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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 undersigned owner of the Red Rock Canyon 26th Street Landfill (“26th Street Landfill”) grants an Environmental Covenant (“Covenant”) this 16th day of April, 2003 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 John S. Bock Estate is the owner of certain property commonly referred to as the 26th Street Landfill, an approximately 57 acre tract, more particularly described in a metes and bounds description set forth in Attachment C, and depicted in Attachment A as that area within the pink dash and dots line, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property" or the “26th Street Landfill”), and the K-S Company, Inc. “Long Term Mitigation and Maintenance Plan” for the 26th Street Landfill, El Paso County (the “Plan”), dated January, 2003 and more particularly described in Attachment(s A and) B attached hereto and incorporated herein by reference: and

WHEREAS, the Property is the subject of mitigation and maintenance pursuant to *Colorado Hazardous Waste Act*, § 25-15-301, *et. seq.* (“CHWA”); and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by assuring long-term monitoring, maintenance and mitigation of an already closed landfill pursuant to the Plan.

WHEREAS, the undersigned owner of the 26th Street Landfill 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 owner of the 26th Street Landfill, its heirs, successors, assigns, and any grantees of the Property, their heirs, successors, assigns and grantees, and any users of the Property, for the benefit of the Department.

NOW, THEREFORE, the undersigned owner of the 26th Street Landfill 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 below, which shall run with the Property in perpetuity and be binding on the owner of the 26th Street Landfill 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. 26th Street Landfill and all parties having any right, title or interest in the Property, or any part thereof; their heirs, successors and assigns shall hereinafter be referred to in this covenant as Owner.

1. Use restrictions. Use restrictions are set forth and defined in Attachment(s A and) B hereto.

2. Purpose of this covenant. 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 on the Property. The Covenant will accomplish this by minimizing those activities that result in disturbing the ground surface, 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.

3. Modifications This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. The owner of the 26th Street Landfill 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 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 other appropriate supporting information.

4. Conveyances The owner of the 26th Street Landfill 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. No owner of the Property shall have any responsibility or liability under this Covenant for matters or obligations required, arising, or occurring after that owner's conveyance or transfer of the Property.

5. The owner of the 26th Street Landfill 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.

6. Notification for Proposed Construction and Land Use. The owner of the Property shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use for the Property.

7. 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.

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.

10. Owner's Compliance Certification. The owner of the Property shall submit an annual Report to the Department, on the anniversary of the date this Covenant was signed by the undersigned owner, detailing the 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:

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

The owner of the 26th Street Landfill, has caused this instrument to be executed this 16th day of April, 2003.

Estate of John S. Bock

By: Russell Journigan
Russell Journigan
Personal Representative

STATE OF HAWAII)
) ss:
COUNTY OF HAWAII)

The foregoing instrument was acknowledged before me this 16th day of April, 2003, by Russell Journigan, Personal Representative of the Estate of John S. Bock.

Witness my hand and official seal.

Shawna L. Yonemura
Notary Public

My commission expires: 8-22-03

Attachments: *(not included)*

- Attachment A
- Attachment B
- Attachment C

Accepted by the Colorado Department of Public Health and Environment this 16th day of May, 2003.

By: Howard Roitman

Title: Acting Environmental Programs Director

STATE OF COLORADO)
) ss:
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 16 day of May, 2003 by Howard Roitman on behalf of the Colorado Department of Public Health and Environment.

Claudette M. Ferris
Notary Public

4300 Cherry Creek Dr So
Address

Denver, CO 80246

My commission expires: October 21, 2003