STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, Executive Director

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

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Located in Glendale, Colorado

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

Colorado Department
of Public Health
and Environment

October 6, 2010

Mark Cure, Operator
5 Star Feedlot Inc.
36977 County Road CC
Bethune, Colorado 80805

Certified Mail Number: 7007 0220 0001 0159 6345

RE: Expedited Settlement Agreement, Number: EC-101006-2

Dear Mr. Cure:

Enclosed for your records you will find 5 Star Feedlot Inc.'s copy of the recently executed Expedited Settlement Agreement ("ESA"). Please be advised that the first page of the ESA was changed in order to place the correct ESA Number on the final document. The ESA is now fully enforceable and constitutes a final agency action.

As specified in the enclosed ESA, 5 Star Feedlot Inc. must, within fifteen (15) calendar days, submit a certified or cashier's check for the amount specified in the ESA to the Water Quality Control Division in order for this matter to be resolved.

If you have any questions, please don't hesitate to contact Kelly Morgan at (303) 692-3634 or by electronic mail at kelly.morgan@state.co.us.

Sincerely,

Russell Zigler

Russell Zigler, Legal Assistant
Compliance Assurance Section
WATER QUALITY CONTROL DIVISION

cc: Kit Carson County Environmental Health Department
Michael R. Cure, Registered Agent, 5 Star Feedlot Inc., 36977 County Road CC, Bethune, CO 80805

ec: Lee Hanley, EPA Region VIII
Erin Kress, Environmental Agriculture Program, CDPHE

Enclosure(s)

Colorado Department of Public Health & Environment

EXPEDITED SETTLEMENT AGREEMENT

Number: EC-101006-2

The Colorado Department of Public Health and Environment (the "Department"), through the Water Quality Control Division (the "Division"), issues this Expedited Settlement Agreement ("ESA"), pursuant to the Division's authority under §§25-8-602 and 25-8-605, C.R.S. of the Colorado Water Quality Control Act (the "Act") §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of 5 Star Feedlot Inc. ("5 Star Feedlot"). The Division and 5 Star Feedlot may be referred to collectively as "the Parties."

1. 5 Star Feedlot is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and 5 CCR 1002-81, §81.3(24).

2. 5 Star Feedlot operates a Concentrated Animal Feeding Operation ("CAFO") as defined by 5 CCR 1002-81, §81.3(5) in the vicinity of 36977 County Road CC, in Kit Carson County, Colorado.

3. Pursuant to 5 CCR 1002-81, §81.8(2)(b), CAFO operators shall have available documentation prepared by a professional engineer, registered in Colorado, certifying that the impoundment liner provisions of 5 CCR 1002-81, §81.8(2) have been met, and stating what constitutes each constructed liner (e.g., synthetic, clay). For impoundments constructed prior to June 30, 2004, such documentation shall be available no later than April 13, 2006. *(See Attachment A)*

4. In documentation provided to the Department by 5 Star Feedlot, dated May 10, 2010, 5 Star Feedlot advised the Department that it did not have documentation prepared by a professional engineer certifying that the facility's impoundments meet the seepage rate standards of 5 CCR 1002-81, §81.8(2). 5 Star Feedlot's failure to construct and maintain its impoundments to comply with the seepage rate standards by no later than April 13, 2006 constitutes violation(s) of 5 CCR 1002-81, §81.8(2). *(See Attachment B)*

5. The parties enter into this ESA in order to outline an enforceable compliance schedule to resolve the violations identified herein and to resolve the matter of civil penalties associated with the alleged violations for a civil penalty in the amount of five thousand dollars ($5,000.00).

6. By accepting this ESA, 5 Star Feedlot neither admits nor denies the violation specified herein.

7. 5 Star Feedlot agrees to the terms and conditions of this ESA. 5 Star Feedlot agrees that this ESA constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 25-8-605, C.R.S., and is an enforceable requirement of the Act. By signing the ESA, 5 Star Feedlot waives: (1) the right to contest the finding(s) specified herein; and (2) the opportunity for a public hearing pursuant to §25-8-603, C.R.S.

8. 5 Star Feedlot agrees to submit to the Department within two hundred and ten (210) calendar days of receipt of the final signed ESA documentation prepared by a professional engineer, registered in Colorado, certifying that the impoundment liner provisions of 5 CCR 1002-81, §81.8(2) have been met, and stating what constitutes each constructed liner (e.g., synthetic, clay).

9. This ESA is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and 5 Star Feedlot each reserve the right to withdraw consent to this ESA if comments received during the thirty-day period result in any proposed modification to the ESA.

10. This ESA constitutes a final agency order or action upon the date when the Department's Executive Director or his designee signs the ESA and effectively imposes the civil penalty.

11. Nothing in this ESA shall preclude the Department from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.

12. 5 Star Feedlot agrees that, within fifteen (15) calendar days of receiving the signed and final ESA from the Division, 5 Star Feedlot shall submit a certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," for the civil penalty amount specified in paragraph 5 above, to:

    Ms. Kelly Morgan
    Colorado Department of Public Health and Environment
    Water Quality Control Division
    Mail Code: WQCD-CADM-B2
    4300 Cherry Creek Drive South
    Denver, Colorado 80246-1530

13. Notwithstanding paragraph 6 above, the violations described in this ESA will constitute part of 5 Star Feedlot's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against 5 Star Feedlot. 5 Star Feedlot agrees not to challenge the use of the cited violations for any such purpose.

14. This ESA, when final, is binding upon 5 Star Feedlot and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this ESA.

ACCEPTED BY 5 STAR FEEDLOT INC.:

Marie A. Cure Date: 8/6/2010
Signature

Marie A. Cure Title: Manager
Name (printed)

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT:

Lori M Gerzina Date: 10/6/10
Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

Attachment A

Excerpt from Animal Feeding Operations Control Regulation 81 (5 CCR 1002-81)

81. 8 GROUND WATER PROTECTION REQUIREMENTS - CONCENTRATED ANIMAL FEEDING OPERATIONS (PERMITTED AND NON-PERMITTED)

(1) Tanks at concentrated animal feeding operations shall be operated and maintained so as not to discharge wastewater to ground water.

(2) Impoundment liners

(a) An impoundment at a concentrated animal feeding operation shall be constructed and maintained to comply with one of the following standards, as applicable:

(i) The seepage rate from an impoundment shall not exceed 1 x 10^{-6} cm/sec; or

(ii) Where approved by the Division for an impoundment with an earthen liner, the seepage rate from the impoundment shall not exceed 7.35 x 10^{-6} cm/sec. The operator of the impoundment shall submit to the Division a request that the impoundment be approved to meet this seepage standard. Such a request shall include, but not be limited to, information documenting that only open-lot wastewater will be diverted to the impoundment, that the impoundment is not designed as an evaporation impoundment, and that the ten (10) foot soil depth zone immediately beneath the impoundment has a cation exchange capacity of at least 15 meq/100 g of soil. Demonstration of compliance with the cation exchange capacity criteria requires the following:

(A) At least seven soil samples shall be acquired from below the entire surface area of the impoundment and analyzed for cation exchange capacity.

(B) The soil samples shall be reasonably equidistant from each other, with five locations being within ten feet of, and downslope of, the two-foot freeboard elevation of the impoundment, and two locations from the middle of the impoundment.

(C) The operator shall have available a map of the impoundment and soil sampling locations.

(D) Where soil samples were taken below existing impoundments, the operator shall have available documentation from a professional engineer registered in the State of Colorado of how the core locations were sealed to meet a 1 x 10^{-6} cm/sec maximum seepage rate.

(b) CAFO operators shall have available documentation, including the supporting information required by section 81.8(2)(b)(iii), prepared by a professional engineer registered in Colorado certifying that the provisions of section 81.8(2) have been met, and stating what constitutes each constructed liner (e.g., synthetic, clay).

(i) For impoundments constructed prior to June 30, 2004, the liner certification shall be available no later than April 13, 2006.

(ii) For any impoundment constructed by an operator on or after June 30, 2004 and before February 27, 2009, the liner certification shall be available prior to wastewater entering the impoundment.

Excerpt from Animal Feeding Operations Control Regulation 81 (5 CCR 1002-81)

(iii) For any impoundment constructed by an operator on or after February 27, 2009, the liner certification and, where applicable, the seepage rate calculations using Darcy's Law shall be available prior to wastewater entering the impoundment.

(iv) Copies of the liner certification and supporting information shall be made available to the Division and its designee, upon request. In addition, these documents shall be submitted to the Division as follows:

(A) For impoundments constructed after February 1, 2007, and before December 30, 2008, submit the documents by February 27, 2009.

(B) For an impoundment constructed after December 30, 2008, submit the documents by no later than 30 days after construction of the impoundment is complete.

(c) A CAFO operator shall visually inspect the exposed liner of an impoundment weekly to identify physical changes or deficiencies that may affect the integrity of the liner. Such deficiencies and physical changes shall be corrected within thirty (30) days of having been identified.

(i) The operator shall record the date of the inspection, deficiencies identified, corrective actions taken, and dates that corrective action was completed.

(ii) Deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing completion of corrective actions within this time period.

(iii) The records shall be maintained on-site for five years from the date of creation and shall be made available to the Division upon request.

(3) Removal of manure or wastewater from an impoundment shall be accomplished in a manner that does not damage the integrity of the liner. The operator shall submit to the Division for approval a Standard Operating Procedure ("SOP") that demonstrates how manure, including sludge, will be removed such that the liner integrity of impoundments is not damaged. The SOP also shall indicate the expected frequency with which manure will be removed from impoundments.

(a) The approved SOP must be available on-site and be submitted to the Division upon request.

(b) The operator shall follow the approved SOP whenever manure, including sludge, is removed. Where the SOP was not followed, the Division may require that the operator make the liner available for inspection. Where the Division has just cause as a result of the inspection, the Division may require re-certification of the liner by a professional engineer registered in Colorado.

(c) An existing CAFO shall submit the SOP no later than December 31, 2004.

(i) A CAFO that comes into existence after December 31, 2004 shall submit the SOP no later than 120 days after animals are placed on the production area.

(ii) The operator shall submit a revised SOP for approval within 30 days of a change having been made to the impoundment(s) at the facility that requires a revision of the SOP, such as a new impoundment or different liner having been constructed.

(d) The operator shall certify after each manure or sludge removal event that the manure or sludge was removed in accordance with the approved SOP.

(i) For a concrete-lined impoundment, where a certification for each removal event is not completed, the operator shall:

(A) Drain and clean the impoundment every five years and use best professional judgment to determine whether the liner integrity is damaged such that the impoundment is no longer capable of having a maximum seepage rate of 1 x 10^{-6} cm/sec.

(B) Where the operator determines that the liner integrity is such that the impoundment remains capable of having a maximum seepage rate of 1 x 10^{-6} cm/sec, the operator shall so certify within five days of the liner inspection. The certification shall include photographs supporting the determination.

(C) Where the operator determines that the liner integrity is damaged such that the impoundment is no longer capable of having a maximum seepage rate of 1 x 10^{-6} cm/sec, the operator shall:

(I) Repair the impoundment within 30 days of the liner inspection so that the liner integrity is such that the impoundment is capable of having a maximum seepage rate of 1 x 10^{-6} cm/sec.

(II) Within 14 days of the impoundment having been repaired, submit to the Division evidence of the repair having been properly completed. The evidence shall consist either of photographs with accompanying written documentation or of other evidence approved by the Division.

(ii) The certifications must be available on-site and be submitted to the Division upon request.

(e) Where the SOP is not followed the operator shall provide notice to the Division within 30 days of the date of manure removal.

(4) Any depth marker in an impoundment shall be installed in a manner that maintains the integrity of the liner and maintains the required seepage rate standard.

(5) Earthen Wastewater Conveyance Structures - Earthen conveyance structures shall be maintained to minimize ponding of wastewater. In addition, such structures shall be constructed and maintained as follows for the purpose of limiting seepage of wastewater in the structures:

(a) Conveyance structures that carry open-lot wastewater

(i) Where constructed in soils that have 35-60 percent gravel, a conveyance structure shall be constructed by sufficiently compacting the existing soil material (less than 60 percent gravel) in place with at least two passes of rubber-tired construction equipment, four passes of track-type equipment, or equivalent, over the entire surface of the conveyance structure. Moisture content of the soil material during compaction shall be maintained to promote sufficient compaction of the in-place materials. The soil should be wet to the touch and leave a stain on the hand when squeezed.

(ii) Where constructed in soils that have greater than 60 percent gravel, or in loamy sand or sandy soils with greater than 35 percent gravel, a conveyance structure shall be constructed by placing a compacted liner over the entire surface of the conveyance structure. A conveyance structure liner shall be constructed of soils having less than 60 percent gravel, shall be twelve (12) inches thick, and shall be compacted with at least two passes of rubber-tired construction equipment, four passes of track-type equipment, or equivalent, over the entire surface of the conveyance structure. Moisture content of the soil material during compaction shall be maintained to promote sufficient compaction of the soil

liner material. The soil should be wet to the touch and leave a stain on the hand when squeezed. In addition, the constructed liner shall be maintained to retain these standards.
(iii) Where constructed in soils having less than 35 percent gravel, a conveyance structure does not need to be lined or compacted.

(b) Conveyance structures that carry process-generated wastewater intermittently (greater than 48 hours between conveyance events) – Earthen conveyance structures that carry process-generated wastewater intermittently shall be constructed and maintained in accordance with the standards specified in section 81.8(5)(a)(ii), above.

(c) Conveyance structures that carry process-generated wastewater non-intermittently (48 hours or less between conveyance events) – Earthen and non-earthen (e.g., pipe or concrete) conveyance structures that carry process-generated wastewater non-intermittently shall be constructed and maintained to have a maximum seepage rate of 1×10^{-6} cm/sec.

(d) Where upon inspection the Division has just cause to determine that the required liner is not in place, the Division may require that the operator submit to the Division a certification that the conveyance structure meets the requirements of section 81.8(5)(b) or (c), or 81.8(5)(a)(ii). The certification shall be made by a professional engineer registered in the State of Colorado.

(6) Setbacks for New and Expanded Impoundments – A completely new impoundment constructed after June 30, 2008, and an existing impoundment that is expanded by 50 percent or more of existing storage capacity after June 30, 2008, shall not be located:

(a) Except as provided below, where the seasonally high ground water level is located within four (4) feet of the bottom of the impoundment liner; and

(i) Where the seasonally high ground water level is located within four (4) feet of the bottom of the impoundment liner, the impoundment shall be constructed and maintained in accordance with the design by a professional engineer registered in the state of Colorado that prevents ground water from contacting the impoundment's liner.

(b) Within 150 feet of a private domestic water supply well or within 300 feet of a community domestic water supply well.

(7) Ground Water Monitoring - Where an impoundment is not in compliance with section 81.8(2), or where the Division determines that an impoundment liner is not being properly maintained, the Division may require the operator to conduct site-specific ground water quality monitoring of, but not limited to, total nitrogen, ammonia-nitrogen, nitrate-nitrogen, and fecal coliform. In making a determination of whether ground water monitoring is required, the Division shall consider all pertinent factors, including but not limited to: whether the impoundment poses a significant potential risk to beneficial uses of ground water, whether there is suspected contamination of ground water attributable to the facility, whether early detection of ground water contamination is essential to protect valuable drinking water sources, and whether there has been a significant failure on the part of the operator to comply with Section 81.8(2), (3), (4), (6), or (7).

(8) Ground Water Remediation - When the Division determines that non-compliance with Section 81.8(2), (3), (4), (6), or (7) has caused, or contributed to, the exceedance of established ground water quality standards, the operator shall:

(a) Submit, in consultation with the Division, an approvable investigation plan (IP) within 60 days of being notified by the Division of the exceedance, unless an extension of time is granted by the Division based on good faith efforts made by the operator.

Excerpt from Animal Feeding Operations Control Regulation 81 (5 CCR 1002-81)

(i) The IP must indicate how the nature and extent of the contamination will be delineated and shall include the following, at minimum:

(A) A plan to determine the full vertical and horizontal extent of ground water contamination.

(B) All potential human and environmental receptors, including: 1) all surface water features including springs, streams, and lakes that could be impacted; and 2) all municipal, agricultural, and domestic ground water users.

(C) A plan to obtain other site-specific hydrogeologic data necessary to fully determine the nature and extent of the contamination. These shall include, as appropriate, but not be limited to, the hydraulic conductivity of all hydrogeologic units, associated porosity values, ground water flow directions, regional and local hydraulic gradients, and pumping rates associated with all wells. The Division may require that the operator install additional monitoring wells for the purpose of fully determining the nature and extent of the contamination.

(D) A reasonable timeline for completing the investigation.

(ii) The operator shall implement the IP within 30 days of it being approved by the Division.

(b) The operator shall submit the following information by no later than 60 days after completion of the approved IP, unless an extension of time is granted by the Division based on good faith efforts made by the operator:

(i) A summary report of the findings of the investigation conducted pursuant to section 81.8(8)(a).

(ii) A comparison of all appropriate and applicable remediation alternatives, including innovative technologies, the associated performance and costs of each alternative, the estimated timelines to achieve the required remediation goals, and the monitoring that will be done until the remediation goal(s) is reached. The Division shall review remediation alternatives based on technological, economic, and environmental risk factors. In determining economic reasonableness, the Division shall take into account such factors as costs of the various alternatives, the potential impact of the alternatives on a project's profitability or competitive position, and any long-term energy impacts. In determining environmental risk factors the Division will include potential exposures of sensitive human and environmental receptors. In cases where sensitive human and environmental impacts could occur, the Division may require interim, or emergency, remedial activities.

(c) The operator shall submit an approvable remediation plan (RP) by no later than 60 days of being notified of the Division's preferred remediation alternative, unless an extension of time is granted by the Division based on good faith efforts made by the operator. The RP shall contain designs and plans for implementation of the preferred alternative.

(i) The operator shall implement the RP within 30 days of it being approved by the Division.

(9) Impoundment Closure – The operator of a facility shall remove manure and wastewater from a closed impoundment, to the fullest extent practicable within 60 days of the impoundment being closed, unless an alternative timeline is approved by the Division. Within one hundred twenty (120) days of an impoundment being closed, an impoundment shall be backfilled with soil that is graded to blend with surface topography and

ATTACHMENT 3

RECEIVED

MAY 24 2010

WATER QUALITY CONTROL DIVISION

Colorado Department of Public Health and Environment

Colorado Department of Public Health and Environment
Environmental Agriculture Program

2007 Compliance Self-Certification for Concentrated Animal Feeding Operations – Regulation No. 81 Liner Certification Requirement

A. Facility Information

5 Star Feedlot
Facility Name

36977 CR CC Bethune, CO 80805
Facility Physical Address (Street Number, City, State, Zip)

Edward or Mark Curc _____ 719-346-8405
Owner/Operator Name (Contact Person) Contact Person Title Contact Telephone Number

36977 CR CC Bethune, CO 80805
Contact Mailing Address (Street Number, City, State, Zip)

curc@plains.net 719-346-9331
Contact Email Address Contact Fax Number

Has Facility changed any of the following information in the last year? (check all that apply)

Location ☐ Name ☐ Ownership ☐ Operator ☐

Please Provide Updated Information: _____

Type of Animals at Facility:

☐ Mature Dairy Cows	☐ Dairy Heifers	☒ Cattle	☐ Veal Calves
☐ Swine (>55#)	☐ Swine (<55#)	☐ Sheep	
☐ Turkeys	☐ Laying Hens	☐ Other Chickens	
☐ Other (specify) _____			

Maximum Number of Animals Facility Intends to Stock at any One Time: 20,000

B. Compliance Information

Please answer all questions, unless you are guided to skip a question. Do not answer questions that you are guided to skip.

1. Does the facility have tanks[1]? ☐ Yes ☒ No

[1] "Tank" means a stationary device, designed to contain an accumulation of pollutant-containing water, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

If yes, are they operated and maintained so as not to discharge wastewater to groundwater? ☐ Yes ☐ No

2. Does the operation have an impoundment(s)[2]? ☒ Yes- if yes, how many? 6 ☐ No - if no, skip to question #4.

[2] "Impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is used for storage, treatment, evaporation or discharge of pollutant-containing waters, sludge or associated sediment.

If yes, are they constructed and maintained so that the seepage rate from any impoundment will not exceed 1×10^{-6} cm/sec? ☒ Yes ☐ No – if no, has the facility submitted a request to the Ag Program that the impoundment be approved to meet the alternative seepage rate in Regulation No. 81. ☐ Yes ☐ No

3. Does the facility have on-site documentation prepared by a professional engineer registered in Colorado certifying that the facility's impoundment(s) meet a regulatory seepage rate and stating what constitutes each constructed liner (e.g., synthetic, clay)? ☐ Yes ☒ No

   If an impoundment(s) was constructed on or after June 30, 2004 was the documentation available at least 30 days prior to wastewater entering the impoundment(s)? ☐ Yes ☐ No

4. Does the facility plan to or is in the process of constructing any impoundment(s)? ☐ Yes – if yes, date construction will be complete _____. ☒ No – if no and question #2 is "no", skip to Section D, otherwise, continue to question #5.

5. Since July 1, 2004, has the facility visually inspected weekly the exposed liner of its earthen impoundment(s) to identify physical changes or deficiencies that may affect the integrity of the liner(s)? ☒ Yes ☐ No
   If yes, have identified deficiencies and physical changes been corrected within 30 days of having been identified unless an explanation of the factors preventing completion of corrective actions within this time period is documented? ☒ Yes ☐ No ☐ Have not, to date, identified any deficiencies or physical changes.
   If no, please indicate whether any such inspections have occurred and, if applicable, the frequency with which they were made (other than weekly). ☐ Yes ☐ No Inspection frequency _____.

6. Does the facility keep records on-site of the date of the inspection, deficiencies identified, corrective actions taken, and dates that corrective action was completed? ☒ Yes ☐ No

C. Requirement to Submit Information to the Environmental Agriculture Program

If you answered "yes" for Question #3 above, please provide the documentation certifying that the facility's impoundment(s) meet a regulatory seepage rate and stating what constitutes each constructed liner. Please be aware that the documentation provided must also include supporting information such as how the determination was made that the impoundment met the seepage rate (e.g., Colorado registered professional engineer certification that the seepage rate is met as well as the methodology used for determining the seepage rate). Submit this information to the address in Section E. after completing Section D.

D. Certification Statement

I certify under penalty of law that:

(i) I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;

(ii) the information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects;

(iii) systems to maintain compliance are in place at the facility and will be maintained from this point forward even if processes or operating procedures are changed; and

(iv) I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information.

Signature of Owner or Operator

5-10-2010
Date (MM/DD/YYYY)

MARK A. CURE
Print Name

operator
Title

E. Submittal Address

Please return the completed self-certification form <u>within 30 days of receipt</u> to:
Colorado Department of Public Health and Environment
Attention: Erin P. Kress
Environmental Agriculture Program – SP-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530