



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

**Covenant Information:**

**Covenant Date** 5/8/2015

**Self Reporting**

**Media of Concern:**

**Surface Water:**

**Ground Water:**

**Air:**

**Soil:**

**Other:**

**Covenant ID** RSNOT00015

**Site Contact Information:**

**Owner Corp:** Broomfield RE Partners, LLC

**Contact Name:** Brian Watson / 800 Hoyt, LLC

**Contact Address:** 1225 Seventeenth St.

**Contact City:** Denver

**Contact State:** CO

**Contact Zip:** 80202

**Contact Phone:** 303-983-9500

**Contaminants of Concern:**

Trochloroethene

**Property Restrictions:**

- 1: Residential use prohibited.
- 2: No use of ground water.
- 3: Vapor mitigation system required in new buildings.
- 4: Excavation into saturated zone requires material handling plan.
- 5: No interference with remedial systems.

**Site Information:**

**ID:** COD078353901

**Name:** HOYT STREET PROPERTY 014

**Address:** 802 Hoyt Street

**City:** Broomfield

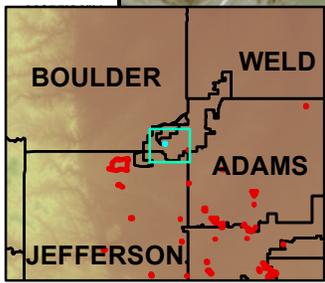
**State:** CO

**Zip:** 80020

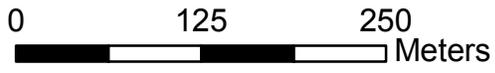
**Legal Description:**

See Institutional Control

# HOYT STREET PROPERTY 014



## RSNOT00015



**This property is subject to a Notice of Environmental Use  
Restrictions Imposed by the Colorado Department of Public  
Health and Environment pursuant to C.R.S. § 25-15-321.5**

**Notice of Environmental Use Restrictions**

WHEREAS, Broomfield RE Partners, LLC, a Delaware limited liability company ("Broomfield Partners") is the owner of certain property located at 800 and 802 Hoyt Street, Broomfield, Colorado, more particularly described in Attachment A, attached hereto and incorporated herein by reference (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 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, for purposes of indexing in the County Clerk and Recorder's office Grantor-Grantee index only, Broomfield Partners 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 a certain Remedial Action Plan ("RAP"), dated December 19, 2003 and approved by the Hazardous Materials and Waste Management Division of the Department in 2004, being implemented by FMC Corporation, SMI Holding LLC, and Microsemi Corp. (collectively, the "Hoyt Street Consortium"), the Property is the subject of remedial action pursuant to the *Colorado Hazardous Waste Act, § 25-15-301, et. seq. ("CHWA")*. The Hoyt Street Consortium is currently conducting remedial activities at the Property to address groundwater contamination; and

WHEREAS, the purpose of this Notice of Environmental Use Restrictions (hereinafter, "Restrictive Notice") is to ensure the protection of human health and the environment by prohibiting residential use of the Property, by prohibiting the use of certain groundwater beneath the property, by minimizing potential for intrusion of volatile contaminants into certain buildings that may be constructed on the Property, by preventing exposure to contaminants of concern, by assuring that the monitoring and extraction wells and other associated equipment at the Property, whether currently installed or as may be installed or relocated in the future, are not adversely affected, impaired, or destroyed; and by securing the Hoyt Street Consortium's continued access to the property, as provided in the Access Agreement (as hereinafter defined), to implement the remedial objectives set forth in the RAP, including the maintenance and operation of the monitoring and extraction

wells, and associated equipment (defined in Paragraph 1(e), below as the “Remedial Systems and Equipment”); and

WHEREAS, Broomfield Partners 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 section 25-15-321.5, with the Hoyt Street Consortium as a third party beneficiary. The Property described in Attachment A shall hereinafter be subject to the following requirements set forth in paragraphs 1 through 12, below, which shall, unless modified or terminated in accordance with Paragraph 4 of this Restrictive Notice and be binding on Broomfield Partners 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.

1) Definitions

- a) “Remedial Action Plan” or “RAP” shall mean the Remedial Action Plan, dated December 19, 2003 and approved by the Department on February 20, 2004, establishing a remedy for groundwater contamination at the Property, together with all Department-approved amendments, changes or alterations, including any administrative order issued by the Department to address the presence of hazardous substances at the Property.
- b) “Hoyt Street Consortium” shall mean the Microsemi Corporation, FMC Corporation and SMI Holding LLC.
- c) “Owner” shall mean the then current record 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.
- d) “Property” shall mean that certain real property located at 800 and 802 Hoyt Street, Broomfield, Colorado, more particularly described in Attachment A, hereto.
- e) “Remedial Systems and Equipment” shall mean all groundwater monitoring and extraction wells installed at the Property, together with all associated outbuildings and equipment, including all pumps, piping, storage containers, fencing and other items associated with the remediation of groundwater contamination or other environmental contamination, as approved by the Department, whether currently installed or installed in the future.
- f) “Access Agreement” shall mean that certain Access and Remediation Activity Agreement fully executed on June 27, 2014 and recorded in the office of the City and County of Broomfield Clerk and Recorder on October 22, 2014 as document number 2014010249, relating to the

Property entered into by and among Microsemi Corporation, a Delaware corporation; Microsemi Corp. – Colorado, a Colorado corporation; Broomfield RE Partners, LLC, a Delaware limited liability company; FMC Corporation (“FMC”) and SMI Holding LLC (“SMI”).

- 2) Inspections and access. 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 Restrictive Notice. Nothing in this Restrictive Notice shall impair any other authority the Department may otherwise have to enter and inspect the Property. The Hoyt Street Consortium, its members, agents and representatives shall have the right of access to the Property as described in the Access Agreement.
- 3) Use restrictions. The Property shall be subject to the following restrictions:
  - a) Residential use is prohibited on the entire Property described in Attachment A and whose approximate boundary is shown on Attachment B. The term “residential use” means use of a building or part of a building as a dwelling (i.e., as a long term place for an occupant to sleep, eat and bathe). Residential use and dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes. For the purposes of this Restrictive Notice, residential use and dwellings do not include motels, hospitals and other buildings used only for short-term lodging.
  - b) For the entire Property described in Attachment A and whose approximate boundary is shown on Attachment B, no groundwater from the shallow alluvial aquifer, the Arapahoe Formation or the Laramie Formation beneath the site may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department. Nothing in the preceding sentence shall prohibit the installation or use of monitoring or remedial wells as authorized in a remedial decision document or environmental sampling plan approved by the Department.
  - c) Any person applying for a construction dewatering permit on the entire Property must notify the Water Quality Control Division of the Colorado Department of Public Health and Environment that the groundwater may be contaminated and that a restrictive notice has been imposed.
  - d) No structures intended for human occupancy (including residences, offices, or other workplaces, etc.) may be built on the portion of the Property known as the “Restricted Area” depicted in Attachment B and described in Attachment C, without a properly designed and constructed vapor mitigation system that is approved by the Department. The vapor mitigation system must be designed and constructed to prevent

concentrations of the vapor phase volatile organic compounds being addressed under the RAP within the structure from exceeding the applicable worker action levels shown in the Department's Hazardous Materials and Waste Management Division Air Screen Concentration Table Values in effect at the time of the construction. Once constructed, all such mitigation systems must be operated and maintained as needed to prevent intrusion of volatile organic compounds above worker action risk levels.

- e) Prior to the occupancy of structures at the Property existing as of the date of this Restrictive Notice which are intended for human occupation, whose footprint extends into the portion of the Property known as the "Restricted Area" depicted in Attachment B and described in Attachment C, Owner shall conduct a program of indoor air testing in such structures in accordance with a work plan approved by the Owner and the Department. If vapor phase volatile organic compounds are determined to be present inside the structure at concentrations that exceed the applicable worker action levels, mitigation systems must be installed, operated and maintained as needed to prevent intrusion of volatile organic compounds above worker action levels prior to occupancy of the building.
- f) Excavation, drilling, grading, digging, tilling and any other soil-disturbing activity below the vadose zone is prohibited on the portion of the Property depicted as the "Restricted Area" in Attachment B and described in Attachment C, except as authorized in a remedial decision document or a materials management plan approved by the Department. As used in this Paragraph 3(f), the term "vadose zone" shall mean the unsaturated soil extending from the ground surface to the shallow potentiometric groundwater surface elevation. The shallow potentiometric groundwater surface elevation is typically encountered within the Restricted Area at depths of approximately 11 to 40 feet below the ground surface depending on proximity to active groundwater extraction wells.
- g) Owner shall not use, or permit the use of, the entire Property, as described in Attachment A and whose approximate boundary is shown in Attachment B, in any way that damages or interferes with the operation, monitoring, or maintenance of the Remedial Systems and Equipment. Nothing in this Covenant shall preclude the modification or relocation of the Remedial Systems and Equipment with the approval of the Hoyt Street Consortium and the Department.
- h) Owner shall not interfere with the grant of access provided for in this Covenant or in the Access Agreement to the Hoyt Street Consortium, its members, agents and representatives, except as approved in writing by the Hoyt Street Consortium and the Department.

- 4) Modifications. This Restrictive Notice 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 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 alternative or 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.
- 5) Conveyances. Owner shall notify the Department at least fifteen (15) days in advance of the closing on any proposed sale or other conveyance of an ownership interest in any or all of the Property.
- 6) 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.
- 7) 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.
- 8) Third Party Beneficiary. Owner, the Hoyt Street Consortium, and the individual companies comprising the Hoyt Street Consortium, 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. Owner, the Hoyt Street Consortium or any the individual companies comprising the Hoyt Street Consortium, 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.
- 12) Notices. Any document or communication required under this Restrictive Notice shall be sent or directed to:

For the Department:

Unit Leader  
Hazardous Waste Corrective Action Unit  
Hazardous Waste Program  
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 Hoyt Street Consortium:

Mr. Brian McGinnis  
Corporate Remediation Department  
FMC Corporation  
1735 Market Street  
Philadelphia, Pennsylvania 19103

For Owner:

At the address set forth in the current Owner's vesting deed or such other address as Owner may provide in writing to the Department and the Hoyt Street Consortium.





**ATTACHMENT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

**Parcel A:**

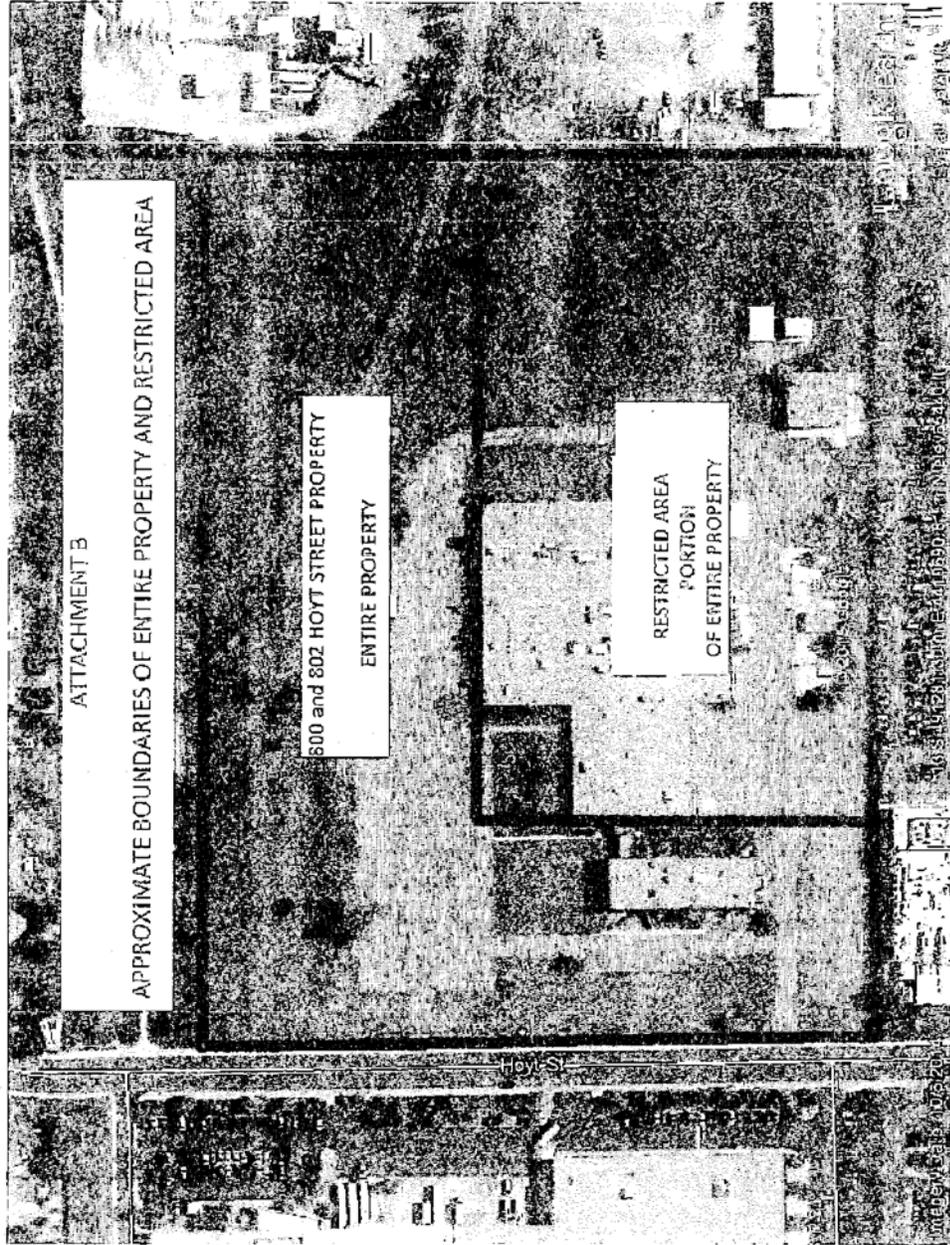
Lot 1, Turnpike Industrial Park Filing No. 2,  
City and County of Broomfield,  
State of Colorado.

**Parcel B:**

Lot 2, Turnpike Industrial Park Filing No. 2,  
City and County of Broomfield,  
State of Colorado.

**ATTACHMENT B**

**APPROXIMATE BOUNDARIES OF  
ENTIRE PROPERTY AND RESTRICTED AREA**



**ATTACHMENT C**

**DESCRIPTION OF THE RESTRICTED AREA OF THE PROPERTY**

The Restricted Area is a rectangular shaped area encompassing approximately 8.58 acres in the southern portion of Lot No. 1 and Lot No. 2 of Turnpike Industrial Park Filing No. 2 in Broomfield, Colorado being the easterly 511 feet of the southerly 461 feet of Lot No. 1, and the southerly 461 feet of Lot No. 2