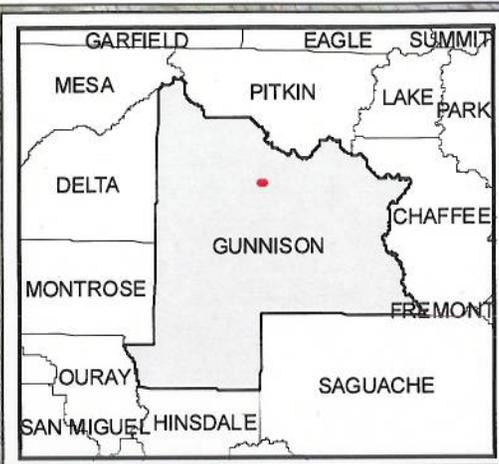
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STATE OF COLORADO  
COUNTY OF GUNNISON

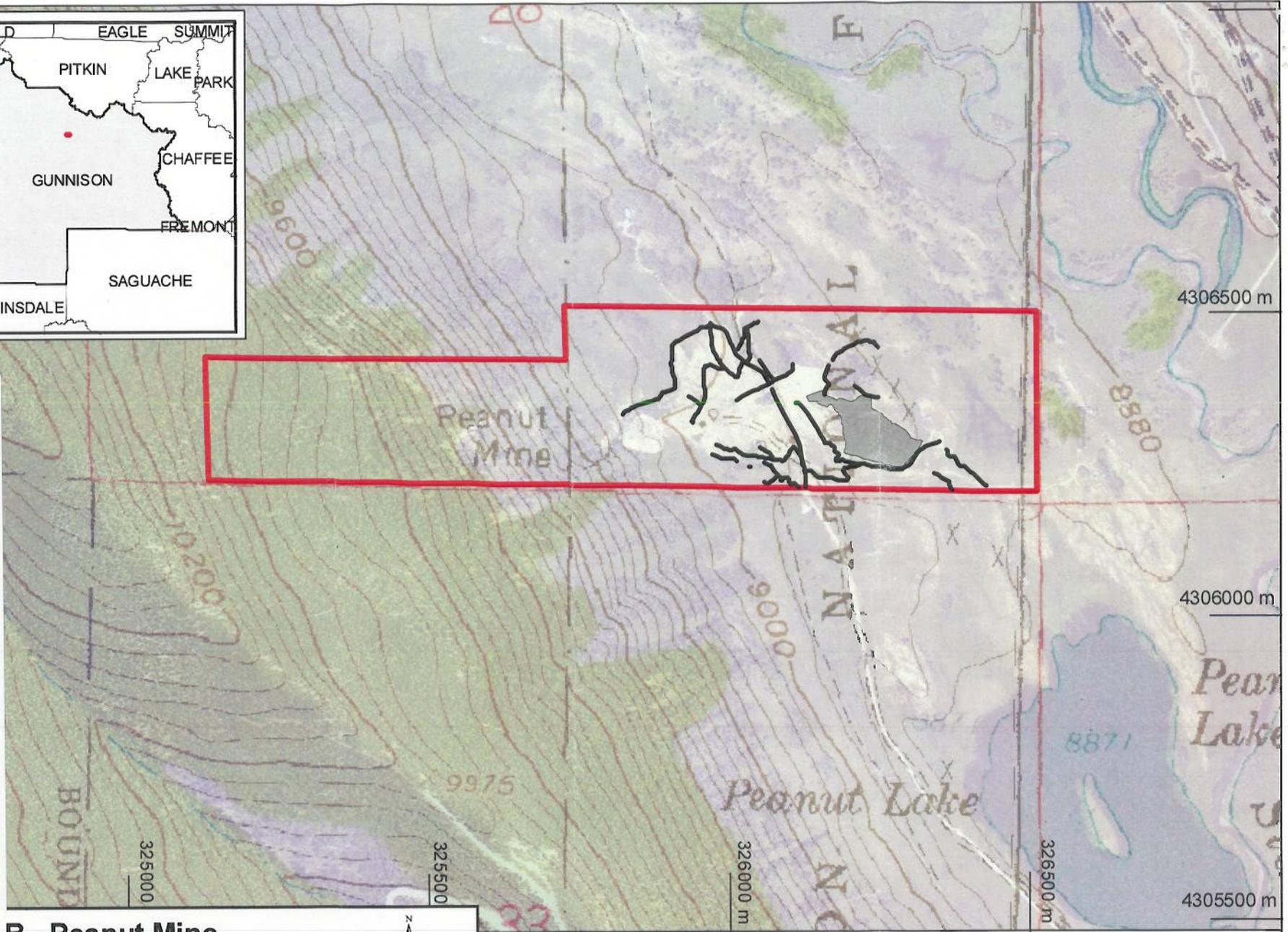
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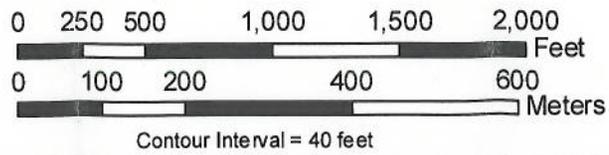


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**Exhibit B - Peanut Mine**

-  Peanut Mine Boundary
-  Peanut Mine Repository Cell Area Covenant Enforced
-  Water Controls Covenant Enforced



NAD\_1983\_UTM\_Zone\_13N  
 Projection: Transverse\_Mercator  
 Linear Unit: Meter  
 GCS\_North\_American\_1983  
 Datum: D\_North\_American\_1983