STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
Located in Glendale, Colorado

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

http://www.cdphe.state.co.us

Colorado Department of Public Health and Environment

Covenant Information:

Covenant ID HMCOV00111

Covenant Date 8/14/2014

Self Reporting ☑

Media of Concern:

- **Surface Water:** ☑
- **Ground Water:** ☑
- **Air:** ☑
- **Soil:** ☑
- **Other:** ☐

Contaminants of Concern:

TCE, PCE, TCA, DCA

Site Contact Information:

Owner Corp: Thoro Products Company

Contact Name: Richard Newman, President

Contact Address: PO Box 44

Contact City: Rollinsville

Contact State: CO

Contact Zip: 80474

Contact Phone:

Property Restrictions:

1. Prohibition on agricultural and residential use
2. Prohibition on use of water and well construction, prohibition on use of surface water
3. Foundation venting or vapor varrier required
4. Protection of the integrity of removal actions
5. Limits on excavation

Site Information:

ID: COD001101476

Name: Twins Inn

Address: 6611 W 58th Place

City: Arvada

State: CO

Zip: 80003

Legal Description:

See Institutional Control

Twins Inn Thoro

COLORADO
Hazardous Materials
& Waste Management Division

HMCOV00111

0 65 130 Meters

This Property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to Section 25-15-321, Colorado Revised Statutes

Environmental Covenant

Thoro Products Company grants an Environmental Covenant ("Covenant") this 14th day of August, 20 14 to the U.S. Environmental Protection Agency ("EPA") and to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("CDPHE" or "the Department"), pursuant to the Colorado Hazardous Waste Act, § 25-15-101, *et seq.*, C.R.S., including § 25-15-321, C.R.S., and to EPA as a third party beneficiary.

WHEREAS, Thoro Products Company (also referred to herein as "Thoro" or "Owner") represents and warrants that, at the time of execution of this Covenant, it is the current and sole Owner of the property located at 6611 West 58th Place, Arvada, Colorado 80003, whose legal description is included as Exhibit A to this Covenant (the "Property"). Owner has authority to execute and record this Covenant; and

WHEREAS, pursuant to the Amended Action Memorandum issued by the U.S. Environmental Protection Agency ("EPA") on November 9, 2011, the Property is subject to a removal action under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.* ("CERCLA"); and

WHEREAS, as provided in the Consent Decree ("Consent Decree") entered into between the United States of America and Thoro in Civil Action No. ~~10-cv-____-RPM~~ 14-cv-01867-REB-KLM, *United States of America v. Thoro Products Company* on August 14, 20 14, Thoro agreed to record this Covenant; and

WHEREAS, the purpose of this Covenant is intended to: (1) satisfy, in part, Thoro's obligations under the Consent Decree, and (2) meet the criteria for removal actions identified in CERCLA § 101(23), 42 U.S.C. § 9601(23), and 40 CFR § 300.1, *et seq.*, as those criteria are set forth in the EPA Removal Action Documents, by: (a) prohibiting certain uses of the Property until levels of hazardous substances at the Property have been reduced to levels protective of human health and the environment, consistent with the Removal Action Documents and any statements of work produced pursuant thereto, and (b) providing access to the Property for EPA, the Department, their respective representatives, and any person or entity conducting work pursuant to the Removal Action Documents, for the purpose of sampling, maintaining, or removing monitoring wells; and (c) providing access to persons or entities entitled to enforce this Covenant for the purpose of determining compliance with this Covenant; and

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JEFFERSON COUNTY, Colorado

WHEREAS, Thoro desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes (C.R.S.), which shall burden the Property and bind Thoro Products Company 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, as described herein, for the benefit of EPA and the Department.

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NOW, THEREFORE: Thoro Products Company hereby grants this Covenant under § 25-15-321, C.R.S. to the EPA the Department, and to the EPA as a third party beneficiary, 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 Thoro 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.

DEFINITIONS

"**Agricultural Use**" shall mean any type of farming or process that is intended to produce food, feed, fiber and other products for human consumption by growing on the land surface or grazing on the Property through the cultivation of plants and/or the raising or caring for domesticated animals (livestock, including but not limited to horses, sheep, or cows). Agricultural Uses shall include the manufacturing, processing or sale of agricultural products, including livestock, unless those products were not grown on the land surface or grazed on the Property.

"**CERCLA**" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq*.

"**Department**" shall mean the Colorado Department of Public Health and Environment and any successor department of the State of Colorado. The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

"**EPA**" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

"**Excavation**" shall mean any disturbance of or boring into the surface or the subsurface of the Property that results in movement or removal of soils or any material, soil, earth, rock, or other substance on the Property. This definition is not intended to and does not supersede any applicable federal, state, or local statutes or regulations governing environmental matters or worker safety and protection.

"**Owner**" shall mean the record owner of the Property and any party having any right, title or interest in the Property, or any part thereof, their successors and assigns, and 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. Owner shall also mean any transferee or grantee of the Property or any interest in the Property.

"**Property**" shall mean the land, improvements, and appurtenances located at 6611 West 58th Place, Arvada, Colorado (hereinafter referred to as "the Property"), according to the recorded plat thereof, in Jefferson County, Colorado, and as described in Attachment A. 3

"**Removal Action Documents**" shall mean the September, 1999, Ecological and Human Health Risk Assessment, the November, 2005, Baseline Indoor Air Sampling Results and Indoor Air Mitigation Plan, the May, 2006, Human Health Risk Assessment, the August 1, 2010, Engineering Evaluation Cost Analysis conducted by URS Corporation, EPA's June 19, 1995, Action Memorandum, EPA's December 18, 2008, Action Memorandum, and EPA's November 9, 2011 Amended Action Memorandum, any work documents produced under the Amended Action Memorandum, and any modifications made thereto. The Removal Action Documents are available at the EPA's Superfund Record Center, 1595 Wynkoop, Denver, CO 80202-1129.

"**Removal Actions**" shall mean the CERCLA removal actions referenced in the Removal Action Documents.

"**Site**" shall mean the Twins Inn Superfund Site, encompassing approximately 20 acres located in the City of Arvada, Colorado, Jefferson County, approximately ten (10) miles northwest of downtown Denver, Colorado, depicted more specifically on Exhibit B attached hereto, and includes the contiguous adjacent areas where hazardous substances have come to be located.

"**Structures**" shall include, but not be limited to, any buildings, concrete footings, foundations, loading docks, retaining walls, pads, sumps, surface impoundments, storm water retention ponds, catch basins, tanks or other structures currently present on, or which may be installed on, the Property.

"Thoro" shall mean Thoro Products Company and its successors and assigns.

ENVIRONMENTAL USE RESTRICTIONS

1. **Prohibition on Agricultural and Residential Use**: Owner shall not allow, permit or construct any Agricultural Use on the Property or any residential use, including, but not limited to any day care facilities, single family or multi-family residential Structures at the Property or allow any playgrounds, parks or recreational facilities for children, schools daycare centers (whether independent or ancillary to a permitted use) or community centers with outdoor uses, at the Property.

2. **Prohibition on Use of Water and Well Construction**. Owner shall not use or permit any person to use the shallow alluvial groundwater under the Property or allow such waters to be developed for any purpose, except as consistent with the Removal Action Documents, or as

allowed by EPA or the Department. Owner shall not, nor shall owner allow, any person to dig, bore or drill or install any well for the production of water or from which water is produced on the Property, or allow any of the same, except as allowed by EPA or the Department.

3. **Prohibition on Use of Surface Water**: Except as authorized by State and federal law, including environmental laws, Owner shall not develop or permit the development of any surface water source on the Property for the production of water.

4. **Foundation Venting or Vapor Barrier**. Owner shall not permit the construction of any new Structures intended for human occupation (e.g., an office space) on the Property without installation and operation of a foundation venting system acceptable to a State of Colorado licensed Professional Engineer that is designed to limit or preclude the presence of airborne contaminants within the structure, building or enclosed space in excess of the applicable worker action levels shown in the CDPHE, Hazardous Materials and Waste Management Division Air Screening Concentration Table Values (the "Table Values") in effect at the time of construction. If Owner renovates the existing buildings for human occupancy, Owner shall confirm through indoor air testing that airborne contaminants within the building are not in excess of the worker action levels shown in the Table Values for contaminants of concern. If airborne contaminants exceed Table Values, Owner shall install and operate a foundation venting system acceptable to a State of Colorado licensed Professional Engineer that is designed to limit or preclude the presence of airborne contaminants within the structure, building or enclosed space in excess of Table Values.

5. **Protection of the Integrity of Removal Actions**. No person shall make use of the Property or undertake, perform or otherwise cause to occur, any activities that unreasonably interferes with the installation, operation, and/or maintenance of monitoring wells on the property, or of any building vapor mitigation system except as allowed by EPA or the Department.

6. **Limitations on Excavation.** Owner shall not allow, permit or construct any Excavation below or into groundwater or saturated soil (soils at or below the static water table and that are visibly moist and/or which feel moist) in or under the Property, unless:

(a) Owner informs the EPA and the Department by providing each agency with a copy of Owner's Excavation plan at least thirty (30) days before beginning any proposed Excavation;

(b) The EPA has approved Owner's Excavation plan;

(c) Prior to an Excavation into groundwater or saturated soil, Owner provides the EPA and the Department at least 72 hours advanced notice and an opportunity to observe the Excavation for which notice is given; and

(d) Such Excavation is performed in a manner that fully complies with all applicable federal, state and local laws, which may include the Colorado Hazardous Waste Act,

CRS 25-15-301, *et seq.*, regulations promulgated by the Colorado State Hazardous Waste Program and standards set by the Occupational Safety and Health Administration (OSHA) under regulation 1910.120, including the use of appropriate personal protective equipment ("PPE"), to minimize worker exposure to contaminants of concern.

7. **Entry and Inspections**:

(a) The Department and EPA and their authorized representatives 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 modify or impair any other authority the EPA and the Department may otherwise have to enter and inspect the Property.

(b) The Department, EPA, their authorized representatives, and any person or entity acting at the direction of EPA or the Department shall have the right of entry to the Property at reasonable times, with prior notice, for the purpose of implementing EPA's CERCLA response actions (e.g. monitoring wells) under the Removal Action Documents. Nothing in this Covenant shall modify or impair any other authority the EPA and the Department may otherwise have to enter and inspect the Property.

MODIFICATION OR TERMINATION OF ENVIRONMENTAL COVENANT

8. This Covenant runs with the land and is perpetual, unless so modified or terminated as described herein. Owner may request that EPA and the Department approve a modification or termination of this Covenant. A request for modification or termination shall include information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment, considering the intended use of the Property (i.e., industrial use) and any other applicable factors. The Department and EPA shall review any submitted information and may request additional information. If the Department and EPA determine that the proposal to modify or terminate this Covenant will protect human health and the environment considering the intended use of the Property and other applicable factors, they shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Owner, the Department and EPA have approved such modification or termination in writing. Information to support a request for modification or termination may include one or more 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 is protective of human health and the environment from the release of hazardous substances indentified in the Removal Action Documents; or

(e) other appropriate supporting information.

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9. **Required Approvals**. The Department and EPA shall promptly review all applications for modifying or terminating this Covenant after receipt of an application. Any proposed modifications must be approved in writing and executed by, (a) the Owner (b) the Department and (c) the EPA. Such written approval shall be evidenced by execution of a written instrument created to amend this Covenant and duly recorded in the real property records of the county in which the Property is located..

10. **Appeal**. Any determination made by EPA and the Department on a request from the Owner to modify or terminate this Covenant may be subject to appeal in accordance with Section 25-15-305(2), C.R.S. (2001), as amended.

ENFORCEMENT

11. **Violations**: In addition to any remedies available under the consent decree, the Owner, the EPA, the Department, or any affected local government, or any affected local government may enforce the terms of this Covenant pursuant to §25-15-322 C.R.S. Nothing in this Covenant is intended to require, or does require Owner to initiate an action to enforce the terms of this Covenant against third parties.

CONVEYANCE/SUBSEQUENT OWNERS

12. **Notice of Conveyance**. Owner shall notify the Department and EPA at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any interest (including leasehold interests) in any part or all of the Property. Owner agrees to include, in full or by reference, in any instrument conveying any interest in any portion of the Property or granting a right to use the Property, including but not limited to deeds, leases, licenses and mortgages, a notice in the following form:

NOTICE:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED_____, 20__, RECORDED IN THE PUBLIC LAND RECORDS OF JEFFERSON COUNTY ON, _____, ___ 20__, IN BOOK _____, PAGE _____, RECEPTION NO._____. "OWNER" AS DEFINED IN THIS ENVIRONMENTAL COVENANT AGREES TO BE SUBJECT TO THIS ENVIRONMENTAL COVENANT AND THE INSTITUTIONAL CONTROLS PROVISIONS OF THE CONSENT DECREE IN Civil Action No.14-cv-01867-REB-KLM *United States of America v. Thoro Products*

Company, AND ACKNOWLEDGES THAT THIS ENVIRONMENTAL COVENANT AND THESE INSTITUTIONAL CONTROLS MAY BE ENFORCED AGAINST THE OWNER BY THE UNITED STATES UNDER THE TERMS OF THE CONSENT DECREE IN THE ABOVE-REFERENCED CIVIL ACTION OR BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE UNITED STATES, ANY AFFECTED LOCAL GOVERNMENT, AND THORO PRODUCTS COMPANY PURSUANT TO §25-15-322 C.R.S.

13. **Copies**: Within thirty (30) days of the date any instrument of conveyance of the Property is executed, Owner shall provide the Department and EPA with a certified true copy of said conveyance instrument and the notice required by section 12 above, as well as the recording reference in the public land records.

14. **Notification of Proposed Change in Land Use**: In addition to the notification provided or in section 5(a), above, Owner shall notify the Department and EPA simultaneously when submitting any application to a local government for a change in land use or building permit, which review under this Covenant shall be limited to a determination by EPA and the Department that the proposed change in land use is not inconsistent with the Use Restrictions in this Covenant or the CERCLA Removal Actions set forth in the Removal Action Documents.

THIRD PARTY BENEFICIARIES

15. **Third Party Beneficiaries.**

(a) The Owner of the Property is a third party beneficiary under § 25-15-322, C.R.S. with the right to enforce the provisions of this Covenant, and any named beneficiaries of this Covenant may file suit in district court to enjoin actual or threatened violations of this Covenant.

(b) The United States Environmental Protection Agency is a third party beneficiary under § 25-15-322, C.R.S. with the right to enforce the provisions of this Covenant and by virtue of being named in this Covenant, and as a condition of settlement of Civil Action No. 14-cv-01867-REB-KLM, *United States of America v. Thoro Products Company*, and the Consent Decree entered therein, and the United States may file suit in district court to enjoin actual or threatened violations of this Covenant.

MISCELLANEOUS

16. **No Admission of Liability**. Neither this Covenant nor any of the terms, recitals, provisions or statements contained herein shall be construed as an admission of liability by Owner in any proceeding, action or dispute under any federal, state or local law or regulation or under any common law theory. Neither the Department, by virtue of accepting this Covenant, nor EPA shall acquire any liability under State law.

17. **Owner's Compliance Certification**: Upon written request by EPA or the Department, Owner shall promptly execute and return an annual certification (in a form attached hereto as Exhibit C) detailing Owner's compliance and any lack of compliance with the terms of this Covenant.

18. **Notice.** Any document or communication required pursuant to this Environmental Covenant shall be sent or directed to:

Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Remediation Program
Thoro Twins Inn Superfund Site Project Officer
Denver, CO 80246-1530

and to:

Remedial Project Manager (8EPR-SR)
Twins Inn Superfund Site
U.S. Environmental Protection Agency
1585 Wynkoop Street
Denver, CO 80202-1129

And, for as long as Thoro is the Owner of the Property to:

Thoro Products Company
c/o Richard Newman, President
P.O. Box 44
Rollinsville, CO 80474

IN WITNESS WHEREOF, Thoro Products Company, a Colorado corporation, has caused this instrument to be executed this 19th day of March, 2014.

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Thoro Products Company

By: Richard E. Newman
Richard E. Newman, President

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 19th day of March, 2014, by Richard E. Newman, President of Thoro Products Company, on behalf of the corporation.

Witness my hand and official seal.

My commission expires: 6-27-15.

Cecily M Winmill
Notary Public

1900 Sixteenth St, #1400
Denver, CO 80202
Address

CECILY M. WINMILL NOTARY PUBLIC STATE OF COLORADO
My Commission Expires 06/27/2015

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ATTACHMENTS

Exhibit A: Property Description
Exhibit B: Site Map
Exhibit C: Owner's Compliance Certification

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Accepted by the Colorado Department of Public Health and Environment this 1st day of October, 2014.

By: Gary W. Baughman

Title: Director, HMWMD

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 1 day of OCTOBER, 2014 by GARY W BAUGHMAN on behalf of the Colorado Department of Public Health and Environment.

Notary Public Claudette M. Ferris

Address 4300 Cherry Creek Dr So
Denver, Co 80246

My commission expires: October 21, 2015

EXHIBIT A

Property Description

General Legal Description of the Land

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Property Address: 6611 W. 58th Place, Arvada, CO 80003, located in Jefferson County, Colorado, Parcel ID: 39-123-00-097; Key 274, Section 12, Township 3, Range 69, Quarter Section SW comprising of 29,795 square feet.

EXHIBIT B

Site Map

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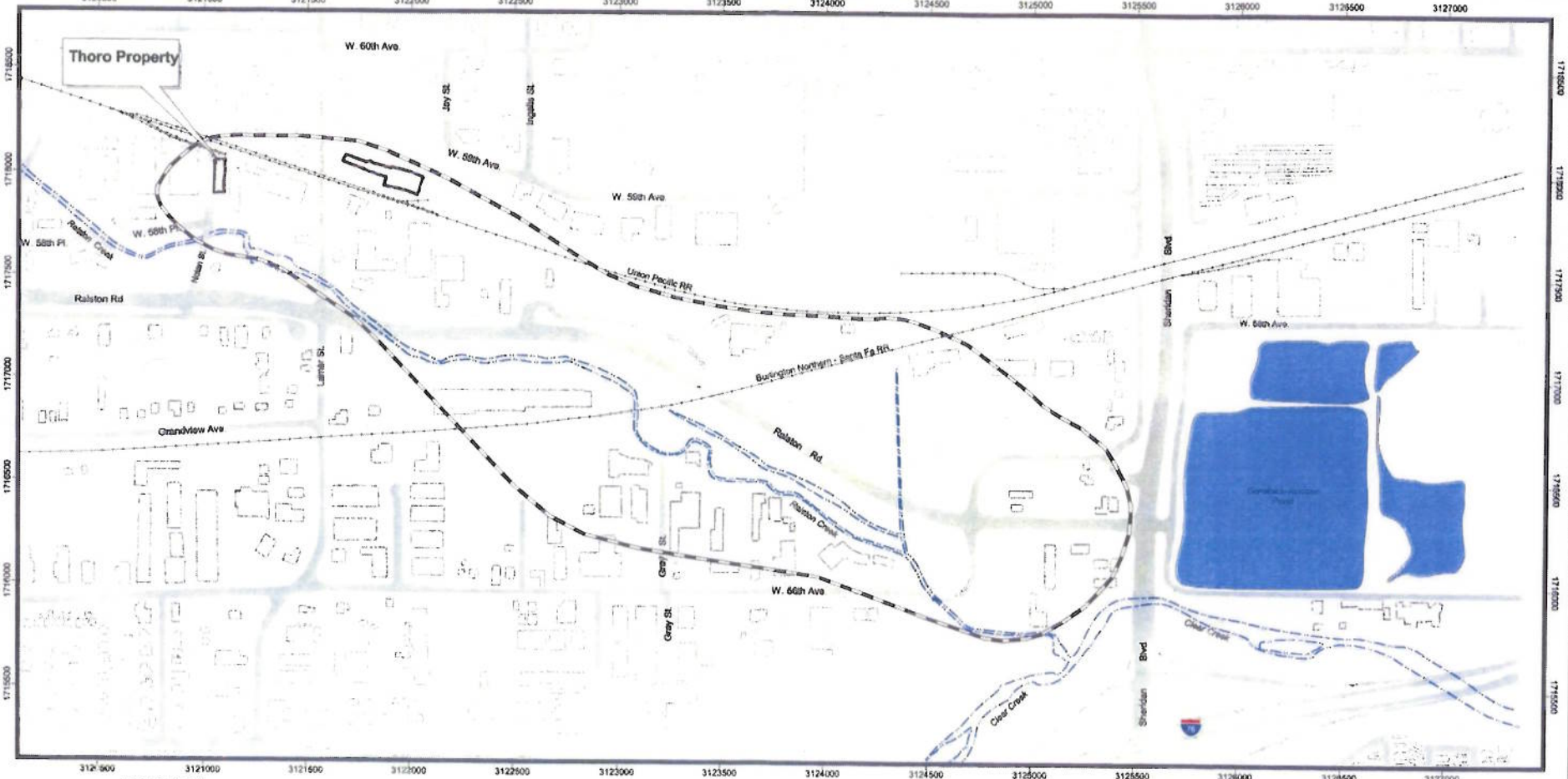

EXPLANATION

- Approximate Twins Inn Site Boundary
- Railroads
- Streams
- Buildings
- Roads

NOTE:
Coordinates reference
State Plane Feet, Colorado North Zone, NAD83
Vertical Datum: NAVD-88

N

500 0 500 Feet

URS

Figure 1-2 EXTENT OF TWINS INN SITE APRIL 2001

TWINS INN TREATABILITY STUDY
ARVADA, COLORADO

PROJECT NO.	DRAWING NO.	DATE
68-RAD00216	ts03-02.apr	5/13/02

EXHIBIT C

Owner's Compliance Certification

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OWNER COMPLIANCE CERTIFICATION

This certification of compliance is provided by Owner, _____ _____, ("OWNER") of the property located at 6611 W. 58th Place, Arvada, CO, pursuant to the terms of the Environmental Covenant ("Covenant") dated _____, 20____, recorded in the public land records of Jefferson County on _____, 2014, Reception No._____.

OWNER as defined in the Covenant, certifies to the best of its knowledge and belief that for the period from _____ to and including the date of this Certification set for below, and except as set forth herein, OWNER has been and is in compliance with the terms of this Covenant. OWNER's lack of compliance with the Covenant for the period from _____ to and including the date of this Certification is as follows:

_____

_____

_____

OWNER's certification of compliance does not extend to and is made independent of the actions of third parties unrelated to OWNER, including but not limited to trespassers, invitees, tenants, and third parties unrelated to OWNER with access to or easements across the Property, as that term is defined in the Covenant.

OWNER's certification of compliance is made to the best of OWNER's knowledge and belief after reasonable inquiry. Owner is aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment for making knowing false statements.

OWNER

By:_____

Its:_____

Date: _____