



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

Covenant Information:

Covenant Date 8/15/2015

Self Reporting

Media of Concern:

Surface Water:

Ground Water:

Air:

Soil:

Other:

Institutional Control ID: HMC0V00121

Site Contact Information:

Owner Corp: Robert B. Riss Marital Trust

Contact Name: Loretta D. Riss

Contact Address: 2510 Grand Blvd, Apt 2704

Contact City: Kansas City

Contact State: MO

Contact Zip: 64108

Contact Phone:

Contaminants of Concern:

TPH, VOC's (BTEX)

Property Restrictions:

- 1: Remain Light Industrial or Commercial Zoning.
- 2: No soil disturbances.
- 3: No beneficial use groundwater.
- 4: Maintain integrity of VCUP.
- 5:

Site Information:

ID:

Name: Skelly Oil Refienery

Address: 7170 Dahlia St

City: Commerce City

State: CO

Zip: 80022

Legal Description:

See Institutional Control

SKELLY OIL REFINERY



Featured Institutional Control



HMC OV00121

HMC OV00121

0 150 300 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, C.R.S.

ENVIRONMENTAL COVENANT

THIS ENVIRONMENTAL COVENANT (this "Covenant") is made and granted this 5th day of August, 2015, by LORETTA D. RISS, as TRUSTEE of the Robert B. Riss Marital Trust under Article V of said indenture of trust dated 6/15/1990, as amended ("Grantor") to the Hazardous Materials and Waste Management Division of Colorado Department of Public Health and the Environment (the "Department").

WHEREAS, Grantor is the current owner of certain properties commonly referred to as Former Skelly Oil Refinery/Grantor Property, located at 7170 Dahlia Street, 4895 E. 71st Street; 7121 Brighton Boulevard; 7101 Brighton Road; all in Commerce City, Colorado, more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as (the "Property")); and

WHEREAS, pursuant to a Voluntary Cleanup Plan Application ("VCUP Application") approved by the Colorado Department of Public Health and Environment on January 29, 2008, the Property is the subject of remedial action pursuant to § 25-16-307(2), C.R.S. of the Colorado Voluntary Cleanup and Redevelopment Act and § 25-15-321, C.R.S. of the Colorado Hazardous Waste Act; and

WHEREAS, as a result of the VCUP Application and work completed thereunder, known contamination remains present in surface soils, subsurface soils, and groundwater on and underneath certain portions of the Property as depicted on **Exhibit B**; and

WHEREAS, the Property contains residual Total Petroleum Hydrocarbon (TPH) contamination at levels that have been determined to be safe for non-residential uses, generally, but not all uses, and has incorporated engineered features or structures that require monitoring, maintenance, or operation, or that will not function as intended if disturbed; and

WHEREAS, the existing Property condition, remedial actions, residual risk, engineered structures and features (including asphalt cap, fencing, and stormwater drain in the northwest corner of asphalt cap), and future controls and actions are summarized in the Operation and Maintenance Plan, Former Skelly Oil Refinery/Riss Trust Property, Commerce City, Colorado dated July 2015 ("O&M Plan"); and

WHEREAS, the existing Property condition, remedial actions, residual risk, engineered structures and features, and restricted uses and requirements are summarized in the Potentially

Contaminated Soils Management Plan, Former Skelly Oil Refinery/Riss Trust Property, Commerce City, Colorado dated July 2015 (“PCSM Plan”); and

WHEREAS the O&M Plan and PCSM Plan are on file at the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, Records Center, and their contents and any amendments thereto are incorporated herein by reference; and

WHEREAS, the engineered structures and features have been designed and installed to disrupt potential exposure pathways which include subsurface soil contact, soil-vapor inhalation, or dermal contact with impacted shall groundwater; and

WHEREAS, certain work practices are necessary to protect the health and safety of future construction workers and utility workers during any approved Soil Disturbance Action, as defined in Paragraph (1)(b), by minimizing the risks associated with potential exposure to impacted materials via subsurface soil contact, soil-vapor inhalation, or dermal contact with impacted shallow groundwater; and

WHEREAS, this Covenant is being granted to the Department pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, C.R.S. *et. seq.*; and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment as explained more fully in the O&M Plan; and

WHEREAS, Grantor 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 Grantor and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using or conducting work on the Property, as described herein, for the benefit of Grantor and the Department unless and until the covenants and restrictions have been modified or terminated in accordance with this Covenant.

NOW, THEREFORE, Grantor hereby grants this Covenant to the Department, and declares that the Property as described in **Exhibit A** shall hereinafter be bound by, held, sold, and conveyed subject to compliance with the O&M Plan and the PCSM Plan, and subject to the specific requirements set forth in paragraphs 1 through 12 of this Covenant, below, which shall run with the Property in perpetuity and be binding on Grantor and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using or conducting work on the Property, as described herein. As used in this Covenant, the term Owner means Grantor, who is the record owner of the Property on the date of execution of this Covenant or any subsequent owner of the Property, 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.

1) **Use Restrictions.**

- a) **Zoning and Use.** Residential use is prohibited on the Property. The term “residential use” means use of a building or part of a building as a dwelling (i.e.,

as a place to sleep, eat and bathe). Dwellings including single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, but do not include motels, hospitals and other buildings used only for short-term lodging.

- b) **Restriction on Soil Disturbance Actions.** No excavation, drilling, grading, digging, tilling or any other soil-disturbing activity or activity that disturbs the asphalt cap ("Soil Disturbance Action") is allowed on the Property, unless conducted in accordance with the O&M Plan and the PCSM Plan.
 - c) **Groundwater.** No groundwater on the Property may be withdrawn or used for any purpose, except as authorized in a remedial decision document approved by the Department or an environmental sampling plan. No person shall dig, bore, drill or install any well for the production of water or from which water is produced on the Property, except for those wells used solely for groundwater quality monitoring purposes.
 - d) **Site Operations and Maintenance.** The Owner shall comply with the requirements set forth in the O&M Plan. This includes maintenance of a drain installed in the northwest corner of the asphalt cap to ensure proper drainage of the northwest corner of the Property and to reduce the potential for water infiltration into the subsurface; fencing at the Property maintained to restrict access by minors who are not accompanied by an adult, trespassers, and uninvited persons; and the asphalt cap and any other approved, concrete foundations, walkways and other impervious structures and features that constitute an acceptable and effective cap in lieu of or in conjunction with the existing asphalt cap.
 - e) **Protection of the Integrity of VCUP Action.** No person shall make any uses of the Property or undertake, perform or otherwise cause to occur, any activities that would in any manner interfere with or adversely affect the implementation, integrity, or protectiveness of the approved VCUP Action.
- 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 requested action. 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:
- i. a proposal to perform additional remedial work;
 - ii. new information regarding the risks posed by the residual contamination;

- iii. information demonstrating that residual contamination has diminished;
 - iv. information demonstrating that an engineered feature or structure is no longer necessary;
 - v. information demonstrating that the proposed modification or termination would not adversely impact the remedy and is protective of human health and the environment; and
 - vi. other appropriate supporting information.
- 3) **Notice Regarding 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 and requirements of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.
 - 5) **Notice Regarding 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 zoning or 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 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) **Conflict with Plans.** In the event of a conflict between the provisions of this Covenant and either of the O&M Plan or the PCSM Plan, or between the provisions of the Plans, this Covenant shall control.
 - 10) **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.
 - 11) **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) **Notices.** Any document or communication required under this Covenant shall be sent or directed to:

Voluntary Cleanup and Brownfield Program
Attention: Mark Rudolph or Program Manager
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

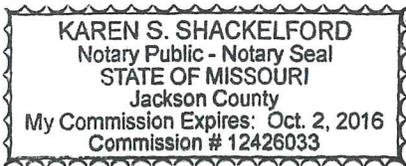
LORETTA D. RISS, as TRUSTEE of the Robert B. Riss Marital Trust under Article V of said indenture of trust dated 6/15/1990, has caused this instrument to be executed this 5th day of August, 2015.

Loretta D. Riss, Trustee

LORETTA D. RISS, as TRUSTEE of the Robert B. Riss Marital Trust under Article V of said indenture of trust dated 6/15/1990

STATE OF Missouri)
COUNTY OF Jackson) ss:

The foregoing instrument was acknowledged before me this 5th day of August, 2015 by LORETTA D. RISS, as TRUSTEE of the Robert B. Riss Marital Trust under Article V of said indenture of trust dated 6/15/1990.



Karen S. Shackelford
Notary Public
13312 West 91st Street
Address Lenexa, KS 66215
office; 1201 Walnut
Kansas City, MO 64105

My commission expires: 10/2/2016

Exhibit A
Legal Description

EXHIBIT A

That part of Plots 5 and 6, Hinchman-Renton Garden Tracts, Adams County, Colorado described as follows: Beginning at the SE corner of said Plot 5, thence Westerly along the South Line of said Plots 5 and 6, 272.34 feet to a point on the South Line of said Plot 6; thence Northerly 252.58 feet; thence Easterly, 387.00 feet to a point on the Westerly Right-of-Way Line of County Road No. 31, (Brighton Blvd.); thence Southwesterly along said Westerly Right-of-Way Line, 278.19 feet to the point of beginning, and containing 1.911 Acres more or less.

Also known as 71st & Brighton Boulevard.

That part of Tracts 5 and 6, Hinchman-Renton Garden Tracts, Adams County, Colorado, according to the recorded plat thereof, described as follows:

Beginning at the Northwest corner of Tract 6; thence South along the West side of Tract 6, 355.10 feet; thence East on a line parallel to the North line of Tract 5 and 6, a distance of 540.00 feet; thence North on a line parallel to the West side of Tract 6 a distance of 355.10 feet; thence West to the point of beginning, a distance of 540.00 feet, and containing 4.4 acres, more or less.

Also known as 7170 Dahlia.

Exhibit B
Property Location Map, Areas of
Known Contamination and
Implemented Remedial Cap
Locations

Figure 1, Exhibit B



Riss Trust Formerly Skelly

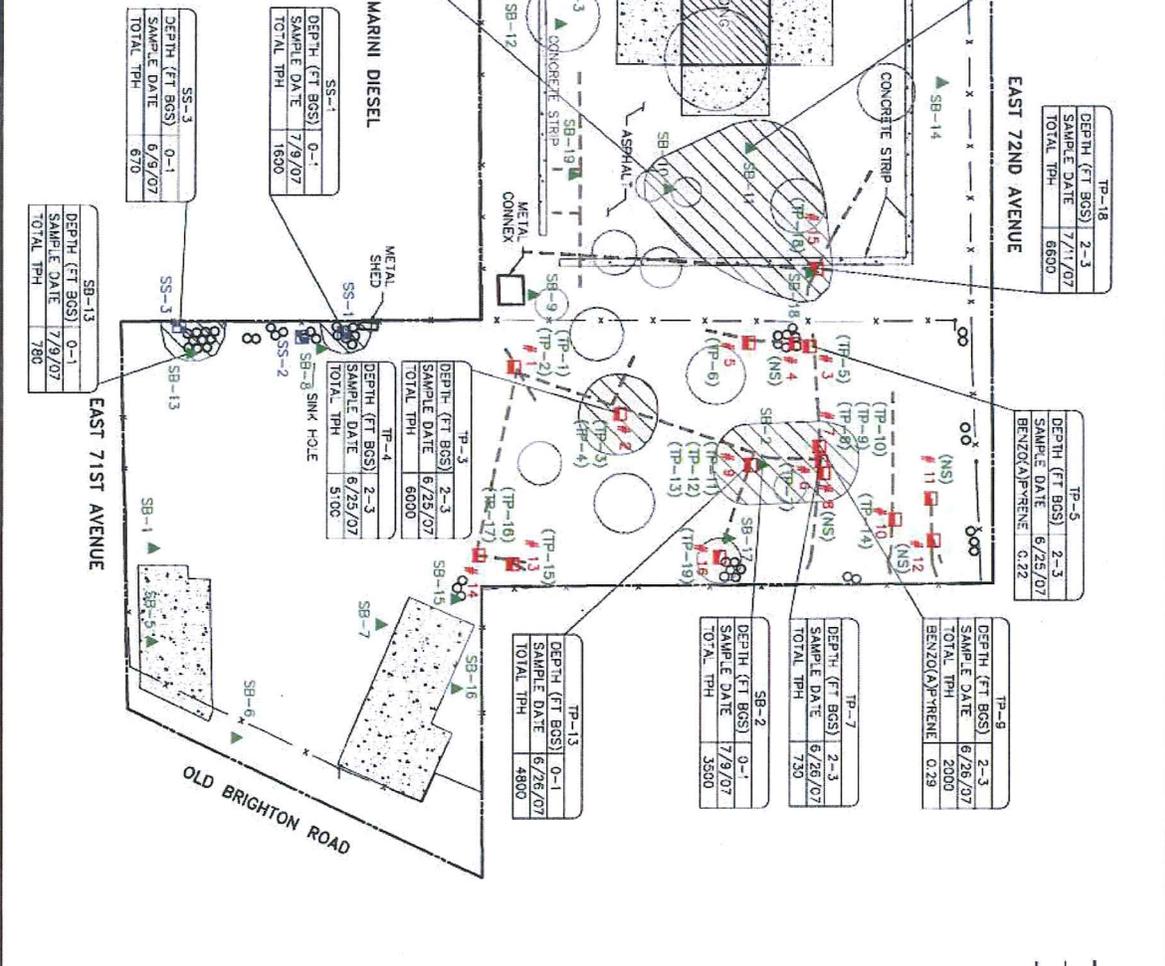
0 62.5 125 250 Meters

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX,

PROJECT NAME: 47503002
 REF: 47503001
 MAGS:

NOTE:

1. ARSENIC EXCEEDANCES ARE NOT SHOWN. DETECTED CONCENTRATIONS ARE NOT GREATER THAN COLORADO BACKGROUND LEVELS.
2. ALL CONCENTRATIONS IN mg/kg.
3. THIS DRAWING IS AT MODIFIED STATE PLANE. TO REDUCE TO STATE PLANE COORDINATES, SCALE AT 0.99974177 (1.00025823) ABOUT THE ORIGIN 0,0.
4. FT BGS = FEET BELOW GROUND SURFACE.



LEGEND:

- PROPERTY BOUNDARY
- FENCE
- UNDERGROUND LINE
- TEST PIT NUMBER
- SOIL BORING
- SURFACE SOIL SAMPLE
- SAMPLE ID
- NOT SAMPLED
- DRUMS
- FORMER AST LOCATIONS (1948 AERIAL)
- POTENTIAL TPH IMPACTED AREA
- CONCRETE PAD AND STRIPS

GRAPHIC SCALE: 0, 80', 160'

FORMER SKELLY OIL REFINERY/ RISS TRUST PROPERTY
 COMMERCE CITY, COLORADO
 VCUP APPLICATION

TEST PIT AND SURFACE SOIL SAMPLE LOCATIONS AND EXCEEDANCES

Exhibit B

FIGURE 2

When Recorded Return To:
STATE OF COLORADO
Department of Law
Natural Resources &
Environment Section
1300 Broadway, 7th Fl
Denver, CO 80203

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement"), effective as of this 10th day of August, 2015, is made by and between Navistar, Inc. ("Navistar"), a Delaware Corporation having a principal office address of 2701 Navistar Drive, Lisle, IL 60532, and a Colorado registered agent and registered agent address of The Corporation Company, 1675 Broadway, Suite 1200, Denver, Colorado 80202, and the Colorado Department of Public Health and Environment ("the Department" or "CDPHE"), having an address of 4300 Cherry Creek Drive South, Denver, CO 80246-1530 (hereinafter, Navistar and CDPHE are referred to collectively as the "Parties").

WITNESSETH:

WHEREAS, Loretta D. Riss, as Trustee of the Marital Trust created under that certain Indenture, dated June 15, 1990, with Robert B. Riss, as Settlor, as amended (the "Trust"), having an address of 2510 Grand Boulevard, Kansas City, MO 64108, is the owner of the real property described in Exhibit A attached hereto and incorporated herein (the "Property"); and

WHEREAS, Navistar is leasing the Property from the Trust on a month-to-month basis (the "Lease"); and

WHEREAS, the Trust has granted an Environmental Covenant to CDPHE, acknowledged and dated August 5, 2015, and recorded at Reception No. 2015000077540 of the real property records of Adams County, Colorado ("Environmental Covenant"). The Environmental Covenant runs with the land and by its terms subjects the Property to certain covenants and restrictions pursuant to Article 15 of Title 25, Colorado Revised Statutes, to ensure protection of human health and the environment; and

WHEREAS, Navistar agrees that it is in its interest to assure the covenants and restrictions contained in the Environmental Covenant are in effect on the Property to protect human health and the environment, particularly of excavation restrictions for worker safety. Further, Navistar recognizes the importance of enforcement of the Environmental Covenant against all the property owners, successors and assigns, and all parties acquiring or owning any right, title, lien or interest in the Property and their heirs,

successors assigns, grantees, executors, administrators, and devisees, and has therefore agreed to subordinate the Lease to the Environmental Covenant; and

WHEREAS, the Parties desire to memorialize their agreement regarding the subordination of the Lease to the Environmental Covenant;

NOW, THEREFORE, for and in consideration of the premises and the terms and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows.

1. Incorporation of Recitals. The foregoing recitals are expressly incorporated into and made a part of this Agreement.
2. Subordination. The Lease and the respective prior interests, rights and remedies of Navistar as to the Property shall at all times be subject, subordinate and inferior in all respects, and junior in priority, to the Environmental Covenant, and all of the terms, covenants and conditions contained therein, as the same may from time to time be modified; however, if the Environmental Covenant is terminated pursuant to C.R.S. 25-15-321, this Agreement shall become null and void.
3. Governing Law, Venue. This Agreement shall be construed according to the laws of Colorado. The proper venue for any action arising under or relating to this Agreement shall be in Denver County, Colorado, and all of the Parties acknowledge and consent to the jurisdiction of the courts located in such county.
4. Full Force and Effect. Except as provided in this Agreement, the terms and provisions of the Environmental Covenant shall remain in full force and effect.
5. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter of this Agreement and merges and supersedes all prior discussions, agreements, and undertaking of every kind and nature between them with respect to the subject matter of this Agreement.
6. Savings Clause. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the Parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.
7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns, provided, however, that nothing herein affects any of the respective rights of Navistar and the Trust to not renew the Lease or to terminate or cancel the Lease.
8. Limited Power of Attorney. Navistar does hereby appoint CDPHE a limited power of attorney solely for the purpose of filling in all blanks above with the appropriate information describing the Environmental Covenant, in the event

EXHIBIT A

That part of Plots 5 and 6, Hinchman-Renton Garden Tracts, Adams County, Colorado described as follows: Beginning at the SE corner of said Plot 5, thence Westerly along the South Line of said Plots 5 and 6, 272.34 feet to a point on the South Line of said Plot 6; thence Northerly 252.58 feet; thence Easterly, 387.00 feet to a point on the Westerly Right-of-Way Line of County Road No. 31, (Brighton Blvd.); thence Southwesterly along said Westerly Right-of-Way Line, 278.19 feet to the point of beginning, and containing 1.911 Acres more or less.

Also known as 71st & Brighton Boulevard.

When Recorded Return To:

STATE OF COLORADO
Department of Law
Natural Resources &
Environment Section
1300 Broadway, 7th Fl
Denver, CO 80203

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement"), effective as of this 19th day of August, 2015, is made by and between Colorado Transportation School LLC, a Colorado limited liability company ("Colorado Transportation"), having an address of 7170 Dahlia Street, Commerce City, CO 80022, and CDL College llc, a Colorado limited liability company ("CDL"), having an address of 7170 Dahlia Street, Commerce City, CO 80022, and the Colorado Department of Public Health and Environment, having an address of 4300 Cherry Creek Drive South, Denver, CO 80246-1530, ("the Department" or "CDPHE") (hereinafter Colorado Transportation, CDL and CDPHE are referred to collectively as the "Parties").

W I T N E S S E T H:

WHEREAS, Loretta D. Riss, as Trustee of the Marital Trust created under that certain Indenture, dated June 15, 1990, with Robert B. Riss, as Settlor, as amended (the "Trust"), having an address of 2510 Grand Boulevard, Kansas City, MO 64108, is the owner of the real property described in Exhibit A attached hereto and incorporated herein (the "Property"); and

WHEREAS, Colorado Transportation is leasing the Property from the Trust on a month-to-month basis (the "Lease"); and

WHEREAS, with the consent of Colorado Transportation, CDL is occupying the Property;

WHEREAS, the Trust has granted an Environmental Covenant to CDPHE, acknowledged and dated August 5, 2015, and recorded at Reception No. 2015000077540 of the real property records of Adams County, Colorado ("Environmental Covenant"). The Environmental Covenant runs with the land and by its terms subjects the Property to certain covenants and restrictions pursuant to Article 15 of Title 25, Colorado Revised Statutes, to ensure protection of human health and the environment; and

WHEREAS, Colorado Transportation and CDL agree that it is in their interests to assure the covenants and restrictions contained in the Environmental Covenant are in effect on the Property to protect human health and the environment, particularly of excavation restrictions for worker safety. Further, Colorado Transportation and CDL recognize the importance of enforcement of the Environmental Covenant against all the property owners, successors and assigns, and all parties acquiring or owning any right, title, lien or interest in the Property and their heirs, successors assigns, grantees, executors, administrators, and devisees, and have therefore agreed to subordinate the Lease and any other rights to occupy the Property to the Environmental Covenant; and

WHEREAS, the Parties desire to memorialize their agreement regarding the subordination of the Lease and any other rights to occupy the Property to the Environmental Covenant;

NOW, THEREFORE, for and in consideration of the premises and the terms and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows.

1. Incorporation of Recitals. The foregoing recitals are expressly incorporated into and made a part of this Agreement.
2. Subordination. The Lease and the respective prior interests, rights and remedies of Colorado Transportation and CDL as to the Property shall at all times be subject, subordinate and inferior in all respects, and junior in priority, to the Environmental Covenant, and all of the terms, covenants and conditions contained therein, as the same may from time to time be modified; however, if the Environmental Covenant is terminated pursuant to C.R.S. 25-15-321, this Agreement shall become null and void.
3. Governing Law, Venue. This Agreement shall be construed according to the laws of Colorado. The proper venue for any action arising under or relating to this Agreement shall be in Denver County, Colorado, and all of the Parties acknowledge and consent to the jurisdiction of the courts located in such county.
4. Full Force and Effect. Except as provided in this Agreement, the terms and provisions of the Environmental Covenant shall remain in full force and effect.
5. Entire Agreement. This Agreement sets forth the entire agreement and understanding among the Parties as to the subject matter of this Agreement and merges and supersedes all prior discussions, agreements, and undertaking of every kind and nature among them with respect to the subject matter of this Agreement.
6. Savings Clause. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the Parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns, provided, however, that nothing herein affects any of the respective rights of Colorado Transportation, CDL and the Trust to not renew the Lease or to terminate or cancel the Lease or to terminate or cancel any other rights to occupy the Property.
8. Limited Power of Attorney. Colorado Transportation and CDL hereby appoint CDPHE a limited power of attorney solely for the purpose of filling in all blanks above with the appropriate information describing the Environmental Covenant, in the event this Subordination Agreement is executed and delivered prior to the execution, delivery and recordation of the Environmental Covenant.
9. Signature. By their signatures hereon, Colorado Transportation and CDL consent to the subordination of the Lease and any other rights to occupy the Property to the Environmental Covenant.

Dated this 19th day of August, 2015.

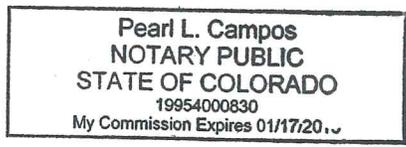
Accepted by the Colorado Department of Public Health and Environment this 25th day of August, 2015.

By: Gary W. Baughman

Title: Director, H&EMD

STATE OF Colorado)
) ss:
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 25 day of August, 2015 by Gary Baughman on behalf of the Colorado Department of Public Health and Environment.



Pearl L. Campos
Notary Public
4300 Cherry Creek Drive
Address Denver Co 80246

My commission expires: 1/19/2019 ^{ptc}

EXHIBIT A

That part of Tracts 5 and 6, Hinchman-Renton Garden Tracts, Adams County, Colorado, according to the recorded plat thereof, described as follows:

Beginning at the Northwest corner of Tract 6; thence South along the West side of Tract 6, 355.10 feet; thence East on a line parallel to the North line of Tract 5 and 6, a distance of 540.00 feet; thence North on a line parallel to the West side of Tract 6 a distance of 355.10 feet; thence West to the point of beginning, a distance of 540.00 feet, and containing 4.4 acres, more or less.

Also known as 7170 Dahlia.