



First Amendment to the Agreement and
Declaration of Covenants for the Valmont Butte Property
dated October 12, 1999

WHEREAS, on October 12, 1999 the State of Colorado, acting by and through the Colorado Department of Public Health and Environment (the "Department"), entered into an Agreement and Declaration of Covenants ("Agreement") with the Valmont Butte Corporation and the Lincoln Trust Company, the Landowner in fee simple of real property in Boulder County, Colorado, consisting of more than 100 acres and described in Exhibit A of the Agreement (the "Valmont Butte Property"); and

WHEREAS, the City of Boulder is the current Landowner in fee simple of the Valmont Butte Property subject to the covenants set forth in the Agreement; and

WHEREAS, the City of Boulder and the Department agree to amend the Agreement to allow for certain environmental sampling.

NOW THEREFORE, the City of Boulder and the Department hereby agree, and Landowner, on behalf of itself and its successors and assigns as owners of any portion of the Valmont Butte Property, hereby declares, the October 12, 1999 Agreement and Declaration of Covenants for the Valmont Butte property shall be amended as follows:

1. Paragraph 1(C)(iv) of the Agreement shall be replaced with the following paragraph:

(iv) All excavations, removals and other material disturbances of existing surface materials, soils or tailings within the Tailings Ponds shall be limited to those activities related to environmental sampling and the construction, maintenance and repair of (a) foundations, caissons, pilings or other subsurface structural components, and (b) water, sewer, gas, telephone, electric or other sub-surface utility components, all in connection with Tailings Ponds Improvements (collectively, "Permitted Disturbances"), subject to the provisions of Paragraphs 1(C)(v) and 1(C)(vi), below.

2. Paragraph 1(C)(v) of the Agreement shall be replaced with the following paragraph:

(v) Any existing surface materials, soils or tailings within the Tailings Ponds which are excavated, removed or disturbed in connection with any Permitted Disturbance shall be (a) fully contained at such construction site, within the Tailings Ponds, during such construction and related activities, and (b) completely re-covered and re-capped within the Tailings Ponds, upon completion of such construction and site restoration activities, with the effect that any such excavated, removed or disturbed surface materials, soils or tailings shall be no less stable and contained within the Tailings Ponds after completion of such construction and related activities than prior to the commencement thereof. Any party conducting activities on the property shall have an appropriate Health and Safety Plan for handling contaminated materials, and shall take appropriate measures to control



any contaminated materials to prevent the release of hazardous substances to the environment. Any handling of radioactive materials shall be accomplished only by a licensed entity, and any radioactive materials removed from the site shall be disposed at an appropriately licensed facility.

3. Paragraph 1(C)(vi) of the Agreement shall be replaced with the following paragraph:

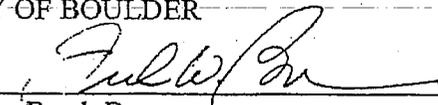
(vi) No wells shall be allowed in any portion of the Tailings Ponds. No drill holes or penetrations of existing surface materials, soils and tailings shall be allowed in any portion of the Tailings Ponds except in connection with any Permitted Disturbances; provided, however, that all such permissible drill holes or penetrations shall be grouted with cement-bentonite grout from total depth to five feet below the surface of the Tailings Ponds cover. From five feet below ground surface to the surface shall be filled with clean soil compacted to match the surrounding cover materials. The surface of the borehole location shall be mounded slightly to promote surface drainage away from the borehole location. All equipment and materials used to advance the borehole, hold it open, and collect samples shall be removed from the borehole prior to abandonment and filling. In the event of material burrowing, tunneling, penetrations or other similar disturbances of the Tailings Ponds by prairie dogs or other wildlife which the Department reasonably determines will pose a substantial risk of contributing materially to the Identified Risks, Landowner and the Department shall cooperate to develop, and Landowner shall implement, an appropriate plan for managing and controlling such wildlife disturbances.

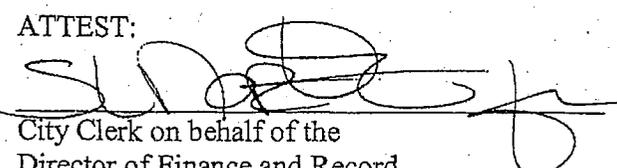
Landowner and the Department agree that except as amended by this amendment, the terms of the October 12, 1999 Agreement and Covenants shall remain in full force and effect.

IN WITNESS WHEREOF, Landowner and the Department have executed and delivered this instrument for recording as of the date first written below.

DATED this 18th day of August, 2004.

LANDOWNER:
CITY OF BOULDER

By: 
Frank Bruno
City Manager

ATTEST:

City Clerk on behalf of the
Director of Finance and Record

