

**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**

[FACILITY] grants an Environmental Covenant (“Covenant”) this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ 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.*, C.R.S.

WHEREAS, [FACILITY] is the owner of certain property commonly referred to as [FACILITY], located at [ADDRESS], 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, the Department, which is located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, is authorized to approve Environmental Covenants pursuant to § 25-15-320 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.*, C.R.S.; and

WHEREAS, for purposes of indexing in the County Clerk and Recorder’s office Grantor-Grantee index only, [FACILITY] shall be considered the **Grantor**, and the Colorado Department of Public Health and Environment shall be considered the **Grantee**. Nothing in the preceding sentence shall be construed to create or transfer any right, title or interest in the Property; and

WHEREAS, pursuant to [*insert compliance order no., plan name, etc.*], the Property is the subject of enforcement and remedial action pursuant to the [*insert name and citation of applicable law(s), e.g., Colorado Hazardous Waste Act, § 25-15-101, et seq., C.R.S. (“CHWA”), the Resource Conservation and Recovery Act, 42 U.S.C. § 6926, et seq. (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. (“CERCLA”), the Solid Waste Disposal Sites and Facilities Act, § 30-20-101, et seq., C.R.S., etc.*]; and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by [*insert summary description of rationale for various restrictions in the covenant. This is not required, but may be useful as an aid in interpreting the covenant. You may choose to reference the environmental remedial decision, if that document explains the purpose(s) of the use restrictions.*]; and

WHEREAS, [FACILITY] 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 [FACILITY] 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 (and third party beneficiary if appropriate).

NOW, THEREFORE, [FACILITY] hereby grants this Environmental Covenant to the Department, [if a third party beneficiary is named, add “with (beneficiary name) as a third party beneficiary,”] 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 [#], below, which shall run with the Property in perpetuity and be binding on [FACILITY] 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. [Refer to CDPHE guidance on use restriction language.]
- 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 the closing on any proposed sale or other conveyance of any interest in any or all of the Property. Within thirty (30) days after any such conveyance, OWNER shall provide the Department with the name, mailing address and telephone number of the new OWNER.
- 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, including its authorized employees, agents, representatives and independent contractors, 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.
- 7) Third Party Beneficiary. The OWNER of the Property [*insert name of any other entity that will be a third party beneficiary*] 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 [*and, if applicable “, nor does any other named beneficiary of this Covenant acquire any liability under State law by virtue of being such a beneficiary”*].
- 9) Enforcement. The Department may enforce the terms of this Covenant pursuant to § 25-15-322, C.R.S. [FACILITY] [*and, if applicable, “and any named beneficiaries of this Covenant”*] 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) Severability. If any part of this Covenant shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.
- 12) Notices. Any document or communication required under this Covenant shall be sent or directed to:

[*appropriate Project manager, Program manager, or Unit leader*]  
Hazardous Materials and Waste Management Division  
Colorado Department of Public Health and the Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

[*add third party beneficiary contact information if applicable*]

[FACILITY], has caused this instrument to be executed this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

[FACILITY]

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ on behalf of [FACILITY]

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Address

My commission expires: \_\_\_\_\_

Accepted by the Colorado Department of Public Health and Environment this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ on behalf of the Colorado Department of Public Health  
and Environment.

---

Notary Public

---

Address

---

My commission expires: \_\_\_\_\_

**ATTACHMENT “A”**  
**to the**  
**ENVIRONMENTAL COVENANT**