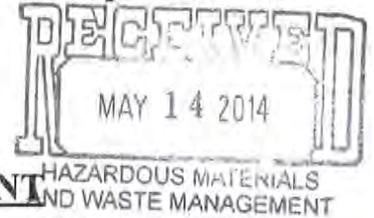




This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.



AMENDED ENVIRONMENTAL COVENANT HAZARDOUS MATERIALS AND WASTE MANAGEMENT

The City of Boulder, State of Colorado (the "City") grants an Environmental Covenant ("Covenant") this 12 day of March, 2014 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.

This covenant replaces the Agreement and Declaration of Covenants executed by the prior owner of the property and recorded with the Boulder County Clerk and Recorder on October 21, 1999, at reception number 1992513 and the First Amendment to the Agreement and Declaration of Covenants executed by the City of Boulder and recorded with the Boulder County Clerk and Recorder on August 31, 2004, at reception number 2622857.

WHEREAS, the City is the current owner of certain property historically used for milling and processing of mineral ores commonly referred to as the Valmont Butte Property, located at 3000 North 63rd Street, Boulder, Colorado, more particularly described in Attachment A (legal description), attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to, in whole or any portion thereof, as "the Property");

WHEREAS, pursuant to the approved Voluntary Cleanup and Redevelopment Act Application for the Valmont Butte Property, dated June 2010, the Property was the subject of a cleanup action (the "VCUP Remedial Action") pursuant to Part 3 in Article 16 of Title 25 Colorado Revised Statutes (25-16-301 *et seq.* CRS), the State of Colorado Voluntary Cleanup and Redevelopment Program;

WHEREAS, the Environmental Completion Report, dated January 15, 2014, provides a description of the VCUP Remedial Action as implemented. These actions included the excavation of impacted soils, which were consolidated and placed in a tailings pile on the north central portion of the Property and covered with a 2-foot soil cap and additional rock cover (the "Tailings Pile"). Further, as part of the VCUP Remediation Action, the former mill building was left in place at the Property (the "Mill Building"). The Primary Tailings Pile and the Mill Building areas are more particularly delineated on Attachment B, attached hereto and incorporated herein by reference as though fully set forth (hereinafter collectively referred to as the "Covenant Areas");

WHEREAS, the Department issued a no action determination (NAD) for the Property dated February 24, 2014. The VCUP Remedial Action, as approved by the Department, left residual contaminant levels at the Property. Notwithstanding the residual contaminant levels, the Department has determined the Property to be safe for certain uses;

WHEREAS, the purpose of this Covenant is to maintain and ensure the integrity and protectiveness of the VCUP Remedial Action over time; and

WHEREAS, to this end, the City 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 City 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 the City.

NOW, THEREFORE, the City 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 11, below, which shall run with the Property in perpetuity and be binding on the City and all parties now or subsequently having any right, title or interest in the Property, 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) No Habitable Structures within the Tailings Pile. No buildings or other enclosed structures that serve as living quarters for any person ("Habitable Structures") shall be constructed within any portion of the Tailings Pile. Subject to the requirements outlined in Paragraphs 1(b), (c), and (d) below, buildings or other enclosed structures, other than Habitable Structures, may be constructed, maintained and repaired within the Tailings Pile.
- b) Tailings Pile Integrity. All work on and improvements to the Tailings Pile ("Tailings Pile Work"), other than routine maintenance and repairs, must be planned, designed and completed so as to preserve the overall integrity of the Tailings Pile and the protectiveness of the Tailings Pile cap, including maintaining the 2 foot soil cap and rock cover or suitable alternative surface.
- c) Management Plan. Prior to undertaking any Tailings Pile Work or work on, in or under the Mill Building, other than routine maintenance and repairs, Owner shall prepare an appropriate plan to ensure that such work is performed in accordance with all applicable legal requirements, is protective of human health and the environment, and is consistent with current radiation exposure limits and the ALARA (as low as reasonably achievable) radiation principles ("Management Plan"). The Management Plan is subject to review and approval by the Department prior to implementation.

- d) Compliance with Radon Guidelines and Exposure Limits. Prior to Owner's application for issuance of a final certificate of occupancy with respect to any building or other structure constructed within the Covenant Areas, Owner shall furnish to the Department (i) a true and complete report documenting the measured radiation dose within all areas of the building or structure and confirming that such building or structure meets the then-current radon guidelines recommended by the U.S. Environmental Protection Agency or its successor agency, (ii) a reasonably detailed description of the methods of radon testing, measurement and analysis utilized to achieve such results, and (iii) in the event any radon mitigation design, devices or equipment were employed or installed in the tested building or structure, a reasonably detailed description of such design, devices or equipment, together with true and complete reports of all radon testing, measurements and analyses completed with respect to such building or structure, including, without limitation, before and after the employment or installation of such radon mitigation design, devices or equipment. No occupancy shall be permitted if the measured dose exceeds EPA's most recent guidelines.
- 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, without limitation, 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 thirty (30) days in advance of the closing on any proposed sale or other conveyance of any interest in 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 reasonable prior notice to the Owner 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. Owner 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) Notices Any document or communication required under this Covenant shall be sent or directed to:

Edgar Ethington
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

[Signatures on the following pages].

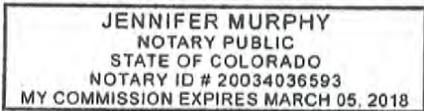
The City has caused this instrument to be executed this 12 day of March, 2014.

The City of Boulder, Colorado

By: Jane S Brautigam
Jane S. Brautigam, City Manager

STATE OF COLORADO)
) ss:
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 12 day of March, 2014 by Jane S. Brautigam on behalf of the City of Boulder, Colorado.



Jennifer Murphy
Notary Public
1777 Broadway
Address
Boulder, CO 80302

My commission expires: March 05, 2018

Attest:
Alisa D. Lewis
for Alisa D. Lewis, City Clerk

Approved as to Form:
David J. Gehr 03-10-2014
David J. Gehr, Deputy City Attorney

Accepted by the Colorado Department of Public Health and Environment this 21st day of April, 2014.

By: Gary W. Baughman

Title: Director, HHSWMD

STATE OF COLORADO)
) ss:
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 21 day of APRIL, 2014 by GARY W. BAUGHMAN on behalf of the Colorado Department of Public Health and Environment.

Claudia M. Turis
Notary Public

4300 Cherry Creek Dr So
Address

Denver, CO 80246

My commission expires: October 21, 2015

ATTACHMENT A



1992513
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EXHIBIT "A"

PARCEL A:

Part of Sections 22 and 23, Township 1 North, Range 70 West of the 6th P.M., described as follows:

Beginning at the Southeast corner of said Section 22; thence Northerly along the East line of said Section 22, a distance of 214.50 feet; thence Westerly and parallel with the South line of said Section 22, a distance of 625.00 feet; thence Southerly and parallel with the East line of said Section 22, a distance of 214.50 feet to the South line of said Section 22; thence Westerly along the South line of said Section 22, a distance of 654.00 feet; thence North, 26.00 feet; thence West, 304.00 feet; thence North 720.00 feet; thence East, 304.00 feet; thence South, 215.00 feet; thence North 78°30' East, 299.88 feet; thence North 00°15'30" West, 385.00 feet to the South bank of the Housel Mill Ditch; thence Northeasterly along the South bank of said Housel Mill Ditch to the East line of said Section 22; thence Southerly along said East line to the centerline of County Road No. 1 as shown on the recorded Plat of said County Road No. 1 which is recorded in Public Roads Book C at Page 87; thence Northeasterly along the centerline of said County Road No. 1 to the East line of the SW1/4SW1/4 of said Section 23; thence Northerly along said East line to the Northwest corner of the SE1/4SW1/4 of said Section 23; thence Easterly along the North line of said SE1/4SW1/4 to the centerline of said County Road No. 1; thence Northeasterly along the centerline of said County Road No. 1 to the East line of the NE1/4SW1/4 of said Section 23; thence South along the East line of the SW1/4 of said Section 23, a distance of 1,638.90 feet to the South Quarter corner of said Section 23; thence Westerly along the South line of said Section 23, a distance of 2,626.12 feet to the POINT OF BEGINNING;

EXCEPT a parcel in the SE1/4SE1/4 of said Section 22, described as follows:

Commencing at the Northwest corner of said Southeast 1/4 of the Southeast 1/4; thence South, 21 rods; thence East, 20 rods to the TRUE POINT OF BEGINNING; thence South, 8 rods; thence East, 20 rods; thence North, 8 rods; thence West, 20 rods to the TRUE POINT OF BEGINNING.

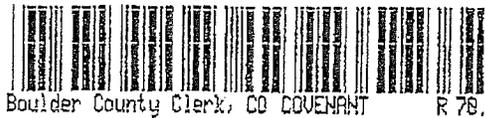
PARCEL B:

Part of the Southeast 1/4 of the Southwest 1/4 of Section 22, Township 1 North, Range 70 West of the 6th P.M., described as follows:

Beginning at the Southeast corner of the Southwest 1/4 of said Section 22; thence North along the East line of said Southwest 1/4, a distance of 355.26 feet; thence South 36°39' West, 433.80 feet; thence on a 20° curve to the right to the South line of said Southwest 1/4; thence East along said South line to the POINT OF BEGINNING.

Continued....

ATTACHMENT A



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PARCEL C:

Part of the Southeast 1/4 of the Southwest 1/4 of Section 22, Township 1 North, Range 70 West of the 6th P.M., described as follows:

Beginning at the Southeast corner of the Southwest 1/4 of said Section 22; thence North along the east line of said Southwest 1/4, a distance of 355.26 feet; thence South 47° West to the South line of said Southwest 1/4; thence East along said South line to the POINT OF BEGINNING;

EXCEPT that parcel described herein as Parcel B;

AND EXCEPT from the above tracts any portion thereof conveyed by Lucile C. Cannon to Design Products, Inc., in Deed recorded December 20, 1965 on Film 534 as Reception no. 802406.

AND EXCEPT portions deeded to Boulder County by deeds recorded May 23, 1984 on Film 1303 as Reception Nos. 622620 and 622628;

AND EXCEPT any portions thereof conveyed to The Colorado Brick Company, Inc., by deed recorded September 14, 1987 on Film 1495 as Reception No. 876679.

All being in the County of Boulder, State of Colorado.