

RESOLUTION NO.

14-34  
Series of 2014

**TITLE: A RESOLUTION ACCEPTING THE ASSIGNMENT FROM THE BOARD OF COUNTY COMMISSIONERS OF WELD COUNTY OF THAT RESTRICTIVE COVENANT DATED AUGUST 5, 2009**

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON, COLORADO, AS FOLLOWS:

Section 1. The Town hereby accepts the Assignment from the Board of County Commissioners of Weld County of that Restrictive Covenant Dated August 5, 2009, and recorded in the records of the Weld County Clerk and Recorder's Office on August 20, 2009 at Reception No. 3643902, attached hereto as **Exhibit A**, and authorizes the Mayor to execute the Assignment on behalf of the Town.

INTRODUCED, READ and PASSED this 3<sup>rd</sup> day of December, 2014.

TOWN OF HUDSON, COLORADO

Raymond Patch  
Raymond Patch, Mayor



Linnette Barker  
Linnette Barker, CMC, Town Clerk

RESTRICTIVE COVENANT

902

THIS RESTRICTIVE COVENANT ("Covenant") is entered this 5<sup>th</sup> day of August, 2009, by ANACAPA LAND COMPANY, LLC, a Delaware limited liability company ("Grantor"), whose address is 717 Texas Avenue, Suite 1000, Houston, Texas 77002, to and for the benefit of WELD COUNTY, a political subdivision of the State of Colorado (the "County"), whose address is 915 Tenth Street, P. O. Box 758, Greeley CO 80632.

RECITALS

A. Grantor is the sole and lawful owner of property located in Weld County, Colorado, and more particularly described in Exhibit A attached hereto (the "Property"), and is authorized to grant this Covenant.

B. In connection with certain land use approvals granted by Weld County to Rocky Mountain Energy Center, LLC for the Rocky Mountain Energy Center ("RMEC"), Grantor offered to maximize the preservation of the current agricultural use of a significant portion of its property. Specifically, Development Standard Number 2 of the Resolution approving the Use-by-Special Review permit by the Board of County Commissioners of Weld County, dated February 6, 2002 ("USR-1339"), states, "In accordance with the application, the RMEC design will preserve a significant amount of farmland and environmentally significant area of the Power Generation Facility Property for the term of the Use by Special Review Permit."

C. In furtherance and fulfillment of that offer, Grantor (an affiliate of Rocky Mountain Energy Center, LLC) has agreed to grant a restrictive covenant against the Property as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby covenants and agrees to restrict all future use of the Property, upon and subject to the following terms and conditions:

1. Covenant. Grantor, hereby covenants and agrees that the Property shall, from and after the date hereof, be used for Agricultural Purposes and other purposes incidental or accessory thereto and for no other purposes whatsoever. For purposes of this Covenant, "Agricultural Purposes" shall mean cultivating land, producing crops, vegetables, plants, flowers and nursery stock, ranching, raising livestock and preparation of agricultural products for use or consumption, and shall include, without limitation, livestock grazing and feeding, gardening, keeping the land planted with native vegetation, mineral exploration and extraction (limited to oil and gas exploration and production) and any other uses permitted as a "use-by-right" within Agricultural Zone Districts (or any counterpart under any future land use laws applicable to the Property) of Chapter 23 of the Weld County Code, or any combination thereof. Road access to and from the power plant facilities located on the lands of Grantor and/or RMEC (and their respective successors and assigns) shall be allowed to be constructed and maintained on the Property and shall comply with any requirements or restrictions of such access which may be set forth in USR-1339 or the Weld County Code. The foregoing shall be subject to, and the use of the Property shall at all times comply with, all zoning and other Weld County land use requirements applicable to the Property and in effect from time to time (including the benefit of any grandfathered rights applicable at any time to the Property or uses or improvements thereon). At no time during the term of this

3643902 08/20/2009 11:44A Weld County, CO  
1 of 6 R 0.00 D 0.00 Steve Moreno Clerk & Recorder

2009-1864

Agreement, or anytime subsequent to its termination, shall the County be responsible for maintaining the Property, or for general liability associated with its use and maintenance.

2. **Termination.** This Covenant shall continue in perpetuity unless terminated in writing (which termination may relate to all or any portion of the Property) by the then owner of the Property (or portion thereof as to which this Covenant is terminated) and Weld County.

3. **Covenant Runs With the Land.** This Covenant shall constitute a restrictive covenant, which shall run with the Property for the benefit of Weld County until its termination pursuant to Paragraph 2. above. The terms and obligations of this Covenant shall be binding upon Grantor and its successors and assigns and shall inure to the benefit of Weld County and its successors and assigns.

4. **Enforcement.** This Covenant is enforceable by and only by Weld County. Weld County shall have the right to prevent and correct or require correction of violations of the provisions of this Covenant. Weld County shall have the right to seek specific performance, Injunctive or other equitable relief with respect to any violations of this Covenant.

5. **No Benefit to Third Parties.** This Covenant does not and shall not be deemed to confer upon or grant to the public or any person not a party hereto any rights whatsoever and, except as provided in Paragraph 4 above, no person shall have the right to enforce, claim damages or to bring any lawsuit, action or other proceedings against either Grantor or Weld County because of any breach hereof, or because of any of the terms, covenants, agreements or conditions contained herein.

6. **Waiver.** Enforcement of the provisions of this Covenant shall be at the discretion of Weld County. Any failure of Weld County to discover a violation or any forbearance to exercise its rights hereunder shall not be deemed or construed to be a waiver of such provisions or of any subsequent breach of the same or any other provisions of this Covenant or of any of Weld County's rights hereunder or an abandonment of any rights, duties or responsibilities hereunder.

7. **Attorneys Fees.** In the event of any litigation arising under or relating to this Covenant, the substantially prevailing party in such litigation shall be awarded its reasonable costs and expenses, including, without limitation, reasonable attorney's fees.

8. **Recordation.** Weld County may record this Covenant in the real estate records in the office of the Clerk and Recorder of Weld County, Colorado.

9. **Governing Law.** The laws of the State of Colorado shall govern the interpretation and performance of this Covenant. Venue for any action or proceeding arising under or relating to this Covenant shall only be proper in Weld County, Colorado.

10. **Severability.** In the case one or more of the provisions contained in this Covenant, or any application hereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Covenant and the application thereof shall not in any way be affected or impaired.

  
3643902 08/20/2009 11:44A Weld County, CO  
2 of 6 R 0.00 D 0.00 Steve Moreno Clerk & Recorder

IN WITNESS WHEREOF, Grantor and Weld County have executed this Covenant as of the date first above written.

ANACAPA LAND COMPANY, LLC, a Delaware limited liability company

By: W Thaddeus Miller  
Name: W Thaddeus Miller  
Title: Chief Legal Officer

ATTEST: Donald A. Moreno  
Clerk to the Board



WELD COUNTY, a political subdivision of the State of Colorado

By: William F. Garcia  
Deputy Clerk to the Board

By: W F Garcia  
Name: William F. Garcia  
Title: Chair, Board of Weld County Commissioners

ATTESTING TO BOARD OF COUNTY COMMISSIONER SIGNATURES ONLY

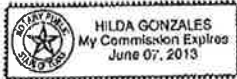
STATE OF Texas )  
 ) ss.  
COUNTY OF Harris )

AUG 05 2009

The foregoing instrument was acknowledged before me on July 14, 2009, by W Thaddeus Miller as Chief Legal Officer of Anacapa Land Company, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires 6-7-2013.



{SEAL}

Hilda Gonzales  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me on August 5, 2009, by William F. Garcia as Chair of Weld County, a political subdivision of the State of Colorado.



Witness my hand and official seal.

My commission expires My Commission Expires May 31, 2010.

Sharon Kahl  
Notary Public

{SEAL}

3643902 09/20/2009 11:44A Weld County, CO  
3 of 6 R 0.00 D 0.00 Steve Moreno Clerk & Recorder

3

2009-1864

**EXHIBIT A  
TO  
RESTRICTIVE COVENANT**

**Legal Description and Depiction of the Property**

See attached page(s)

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3643902 08/20/2009 11:44A Weld County, CO  
4 of 6 R 0.00 D 0.00 Steve Moreno Clerk & Recorder

A-1

# EXHIBIT "A"

A PART OF SECTION 31, TOWNSHIP 2 NORTH AND THE NORTHWEST  
QUARTER OF SECTION 6, TOWNSHIP 1 NORTH, RANGE 64 WEST OF THE  
6TH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO  
SHEET 1 OF 2

## Parcel Description

A PARCEL OF LAND LOCATED IN SECTION 31, TOWNSHIP 2 NORTH AND IN THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 1 NORTH, RANGE 64 WEST OF THE 6TH P.M., WELD COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 31; THENCE ALONG THE SOUTH LINE OF SAID SECTION 31, N88°08'14"E, A DISTANCE OF 30.00' FEET, TO A POINT ON THE EASTERLY R.O.W. LINE OF WELD COUNTY ROAD 49, SAID POINT BEING THE POINT OF BEGINNING; THENCE N00°25'59"W, ALONG SAID EASTERLY R.O.W. LINE, A DISTANCE OF 2693.27 FEET TO A POINT ON THE EAST-WEST CENTERLINE OF SAID SECTION 31; THENCE N00°29'19"W, ALONG SAID EASTERLY R.O.W. LINE, A DISTANCE OF 2103.75 FEET TO A POINT ON THE SOUTHERLY LINE OF THE RAILROAD R.O.W. BOOK 86 AND PAGE 457; THENCE ALONG THE SOUTHERLY LINE OF SAID RAILROAD R.O.W. 923.38 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 6255.32 FEET, AN INCLUDED ANGLE OF 08°27'28" AND SUBTENDED BY A CHORD BEARING NORTH 51°37'18" EAST, A DISTANCE OF 922.55 FEET TO A POINT ON THE SOUTHERLY R.O.W. LINE OF WELD COUNTY ROAD 16; THENCE N88°53'22"E, ALONG THE SAID SOUTHERLY R.O.W. LINE, A DISTANCE OF 3164.45 FEET TO A POINT ON THE WESTERLY LINE OF RECORDED EXEMPTION NO. 1305-31-1-RE628; THENCE S00°17'54"W, ALONG SAID WESTERLY LINE, A DISTANCE OF 1141.09 FEET TO THE NORTHEAST CORNER OF THAT PARCEL DESCRIBED AT RECEPTION NO. 3267392; THENCE N89°42'06"W, ALONG THE NORTHERLY LINE OF SAID RECEPTION NO. 3267392, A DISTANCE OF 37.07 FEET; THENCE S00°17'54"W, ALONG THE WESTERLY LINE OF SAID RECEPTION NO. 3267392, A DISTANCE OF 1436.99 FEET; THENCE CONTINUING ALONG SAID WESTERLY LINE S00°16'57"W, A DISTANCE OF 254.88 FEET TO A POINT OF INTERSECTION OF SAID WESTERLY LINE AND THE NORTHERLY LINE OF THE ROCKY MOUNTAIN ENERGY PARCEL DESCRIBED AT RECEPTION NO. 2960526 AS BEING THE "PERMIT PROPERTY POWER GENERATION FACILITY SITE"; THENCE S89°30'04"W, ALONG THE NORTHERLY LINE EXTENDED AND THE NORTHERLY LINE OF SAID RECEPTION NO. 2960526, A DISTANCE OF 2322.71 FEET; THENCE S00°31'26"E, ALONG THE WESTERLY LINE OF SAID RECEPTION NO. 2960526, A DISTANCE OF 1961.35 FEET; THENCE N89°25'06"E, ALONG THE SOUTHERLY LINE OF SAID RECEPTION NO. 2960526, A DISTANCE OF 1967.58 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE S00°33'39"E, ALONG THE EASTERLY LINE EXTENDED OF SAID RECEPTION NO. 2960526, A DISTANCE OF 524.08 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 31; THENCE S88°08'19"W, ALONG SAID SOUTH LINE, A DISTANCE OF 1045.57 FEET TO A SOUTH QUARTER CORNER OF SAID SECTION 31; THENCE S88°08'14"W ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 31, A DISTANCE OF 474.99 FEET; THENCE S00°37'09"E, ALONG A LINE PARALLEL WITH THE WESTERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6, A DISTANCE OF 575.00 FEET; THENCE S88°08'14"W ALONG A LINE PARALLEL WITH THE NORTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6, A DISTANCE OF 840.72 FEET TO A POINT ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 6; THENCE S01°32'39"E, ALONG THE EASTERLY LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER, A DISTANCE OF 724.89 FEET; THENCE S88°27'56"W, ALONG THE SOUTHERLY LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER, A DISTANCE OF 1117.07 FEET TO A POINT ON THE EASTERLY R.O.W. LINE OF WELD COUNTY ROAD 49; THENCE N00°37'09"W, ALONG SAID EASTERLY R.O.W. LINE, A DISTANCE OF 1293.65, TO THE POINT OF BEGINNING.

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 AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE 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.



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5 of 6 R 0.00 D 0.00 Steve Moreno Clerk & Recorder

JOHN B. GUYTON  
COLORADO P.L.S. #18406  
CHAIRMAN/CEO, FLATIRONS, INC.

FSI JOB NO. 09-100,357

FSI JOB NO. 09-100,357  
DRAWN BY: E.DAVIS  
DATE: 5-5-2009

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. THIS EXHIBIT IS INTENDED TO DEPICT THE ACCOMPANYING PARCEL DESCRIPTIONS. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT.

### Flatirons, Inc.

Surveying, Engineering & Geomatics

MAIN OFFICE  
3825 IRIS AVENUE, #100  
BOULDER, CO 80301  
PH: (303) 443-7001  
FAX: (303) 443-9830

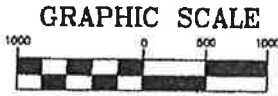
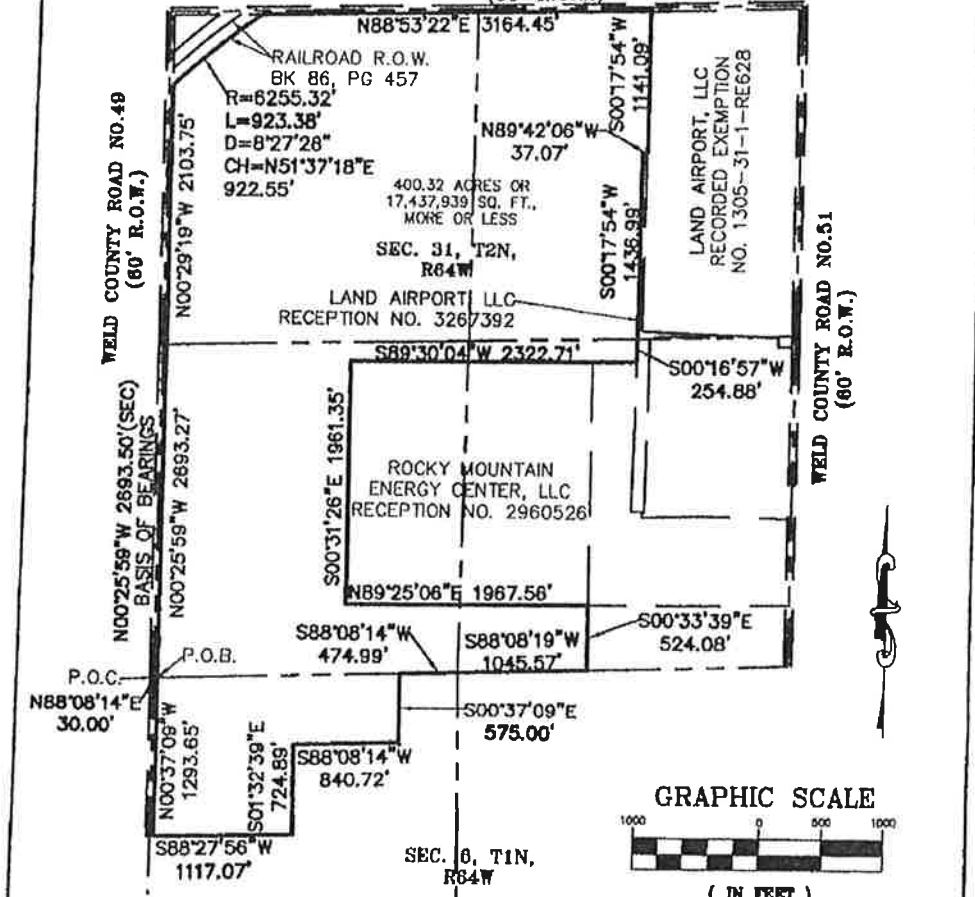


BRANCH OFFICE  
655 FOURTH AVENUE  
LONGMONT, CO 80501  
PH: (303) 776-1733  
FAX: (303) 776-4355

www.FlatironsInc.com

# EXHIBIT "A"

SHEET 2 OF 2  
 WELD COUNTY ROAD NO.16  
 (60' R.O.W.)



( IN FEET )  
 1 inch = 1000 ft.

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 6 of 6 R 0.00 D 0.00 Steve Moreno Clerk & Recorder

FSI JOB NO. 09-100,357  
 DRAWN BY: E.DAVIS  
 DATE: 5-5-2009

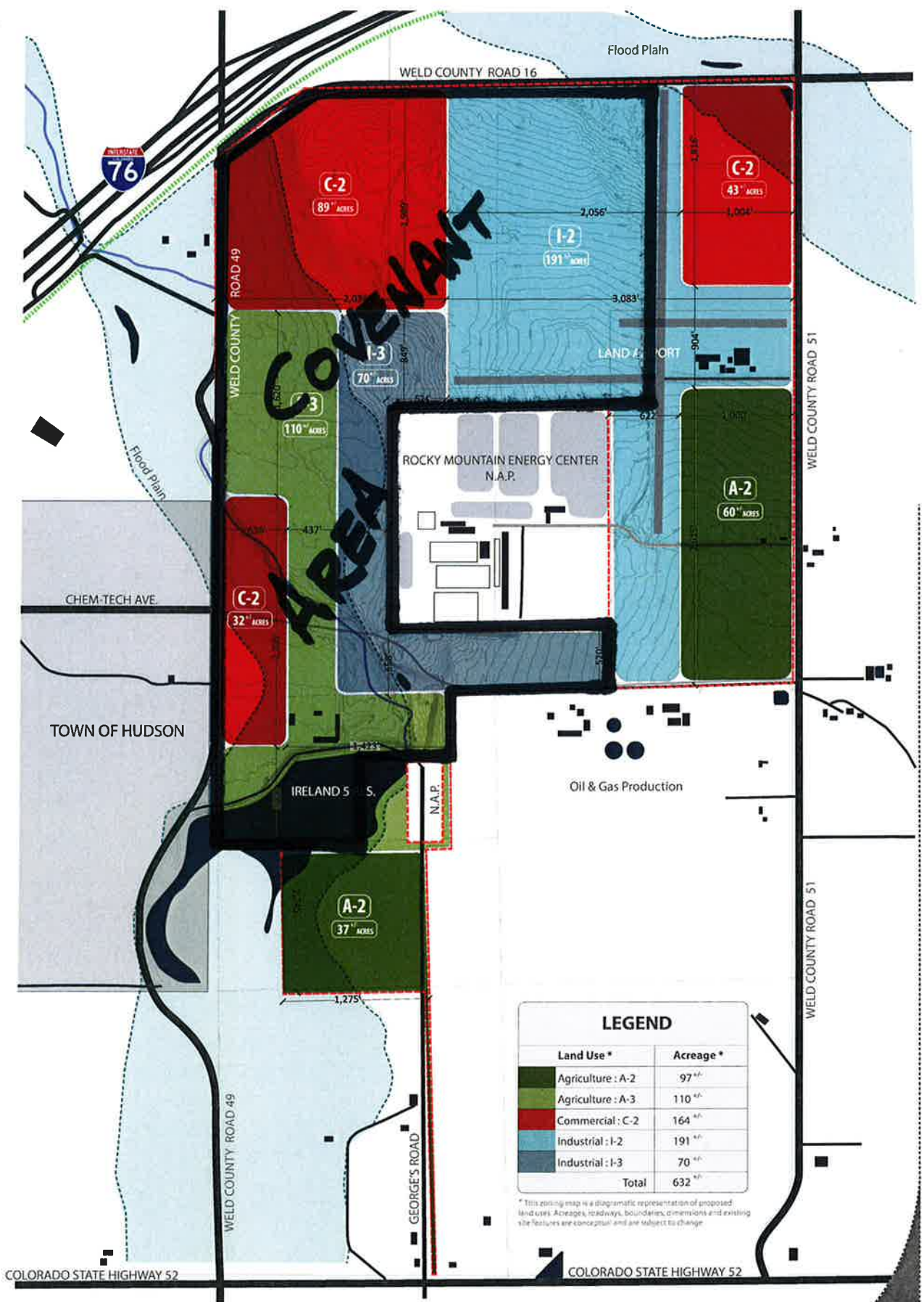
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**Flatirons, Inc.**  
 Surveying, Engineering & Geomatics

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 FAX: (303) 778-4355

www.FlatironsInc.com



**LEGEND**

Land Use *	Acreage *
Agriculture : A-2	97 <sup>±</sup>
Agriculture : A-3	110 <sup>±</sup>
Commercial : C-2	164 <sup>±</sup>
Industrial : I-2	191 <sup>±</sup>
Industrial : I-3	70 <sup>±</sup>
<b>Total</b>	<b>632<sup>±</sup></b>

\* This zoning map is a diagrammatic representation of proposed land uses. Acreages, roadways, boundaries, dimensions and existing site features are conceptual and are subject to change.

# Zoning Plan

Land Airport - Hudson, CO. 10.31.14





ASSIGNMENT OF RESTRICTIVE COVENANT

THIS ASSIGNMENT OF RESTRICTIVE COVENANT ("the Assignment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2014, by and between the Board of County Commissioners of Weld County, Colorado ("Weld County") and the Town of Hudson, Colorado (the "Town") as follows:

WHEREAS, the Board of County Commissioners of Weld County ("Weld County") is the beneficiary of that Restrictive Covenant by Anacapa Land Company, LLC dated August 5, 2009, and recorded in the records of the Weld County Clerk and Recorder's Office on August 20, 2009 at Reception No. 3643902 (the "Covenant");

WHEREAS, the Property as defined in the Covenant is within certain property that has, as of December 7, 2014, been finally annexed to the Town of Hudson, Colorado; and

WHEREAS, because the Property is now within the corporate limits of the Town of Hudson, Weld County desires to assign its right, title and interest as the beneficiary of the Covenant to the Town.

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and promises set forth below, the receipt and sufficiency of which are mutually acknowledged, Weld County and the Town of Hudson hereby agree as follows:

1. Pursuant to Section 3 of the Covenant, which contemplates assignment of the Covenant, Weld County hereby assigns all right, title and interest as beneficiary of the Covenant to the Town of Hudson.
2. The Town of Hudson hereby accepts the assignment of all right, title, and interest as beneficiary of the Covenant.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, this Assignment is executed by Weld County and the Town as of the date first above written.

ATTEST:  
Weld County Clerk to the Board

COUNTY OF WELD, a political  
subdivision of the State of Colorado

By: \_\_\_\_\_  
Deputy Clerk to the Board

By: \_\_\_\_\_  
\_\_\_\_\_, Chair  
Board of County Commissioners  
of the County of Weld

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The above and foregoing signature of \_\_\_\_\_ as Chair of the Board of County Commissioners of the County of Weld was acknowledged, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

ATTEST



TOWN OF HUDSON, a municipal corporation of the State of Colorado

By: *Linnette Barker*  
Linnette Barker, CMC Town Clerk

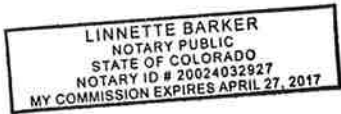
By: *Raymond Patch*  
Raymond Patch, Mayor

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Weld )

The above and foregoing signature of Raymond Patch, as Mayor of the Town of Hudson, Colorado was acknowledged, subscribed and sworn to before me this 3<sup>rd</sup> day of December, 2014.

Witness my hand and official seal.

My commission expires: 4/27/17



*Linnette Barker*  
Notary Public