

**This property is subject to a Notice of Environmental Use
Restrictions imposed by the Colorado Department of Public Health
and Environment pursuant to section 25-15-321.5, Colorado
Revised Statutes**

NOTICE OF ENVIRONMENTAL USE RESTRICTIONS

WHEREAS, [*insert FACILITY name*] (“OWNER”) is the owner of certain property commonly referred to as the _____, located at [*insert street address, city and county*], State of Colorado, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as “the Property”); and

WHEREAS, the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment (“the Department”), which is located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, is authorized to [*insert “approve” or “issue” as appropriate*] Notices of Environmental Use Restrictions (a/k/a “Restrictive Notices”) pursuant to § 25-15-320(4)(a) of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.*, C.R.S. (“CHWA”); and

WHEREAS, for purposes of indexing in the County Clerk and Recorder’s office Grantor-Grantee index only, [FACILITY] shall be considered the **Grantor**, and the Colorado Department of Public Health and Environment shall be considered the **Grantee**. Nothing in the preceding sentence shall be construed to create or transfer any right, title or interest in the Property; and

WHEREAS, pursuant to [*insert compliance order no., plan name, etc.*], the Property is the subject of enforcement and remedial action pursuant to the [*insert name and citation of applicable law(s), e.g., Colorado Hazardous Waste Act, § 25-15-301, et seq., C.R.S. (“CHWA”), the Resource Conservation and Recovery Act, 42 U.S.C. § 6926, et seq. (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq. (“CERCLA”), the Solid Waste Disposal Sites and Facilities Act, § 30-20-101, et seq., C.R.S., etc.*]; and

WHEREAS, the purpose of this Restrictive Notice is to ensure protection of human health and the environment by [*insert summary description of rationale for various restrictions in the restrictive notice. This is not required, but may be useful as an aid in interpreting the restrictive notice. You may choose to reference the environmental remedial decision instead or in addition, if that document explains the purpose(s) of the use restrictions.*]; and

WHEREAS, [FACILITY] has requested that the Department [*insert “approve” or “issue,” depending on the situation*] this Restrictive Notice as provided in Article 15 of Title 25, Colorado Revised Statutes;

NOW, THEREFORE, the Department [*insert “approves” or “issues”*] this Restrictive Notice pursuant to § 25-15-321.5, C.R.S. The Property described in Attachment A shall hereinafter be subject to the following requirements set forth in paragraphs 1 through [#] below, which shall be binding on [FACILITY] and all persons now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein. As used in this Restrictive Notice, the term OWNER means the then current record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

- 1) Use restrictions. [*Refer to CDPHE guidance on use restriction language.*]
- 2) Modifications. This Restrictive Notice shall remain in full force and effect unless modified or terminated in accordance with this paragraph and pursuant to § 25-15-321.5, C.R.S. or any successor statute. OWNER may request that the Department approve a modification or termination of the Restrictive Notice. 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 Restrictive Notice will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Restrictive Notice shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:
 - a) a proposal to perform additional remedial work;
 - b) new information regarding the risks posed by the residual contamination;
 - c) information demonstrating that residual contamination has diminished;
 - d) information demonstrating that an engineered feature or structure is no longer necessary;
 - e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
 - f) other appropriate supporting information.
- 3) Conveyances. OWNER shall notify the Department at least fifteen (15) days prior to any conveyance of any interest in any or all of the Property. Within thirty (30) days after any such conveyance, OWNER shall provide the Department with the name, mailing address and telephone number of the new OWNER.
- 4) Notice to Lessees. OWNER agrees to incorporate either in full or by reference the restrictions of this Restrictive Notice in any leases, licenses, or other instruments granting a right to use the Property.

- 5) Notification for proposed construction and land use. OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.
- 6) Inspections. The Department, including its authorized employees, agents, representatives and independent contractors, 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 Restrictive Notice.
- 7) Third Party Beneficiary. The OWNER of the Property [*insert name of any other entity that will be a third party beneficiary*] is a third party beneficiary with the right to enforce the provisions of this Restrictive Notice 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 [*insert “approving” or “issuing” as appropriate*] this Restrictive Notice [*and, if applicable “, nor does any other named beneficiary of this Restrictive Notice acquire any liability under State law by virtue of being such a beneficiary”*].
- 9) Enforcement. The Department may enforce the terms of this Restrictive Notice pursuant to § 25-15-322, C.R.S. [FACILITY] [*and if applicable, “and any named beneficiaries of this Restrictive Notice”*] may file suit in district court to enjoin actual or threatened violations of this Restrictive Notice.
- 10) Owner’s Compliance Certification. OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNER’s compliance, and any lack of compliance, with the terms of this Restrictive Notice.
- 11) Severability. If any part of this Restrictive Notice shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.
- 12) Notices. Any document or communication required under this Restrictive Notice shall be sent or directed to:

[*appropriate Project manager, Program manager, or Unit leader*]
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

[*add third party beneficiary contact information if applicable*]

This Notice of Environmental Use Restrictions is [*insert “approved” or “issued” as appropriate*] by the Colorado Department of Public Health and Environment

STATE OF _____)
) ss:
COUNTY OF _____) _____

The foregoing instrument was acknowledged before me this ___ day of _____,
_____ by _____ on behalf of [FACILITY]

Notary Public

Address

My commission expires: _____

Accepted by the Colorado Department of Public Health and Environment this ___ day of
_____, _____.

By: _____

Title: _____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____,
_____ by _____ on behalf of the Colorado Department of Public Health and
Environment.

Notary Public

My commission expires: _____

ATTACHMENT “A”
to the
NOTICE OF ENVIRONMENTAL USE RESTRICTIONS