



## Zone Map Amendment (Rezoning) - Application

<b>PROPERTY OWNER INFORMATION*</b>	
<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR FEE PAYMENT***	
Property Owner Name	
Address	
City, State, Zip	
Telephone	
Email	
<p>*All standard zone map amendment applications must be initiated by owners (or authorized representatives) of at least 51% of the total area of the zone lots subject to the rezoning. See page 4.</p>	
<b>PROPERTY OWNER(S) REPRESENTATIVE**</b>	
<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR FEE PAYMENT***	
Representative Name	
Address	
City, State, Zip	
Telephone	
Email	
<p>**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.</p>	
<p>***If contact for fee payment is other than above, please provide contact name and contact information on an attachment.</p>	
<b>SUBJECT PROPERTY INFORMATION</b>	
Location (address):	
Assessor's Parcel Numbers:	
Area in Acres or Square Feet:	
Current Zone District(s):	
<b>PROPOSAL</b>	
Proposed Zone District:	
<b>PRE-APPLICATION INFORMATION</b>	
In addition to the required pre-application meeting with Planning Services, did you have a concept or a pre-application meeting with Development Services?	<input type="checkbox"/> Yes - State the contact name & meeting date _____ <input type="checkbox"/> No - Describe why not (in outreach attachment, see bottom of p. 3)
Did you contact the City Council District Office regarding this application ?	<input type="checkbox"/> Yes - if yes, state date and method _____ <input type="checkbox"/> No - if no, describe why not (in outreach attachment, see bottom of p. 3)



## REZONING REVIEW CRITERIA (ACKNOWLEDGE EACH SECTION)

<p>General Review Criteria DZC Sec. 12.4.10.7.A</p> <p>Check box to affirm <b>and</b> include sections in the review criteria narrative attachment</p>	<p><input type="checkbox"/> <b>Consistency with Adopted Plans:</b> 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.</p> <p>Please provide a review criteria narrative attachment describing <b>how</b> the requested zone district is consistent with the policies and recommendations found in <b>each</b> of the adopted plans below. Each plan should have its' own subsection.</p> <p><b>1. Denver Comprehensive Plan 2040</b></p> <p>In this section of the attachment, describe <b>how</b> the proposed map amendment is consistent with <i>Denver Comprehensive Plan 2040</i>'s a) equity goals, b) climate goals, and c) any other applicable goals/strategies.</p> <p><b>2. Blueprint Denver</b></p> <p>In this section of the attachment, describe <b>how</b> the proposed map amendment is consistent with: a) the neighborhood context, b) the future place type, c) the growth strategy, d) adjacent street types, e) plan policies and strategies, and f) equity concepts contained in <i>Blueprint Denver</i>.</p> <p><b>3. Neighborhood/ Small Area Plan and Other Plans (List all from pre-application meeting, if applicable):</b></p>
<p>General Review Criteria: DZC Sec. 12.4.10.7. B &amp; C</p> <p>Check boxes to the right to affirm <b>and</b> include a section in the review criteria for Public Health, Safety and General Welfare narrative attachment.</p>	<p><input type="checkbox"/> <b>Uniformity of District Regulations and Restrictions:</b> 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.</p> <p><input type="checkbox"/> <b>Public Health, Safety and General Welfare:</b> The proposed official map amendment furthers the public health, safety, and general welfare of the City.</p> <p>In the review criteria narrative attachment, please provide an additional section describing <b>how</b> the requested rezoning furthers the public health, safety and general welfare of the City.</p>
<p>Review Criteria for Non-Legislative Rezonings: DZC Sec. 12.4.10.8</p> <p>For Justifying Circumstances, check box and include a section in the review criteria narrative attachment.</p> <p>For Neighborhood Context, Purpose and Intent, check box <b>and</b> include a section in the review criteria narrative attachment.</p>	<p><b>Justifying Circumstances - One of the following circumstances exists:</b></p> <p><input type="checkbox"/> The existing zoning of the land was the result of an error;</p> <p><input type="checkbox"/> The existing zoning of the land was based on a mistake of fact;</p> <p><input type="checkbox"/> The existing zoning of the land failed to take into account the constraints of development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage;</p> <p><input type="checkbox"/> Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such change may include:</p> <ul style="list-style-type: none"><li>a. Changed or changing conditions in a particular area, or in the city generally; or</li><li>b. A City adopted plan; or</li><li>c. That the City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning.</li></ul> <p><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.</p> <p>In the review criteria narrative attachment, please provide an additional section describing the selected justifying circumstance. If the changing conditions circumstance is selected, describe changes since the site was last zoned. Contact your pre-application case manager if you have questions.</p> <p><input type="checkbox"/> <b>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.</b></p> <p>In the review criteria narrative attachment, please provide a separate section describing <b>how</b> the rezoning aligns with a) the proposed district neighborhood context description, b) the general purpose statement, and c) the specific intent statement found in the Denver Zoning Code.</p>



## REQUIRED ATTACHMENTS

Please check boxes below to affirm the following **required** attachments are submitted with this rezoning application:

- Legal Description of subject property(s). **Submit as a separate Microsoft Word document.** View guidelines at: <https://www.denvergov.org/content/denvergov/en/transportation-infrastructure/programs-services/right-of-way-survey/guidelines-for-land-descriptions.html>
- Proof of ownership document for each property owner signing the application, such as (a) Assessor's Record, (b) Warranty deed, or (c) Title policy or commitment dated no earlier than 60 days prior to application date. If the owner is a corporate entity, proof of authorization for an individual to sign on behalf of the organization is required. This can include board resolutions authorizing the signer, bylaws, a Statement of Authority, or other legal documents as approved by the City Attorney's Office.
- Review Criteria Narratives. See page 2 for details.

## ADDITIONAL ATTACHMENTS (IF APPLICABLE)

Additional information may be needed and/or required. Please check boxes below identifying additional attachments provided with this application.

- Written narrative explaining reason for the request** (optional)
- Outreach documentation attachment(s).** Please describe any community outreach to City Council district office(s), Registered Neighborhood Organizations (RNOs) and surrounding neighbors. If outreach was via email- please include email chain. If the outreach was conducted by telephone or meeting, please include contact date(s), names and a description of feedback received. If you have not reached out to the City Council district office, please explain why not. (optional - encouraged )
- Letters of Support.** If surrounding neighbors or community members have provided letters in support of the rezoning request, please include them with the application as an attachment (optional).
- Written Authorization to Represent Property Owner(s)** (if applicable)
- Individual Authorization to Sign on Behalf of a Corporate Entity** (e.g. if the deed of the subject property lists a corporate entity such as an LLC as the owner, this document is required.)
- Affordable Housing Review Team Acceptance Letter**
- Other Attachments.** Please describe below.



## REZONING GUIDE

Rezoning Application Page 4 of 4

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

We, the undersigned represent that we are the owner(s) 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	Date	Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed, (C) title policy or commitment, or (D) other as approved	Has the owner authorized a representative in writing? (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 Josie Q. Smith</i>	01/12/20	(A)	YES
Chris Student	3300 N Irving St Denver, CO 80211 952-201-5676	100%	<i>Chris Student</i>	4/10/24	B	YES
						YES
						YES
						YES

## SPECIAL WARRANTY DEED

**THIS DEED** is dated the 7th day of May, 2021, and is made between  
(whether one, or more than one),

The Gilbert E. Vigil Revocable Trust

the "Grantor" of the County of \_\_\_\_\_ and State of Colorado and

P Street III LLC, a Colorado limited liability company

(whether one, or more than one), the "Grantee", whose legal address is 730 Kalamath Street, Denver, CO 80204 of the County of Denver and State of Colorado.

**WITNESS**, that the Grantor, for and in consideration of the sum of **One Million Dollars and No Cents ( \$1,000,000.00 )**, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, conveys and confirms unto the Grantee and the Grantee's heirs and assigns forever, all the real property, together with any improvements thereon, located in the City and County of Denver and State of Colorado described as follows:

**See Exhibit "A" attached hereto and made a part hereof**

also known by street address as: 3300 North Irving Street, Denver, CO 80211

**TOGETHER** with all and singular the hereditaments and appurtenances thereto 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 Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

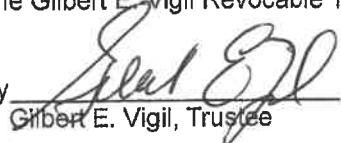
**TO HAVE AND TO HOLD** the said premises above bargained and described, with the appurtenances, unto the Grantee, and the Grantee's heirs and assigns forever, The Grantor, for the Grantor and the Grantor's heirs and assigns, does covenant, grant, bargain, and agree that the Grantor shall and will WARRANT THE TITLE AND DEFEND the above described premises, in the quiet and peaceable possession of the Grantee and the heirs and assigns of the Grantee, against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor except and subject to:

**See Exhibit "B" attached hereto and made a part hereof**

**IN WITNESS WHEREOF**, the Grantor has executed this deed on the date set forth above.

The Gilbert E. Vigil Revocable Trust

By



Gilbert E. Vigil, Trustee

**OPERATING AGREEMENT**

**OF**

**P STREET III, LLC,  
a Colorado limited liability company**

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**OPERATING AGREEMENT  
OF  
P STREET III, LLC  
a Colorado limited liability company**

This Operating Agreement (the "Agreement") is made and entered into as of August 4, 2020, by and between the Members listed on **Exhibit A** attached hereto (each a "Member", and collectively, the "Members"), and **P STREET III, LLC**, a Colorado limited liability company (the "Company"), on the following terms and conditions. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in ARTICLE 2.

**ARTICLE 1 - FORMATION OF THE COMPANY**

1.1 Formation; Articles of Organization. On August 4, 2020, the Company was organized as a Colorado limited liability company under and pursuant to the Act by filing the Articles with the Secretary of State. The rights and obligations of the Company and the Members shall be as provided in the Act, the Articles and this Agreement. This Agreement is subject to, and governed by, the Act and the Articles. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the Act or the provisions of the Articles, such provisions of the Act or the Articles, as the case may be, shall be controlling.

1.2 Name. The name of the Company is "P Street III, LLC", or such other name as the Manager from time to time may determine, and all business of the Company shall be conducted in such name as the Manager shall determine.

1.3 Principal Place of Business. The principal place of business of the Company within the State of Colorado shall be 730 Kalamath, Denver, Colorado 80204. The Company may locate its place of business at any other place or places as the Manager may from time to time deem advisable.

1.4 Registered Office and Registered Agent. The Company's registered office shall be at the office of its registered agent at 16350 E. Arapahoe Road, Suite 108-102, Foxfield, CO 80016, and the name of its registered agent at such address shall be Schelwat Law, LLC. The registered office and registered agent may be changed from time to time by the Manager as the Manager deems advisable by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State pursuant to the Act.

1.5 Statutory Requirements. The Manager shall execute and file any assumed or fictitious name certificates and other documents required by, and otherwise shall conform with, all applicable laws in the conduct of the Company business.

1.6 Partnership Classification. It is the intention of the parties hereto that the Company be treated as a partnership for federal income tax purposes as defined in Section 7701 of the Code (as defined herein).

## ARTICLE 2- GLOSSARY OF DEFINED TERMS

2.1     "Act" means the provisions of the Colorado Limited Liability Company Act, C.R.S. § 7-80-101, et seq. and any provisions of any successor act.

2.2     "Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the referenced Person. For purposes hereof, the terms "control", "controlled", or "controlling" with respect to a specified person or entity shall include, without limitation, (i) the ownership, control or power to vote ten percent (10%) or more of (x) the outstanding shares of any class of voting securities or (y) beneficial interests, of any such person or entity, as the case may be, directly or indirectly, or acting through one or more persons or entities, (ii) the control in any manner over the Manager(s) or the election of more than one director or trustee (or persons exercising similar functions) of such person or entity, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such person or entity.

2.3     "Agreement" means this Operating Agreement of the Company.

2.4     "Articles" means the Articles of Organization of the Company filed with the Secretary of State with an effective date of August 4, 2020.

2.5     "Bankruptcy" means (1) the Person files a voluntary petition in bankruptcy; (2) the Person is adjudicated a bankrupt or insolvent; (3) the Person files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (4) the Person seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Person or of all or any substantial part of the Person's properties; (5) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed; or (6) if within 90 days after the appointment without the Person's consent or acquiescence of a trustee, receiver, or liquidator of the Person or of all or any substantial part of the Person's properties, the appointment is not vacated or stayed; or if, within 90 days after the expiration of any such stay, the appointment is not vacated.

2.6     "Book Value" means, with respect to any Company assets the asset's adjusted-basis-for federal income tax purposes, except that the Book Values of all Company assets shall be adjusted to equal their respective fair market values, in accordance with the rules set forth in Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, except as otherwise provided herein, immediately prior to: (a) the date of the acquisition of any additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (b) the date of the actual distribution of more than a *de minimis* amount of Company property (other than a pro rata distribution) to a Member; or (c) the date of the actual liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations; provided that adjustments pursuant to clauses (a) and (b) above shall be made only if the Manager determines in its sole discretion that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members. The Book Value of any Company asset distributed to any Member shall be adjusted immediately prior to such distribution to equal its fair market value.

The Book Value of any Company asset shall be adjusted to reflect any write-down that constitutes a disposition of such asset.

2.7     "Capital Account" means the capital account of each Member established and maintained in accordance with Section 5.1.

2.8     "Capital Contribution" means any contribution of cash, the fair value of property or services, or the obligation to contribute cash, property or services made by or on behalf of a Member.

2.9     "Capital Loan" shall have the meaning set forth in Section 4.3(b).

2.10    "Cash Flow" means all cash funds of the Company on hand from time to time less (1) principal and interest payments on indebtedness of the Company; (2) all cash expenditures incurred incident to the normal operation of the Company's business but not yet paid, including salaries, management fees, if any, and other guaranteed payments incident to the normal operation of the Company's business; and (3) such other Reserves as the Manager determines are necessary for the proper operation of the Company's business.

2.11    "Code" means the Internal Revenue Code of 1986, as amended, and any successor statutes.

2.12    "Company" means the limited liability company whose name appears in Section 1.2.

2.13    "Deficit Capital Account" shall mean with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the taxable year, after giving effect to the following adjustments:

(a)     Credit to such Capital Account (1) any amount which such Member is obligated to restore, under Section 1.704 1(b)(2)(ii)(c) of the Regulations, (2) the amount of such Member's share of Company minimum gain (as determined in accordance with Section 1.704 2(g)(1) and (g)(3) of the Regulations), and (3) the amount of such Member's share of Member nonrecourse debt minimum gain (as determined under Section 1.704 2(i)(5) of the Regulations); and

(b)     Debit to such Capital Account the items described in Sections 1.704 1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

2.14    "Dissolution Date" shall mean the date on which the Company dissolves pursuant to Section 12.1.

2.15    "Distributable Cash" means all cash funds of the Company less (i) all cash expenditures incurred incident to the normal operation of the Company's business but not yet paid, including salaries and other guaranteed payments incident to the normal operation of the Company's business, and (ii) such Reserves as the Manager reasonably determines are necessary for the proper operation of the Company's business.

2.16 "Economic Interest" means the right of an assignee of a Member to receive that Member's share of distributions and tax allocations pursuant to this Agreement and the holder of an Economic Interest shall have the right to receive the assigning Member's share of distributions and tax allocations pursuant to this Agreement, but shall not have the right (1) to participate in the management of the business and affairs of the Company, (2) to vote on any matter as a Member, or (3) to otherwise exercise or enjoy the powers or privileges of a Member under this Agreement, the Articles, or the Act.

2.17 "Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association.

2.18 "Fiscal Year" means the Company's fiscal year, which shall be a calendar year.

2.19 "Majority" whenever any matter is required or allowed to be approved by a Majority of the Members, such matters shall be considered approved or consented to upon the receipt of the affirmative approval or consent, either in writing or at a meeting, of those Members holding no less than fifty-one percent (51%) of the Percentage Interests entitled to vote on the date such approval is given.

2.20 "Manager" or "Managers" shall mean one or more managers. Initially, Manager shall mean Justin Brockman, and any other Person that succeeds him in that capacity.

2.21 "Member" means any Person listed in Exhibit A and any Person that is admitted as a new or additional Member after the date of this Agreement.

2.22 "Membership Interest" means the entire ownership interest of a Member in the Company at any particular time, including the right of a Member to any and all benefits to which a Member may be entitled as provided in this Agreement, the Articles and the Act, together with the obligation of the Member to comply with this Agreement, the Articles and the Act.

2.23 "Net Loss" means the losses and deductions of the Company determined in accordance with generally accepted accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, of the tax return of the Company filed for federal income tax purposes.

2.24 "Net Profit" means the income and gains of the Company determined in accordance with generally accepted accounting principles consistently applied from year to year employed under the method of accounting and adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

2.25 "New Member" shall have the meaning set forth in ARTICLE 11.

2.26 "Percentage Interest" of each Member shall mean the percentage set forth opposite the name of each Member on Exhibit A attached hereto as adjusted pursuant to Section 4.3 hereof.

2.27 "Person" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so indicates.

2.28 "Regulations" means the regulations, temporary and final, of the Treasury Department promulgated under the Code.

2.29 "Reserves" means, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Manager for working capital, to pay taxes, insurance, debt service, principal repayments and such other costs or expenses incident to the ownership or operation of the Company's property as the Manager deems appropriate.

2.30 "Secretary of State" means the Secretary of State of the State of Colorado.

2.31 "Securities Acts" means the Securities Act of 1933, the Colorado Securities Act and any other state securities laws, as each may be amended, or any successor acts.

2.32 "Substituted Member" means an approved transferee of a Member's Membership Interest that has been admitted as a Member with all the rights and obligations of a Member in compliance with Section 10.2.

2.33 "Successor-in-Interest" shall have the meaning set forth in Section 11.2(c).

### **ARTICLE 3 - BUSINESS OF THE COMPANY**

3.1 Business and Purpose. The business of the Company shall be:

(a) to purchase, finance, renovate, lease and/or sell properties, and any other business legally permitted;

(b) engage in and do any lawful act concerning any or all lawful businesses which limited liability companies may be organized, including all powers and purposes now and hereafter permitted by law to a limited liability company, including, but not limited to, the initial specific purpose of acting as a manager of one or more limited liability companies

(c) to exercise all powers necessary to or reasonably connected with the foregoing which may be legally exercised by limited liability companies under the Act; and

(d) to engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

3.2 Restriction on Power of Manager. The Manager shall have no authority to perform any act in respect of the Company in violation of any applicable laws or regulations.

## ARTICLE 4 - MEMBERS; CAPITAL CONTRIBUTIONS

4.1 Members. The name of the Members shall be as set forth on Exhibit A attached hereto and made a part hereof. The Manager shall amend Exhibit A from time to time upon the admission or withdrawal of any Member.

4.2 Initial Capital Contributions. The Members shall fund their Capital Contributions upon execution hereof in the amounts set forth on Exhibit A ("Initial Capital Contributions").

4.3 Additional Capital Contributions.

(a) Capital Contributions. The Manager may call for additional Capital Contributions as may be required to be contributed pursuant to this Section 4.3, by sending written notice of such call to the Members ("Cash Call") setting forth the amount of cash required from each Member (each Member's "Requested Amount"). The Requested Amount shall be computed by multiplying the Percentage Interest of each Member by the amount required by the Company. Each Member shall contribute to the Company his or her Requested Amount within three (3) business days following the date of the Cash Call.

(b) Discretionary Capital Loans. If, from time to time, the Company requires funds to pay costs and expenses incurred by the Company, and the Members are unable or unwilling to fund a Cash Call, then a Member may, without obligation to do so, advance the full amount of such required funds as loans (each, a "Capital Loan") to the Company at an interest rate equal to 12% per annum. If the Manager determines to fund a Capital Loan, (a) the Manager shall provide written notice of such determination to the other Members; (b) each Member shall have the right to fund its Percentage Interest of the Capital Loan; and (c) should a Member not fund the Company its full Percentage Interest of the amount of the Capital Loan set forth in the notice within three (3) business days following the notice, the other Members may fund any or all of such unfunded portion. Each Capital Loan shall be repayable prior to distributions of Cash Flow to the Members in accordance with Section 6.4(b). Any payments on account of Capital Loans shall be credited first to any and all outstanding interest on the Capital Loans and, thereafter, to principal.

(c) Failure to Contribute.

(i) If a Member fails to timely contribute its pro rata share of any Cash Call, and the other Member or Members are unwilling or unable to make a Capital Loan, the other Member or Members as the case may be ("Contributing Member"), may elect the remedy provided in Section 4.3(c)(ii) below:

(ii) The Contributing Member (or Contributing Members in proportion to their respective Percentage Interests) may make an Additional Capital Contribution to the Company equal to the amount the non-contributing Member ("Failing Member") failed to timely make, and such amount shall be added to the respective Capital Accounts of the Contributing Members. The Contributing

Members' Percentage Interests shall be increased, and the Failing Member's Percentage Interest shall be decreased, by a percentage point adjustment derived from the formulas below. The adjustment to the Members' Percentage Interests is expressed as a number of percentage points added or subtracted (as the case may be) to the Members' Percentage Interests.

(iii) If a Member fails to timely contribute any Additional Capital Contribution, the percentage point adjustment to the Members' Percentage Interests shall be based on the following formula: the percentage point adjustment equals  $A \times (B/C)$ .

(A) In either event, the term "A" above shall be the Percentage Interest of the Failing Member prior to the default; the term "B" above shall be the amount of required Additional Capital Contribution which the Failing Member has failed to make; and the term "C" above shall be the amount of required Additional Capital Contribution which the Failing Member has failed to make, plus the amount of all Capital Contributions actually made by the Failing Member (including its predecessors in title).

(B) The Contributing Members electing to contribute the Additional Capital Contribution and dilute the Percentage Interest of the Failing Member shall have their Percentage Interests increased by the same percentage point adjustment, pro rata, based on the portion of the Additional Capital Contribution actually made by each Contributing Member. Any adjustments to the Members' Percentage Interests pursuant to this Section 4.3 shall be permanently effective (unless modified later pursuant to Section 4.3 or by other agreement) for the purpose of distribution and allocations and for all other purposes including, without limitations, voting rights. An example incorporating the foregoing is as follows.

Assume:

1. Members X, Y & and Z each make initial Capital Contributions of One Hundred Thousand Dollars (\$100,000.00) each.

2. The Additional Capital Contribution required from each Member is \$100,000. Members X and Y timely make the entire \$100,000 Additional Capital Contribution and Member Z fails to timely make such contribution.

3. X and Y make their contribution plus  $\frac{1}{2}$  each of Member Z's contribution.

4. The percentage point adjustment to the Percentage Interests of Members X, Y and Z is computed as follows:

Percentage Point Reduction =  $33\frac{1}{3}\% \times \frac{\$100,000}{\$200,000}$

or  $33\frac{1}{3}\% \times 50\%$

Percentage Point Reduction of Z =  $16.66\% \text{ or from } 33.3\% \text{ to } 16.66\%$

Percentage Point Increase of X and Y =  $16.66\% \text{ or from } 66.66\% \text{ to } 83.33\%$

(iv) The remedy set forth above shall be exclusive, and the Company shall have no right of action against a Non-Contributing Member at law or in equity.

4.4 Loans. The Manager, on behalf of the Company, may borrow money from any of the Members, the Manager, or third Persons. The Manager is specifically authorized to borrow funds from one or more lenders (each referred to as a "Lender") upon such commercially reasonable terms and conditions as the Manager shall determine. The Manager is authorized to execute and deliver to the Lender any and all agreements or other instruments and documents as may be required by the Lender to evidence the loan, or to comply with the Lender's conditions for effecting the loan, and further to pledge, assign, transfer, convey, deliver, encumber, mortgage or otherwise hypothecate any real, personal or intangible property of any kind of the Company, or any interest therein, whether now owned or hereafter acquired, and execute and deliver mortgages or deeds of trust, and security agreements covering any such property or interest, as security for the loan, all such instruments and documents to be in such form and to contain such terms and conditions as may be approved by the Manager, such approval of the Company to be conclusively evidenced by the Manager's execution thereof.

4.5 Limitation on Liability. No Member or Manager shall be liable under a judgment, decree or order of any court, or in any other manner, for a debt, obligation or liability of the Company, except as provided by law and pursuant to this Agreement. No Member shall be required to loan any funds to the Company.

4.6 No Individual Authority. No Member (other than in such Member's capacity as a Manager) shall have any authority to act for, or to undertake or assume, any obligation, debt, duty or responsibility on behalf of any other Member or the Company.

4.7 No Member Responsible for Other Member's Commitments. If any Member (or any Member's partners, members, shareholders, beneficiaries, trustees, agents or Affiliates) has incurred any indebtedness or obligation prior to the date hereof or hereafter incurred that relates to or otherwise affects the Company, the Company shall not have any liability or responsibility for or with respect to the indebtedness or obligation unless the indebtedness or obligation is assumed by the Company pursuant to a written instrument signed by the Managers. Furthermore, no Member shall be responsible or liable for any indebtedness or obligation that is incurred prior to the date hereof or hereafter incurred by any other Member (or any Member's

partners, members, shareholders, beneficiaries, trustees, agents or Affiliates) unless the indebtedness or obligation is assumed by the Member pursuant to a written instrument signed by the Member assuming the liability or obligation. If a Member (or any Member's shareholders, partners, members, beneficiaries, trustees, agents or Affiliates), whether prior to or after the date hereof, incurs or has incurred any debt or obligation that neither the Company nor the other Members is to have any responsibility or liability therefor, that Member hereby indemnifies and holds harmless the Company and the other Members from any liability or obligation they may incur in respect thereof.

## **ARTICLE 5 - MEMBERS' CAPITAL ACCOUNTS**

**5.1 Capital Accounts.** A separate Capital Account shall be established and maintained on behalf of each Member, including any New Member or Substituted Member who receives a Membership Interest in the Company. The Capital Accounts shall be maintained in accordance with the Code, including Section 704(b) of the Code, the Regulations and other applicable authority. In the event of a permitted sale or exchange of a Membership Interest, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest.

**5.2 Withdrawal or Reduction of Members' Contributions to Capital; No Right to Retire or Resign.**

(a) No Member shall have the right to retire or resign as a Member or to withdraw any amounts of the Member's Capital Contribution or amounts from its Capital Account or to receive property of the Company or any distribution or return for the Member's Capital Contribution, except as specifically provided in this Agreement. Any attempted or actual retirement, resignation or withdrawal in violation of this Agreement shall subject such Member to damages for breach of this Agreement, which damages shall offset any amounts otherwise distributable to the Member.

(b) A Member, irrespective of the nature of the Member's contribution, has only the right to receive cash in return for such Member's contribution to capital; however, the foregoing does not preclude the Company from distributing property other than cash to any Member.

(c) No provision is made for the expulsion of a Member.

(d) No Member shall be entitled to interest on his or her Capital Contribution.

**5.3 Modification of Capital Accounts.** Because the Members intend that Capital Accounts be maintained in accordance with the Code, the Regulations and applicable law, to accomplish that purpose, the Managers may modify the manner in which the Capital Accounts are maintained and adjustments thereto are computed, and to make any appropriate adjustments thereto, to assure such compliance; provided, however, that such modifications and adjustments shall not materially alter the economic agreement between or among the Members set forth in this Agreement.

5.4 No Obligation to Restore. As specified in Section 12.3, no Member shall have any liability to restore all or any portion of a Deficit Capital Account of such Member.

## **ARTICLE 6 - ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS**

6.1 Net Profits. Net Profits shall be allocated to the Members in the following order of priority:

(a) First, to the Members in proportion to and to the extent of the excess, if any, of (i) the cumulative Net Losses allocated to such Members pursuant to Section 6.2 for all prior taxable years, over (ii) the cumulative Net Profits allocated to such Members pursuant to this Section 6.1(a) for all prior taxable years;

(b) Finally, the balance, if any, of such Net Profits shall be allocated to the Members in proportion to their respective Percentage Interests.

6.2 Net Losses. After giving effect to the special allocations set forth in ARTICLE 13, Net Losses for any taxable year shall be allocated to the Members in proportion to their positive Capital Account balances, or if no such Members exist, then to the Members in proportion to their respective Percentage Interests.

6.3 Target Allocations. Except as otherwise provided in this Agreement, if upon Dissolution and termination of the Company and, after all other allocations provided for in Sections 6.1 and 6.2 have been made as if this Section 6.3 were not in this Agreement, a distribution to the Members under Section 6.1 would be different from a distribution under Section 6.4, then Net Profits (and items thereof) and Net Losses (and items thereof) solely for the Fiscal Year of Dissolution and termination of the Company shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after giving effect to such allocation is, as nearly as possible, equal (proportionately) to the amount of the distributions that would be made to such Member during such last Fiscal Year pursuant to Section 6.4.

6.4 Distributions. The Managers shall distribute Cash Flow at such times as the Managers shall determine in the following order of priority, and once a tier of distribution has been fully satisfied, no further distributions shall be made pursuant to such tier:

(a) First, 100% to the Members in proportion to and in reduction of the Member's Net Invested Capital until the Member's Net Invested Capital is reduced to zero;

(b) Finally, the Company shall distribute Cash Flow to the Members in proportion to their respective Percentage Interests.

6.5 Reporting by the Members. The Members agree to report their shares of Net Profit, Net Loss, income, expense, deduction and credit for federal income tax purposes in accordance with this ARTICLE 6 and ARTICLE 13.

6.6 Allocation of Income and Loss and Distributions in Respect of Interest Transferred. Distributions of Company assets may be made only to holders of Membership

Interests, or, as the case may be, Economic Interests, as shown on the books and records of the Company. Neither the Company, a Manager, nor any Member (who is not a recipient of such distribution) shall incur any liability for making distributions in accordance with the provisions of the foregoing, whether or not the Company, a Manager, or the Member has knowledge or notice of any transfer or purported transfer of ownership of a Membership Interest in the Company which has not been effected in accordance with this Agreement. Notwithstanding any provision above to the contrary, gain or loss to the Company realized in connection with the sale or other disposition of any of the assets of the Company shall be allocated solely to the holders of Membership Interests in the Company as of the date the sale or other disposition occurs.

6.7 Withholding Included. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to Section 6.4.

## **ARTICLE 7 - VOTING AND CONSENTS**

7.1 Manner of Acting. The vote or consent of a Majority of Members shall be the act of the Members, unless the vote or consent of a greater or lesser proportion or number is otherwise required by this Agreement or the Act. Notwithstanding anything contained herein to the contrary, when acting on matters subject to the vote of the Members, notwithstanding that the Company is not then insolvent, the Members and the Manager shall take into account the interest of the Company's creditors, as well as those of the Members.

7.2 No Annual Meeting Required. No annual meeting of the Members shall be required to be held.

7.3 Meetings. Meetings of the Members or any class of Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by a Manager or by any Member having not less than 25% of the Percentage Interests.

7.4 Place of Meetings. The meetings shall be held at the principal place of business of the Company, unless the Members agree otherwise.

7.5 Notice of Meetings. Except as provided in Section 7.6, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than 10 or more than 30 days before the date of the meeting, in accordance with the notice provision of this Agreement.

7.6 Meeting of All Members. If all the Members meet at any time and place, either within or outside of the State of Colorado, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

7.7 Record Date. For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is given or the date on which the

resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

7.8 Proxies. A Member may vote in person or by proxy. The proxy appointment form, executed in writing by the Member or by a duly authorized attorney in fact, shall be filed with the Manager before or at the time of the meeting. No appointment of a proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy appointment form. A facsimile or photocopy of such proxy appointment form or attorney-in-fact designation shall have the same force and effect as the original.

7.9 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by a Majority of Members, and delivered to the Manager for filing with the Company records. Action taken under this Article is effective when all of the Members so required have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

7.10 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the Person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

7.11 Telephonic Meetings. Any and all Members may participate in any meeting by, or through the use of, any means of communication by which all Members participating and entitled to vote may simultaneously hear and communicate with each other during the meeting. A Member so participating is deemed to be present in person at the meeting.

7.12 Attendance Waives Notice. By attending a meeting, a Member waives objection to the lack of notice or defective notice unless the Member, at the beginning of the meeting, objects to the holding of the meeting or the transacting of business at the meeting. A Member who attends a meeting also waives objection to consideration at such meeting of a particular matter not within the purpose described in the notice unless the Member objects to considering the matter when it is presented.

7.13 Assignee Not Entitled to Vote. Any assignee of a Member's Membership Interest in the Company shall not be entitled to vote or participate in any matters in any meeting unless the assignee becomes a Substituted Member or New Member as provided in ARTICLE 11 hereof.

7.14 No Requirements of Records of Meetings. Neither this Agreement nor the Act requires any Member or Manager to take or maintain minutes or other records of any meetings of the Members.

## **ARTICLE 8 - RIGHTS AND DUTIES OF MANAGER**

8.1 **General Grant; Manner of Acting.** The business and affairs of the Company shall be managed by the Manager, and the management and conduct of the business of the Company is vested in the Manager. The Manager shall direct, manage and control the business of the Company to the best of his ability and, subject to the limitations and restrictions set forth in this Agreement, shall have full and complete authority, power and discretion to make any and all decisions, to take any and all actions, and to execute all instruments or other documents which the Manager shall deem to be reasonably required or appropriate in light of the Company's business and objectives.

8.2 **Management by the Manager.** Without limiting the foregoing but subject to the limitations and restrictions set forth in this Agreement, the Manager may exercise the following specific rights and powers without any further consent of the Members being required:

- (a) to purchase liability and other insurance to protect the Company's property and business;
- (b) to invest and reinvest the funds of the Company; and to receive and hold property as security for repayment;
- (c) to fix the compensation of officers and agents of the Company;
- (d) to initiate, prosecute, defend, settle, compromise or dismiss claims, and satisfy judgments, by or against the Company, the Manager, or the Members in connection with the activities arising out of, connected with, or incident to the business of the Company, and to otherwise protect the interests of the Company, as long as Manager has not engaged in fraud or criminal conduct pertaining to the Company;
- (e) to engage or retain such employees, independent contractors, attorneys and accountants as the Manager deems necessary or appropriate in furtherance of the business of the Company, and to determine the terms of such engagements or retentions;
- (f) to appoint such officers and agents of the Company as the Manager shall determine for such terms as the Manager shall determine; to remove such officers and agents; to prescribe such powers and duties for them as may not be inconsistent with law;
- (g) to open one or more bank accounts in the name of the Company and to authorize the Manager and/or one or more agents, in the name of and on behalf of the Company, to sign checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness; to endorse for deposit and/or deposit to the credit of the Company at any bank, trust company, or banking institution in which the Company may maintain an account, cash, checks, notes, drafts, or other bankable securities or instruments; to make, deliver, accept, or endorse any commercial paper in connection with the business of the Company;
- (h) to enter into construction contracts, purchase goods, and execute other agreements and contracts relating to the improvement of the Company's property;

- (i) to enter into leases and licenses, and to grant easements for the benefit of utility companies, for the benefit of the Company;
- (j) to expend Company funds in connection with the business of the Company;
- (k) to pay all taxes, licenses, or assessments of whatever combination imposed on or against the Company or its property or assets, and to make such returns or to do all such acts or things as may be deemed necessary or advisable in connection therewith;
- (l) to care for and distribute funds and property to the Members by means of cash, income, return of Capital Contributions, or otherwise, all in accordance with an subject to the provisions of this Agreement;
- (m) to cause the Company to enter into agreements with other entities in furtherance of its purposes; and
- (n) to make all elections for federal and state income tax purposes.

8.3 Limitations on Management Authority. Notwithstanding any other provision of this Agreement, but subject to the limitations and restrictions set forth in this Agreement, the Manager shall not have the authority to take any of the following acts without first obtaining the affirmative vote of a Majority of the Members:

- (a) to sell all of the real or personal property of the Company;
- (b) to borrow money on a secured or unsecured basis to finance the business of the Company;
- (c) to encumber all or any portion of the Company's property to secure such borrowings; or to repay, refinance, increase, modify, consolidate or otherwise deal in such borrowings and encumbrances;
- (d) to refinance or extend a loan;
- (e) to exchange or otherwise dispose of all or any portion of the property and assets of the Company;
- (f) to merge the Company with or into another Entity;
- (g) to create any different class of Member;
- (h) to alter the primary business purpose of the Company;
- (i) to take any actions that would make it impossible to carry on the ordinary business of the Company;
- (j) to confess any judgment against the Company in excess of \$500,000.00;

- (k) to commence any bankruptcy, insolvency reorganization or debt relief actions under federal or state law, seeking or consenting to the appointment of a receiver, or making any assignment for the benefit of the Company's creditors;
- (l) to change the method of preparing of the Company's financial statements;
- (m) to change the tax classification of the Company;
- (n) any act in contravention of this Agreement; and
- (o) any other act or transaction described in this Agreement or mandated by law as requiring the vote, consent or approval of the Members.

**8.4 Number, Tenure, Election and Qualifications of Manager.**

(a) Number. The number of Managers initially shall be one (1). The initial Manager shall be as set forth in Section 2.20. The number of Managers may be increased or decreased at any time by a Majority of the Members.

(b) Tenure. The initial Manager shall hold office until the Manager's dissolution, resignation or removal and until such Manager's successor has been elected and qualified. Thereafter, any successor Manager elected by the Members shall hold office until such Manager's death, dissolution, resignation or removal and until such Manager's successor has been elected and qualified.

(c) Election. Except for the initial Manager, the Managers shall be elected by a Majority of the Members.

(d) Qualifications. Any Manager shall be a natural person 18 years of age or older or an Entity, but need not be a Member, or in the case of a natural person, a citizen of the United States of America.

**8.5 Resignation.** A Manager may resign at any time by giving written notice to the Members. The resignation of a Manager shall take effect upon receipt of notice or evidence of delivery of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**8.6 Removal.** The Manager may be removed at any time by a Majority of the Members.

**8.7 Time and Effort; Conflicts of Interest; Duty of Care.**

(a) Time and Effort. The Manager shall devote such time and effort to the business of the Company as the Manager determines to be necessary to conduct the business of the Company.

(b) Conflicts of Interest. The Members and the Manager do not violate a duty

or obligation to the Company merely because their conduct furthers their own interests.

(c) Dealings with Company. The Manager, acting on behalf of the Company, shall not be prohibited from or otherwise limited in employing, borrowing money from, contracting with, or otherwise dealing with, any Person by reason of the fact that such Person is the Manager, the Members or an Affiliate of the Manager or a Member, or is an Entity in which the Manager or a Member has an interest, whether such relationship, affiliation, or interest is direct or indirect, provided that (a) the terms and conditions of such employment, loan, contract or other dealing are at least as favorable to the Company as those generally available from Persons operating at arm's length, and (b) such transaction is not prohibited by this Agreement.

(d) Duty of Care. The Manager shall perform his duties as Manager in good faith, in a manner the Manager reasonably believes to be in the best interest of the Company and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

8.8 No Annual Meeting Required; No Minutes Required. No annual meeting shall be required to be held. Any Member may give notice to the Manager to hold a meeting, and the Manager shall call the meeting by giving the Members notice of such meeting, not less than ten (10) nor more than thirty (30) days, prior to the date of such meeting. Neither this Agreement nor the Act requires any Member or Manager to take or to maintain minutes or other records of any meetings.

8.9 Liability of Manager. The Manager shall not be liable or obligated to the Members for any mistake of fact or judgment or for the doing of any act or the failure to do any act by the Manager in conducting the business, operations and affairs of the Company, which may result in any loss or damage to the Company or its Members so long such act or failure to act is not the result of fraud or misappropriation of funds. The Manager does not, in any way, guarantee the return of a Member's Capital Contribution from the operations of the Company. The Manager shall not be responsible to the Members because of a loss of a Member's investment or a loss in operations, unless the loss shall have been the result of fraud or misappropriation of funds or a knowing violation of the law. In discharging its duties as Manager, the Manager shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports, or statements by any of its agents, or by any other Person, as to matters the Manager reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by the Manager.

8.10 Indemnity of Manager. The Company shall indemnify the Manager and any agents of the Company for all costs, losses, liabilities, and damages paid or accrued by the Manager or agent in connection with the business of the Company, to the fullest extent provided or allowed by the Act, provided that, notwithstanding the foregoing, the Company shall not indemnify the Manager for its fraud, misappropriation of funds or a knowing violation of the law. In addition, the Company may advance costs of defense or prosecution of any claim to the Manager or agent of the Company, provided such claim is in connection with the business of the

Company, provided that the Company shall not advance such costs in connection with any action brought by or on behalf of the Company.

8.11 Reimbursement; Compensation. The Manager shall be entitled to reimbursement from the Company for all expenses of the Company reasonably incurred and actually paid by the Manager on behalf of the Company.

## **ARTICLE 9- BOOKS, RECORDS AND ADMINISTRATION**

9.1 Books and Records. The books and records of the Company shall be kept, and the final financial position and results of its operations recorded, in accordance with the accounting methods elected to be followed by the Manager on behalf of the Company for federal income tax purposes. The Fiscal Year of the Company for financial reporting and for federal income tax purposes shall be the calendar year.

9.2 Location and Access to Books and Records. All accounts, books and other relevant Company documents shall be maintained by the Manager at the Company's principal place of business, or at such other location as the Manager shall determine at all times during the duration of the Company and for six (6) years following the liquidation of the Company. Upon reasonable request, each Member, and such Member's duly authorized representative, shall have the right, during ordinary business hours, to inspect and copy such Company documents at the Member's expense.

The Company shall keep the following records:

- (a) a current list of the full name and last known business, residence, or mailing address, telephone number, tax identification number and facsimile number of each Member and Manager, both past and present;
- (b) a copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;
- (c) copies of the Company's federal, state, and local income tax returns and reports, if any, for the four most recent years;
- (d) copies of the Company's currently effective written Agreement, copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property or services, and copies of any financial statements of the Company for the three most recent years;
- (e) minutes of any meeting for which minutes were taken; and
- (f) any written consents obtained from Members for actions taken by Members without a meeting.

9.3 Tax Returns and Other Elections. The Manager shall be the "partnership representative" (the "Partnership Representative") as provided in Code Section 6223(a) (as amended by the Bipartisan Budget Act of 2015 (the "BBA"). The Partnership Representative

may resign at any time by notifying the partnership and the IRS in writing of the resignation. The notification to the IRS, submitted in accordance with any applicable IRS form or other guidance, may include a designation of a successor Partnership Representative for the taxable year for which the designation of the resigning Partnership Representative was in effect. If the resigning Partnership Representative does not designate a successor, the IRS will determine there is no designation in effect and the Members shall designate the successor Partnership Representative. Notwithstanding the foregoing, the Partnership Representative may resign simultaneously with the filing of a valid administrative adjustment request (“AAR”) after receipt of a notice of administrative proceeding for a Company’s taxable year, or at such other time as prescribed by the IRS. If the Partnership Representative resigns in connection with the filing of an AAR, the Partnership Representative must designate a successor Partnership Representative. The Company may not use the form prescribed by the IRS for filing an AAR solely for the purpose of allowing the Partnership Representative to resign.

The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by any federal, state, local, or foreign taxing authority (each a “Taxing Authority”), including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees that such Member will not independently act with respect to tax audits or tax litigation of the Company, unless previously authorized to do so in writing by the Partnership Representative, which authorization may be withheld by the Partnership Representative in its sole and absolute discretion. The Partnership Representative shall have sole discretion to determine whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any Taxing Authority.

The Company will not elect into the partnership audit procedures enacted under Section 1101 of the BBA (the “BBA Procedures”) for any tax year, and, to the extent permitted by applicable law and regulations, the Company will annually elect out of the BBA Procedures for tax years pursuant to Code Section 6221(b) (as amended by the BBA). For any year in which applicable law and regulations do not permit the Company to elect out of the BBA Procedures, then within forty-five (45) days of any notice of final partnership adjustment, the Company will elect the alternative procedure under Code Section 6226, as amended by Section 1101 of the BBA, and furnish to the Internal Revenue Service and each Member during the year or years to which the notice of final partnership adjustment relates a statement of the Member's share of any adjustment set forth in the notice of final partnership adjustment.

Each Member agrees that such Member shall not treat any Company item inconsistently on such Member's federal, state, foreign or other income tax return with the treatment of the item on the Company's return. Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes and any taxes imposed pursuant to Code Section 6226 as amended by the BBA) will be paid by such Member and if required to be paid (and actually paid) by the Company, will be recoverable from such Member by the Company, and such Member shall be liable to the Company for all of its costs, expenses, and fees (including attorneys' and accountants' fees) incurred in connection therewith.

Except as otherwise provided herein, the Partnership Representative shall have sole discretion to make any determination regarding income tax elections it deems advisable on behalf of the Company; provided, that the Partnership Representative will make an election under Code Section 754, if requested in writing by another Member.

**9.4 Bank Accounts.** All funds of the Company shall be deposited in a federally insured bank account or accounts (or otherwise with the prior consent of all Members) maintained in the Company's name. The Manager shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and funds therein.

**9.5 Reports.** The Manager shall prepare (or cause to be prepared at no expense to the Company) and cause to be sent to each Person who was a Member at any time during the accounting year then ended financial statements (including a balance sheet, income statement, statement of changes in Member's capital, and comparison of actual expenditures to budgeted expenditures) of the Company as of the last day of each fiscal year and fiscal quarter and a calculation of distributions and a report of all variances from the Company's budget for each fiscal quarter of each fiscal year. All such statements shall be prepared on the basis of generally accepted accounting principles, consistently applied. Copies shall be furnished to each Member on or before the last day of February of each fiscal year as to the annual statement, and within forty-five (45) days after the end of each fiscal quarter as to the quarterly statements and the calculation of distributions and the report of all variances from the Budget, or as soon as practicable. In addition, within seventy-five (75) days after the end of each taxable year of the Company, the Manager shall use commercially reasonable efforts to cause to be sent to each Person who was a Member at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Member's income tax returns for that year, including, without limitation, the Company's entire federal income tax return (Form 1065 and all Schedules, Exhibits and Forms K-1 attached thereto) for that year. All financial statements, instruments and other reports described herein shall be certified by Manager that such reports are true and accurate in all material respects.

## **ARTICLE 10 - RESTRICTIONS ON TRANSFERABILITY**

**10.1 General.** Except as otherwise specifically provided in Section 10.2 or in this Agreement, a Member shall not have the right to sell, assign, pledge, exchange or otherwise transfer for consideration (collectively, "sell" or "sale"), or to gift or otherwise transfer for no consideration (collectively, "gift") or in any other manner whatsoever dispose of all or any part of the Member's Membership Interest (including, without limitation, voting rights or the rights to receive the Member's share of Net Profit or other compensation by way of income and the return of Capital Contributions). Each Member hereby acknowledges the reasonableness of the restrictions on sale and gift of Membership Interests imposed by this Agreement in view of the Company's purposes and the relationship of the Members. Accordingly, the restrictions on sale and gift contained herein shall be specifically enforceable.

**10.2 Consent Required to Transfer.** A Member may transfer all or any part of its Membership Interest to any Member and may transfer all or any part of his interest to a Person other than a Member only if (1) the non-transferring Members approve the proposed transfer of

the Member's Membership Interest in writing, (2) the non-transferring Members do not exercise their rights to purchase the proposed Membership Interest as provided in Section 10.3 below, and (3) the transferring Member and the transferee complies with Section 10.4 below. Upon the written consent of the non-transferring Members and compliance with Section 10.4, the transferee shall have the right with respect to or by virtue of the transferring Member's Membership Interest to participate in the business and affairs of the Company and to be admitted as a "Substituted Member", unless the non-transferring Members approve the transfer of only an Economic Interest, in which event the transfer shall be only of an Economic Interest. If the non-transferring Members do not unanimously consent, then the transfer shall not be permitted. Notwithstanding the foregoing, a Member may transfer its Membership Interest to immediate family members (i.e. spouse, child, parent or a trust for any of same) without consent from the non-transferring Members, but the transfer shall only be of an Economic Interest.

### 10.3 Buy-Sell Agreement.

(a) If any Member (the "Selling Member") desires to transfer or sell all or any part of its Membership Interest, the Selling Member shall give written notice (the "Notice of Sale") to the other Members. The Notice of Sale shall state: (1) that the Selling Member desires to sell all or part of its Membership Interest; (2) the value, as determined by the Selling Member, of all of the assets of the Company net of all liabilities of the Company, upon which value the Selling Member is willing to have the purchase price for the Selling Member's Membership Interest determined (the "Stated Value").

(b) Within sixty (60) days after receipt by the non-selling Members of a Notice of Sale, the non-selling Members (who, except as specifically set forth below, shall not be required to act unanimously in this regard) shall either: (i) give written notice (the "Call Notice") of the Member's election to purchase an amount equivalent to its Membership Interest in the Company of the Selling Member's Membership Interest; or (ii) give written notice (the "Put Notice") of the non-selling Member's election to sell its Membership Interest to the Selling Member at the Stated Value.

(c) Notwithstanding the foregoing, to the extent that any Member does not wish to accept the Selling Member's offer to sell, the remaining Member(s) may accept the same by giving a Call Notice and may purchase the Selling Member's Membership Interest pro rata in accordance with such remaining Member(s) Membership Interests in the Company, and, in such event, any Member who does not wish to participate in such purchase shall have no rights to deliver to the Selling Member a Put Notice. The failure of the non-Selling Members to give either a Call Notice or Put Notice as provided herein within the required sixty (60) day period shall be deemed to be the giving of a Put Notice.

(d) The closing of a purchase of a Member's Membership Interest, pursuant to this Section 10.3, shall take place at the offices of the Company at such time as may be designated in the Call Notice or the Put Notice, but in no event later than one hundred twenty (120) days after receipt by the Selling Member of the Call Notice or the Put Notice, unless a later time is agreed to by all of the Members (the "Closing Date"). On the Closing Date, the Member(s) required by the Call Notice or the Put Notice to purchase (the "Purchasing Member(s)"), shall purchase all of the Membership Interests by

the payment of cash or certified funds to the Selling Member in an amount equal to the purchase price of the Selling Member's Membership Interest, as determined by the Stated Value above. Contemporaneously with the receipt by the Selling Member of such purchase price, the Selling Member shall deliver to the purchasing Member(s) an assignment(s) of its Membership Interest in the form presented by the Manager.

(e) Any assignment of a Member's Membership Interest under this Article shall be in writing, shall be an absolute assignment of all of such Member's Company Interest, and shall warrant:

(i) the Percentage Interest owned by the Member making the assignment;

(ii) that such interest is free and clear of all encumbrances; and

(iii) that the Member making the assignment has the full and complete right, power and authority to make the assignment.

(f) If any Member is required under this Section 10.3 to purchase all or any portion of another Member's Membership Interest, and fails to tender the cash or certified funds required under this Section within the required time period, time being of the essence hereof, then:

(i) if there are other purchasing Members, the other purchasing Members shall, within thirty (30) days after the Closing Date, proceed with the purchase of the Membership Interest of the Selling Member and shall also purchase the Membership Interest of the purchasing Member who has failed to tender the required cash or certified funds in a timely fashion;

(ii) if there are no other purchasing Members, the purchasing Member shall become a Selling Member and the original Selling Member shall become the purchasing Member and shall, within thirty (30) days after the Closing Date, proceed with the purchase of the Membership Interest of the Selling Member;

(iii) in either case, the purchase price for the Membership Interest of the Member who has failed to tender the required cash or certified funds in a timely fashion shall be an amount equal to seventy-five percent (75%) of the purchase price determined herein.

(g) If any Member is required under this Section to deliver an assignment of its Membership Interest and fails to deliver such assignment within the time required, time being of the essence hereof, or fails to deliver such assignment in the form required, then the Member(s) to whom such assignment is to be delivered, in addition to all other remedies that may be available, shall have the right to an action for specific performance and damages against the Member who has failed to properly deliver the assignment.

10.4 Additional Requirements. As a condition to recognizing the effectiveness and binding nature of any sale or gift, the transferring Member and the proposed transferee (whether an existing Member or a third Person) shall execute, acknowledge and deliver to the Company

such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform all such other acts which the Manager may deem necessary to (1) constitute such transferee as a Member (if new); (2) confirm that the transferee desiring to acquire a Membership Interest has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of the Agreement, as the same may have been further amended; (3) preserve the Company after the completion of such sale, transfer, assignment, or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business; (4) maintain the status of the Company as an organization not taxable as a corporation under the then applicable provisions of the Code; (5) not cause, either alone or when combined with other transactions, a termination of the Company within the meaning of Code Section 708 (except as approved by the Manager); and (6) assure compliance with the applicable Securities Acts and regulations.

## **ARTICLE 11 - NEW MEMBERS AND SUBSTITUTED MEMBERS; CONVERSION OF MEMBERSHIP INTERESTS**

11.1 New Members and Substituted Members. Any Person may become a New Member in the Company with the prior consent of all of the Members as provided in ARTICLE 10, by the issuance or sale by the Company of new Company Membership Interests for such consideration and upon such terms as the Members shall unanimously approve, provided that if new Membership Interests are issued, all existing Members shall be diluted pro rata ("New Member"), and, as to a Substituted Member, as set forth in Section 10.2, subject to the terms and conditions of this Agreement. No New Members or Substituted Members shall be entitled to any retroactive allocation of Net Loss, Net Profit, income, expenses or deductions incurred by the Company; however, the Manager may, at his option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of Net Loss, Net Profit, income, expense and deductions to a New Member or Substituted Member for that portion of the Company's tax year in which the New Member or Substituted Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder.

## 11.2 Conversion of Membership Interests Upon Dissociation of a Member.

(a) Dissociation Defined. "Dissociation" shall mean that a Member shall cease to be a Member, and, subject to Section 11.2(c) below, the Membership Interest of the Member shall automatically be converted to an Economic Interest as set forth in Section 11.2(b) below, upon the happening of any of the following events:

- (i) the filing for Bankruptcy or divorce by a Member (or against a Member by any other party that is not dismissed within 60 days following such filing) or any other transfer of a Membership Interest or judicial stay or oversight relating to the Member's Membership Interest in any manner by operation of law pursuant to judicial order or legal process;
- (ii) in the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or property;
- (iii) in the case of a Member who is not a natural person, the termination or dissolution and commencement of a winding up of the Member; or
- (iv) any other event which terminates the continued membership of a Member in a limited liability company under the Act.

(b) Conversion of Membership Interest. Except as set forth below in Section 11.2(c), upon the Dissociation of a Member, the Membership Interest of such Member shall immediately and automatically convert to an Economic Interest. If a Member who is a natural person dies or a court of competent jurisdiction adjudges the Member to be incompetent to manage his or her person or his or her property, the Member's executor, administrator, guardian, conservator or other legal representative may exercise the Member's rights under the converted Economic Interest and may elect, upon notice to the Manager, to become a Substitute Member. If a Member is not a natural person, and is dissolved or terminated, the powers with respect to the Economic Interest of such Member may be exercised by such Member's legal representative or successor.

(c) Exception to Conversion. Notwithstanding Section 11.2(b) above, the Membership Interest of a Member shall not immediately and automatically convert to an Economic Interest upon the Dissociation of such Member if: (1) another Person (the "Successor-in-Interest") succeeds to the interest of such Member; (2) the Successor-in-Interest agrees to satisfy the requirements of Section 11.3; and (3) all remaining Members agree to allow the Successor-in-Interest to be admitted as a New Member, in their sole and absolute discretion.

## 11.3 Requirements for Admission of a New Member or Substituted Member. As a condition precedent to admission of any Person as a New Member or Substituted Member, such Person must execute, acknowledge and deliver to the Company such instruments of transfer,

assignment and assumption and such other certificates, representations and documents, and perform all such other acts which the Manager may deem necessary to: (1) constitute such New Member or Substituted Member as such; (2) confirm that the New Member or Substituted Member has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Agreement, as the same may have been further amended; (3) preserve the Company after the issuance of a Membership Interest to a New Member or the transfer of a Membership Interest to a Substituted Member under the laws of each jurisdiction in which the Company is qualified, organized or does business; (4) maintain the status of the Company as an organization not taxable as a corporation under the then applicable provisions of the Code; (5) not cause, either alone or when combined with other transactions, a termination of the Company within the meaning of Code Section 708; and (6) assure compliance with the applicable Securities Acts and regulations.

## **ARTICLE 12 - DISSOLUTION AND TERMINATION**

### **12.1 Dissolution.**

(a) The Company shall be dissolved upon the occurrence of any of the following events:

- (i) the unanimous vote or unanimous written consent of the Members to dissolve; or
- (ii) upon the sale or other disposition of all or substantially all of the property and assets owned by the Company.

(b) As soon as possible following the election to dissolve, the Manager shall file such form as shall be prescribed by the Secretary of State to dissolve the Company or take such other actions as may be required under the Act.

12.2 Effect of Filing of Dissolving Statement. As soon as possible following the dissolution of the Company, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until the articles of dissolution have been filed with the Secretary of State or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

### **12.3 Winding Up, Liquidation and Distribution of Assets.**

(a) Accounting. Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Manager shall immediately proceed to wind up the affairs of the Company.

(b) Winding Up. If the Company is dissolved and its affairs are to be wound up, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members, and no Member shall take any action that is inconsistent with or not necessary

or appropriate for winding up the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the property and assets of the Company have been distributed pursuant to this Agreement and the Articles of Dissolution have been filed with the Secretary of State. The Manager shall be responsible for overseeing the winding up and dissolution of the Company, shall take full account of the Company's liabilities and property, shall allocate any Net Profit and Net Loss resulting from such sales to the Members as set forth in Sections 6.1 and 6.2 and ARTICLE 13, and shall cause the proceeds from such sale to be applied and distributed in the following order:

(i) First, to the payment and discharge of all the Company's debts and liabilities to creditors, including any loans advanced by the Members and all costs related to the dissolution, winding up, and liquidation and distribution of assets;

(ii) Second, to the establishment of such Reserves as may reasonably be determined by the Manager to be necessary to provide for contingent liabilities of the Company (for the purpose of determining Capital Accounts of the Members, the amounts of such Reserves shall be deemed an expense of the Company); and

(iii) The balance, if any, in accordance with the Members' positive Capital Account balances in accordance with ARTICLE 6.

(c) Valuation of Distributable Assets. Assets may be distributed to Members in cash or in kind, as determined by the Manager, with any assets distributed in kind being valued for this purpose at the fair market value at the date of dissolution as determined by an independent appraisal or by the Manager (the Manager's determination shall be subject to approval by the Members). If such assets are distributed in kind, such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts shall be adjusted pursuant to this Agreement to reflect such deemed sale.

(d) Liquidation. Notwithstanding anything to the contrary in this Agreement, in the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), (1) distributions shall be made to the Members in accordance with their positive Capital Account balances in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2), and (2) if any Member has a Capital Account with a negative balance (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

(e) Termination; Compliance with Laws. Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated. The Manager shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

12.4 Articles of Dissolution. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all the remaining property and assets have been distributed to the Members, Articles of Dissolution shall be executed in duplicate and verified by the Person signing the articles, which articles shall set forth the information required by the Act.

12.5 Filing of Articles of Dissolution. Upon the filing of the articles of dissolution with the Secretary of State, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act. The Manager shall have authority to distribute, in accordance with this Agreement, any Company property discovered after dissolution, and take such other action as may be necessary on behalf of and in the name of the Company.

12.6 Return of Contribution Nonrecourse to Other Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of the Member's Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Member or Members shall have no recourse against any other Member or the Manager.

## **ARTICLE 13 - SPECIAL ALLOCATIONS**

Notwithstanding ARTICLE 6, the following provisions shall govern allocations:

13.1 Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations, which create or increase a Deficit Capital Account of such Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated and credited to the Capital Account of such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 13.1 be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Regulations.

13.2 Gross Income Allocation. In the event any Member would have a Deficit Capital Account at the end of any Company taxable year which is in excess of the sum of any amount that such Member is obligated or deemed obligated to restore to the Company (1) under Regulations Section 1.704 2(g)(1) regarding Company minimum gain and (2) under Regulations Section 1.704 2(i)(5) regarding Member non-recourse minimum gain, then the Capital Account of such Member shall be specially allocated and credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

13.3 Minimum Gain Chargeback. Notwithstanding any other portion of this ARTICLE 13 and except as provided in Section 1.704-2(f) of the Regulations, if there is a net decrease in the Company's minimum gain as determined under Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations during a taxable year of the Company, then the Capital Accounts of each

Member shall be allocated items of income (including gross income) and gain for such year (and, if necessary, for subsequent years) in an amount equal to the total net decrease in the Company's minimum gain multiplied by the Members' percentage share of the Company's minimum gain at the end of the preceding taxable year determined in accordance with Section 1.704-2(g) of the Regulations. This Section 13.3 is intended to comply with the minimum gain chargeback requirement of Section 1.704 2(f) of the Regulations and shall be interpreted consistently therewith. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. In any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion, the Manager may in their discretion (and shall, if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Regulation Section 1.704 2(f)(4).

13.4 Allocation of Member Nonrecourse Debt Deductions. Items of Company loss, deduction and expenditures described in Section 705(a)(2)(B) of the Code which are attributable to any nonrecourse debt of the Company and are characterized as Member nonrecourse debt deductions as determined under Section 1.704 2(i)(2) of the Regulations shall be charged to the Members' Capital Accounts in accordance with said Section 1.704 2(i) of the Regulations.

13.5 Allocation of Nonrecourse Deductions. Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Regulations) attributable to nonrecourse liabilities of the Company, and thereafter throughout the full term of the Company, nonrecourse deductions shall be allocated to the Members in accordance with, and as a part of, the allocations of Company Net Loss for such period.

13.6 Intention of Allocations. Any credit or charge to the Capital Accounts of the Members pursuant to Sections 13.1 through 13.5 hereof shall be taken into account in computing subsequent allocations of Net Profit and Net Loss pursuant to ARTICLE 6, so that the net amount of any items charged or credited to Capital Accounts pursuant to ARTICLE 6 shall to the extent possible, be equal to the net amount that would have been allocated to the Capital Account of each Member pursuant to the provisions of ARTICLE 6 if the special allocations required by Sections 13.1 through 13.5 hereof had not occurred.

#### 13.7 Code Section 704(c) Allocations.

(a) In accordance with Section 704(c)(1)(A) of the Code and Section 1.704 1(b)(2)(iv)(d)(3) of the Regulations, if a Member contributes property with a fair market value that differs from its adjusted basis at the time of contribution, income, gain, loss and deductions with respect to the property shall, solely for federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company and its fair market value at the time of contribution.

(b) Pursuant to Section 704(c)(1)(B) of the Code, if any contributed property is distributed by the Company other than to the contributing Member within five (5) years

of being contributed, then, except as provided in Section 704(c)(2) of the Code, the contributing Member shall be treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Member under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the distribution.

(c) In the case of any distribution by the Company to a Member, such Member shall be treated as recognizing gain in an amount equal to the lesser of:

(i) the excess (if any) of (A) the fair market value of the property (other than money) received in the distribution in excess of (B) the adjusted basis of such Member's interest in the Company immediately before the distribution, reduced (but not below zero) by the amount of money received in the distribution, or

(ii) the Net Precontribution Gain (as defined in Section 737(b) of the Code) of the Member. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Member under Section 704(c)(1)(B) of the Code if all property which (A) had been contributed to the Company within five (5) years of the distribution, and (B) is held by the Company immediately before the distribution, had been distributed by the Company to another Member.

If any portion of the property contributed consists of property which had been contributed by the distributee Member to the Company, then such property shall not be taken into account under this Section 13.7 and shall not be taken into account in determining the amount of the Net Precontribution Gain. If the property distributed consists of an interest in an Entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

13.8 Revaluation of Capital Accounts. In connection with a Capital Contribution of money or other property (other than a *de minimis* amount) by a New Member or existing Member as consideration for the Member's Membership Interest, or in connection with the liquidation of the Company or a distribution of money or other property (other than a *de minimis* amount) by the Company, to a retiring or resigning Member, as consideration for a Membership Interest, the Capital Accounts of the Members shall be adjusted to reflect a revaluation of Company property (including intangible assets) in accordance with Regulation Section 1.704-1(b)(2)(iv)(f). If under Section 1.704-1(b)(2)(iv)(f) of the Regulations, Company property that has been revalued is properly reflected in the Capital Accounts and on the books of the Company at a book value that differs from the adjusted tax basis of such property, then depreciation, depletion, amortization and gain or loss with respect to such property shall be shared among the Members in a manner that takes account of the variation between the adjusted tax basis of such property and its book value, in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the Company are taken into account in determining the Members' share of tax items under Section 704(c) of the Code.

13.9 Recapture. All recapture of income tax deductions resulting from sale or other disposition of Company property shall be allocated to the Member or Members to whom the deduction that gave rise to such recapture was allocated hereunder to the extent that such Member is allocated any gain from the sale or other disposition of such property.

13.10 Other Allocations. For purposes of determining the Net Profit and Net Loss or other items allocable to any period, Net Profit, Net Loss and any other items shall be determined on a daily, monthly, or other basis, as determined by the Manager using any permissible method under Code Section 706 and the Regulations thereunder.

(a) The Members are aware of the income tax consequences of the allocations made hereunder and hereby agree to be bound by the provisions of this Agreement in reporting their shares of Company income and loss for income tax purposes.

(b) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the membership within the meaning of Section 1.752-3(a)(3) of the Regulations, the Member's interest in Net Profit is in proportion to the Member's Percentage Interest.

(c) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Manager shall endeavor to treat distributions as having been made from the proceeds of a nonrecourse liability or a Member nonrecourse debt only to the extent that such distributions would cause or increase the Deficit Capital Account for any Member.

13.11 Overriding Allocations. The allocations set forth in ARTICLE 6 and in this ARTICLE 13 ("Special Allocations") are intended to comply with certain requirements of Treasury Regulation §1.704-1(b). However, notwithstanding the good faith efforts and intentions of the parties to conform the Special Allocations to the economic agreement of the parties, it is understood and acknowledged that the Special Allocations may not be consistent with the manner in which the Members intend to share distributions of Cash Flow of the Company. Accordingly, notwithstanding anything contained in ARTICLE 6 and ARTICLE 13 to the contrary, the Manager are hereby authorized, in his reasonable discretion, to allocate Net Profit, Net Loss, and other Company items attributable to Company assets among the Members so as to prevent the Special Allocations from distorting the manner in which the distributions of Cash Flow are to be shared among the Members pursuant to ARTICLE 6 hereof.

## **ARTICLE 14—NEGOTIATION AND ARBITRATION**

In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the parties hereto shall negotiate in good faith to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by: (i) a certified professional accountant who shall be selected by a Majority of the Members, if the dispute, claim, question or disagreement involves financial or tax issues, and the certified professional accountant's decision shall be binding; (ii)

75% of the Members by a vote for any contract or day-to-day business issues; or (iii) for all other matters, or if 75% of the Members can not reach consensus, by arbitration administered by the Judicial Arbiter Group in accordance with its commercial arbitration rules. The arbitration shall be held in Denver, Colorado within ninety (90) days of the date of such notice by a single arbitrator agreed to by the parties or if the parties are unable so to agree then by an arbitrator selected by the Judicial Arbiter Group. The costs of the arbitration and/or CPA shall be paid by the Company.

## ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 Notices. Any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes (1) if delivered personally to the party or to an executive officer of the party to whom the same is directed; (2) if sent by registered or certified mail, postage and charges prepaid, or by a recognized overnight delivery service, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Agreement; or (3) upon transmission by facsimile or .pdf technology to the facsimile number or electronic mail address, as shown in the Company's records (if available), of the party being notified with a copy of said notice given by one of the other methods set forth in this Section 15.1. Except as otherwise provided herein, any such notice shall be deemed to be given under clause (1) upon delivery, under clause (2) two business days after mailing or one business day after delivery by the overnight delivery service, or under clause (3) upon completion of the facsimile or electronic pdf transmission.

15.2 Application of Law. This Agreement and the application and interpretation hereof shall be governed exclusively by its terms and by the laws of the State of Colorado and specifically the Act.

15.3 Attorneys' Fees. In the event of any dispute arising as a result, or by reason, of this Agreement, the prevailing party in such dispute shall be awarded its reasonable attorneys' fees and all other reasonable costs and expenses incurred in connection with such dispute. The foregoing award of attorneys' fees shall include fees incurred in any post-judgment proceedings to collect or enforce any judgment. This provision is separate and several and shall survive the merger or termination of this Agreement.

15.4 Waiver of Action of Partition. Each Member irrevocably waives during the term of existence of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

15.5 Amendments. The Articles and this Agreement may be amended only upon the unanimous written consent of the Members, except the Manager shall have the authority to amend Exhibit A as provided in Section 4.1 without the consent of the Members.

15.6 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

15.7 Construction of Terms. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the Person may in the context require. Any reference to the Code or statutes or laws shall include all amendments, modifications or replacements of the specific sections or provisions concerned.

15.8 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

15.9 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

15.10 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

15.11 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be illegal, invalid or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Furthermore, a new provision shall automatically be deemed added to this Agreement in lieu of such illegal, invalid or unenforceable provision, which new provision is as similar in terms to such illegal, invalid or unenforceable provision as is possible with the new provision still being legal, valid and enforceable.

15.12 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

15.13 Not for Creditors' Benefit. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company. Furthermore, this Agreement is made solely and specifically for the benefit of the parties hereto, their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other Person shall have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

15.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

15.15 Reliance on Authority of Person Signing Agreement. If a Member is not a natural person, neither the Company nor any Member shall (1) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such Entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual or (2) be required to see to the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such Entity.

15.16 Lack of Registration. The Members recognize that (1) no Membership Interest has been registered under any of the Securities Acts, (2) no Member may sell, offer for sale, transfer, pledge or hypothecate its Membership Interest, or any portion thereof, in the absence of an effective registration statement covering such interest under the Securities Acts, unless such sale, offer for sale, transfer, pledge or hypothecation is exempt from registration under the Securities Acts as approved by the Company, (3) the Company has no obligation to register the Membership Interests for sale, or to assist in establishing an exemption from registration for any proposed sale, and (4) the restrictions on transfer may severely affect the liquidation of the investment.

15.17 Investment Intent. Each Member is acquiring its Membership Interest for its own account for investment purposes and not with a view to, or for sale in connection with, any distribution of any Membership Interest thereof and with no present intention of selling or assigning any Membership Interest. Each Member further acknowledges that there is no public market for the Membership Interests and that there may never be a public market for such Membership Interests, and that even if a market develops for such Membership Interest, the Member may never be able to sell or dispose of such Membership Interests and may thus have to bear the risk of investment in such securities for a substantial period of time. Each Member further acknowledges that it has such knowledge and experience in financial and business matters that it is capable of evaluating the risks of its investment in the Company and is able to bear the economic risk of such investment. Each Member believes it has made an informed judgment with respect to its investment in the Company.

15.18 Creditors' Rights. If a court of competent jurisdiction charges the Membership Interest of any Member with payment of the unsatisfied amount of any judgment or claim, to the extent so charged, the judgment creditor shall have only the rights of an assignee of the Membership Interest, and the Company shall not be dissolved, unless otherwise dissolved pursuant to the provisions of this Agreement or the Act. Such judgment creditor shall have only an Economic Interest and shall not have the right to be admitted as a Member nor to exercise any rights of a Member under this Agreement or the Act.

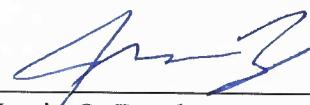
15.19 Further Assurances – PATRIOT Act. Each of the Members hereto agrees to promptly hereafter deliver to the Company (but in any event within 10 days following written request) any evidence, including a certification, reasonably requested from time to time by the Company confirming a Member's compliance with any laws relating to terrorism or money laundering, including Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56), including but not limited to the names, dates of birth and social security number of each natural person directly or indirectly (either as stockholders, members, partners or beneficiaries of trust or otherwise) owning an interest in such Member.

**[CERTIFICATE AND SIGNATURES ON FOLLOWING PAGES]**

## CERTIFICATE

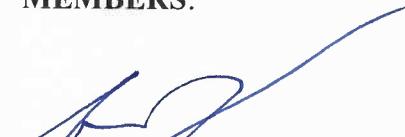
Each of the undersigned hereby agrees, acknowledges and certifies that the foregoing agreement constitutes the Operating Agreement of P Street III, LLC, adopted by the Members and the Manager on behalf of the Company, to be effective as of the 4<sup>th</sup> day of August, 2020.

### MANAGER:



Justin O. Brockman

### MEMBERS:



Justin O. Brockman



Christopher Student

**EXHIBIT A**  
**TO OPERATING AGREEMENT**  
**OF P STREET III, LLC**

Schedule of Members

<b>MEMBER</b>	<b>CAPITAL CONTRIBUTION</b>	<b>PERCENTAGE INTEREST</b>
<b>MEMBERS:</b>		
Justin O. Brockman	\$1,000.00	50.0%
Christopher Student	\$1,000.00	50.0%
<b>TOTAL</b>	<b>\$2,000.00</b>	<b>100%</b>

**FIRST AMENDMENT TO  
OPERATING AGREEMENT OF P STREET III, LLC**

This First Amendment to Operating Agreement of P STREET III, LLC ("First Amendment") is effective as of October 1, 2023.

WHEREAS, P Street III, LLC (the "Company") entered into that certain Operating Agreement dated as of August 4, 2020 (the "Operating Agreement"); and

WHEREAS, the Members and Manager desire to amend certain provisions of the Operating Agreement and acknowledge the resignation of the initial Manager and appointment of the new Manager, and each are authorized to amend the Operating Agreement.

NOW, THEREFORE, the Operating Agreement of the Company is hereby amended as follows:

1. Manager. As of the date hereof, Justin Brockman hereby resigns as the Manager of the Company, and Chris Student is hereby appointed unanimously by the Members as the Manager of the Company.

2. No Other Changes. Except as expressly modified herein, the Operating Agreement of the Company remains in full force and effect.

**MEMBERS:**

  
\_\_\_\_\_  
Justin O. Brockman

  
\_\_\_\_\_  
Christopher Student

**MANAGER:**

  
\_\_\_\_\_  
Christopher Student

**Rezoning Review Criteria Narrative**  
**3300 N Irving St**  
**Denver, CO 80211**

**Consistency with Adopted Plans**

**Denver Comprehensive Plan 2040**

The proposed rezoning aligns well with Denver's Comprehensive Plan 2040 in the following ways:

- **Environmentally Resilient**
  - “Promoting infill development where infrastructure and services are already in place”
  - “Encouraging mixed-use communities where residents can live, work and play in their own neighborhoods”
- **Economically Diverse and Vibrant**
  - “Broaden the tax base with a focus on fiscal activity that is resilient to changes over time”
  - “Promote small, locally-owned businesses and restaurants that reflect the unique character of Denver”
- **Equitable, Affordable, and Inclusive**
  - “Increase development of housing units close to transit and mixed-use developments”
  - “Create a greater mix of housing options in every neighborhood for all individuals and families”

**Blueprint Denver**

The proposed rezoning aligns well with Blueprint Denver in the following ways:

- **Neighborhood Context**
  - The subject property is located on an **Urban Corridor** that “Typically provides some mix of office, commercial, and residential uses.”
  - The surrounding buildings in the neighborhood reach as high as 12 stories, with most in the 2-5 story range, and provide a mix of office, commercial, and residential uses.
- **Adjacent Street Types**
  - The subject property is located adjacent to 32<sup>nd</sup> & Lowell which has a mixture of building types including office, commercial, and residential that range in height from 1-12 stories
- **Plan Policies and Strategies**
  - Land Use and Built Form's | An Evolving City: “With the expected increase in population, neighborhoods will need to accommodate some growth. Balancing the preservation of neighborhood character with the demands for additional housing and jobs is a key focus of this plan's recommendations.”
- **Equity**
  - “Providing a better and more inclusive range of housing and employment options in all neighborhoods.”

**Public Health, Safety, and General Welfare**

The proposed rezoning will ensure that the current building will be able to be used for businesses that will provide amenities and employment opportunities to those in the community. Additionally, should redevelopment of the site take place in the future, the neighborhood and community would see an increase in housing options and/or available space for local businesses.

### **Justifying Circumstances**

The parcel was rezoned to PUD599 on August 22<sup>nd</sup>, 2005 so that the landlord could use the building as a dental office. Since then, Denver has adopted a new zoning code. The proposed rezoning would bring the parcel into the current zoning code while maintaining the appropriate neighborhood context.

### **Zone District**

- **Proposed District Neighborhood Context Description**
  - In the Urban Neighborhood Context, the Mixed Use zone districts promote a pedestrian-active street front. Buildings are pulled up to the street with parking at the side or rear of the building
- **General Purpose Statement**
  - Promote safe, active, and pedestrian-scaled, diverse areas through the use of building forms that clearly define and activate the public street edge
- **Specific Intent**
  - Areas or intersections served primarily by local streets embedded within an existing or proposed neighborhood where a building of 1 to 2 stories is desired

**Rezoning Outreach Documentation**  
**3300 N Irving St**  
**Denver, CO 80211**

I have had discussions with the following people regarding rezoning 3300 N Irving St:

- 1. Amanda Sandoval – Council Woman District 1**
  - a. I had a virtual meeting with Amanda Sandoval on January 12<sup>th</sup>, 2024.
- 2. West Highland Neighborhood Association**
  - a. I send an email on January 11<sup>th</sup>, 2024 to Eddie, Eric, Karl and Joey, and all other members of the West Highland Neighborhood Association who are party to or forwarded emails from the following email addresses:  
[president@westhighlandneighborhood.org](mailto:president@westhighlandneighborhood.org) and [LUP@westhighlandneighborhood.org](mailto:LUP@westhighlandneighborhood.org) informing them of my intention to rezone the property, the justifying circumstances, and asking to have a call to discuss councilwoman Sandoval's recommended zone district to gain their support following my call with Councilwoman Sandoval.
- 3. Joey Gargotto – West Highland Neighborhood Association**
  - a. I spoke with Joey Gargotto, member of the West Highland Neighborhood Association, on February 6<sup>th</sup>, 2024. Joey and I discussed the need to rezone this property, and he voiced his support of the U-MS-2X zone district
- 4. Letter emailed to West Highland Neighborhood Association**
  - a. I emailed a letter on February 28<sup>th</sup>, 2024 with a rezoning narrative to members of the West Highland Neighborhood Association, attached as part of the rezoning application
- 5. Pre-application Meeting**
  - a. I had a virtual meeting with Associate City Planner Will Prince on April 3<sup>rd</sup>, 2024. We discussed the consistency with adopted plans, uniformity of district regulations, furthering public health, safety and welfare, the justifying circumstances, and the consistency with neighborhood context, zone district purpose and intent. Will confirmed there is plan support to rezone the property.
- 6. Development Services Meeting**
  - a. I did not have a concept or pre-application meeting with Development Services because there are no plans to redevelop this property.

P Street III, LLC  
730 Kalamath St  
Denver, CO

November 28<sup>th</sup>, 2024

West Highlands Neighborhood Association

Sent via email

[LUP@westhighlandneighborhood.org](mailto:LUP@westhighlandneighborhood.org)

[jgargotto@gmail.com](mailto:jgargotto@gmail.com)

[paul@digstudio.com](mailto:paul@digstudio.com)

West Highlands Neighborhood Association Members,

I am the managing member of P Street III, LLC, the owner of the property most recently occupied by Perfect Teeth at 3300 N Irving St, Denver, CO, the southeast corner of 34<sup>th</sup> Ave and Irving St. You may recall that I attempted to rezone this property in the first half of 2021, which ultimately led to push back from the West Highlands neighbors and denial by City Council members, due to concerns of the proposed zone district, U-MX-2, allowing for a drive thru use, subject to geographical limitations.

**Here is a timeline of events from my previous rezoning effort:**

- 9/21/2020: Landlord met with Naomi Grunditz to discuss potential rezoning
- 10/21/2020: Landlord had a pre-application meeting with Ashley Green of Development Services, Pre-Application Request document attached
- 10/30/2020: Landlord met with Councilwoman Sandoval via Zoom to discuss the pre-application
- 12/4/2020: Landlord submitted a Rezoning Application, attached
- 12/16/2020: Landlord met with the West Highlands Neighborhood Association, attendees included Trevor Greco and Rick Kerr, among others
- 12/23/2020: Landlord had multiple conversations with James Van Hooser and Naomi Grunditz regarding the Rezoning Application. James and Naomi suggested some minor changes to the Rezoning Application that was previously submitted, which Landlord incorporated and resubmitted
- 3/25/2021: City Planner James Van Hooser submitted a letter to the Denver Planning Board with the following recommendation: “Based on the criteria for review in the Denver Zoning Code, Staff recommends approval for Application #2020I-00181” to be rezoned to U-MX-2, attached
- 4/20/2021: LUTI Committee discussed the Rezoning Application
- 5/17/2021: City Council First Reading
- 5/18/2021: Signs were posted on the property for the public hearing
- 6/14/2021: City Council Public Hearing

It was never my intention to redevelop this property to allow for a drive thru, and I currently do not have any plans to redevelop this property. I recently reengaged with District 1 Councilwoman Amanda Sandoval to get her opinion on the most appropriate zone district, which she believes is U-MS-2X.

#### **Proposed Zone District**

The proposed zone district is U-MS-2x, which is described by the City and County of Denver as follows; “U-MS-2X applies to small sites served primarily by local streets embedded within an existing or

P Street III, LLC  
730 Kalamath St  
Denver, CO

proposed neighborhood. These are typically one or two parcels and are limited to low scale building forms and low intensity uses."

U-MS-2X does not allow for a drive thru use.

### **Justifying Circumstances**

The parcel was rezoned to PUD599 on August 22nd, 2005, to allow the landlord to use the building as a dental office. Unfortunately, the allowable use for the PUD was written very narrowly, and quite literally only allows for dental use. Since then, Denver has adopted a new zoning code. The proposed rezoning would bring the parcel into the current zoning code while maintaining the appropriate neighborhood context. This will allow for the building to be used by more than just a dentist, so it can continue to serve the needs of the surrounding community.

I met with Councilwoman Sandoval on January 12, 2024 to discuss this property and the appropriate zone district for this property to fit in with the neighborhood context, and have her support to move forward with the U-MS-2X zone district. In addition to Councilwoman Sandoval selecting and supporting this zone district, I'm hopeful that the West Highlands Neighborhood Association will provide the same support.

Prior to submitting the Rezone Application to the City and County of Denver, I would love to have confirmation from the WHNA to show the City Council that both the District 1 Councilwoman and the WHNA are in support of the proposed zone district. Please reach out to me at your earliest convenience, my contact information is below.

Sincerely,

*Chris Student*

Chris Student  
952-201-5676  
chris@rprops.com