

FLOODPLAIN SITE WALK, 4:15 P.M.
MEET AT TOWN HALL TO CARPOOL, 4:00 P.M.
DRESS WARMLY

FLOODPLAIN WORK SESSION TO FOLLOW,
CREEDE TOWN HALL

(DRAFT 10-30-17)

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 Lower Willow Creek Restoration Company (LWCRCO) 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, C.R.S. of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.*, C.R.S.

WHEREAS, LWCRCO is the owner of certain property commonly referred to as Lower Willow Creek Floodplain, located at immediately South of the City of Creede, 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 Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("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.* 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530; and

WHEREAS, for purposes of indexing in the County Clerk and Recorder's office Grantor-Grantee index only, LWCRCO 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 the approved Voluntary Cleanup Plan for the Lower Willow Creek Restoration, the Property is the subject of remedial action pursuant to the Voluntary Cleanup & Restoration Act

and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment for the future use of the Lower Willow Creek Floodplain as Open Space. The Lower Willow Creek Channel alignment has been restored to a single thread channel thereby isolating the surface water in Willow Creek from mining related impacted remaining in the floodplain. Mining residuals and soils impacted by legacy mining activities in the floodplain

have been capped with soil further isolating the end users (general public and wildlife) from those metals impacts. This covenant is intended to restrict disturbance of the cap and when disturbance must occur, strict materials management procedures are to be followed including the proper handling and disposition of metals impacted soils and proper replacement of the cap. The covenant shall also restrict the use of groundwater in the floodplain for domestic or commercial use.

WHEREAS, LWCRCO 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 LWCRCO 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 the City of Creede, Colorado.

NOW, THEREFORE, LWCRCO hereby grants this Environmental Covenant to the Department, and the City of Creede, Colorado 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 10, below, which shall run with the Property in perpetuity and be binding on LWCRCO 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 No excavation, drilling, grading, digging, tilling (except for the purposes of augmenting the soil cap for vegetation purposes) or any other soil-disturbing activity is permitted on the Property unless conducted in accordance with:

(a) the attached Department-approved Materials Management Plan and any amendments thereto, or

(b) a remedial decision document or environmental sampling plan that has been approved by the Department [consider whether prior review and approval of environmental sampling plans is appropriate].

The Materials Management Plan and any amendments thereto are on file at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, Records Center.

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.
 - 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 prior notice for the purpose of determining compliance with the terms of this Covenant.
 - 7) Third Party Beneficiary The OWNER of the Property and the **City of Creede, Colorado** 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. LWCRCO 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.
 - 12) 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:

Mr. Douglas Jameson, Unit Leader of the VCRA Program
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Lower Willow Creek Restoration Company
P.O. Box
Creede, Colorado 81130
Attention: President

City of Creede
P.O. Box
Creede, Colorado 81130
Attention: City Manager

LWCRCO has caused this instrument to be executed this _____ day of _____, _____.

Lower Willow Creek Restoration Company

By: _____

Title: _____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
by _____ on behalf of LWCRCO

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 _____,
by _____ on behalf of the Colorado Department of Public Health and Environment.

Notary Public

Address

My commission expires: _____

DRAFT