



COLORADO

Department of Public Health & Environment

HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION

COMPLIANCE ORDER ON CONSENT

Number: 23-11-09-01

IN THE MATTER OF THORNTON DEVELOPMENT AUTHORITY, THORNTON SHOPPING CENTER, EAST 88th AVENUE AND WASHINGTON STREET, THORNTON, CO

The Colorado Department of Public Health and Environment, through the Hazardous Materials and Waste Management Division (“Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under section 25-15-308(2), C.R.S. of the Colorado Hazardous Waste Act (“the Act”), sections 25-15-101 to 515, C.R.S., and its implementing regulations, 6 CCR 1007-3 (“the Regulations”), with the express consent of the Thornton Development Authority (“TDA”). The Division and TDA may be referred to collectively as “the Parties.”

BACKGROUND AND STATEMENT OF PURPOSE

1. The Thornton Shopping Center is located at the northeast corner of East 88th Avenue and Washington Street, Thornton, Colorado (the “Facility”). The Facility comprises 15.86 acres (Parcel Nos. 0171923318043 and 0171923318037) and contains three buildings originally constructed between 1955 and 1976, totaling approximately 102,402 square feet.
2. Thornton, LLC purchased the shopping center in 2005. Shortly after purchasing the Facility, Thornton, LLC and its manager and Facility operator, Jay Brown (collectively, “Thornton LLC”), learned that groundwater contamination attributable to releases from dry cleaners that formerly operated at the Facility was migrating offsite. The Division began requiring remedial action at the Facility to address groundwater and soil contamination.

3. Thornton LLC did not fully implement the phased corrective action plan (“CAP”) required by the Division and never implemented the property improvements that it had planned. As a result, the Facility has remained contaminated and in disrepair.
4. On January 11, 2022, the City of Thornton City Council authorized TDA to exercise its power of eminent domain, if necessary, to acquire the Facility. On August 1, 2022, TDA filed a Petition in Condemnation in Adams County District Court seeking to condemn the Facility. The Petition was consistent with TDA’s urban renewal plan and memorialized its commitment to eliminate blight at the Facility.
5. On November 2, 2022, TDA agreed to and signed an October 27, 2022 letter agreement from the Division entitled “Transfer of CHWA Corrective Action Plan” outlining how responsibility for the corrective action at the Facility would transfer from Thornton LLC to TDA on the date TDA took possession of the Facility (“Transfer Letter”). Pursuant to the Transfer Letter, the Division approved the transfer of CAP responsibility from Thornton LLC to TDA effective the date TDA took possession of the Facility, and the Parties agreed the Transfer Letter would govern corrective action at the Facility until the Parties agreed to and executed a new compliance order on consent and TDA obtained title to the Facility.
6. The Division and TDA agreed in the Transfer Letter that after taking possession of the Facility and before taking title to the Facility, TDA would fulfill the following obligations: (1) proper management and disposal of waste stored onsite from previous investigations; (2) groundwater sampling, after consulting with the Division regarding sample locations and analytes; (3) submission of written quarterly groundwater monitoring and sampling reports, analytical data, and updates to the Division; (4) remedial investigation and work plan design that will prioritize source removal activities and will form a new remedial work plan that will replace the CAP; and (5) continued negotiation of a consent order with the Division.
7. The Parties further agreed in the Transfer Letter that in negotiating a consent order, the Parties would negotiate an order that includes Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* (“CERCLA”), protection language similar to that in the Corrective Action Order on Consent No. 21-09-27-01, *In the Matter of the Former Koppers Wood Treating Facility*, 465 W. 56th Avenue, Denver, Colorado, and that the consent order would include the following provisions: (1) TDA assumption of on and off-site responsibilities under the Act; (2) protection from contribution actions or claims as provided by CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2), in exchange for compliance with the Division-approved order and Division-approved corrective action documents; (3) release and covenant not to sue with respect to response costs incurred by the State of Colorado (“State”) related to the Facility upon satisfaction of the terms and conditions of the consent order; (4) interim milestones that will allow for Facility redevelopment upon completion of soils remediation; (5) status “comfort” letters, as appropriate from the Division for new buyers of portions of the

redeveloped Facility even if some groundwater remediation is ongoing; and (6) institutional controls at the Facility to the extent required by Section 25-15-320, C.R.S.

8. On November 22, 2022, TDA was awarded immediate possession of the Facility upon deposit of \$2.5 million in the court registry. On January 3, 2023, TDA took possession of the Facility. Under the terms of the Transfer Letter, when TDA took possession of the Facility, it assumed control over the phased CAP process pursuant to 6 CCR 1007-3, §100.26(b)(2). TDA expects to take title to the property within eighteen (18) months of possession, and at that point will be both the owner and operator of the Facility.
9. As anticipated by the Transfer Letter, the Parties now enter into this Consent Order to govern corrective action at the Facility, effective as of the date TDA acquires title to the Facility.
10. The mutual objectives of the Parties in entering into this Consent Order are:
 - a. To establish compliance requirements and schedules for corrective action at the Facility pursuant to the Act and the Regulations.
 - b. To resolve TDA's liability for response costs (as defined in Paragraph 30 below) incurred by the State of Colorado pursuant to section 107(a)(4)(B) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a)(4)(B), which will in turn provide TDA with contribution protection in accordance with CERCLA section 113(f).
 - c. To define TDA's responsibilities under the Act as the prospective owner, eventual owner, and current operator of the Facility, on which there has been a release of hazardous wastes and hazardous constituents to the environment, as described in Paragraphs 11 and 12.
 - d. To serve as an enforceable mechanism in lieu of a permit for the Facility under the Act.

DIVISION'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the Division's investigation, and in accordance with section 25-15-308(2), C.R.S., the Division has made the following findings of fact and conclusions of law.

11. Prior to TDA's involvement with the property, a number of dry cleaning businesses operated at the Facility at 8866, 8876, and 8946 Washington Street and possibly other locations on the Facility. Groundwater beneath the Facility and neighboring properties is contaminated with a dry cleaning solvent known as tetrachloroethylene (alternatively, "perchloroethylene," "PCE," or "perc"), as well as related chemicals which can result from the breakdown of PCE, including but not necessarily limited to trichloroethylene ("TCE"), cis-1,2,-dichloroethylene, and vinyl chloride. The primary source of the PCE release is located underneath a now-vacant unit (8866 Washington Street) in the Facility.

The nature and extent of contamination has not been fully characterized to date. Further characterization of nature and extent is required.

12. PCE, TCE, and the other chlorinated solvent chemicals at the Facility are listed hazardous waste regulated by the Act and Regulations. Due to the unpermitted release of hazardous waste at the Facility during prior ownership and operation on or after 1980, the Facility is a “treatment, storage, or disposal site or facility” as that term is defined in section 25-15-101(18), C.R.S.
13. The Act requires all “treatment, storage, or disposal site[s] or facilit[ies]” to have a permit. Section 25-15-303(1), C.R.S.
14. The Division has authority to issue and enforce the conditions of permits for treatment, storage and disposal sites or facilities. § 25-15-301(2)(a), C.R.S. This Consent Order serves as an enforceable mechanism in lieu of a permit.
15. TDA represents that it is a properly constituted urban renewal authority, existing and organized pursuant to § 31-25-101, *et seq.*, C.R.S.
16. TDA acquired possession of the Facility on January 3, 2023 through a condemnation action pursuant to § 38-1-101, *et seq.*; and § 38-7-101, *et seq.*, C.R.S.
17. Upon completion of additional condemnation proceedings, TDA expects to become the “owner” of the Facility as that term is defined in 6 CCR 1007-3, section 260.10.
18. TDA is an “operator” of the Facility as that term is defined in 6 CCR 1007-3, section 260.10.
19. TDA is a “person” subject to the requirements of the Act as that term is defined in section 25-15-101(13), C.R.S.

ORDER AND AGREEMENT

20. Based on the foregoing factual and legal determinations, pursuant to its authority under section 25-15-308, C.R.S., the Division orders, and TDA agrees to comply with, all provisions of this Consent Order, including all requirements set forth below.
21. TDA agrees to the terms and conditions of this Consent Order. TDA agrees that this Consent Order constitutes an order issued pursuant to section 25-15-308(2), C.R.S., and is an enforceable requirement of Part 3 of the Act. TDA also agrees that this Consent Order serves in lieu of the permit required under section 25-15-303(1), C.R.S. TDA further agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division to enforce this Consent Order or by TDA against the Division:

- a. the issuance of this Consent Order;
 - b. the factual and legal determinations made by the Division herein; and
 - c. the Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
22. Notwithstanding the above, TDA does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by TDA pursuant to this Consent Order shall not constitute evidence of fault by TDA with respect to the conditions of the Facility. TDA expressly reserves its rights to deny any of the Division's factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

CORRECTIVE ACTION REQUIREMENTS

23. Within thirty (30) calendar days of the effective date of this Consent Order, TDA must submit a Remedial Investigation and Corrective Measures Work Plan ("Work Plan") for Division review and approval. The Work Plan must include the following:
- a. A proposal for indoor air monitoring and reporting to the Division;
 - b. A description of proposed quarterly groundwater monitoring and sampling, on- and off-site, including installation of additional groundwater monitoring wells to fully delineate the groundwater plume;
 - c. Proposed monitoring to assess the effectiveness of corrective action measures, including the off-site BOS-100 injections;
 - d. A proposal for on-site corrective action, which may include source area excavation and contaminated soil removal, a boundary wall or permeable reactive barrier, and bioremediation;
 - e. A proposed work schedule or timeline; and
 - f. A waste management plan.
24. The Division will notify TDA in writing of its approval, approval with modifications, or disapproval of the Work Plan. Once approved, the Work Plan, along with any subsequent modifications, shall be binding on TDA.
25. Within fifteen (15) calendar days of the Division's approval of the Work Plan, TDA must begin to implement the plan in accordance with the procedures and schedules contained in the approved plan.
26. TDA must submit brief written progress reports in writing to the Division, on the first day of each month, which include the following information:

- a. A summary of all activities performed in the previous month; and
- b. A description of activities to be performed in the upcoming month

The requirement to submit a monthly progress report may be waived by the Division.

- 27. All documents submitted under this Consent Order must use the same titles as stated in this Consent Order, and must reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. No plan for Division approval under this Consent Order may be implemented unless and until written approval is received from the Division. The Division shall use its best efforts to comply with decision timeframes stated in 6 CCR. 1007-3, section 100.26(b). Any approval by the Division of a plan submitted under this Consent Order is effective upon receipt by TDA. All approved plans or plan modifications, including all procedures and schedules contained in the plans, are hereby incorporated into this Consent Order, and shall constitute enforceable requirements under the Act.
- 28. As soil remediation is completed in parts of the Facility protective of the intended use of the Facility or portion thereof, the Division will provide appropriate “comfort letters” to prospective purchasers and/or tenants of such remediated portions even if some groundwater remediation is ongoing. Such letters may provide, by way of example and as appropriate, the Division’s findings that soil remediation has been completed to the extent protective of the proposed use of the Facility or portion thereof and outline the prospective purchaser and/or tenant’s ongoing obligation for further remediation of remaining contamination, if any.
- 29. The Parties anticipate that institutional controls in the form of environmental use restrictions restricting the use of groundwater at the Facility, or portions thereof, may be required pursuant to section 25-15-321.5, C.R.S., and Division policy.

RESOLUTION OF CERCLA SECTION 107(a) LIABILITY

- 30. As further provided in Paragraph 61 below, in addition to performance of the Work Plan and any approved amendments thereto, TDA agrees to pay all document review and activity fees incurred by the Division pursuant to section 100.32 of the Regulations and further agrees that all such fees shall be considered response costs incurred by the Division pursuant to CERCLA section 107(a)(4)(B), 42 U.S.C. § 9607(a)(4)(B).

PUBLIC INVOLVEMENT

31. The Division shall assure meaningful opportunity for public involvement in connection with the issuance of this Consent Order which serves in lieu of a permit for the Facility in accordance with 6 CCR 1007-3, section 265.121(b). At a minimum, this opportunity for public involvement shall include public notice and opportunity for comment on the proposed Work Plan.

CERTIFICATION AND CERCLA SECTION 113(f) CONTRIBUTION PROTECTION

32. By entering into this Consent Order, TDA certifies that to the best of its knowledge and belief it has disclosed to the Division all information known to TDA and all information in the possession and control of its officers, directors, employees, contractors and agents which relates in any way to any existing contamination or any past release of hazardous substances, pollutants or contaminants at or from the Facility.
33. TDA certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Facility.
34. TDA represents that it is a bona fide prospective purchaser ("BFPP") as defined by CERCLA section 101(40), 42 U.S.C. § 9601(40), that it has and will continue to comply with § 9601(40) during its ownership of the Facility, and that it qualifies for the protection from liability under CERCLA section 107(r)(1), 42 U.S.C. § 9607(r)(1), with respect to the Facility.
35. The Division and TDA agree that this Consent Order constitutes an administrative settlement for the purposes of CERCLA section 113(f), 42 U.S.C. § 9613(f). In accordance with CERCLA section 113(f), TDA is entitled to protection from contribution actions or claims for the matters addressed in this Consent Order.
36. If the Division determines that information provided by TDA is not materially accurate and complete or that TDA has failed to comply with this Consent Order, within the sole discretion of the Division, the covenant not to sue in Paragraph 45 and the contribution protection provisions in Paragraphs 35 and 37 will be null and void and the Division reserves all rights it may have.

SCOPE AND EFFECT OF CONSENT ORDER

37. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the obligations of TDA with respect to the releases cited in Paragraphs 11 and 12. This Consent Order is final agency action. TDA agrees not to appeal this

Consent Order. The Division may enforce this Consent Order in District Court and may seek civil penalties of up to Twenty Five Thousand Dollars (\$25,000) per violation each day of any violation of this Consent Order. Alternatively, the Division may seek administrative penalties for any violation of this Consent Order as provided by C.R.S. § 25-15-308 and 309.

38. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in submissions required hereunder. All approved submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
39. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act not specifically cited herein, or any subsequent violation of any requirement of this Consent Order, the Act, or the Regulations.
40. TDA shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

**LIMITATIONS, RELEASES, COVENANTS NOT TO SUE,
AND RESERVATION OF RIGHTS AND LIABILITY**

41. Upon the effective date of this Consent Order, and until the Division approves completion of all required actions in this Consent Order, this Consent Order shall stand in lieu of any other enforcement action by the Division against TDA with respect to the release of hazardous constituents cited in Paragraphs 11 and 12. Notwithstanding the covenant not to sue in Paragraph 45, the Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties and/or injunctive relief.
42. This Consent Order does not grant any release of liability for any violations not specifically cited herein or any matters not addressed.
43. TDA reserves its rights and defenses regarding the Facility other than proceedings to enforce this Consent Order, including, without limitation, the monetary limitations or any other rights, immunities, and protection provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., and any and all defenses to liability available to TDA under CERCLA in the absence of this Consent Order.

44. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of this Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment. Any such additional requirements shall be subject to, and disputes regarding such requirements shall be resolved in accordance with, the Dispute Resolution process provided for in paragraphs 55 through 58 below.
45. Except as provided in Paragraph 37, the State covenants not to sue or take administrative action against TDA pursuant to 107(a) of CERCLA, 42 U.S.C. 9607(a), for matters addressed in this Consent Order and payments of response costs pursuant to Paragraph 30. These covenants shall take effect upon the Effective Date of this Consent Order and are conditioned upon the complete performance by TDA of its obligations under this Consent Order and on the veracity of the information provided by TDA to the State relating to TDA's involvement with the Facility and the certifications and representations made in Paragraphs 32, 33, and 34.
46. TDA releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims or for any injuries or damages to persons or property resulting from acts or omissions of TDA, or those acting for or on behalf of TDA, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. TDA shall not hold out the State of Colorado or its employees, agents or representatives as (a) a party to any contract entered into by TDA in carrying out activities pursuant to this Consent Order; or (b) an owner, operator or generator of hazardous wastes at the Facility. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the Parties, their employees, agents or representatives.

OFFSITE ACCESS

47. To the extent any plan submitted by TDA requires access to property not owned or controlled by TDA, TDA shall use its best efforts (but not including eminent domain powers) to obtain site access from the present owners of such property to conduct required activities, and to allow Division access to such property to oversee such activities. In the event that site access is not obtained when necessary, TDA shall notify the Division in writing regarding its best efforts and its failure to obtain such access.

SITE ACCESS AND SAMPLING

48. The Division shall be permitted to oversee any and all work being performed under this Consent Order. The Division shall be permitted access to the Facility property at any

time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining TDA's compliance with the Act, the Regulations, and this Consent Order. The Division shall be permitted to inspect work sites, operating and field logs, contracts, manifests, shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview TDA personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Facility.

49. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by TDA. TDA must notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and must provide split samples to the Division when the Division requests them in advance of the sampling event.
50. TDA must notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. TDA must provide the Division any blue print, diagram, construction or other permits for any construction or corrective action activity undertaken pursuant to this Consent Order upon request.

FORCE MAJEURE

51. TDA shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of TDA, and which cannot be overcome by due diligence.
52. Within seventy-two (72) hours of the time that TDA knows or has reason to know of the occurrence of any event which TDA has reason to believe may prevent TDA from timely compliance with any requirement under this Consent Order, TDA shall provide verbal notification to the Division. Within seven (7) calendar days of the time that TDA knows or has reason to know of the occurrence of such event, TDA shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

53. The burden of proving that any delay was caused by a force majeure shall at all times rest with TDA. If the Division agrees that a force majeure has occurred, the Division will so notify TDA. The Division will also approve or disapprove of TDA's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of TDA's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to TDA. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, TDA may file an objection.
54. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, TDA shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

DISPUTE RESOLUTION

55. If the Division determines that remediation of contamination at, or relating to, the Facility is necessary; that additional corrective action requirements are necessary pursuant to paragraph 44; that a violation of this Consent Order has occurred; that a force majeure has not occurred; that the actions taken by TDA to mitigate the delay caused by a force majeure are inadequate; or, that TDA's Notice of Completion should be rejected, the Division shall provide a written explanation of its determination to TDA. Within fifteen (15) calendar days of receipt of the Division's determination, TDA shall:

- a. Submit a notice of acceptance of the determination to the Division; or
- b. Submit a notice of dispute of the determination to the Division.

If TDA fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

56. If the Division disapproves or approves with modifications any original or revised Work Plan submitted by TDA pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within fifteen (15) calendar days of receipt of the Division's approval with modifications or disapproval of the plan, TDA shall:
- a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;
 - b. In the case of a disapproval only, submit a revised plan for Division review and approval. TDA may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by TDA; or

- c. Submit a written notice of dispute of the disapproval or approval with modifications to the Division.

If TDA fails to do any of the above within the specified time, TDA shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

- 57. If TDA submits a revised Work Plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify TDA in writing of its approval, approval with modifications, or disapproval of the revised Work Plan. If the Division disapproves the revised Work Plan, it may include in its disapproval a Work Plan for implementation by TDA. Such disapproval and Work Plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedure Act, sections 24-4-101 through 108, C.R.S. (the "APA"), unless TDA submits a notice of dispute, pursuant to paragraph 56 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division-approved Work Plan shall not become effective pending resolution of the dispute.
- 58. If TDA files any notice of dispute pursuant to paragraph 55, 56, or 57, the notice shall specify the particular matters in the Division's determination that TDA seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by TDA. The Division and TDA shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement, during which time TDA must provide any additional evidence or argument to the administrative record. If agreement cannot be reached on all issues within this thirty (30) day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the APA.

NOTICES

- 59. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Richard Mruz, Jr., Unit Leader
Corrective Action Unit
Colorado Department of Public Health and Environment
Mail Code: HMWMD-B2

4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

For TDA:

Chadwick Howell
Redevelopment Administrator
City of Thornton Economic Development
9500 Civic Center Drive
Thornton, CO 80229

OBLIGATIONS UNAFFECTED BY BANKRUPTCY

60. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by TDA of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. TDA agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for TDA and the Facility to achieve and maintain compliance with State law.

REIMBURSEMENT OF COSTS

61. Pursuant to 6 CCR 1007-3, section 100.3, TDA shall reimburse the Division for all costs incurred by the Division pursuant to this Consent Order, including, but not limited to document review and activity fees, which, pursuant to Paragraph 30, shall also constitute CERCLA section 107(a)(4)(B), 42 U.S.C. § 9607(a)(4)(B), response costs. Payment is due thirty (30) calendar days after billing by the Division.

MODIFICATIONS

62. This Consent Order may be modified only upon mutual written agreement of the Parties.

COMPLETION OF REQUIRED ACTIONS

63. TDA shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject TDA's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects TDA's Notice of Completion, it shall include in its notice a statement

identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. TDA shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:

- a. Submit a written notice of acceptance of the determination to the Division; or
- b. Submit a written notice of dispute to the Division.

If TDA fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

NOTICE OF EFFECTIVE DATE

64. This Consent Order shall be effective on the date TDA obtains title to the Facility ("Effective Date").

BINDING EFFECT AND AUTHORIZATION TO SIGN

65. This Consent Order is binding upon TDA and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. TDA agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR THORNTON DEVELOPMENT AUTHORITY:

Kevin S. Woods
Executive Director

Date

ATTEST:

Kristen Rosenbaum
City Clerk

Date

Approved as to form:

Tami Yellico
Attorney to the Thornton Development Authority

Date

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

Rick Mruz, Jr.
Corrective Action Unit Leader
Hazardous Materials and Waste
Management Division

Date

Approved as to form:

Emily Splitek #46619 *
Senior Assistant Attorney General
Office of the Attorney General
Natural Resources and Environment Section
Attorneys for the Division

Date

Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, Colorado 80203
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