Amended and Restated Environmental Covenant

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, the United States owns, and Department of Energy has administrative jurisdiction over, certain property commonly referred to as the Rocky Flats Central Operable Unit (Central OU). The Central OU is situated on a portion of a property formerly known as the Rocky Flats Environmental Technology Site, or Rocky Flats, located at 10808 Highway 93, Golden, Colorado. The Central OU is more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth; 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 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. ("CHWA"); and

WHEREAS, the United States, acting by and through DOE, has previously granted an Environmental Covenant to the Department that imposes the Central OU environmental use restrictions specified in the CAD/ROD as institutional controls, which Covenant was recorded with Jefferson County, Colorado on December 12, 2011, and bears reception number 201111237; and

WHEREAS, for purposes of indexing in the County Clerk and Recorder’s office Grantor-Grantee index only, the United States of America 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, the Central OU together with certain engineered structures, is hereinafter referred to as "the Property," and is situated as shown in Attachment A; and

WHEREAS, pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"), and CHWA, the Central OU is subject to closure, post-closure and corrective action requirements, and pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. ("CERCLA"), the Central OU is subject to certain remedial requirements; and

WHEREAS, pursuant to the Rocky Flats Cleanup Agreement (Federal Facility Agreement and Consent Order, CERCLA VIII-96-21, RCRA (3008(h)) VIII-96-01, State of Colorado Docket 1
WHEREAS, the CAD/ROD specifies certain corrective and remedial actions and closure requirements pursuant to CHWA, RCRA and CERCLA, including the imposition of "environmental use restrictions," as that term is defined in § 25-15-101(4.7), C.R.S.; and

WHEREAS, pursuant to the CAD/ROD, RFCA was superseded by the Rocky Flats Legacy Management Agreement (Federal Facility Agreement and Consent Order, CERCLA VIII-96-21, RCRA (3008(h)) VIII-96-01, State of Colorado Docket #96-07-19-01, as amended) (RFLMA) on March 14, 2007 to establish the regulatory framework for implementing the final response actions, corrective actions and closure requirements selected and approved in the CAD/ROD; and

WHEREAS, an amendment to the CAD/ROD clarifying the environmental use restrictions required by the CAD/ROD as institutional controls was issued on September 22, 2011; and

WHEREAS, the purpose of this Restrictive Notice is to ensure protection of human health and the environment by creating a legal mechanism for enforcing the environmental use restrictions specified in the CAD/ROD as institutional controls; and

WHEREAS, DOE has placed in the administrative record required under 42 U.S.C. § 9613(k) for the Rocky Flats Site, and, as required by 6 CCR 1007-3 § 265.119(b)(1)(iii), has filed with the Department and the Jefferson County Planning and Zoning Department a survey plat and record of the wastes that have been disposed in a landfill known as the Present Landfill, which is located in the Central OU; and

WHEREAS the United States and the Department intend that this Restrictive Notice shall modify and supersede the Environmental Covenant bearing reception number 201111237 in its entirety; and

WHEREAS, the United States, acting by and through the DOE pursuant to its authority under the Atomic Energy Act, 42 U.S.C. § 2011 et. seq., and CERCLA, has requested that the Department approve this Restrictive Notice as provided in Article 15 of Title 25, Colorado Revised Statutes;

NOW, THEREFORE, the Department approves this Restrictive Notice pursuant to § 25-15-321.5. The Property described in Attachment A shall hereinafter be subject to the following requirements set forth in paragraphs 1 through 13 below, which shall be binding on DOE 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.** The following uses and activities listed in (a) through (g) below are prohibited on the Property:

a. Restriction: The construction and use of buildings that will be occupied on a permanent or temporary basis (such as for residences or offices) is prohibited. The construction and use of storage sheds or other, non-occupied structures is permitted, consistent with the restrictions contained in controls 2 and 3 below, and provided such use does not impair any aspect of the response action at Rocky Flats.

Objective: Prevent unacceptable exposures via the indoor air pathway.

Rationale: The analysis of the indoor air pathway in the Comprehensive Risk Assessment indicated that subsurface volatile organic compounds were at levels in certain portions of the Central OU that could pose a risk of unacceptable exposure to the Wildlife Refuge Worker if occupied structures were built in these areas.

b. Restriction: Excavation, drilling, and other intrusive activities below a depth of three feet are prohibited, without prior regulatory review and approval pursuant to the Soil Disturbance Review Plan in RFLMA Attachment 2.

Objective: Prevent unacceptable exposure to residual subsurface contamination.

Rationale: Contaminated structures, such as building basements, exist in certain areas of the Central OU, and the Comprehensive Risk Assessment did not evaluate the risks posed by exposure to this residual contamination. Thus, this restriction eliminates the possibility of unacceptable exposures. Additionally, it prevents damage to subsurface engineered components of the remedy.

c. Restriction: No grading, excavation, digging, tilling, or other disturbance of any kind of surface soils is permitted, except in accordance with an erosion control plan (including Surface Water Protection Plans submitted to EPA under the Clean Water Act) approved by CDPHE or EPA. Soil disturbance that will not restore the soil surface to preexisting grade or higher may not be performed without prior regulatory review and approval pursuant to the Soil Disturbance Review Plan in RFLMA Attachment 2.

Objective: Prevent migration of residual surface soil contamination to surface water.

Rationale: Certain surface soil contaminants, notably plutonium-239/240, were identified in the fate and transport evaluation in the Remedial Investigation as having complete pathways to surface water if disturbed. This restriction minimizes the possibility of such disturbance and resultant impacts to surface water. Restoring the soil surface to preexisting grade maintains the current depth to subsurface contamination or contaminated structures.

d. Restriction: Surface water may not be used for drinking water or agricultural purposes.
Objective: Prevent unacceptable exposure to local surface water contamination above the terminal ponds.

Rationale: While the Comprehensive Risk Assessment did not evaluate the risks posed by the use of surface water for drinking or agricultural purposes, the nature and extent of contamination evaluation in the Remedial Investigation showed that certain contaminants were found at levels exceeding standards above the terminal ponds. This restriction reduces the possibility of unacceptable exposures to future users from this source.

e. Restriction: The construction or operation of groundwater wells is prohibited, except for remedy-related purposes.

Objective: Prevent unacceptable exposure to contaminated groundwater.

Rationale: While the Comprehensive Risk Assessment did not evaluate the risks posed by the use of groundwater for drinking or agricultural purposes, the nature and extent of contamination evaluation in the Remedial Investigation identified areas in the Central OU where groundwater contaminants exceeded water quality standards or Maximum Contaminant Levels established under the Clean Water Act, 33 U.S.C. § 1251 et seq. This restriction reduces the possibility of unacceptable exposures to future users from this source. Additionally, it prevents the disruption of groundwater flow paths so as to avoid impacts on groundwater collection and treatment systems.

f. Restriction: Digging, drilling, tilling, grading, excavation, construction of any sort (including construction of any structures, paths, trails or roads), and vehicular traffic are prohibited on the covers of the Present Landfill and the Original Landfill, except for authorized response actions.

Objective: Ensure the continued proper functioning of the landfill covers.

Rationale: This restriction helps ensure the integrity of the landfill covers.

g. Restriction: Activities that may damage or impair the proper functioning of any engineered component of the response action, including but not limited to any treatment system, monitoring well, landfill cap, or surveyed benchmark, are prohibited. The preceding sentence shall not be construed to prohibit the modification, removal, replacement, or relocation of any engineered component of the response action in accordance with the action determinations in RFLMA Attachment 2.

Objective: Ensure the continued proper functioning of engineered portions of the remedy.

Rationale: This restriction helps ensure the integrity of other engineered components of the remedy, including monitoring and survey points.
2) **Modifications.** This Restrictive Notice shall remain and continue in full force and effect unless modified or terminated in accordance with this paragraph and pursuant to C.R.S. § 25-15-321.5 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 the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
   e) 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. Thirty (30) days after any conveyance, OWNER shall provide the Department with a copy of the recorded deed transferring any interest in any or all of the Property and provide the name, mailing address and telephone number of the new OWNER. If the entire interest is not conveyed, OWNER shall provide an improvement survey plat that shows the property being conveyed.

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. Nothing in this Restrictive Notice shall impair any other authority the Department may otherwise have to enter and inspect the Property.

7) **Third Party Beneficiary.** The OWNER of the Property 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 approving this Restrictive Notice.
9) **Enforcement.** The Department may enforce the terms of this Restrictive Notice pursuant to §25-15-322. C.R.S. DOE 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:

For the Department:
Hazardous Waste Corrective Action 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

For the Department of Energy:
Asset Management Team Lead
Senior Realty Officer
United States Department of Energy
Office of Legacy Management
11025 Dover Street, Suite 1000
Westminster, CO 80021

13) This document is an approved modification of the Environmental Covenant between DOE and the Department, dated November 14, 2011, and recorded at Jefferson County, Colorado, reception number 2011112377. As of the date the Department signs this Restrictive Notice, it supersedes the November 14, 2011 Covenant, and the November 14, 2011 Covenant no longer has any independent force or effect.
The United States, by and through the Department of Energy, has caused this document to be executed this 22nd day of March, 2017.

By: [Signature]

Title: [Title]

STATE OF [Colorado] ss:

COUNTY OF [Denver]

The foregoing instrument was acknowledged before me this 22nd day of March, 2017, by [Signature] on behalf of the United States Department of Energy.

[Vail Nazzaro]
Notary Public

11025 Dover St 1st 100
Address

Westminster, CO 80021

My commission expires: 10/8/18

[Vail Nazzaro]
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20084015258
MY COMMISSION EXPIRES OCTOBER 08, 2018
This Notice of Environmental Use Restrictions is approved by the Colorado Department of Public Health and Environment this 27th day of March, 2017.

By: [Signature]

Title: Director, HME

STATE OF Colorado ) ss:
COUNTY OF Denver )

The foregoing instrument was acknowledged before me this 27th day of March, 2017.

by [Signature] on behalf of the Colorado Department of Public Health and Environment.

[Notary Public Signature]

Address: 4300 Cherry Creek Drive South
Denn, CO 80226

My commission expires: 1/1/2019
ATTACHMENT “A”
to the
Notice of Environmental Use Restrictions
A PARCEL OF LAND LOCATED IN PARTS OF SECTIONS 2, 3, 9, 10, 11, 14, 15, AND 16, TOWNSHIP 2 SOUTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF JEFFERSON, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:


COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 9; THENCE SOUTH 83°30'34" EAST, A DISTANCE OF 781.01 FEET TO THE POINT OF BEGINNING; THENCE ALONG THE FOLLOWING THIRTY-FIVE (35) COURSES AND DISTANCES;
1) NORTH 00°47'30" WEST, 486.22 FEET;
2) NORTH 77°03'40" EAST, 1859.46 FEET;
3) NORTH 00°15'35" EAST, 1490.32 FEET;
4) NORTH 62°19'38" WEST, 31.77 FEET;
5) NORTH 00°14'56" EAST, 1398.25 FEET;
6) NORTH 47°18'38" EAST, 955.47 FEET;
7) NORTH 47°56'20" EAST, 1969.68 FEET;
8) NORTH 55°35'10" EAST, 453.84 FEET;
9) NORTH 62°19'38" WEST, 31.77 FEET;
10) SOUTH 11°59'19" EAST, 648.68 FEET;
11) NORTH 76°40'22" EAST, 546.70 FEET;
12) SOUTH 07°34'38" EAST, 1335.72 FEET;
13) SOUTH 29°54'39" WEST, 1192.66 FEET;
14) SOUTH 05°10'44" WEST, 4152.31 FEET;
15) SOUTH 05°13'45" EAST, 358.96 FEET;
16) SOUTH 11°29'21" EAST, 111.31 FEET;
17) SOUTH 25°06'30" EAST, 54.39 FEET;
18) SOUTH 38°14'48" EAST, 255.02 FEET;
19) SOUTH 56°45'28" West, 583.89 FEET;
20) NORTH 43°53'26" WEST, 885.97 FEET;
21) NORTH 84°29'30" WEST, 2098.82 FEET;
22) SOUTH 88°39'51" WEST, 228.77 FEET;
23) SOUTH 82°25'57" WEST, 657.96 FEET;
24) NORTH 77°49'49" WEST, 47.05 FEET;
25) NORTH 63°43'37" WEST, 22.82 FEET;
26) SOUTH 28°04'58" WEST, 21.35 FEET;
27) SOUTH 73°43'41" WEST, 969.12 FEET;
28) SOUTH 72°10'47" WEST, 873.68 FEET;
29) SOUTH 79°28'51" WEST, 228.77 FEET;
30) NORTH 83°23'48" WEST, 2400.13 FEET;
31) NORTH 53°05'27" WEST, 176.84 FEET;
32) SOUTH 87°05'20" WEST, 539.50 FEET;
33) NORTH 60'00'49" WEST, 390.82 FEET;
34) SOUTH 87°05'20" WEST, 697.23 FEET;
35) NORTH 74°46'56" WEST, 281.07 FEET TO THE POINT OF BEGINNING.

CONTAINING 57, 009, 784 SQUARE FEET OR 1,308 ACRES, MORE OR LESS

I, JOHN B. GUYTON, A LICENSED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION WAS PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE AT THE REQUEST OF THE CLIENT AND IS NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.

JOHN B. GUYTON
COLORADO P.L.S. #16406
PRESIDENT, FLATIRONS, INC.

DATE
FSI JOB NO. 06–51,569

Flatirons, Inc.
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Boulder, CO 80301
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Fax: (303) 443–5830
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