

ATTACHMENT I

**November 23, 2015 Letter
IRGI to Tracie White and Curtis Stovall
COLORADO DEPARTMENT OF PUBLIC
HEALTH AND ENVIRONMENT**

**MODIFIED ENVIRONMENTAL COVENANT
("MODIFIED EC")**

**This property is subject to an Environmental Covenant held by the
Colorado Department of Public Health and Environment
pursuant to section 25-15-321, C.R.S.**

**MODIFIED
ENVIRONMENTAL COVENANT**

IRG Redevelopment I, LLC ("IRGI" or "OWNER" or "Grantor") grants this Modified Environmental Covenant ("Covenant") this _____ day of _____, 2015, to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department" or "Grantee") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, IRGI is the owner of certain property commonly referred to as the Lowry Landfill OU2, located at the former Lowry Air Force Base ("LAFB") in Denver, 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");

WHEREAS, the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department"), is authorized to approve Environmental Covenants pursuant to § 25-15-320 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.*;

WHEREAS, pursuant to Consent Agreement Number 01-08-07-02, the Property is the subject of enforcement and remedial action pursuant to the Colorado Hazardous Waste Act, § 25-15-301, *et. seq.* ("CHWA"). The Property was the former base landfill (also known as Operable Unit 2 (OU2)). OU2 was historically used for disposal of Air Force waste, and associated construction waste and debris primarily from training activities conducted at LAFB. OU2 has been closed in accordance with the Phase 2 Corrective Action Plan for the Operable Unit 2 Landfill Closure at Lowry;

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to any hazardous substance, hazardous waste, hazardous constituents, and/or solid waste that remains in the landfill on the Property. The Covenant will accomplish this by prohibiting those activities that may interfere with the landfill cover or its monitoring or control systems and by creating a review and approval process to ensure that any such intrusive activities are conducted with appropriate precautions to avoid or eliminate any hazards;

WHEREAS, it is the intent of IRGI and the Department that this Modified Environmental Covenant shall restate and replace the Environmental Covenant entered into between the United States of America, acting by and through the Secretary of the Air Force, and the Department

dated January 4, 2006 and recorded in the real property records of Denver County on January 18, 2006, at Reception No. 2006011845; and

WHEREAS, IRGI 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 IRGI 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, for the benefit of the Department, and OWNER.

NOW, THEREFORE, IRGI hereby grants this Environmental Covenant to the Department, and declares 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 11, below, which shall run with the Property in perpetuity and be binding on Grantor 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 Environmental Covenant, 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 Property is subject to the following restrictions:

a) Unless this Environmental Covenant is modified in accordance with the State's statute and regulations, the Property (OU2) may be developed in accordance with land use and development plans approved by local governments with jurisdiction over the Property.

b) In general, the OWNER shall not use or conduct any activity on OU2 that will adversely affect:

- i. the integrity of the cover;
- ii. the effectiveness of drainage or erosion controls;
- iii. slope stability; or
- iv. groundwater or gas monitoring or control systems.

Specifically, no activity shall be conducted or permitted by the OWNER, nor shall the OWNER use OU2 in any manner that is inconsistent with the use designated in this paragraph or that is not in compliance with the requirements of section 3.6.1(A) of 6 CCR 1007-2, Part 1 or the Department-approved Phase 2 Corrective Action Plan for the Operable Unit 2 Landfill Closure at Lowry dated November 2003, as amended or otherwise set forth herein or approved by the Department.

c) OWNER shall not extract or utilize in any manner whatsoever any water from the upper aquifer below the surface of the ground within OU2 for any purpose whatsoever unless the OWNER shall first have obtained the prior written approval of the Department. This limitation shall not apply to a qualified environmental professional, obtaining ground water samples for

analysis from existing monitoring wells located on the Property or other future monitoring wells installed on the Property, as approved by the Department.

d) Any plans for soils disturbance activities or cap penetration, including, without limitation, excavation, grading, construction, geotechnical or environmental investigations, soil stockpiling, or other contact-intensive activity on the Property that will adversely affect the integrity of the cover, the effectiveness of drainage or erosion control systems, slope stability, or groundwater or gas monitoring or control systems, except pursuant to the Department- approved Soil Stockpile Plan, Cap Penetration Plan, and Field Investigation Work Plan, must receive written approval from the Department prior to initiation of such activities.

e) For the duration of this covenant, the Air Force shall perform all of the requirements set forth in the Post-Closure Operation and Maintenance Plan, Appendix E of the Phase 2 Corrective Action Plan for the Operable Unit 2 Landfill Closure at Lowry dated November 2003, or subsequent modifications approved by the Department.

2) Modifications. This Covenant 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 Covenant. 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 Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant 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 in advance of the closing on any proposed sale or other conveyance of any interest in any or all of the Property.

4) Notice to Lessees. OWNER agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.

- 5) Notification for proposed construction and land use. The OWNER and/or its transferees 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 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 Covenant. Nothing in this Covenant 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 Covenant 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 accepting this Covenant.
- 9) Enforcement. The Department may enforce the terms of this Covenant pursuant to §25-15-322, C.R.S. OWNER may file suit in district court to enjoin actual or threatened violations of this Covenant.
- 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 Covenant.
- 11) Notices. Any document or communication required under this Covenant shall be sent or directed to:

Federal Facilities Remediation and Restoration 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

Peter M. Goffstein, Senior Vice President
IRG Redevelopment I, LLC
8044 Montgomery Road, Suite 710
Cincinnati, OH 45236

Accepted by the Colorado Department of Public Health and Environment this ____ day of _____, 2015 .

By:

Title: Director, Hazardous Materials and Waste Management Division

STATE OF COLORADO)
) 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.

My Commission expires: _____

Notary Public
Address: _____
