## Former Lowry Air Force Base Environmental Covenant Summary

**Covenant ID: HMCOV00022**

**Covenant Information:**

Covenant Date: 1/13/2006
Self Reporting: Yes
Media of Concern:
- Surface Water: No
- Groundwater: Yes
- Air: No
- Soil: No
- Other: No

Contaminants of Concern: trichloroethylene (TCE)
Property Restrictions:

1. No excavation, extraction, or utilization of water from alluvial aquifer and the Denver (weathered) aquifer
2. No tampering or damaging of the monitoring wells
3. If groundwater is encountered during soil excavation at Operating Unit (OU) 5, the Department shall be notified within two days; and groundwater must be appropriately disposed of
4. Owner shall notify the Department within 48 hours of the damage of any monitoring well. Wells shall be repaired at owners expense (within 10 days)
5. If structures are built on OU 5, owner is required to install ventilation systems as specified in the environmental covenant.

**Site Information:**

ID: NA
Name: Former Lowry Air Force Base
Address: See legal description
City: Denver
State: CO
Zip Code: NA
Legal Description: See File
County: Denver

**Site Contact Information:**

Lowry Redevelopment Authority
Name: Greg Palcanis
Address: 555 Uinta Way
City: Denver
State: CO Zip Code: 80230

# LOWRY AIR FORCE BASE

**HMCOV00022**

0 650 1,300 Meters

COLORADO
Hazardous Materials & Waste Management Division
Department of Public Health & Environment

# 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

The United States of America, acting by and through the Secretary of the Air Force, under and pursuant to the powers and authority contained in the Defense Base Closure and Realignment Act of 1990, as amended (10 U.S.C. § 2687, note) ("Grantor") grants an Environmental Covenant ("Covenant") this 4th day of January, 2006 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, the Grantor is the owner of certain property associated with the former Lowry Air Force Base ("LAFB"), located in Denver and Aurora, Colorado, 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 Consent Agreement Number 01-08-07-02, the Property is the subject of enforcement and remedial action pursuant to the Colorado Hazardous Waste Act, § 25-15-301, et. seq. ("CHWA"). Historic Air Force activities resulted in chlorinated solvents, with the primary constituent of concern being trichloroethylene (TCE), contaminating the groundwater associated with the Property; and,

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to any hazardous substance, hazardous waste, hazardous constituents, and/or solid waste that remains in the alluvial groundwater beneath the Property. The Covenant will accomplish this by prohibiting those activities that may result in contact with groundwater and by creating a review and approval process to ensure that any such intrusive activities are conducted with appropriate precautions to avoid or eliminate any hazards; and

WHEREAS, the Grantor 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 the Grantor, and all parties having any right, title or interest in the Property, or any part thereof, its heirs, successors, assigns, and any persons using the land as described herein, for the benefit of the Department.

NOW, THEREFORE, the Grantor 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 9 below, which shall run with the Property in perpetuity and be binding on Grantor 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 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 OWNER shall not excavate into, extract or utilize, in any manner whatsoever any water from the alluvial aquifer and weathered Denver aquifer below the surfaces of the ground within the boundary of OU5 for any purpose whatsoever unless the OWNER shall first have obtained the prior written approval of the Department.

b. The OWNER shall not tamper with or damage in any manner any of the monitoring wells.

c. If groundwater is encountered during any excavation of soil at OU5, the OWNER shall notify the Department within two (2) business days of the incident, and must dispose of the groundwater in accordance with applicable federal, state, and local law and regulation, at its own cost and expense.

d. There are a series of monitoring wells on OU5. The OWNER shall notify the Department within forty-eight (48) hours of any damage to these wells of which it has knowledge. Unless otherwise agreed to by the Department, the OWNER, shall repair any damage to such wells or replace such wells at the OWNER's sole expense within ten (10) days.

e. Unless a written determination is obtained from the Department that such systems are not required, the OWNER shall, at its sole expense, install and arrange for maintenance of the following ventilation systems in structures constructed on OU5 after the date of this Covenant, unless deemed and verified unnecessary in writing by the Department.

1. Newly-constructed residential structures must contain a sub-slab depressurization system ("SSDS").

2. Newly-constructed commercial structures must contain either a heating, ventilating, and air conditioning system ("HVAC") which, while operating, is designed to provide an internal positive pressure in the building, and such HVAC must be operated in accordance with normal and customary operating procedures for similar buildings in Denver, Colorado and Denver City Ordinance or a SSDS.

The term "structures" as utilized herein shall not include garages or other outbuildings used primarily for storage, built slab on grade, where no soil excavation five (5) feet or more below the ground surface is necessary for the construction or operation thereof.

2. Modifications This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. If a Completion Report is approved by the Department under the Consent Agreement No. 01-08-07-02, for all or a portion of the Property, which determines that the Property can be utilized for unrestricted use, this Covenant will be terminated as to that portion or all of the Property. In addition, the OWNER or its successors and assigns 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 groundwater 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.

3. Conveyances The 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 The 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 The OWNER and/or its transferees shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use at 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, nor does any other named beneficiary of this Covenant acquire any liability under State law by virtue of being such a beneficiary.

8. Enforcement The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.R.S. The Grantor and any named beneficiary of this Covenant may file suit in district court to enjoin actual or threatened violations of this Covenant.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand at the direction of the Secretary of the Air Force, the day and year first above written.

THE UNITED STATES OF AMERICA

By: Kathy M. Halv
KATHRYN M. HALVORSON
Director
Air Force Real Property Agency

Witness:

Kathryn Peters

Commonwealth of Virginia):
)ss.
County of Arlington ):

The foregoing instrument was acknowledged before me this 4th day of JANUARY, 2006, by Kathryn M. Halvorson as the Director of Air Force Real Property Agency.

Witness my hand and official seal

PAUL C. MACPHERSON
NOTARY PUBLIC
COMMONWEALTH
OF VIRGINIA
My Commission Expires
September 30, 2009

Notary Public
My Commissions Expires on SEPTEMBER 30, 2009

(seal)

Accepted by the Colorado Department of Public Health and Environment this 13th day of January 2006.

By: Gary W. Baughman
GARY BAUGHMAN
Director
Hazardous Materials Waste Division

STATE OF COLORADO)
) ss:
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 13th day of January 2006 by Gary W. Baughman on behalf of the Colorado Department of Public Health and Environment.

Notary Public
Address: 4300 Cherry Creek Drive S - Denver
My commission expires: 2-29-08

IN WITNESS WHEREOF, I have hereunto set my hand at the direction of the Secretary of the Air Force, the day and year first above written.

THE UNITED STATES OF AMERICA

By: Kathy M. Halvorson

KATHRYN M. HALVORSON
Director
Air Force Real Property Agency

Witness:

Kathryn Peters

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GARY BAUGHMAN
Director
Hazardous Materials Waste Division

STATE OF COLORADO)
) ss:
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 13th day of January 2006 by Gary W. Baughman on behalf of the Colorado Department of Public Health and Environment.

Diana L. Huber

Notary Public
Address: 4300 Cherry Creek Dr S Denver
My commission expires: 2-29-08