



**TO:** Denver City Council  
**FROM:** Scott Robinson, Senior City Planner  
**DATE:** June 15, 2017  
**RE:** Official Zoning Map Amendment Application #2016I-00129

## Staff Report and Recommendation

Based on the criteria for review in the Denver Zoning Code, staff recommends approval for Application #2016I-00129.

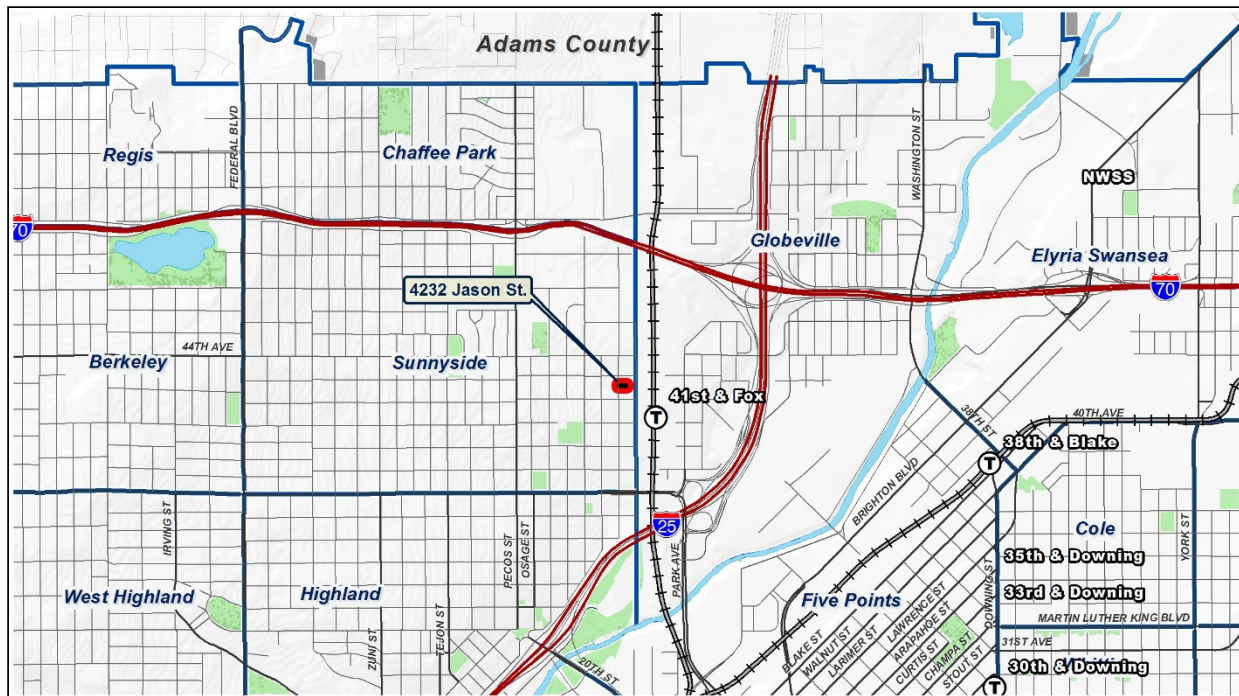
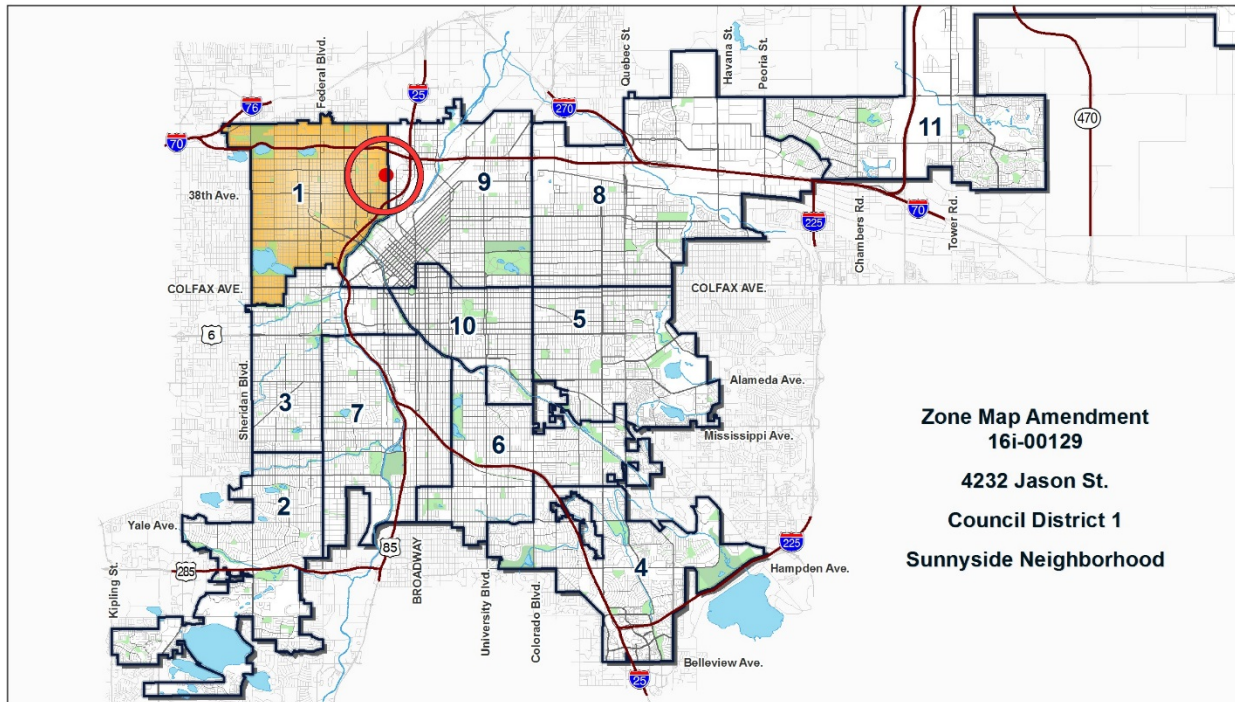
## Request for Rezoning

Address:	4232 N Jason Street
Neighborhood/Council District:	Sunnyside / Council District 1
RNOs:	Denver Neighborhood Association, Inc., Globeville Civic Association #2, Elyria Swansea/Globeville Business Association, United Community Action Network, Inc., Inter-Neighborhood Cooperation, United Northside Neighborhood, Globeville Civic Partners, North Neighborhoods Democratic Council, Denver Urban Resident Association, Globeville K.A.R.E.S., Comunidades Unidades Globeville Elyria & Swansea
Area of Property:	6,250 square feet
Current Zoning:	I-A, UO-2
Proposed Zoning:	C-RX-8
Property Owner(s):	Charles Fresquez, Linda McIntyre, & Nadine Garcia
Owner Representative:	Ben Gearhart

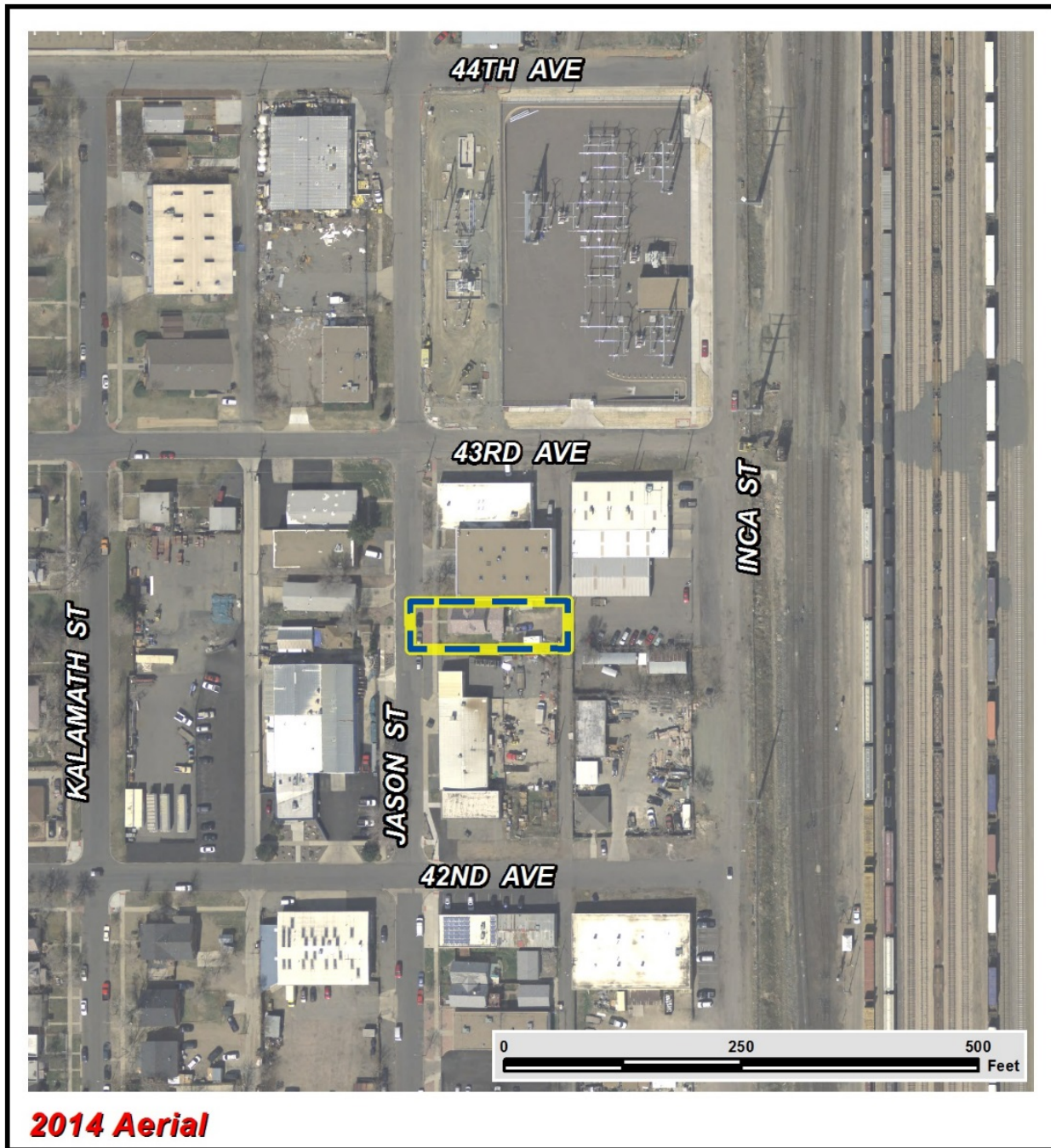
## Summary of Rezoning Request

- The subject property is located on Jason Street between 42<sup>nd</sup> Avenue and 43<sup>rd</sup> Avenue, in the 41<sup>st</sup> and Fox station area.
- The property currently has a single-family residence on it and is surrounded by industrial land uses.
- The proposed rezoning would allow the property owners to redevelop to better serve the new 41<sup>st</sup> and Fox rail transit station area.
- The **C-RX-8** (Urban **C**enter, **R**esidential **M**ixed Use, **8** story) zone district allows street-level retail uses, but upper stories are reserved exclusively for housing or lodging accommodation uses. Commercial uses are secondary to the primary residential use of the district, and provide neighborhood-scaled shops and offices. Further details of the zone district can be found in Article 7 of the Denver Zoning Code (DZC).

- The applicant's request includes removing the Billboard Use Overlay, UO-2, on the property.







### Existing Context

The subject property is in the Sunnyside neighborhood, just west of the 41<sup>st</sup> and Fox station for the RTD G Line. The area is primarily industrial, located between the railroad tracks and the residential core of the Sunnyside neighborhood. There are a few residential properties scattered through the area, such as the subject property. Surrounding the property are warehouses and automobile services businesses.

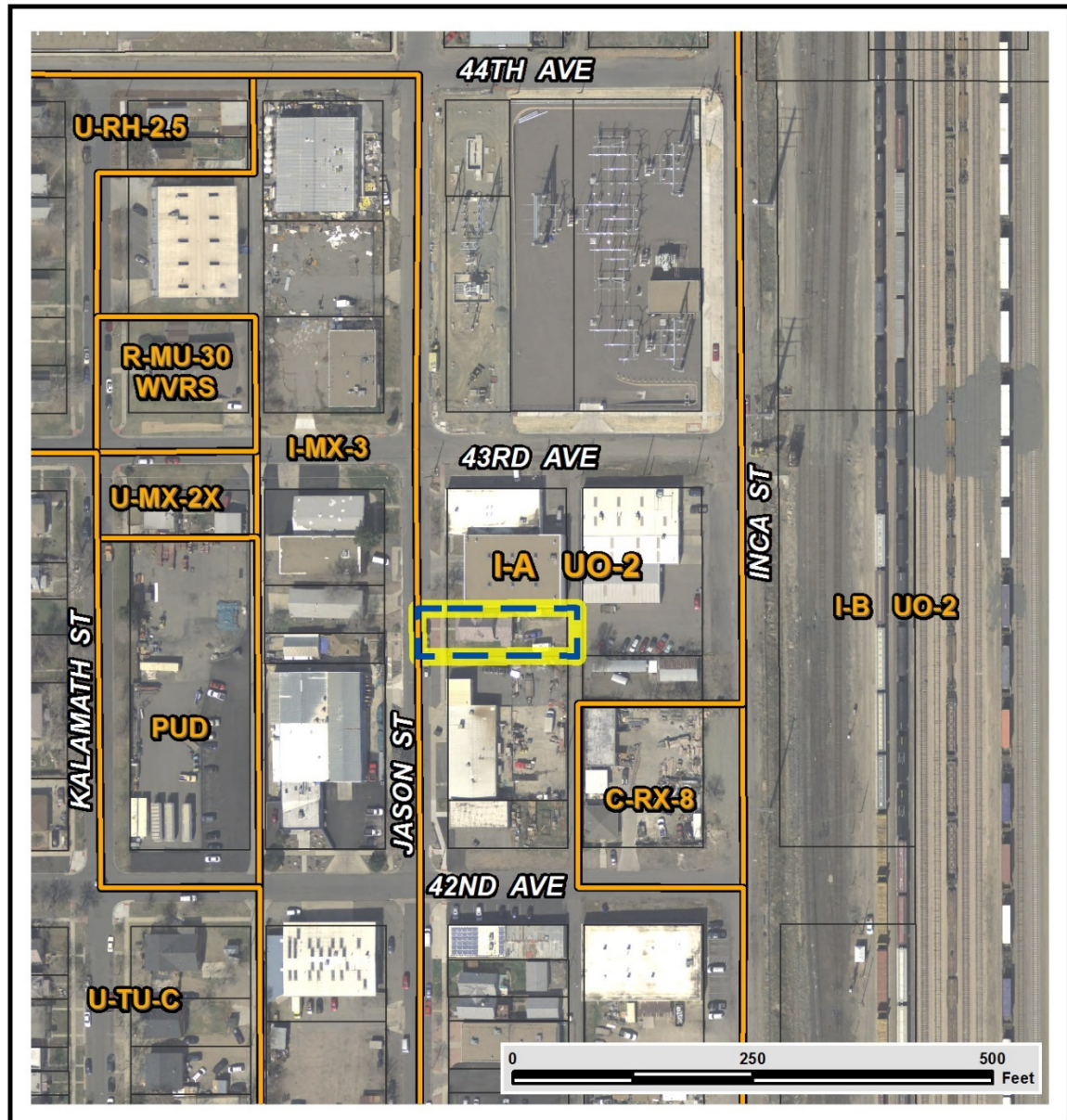
The site is one block away from the new multi-use path connecting to the South Platte Trail and downtown. The properties on the southeast corner of the block were rezoned to C-RX-8 in 2016.

The following table summarizes the existing context proximate to the subject site:

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
Site	I-A, UO-2	Single-family residence	2-story front-gable house with small setbacks	Generally regular grid of streets, cut off by the railroad tracks to the east; alleys run north-south through rectangular blocks; pedestrian access to the 41 <sup>st</sup> and Fox station is provided by a bridge at 41 <sup>st</sup> Ave and Inca St; many industrial uses have vehicular access from both the street and the alley
North	I-A, UO-2	Industrial	1-story concrete warehouse building with access from the street	
South	I-A, UO-2	Industrial	1-story metal building and storage yard	
East	I-A, UO-2	Industrial	1-story metal warehouse buildings and associated parking	
West	I-A, UO-2	Tattoo parlor and residence	Two 1-story single-family residential style buildings	

## 1. Existing Zoning

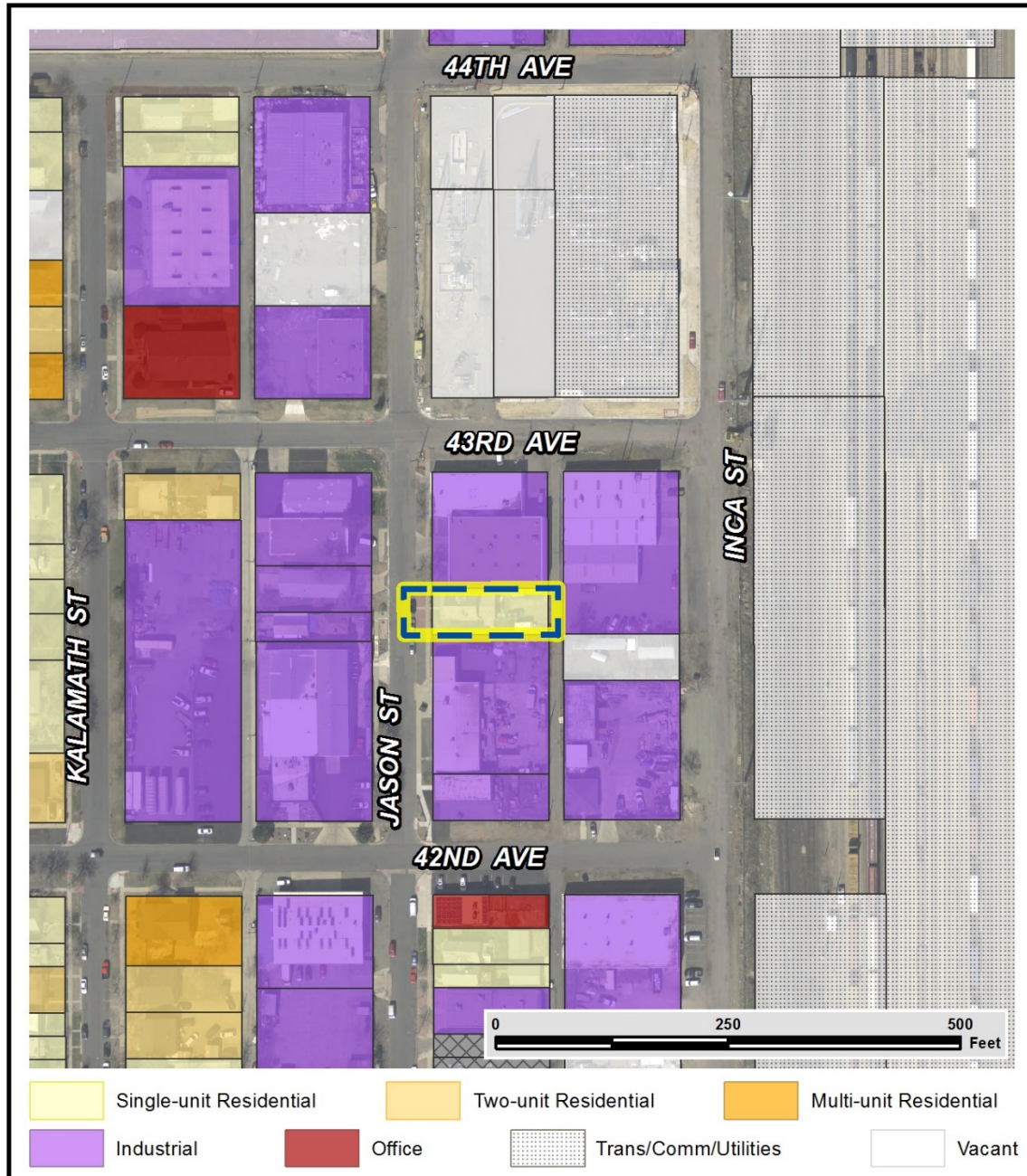
The existing zoning on the subject property is I-A, UO-2. I-A is a light industrial zone district in the Industrial Context. It allows office, business, and light industrial uses. Residential uses are only permitted where an existing residential structure existed prior to July 1, 2004. The General and Industrial building forms are allowed in the I-A zone district and building mass is regulated by a maximum Floor Area Ratio of 2.0. No maximum building height is specified for the zone district except for when a site is within 175 feet of a Protected District, in which case the maximum permitted building height is 75 feet. There are no build-to requirements, transparency requirements, or street level activation standards in the I-A zone district. Surface parking is permitted between the building and primary and side streets. See DZC Division 9.1.



The UO-2 Billboard Use Overlay allows for “outdoor general advertising device” signs (i.e. billboards) within the applicable area. Additional standards and limitations regarding minimum separation and distance requirements also apply. There are currently no billboards on the subject site, and the applicant is proposing to eliminate the UO-2 overlay on the property. See DZC Section 9.4.4.7.



## 2. Existing Land Use Map



### 3. Existing Building Form and Scale



**Site** – from Jason St



**East** – from Jason St



**North** – at Jason and 43<sup>rd</sup>



**South** – at Jason and 42<sup>nd</sup>



**West** – from Inca St



## Summary of City Agency Referral Comments

As part of the DZC review process, the rezoning application is referred to potentially affected city agencies and departments for comment. A summary of agency referral responses follows:

**Asset Management:** Approve – No comments.

**Development Services – Wastewater:** There is no objection to the rezone, however applicant should be under notice that Public Works will not approve any development of this property without assurance that there is sufficient sanitary and storm sewer capacity. A sanitary study and drainage study may be necessary. These studies may result in a requirement for the developer to install major infrastructure improvements or a limit to development if current infrastructure is insufficient.

**Public Works – City Surveyor:** Approve – No comments.

**Environmental Health:** Approve

- General Notes: Most of Colorado is high risk for radon, a naturally occurring radioactive gas. Due to concern for potential radon gas intrusion into buildings, DEH suggests installation of a radon mitigation system in structures planned for human occupation or frequent use. It may be more cost effective to install a radon system during new construction rather than after construction is complete.
- If renovating or demolishing existing structures, there may be a concern of disturbing regulated materials that contain asbestos or lead-based paint. Materials containing asbestos or lead-based paint should be managed in accordance with applicable federal, state and local regulations.
- The Denver Air Pollution Control Ordinance (Chapter 4- Denver Revised Municipal Code) specifies that contractors shall take reasonable measures to prevent particulate matter from becoming airborne and to prevent the visible discharge of fugitive particulate emissions beyond the property on which the emissions originate. The measures taken must be effective in the control of fugitive particulate emissions at all times on the site, including periods of inactivity such as evenings, weekends, and holidays.
- Denver's Noise Ordinance (Chapter 36–Noise Control, Denver Revised Municipal Code) identifies allowable levels of noise. Properties undergoing Re-Zoning may change the acoustic environment, but must maintain compliance with the Noise Ordinance. Compliance with the Noise Ordinance is based on the status of the receptor property (for example, adjacent Residential receptors), and not the status of the noise-generating property. Violations of the Noise Ordinance commonly result from, but are not limited to, the operation or improper placement of HV/AC units, generators, and loading docks. Construction noise is exempted from the Noise Ordinance during the following hours, 7am–9pm (Mon–Fri) and 8am–5pm (Sat & Sun). Variances for nighttime work are allowed, but the variance approval process requires 2 to 3 months. For variance requests or questions related to the Noise Ordinance, please contact Paul Riedesel, Denver Environmental Health (720-865-5410).
- Scope & Limitations: DEH performed a limited search for information known to DEH regarding environmental conditions at the subject site. This review was not intended to conform to ASTM



standard practice for Phase I site assessments, nor was it designed to identify all potential environmental conditions. In addition, the review was not intended to assess environmental conditions for any potential right-of-way or easement conveyance process. The City and County of Denver provides no representations or warranties regarding the accuracy, reliability, or completeness of the information provided.

## Public Review Process

	Date
CPD informational notice of receipt of the rezoning application to all affected members of City Council and registered neighborhood organizations:	<b>1/9/17</b>
Property legally posted for a period of 15 days and CPD written notice of the Planning Board public hearing sent to all affected members of City Council and registered neighborhood organizations:	<b>4/4/17</b>
Planning Board voted 8 to 0 at the public hearing to recommend approval to City Council (1 board member abstained)	<b>4/19/17</b>
CPD written notice of the Land Use, Transportation and Infrastructure Committee meeting sent to all affected members of City Council and registered neighborhood organizations, at least ten working days before the meeting:	<b>4/24/17</b>
Land Use, Transportation and Infrastructure Committee of the City Council moved the bill forward:	<b>5/16/17</b>
Property legally posted for a period of 21 days and CPD written notice of the City Council public hearing sent to all affected members of City Council and registered neighborhood organizations:	<b>5/29/17</b>
City Council Public Hearing:	<b>6/19/17</b>

- Summary of Other Public Outreach and Input
  - **Registered Neighborhood Organizations (RNOs)**
    - To date, no comment letters have been received from Registered Neighborhood Organizations.

- **Other Public Comment**

- To date, staff has received one email in support of the application.

## Criteria for Review / Staff Evaluation

The criteria for review of this rezoning application are found in DZC, Sections 12.4.10.7 and 12.4.10.8, as follows:

### **DZC Section 12.4.10.7**

1. Consistency with Adopted Plans
2. Uniformity of District Regulations and Restrictions
3. Public Health, Safety and General Welfare

### **DZC Section 12.4.10.8**

1. Justifying Circumstances
2. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements

## **1. Consistency with Adopted Plans**

The following adopted plans apply to this property:

- Denver Comprehensive Plan 2000
- Blueprint Denver (2002)
- Sunnyside Neighborhood Plan (1992)
- 41<sup>st</sup> & Fox Station Area Plan (2009)

### **Denver Comprehensive Plan 2000**

The proposal is consistent with many Denver Comprehensive Plan strategies, including:

- Environmental Sustainability Strategy 2-F – *Conserve land by: promoting infill development within Denver at sites where services and infrastructure are already in place; designing mixed-use communities and reducing sprawl, so that residents can live, work and play within their own neighborhoods; creating more density at transit nodes.* (p. 39)
- Environmental Sustainability Strategy 4-A – *Promote the development of sustainable communities and centers of activity where shopping, jobs, recreation and schools are accessible by multiple forms of transportation, providing opportunities for people to live where they work.* (p. 41)
- Land Use Strategy 3-B – *Encourage quality infill development that is consistent with the character of the surrounding neighborhood; that offers opportunities for increased density and more amenities; and that broadens the variety of compatible uses.* (p. 60)
- Land Use Strategy 4-A – *Encourage mixed-use, transit-oriented development that makes effective use of existing transportation infrastructure, supports transit stations, increases transit patronage, reduces impact on the environment, and encourages vibrant urban centers and neighborhoods.* (p. 60)
- Mobility Strategy 4-E – *Continue to promote mixed-use development, which enables people to live near work, retail and services.* (p. 78)

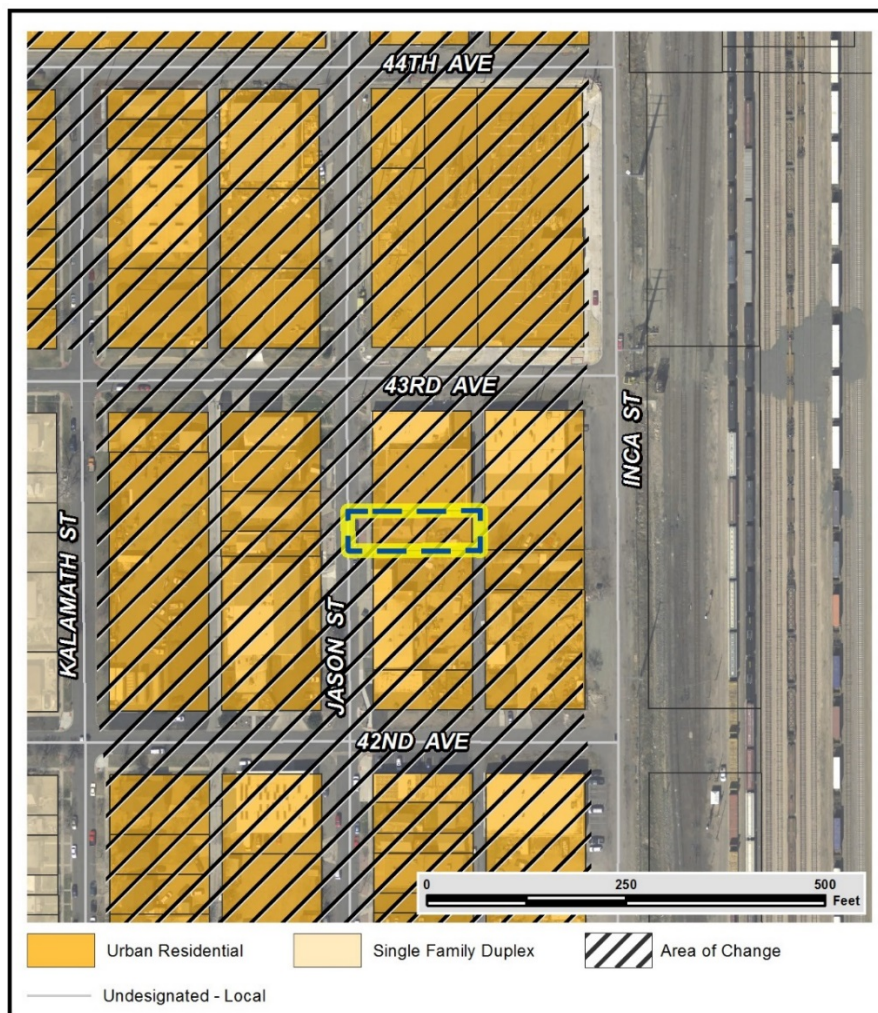
- Denver's Legacies Strategy 3-A – *Identify areas in which increased density and new uses are desirable and can be accommodated.* (p. 99)

The proposed map amendment would allow for mixed-use infill development near the new 41<sup>st</sup> and Fox station for the RTD G Line, which will provide high-quality transit service to downtown Denver, Arvada, and Wheat Ridge. The new transit station provides an opportunity to increase density in the east portion of Sunnyside in a way that is compatible with the surrounding established neighborhood. The proposed C-RX-8 zoning would allow for a broader variety of uses including housing, retail services, and employment in a compact, urban neighborhood. The proposed rezoning is consistent with these Comprehensive Plan 2000 recommendations.

### Blueprint Denver

According to the 2002 Plan Map adopted in Blueprint Denver, this site has a concept land use of Urban Residential and is located in an Area of Change.

### Future Land Use





An Urban Residential neighborhood is “higher density and primarily residential but may include a noteworthy number of complementary commercial uses. New housing tends to be in mid- to high-rise structures, and there is a greater housing base than employment base” (p. 41). The uses should be “primarily residential with moderate levels of small-scale commercial use” (p. 65). The building should have “pedestrian scaled facades and contextual design” and should include “extensive ground floor windows and frequent access” (p. 66). The proposed C-RX-8 zoning would be consistent with these recommendations by allowing a new structure up to eight stories tall. The proposed zoning would require the new structure to be predominately residential, with commercial uses other than lodging allowed only on the ground floor. The C-RX-8 zone district requirements include build-to, transparency, entrance, and upper story setback standards, implementing the design recommendations stated in Blueprint Denver.

#### **Area of Change / Area of Stability**

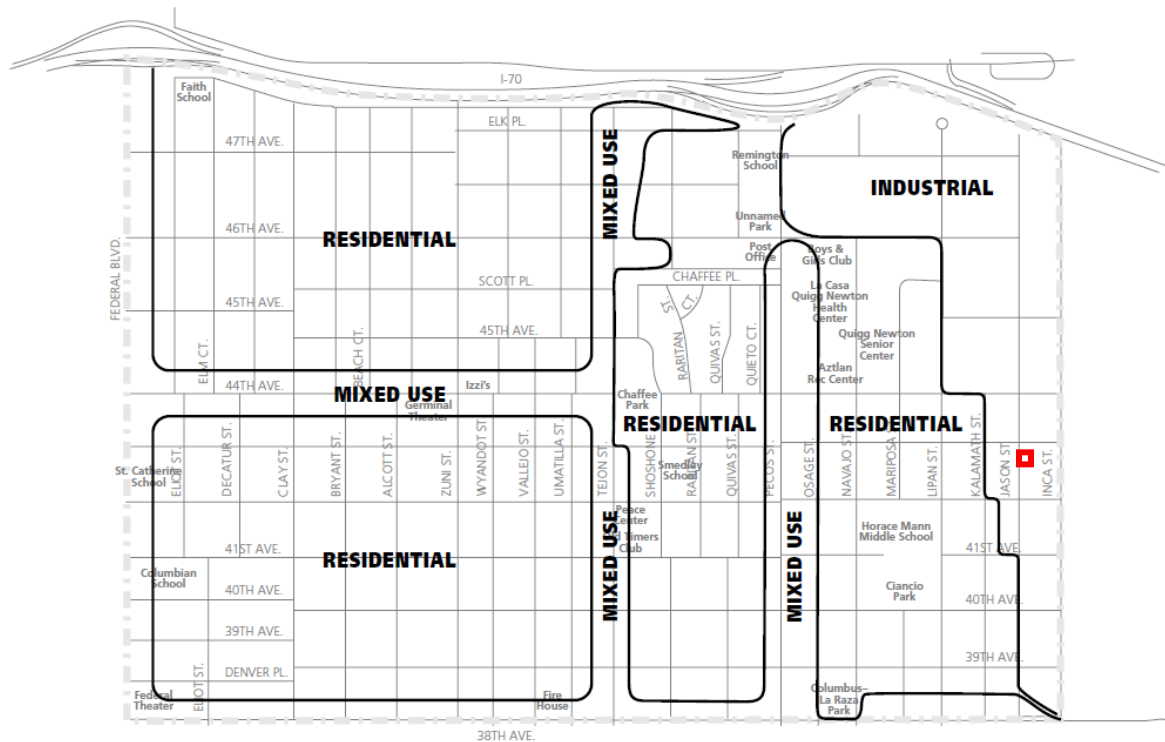
The subject property is in an Area of Change. Blueprint Denver states “the goal for Areas of Change is to channel growth where it will be beneficial and can best improve access to jobs, housing and services with fewer and shorter auto trips” (p. 127). The proposed C-RX-8 zoning would allow additional development near a transit station, supporting jobs, housing, and services with less reliance on automobiles, consistent with the goals of Blueprint Denver.

#### **Street Classifications**

Jason Street is classified as an Undesignated Local by Blueprint Denver. The plan describes Local streets as “influenced less by traffic volumes and tailored more to providing local access. Mobility on local streets is typically incidental and involves relatively short trips at lower speeds to and from other streets” (p. 51). The residential and neighborhood-scale commercial uses allowed by the proposed C-RX-8 zone district would be appropriate for a local street. However, Jason Street and the other streets in the area have limited connectivity, being cut off by I-70 to the north, the railroad tracks to the east, and 38<sup>th</sup> Avenue to the south. So, while eight stories may not typically be appropriate for a local street, the proposed intensity is justified by the proximity to the 41<sup>st</sup> and Fox station and new bike and pedestrian trail rather than the presence of Collector or Arterial streets in the area. The proposed zoning is consistent with the street classification and other recommendations of Blueprint Denver.

#### **Sunnyside Neighborhood Plan**

The Sunnyside Neighborhood Plan was adopted in 1992 and covers the subject property. The plan identifies the east portion of the neighborhood as industrial and recommends removing residential uses from the industrial area.

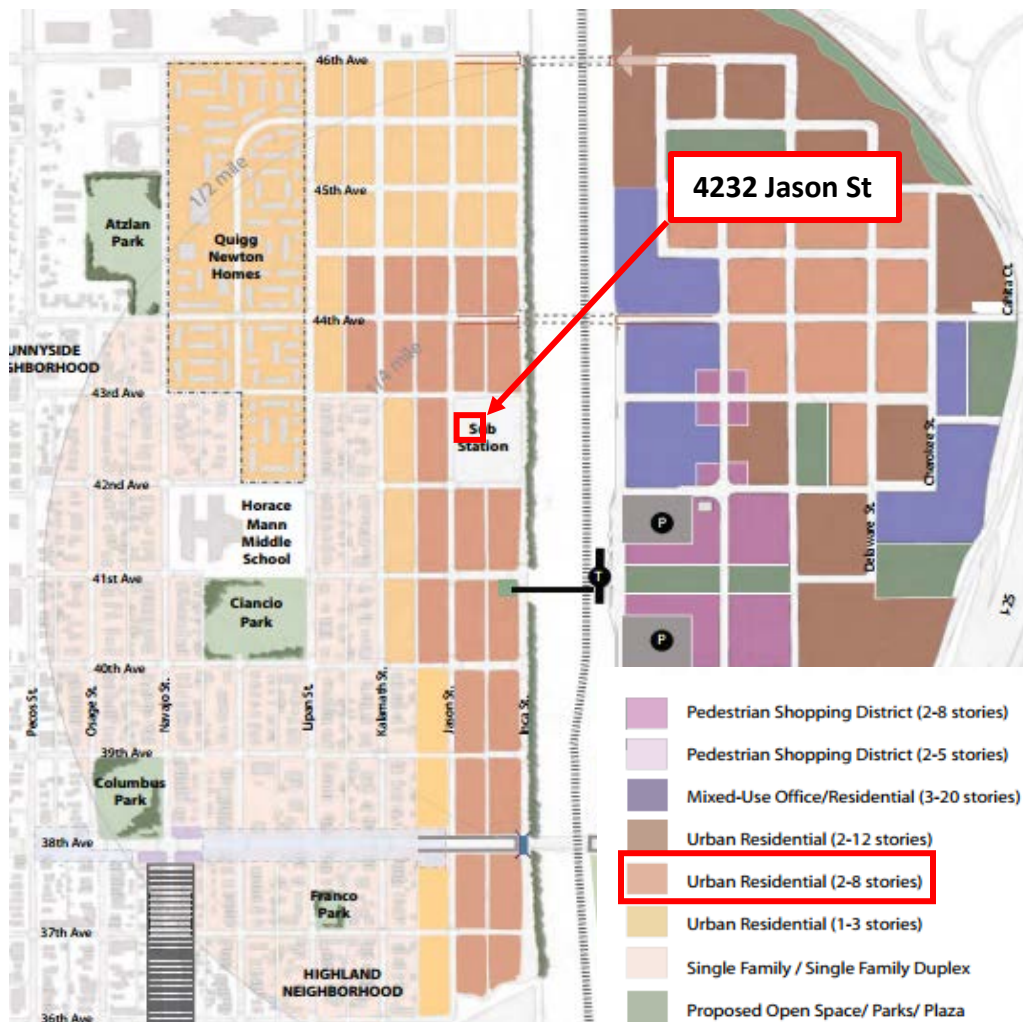


**Generalized Land Use Map**

Although the Sunnyside Neighborhood Plan is an adopted plan that continues to guide policy and development decisions within the neighborhood, the eastern portion of the plan area (including the subject site) has more recent guidance from the 41<sup>st</sup> & Fox Station Area Plan. The station area plan was adopted in 2009 in response to new opportunities presented by the commuter rail station. As a result, it provides substantially different land use recommendations than the older Sunnyside Neighborhood Plan, which pre-dates the conception of FasTracks by more than a decade. The 41<sup>st</sup> & Fox Station Area Plan does not recommend any industrial within the portion of Sunnyside that it covers (approximately 36<sup>th</sup> Ave. to 46<sup>th</sup> Ave.). For additional details on relevant recommendations from the 41<sup>st</sup> & Fox Station Area Plan, please refer to the next section of this staff report.

#### **41<sup>st</sup> and Fox Station Area Plan**

The subject property is also covered by the 41<sup>st</sup> and Fox Station Area Plan, adopted in 2009. The plan includes a land use map which mistakenly identifies the subject property as an electrical substation. The substation is in fact one block to the north, between 43<sup>rd</sup> Avenue and 44<sup>th</sup> Avenue, so the land use guidance for the subject property must be inferred. The blocks immediately to the north (where the substation actually is) and south, and the half block to the west, are all designated Urban Residential (2-8 Stories). The same designation should apply to the subject property. According to the plan, “these areas are intended as new, moderate density neighborhoods. On the west side of the tracks along Inca it forms a new edge between the station and the existing neighborhood to the west” (p. 16).



*41<sup>st</sup> & Fox Station Area Plan map*

The proposed C-RX-8 zoning would allow predominately residential development with a maximum height of eight stories, consistent with the plan guidance for the area. This would facilitate the growth of a new neighborhood at an appropriate intensity to transition to the established neighborhood to the west.

The 41<sup>st</sup> and Fox Station Area Plan also includes urban design recommendations, including that “the ground floors of buildings in all areas should contain the following elements: prominent, street facing entries, extensive ground floor windows and frequent entrances, pedestrian scaled facades, awnings to protect pedestrians and mark entrances, and building entrances that meet the sidewalk” (p. 18). The plan also calls for buildings edges to be “brought to the sidewalk with minimal setbacks” (p. 18).

The proposed C-RX-8 zoning only allows the General building form, which requires that 70 percent of the building façade be within 10 feet of the street (15 feet for residential only buildings). It also requires a minimum of 40 percent of the street-facing façade be transparent (30 percent for residential only



buildings) and that pedestrian access come from the street. The proposed C-RX-8 zoning meets the land use, intensity, and design intent of the 41<sup>st</sup> and Fox Station Area Plan.

## **2. Uniformity of District Regulations and Restrictions**

The proposed rezoning to C-RX-8 will result in the uniform application of zone district building form, use, and design regulations.

## **3. Public Health, Safety and General Welfare**

The proposed official map amendment furthers the public health, safety, and general welfare of the City primarily through implementation of the city's adopted land use plan. The C-MX-8 zone district would improve the pedestrian experience and allow more compatible uses. It would also allow redevelopment of the property and investment in the Sunnyside neighborhood, furthering the city's goals of creating a cohesive, walkable community around the 41<sup>st</sup> and Fox station.

## **4. Justifying Circumstance**

The application identifies the new 41<sup>st</sup> and Fox transit station as a changed condition for the Justifying Circumstance under DZC Section 12.4.10.8.A.4, "The land or its surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or to recognize the changed character of the area." Recent changes in the surrounding environs include the newly-constructed multi-use trail and the construction of the commuter rail station. Several rezonings and development plans have been approved in the station area. As described above, it is the city's stated goal for the properties around the station to redevelop into a transit-supportive urban center. The proposed map amendment would help achieve that goal, encouraging redevelopment that is in the public interest, and is therefore justified.

## **5. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements**

The requested C-RX-8 zone district is within the Urban Center Neighborhood Context. The neighborhood context generally consists of multi-unit residential and mixed-use commercial strips and commercial centers in an orthogonal street grid with high levels of bike and pedestrian access to transit. (DZC, Division 7.1). The proposed zone district would allow multi-unit residential and commercial development with convenient pedestrian access to the 41<sup>st</sup> and Fox transit station, consistent with the Urban Center context description.

The Denver Zoning Code states the C-RX-8 zone district "applies to residentially-dominated areas served primarily by collector or arterial streets where a building scale of 2 to 8 stories is desired" (DZC Section 7.2.3.2.B). As described above, the area is served by local streets because of the barriers surrounding it, but the proximity to the 41<sup>st</sup> and Fox station makes the C-RX-8 an appropriate zone district for the site. The desired building heights and access to transit are consistent with the zone district purpose and intent statements.

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4232 N Jason St  
June 15, 2017  
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### Attachments

1. Application
2. Public comment

## Zone Map Amendment (Rezoning) - Application

PROPERTY OWNER INFORMATION*		PROPERTY OWNER(S) REPRESENTATIVE**	
<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION		<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
Property Owner Name		Representative Name	
Address		Address	
City, State, Zip		City, State, Zip	
Telephone		Telephone	
Email		Email	
<p><b>*If More Than One Property Owner:</b>            All standard zone map amendment applications shall be initiated by all the owners of at least 51% of the total area of the zone lots subject to the rezoning application, or their representatives authorized in writing to do so. See page 3.</p>		<p><b>**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.</b></p>	
<p>Please attach Proof of Ownership acceptable to the Manager for each property owner signing the application, such as (a) Assessor's Record, (b) Warranty deed or deed of trust, or (c) Title policy or commitment dated no earlier than 60 days prior to application date.</p>			
SUBJECT PROPERTY INFORMATION			
Location (address and/or boundary description):			
Assessor's Parcel Numbers:			
Area in Acres or Square Feet:			
Current Zone District(s):			
PROPOSAL			
Proposed Zone District:			
Does the proposal comply with the minimum area requirements specified in DZC Sec. 12.4.10.3:		<input type="checkbox"/> Yes	<input type="checkbox"/> No



## REVIEW CRITERIA

<p>General Review Criteria: The proposal must comply with all of the general review criteria DZC Sec. 12.4.10.7</p>	<div> <input type="checkbox"/> Consistency with Adopted Plans: The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of adoption of the City's Plan.         </div> <p>Please provide an attachment describing relevant adopted plans and how proposed map amendment is consistent with those plan recommendations; or, describe how the map amendment is necessary to provide for an unanticipated community need.</p> <div> <input type="checkbox"/> Uniformity of District Regulations and Restrictions: The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.         </div> <div> <input type="checkbox"/> Public Health, Safety and General Welfare: The proposed official map amendment furthers the public health, safety, and general welfare of the City.         </div>
<p>Additional Review Criteria for Non-Legislative Rezonings: The proposal must comply with both of the additional review criteria DZC Sec. 12.4.10.8</p>	<p><b>Justifying Circumstances - One of the following circumstances exists:</b></p> <div> <input type="checkbox"/> The existing zoning of the land was the result of an error.           <input type="checkbox"/> The existing zoning of the land was based on a mistake of fact.           <input type="checkbox"/> The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage.           <input type="checkbox"/> The land or its surroundings has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area to recognize the changed character of the area.           <input type="checkbox"/> It is in the public interest to encourage a departure from the existing zoning through application of supplemental zoning regulations that are consistent with the intent and purpose of, and meet the specific criteria stated in, Article 9, Division 9.4 (Overlay Zone Districts), of this Code.         </div> <p>Please provide an attachment describing the justifying circumstance.</p> <div> <input type="checkbox"/> The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District.         </div> <p>Please provide an attachment describing how the above criterion is met.</p>

## REQUIRED ATTACHMENTS

Please ensure the following required attachments are submitted with this application:

- ☐ Legal Description (required to be attached in Microsoft Word document format)
- ☐ Proof of Ownership Document(s)
- ☐ Review Criteria

## ADDITIONAL ATTACHMENTS

Please identify any additional attachments provided with this application:

- ☐ Written Authorization to Represent Property Owner(s)

Please list any additional attachments:

# REZONING GUIDE

Rezoning Application Page 3 of 3

## PROPERTY OWNER OR PROPERTY OWNER(S) REPRESENTATIVE CERTIFICATION/PETITION

We, the undersigned represent that we are the owners of the property described opposite our names, or have the authorization to sign on behalf of the owner as evidenced by a Power of Attorney or other authorization attached, and that we do hereby request initiation of this application. I hereby certify that, to the best of my knowledge and belief, all information supplied with this application is true and accurate. I understand that without such owner consent, the requested official map amendment action cannot lawfully be accomplished.

Property Owner Name(s) (please type or print legibly)	Property Address City, State, Zip Phone Email	Property Owner Interest % of the Area of the Zone Lots to Be Rezoned	Please sign below as an indication of your consent to the above certification statement (must sign in the exact same manner as title to the property is held)	Date	Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed or deed of trust, (C) title policy or commitment, or (D) other as approved	Property owner representative written authorization? (YES/NO)
<b>EXAMPLE</b> John Alan Smith and Josie Q. Smith	123 Sesame Street Denver, CO 80202 (303) 555-5555 sample@sample.gov	100%	<i>John Alan Smith</i> <i>Josie Q. Smith</i>	01/01/12	(A)	NO
CHARLES V. FRESQUEZ LINDA MCINTYRE NADINE J GARCIA	4232 JASON ST. DENVER CO. 80211 303-517-6792	100%	<i>Charles Fresquez</i> <i>Linda McIntyre</i> <i>Nadine Garcia</i>	12/03/16		YES

Last updated: February 4, 2015

 Return completed form to [rezoning@denvergov.org](mailto:rezoning@denvergov.org)

Lots 6 and 7, Block 14, Viaduct Addition, City and County of Denver, State of Colorado



[Neighborhood](#)[Business](#)[Visiting](#)[Government](#)[Online Services](#)[A to Z](#)

## Denver Property Taxation and Assessment System

[New Search](#)

4232 JASON ST

Owner	Schedule Number	Legal Description	Property Type	Tax District
FRESQUEZ,CHARLES V & MCINTYRE,LINDA & 4232 JASON ST DENVER , CO 80211-2518	0221415004000	L 6 & 7 BLK 14 VIADUCT ADD	RESIDENTIAL	DENV

[Summary](#)[Assessment](#)[Assessment Protest](#)[Taxes](#)[Comparables](#)[Neighborhood Sales](#)[Chain of Title](#)

### Chain Of Title Records

Reception Number	Reception Date	Instrument	Sale Date	Sale Price	Grantor/ Grantee
2014013945	2/7/2014	QC	2/7/2014		FRESQUEZ,CHARLES V &/ FRESQUEZ,CHARLES V &
JT00164390	9/20/1999	QC	9/20/1999	\$10	FRESQUEZ,MARY B/ FRESQUEZ,CHARLES V &
0000130933	7/28/1999	DC	7/5/1973		FRESQUEZ,MARY B/ FRESQUEZ,MARY B

# Empire Title North, LLC

12000 Pecos Street, Suite 275  
Westminster, CO 80234  
Tel: (303) 280-1669 • Fax: (303) 280-0801

Date: **October 14, 2016**  
File Number: **200231**  
Property Address: **4232 Jason Street  
Denver, CO 80211**  
Seller: **Charles V. Fresquez, Linda McIntyre and Nadine J. Garcia**  
Buyer: **Gearhart Moore Holdings, LLC**

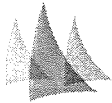
Please deliver to the Following Customers:

To:	Re/Max Northwest, Inc. 12000 Pecos Street St 160 Westminster, CO 80234	Attn:	Daniel Muniz
To:	Modus Real Estate 2828 Speer Blvd #220 Denver, CO 80211	Attn:	Charles Moore
To:	Firstbank 10435 West Colfax Lakewood CO 80215	Attn:	Erin Dolph
To:	Charles V. Fresquez, Linda McIntyre and Nadine J. Garcia 4232 Jason Street Denver, CO 80211		
To:	Gearhart Moore Holdings, LLC 3416 W. 40th Ave Denver, CO 80211	Attn:	Eric Ely
To:	Empire Title North, LLC 12000 Pecos Street, Suite 275 Westminster, CO 80234	Attn:	Lisa Anders

Enclosed please find the following item(s) concerning the above captioned order. Should you have any questions regarding the attached documentation, please contact us at **(303) 280-1669**. We appreciate your business very much and look forward to serving you in this transaction.

Your Escrow Officer for this transaction is **Lisa Anders**  
Phone Number: **(303) 280-1669** Fax Number: **(303) 280-0801**

<input type="checkbox"/> Commitment	<input type="checkbox"/> Endorsement	<input type="checkbox"/> Revised Commitment
<input type="checkbox"/> Tax Certificate	<input type="checkbox"/> Covenants, Conditions, Restrictions	<input type="checkbox"/> Schedule B-2 Documents
<input type="checkbox"/> Schedule B-1 Documents	<input type="checkbox"/> Ownership Encumbrance Report	<input type="checkbox"/> Title Guarantee



**WESTCOR**  
Land Title Insurance Company

**ALTA Commitment Form (6-17-06)**

**COMMITMENT FOR TITLE INSURANCE**

**ISSUED BY**

**WESTCOR LAND TITLE INSURANCE COMPANY**

Westcor Land Title Insurance Company, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six (6) months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, **WESTCOR LAND TITLE INSURANCE COMPANY** has caused its corporate name and seal to be hereunto affixed and by these presents to be signed in facsimile under authority of its by-laws, effective as of the date of Commitment shown in Schedule A.

Issued By:

CO1000 \* 200231

Empire Title North, LLC

12000 Pecos Street, Ste. 275

Westminster, CO 80234

**WESTCOR LAND TITLE INSURANCE COMPANY**



By:

*Mary O'Donnell*

President

Attest:

*Patricia W. Bower*

Secretary

# COMMITMENT FOR TITLE INSURANCE

## SCHEDULE A

Commitment Number: **200231**  
AMENDMENT NUMBER:  
PROPERTY ADDRESS:  
**4232 Jason Street, Denver, CO 80211**  
SCHEDULE #: **02214-15-004-000**

1. Effective date: **September 28, 2016** at 8:00 A.M.

2. Policy or policies to be issued:	Amount	Premium
-------------------------------------	--------	---------

A. ALTA Owner's Policy - Proposed Insured: <b>Gearhart Moore Holdings, LLC, a Colorado limited liability company</b>	<b>\$425,000.00</b>	<b>\$816.00</b>
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B. ALTA Loan Policy - Proposed Insured <b>Firstbank, It's successors and/or assigns</b>	<b>\$325,000.00</b>	<b>\$150.00</b>
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C. None - Proposed Insured:	<b>\$</b>	<b>\$</b>
-----------------------------	-----------	-----------

Endorsement 100	<b>\$50.00</b>
Endorsement	<b>\$0.00</b>
[OEC]	<b>\$65.00</b>
<b>TAX CERTIFICATE</b>	<b>\$25.00</b>
[ ]	<b>\$</b>
[ ]	<b>\$</b>
<b>TOTAL</b>	<b>\$1,156.00</b>

3. The estate or interest in the land described or referred to in this commitment and covered herein is **FEE SIMPLE** and title thereto is at the effective date hereof vested in:

**Charles V. Fresquez and Linda McIntyre and Nadine J. Garcia**

4. The land referred to in this commitment is described as follows:

**LOTS 6 AND 7, BLOCK 14, VIADUCT ADDITION, CITY AND COUNTY OF DENVER, STATE OF COLORADO.**



## **SCHEDULE B-1**

### **Requirements**

The following are to be complied with:

Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to-wit:

- A. A PROPER DEED FROM **Charles V. Fresquez, Linda McIntyre and Nadine J. Garcia TO Gearhart Moore Holdings, LLC**, CONVEYING SUBJECT PROPERTY.
- B. DEED OF TRUST FROM **Gearhart Moore Holdings, LLC**, TO THE PUBLIC TRUSTEE OF DENVER COUNTY FOR THE USE OF **Firstbank** TO SECURE PAYMENT OF \$325,000.00.
- C. RELEASE BY THE PUBLIC TRUSTEE OF DENVER COUNTY OF THE DEED OF TRUST FROM CHARLES V. FRESQUEZ, LINDA MCINTYRE AND NADINE J. GARCIA FOR THE USE OF BANK OF THE WEST TO SECURE \$30,000.00, DATED MAY 23, 2014, AND RECORDED JUNE 2, 2014 AT RECEPTION NO. 2014062693.
- D. STATEMENT OF AUTHORITY FOR, GEARHART MOORE HOLDINGS, LLC. A COLORADO LIMITED LIABILITY COMPANY EVIDENCING THE EXISTENCE OF THE ENTITY AND AUTHORITY OF PERSON AUTHORIZED TO EXECUTE INSTRUMENT CONVEYING, ENCUMBERING OR OTHERWISE AFFECTING TITLE TO REAL PROPERTY ON BEHALF OF THE ENTITY, AND CONTAINING THE OTHER INFORMATION REQUIRED BY CRS 38-30-172, EVIDENCING THE EXISTENCE OF SAID ENTITY ON, OR PRIOR TO ITS ACQUISITION OF TITLE TO THE LAND HEREIN.
- E. NOTE: IF THE SALES PRICE OF THE SUBJECT PROPERTY EXCEEDS \$100,000.00, THE SELLER SHALL BE REQUIRED TO COMPLY WITH THE DISCLOSURE OF WITHHOLDING PROVISIONS OF C.R.S. 39-22-604.5 (NONRESIDENT WITHHOLDING).
- F. RECEIPT BY THE COMPANY OF THE COMPANY'S FINAL AFFIDAVIT AND AGREEMENT INDEMNIFYING IT AGAINST UNFILED MECHANIC'S AND MATERIALMEN'S LIENS.

**SCHEDULE B-2****Exceptions**

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Rights or claims of parties in possession not shown by the public records.
2. Easements or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortages in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims, or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. Unpatented mining claims: reservations or exceptions in Patents or in Acts authorizing the issuance thereof, water rights, claims or title to water;  
NOTE: Item no. 6 of the above will not appear on the Lender's Policy (if any) to be issued hereunder.
7. Taxes and assessments which are a lien or are now due and payable; any tax, special assessment, charge or lien imposed for or by any special taxing district or for water or sewer service; any unredeemed tax sales.
8. ANY AND ALL UNPAID TAXES AND ASSESSMENTS. A TAX CERTIFICATE HAS BEEN ORDERED.

## DISCLOSURE ATTACHMENT

**Note (1)** Exception No. 4 of Schedule B, Section 2 concerning unrecorded mechanics' or material men's liens, may be deleted from The owner's policy upon satisfaction and compliance with underwriting requirements established by the Company.

These requirements may include the following:

(1) The land described in Schedule A of this commitment must be a Single-family residence, including a condominium or townhouse unit.

(2) No labor, services or materials must have been furnished for repair, improvement or construction on the land described in Schedule A within the 13 months immediately proceeding the effective date of this Commitment.

(3) The Company must receive a satisfactory affidavit and indemnity agreement which indemnifies it against any claims of liens for labor, services or materials heretofore or hereafter furnished for repair, improvement or construction on the land described in Schedule A.

(4) The Company may establish additional requirements which it deems reasonably necessary as a prerequisite to making an Underwriting determination concerning its willingness to delete the said exception of Schedule B, Section 2.

**Note (2)** Colorado Insurance Regulations, 3-5-1, Paragraph C of Article VII requires that: "Every Title Entity shall be responsible for all matters which appear of public record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed."

**Note (3)** The following disclosures are hereby made Pursuant to Colorado Revised Statutes 10-11-122:

- a: The subject property may be located in a special taxing district;
- b: A Certificate of Taxes Due listing each taxing jurisdiction shall be obtained from the County Treasurer or the County Treasurer's authorized agent;
- c: Information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and recorder, or the County Assessor.

**Note (4)** If there has been a mineral severance, Pursuant to CRS 10-11-123 Notice is hereby given:

- a: That there is recorded evidence that a mineral estate has been severed, leased or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
- b: That such mineral estate may include the right to enter and use the property without the surface owner's permission.

**Note (5)** Effective September 1, 1997, CRS 30-10-406 requires that all documents received for recording or filing in the clerk and recorders office shall contain a top margin of at least once-inch and a left, right and bottom margin of at least one half of an inch. The clerk and recorder may refuse to record or file any document that does not conform, except that, the requirement for the top margin shall not apply to documents using forms on which space is provided for recording or filing information at the top margin of the document.

**Note (6)** If the sales price of the subject property exceeds \$100,000.00, the seller shall be required to comply with the disclosure or withholding provisions of Colorado Revised Statutes 39-22-604.5 (Non-resident withholding).

**NOTHING HEREIN CONTAINED WILL BE DEEMED TO OBLIGATE THE COMPANY TO PROVIDE ANY OF THE COVERAGES REFERRED TO HEREIN UNLESS THE ABOVE CONDITIONS ARE FULLY SATISFIED.**

## FINAL AFFIDAVIT AND AGREEMENT

The undersigned, as General Contractor and/or Owner and Purchaser, for the purpose of inducing to issue its Loan and/or Owners Policy for Title Insurance in connection with the property described as:

**SEE ATTACHED EXHIBIT "A"**

do hereby make the following representations to with full knowledge and intent that said company shall rely thereon:

### OWNER'S AND/OR GENERAL CONTRACTOR'S STATEMENT:

1. The undersigned is/are the owner(s) of the said property and there are no other present owner(s) of this property or any portion thereof.
2. The undersigned have possession of all of this property and no other person or entity has any right or claim, written or verbal, to use or possess any portion of said property.
3. The undersigned know of no easements, rights of way, liens, agreements, options, contracts or other rights in or claims to the property, written or verbal, recorded or unrecorded, other than those disclosed in the Commitment for Title Insurance.
4. That all persons, firms and corporations, including the General Contractor, and all subcontractors, who have furnished services, labor or materials, used for construction, renovation, repair, maintenance, remodeling or other types of construction of improvements on the real estate described, have been paid in full. And the undersigned is/are aware of no invoices, bills, claims or demands for labor, services or materials for which claim of payment has been made.
5. That no claims have been made to the undersigned, nor is any suit now pending of any contractor, subcontractor, laborer or materialman, and that no chattel mortgages, conditional bills of sale, security agreements or financing statements have been made, or are now outstanding as to any materials, appliances, fixtures, or furnishings placed upon or installed in said premises.
6. That all of the improvements constructed on the real estate herein described were completed on or before .

### PURCHASER'S STATEMENT:

1. That the improvements on the real estate herein described have been fully completed by the General Contractor and have been accepted by the undersigned as completed and as satisfactory.
2. That the full purchase price has been paid by said Purchasers to said contractor and/or Seller.
3. That said premises **were/will be** occupied by said Purchasers on or about .
4. That the undersigned have not caused or agreed to or contracted for any labor, services or materials to be furnished or work to be done on said improvements which materials or labor have not been paid for in full, or which material or labor could give rise to mechanic's or other statutory liens and have not executed any security agreements or financing statements for materials, appliances, fixtures or furnishings placed upon or installed in said premises.

THEREFORE THE UNDERSIGNED DO JOINTLY AND SEVERALLY HEREBY AGREE, DEFEND AND SAVE HARMLESS AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, COSTS AND ATTORNEY FEES BY REASON OF ANY CLAIMS OR LIENS ASSERTED WITH RESPECT TO THE MATTERS DESCRIBED IN THE ABOVE PARAGRAPH(S). THIS PARAGRAPH SHALL APPLY ONLY TO EACH OF THE UNDERSIGNED ONLY TO THE EXTENT OF THE ABOVE REPRESENTATIONS MADE BY EACH RESPECTIVE PERSON SIGNING ON THE EXHIBIT "A" FORM ATTACHED HERETO AND MADE PART HEREOF.

**SEE ATTACHED EXHIBIT "A" FOR PROPERTY LEGAL DESCRIPTION, SIGNATURE LINES AND REQUIRED ACKNOWLEDGEMENT.**





02/07/2014 02:38 PM  
City & County of Denver

R \$11.00

QCD

2014013945

Page: 1 of 1

D \$0.00

# QUITCLAIM DEED

THIS DEED made this \_\_\_\_ day of February 2014 between Charles V. Fresquez, Linda McIntyre, and Ronald J. Fresquez, Grantors, and Charles V. Fresquez, Linda McIntyre, and Nadine J. Garcia, as joint tenants, whose legal address is 4232 Jason Street, Denver, CO 80211, Grantees:

WITNESS, that the Grantors, for and in consideration of less than five hundred dollars, the receipt and sufficiency of which is hereby acknowledged, have remised, released, sold and QUITCLAIMED, and by these presents do remise, release, sell and QUITCLAIM unto the grantees, their heirs, successors, and assigns forever, not as tenants in common, but as joint tenants, for all the right, title, interest, claim and demand which the grantors have in and to the real property, together with improvements, if any, situate, lying and being in the City and County of Denver and State of Colorado, described as follows:

Lot Six (6) and Seven (7), Block Fourteen (14), Viaduct Addition, City and County of Denver, State of Colorado

also known by street and number as: 4232 Jason Street, Denver, CO 80211

\*\*Exempt from Documentary Fee pursuant to CRS 39-13-102(2)(a): Consideration less than \$500.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantors, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances subject to: taxes and assessments for 2013 and subsequent years, and easements and restrictions of record.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the grantor, either in law or equity, to the only proper use, benefit and behoof of the Grantees' heirs, successors, and assigns forever.

IN WITNESS WHEREOF the Grantors have executed this deed on the date set forth above.

Charles V. Fresquez

Linda McIntyre

Ronald J. Fresquez

STATE OF COLORADO )  
 ) ss.  
CITY & COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of February 2014, by Charles V. Fresquez.

Witness my hand and official seal.  
My commission expires:

Allison Marie Grout  
Notary Public

STATE OF COLORADO )  
 ) ss.  
CITY & COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of February 2014, by Linda McIntyre.

Witness my hand and official seal.  
My commission expires:

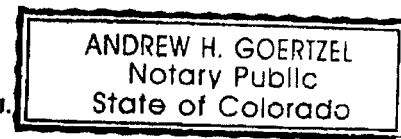
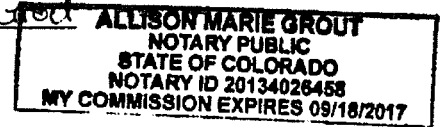
Allison Marie Grout  
Notary Public

STATE OF COLORADO )  
 ) ss.  
CITY & COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 6 day of February 2014, by Ronald J. Fresquez.

Witness my hand and official seal.  
My commission expires:

Allison Marie Grout  
Notary Public



1-22-17



2014062693

Page: 1 of 9

06/02/2014 01:46 PM  
City & County of Denver  
Electronically Recorded

R \$51.00

DOT

D \$0.00

**RECORDATION REQUESTED BY:**

BANK OF THE WEST  
DENVER-NORTH  
3460 W 38TH AVENUE  
DENVER, CO 80211-1912

**WHEN RECORDED MAIL TO:**

BANK OF THE WEST  
CONSUMER PRODUCT SERVICING  
P.O. BOX 2497  
OMAHA, NE 68103-2497

**RETURN TO:**  
**DRI Title & Escrow**  
**13057 W. Center Rd., Ste #1**  
**Omaha, NE 68144**

**FOR RECORDER'S USE ONLY**

6266813

**DEED OF TRUST**

**MAXIMUM PRINCIPAL AMOUNT SECURED.** The Lien of this Deed of Trust shall not exceed at any one time \$30,000.00 except as allowed under applicable Colorado law.

**THIS DEED OF TRUST** is dated May 23, 2014, among CHARLES V FRESQUEZ, whose address is 4232 JASON ST, DENVER, CO 80211; LINDA MCINTYRE, whose address is 5020 RALEIGH ST, DENVER, CO 80212 and NADINE J GARCIA, whose address is 11310 HUDSON ST, THORTON, CO 80233, NOT AS TENANTS IN COMMON, BUT AS JOINT TENANTS ("Grantor"); BANK OF THE WEST, whose address is DENVER-NORTH, 3460 W 38TH AVENUE, DENVER, CO 80211-1912 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and the Public Trustee of the City and County of Denver, Colorado (referred to below as "Trustee").

**CONVEYANCE AND GRANT.** For valuable consideration, Grantor hereby irrevocably grants, transfers and assigns to Trustee for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in DENVER County, State of Colorado:

**LOT SIX (6) AND SEVEN (7), BLOCK FOURTEEN (14), VIADUCT ADDITION, CITY AND COUNTY OF DENVER, STATE OF COLORADO**

**The Real Property or its address is commonly known as 4232 JASON ST, DENVER, CO 80211.**

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that: (a) this Deed of Trust is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Property; (c) the provisions of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

**GRANTOR'S WAIVERS.** Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Borrower shall pay to Lender all Indebtedness secured by this Deed of Trust as it becomes due, and Borrower and Grantor shall perform all their respective obligations under the Note, this Deed of Trust, and the Related Documents.

1446789-943453

**DEED OF TRUST  
(Continued)****Page 2**

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Borrower and Grantor agree that Borrower's and Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient

**DEED OF TRUST  
(Continued)**

Page 3

corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender, together with such other hazard and liability insurance as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**LENDER'S EXPENDITURES.** If Grantor fails (A) to keep the Property free of all taxes, liens, security interests, encumbrances, and other claims, (B) to provide any required insurance on the Property, or (C) to make repairs to the Property then Lender may do so. If any action or proceeding is commenced that would materially affect Lender's interests in the Property, then Lender on Grantor's behalf may, but is not required to, take any action that Lender believes to be appropriate to protect Lender's interests. All expenses incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of any default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Deed of Trust:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing



**DEED OF TRUST  
(Continued)**

Page 4

applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Promises.** All promises, agreements, and statements Grantor has made in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature and shall remain in full force and effect until such time as Borrower's Indebtedness is paid in full.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Borrower.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Borrower's and Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with

**DEED OF TRUST  
(Continued)****Page 5**

the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** Upon the full performance of all the obligations under the Note and this Deed of Trust, Trustee may, upon production of documents and fees as required under applicable law, release this Deed of Trust, and such release shall constitute a release of the lien for all such additional sums and expenditures made pursuant to this Deed of Trust. Lender agrees to cooperate with Grantor in obtaining such release and releasing the other collateral securing the Indebtedness. Any release fees required by law shall be paid by Grantor, if permitted by applicable law.

**EVENTS OF DEFAULT.** At Lender's option, Grantor will be in default under this Deed of Trust if any of the following happen:

**Payment Default.** Borrower fails to make any payment when due under the Indebtedness.

**Break Other Promises.** Borrower or Grantor breaks any promise made to Lender or fails to perform promptly at the time and strictly in the manner provided in this Deed of Trust or in any agreement related to this Deed of Trust.

**Compliance Default.** Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

**Default on Other Payments.** Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**False Statements.** Any representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

**Defective Collateralization.** This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The death of Borrower or Grantor, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor.

**Taking of the Property.** Any creditor or governmental agency tries to take any of the Property or any other of Borrower's or Grantor's property in which Lender has a lien. This includes taking of, garnishing of or levying on Borrower's or Grantor's accounts with Lender. However, if Borrower or Grantor disputes in good faith whether the claim on which the taking of the Property is based is valid or reasonable, and if Borrower or Grantor gives Lender written notice of the claim and furnishes Lender with monies or a surety bond satisfactory to Lender to satisfy the claim, then this default provision will not apply.

**Breach of Other Agreement.** Any breach by Borrower or Grantor under the terms of any other agreement between Borrower or Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Borrower or Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**RIGHTS AND REMEDIES ON DEFAULT.** Subject to any applicable notice and cure provisions under Colorado law, if an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

**Election of Remedies.** All of Lender's rights and remedies will be cumulative and may be exercised alone or together. An election by Lender to choose any one remedy will not bar Lender from using any other remedy. If Lender decides to spend money or to perform any of Grantor's obligations under this Deed of Trust, after Grantor's failure to do so, that decision by Lender will not affect Lender's right to declare Grantor in default and to exercise Lender's remedies.

**Accelerate Indebtedness.** Lender shall have the right at its option to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Borrower would be required to pay.

**Foreclosure.** Lender shall have the right to cause all or any part of the Real Property, and Personal Property, if Lender decides to proceed against it as if it were real property, to be sold by the Trustee according to the laws of the State of Colorado as respects foreclosures against real property. The Trustee shall give notice in accordance with the laws of Colorado. The Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including but not limited to Trustee's fees, attorneys' fees, and the cost of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled to the excess.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right to take possession of and manage the Property and collect the Rents, including

**DEED OF TRUST  
(Continued)****Page 6**

amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver. Receiver may be appointed by a court of competent jurisdiction upon ex parte application and without notice, notice being expressly waived.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Borrower or Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

**Sale of the Property.** In exercising its rights and remedies, Lender shall be free to designate on or before it files a notice of election and demand with the Trustee, that the Trustee sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. Upon any sale of the Property, whether made under a power of sale granted in this Deed of Trust or pursuant to judicial proceedings, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all, or any portion of, the Indebtedness for or in settlement or payment of all, or any portion of, the purchase price of the Property purchased, and, in such case, this Deed of Trust, the Note, and any documents evidencing expenditures secured by this Deed of Trust shall be presented to the person conducting the sale in order that the amount of Indebtedness so used or applied may be credited thereon as having been paid.

**Attorneys' Fees; Expenses.** If Lender forecloses or institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**Rights of Trustee.** To the extent permitted by applicable law, Trustee shall have all of the rights and duties of Lender as set forth in this section.

**NOTICES.** Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any person may change his or her address for notices under this Deed of Trust by giving formal written notice to the other person or persons, specifying that the purpose of the notice is to change the person's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors. It will be Grantor's responsibility to tell the others of the notice from Lender.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** What is written in this Deed of Trust and in the Related Documents is Grantor's entire agreement with Lender concerning the matters covered by this Deed of Trust. To be effective, any change or amendment to this Deed of Trust must be in writing and must be signed by whoever will be bound or obligated by the change or amendment.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

## DEED OF TRUST (Continued)

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**Governing Law.** This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Colorado.

**Joint and Several Liability.** All obligations of Borrower and Grantor under this Deed of Trust shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Grantor signing below is responsible for all obligations in this Deed of Trust.

**No Waiver by Lender.** Grantor understands Lender will not give up any of Lender's rights under this Deed of Trust unless Lender does so in writing. The fact that Lender delays or omits to exercise any right will not mean that Lender has given up that right. If Lender does agree in writing to give up one of Lender's rights, that does not mean Grantor will not have to comply with the other provisions of this Deed of Trust. Grantor also understands that if Lender does consent to a request, that does not mean that Grantor will not have to get Lender's consent again if the situation happens again. Grantor further understands that just because Lender consents to one or more of Grantor's requests, that does not mean Lender will be required to consent to any of Grantor's future requests. Grantor waives presentment, demand for payment, protest, and notice of dishonor. In the event Lender institutes legal process to obtain possession of the Property and to the extent permitted by law, Grantor hereby knowingly and voluntarily waives any right to a hearing prior to a court order granting Lender the right to take possession of the Property. Grantor waives all rights of exemption from execution or similar law in the Property, and Grantor agrees that the rights of Lender in the Property under this Deed of Trust are prior to Grantor's rights while this Deed of Trust remains in effect.

**Severability.** If a court finds that any provision of this Deed of Trust is not valid or should not be enforced, that fact by itself will not mean that the rest of this Deed of Trust will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Deed of Trust even if a provision of this Deed of Trust may be found to be invalid or unenforceable.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the Indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Colorado as to all Indebtedness secured by this Deed of Trust.

**DEFINITIONS.** The following words shall have the following meanings when used in this Deed of Trust:

**Beneficiary.** The word "Beneficiary" means BANK OF THE WEST, and its successors and assigns.

**Borrower.** The word "Borrower" means NADINE J GARCIA and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

**Grantor.** The word "Grantor" means CHARLES V FRESQUEZ, LINDA MCINTYRE and NADINE J GARCIA.

**Guaranty.** The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses



**DEED OF TRUST  
(Continued)**

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incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

**Lender.** The word "Lender" means BANK OF THE WEST, its successors and assigns. The words "successors or assigns" mean any person or company that acquires any interest in the Note.

**Note.** The word "Note" means the promissory note dated May 23, 2014, in the original principal amount of **\$30,000.00** from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of the Note is May 22, 2029.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

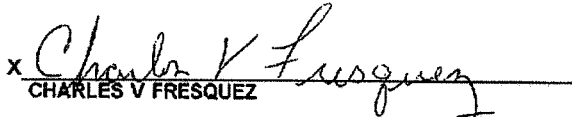
**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

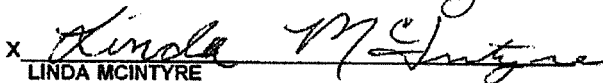
**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

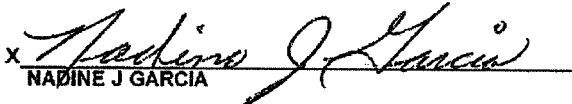
**Trustee.** The word "Trustee" means the Public Trustee of the City and County of Denver, Colorado.

**EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND EACH GRANTOR AGREES TO ITS TERMS.**

**GRANTOR:**

x   
CHARLES V FRESQUEZ

x   
LINDA MCINTYRE

x   
NADINE J GARCIA

DEED OF TRUST  
(Continued)

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## INDIVIDUAL ACKNOWLEDGMENT

STATE OF Colorado )  
 ) SS  
COUNTY OF Denver )

On this day before me, the undersigned Notary Public, personally appeared CHARLES V FRESQUEZ; LINDA MCINTYRE; and NADINE J GARCIA, to me known to be the individuals described in and who executed the Deed of Trust, and acknowledged that they signed the Deed of Trust as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 23 day of May, 20 14.

By [Signature]

Residing at 7460 W 28th Ave

Notary Public in and for the State of Colorado

Phuong Huynh  
Notary Public  
State of Colorado

My commission expires October 31, 2014

My Commission Expires October 31 2014

## Originator Names and Nationwide Mortgage Licensing System and Registry IDs:

Organization: BANK OF THE WEST

NMLSR ID: 19116

Individual: PHUONG HUYNH

NMLSR ID: 683133


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TR-6266813 PR-13

JANUARY 3, 2017

CITY OF DENVER  
COMMUNITY PLANNING & DEVELOPMENT  
201 W. COLFAX, DEPT. 205  
DENVER, CO. 80202

TO WHOM IT MAY CONCERN:

AS THE PRINCIPAL OWNERS OF  
4232 JASON ST, DENVER CO. 80211.  
I AUTHORIZE BEN GEARHART AND  
CHARLES MOORE OF GEARHART MOORE  
HOLDINGS, LLC. TO SUBMIT A  
REZONING APPLICATION AS THE  
PROPERTY OWNERS REPRESENTATIVE.

BEST  
x. Charles V. Fresquez  
x   
x Nadine J Garcia

CHARLES V. FRESQUEZ  
LINDA MCINTYRE  
NADINE J GARCIA

# **4232 Jason St – Rezoning Summary (Revised)**

**March 2, 2017**

**Rezone From I-A, UO-2 to C-RX-8**

**Project Address: 4232 Jason St**

**Acreage: 6,250 sq ft (Approx. 0.14 acres)**

## **1) Consistency with Adopted Plans**

Under Blue Print Denver the area has been designated as an “area of change” with proposed “Higher Density residential uses along the new light rail station.” The 41<sup>st</sup> and Fox street plan calls to “create a transit-friendly neighborhood through private redevelopment from heavy industrial to...commercial, mixed-use located close to the transit station.” The proposed rezone from IA to C-RX-8 is in alignment with adopted plans and will help contribute to a transit friendly neighborhood and the intent of Blueprint Denver for “higher residential density along the new light rail station”. All of these components also align with Comprehensive Plan 2000 which states that the “Ongoing clarification of the Zoning Ordinance in a process linked to a citywide land-use plan will eventually result in a built environment with greater overall urban design integrity, stronger connections among urban centers, and a richer and more diverse mix of uses within geographically proximate areas. The linking of these activities will be especially useful in identifying opportunities for the development of housing, transportation, open space, necessary community facilities and other essential uses that are more difficult to integrate.” Although the Sunnyside Neighborhood Plan recommends industrial at this location, that plan is older than the 41<sup>st</sup> & Fox Station Area Plan and pre-dates the commuter rail station being located in this area. This rezoning request is appropriately consistent with the more recent plan.

**2) Uniformity of District Regulations.** Although the current block is primarily industrial, this area is seeing a rapid change to higher density residential under the guidance of the 41<sup>st</sup> and Fox station plan this property is one of several that is requesting rezoning to high density residential and will create a new corridor of high quality mixed housing types adjacent to the new light rail station.

**3) Public Health, Safety and General Welfare.** The proposed change from Industrial to C-RX-8 will allow our team to create a quality mixed-use commercial/residential project that will contribute to the need for commuter housing and ground floor commercial use to provide street level activation. The current property is in poor condition and the proposed redevelopment will provide safer, healthier homes, with a neighborhood friendly ground floor commercial use. Ground floor parking will also be provided on the first level to not overburden street level parking.

## **4) Description of Justifying Circumstances**

Because of the new light rail station, and the rising popularity of the Sunnyside and the Highlands neighborhood, and the proximity of this area to downtown this area has seen a high demand for new housing. By converting this industrial area to high density residential this will help the city meet the rising demand while respecting the existing neighborhood to the west.

## **5) Consistency with Neighborhood Context**

The property borders residential zoned districts to the west, with increased residential and mixed use districts being proposed on the east the rezone of this property will be in alignment with the existing neighborhood and future neighborhood plans.

## **Robinson, Scott D. - CPD Planning Services**

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**From:** Rezoning - CPD  
**Sent:** Tuesday, April 25, 2017 11:08 AM  
**To:** Robinson, Scott D. - CPD Planning Services  
**Subject:** FW: 4232 Jason Street Rezoning

**From:** Phillip Zakrzewski [mailto:phillip.zakrzewski@gmail.com]  
**Sent:** Monday, April 24, 2017 3:50 PM  
**To:** Rezoning - CPD <Rezoning@denvergov.org>  
**Subject:** 4232 Jason Street Rezoning

We fully support this rezoning. We need to increase density in Denver, and this site is a five-minute walk from the 41st and Fox commuter rail station. The uses on the surrounding blocks do not maximize the potential in the area. Sunnyside is but a few minutes by bike/walking/train from downtown - this is where it makes sense to increase density and meet the demands that our city is undergoing.

Thank you,

Phillip Zakrzewski  
1857 W. 41st Avenue  
Denver, CO 80211