

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

NOTICE OF ENVIRONMENTAL USE RESTRICTIONS

WHEREAS, Triangle Logistics Center (“Triangle”) is the owner of certain property that is a portion of the property commonly referred to as the Former 48th and Holly Landfill, located at 48th and Holly Streets, Commerce City, Colorado 80216, Adams County Parcel Number 0182317300029, more particularly described in Attachment A and depicted in Attachment B, attached hereto and incorporated herein by reference as though fully set forth (hereinafter, “the Property”); and

WHEREAS, the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment (“the Department”), located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, is authorized to approve 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.*; and

WHEREAS, Triangle and the Department have agreed that the Department should release and terminate the Environmental Covenant for the Property dated July 2, 2007 (Reception No. 2007000063610), re-recorded on April 21, 2008 (Reception No. 2008000031499), and replace it with this Notice of Environmental Use Restrictions; and

WHEREAS, the Release and Termination of the Environmental Covenant is being executed concurrently with this Notice of Environmental Use Restrictions; and

WHEREAS, for purposes of indexing in the County Clerk and Recorder’s office Grantor-Grantee index only, Triangle be considered the **Grantor**, and the Department 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 Sand Creek Industrial Superfund Site Record of Decision for OU3 and OU6, dated June 30, 1993, the Property is the subject of enforcement and remedial action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § § 9601, *et seq.* (“CERCLA”); and

WHEREAS, the purpose of this Restrictive Notice is to ensure protection of human health and the environment by allowing for development of the Property that will not adversely affect the operation and maintenance of the remedy components for OU3 and OU6; and

WHEREAS, such remedy components consist of (i) continued operation of the landfill’s soil cover system and landfill gas extraction system (“LFGES”) with improvements as required; (ii) continued maintenance of the area’s perimeter fence and warning signs; (iii) continuation of the existing institutional controls and implementation of additional institutional controls as

necessary; and (iv) implementation of a monitoring program for groundwater and methane gas and periodic site reviews (collectively, “Remedial Components”); and

WHEREAS, Triangle 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 Triangle 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, for the benefit of the Department and Environmental Protection Agency (“EPA”).

NOW, THEREFORE, Triangle and the Department agree to this Restrictive Notice, with EPA as a third party beneficiary, and declare that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 14, below, which shall run with the Property in perpetuity and be binding on Triangle 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. 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. Activity restrictions.

- a. Due to the presence of methane gas at levels dangerous to human health and the environment, and to protect the proper functioning of the LFGES and soil cover system, all activities that will affect Remedial Components must be approved by CDPHE or EPA. Therefore, no activity of any kind that will affect Remedial Components is allowed on the Property other than activities done in accordance with:
 - i. Remedial plans approved by EPA in consultation with the Department;
 - ii. A Materials Management Plan approved by the Department in consultation with EPA; or
 - iii. Other construction or redevelopment plans or designs approved by the Department and EPA for any construction or redevelopment that may impact the Remedial Components or potentially exacerbate the migration of contaminants.
- b. For purposes of this paragraph 1, and without limiting the foregoing, activities, designs, and systems approved pursuant to that certain Administrative Settlement Agreement for Response Actions and Payment of Response Costs by Prospective Purchaser (“PPA”) entered into among Triangle, EPA, and the State of Colorado, Docket No. CERCLA-08-2022-0005 (“Remedial Decision Document”), are allowed on the Property.
- c. Without limiting the foregoing, no enclosed structures may be built on the Property without either: (a) a building Methane Mitigation System (“MMS”) developed in accordance with the Work Plan approved pursuant to the Remedial Decision Document (“Work Plan”); or (b) a MMS developed in accordance with a Department-approved building Methane Mitigation System Design and Operations Plan (“MMSDOM Plan”). Once constructed, all building MMSs must be operated and

maintained in accordance with a Building MMS O&M manual developed and approved in accordance with the Work Plan or a MMSDOM Plan, as applicable, to prevent airborne concentrations of methane gas within any structure from exceeding concentrations protective of building uses.

3. Modifications. This Restrictive Notice shall remain in full force and effect unless modified or terminated pursuant to this paragraph. 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.
4. 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. 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.
5. 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.
6. 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.
7. 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.
8. Third Party Beneficiaries. EPA and the District (as defined below) are third party beneficiaries with the right to enforce the provisions of this Restrictive Notice as provided in § 25-15-322, C.R.S.

9. No Liability. The Department does not acquire any liability under State law by virtue of accepting this Restrictive Notice, nor does any other named beneficiary of this Restrictive Notice acquire any liability under State law by virtue of being such a beneficiary.
10. Enforcement. The Department may enforce the terms of this Restrictive Notice pursuant to § 25-15-322, C.R.S. against OWNER and any named beneficiaries of this Restrictive Notice and may file suit in district court to enjoin actual or threatened violations of this Restrictive Notice.
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 Restrictive Notice ("Certification of Compliance").
12. 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.
13. Notices. Any document or communication required under this Restrictive Notice shall be sent or directed to:

Sand Creek NPL Site Project Manager
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Remedial Project Manager
Sand Creek NPL Site
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

14. Subdivision of Property. Payment of annual fees, if applicable, and Certification of Compliance with the restrictions set forth in paragraph (1) of this Restrictive Notice shall be the responsibility of OWNER or, upon written notice to the Department, the TRIANGLE LOGISTICS CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-governmental entity formed pursuant to §§ 31-1-101 *et seq.*, C.R.S. ("District") or a property owner's association ("POA") formed under Colorado law. Nothing in this paragraph relieves OWNER of the obligation to comply with the requirements of this paragraph if the District or such POA is unable to fulfill any of the responsibilities it assumes on behalf of OWNER pursuant to this paragraph. The OWNER may submit an alternative plan addressing payment of annual fees and certification of compliance with the restrictions set forth in paragraph (1) of this Restrictive Notice. The Department shall approve the plan if it determines that the plan reasonably will ensure continued compliance with the requirements of this Restrictive Notice. Any Department notice of disapproval shall include the Department's rationale for its decision, including any additional information or changes to the plan that the Department requires before the plan can be approved. Any appeal of a Department notice of disapproval shall be taken in accordance with § 25-15-305(2), C.R.S.

Accepted by the Colorado Department of Public Health and Environment this 2ND day of MAY, 2022.

By: *Grace Stutes*

Title: HAZARDOUS MATERIALS & WASTE MANAGEMENT DIVISION DIRECTOR

STATE OF COLORADO)
) ss:
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 2nd day of May, 2022 on behalf of the Colorado Department of Public Health and Environment.

CAITLIN TIEHEN
Notary Public

CAITLIN TIEHEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20214042441
MY COMMISSION EXPIRES OCT 27, 2025

4059 E. 119th Ct
Address
Thornton, CO 80233

My commission expires: Oct. 27, 2025



ATTACHMENT "A"
to the
RESTRICTIVE NOTICE: LEGAL DESCRIPTION

That part of the SW $\frac{1}{4}$ of Section 17, Township 3 South, Range 67 West of the 6th P.M., described as follows:

Commencing at the Southwest corner of the SW $\frac{1}{4}$ of said Section 17;

Thence East along the South line of said Section 17, 640 feet to the Point of Beginning;

Thence continuing East along said South line of Section 17, 1075 feet to a point of intersection with a line parallel to and 50 feet Southwesterly of the centerline of the main track of the Colorado and Eastern Railroad as same is presently laid out and located;

Thence Northwesterly along said parallel line 50 feet Southwesterly of said main track centerline, 1360 feet to a point, said point being the point of intersection with the North/South centerline of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 17;

Thence South along said North/South centerline to the Point of Beginning,

EXCEPT that portion conveyed to the City of Commerce City by Deed recorded July 25, 1966 in Book 1308 at Page 392,

County of Adams, State of Colorado.

Notice of Environmental Use Restriction: Sand Creek

