



**TO:** Denver City Council Land Use, Transportation and Infrastructure Committee  
**FROM:** Theresa Lucero, Senior City Planner  
**DATE:** September 19, 2019  
**RE:** Official Zoning Map Amendment Application #2019I-00006

**Staff Report and Recommendation**

Based on the criteria for review in the Denver Zoning Code, Staff recommends approval for Application #2019I-00006.

**Request for Rezoning**

**Address:** 18300 East 66<sup>th</sup> Avenue  
**Neighborhood/Council District:** DIA Neighborhood / Council District 11  
**RNOs:** Green Valley Ranch Citizen’s Advisory Board; Master Homeowners Association for Green Valley Ranch; Montbello 20/20; Northern Corridor Coalition; Inter-Neighborhood Cooperation (INC)  
**Area of Property:** 168,117 square feet or 3.86 acres  
**Current Zoning:** C-MU-20 with waivers and conditions, AIO  
**Proposed Zoning:** S-CC-5, AIO  
**Property Owner(s):** DIBC Commercial, LLC  
**Owner Representative:** Mark Throckmorton

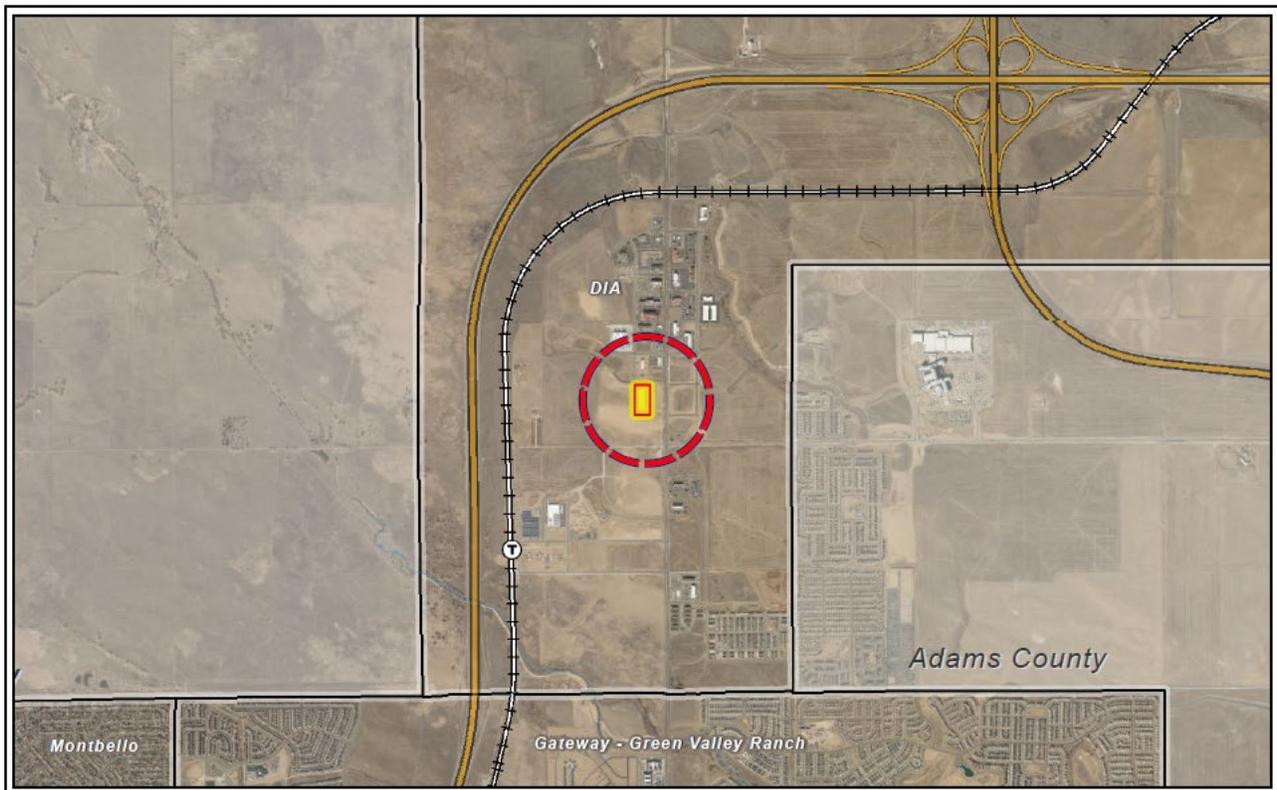
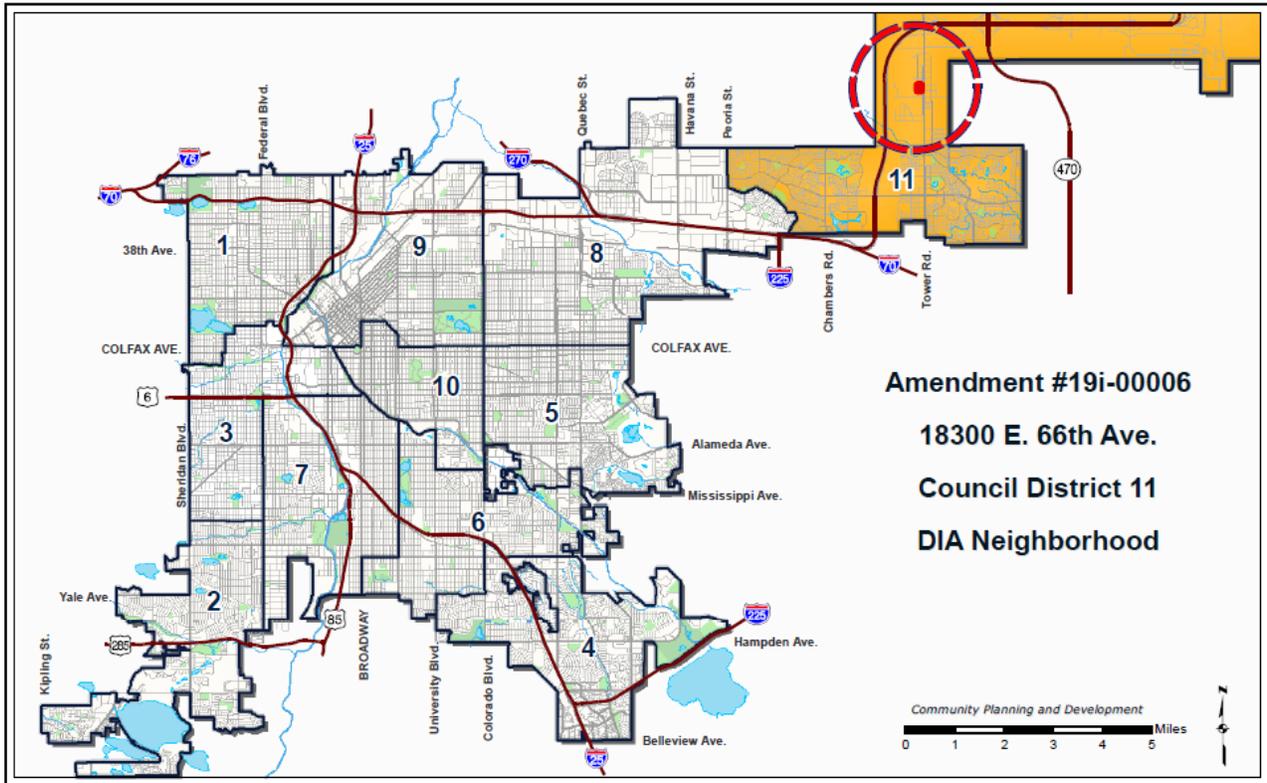
**Summary of Rezoning Request**

- The subject property is vacant. The property owner is proposing to rezone the property to build a fully enclosed collision center on the property.
- The **S-CC-5, Suburban, Commercial Corridor, 5**, (auto-oriented arterial streets where the building scale is 5 stories, or 70 feet. The **Airport Influence Overlay** is designed to limit the impacts of airport operations on surrounding properties. The S-CC-5 district is intended for use in the Suburban Neighborhood Context which is characterized by single-unit and multi-unit residential, commercial strips and centers, and office parks. Land use types are typically separated from other land use types such as single-family separate from multi-family, and commercial separate from residential. The General, Drive Thru Services, and Drive Thru Restaurant primary building forms are allowed. Further details of the S-CC-5 zone district can be found in Article 3 of the Denver Zoning Code and of the AIO overlay can be found in Article 9.

Suburban (S) Neighborhood Context Zone District	Building Forms											
	Suburban House	Urban House	Duplex	Tandem House	Row House	Garden Court	Town House	Apartment	Drive Thru Services	Drive Thru Restaurant	General	Shopfront
Max Number of Primary Structures Per Zone Lot	1*	1*	1*	2	No Maximum							
Commercial Corridor (CC)	S-CC-5								☐	☐	■	

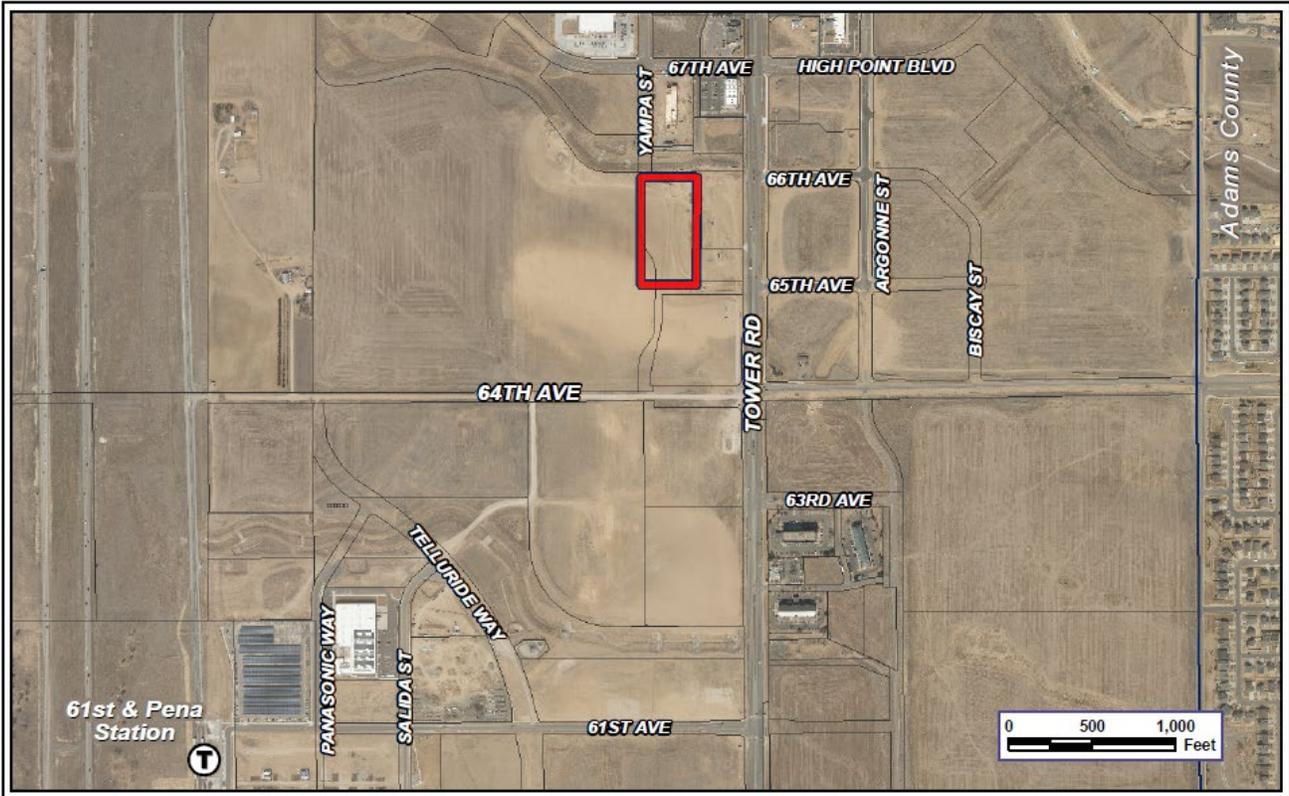
■=Allowed      ☐= Allowed subject to geographic limitations. \*See Section 1.2.3.5 for exceptions

Planning Services  
 Community Planning and Development  
 201 W. Colfax Ave., Dept. 205 | Denver, CO 80202  
[www.denvergov.org/CPD](http://www.denvergov.org/CPD)  
 p. 720.865.2983



### 1. Existing Context

#### Aerial - 2018



Map Date: August 22, 2019

The subject property is on vacant land west of Tower Road at the southeast corner of 66<sup>th</sup> Avenue and Yampa Street. In the general vicinity are:

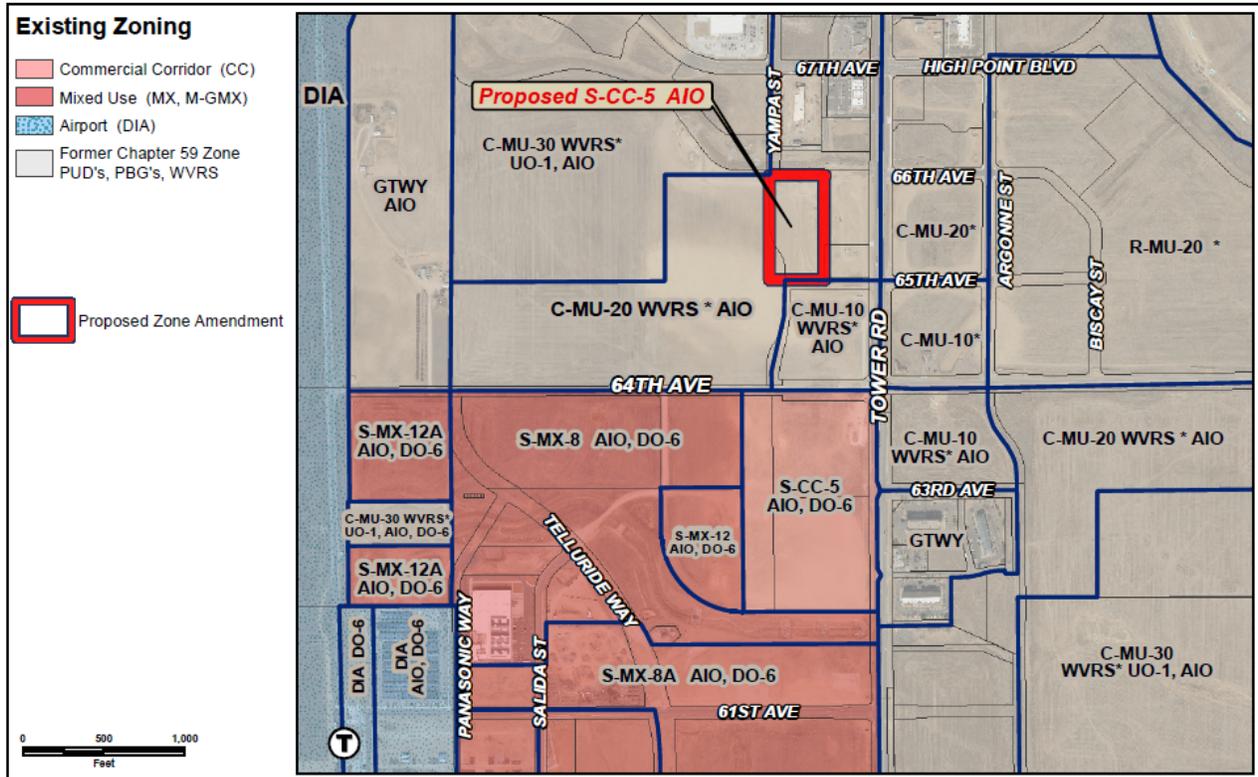
- Denver International Airport – 3 miles northeast;
- 61<sup>st</sup> & Peña Station on the University of Colorado A Line – ¾ miles southwest;
- Gaylord Rockies Resort – 1 1/4 miles east;
- Peña Boulevard – 3/4 mile west,

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

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
Site	C-MU-20 with waivers & conditions, AIO	Vacant	None	Block sizes and shapes are consistent and rectangular and shaped by a grid street pattern. A mixture of attached, detached and no sidewalks and no existing alleys.
North	C-MU-20 with waivers & conditions, AIO	Vacant	None	
South	C-MU-20 with waivers & conditions, AIO	Vacant	None	
East	C-MU-20 with waivers & conditions, AIO	Commercial and Vacant	1-story Commercial with Fuel Pumps	
West	C-MU-20 with waivers & conditions, AIO	Vacant	None	

## 2. Existing Zoning

### Existing Zoning



Map Date: August 22, 2019

The existing zoning is C-MU-20 with waivers and conditions and AIO, DIA Influence Area Overlay Zone. The C-MU-20 is a Former Chapter 59 commercial mixed use zone district providing for a wide range of commercial and residential allowed uses and limited industrial land uses along or near arterial streets or other high traffic streets. The waivers limit residential uses, waive the right to build single-family single-unit uses north of East 56<sup>th</sup> Avenue, and waive the right to a primary parking use unless the use is completely enclosed in a garage or parking structure. The zoning includes a condition that zone lots located between East 56<sup>th</sup> Avenue and East 62<sup>nd</sup> Avenues occupied by a listed residential use shall comply with noise mitigation construction standards. There is a further condition for zone lots located north of East 56<sup>th</sup> Avenue that prior to February 11, 2000, the owner shall execute an Air Rights Covenant and Avigation Easement whereby the property owner waives the rights and causes of action against the city due to airport noise. The C-MU-20 zone district requires a minimum zone lot of 4,000 square feet for single unit dwellings, 6,000 square feet for duplexes, and 10,000 square feet for any other land use. Maximum gross floor area allowed for C-MU-20 districts is 1:1, or gross floor area equal to the area of the zone lot.

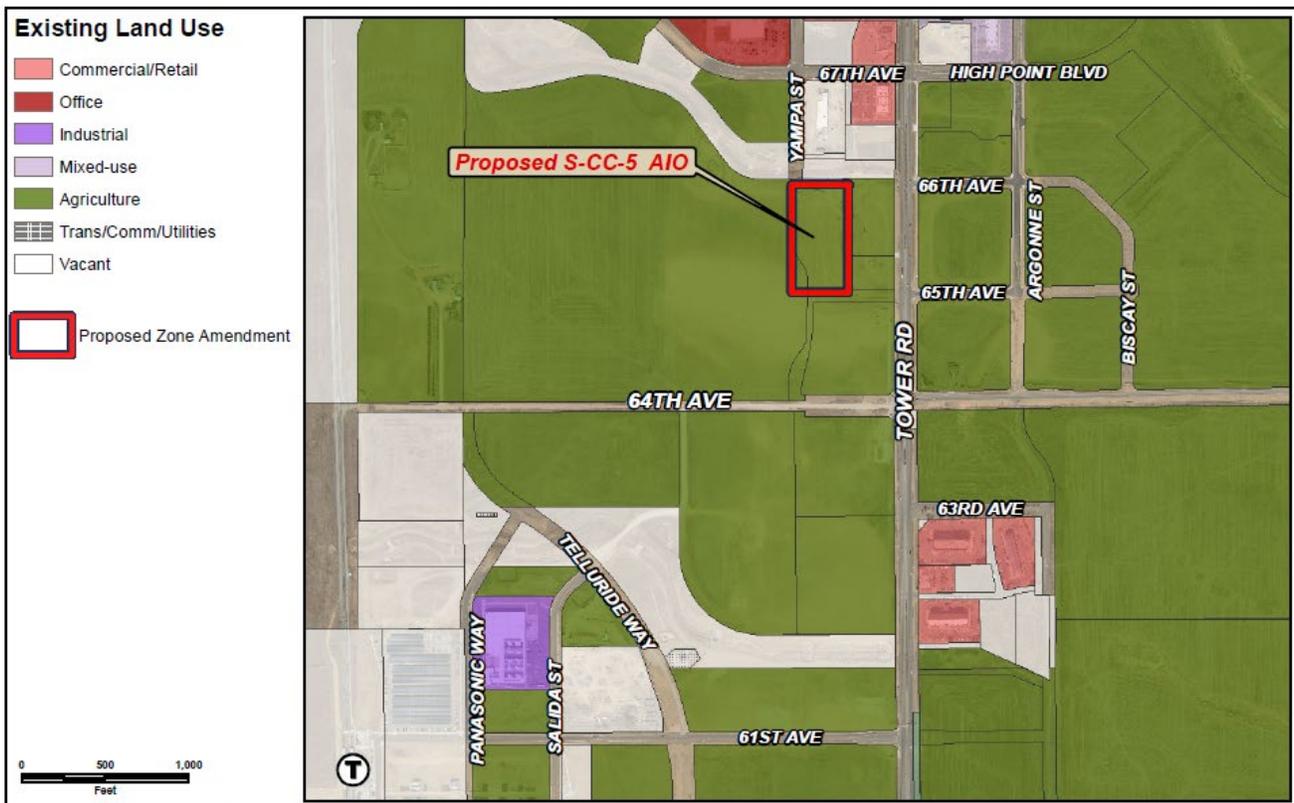
AIO, the DIA Influence Area Overlay Zone, is paired with the DIA Influence Area zone district. The AIO is a Denver Zoning Code zone district which does not apply to the site because the site retains Former Chapter 59 zoning, but it will apply to the site when rezoned to the Denver Zoning Code. The AIO is designed to limit the impacts of airport activity on the airport's neighbors and provides room for the airport to expand and grow. The intent of the AIO is to minimize noise impacts of the

airport on residential or sensitive land uses in the DIA Influence Area. Within the DIA Influence Area Overlay Zone District there are the following land use restrictions:

1. Single unit and two unit dwellings are not permitted in the DIA Influence Area Overlay Zone District.
2. Multi-unit dwellings, live/work dwellings, all uses categorized as group living uses in the Zoning Code, hospitals, bed and breakfast, and all educational uses that include residential accommodations are not permitted in the DIA Influence Area Overlay Zone District north of 64<sup>th</sup> Avenue.
3. Surface parking of vehicles is not permitted as a primary use of land in the DIA Influence Area Overlay Zone District. Garage parking is permitted.

## 2. Existing Land Use Map

### Existing Land Use



Map Date: August 22, 2019

Land Use Data Compiled 2018

### 3. Existing Building Form and Scale



**Proposed Zoning**

The requested S-CC-5 has a maximum height of 70 feet and allows the General primary building form. Drive thru Services and Restaurants are not allowed on zone lots within ¼ mile of the outer boundary of a Rail Transit Station Platform, but since this site is not located within ¼ mile of a rail station, they would be allowed. A wide variety of residential, civic, commercial and industrial land uses are allowed. The Denver International Airport Overlay Zone District, AIO, intent is to reduce exposure of residential and other sensitive land uses to airport operations, to minimize noise impacts of the airport on residential or sensitive land uses in the DIA Influence Area. Within the DIA Influence Area Overlay zone district there are the following land use restrictions:

1. Single unit and two unit dwellings are not permitted in the DIA Influence Area Overlay Zone District.
2. Multi-unit dwellings, live/work dwellings, all uses categorized as group living uses in the Zoning Code, hospitals, bed and breakfast, and all educational uses that include residential accommodations are not permitted in the DIA Influence Area Overlay Zone District north of 64<sup>th</sup> Avenue.
3. Surface parking of vehicles is not permitted as a primary use of land in the DIA Influence Area Overlay Zone District. Garage parking is permitted.

Design Standards	Existing C-MU-20 Waiver & Conditions, AIO	Proposed S-CC-5, AIO
Primary Building Forms Allowed	N/A	General
Stories/Heights (max)	N/A	5 stories, 70 feet
Primary Build-to Percentages (min)	N/A	N/A
Primary Street Setback (min)	10 feet (For 1 or 2 unit residential); 0 feet (For ground floor commercial with 4 or more stories)	0 feet
Surface Parking Between Building and Primary Street/Side Street	N/A	Allowed/Allowed
Transparency, Primary Street	N/A	40%
AIO	Yes	Yes

**Summary of City Agency Referral Comments**

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

**Assessor:** Approved – No Response.

**Asset Management:** Approved – No Comments.

**Denver Public Schools:** Approved – No Response.

**Department of Public Health and Environment:** - Approved, see comments below. Notes. DDPHE concurs with the rezoning and has no information to suggest that current environmental conditions would impact the proposed rezoning.

General Notes: Most of Colorado is high risk for radon, a naturally occurring radioactive gas. Due to concern for potential radon gas intrusion into buildings, DDPHE suggests installation of a radon mitigation

system in structures planned for human occupation or frequent use. It may be more cost effective to install a radon system during new construction rather than after construction is complete. If renovating or demolishing existing structures, there may be a concern of disturbing regulated materials that contain asbestos or lead-based paint. Materials containing asbestos or lead-based paint should be managed in accordance with applicable federal, state and local regulations.

The Denver Air Pollution Control Ordinance (Chapter 4- Denver Revised Municipal Code) specifies that contractors shall take reasonable measures to prevent particulate matter from becoming airborne and to prevent the visible discharge of fugitive particulate emissions beyond the property on which the emissions originate. The measures taken must be effective in the control of fugitive particulate emissions at all times on the site, including periods of inactivity such as evenings, weekends, and holidays.

Denver's Noise Ordinance (Chapter 36–Noise Control, Denver Revised Municipal Code) identifies allowable levels of noise. Properties undergoing Re-Zoning may change the acoustic environment, but must maintain compliance with the Noise Ordinance. Compliance with the Noise Ordinance is based on the status of the receptor property (for example, adjacent Residential receptors), and not the status of the noise-generating property. Violations of the Noise Ordinance commonly result from, but are not limited to, the operation or improper placement of HV/AC units, generators, and loading docks. Construction noise is exempted from the Noise Ordinance during the following hours, 7am–9pm (Mon–Fri) and 8am–5pm (Sat & Sun). Variances for nighttime work are allowed, but the variance approval process requires 2 to 3 months. For variance requests or questions related to the Noise Ordinance, please contact Paul Riedesel, Denver Environmental Health (720-865-5410).

Scope & Limitations: DEH performed a limited search for information known to DDPHE regarding environmental conditions at the subject site. This review was not intended to conform to ASTM standard practice for Phase I site assessments, nor was it designed to identify all potential environmental conditions. In addition, the review was not intended to assess environmental conditions for any potential right-of-way or easement conveyance process. The City and County of Denver provides no representations or warranties regarding the accuracy, reliability, or completeness of the information provided.

**Development Services – Fire Prevention:** Approved – No Response.

**Development Services – Project Coordination:** Approved – No Response.

**Development Services – Transportation:** Approved – No Response.

**Development Services – Wastewater:** Approved – No Response.

**Parks and Recreation:** Approved – No Response.

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

**Public Review Process**

	<b>Date</b>
CPD informational notice of receipt of the rezoning application to all affected members of City Council, registered neighborhood organizations, and property owners:	<b>06/28/19</b>
Property legally posted for a period of 15 days and CPD written notice of the Planning Board public hearing sent to all affected members of City Council, registered neighborhood organizations, and property owners:	<b>08/19/19</b>
Planning Board public hearing and unanimous (6-0) recommendation of approval:	<b>09/04/19</b>
CPD written notice of the Land Use, Transportation and Infrastructure Committee meeting sent to all affected members of City Council and registered neighborhood organizations, at least ten working days before the meeting:	<b>09/10/19</b>
Land Use, Transportation and Infrastructure Committee of the City Council:	<b>09/24/19</b>
Property legally posted for a period of 21 days and CPD notice of the City Council public hearing sent to all affected members of City Council and registered neighborhood organizations:	<b>10/13/19 (Tentative)</b>
City Council Public Hearing:	<b>11/04/19 (Tentative)</b>

- **Registered Neighborhood Organizations (RNOs)**
  - To date, staff has received no comment letters from Registered Neighborhood Associations.
- **Other Public Comment**
  - To date, staff has received no other public comment letters.

**Criteria for Review / Staff Evaluation**

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

**DZC Section 12.4.10.7**

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

**DZC Section 12.4.10.8**

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

**1. Consistency with Adopted Plans**

The following adopted plans apply to this property

- Denver Comprehensive Plan 2040
- Blueprint Denver (2019)
- Far Northeast Area Plan (2019)

**Denver Comprehensive Plan 2040**

The proposed rezoning is consistent with many of the *Denver Comprehensive Plan 2040* strategies, including:

- Strong and Authentic Neighborhoods Goal 1, Strategy A – “*Build a network of well-connected, vibrant, mixed-use centers and corridors*” (p.34).
- Economically Diverse and Vibrant Goal 2, Strategy B – “*Facilitate the growth of a diverse business sector that serves as the foundation for a global, innovative economy*” (p.46).
- Economically Diverse and Vibrant Goal 5, Strategy C – “*Promote Denver International Airport as the gateway between Denver and the world*” (p. 47).
- Environmentally Resilient Goal 8, Strategy A - “*Promote infill development where infrastructure and services are already in place*” (p.54).

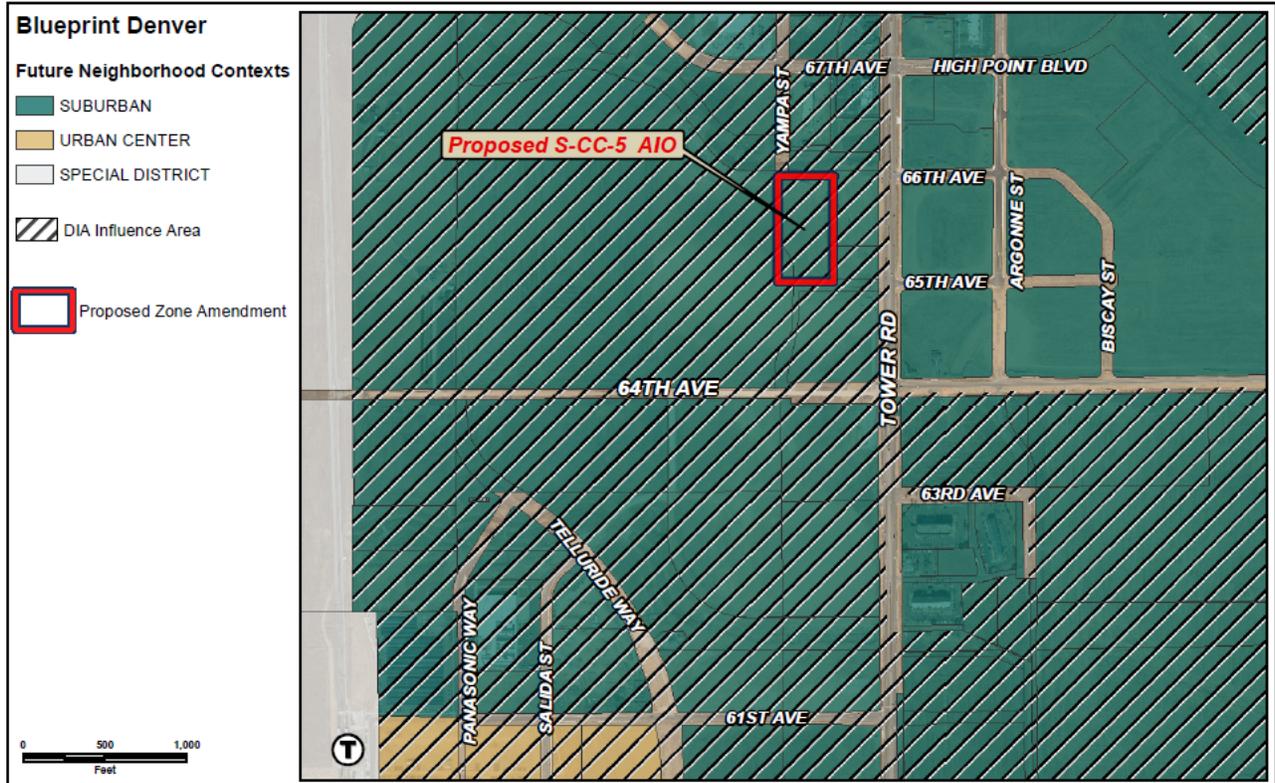
The proposed map amendment will enable development at a greenfield location where infrastructure is already in place. The requested S-CC-5 zone district broadens the mix of allowed land uses to those uses appropriate for auto-dominated arterial streets. The AIO, DIA Influence Area Overlay Zone District, will reduce exposure of residential and other sensitive land uses to nearby airport operations thus allowing the airport to grow. Therefore the rezoning is consistent with *Comprehensive Plan 2040* recommendations.

**Blueprint Denver (2019)**

*Blueprint Denver 2019* identifies the subject property as within the Suburban Neighborhood Context, in a Community Center future place with a growth strategy of “Community Centers and Corridors.” Areas within the DIA Influence Area Overlay Zone District (AIO) are specifically addressed:

- Land Use and Built Form: Economics Policy 7: “*Protect and Promote Denver International Airport as the primary economic engine for the state of Colorado*” (p. 93).
- Land Use and Built Form: Economics Policy 7B; “*Encourage further commercial development near the airport and protect DEN’s ability to grow and thrive for generations to come*” (p. 93).
- Land Use and Built Form: Economics Policy 7C: “*Maintain existing zoning regulations that limit the type and location of residential uses allowed north of 56<sup>th</sup> Avenue as needed. If any new or existing regulatory tools need consideration, a city-led process with community input should occur*” (p. 93).

## Blueprint Denver Future Neighborhood Contexts



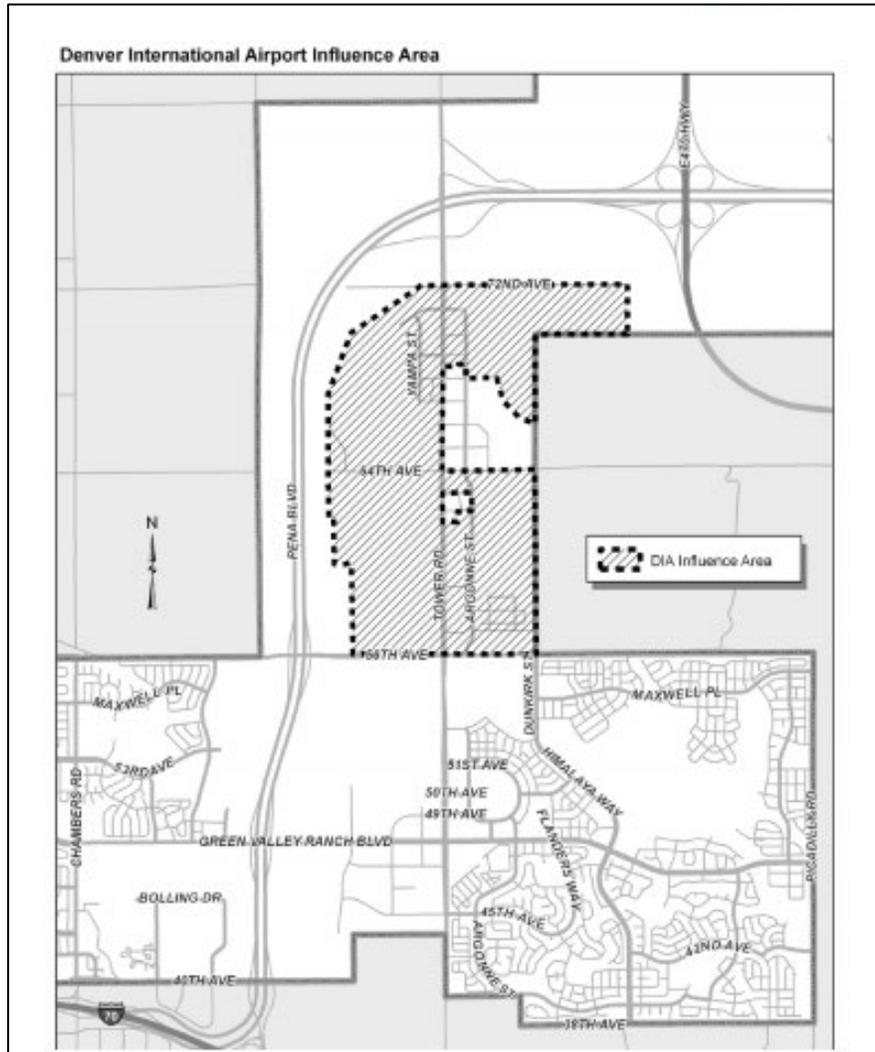
Map Date: August 22, 2019

### Future Neighborhood Context

*Blueprint Denver 2019* is organized by neighborhood contexts since a context-based approach sets guidelines for character-compatible development. According to *Blueprint Denver* the subject property is within the Suburban Context and the Airport District. Suburban areas are characterized by a range of uses from single-unit and multi-unit residential to commercial corridors and centers. Commercial development is focused along main corridors and centers. The intensity and scale of uses are dependent upon the surrounding character. Block patterns are generally irregular with curvilinear streets and no alleys. These areas are generally found at the edges of Denver.

The Airport District serves the primary purpose of air transportation, shipping and vehicle storage for travelers and employees of Denver International Airport (DIA). Land uses found within the airport district are either aviation, aviation-related or non-aeronautical commercial activities ranging from warehousing, manufacturing, office, hotel, retail, commercial, car rental, air cargo transfer and all aviation services. Due to the need for the airport to continue serving its role in the state economy, nearby places outside of the airport district are included in the DIA Influence Area. This area is located generally between 56<sup>th</sup> Avenue and 72<sup>nd</sup> Avenue, and between Dunkirk Street and Peña Boulevard (see the map below). Within the DIA Influence Area the DIA Influence Area Overlay Zone District applies when properties rezone out of Former Chapter 59 zone districts into the Denver Zoning Code. The AIO applies additional regulations in the area to:

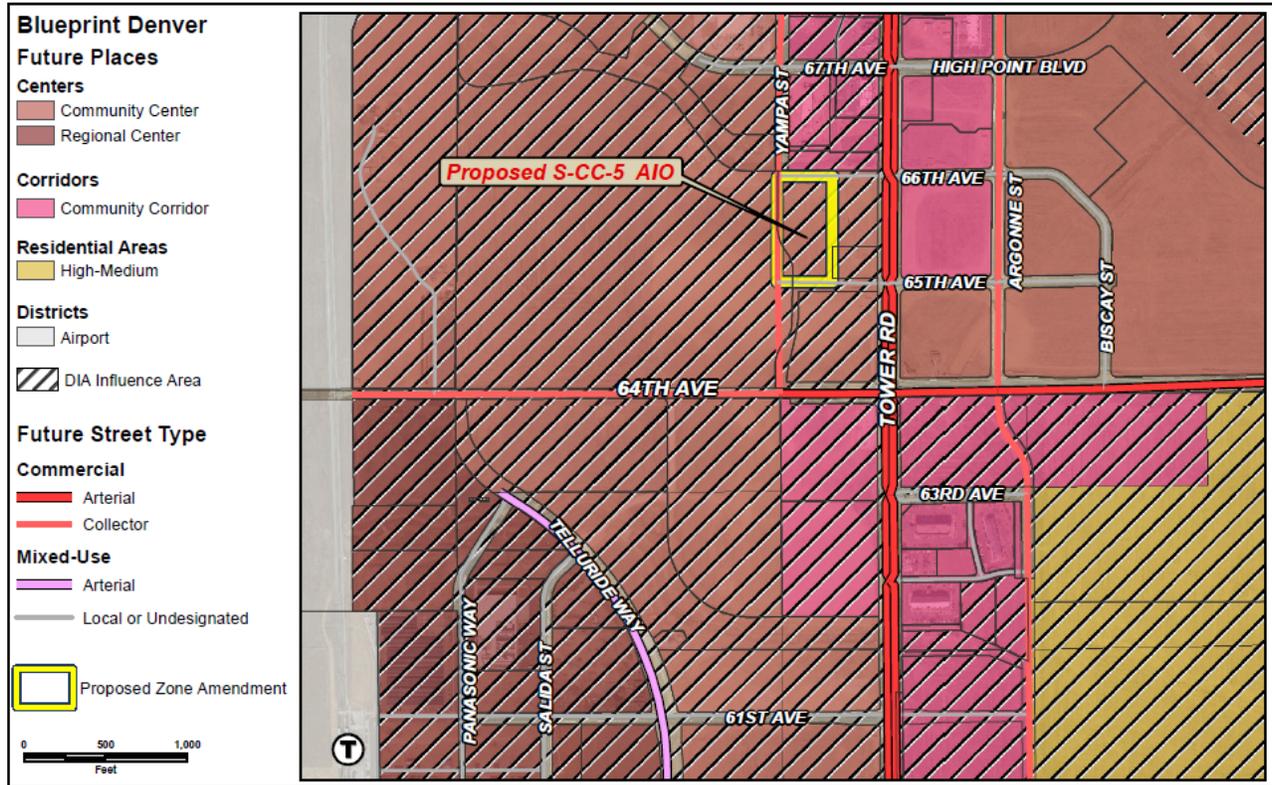
- Limit single and two-unit residential uses
- Not permit multi-unit residential uses north of 64<sup>th</sup> Avenue
- Require Avigation Easements with rezoning and site development plans.



The proposed S-CC-5 zone district allows a rich mix of residential, civic, commercial and limited industrial land uses next to the city’s most auto-dominated corridors. The AIO Overlay Zone District will serve to prohibit single-unit, two-unit and multi-unit residential land uses on the subject property as the property is within the DIA Influence Area. The proposed S-CC-5 AIO will allow non-residential development of the subject property while respecting the influence area of Denver International Airport.

**Future Places**

**Blueprint Denver Future Places and Streets**



Map Date: August 22, 2019

A Community Center “typically provides some medium mix of office, commercial and residential uses. A wide customer draw both of local residents from surrounding neighborhoods and from other parts of the city. Activity levels vary depending on the type and mix of uses. A mix of larger and smaller scale buildings, some setback from the street to accommodate parking. Heights are generally up to 5 stories. Transitions gradually within the center out to the surrounding residential uses” (p. 194). The S-CC-5 AIO zone district standards allow a mix of office, commercial and limited industrial land uses appropriate for a commercial corridor near an airport and a maximum allowed height of 5 stories. The AIO will ensure that the new development remains compatible with nearby airport operations.

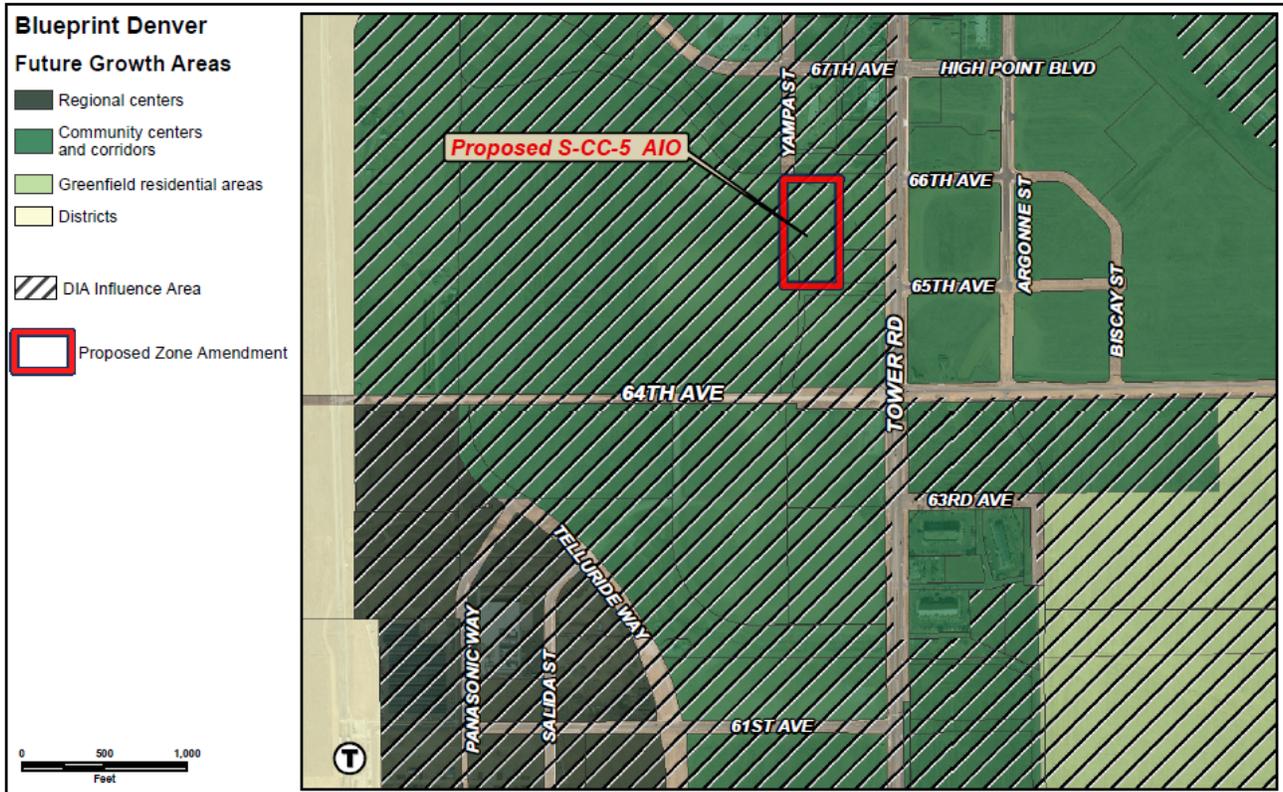
**Street Types**

Blueprint Denver 2019 classifies 66<sup>th</sup> Avenue as an Undesignated Local street and Yampa Street as a Commercial Collector street. Tower Road half a block to the east is classified as a Commercial Arterial street. Local streets are designed for the highest degree highest degree of property access and the lowest through movement. Arterial streets are designed for the highest amount of through movement and the lowest degree of property access. Collector streets are in between as they collect movement from local streets and convey it to arterial streets. Commercial streets “typically contain commercial uses including shopping centers, auto services and offices. Buildings are often set back with on-site parking” (p. 159). Within the Suburban Context the predominate street types are Local and Community

Corridors. The proposed S-CC-5 district allows a mix of residential, commercial and limited industrial uses. Therefore, it is consistent with the Suburban commercial collector, local street and Commercial Arterial street types near this site.

**Growth Strategy**

**Blueprint Denver Future Growth Strategy**



Map Date: August 22, 2019

The subject property is on the Growth Strategy map within "Community centers and corridors." These types of places are anticipated to see around 25% of new housing growth and 20% of new employment growth by 2040 (p. 51). "The future growth area percentages indicate the projected amount of new jobs or new housing across all areas of the city with that place designation. Each place may have a unique ratio of jobs and housing different than what the place designation captures across the entire city. For example, some centers and corridors may only have new jobs – and no new housing – due to market conditions or existing land use regulations, such as the airport influence overlay zone near DEN" (p. 51). This site is located within the "Community centers and corridors" and is within the Airport Influence Overlay that will limit the impacts of airport operations and minimize noise impacts on surrounding properties. The proposed map amendment to S-CC-5 and AIO will allow medium-intensity commercial growth on a Community Corridor where it is in character with the existing area while accommodating DEN airport operations.

**Far Northeast Area Plan (2019)**

The Far Northeast Area Plan contains a framework plan for the entire study area and individual neighborhood statistical areas summarizing the vision for smaller neighborhood areas. The Plan updates Denver Comprehensive Plan 2040 and Blueprint Denver 2019. The Plan’s most pertinent overall future place land use recommendations are:

- *“LU-3 Infill and intensify existing commercial areas by attracting more retail, services, and residential to create mixed-use centers and corridors” (p. 37).*
- *“LU-3.2 Create mixed-use corridors at the locations identified on the future places map...b. create community corridors on Tower Road” (p. 37).*
- *“LU-4 Create new community and regional centers in large undeveloped areas...b. and key intersections on Tower Road as identified by the future places map” (p. 38).*

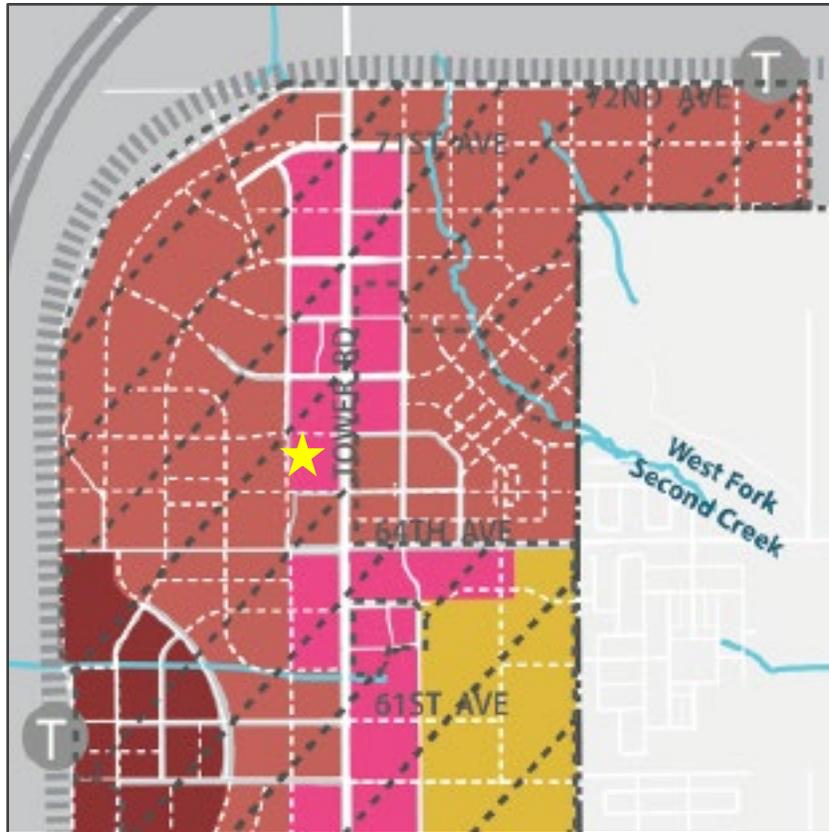
Within the Far Northeast Area Plan the subject property is within the Suburban Neighborhood Context, in a Community Center future place, with a Growth Strategy of Community Centers and Corridors and is recommended for a maximum building height of 8 stories. See the Future Neighborhood Context map, the Future Places map, the Growth Strategy map and the Recommended Maximum Building Heights Maps below.

### Far Northeast Area Plan Neighborhood Context



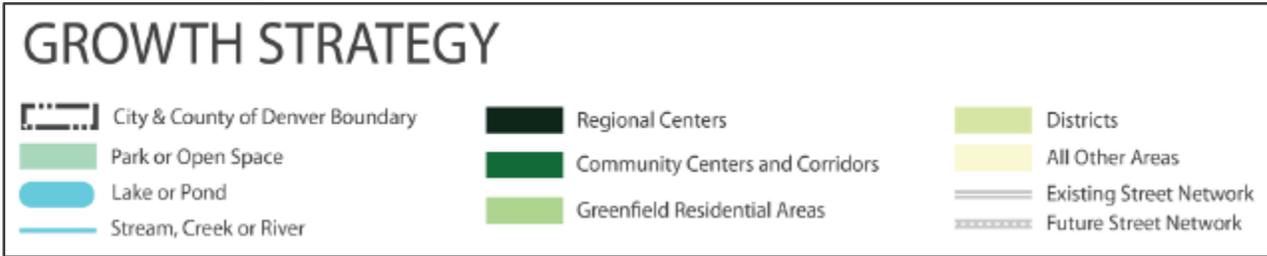
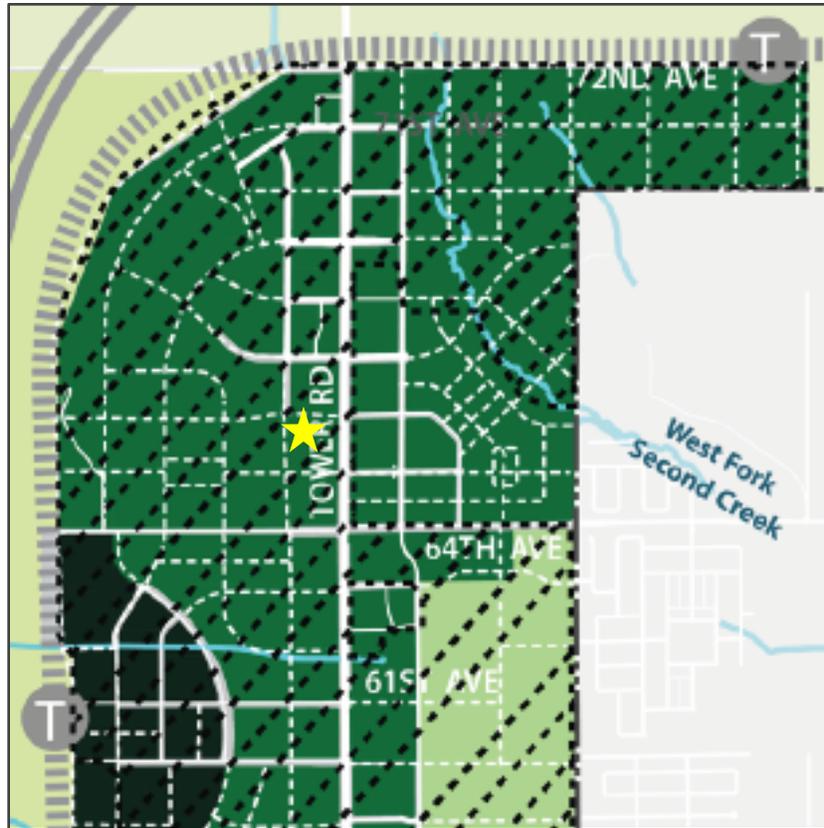
The Far Northeast Area Plan designates the subject property as within the Suburban Neighborhood context and describes the context as “largely single-unit but can also include higher intensity residential. Commercial development is focused along main corridors and centers bordering residential areas. Although this context is more auto-oriented than others, there should still be quality multi-modal connectivity” (p. 31). The proposed S-CC-5/AIO districts will allow commercial mixed use development on the Tower Road corridor in conformance with the Suburban Neighborhood Context.

**Far Northeast Area Plan Future Place**



The Far Northeast Area Plan designates the subject property as within a Community Corridor future place. The plan describes Corridors as “mixed-use places of different scales (local and community) oriented along a street. They provide spaces for people to engage in social activities and entertainment, such as shopping and dining. Corridors are often embedded in neighborhoods and serve nearby residents. Far Northeast has community corridors, but not local corridors” (p. 33). The S-CC-5 zone district, with the allowed mixture of civic, commercial and limited industrial land uses and a scale of 5 stories, will be compatible with the designated Community Corridor place type. The AIO will ensure new development remains compatible with nearby airport operations.

**Far Northeast Area Plan Growth Strategy**



Within the Far Northeast Area Plan the growth strategy for the subject property is “Community Centers and Corridors.” The plan states that “*most change is expected to occur in greenfield areas, that are currently underdeveloped. These undeveloped lands are located in the Gateway on either side of the Pena Boulevard scenic buffer, along Tower Road, and include most of the land located north of E. 56<sup>th</sup> Avenue*” ...*In addition to the significant growth opportunity on undeveloped land, growth is also expected in existing community centers and corridors through reinvestment and redevelopment.* (p. 41). The S-CC-5 zone district will allow some undeveloped property to be redeveloped with moderate-intensity mixed use commercial development while the AIO will ensure the land uses are compatible with DEN airport operations.

### Far Northeast Area Plan Recommended Building Heights



The Far Northeast Area Plan also recommends maximum building heights. For the subject property the recommended maximum building height is 8 stories. See the maximum building height plan map above. The S-CC-5 proposed zone district is below the recommended 8 story height limit.

And Finally, the Far Northeast Area Plan suggests strategies for implementing the plan in the “character areas” described in the plan. The subject property is within the DIA neighborhood where “the vast majority of this area consists of undeveloped land, these character areas are broad and will take shape over the course of many years as the DIA neighborhood develops according to the guidance of this plan” (p. 183). Recommendations for the area include the following strategies:

- “1 – Create community corridors on major through streets and locate community centers at major intersections: 1A Tower Road, 56<sup>th</sup> Avenue, and 64<sup>th</sup> Avenue – Create a destination community corridor on Tower Road spanning the neighborhood from north to south. Community corridor opportunities also exist on portions of 56<sup>th</sup> and 64<sup>th</sup> Avenues” (p. 183).



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

The proposed rezoning to S-CC-5 AIO will result in the uniform application of zone district building form, use and design regulations.

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

The proposed official map amendment furthers the public health, safety, and general welfare of the City by allowing an investment in developing vacant property in the area consistent with the desired character as described by the city's adopted land use plans.

## **4. Justifying Circumstance**

The application identifies the adoption of Comprehensive Plan 2040, Blueprint Denver 2019 and the Far Northeast Area Plan and the desire to conform to the new plans as well as to rezone out of the Former Chapter 59 zone district as the changed or changing conditions that are the Justifying Circumstance under DZC Section 12.4.10.8.A.4, *"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: Changed or changing conditions in a particular area, or in the city generally; or a city adopted plan; or that the city adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning."*

The Blueprint Denver 2002 concept land use was Employment and Area of Change. Areas of change were where new growth should be directed and Employment areas contained office, warehousing, light manufacturing and high tech land uses. With the adoption of Comprehensive Plan 2040, Blueprint Denver 2019 and the Far Northeast Area Plan the land use concept was updated to a Community Corridor place type and maximum 5-8-story building height. The Community Corridor is a mix of commercial, office and residential land uses at a moderate scale. These updated changes to the place type and the recommended scale of development are sufficient changed conditions to justify rezoning the property. Changed conditions is an appropriate justifying circumstance for the proposed rezoning.

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

The fifth review criterion in the Denver Zoning Code is that the proposed official map amendment must be consistent with the descriptions of the applicable neighborhood context, and with the stated purpose and intent of the proposed zone district. Overall, the proposed map amendment is consistent with the Suburban Neighborhood Context. The Denver Zoning Code describes the Suburban Context which is characterized by single-unit, and multi-unit residential, commercial strips and centers, and office parks. Multi-unit building forms are typically separated from single-unit residential and consist of Row House and occasional mid- and high-rise Apartment building forms. Commercial buildings are typically separated from residential and consist of Shopfront and General forms. Multi-unit residential and commercial uses are primarily located along arterial and collector streets. Block patterns in the Suburban Context are irregular and shaped by curvilinear streets and modified grid streets.

The Suburban commercial corridor zone districts are intended to *"balance the need for safe, active and pedestrian-scaled, diverse areas with the need for convenient automobile access, to address development opportunities next to the city's; most auto-dominated corridors, and to ensure new development contributes positively to established neighborhoods and character, and improves the*

*transition between commercial development and adjacent residential neighborhoods” (p. 3.2-3).* The S-CC-5 zone district intent is that *“it applies primarily to auto-oriented arterial street corridors where a building scale of 1 to 5 stories is desired.”* The S-CC-5 zone district is a mixed-use zone district applied to auto-oriented arterial street corridors and allows a building height of up to 5 stories. The proposed map amendment is consistent with the commercial development described in the Suburban Neighborhood Context. The proposal will separate commercial development from residential and will be of moderate scale. The S-CC-5 zone district is consistent with both the general and specific purpose and intent of the Suburban Context and the S-CC-5 zone district description.

The intent of the AIO is to reduce exposure of residential and other sensitive land uses to airport operations, to minimize noise impacts of the airport on residential or sensitive land uses in the DIA Influence Area. The inclusion of the AIO will limit the impacts of airport activity on the airport’s neighbors and provides room for the airport to expand and grow. Inclusion of the AIO will allow a mix of non-residential land uses consistent with area airport operations.

### **Attachments**

1. Application
2. Legal Description
3. Current waivers and conditions

## Zone Map Amendment (Rezoning) - Application

PROPERTY OWNER INFORMATION*		PROPERTY OWNER(S) REPRESENTATIVE**	
<input checked="" type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION		<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
Property Owner Name	DIBC Commercial, LLC	Representative Name	
Address	1125 17th Street Suite 2500	Address	
City, State, Zip	Denver, CO 80202	City, State, Zip	
Telephone	303-295-3071	Telephone	
Email	mark@fulenwider.com	Email	
<p><b>*If More Than One Property Owner:</b>            All standard zone map amendment applications shall be initiated by all the owners of at least 51% of the total area of the zone lots subject to the rezoning application, or their representatives authorized in writing to do so. See page 3.</p>		<p><b>**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.</b></p>	
<p>Please attach Proof of Ownership acceptable to the Manager for each property owner signing the application, such as (a) Assessor's Record, (b) Warranty deed or deed of trust, or (c) Title policy or commitment dated no earlier than 60 days prior to application date.</p> <p>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.</p>			
SUBJECT PROPERTY INFORMATION			
Location (address and/or boundary description):	Lot 1 Block 1 Denver International Business Center Filing No. 7 - 18300 E 66th Avenue		
Assessor's Parcel Numbers:	0004100184000		
Area in Acres or Square Feet:	3.8594 acres (168,117 SF)		
Current Zone District(s):	C-MU-20 with Waivers & Conditions, AIO		
PROPOSAL			
Proposed Zone District:	S-CC-5 AIO		

## REVIEW CRITERIA

<p>General Review Criteria: The proposal must comply with all of the general review criteria DZC Sec. 12.4.10.7</p>	<p><input checked="" type="checkbox"/> Consistency with Adopted Plans: The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of adoption of the City's Plan. Please provide an attachment describing relevant adopted plans and how proposed map amendment is consistent with those plan recommendations; or, describe how the map amendment is necessary to provide for an unanticipated community need.</p> <p><input checked="" type="checkbox"/> Uniformity of District Regulations and Restrictions: The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.</p> <p><input checked="" type="checkbox"/> Public Health, Safety and General Welfare: The proposed official map amendment furthers the public health, safety, and general welfare of the City.</p>
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<p>Additional Review Criteria for Non-Legislative Rezonings: The proposal must comply with both of the additional review criteria DZC Sec. 12.4.10.8</p>	<p>Justifying Circumstances - One of the following circumstances exists:</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 on 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 checked="" 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> <p>a. Changed or changing conditions in a particular area, or in the city generally; or</p> <p>b. A City adopted plan; or</p> <p>c. That the City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning.</p> <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. Please provide an attachment describing the justifying circumstance.</p> <p><input checked="" type="checkbox"/> The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District. Please provide an attachment describing how the above criterion is met.</p>
--	--

## REQUIRED ATTACHMENTS

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

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

## ADDITIONAL ATTACHMENTS

Please identify any additional attachments provided with this application:

- Written Authorization to Represent Property Owner(s)
- Individual Authorization to Sign on Behalf of a Corporate Entity

Please list any additional attachments:

1. Rezoning Pre-application Request and Research Summary 2-14-19

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

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

Property Owner Name(s) (please type or print legibly)	Property Address City, State, Zip Phone Email	Property Owner Interest % of the Area of the Zone Lots to Be Rezoned	Please sign below as an indication of your consent to the above certification statement	Date	Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed or deed of trust, (C) title policy or commitment, or (D) other as approved	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</i> <i>Josie Q. Smith</i>	01/01/12	(A)	YES
DIBC Commercial, LLC	1125 17th Street Suite 2500 Denver, CO 80202 mark@fulenwider.com	100%	Mark Throckmorton 		A	YES

# 18600 E 64TH AVE

<b>Owner</b>	DIBC COMMERCIAL LLC 1125 17TH ST 2500 DENVER , CO 80202-2045
<b>Schedule Number</b>	00041-00-184-000
<b>Legal Description</b>	T3 R66 S4 SE/4 DIF RCP #9400174246 EXC E 30FT & EXC S 30FT & EXC DIF RCP# #9600152541 EXC TR-15 & EXC #98128959 & EXC DIBC FLG #4 & FLG #6 DAF*
<b>Property Type</b>	VACANT LAND, PUD
<b>Tax District</b>	419C

## Chain Of Title Records

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May 9, 2019

To Whom it May Concern

RE: Rezoning of Lot 1 Block 1 DIBC Filing # 7

L. C. Fulenwider, Inc. is the manager of DIBC Commerical LLC .

Mark Throckmorton is a Vice President of L. C. Fulenwider, Inc. and is authorized to sign on behalf of L. C. Fulenwider, Inc. regarding the rezoning application.

Sincerely,



L. C. Fulenwider III  
L. C. Fulenwider, Inc.



EIGHTH: Pursuant to C.R.S. §7-80-801(c), the Company reserves the right to continue the business of the Company following the occurrence of an event which would otherwise cause a dissolution of the Company if, at such time, all remaining members consent to the same in accordance with the provisions of the Operating Agreement.

Dated this 26<sup>th</sup> day of December, 1996.

  
\_\_\_\_\_  
Stephen L. Waters

**OPERATING AGREEMENT**

**OF**

**DIBC COMMERCIAL, LLC**

**A COLORADO LIMITED LIABILITY COMPANY**

**EFFECTIVE AS OF DECEMBER 26, 1996**

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**EXHIBIT A**            Initial Contributions by Members

**EXHIBIT B**            Legal Description of Site

## ARTICLE I DEFINITIONS

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein);

(a) "Affirmative Vote of Members" shall mean the majority vote of all members on a per capita basis without regard to the percentage of ownership interest of each in the Company.

(b) "Articles of Organization" shall mean the Articles of Organization of DIBC Commercial, LLC as filed with the Secretary of State of Colorado and as the same may be amended from time to time.

(c) "Capital Account" as of any given date shall mean the Capital Contribution to the Company by a Member as adjusted up to the date in question pursuant to Article VIII.

(d) "Capital Contribution" shall mean any contribution to the capital of the Company in cash or property by a Member whenever made. "Initial Capital Contribution" shall mean the initial contribution to the capital of the Company pursuant to this Operating Agreement.

(e) "Capital Interest" shall mean the proportion that a Member's positive Capital Account bears to the aggregate positive Capital Accounts of all Members whose Capital Accounts have positive balances as may be adjusted from time to time.

(f) "Code" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(g) "Colorado Act" shall mean the Colorado Limited Liability Company Act at C.R.S. 7-80-101, et seq., as the same has been and may be subsequently amended.

(h) "Company" shall refer to DIBC Commercial, LLC.

(i) "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:

(i) credit to such Capital Account any amount which such Member is obligated to restore under Section 1.704-1(b)(2)(ii)(c) of the Treasury Regulations, as well as any addition thereto pursuant to the next to last sentence of Sections 1.704-2(g)(1) and (i)(5) of the Treasury Regulations, after taking into account thereunder any changes during such year in partnership minimum gain

(as determined in accordance with Section 1.704-2(d) of the Treasury Regulations) and in the minimum gain attributable to any partner nonrecourse debt (as determined under Section 1.704-2(i)(39) of the Treasury Regulations); and

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

This definition of Deficit Capital Account is intended to comply with the provision of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and 1.704-2, and will be interpreted consistently with those provisions.

(j) "Distributable Cash" means all cash, revenues and funds received by the Company, less the sum of the following to the extent paid or set aside by the Company: (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders; (ii) all cash expenditures incurred incident to the normal operation of the Company's business; (iii) such Reserves as the Manager deems reasonably necessary to the proper operation of the Company's business.

(k) "Economic Interest" shall mean a Member's or Economic Interest Owner's share of one or more of the Company's Net Profits, Net Losses and distributions of the Company's assets pursuant to this Operating Agreement and the Colorado Act, but shall not include any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or Manager.

(l) "Economic Interest Owner" shall mean the owner of an Economic Interest who is not a Member.

(m) "Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

(n) "Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year.

(o) "Gifting Member" shall mean any Member or Economic Interest Owner who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest or Economic Interest.

(p) "Income" shall mean the total taxable income for the Company for any respective taxable year.

(q) "Majority Interest" shall mean one or more Capital Interests of Members which taken together exceed 50% of the aggregate of all Capital Interests.

(r) "Manager" shall mean one or more managers. Specifically, "Manager" shall mean L.C. Fulenwider, Inc. or Fully's III, Inc., or any other persons that succeed them in that capacity. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.

(s) "Member" shall mean each of the parties who executes a counterpart of this Operating Agreement as a Member and each of the parties who may hereafter become Members. To the extent a Manager has purchased Membership Interests in the Company, he will have all the rights of a Member with respect to such Membership Interests, and the term "Member" as used herein shall include a Manager to the extent he has purchased such Membership Interests in the Company. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Economic Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Economic Interest, as the case may be.

(t) "Membership Interest" shall mean a Member's entire interest in the Company including such Member's Economic Interest and such other rights and privileges that the Member may enjoy by being a Member.

(u) "Net Profits" and "Net Losses" shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with accounting principles employed under the tax method of accounting, or such other method, consistently applied, as the Company's accountant may deem advisable, at the close of each fiscal year on the Company's information tax return filed for federal income tax purposes.

(v) "Operational Net Profits" and "Operational Net Losses" shall mean Net Profits and/or Net Losses without consideration of depreciation of capitalized costs.

(w) "Operating Agreement" shall mean this Operating Agreement as originally executed and as amended from time to time.

(x) "Persons" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

(y) "Profits Interest" means an interest other than a Capital Interest in the Company.

(z) "Property" means that certain parcel of real property consisting of approximately 153 acres more particularly described in Exhibit B attached hereto and any improvements thereto.

(aa) "Reserves" shall mean, 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 and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

(ab) "Selling Member" shall mean any Member or Economic Interest Owner which sells, assigns, pledges, hypothecates or otherwise transfers for consideration all or any portion of its Membership Interest or Economic Interest.

(ac) "Transferring Member" shall collectively mean a Selling Member and a Gifting Member.

(ad) "Treasury Regulations" shall include proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles of Organization and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

## ARTICLE II FORMATION OF COMPANY

2.1 **Formation.** The Company has been organized as a Colorado limited liability company by the filing of Articles of Organization (the "Articles") under and pursuant to the Act and the issuance of a certificate of organization for the Company by the Secretary of State of the state of Colorado. The rights and liabilities of the Members shall be determined pursuant the Colorado Act and this Agreement. To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement then they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Colorado Act, control.

2.2 **Name.** The name of the Company is DIBC Commercial, LLC, and all Company business must be conducted in that name or such other names that comply with applicable law as the Manager may select from time to time.

2.3 **Principal Place of Business.** The principal place of business of the Company within the State of Colorado shall be 1125 - 17th Street, Suite 2500, Denver, Colorado 80202. The Company may locate its places of business and registered office at any other place or places as the Manager may from time to time deem advisable.

2.4 **Registered Office and Registered Agent.** The Company's initial registered office shall be at 1125 - 17th Street, Suite 2500, Denver, Colorado 80202, and the name of its initial registered agent at such address shall be L.C. Fulenwider III. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Colorado Secretary of State pursuant to the Colorado Act.

2.5 **Term.** The term of the Company shall be thirty (30) years from the date of filing of Articles of Organization with the Secretary of State of the State of Colorado, unless extended by amendment to this Operating Agreement and the Company's Articles of Organization, if applicable, or unless the Company is earlier dissolved in accordance with either the provisions of this Operating Agreement or the Colorado Act.

### **ARTICLE III BUSINESS OF COMPANY**

3.1 **Permitted Businesses.** The business of the Company shall be:

(a) To acquire, own, manage, operate, market, rent, lease, sell, encumber, develop, improve and maintain real estate within or without the State of Colorado, including but not limited to that certain undeveloped land located in the vicinity of the Denver International Airport, described in Exhibit B attached hereto and to perform such other activities as may be necessary or desirable in connection therewith, together with any other activities that are approved by the majority vote of the Members. The Company shall not engage in any other activity or business and no Manager or Member shall have the authority to hold himself or itself out as agent of the Company or another Manager or Member in any other activity.

(b) To exercise all other powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Colorado Act, including but not limited to entering into agreements to become a manager and/or member of another duly organized limited liability company; a general or limited partner of a duly organized partnership or a shareholder of a duly organized corporation.

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

### **ARTICLE IV NAMES AND ADDRESSES OF MEMBERS**

The names and addresses of the Members are as follows:

<u>NAME</u>	<u>ADDRESS</u>
L.C. Fulenwider, Inc., a Colorado corporation	1125 - 17th Street, Suite 2500 Denver, Colorado 80202
Fully's III, Inc, a Colorado corporation	1125 -17th Street, Suite 2500 Denver, Colorado 80202

## ARTICLE V RIGHTS AND DUTIES OF MANAGER

5.1 **Management.** The business and affairs of the Company shall be managed by its Managers. The Managers shall direct, manage and control the business of the Company to the best of their ability. Except for situations in which the approval of the Members is expressly required by this Operating Agreement or by nonwaivable provisions of applicable law, the Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. At any time when there is more than one Manager, any one Manager may take any action permitted to be taken by the Managers, unless the approval of more than one of the Managers is expressly required pursuant to this Operating Agreement or the Act. Notwithstanding the foregoing, the approval of two (2) managers is required to carry out any action which was specifically voted upon by the Members of the Company.

5.2 **Number, Tenure and Qualifications.** The Company shall initially have two Managers. The initial Managers shall be L.C. Fulenwider, Inc. and Fully's III, Inc. The number of Managers of the Company shall be fixed from time to time by the affirmative vote of Members holding at least two-thirds of all Capital Interests in the Company's capital, but in no instance shall there be less than one Manager. The initial Managers shall hold office until the first annual meeting of Members, and until their successors have been elected and qualified. Thereafter, each Manager shall hold office until the next annual meeting of Members or until his successor shall have been elected and qualified. Managers shall be elected by the affirmative vote of Members holding at least a Majority Interest. Managers need not be residents of the State of Colorado or Members of the Company. In the event of a deadlock in a vote of the Members to elect a Manager, as the result of which no Manager shall be elected or empowered to act, L.C. Fulenwider, Inc. and Fully's III, Inc. shall be entitled to act as interim Managers of the Company pending a break in the deadlock or the entry of any court of competent jurisdiction respecting such matter.

5.3 **Certain Powers of the Manager.** Without limiting the generality of Section 5.1, the Managers shall have power and authority, on behalf of the Company:

(a) To acquire property from any Person as the Managers may determine. The fact that a Manager or a Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Managers from dealing with that Person;

(b) To borrow money for the Company from banks, other lending institutions, the Managers, Members, or affiliates of the Managers or Members on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Managers, or to the extent permitted under the Colorado Act, by agents or employees of the Company expressly authorized by the Managers to contract such debt or incur such liability;

(c) To purchase liability and other insurance to protect the Company's property and business;

(d) To hold and own any Company real and/or personal properties in the name of the Company;

(e) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments;

(f) Upon the affirmative vote of the Members holding at least two-thirds of all Capital Interests, to sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan so long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound, provided, however, that the affirmative vote of the Members shall not be required with respect to any sale or disposition of the Company's assets in the ordinary course of the Company's business;

(g) To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; partnership agreements; operating agreements of other limited liability companies; and any other instruments or documents necessary, in the opinion of the Managers, to the business of the Company;

(h) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;

(i) To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Managers may approve; and

(j) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Operating Agreement or by a Manager or Managers of the Company in writing, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Managers to act as an agent of the Company in accordance with the previous sentence. Provided, however, that upon the affirmative vote of Members holding at least three-fourths of all Capital Interests in the Company's capital, the Members can override action proposed to be taken by the Managers.

**5.4 Liability for Certain Acts.** Each Manager shall perform his duties as Manager in good faith, in a manner he reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs the duties as Manager shall not have any liability by reason of being or having been a Manager of the Company. The Manager does not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. The Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a wrongful taking by the Manager.

**5.5 Managers and Members Have No Exclusive Duty to Company.** A Manager shall not be required to manage the Company as his sole and exclusive function and he (and any Manager and/or Member) may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Manager and/or Member or to the income or proceeds derived therefrom. Neither the Manager nor any Member shall incur any liability to the Company or to any of the Members as a result of engaging in any other business or venture.

**5.6 Bank Accounts.** The Managers may from time to time open bank accounts in the name of the Company, and the Managers shall be the sole signatory thereon, unless the Managers determine otherwise.

**5.7 Indemnity of the Managers, Employees and Other Agents.** To the maximum extent permitted under section 7-80-410 of the Colorado Act, the Company shall indemnify the Managers and make advances for expenses to the maximum extent permitted under section 7-80-410 of the Colorado Act. The Company shall indemnify its employees and other agents who are not Managers to the fullest extent permitted by law, provided that such indemnification in any given situation is approved by Members owning a Majority Interest.

5.8 **Resignation.** Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt 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. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

5.9 **Removal.** At a meeting called expressly for that purpose, all or any lesser number of Managers may be removed at any time, with or without cause, by the affirmative vote of Members holding a Majority Interest. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

5.10 **Vacancies.** Any vacancy occurring for any reason in the number of Managers of the Company may be filled by the affirmative vote of a majority of the remaining Managers then in office, provided that if there are no remaining Managers, the vacancy(ies) shall be filled by the affirmative vote of Members holding a Majority Interest. Any Manager's position to be filled by reason of an increase in the number of Managers shall be filled by the affirmative vote of a majority of the Managers then in office or by an election at an annual meeting or at a special meeting of Members called for that purpose or by the Members' unanimous written consent. A Manager elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office and shall hold office until the expiration of such term and until his successor shall be elected and shall qualify or until his earlier death, resignation or removal. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until the next annual meeting of Members and until his successor shall be elected and shall qualify, or until his earlier death, resignation or removal.

5.11 **Salaries.** The salaries and other compensation of the Managers shall be fixed from time to time by an affirmative vote of Members holding at least a Majority Interest, and no Manager shall be prevented from receiving such salary by reason of the fact that he is also a Member of the Company.

## ARTICLE VI RIGHTS AND OBLIGATIONS OF MEMBERS

6.1 **Limitation of Liability.** Each Member's liability shall be limited as set forth in this Operating Agreement, the Colorado Act and other applicable law.

6.2 **Company Debt Liability.** A Member will not be personally liable for any debts or losses of the Company beyond his respective Capital Contributions and any obligation of the Member under Section 8.1 or 8.2 to make Capital Contributions, except as provided in Section 6.7 herein or as otherwise required by law.

6.3 **List of Members.** Upon written request of any Member, the Manager shall provide a list showing the names, addresses and Membership Interests and Economic Interests of all Members.

6.4 **Approval of Sale of All Assets.** The Members shall have the right, by the affirmative vote of Members holding at least two-thirds of all Capital Interests, to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets (other than in the ordinary course of the Company's business) which is to occur as part of a single transaction or plan.

6.5 **Company Books.** In accordance with Section 9.9 herein, the Managers shall maintain and preserve, during the term of the Company, and for five (5) years thereafter, all accounts, books, and other relevant Company documents. Upon reasonable request, each Member and Economic Interest Owner shall have the right, during ordinary business hours, to inspect and copy such Company documents at the requesting Member's or Economic Interest Owner's expense.

6.6 **Priority and Return of Capital.** Except as may be expressly provided in Article IX, no Member or Economic Interest Owner shall have priority over any other Member or Economic Interest Owner, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

6.7 **Liability of a Member to the Company.**

(a) A Member who rightfully receives the return in whole or in part of its contribution (as defined in Section 7-80-607 of the Colorado Act) is nevertheless liable to the Company only to the extent now or hereafter provided by the Colorado Act.

(b) A Member who receives a distribution made by the Company:

(i) which is either in violation of this Operating Agreement, or

(ii) when the Company's liabilities exceed its assets (after giving effect to the distribution),

is liable to the Company for a period of six years after such distribution for the amount of the distribution.

## ARTICLE VII MEETINGS OF MEMBERS

7.1 **Annual Meeting.** The annual meeting of the Members shall be held on the second Tuesday in February or at such other time as shall be determined by resolution of the

Members, commencing with the year 1997, for the purpose of the transaction of such business as may come before the meeting.

**7.2 Special Meetings.** Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by any Manager or by any Member or Members holding at least 10% of the Capital Interests.

**7.3 Place of Meetings.** The Members may designate any place, either within or outside the State of Colorado, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the Company in the State of Colorado.

**7.4 Notice of Meetings.** Except as provided in Section 7.5, written notice stating the place, day and hour of a meeting of the Members and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Company, with postage thereon prepaid.

**7.5 Meeting of all Members.** If all of the Members shall 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.

**7.6 Record Date.** For the purpose of determining 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 mailed 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 Section, such determination shall apply to any adjournment thereof.

**7.7 Quorum.** Members holding at least two-thirds of all Capital Interests, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Capital Interests so represented may adjourn the meeting from time to time for a period not to exceed 60 days without further notice. However, if the adjournment is for more than 60 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized

meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Capital Interests whose absence would cause less than a quorum.

**7.8 Manner of Acting.** If a quorum is present, the affirmative vote of Members holding a Majority Interest shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Colorado Act, by the Articles of Organization, or by this Operating Agreement. Unless otherwise expressly provided herein or required under applicable law, Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Capital Interest, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.

**7.9 Proxies.** At all meetings of Members a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

**7.10 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 each Member entitled to vote and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote 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.

**7.11 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.

## **ARTICLE VIII CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS**

**8.1 Members' Capital Contributions.** Each Member shall contribute such amount as is set forth in Exhibit A hereto as its share of the Initial Capital Contribution.

**8.2 Additional Contributions.** Each Member shall be required to make such additional Capital Contributions as shall be determined by the vote of a majority of the Managers from time to time to be reasonably necessary to meet the expenses of the Company. Upon the making of any such determination, the Manager shall give written notice to each Member of the

amount of required additional contribution, and each Member shall deliver to the Company its pro rata share thereof (in proportion to the respective Interest of the Member on the date such notice is given) no later than 30 days following the date such notice is given. None of the terms, covenants, obligations or rights contained in this Section 8.2 is or shall be deemed to be for the benefit of any person or entity other than the Members and the Company, and no such third person shall under any circumstances have any right to compel any actions or payments by the Manager and/or the Members. This provision shall not apply to Fully's III, Inc. due to its ownership of a Profits Interest in the Company.

### 8.3 Capital Accounts.

(a) A separate Capital Account will be maintained for each Member. Each Member's Capital Account will be increased by (1) the amount of money contributed by such Member to the Company; (2) the fair market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); (3) allocations to such Member of Net Profits; and (4) allocations to such Member of income described in Section 705(a)(1)(B) of the Code. Each Member's Capital Account will be decreased by (1) the amount of money distributed to such Member by the Company; (2) the fair market value of property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code); (3) allocations to such Member of expenditures described in Section 705(a)(2)(B) of the Code; and (4) allocations to the account of such Member of Net Losses.

(b) In the event of a permitted sale or exchange of a Membership Interest or an Economic Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest or Economic Interest in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 8.3 is intended to comply with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. If in the opinion of the Company's accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 8.3 should be modified in order to comply with Section 704(b) of the Code and the Treasury Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 8.3, the method in which Capital Accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

(d) Upon liquidation of the Company (or any Member's Membership Interest or Economic Interest Owner's Economic Interest), liquidating distributions will be made in accordance with the positive Capital Account balances of the Members and Economic Interest Owners, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs. Liquidation proceeds will be paid within sixty days of the end of the taxable year (or, if later, within 120 days after the date of the liquidation). The Company may offset damages for breach of this Operating Agreement by a Member or Economic Interest Owner whose interest is liquidated (either upon the withdrawal of the Member or the liquidation of the Company) against the amount otherwise distributable to such Member.

(e) Except as otherwise required in the Colorado Act (and subject to Section 8.1 and 8.2), no Member or Economic Interest Owner shall have any liability to restore all or any portion of a deficit balance in such Member's or Economic Interest Owner's Capital Account.

#### 8.4 Withdrawal or Reduction of Members' Contributions to Capital.

(a) A Member shall not receive out of the Company's property any part of its Capital Contribution until all liabilities of the Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of the Company sufficient to pay them.

(b) A Member, irrespective of the nature of its Capital Contribution, has only the right to demand and receive cash in return for its Capital Contribution.

### ARTICLE IX ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS

9.1 **Allocations of Gains, Losses, and Profits and Losses from Operations.** Subject to the provisions of Section 9.3, the Gains, Losses, Net Profits and Net Losses of the Company for each fiscal year will be allocated as follows:

(a) Gains and Operational Net Profits:

<u>MEMBER</u>	<u>ALLOCATION</u>
L.C. Fulenwider, Inc.	80 %
Fully's III, Inc.	20 %

(b) Losses and Operational Net Losses:

MEMBER

ALLOCATION

L.C. Fulenwider, Inc.	100 %
Fully's III, Inc.	0 %

- (c) The above allocations take into consideration that Fully's III, Inc. owns a 20 % Profits Interest in the Company. As such, Fully's III, Inc. will only participate in 20 % of any increase in value of the Property subsequent to its initial contribution to the Company and 20 % of Operational Net Profits.

**9.2 Special Allocations to Capital Accounts.** Notwithstanding Section 9.1 hereof:

(a) No allocations of loss, deduction and/or expenditures described in Section 705(a)(2)(B) of the Code shall be charged to the Capital Accounts of any Member if such allocation would cause such Member to have a Deficit Capital Account. The amount of the loss, deduction and/or Code Section 705(a)(2)(B) expenditure which would have caused a Member to have a Deficit Capital Account shall instead be allocated to any Members which would not have a Deficit Capital Account as a result of the allocation, in proportion to their respective Capital Contributions, or, if no such Members exist, then to the Members in accordance with their interests in Company profits pursuant to Section 9.1.

(b) 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 Treasury 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 to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Section 9.02(b) be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

(c) 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 to restore to the Company under Treasury Regulations Section 1.704-1(b)(2)(ii)(c) and such Member's share of minimum gain as defined in Section 1.704-2(g)(1) of the Treasury Regulations (which is also treated as an obligation to restore in accordance with Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations), the Capital Account of such Member shall be specially credited with items of Membership income (including gross income) and gain in the amount of such excess as quickly as possible.

(d) Notwithstanding any other provision of this Section 9.2, if there is a net decrease in the Company's minimum gain as defined in Treasury Regulation Section 1.704-2(d) 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) equal to that Member's share of the net decrease in Company minimum gain. This Section 9.2(d) is intended to comply with the minimum gain chargeback requirement of Section 1.704-2 of the Treasury Regulations and shall be interpreted consistently therewith. If 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 Managers 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 Treasury Regulation Section 1.704-2(f)(4).

(e) Items of Company loss, deduction and expenditures described in Section 705(a)(2)(B) which are attributable to any nonrecourse debt of the Company and are characterized as partner (Member) nonrecourse deductions under Section 1.704-2(i) of the Treasury Regulations shall be allocated to the Members' Capital Accounts in accordance with said Section 1.704-2(i) of the Treasury Regulations.

(f) Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Treasury Regulations) such deductions shall be allocated to the Members in accordance with, and as a part of, the allocations of Company profit or loss for such period.

(g) In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-1(b)(2)(i)(iv) of the Treasury 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.

(h) 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 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.

(i) In the case of any distribution by the Company to a Member or Economic Interest Owner, such Member or Economic Interest Owner 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 over (B) the adjusted basis of such Member's Membership Interest or Economic Interest Owner's Economic 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 or Economic Interest Owner. The Net Precontribution Gain means the net gain (if any) which would have been recognized by the distributee Member or Economic Interest Owner under Section 704(c)(1)(B) of the Code of all property which (1) had been contributed to the Company within five years of the distribution, and (2) is held by the Company immediately before the distribution, had been distributed by the Company to another Member or Economic Interest Owner. If any portion of the property distributed consists of property which had been contributed by the distributee Member or Economic Interest Owner to the Company, then such property shall not be taken into account under this Section 9.2(i) 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.

(j) In connection with a Capital Contribution of money or other property (other than a di minimis amount) by a new or existing Member or Economic Interest Owner as consideration for an Economic Interest or Membership Interest, or in connection with the liquidation of the Company or a distribution of money or other property (other than a di minimis amount) by the Company to a retiring Member or Economic Interest Owner as consideration for an Economic Interest or Membership Interest), the Capital Accounts of the Members shall be adjusted to reflect a revaluation of Company property (including intangible assets) in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f). If under Section 1.704-1(b)(2)(iv)(f) of the Treasury 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' shares of tax items under Section 704(c) of the Code.

(k) All recapture of income tax deductions resulting from sale or 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.

(l) Any credit or charge to the Capital Accounts of the Members pursuant to Sections 9.2 (b), (c), and/or (d), hereof shall be taken into account in computing subsequent allocations of profits and losses pursuant to Section 9.1, so that the net amount of any items charged or credited to Capital Accounts pursuant to Sections 9.1 and 9.2 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 this Article IX if the special allocations required by Sections 9.2 (b), (c), and/or (d), hereof had not occurred.

**9.3 Distributions.** Except as provided in Section 8.3(d), all distributions of cash or other property shall be made as follows:

<u>Member</u>	<u>Allocation</u>
L.C. Fulenwider, Inc.	80 %
Fully's III, Inc.	20 %

Except as provided in Section 9.4, all distributions of Distributable Cash and property shall be made at such time as determined by the Managers but in no event later than 120 days after the end of the preceding Account Period as specified in Section 9.8 hereof, unless a later date is agreed to by all Members. 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 this Section 9.3.

**9.4 Limitation Upon Distributions.** No distribution shall be declared and paid unless, after the distribution is made, the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their contributions.

**9.5 Accounting Principles.** The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis using the cash method of accounting. It is intended that the Company will elect those accounting methods which provide the Company with the greatest tax benefits.

**9.6 Interest On and Return of Capital Contributions.** No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.

9.7 **Loans to Company.** Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.

9.8 **Accounting Period.** The Company's accounting period shall be the calendar year.

9.9 **Records, Audits and Reports.** At the expense of the Company, the Manager shall maintain records and accounts of all operations and expenditures of the Company. At a minimum the Company shall keep at its principal place of business the following records:

(a) A current list of the full name and last known business, residence, or mailing address of each Member, Economic Interest Owner and Manager, both past and present;

(b) A copy of the Articles of Organization of the Company 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 Operating 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 every annual meeting, special meeting and court-ordered meeting;

(f) Any written consents obtained from Members for actions taken by Members without a meeting.

9.10 **Returns and Other Elections.** The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. For Colorado tax purposes, each Member and Economic Interest Owner (as defined in Section 10.03) which is a nonresident of Colorado shall execute and deliver to the Manager a Form DR 0107 - COLORADO LIMITED LIABILITY COMPANY NONRESIDENT MEMBER INCOME TAX AGREEMENT (the "Nonresident Tax Agreement") no later than 60 days after becoming a Member or Economic Interest Owner, as the case may be. The Managers shall timely file with the Colorado Department of Revenue, together with the Company's annual Colorado return, a

Nonresident Tax Agreement with respect to each Nonresident Member and Economic Interest owner.

All elections permitted to be made by the Company under federal or state laws shall be made by the Managers in their sole discretion, provided that the Managers shall make any tax election requested by Member owning a Majority Interest.

**9.11 Tax Matters Partner.**

(a) Designation. The Tax Matters Partner shall be a Manager of the Company. L.C. Fulenwider, Inc. is hereby designated as the initial Tax Matters Partner of the Company pursuant to §6231(a)(7) of the Code, and shall serve as such until a successor is appointed by a vote of the majority of the Managers. The Tax Matters Partner may not take any action contemplated by §§6622 through 6632 of the Code without the consent of a majority of the Managers.

(b) Communications. The Tax Matters Partner shall, within five (5) days of receipt thereof, forward to each Member and Economic Interest Owner a photocopy of any correspondence relating to the Company received from the Internal Revenue Service. The Tax Matters Partner shall, within five (5) days thereof, advise each Member and Economic Interest Owner in writing of the substance of any conversation held with any representative of the Internal Revenue Service.

**ARTICLE X  
TRANSFERABILITY**

10.1 **General.** Except as otherwise specifically provided herein neither a Member nor an Economic Interest Owner shall have the right to:

(a) sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration, (collectively, "sell"),

(b) gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy)

all or any part of its Membership Interest or Economic Interest.

**10.2 Right of First Refusal.**

(a) A Selling Member which desires to sell all or any portion of its Membership Interest or Economic Interest in the Company to a third party purchaser shall obtain from such third party purchaser a bona fide written offer to purchase such interest, stating the terms and conditions upon which the purchase is to be made and the

consideration offered therefor. The Selling Member shall give written notification to the remaining Members, by certified mail or personal delivery, of its intention to so transfer such interest, furnishing to the remaining Members a copy of the aforesaid written offer to purchase such interest.

(b) The remaining Members, and each of them shall, on a basis pro rata to their Capital Interests or on a basis pro rata to the Capital Interests of those remaining Members exercising their right of first refusal, have the right to exercise a right of first refusal to purchase all (but not less than all) of the interest proposed to be sold by the Selling Member upon the same terms and conditions as stated in the aforesaid written offer to purchase by giving written notification to the Selling Member, by certified mail or personal delivery, of their intention to do so within ten (10) days after receiving written notice from the Selling Member. The failure of all the remaining Members (or any one or more of them) to so notify the Selling Member of their desire to exercise this right of first refusal as to all of the Selling Member's interest subject to the third party offer to purchase within said ten (10) day period shall result in the termination of the right of first refusal and the Selling Member shall be entitled to consummate the sale of its interest in the Company to such third party purchaser.

In the event the remaining Members (or any one or more of the remaining Members) give written notice to the Selling Member of their desire to exercise this right of first refusal and to purchase all of the Selling Member's interest in the Company which the Selling Member desires to sell upon the same terms and conditions as are stated in the aforesaid written offer to purchase, the remaining Members shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within thirty (30) days after receipt of written notification from the Selling Member of the third party offer to purchase.

(c) In the event of either the purchase of the Selling Member's interest in the Company by a third party purchaser or the gift of an interest in the Company (including an Economic Interest), and as a condition to recognizing one or more of the effectiveness and binding nature of any such sale or gift and (subject to Section 10.3, below) substitution of a new Member as against the Company or otherwise, the remaining Members may require the Selling Member or Gifting Member and the proposed purchaser, donee or successor-in-interest, as the case may be, to execute, acknowledge and deliver to the remaining Members such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the remaining Members may deem necessary or desirable to:

(i) constitute such purchaser, as a Member, donee or successor-in-interest as such;

(ii) confirm that the person desiring to acquire an interest or interests in the Company, or to be admitted as a Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Operating Agreement, as the same may have been further amended (whether such Person is to be admitted as a new Member or will merely be an Economic Interest Owner);

(iii) 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;

(iv) maintain the status of the Company as a partnership for federal tax purposes; and

(v) assure compliance with any applicable state and federal laws including securities laws and regulations.

(d) Any sale or gift of a Membership Interest or Economic Interest or admission of a Member in compliance with this Article X shall be deemed effective as of the last day of the calendar month in which the remaining Members' consent thereto was given, or, if no such consent was required pursuant to Section 10.2(e), then on such date that the donee or successor-in-interest complies with Section 10.2(c). The Selling Member agrees, upon request of the remaining Members, to execute such certificates or other documents and perform such other acts as may be reasonably requested by the remaining Members from time to time in connection with such sale, transfer, assignment, or substitution. The Selling Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article X.

(e) Subject to Section 10.3(c), A Transferring Member may gift all or any portion of its Membership Interest and Economic Interest (without regard to Section 10.2(a) and (b) provided that the donee or other successor-in-interest (collectively, "donee") complies with Section 10.2(c) and further provided that the donee is either the Gifting Member's spouse, former spouse, or lineal descendent (including adopted children). In the event of the gift of all or any portion of a Gifting Member's Membership Interest or Economic Interest to one or more donees who are under 25 years of age, one or more trusts shall be established to hold the gifted interest(s) for the benefit of such donee(s) until all of the donee(s) reach the age of at least 25 years.

### **10.3 Transferee Not Member in Absence of Unanimous Consent.**

(a) Notwithstanding anything contained herein to the contrary (including, without limitation, Section 10.2 hereof), if all of the remaining Members do not approve

by unanimous written consent of the proposed sale or gift of the Transferring Member's Membership Interest or Economic Interest to a transferee or donee which is not a Member immediately prior to the sale or gift, then the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company or to become a Member. The transferee or donee shall be merely an Economic Interest Owner. No transfer of a Member's interest in the Company (including any transfer of the Economic Interest or any other transfer which has not been approved by unanimous written consent of the Members) shall be effective unless and until written notice (including the name and address of the proposed, transferee or donee and the date of such transfer) has been provided to the Company and the non-transferring Member(s).

(b) Upon and contemporaneously with any sale or gift of a Transferring Member's Economic Interest in the Company which does not at the same time transfer the balance of the rights associated with the Economic Interest transferred by the Transferring Member (including, without limitation, the rights of the Transferring Member to participate in the management of the business and affairs of the Company), the Company shall purchase from the Transferring Member, and the Transferring Member shall sell to the Company for a purchase price of \$100.00, all remaining rights and interests retained by the Transferring Member which immediately prior to such sale or gift were associated with the transferred Economic Interest.

(c) The restrictions on transfer contained in this Section 10.3 are intended to comply (and shall be interpreted consistently) with the restrictions on transfer set forth in C.R.S. § 7-80-702(1).

## **ARTICLE XI ADDITIONAL MEMBERS**

From the date of the formation of the Company, any Person or Entity acceptable to the Members by their unanimous vote thereof may become a Member in this Company either by the issuance by the Company of Membership Interests for such consideration as the Members by their unanimous votes shall determine, or as a transferee of a Member's Membership Interest or any portion thereof, subject to the terms and conditions of this Operating Agreement. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. 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 loss, income and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Treasury Regulations promulgated thereunder.

**ARTICLE XII  
DISSOLUTION AND TERMINATION**

**12.1 Dissolution.**

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

(i) when the period fixed for the duration of the Company shall expire pursuant to Section 2.5 hereof unless otherwise extended as provided therein;

(ii) by the unanimous written agreement of all Members;

(iii) upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or occurrence of any other event which terminates the continued membership of a Member in the Company (a "Withdrawal Event"), unless the business of the Company is continued by the consent of all the remaining Members within ninety (90) days after the Withdrawal Event and there are at least two remaining Members.

(b) Notwithstanding anything to the contrary in this Operating Agreement, if a Member or Members owning Capital Interest which in the aggregate constitute not less than two-thirds of the Capital Interest vote to dissolve the Company at a meeting of the Company pursuant to Article VII, then all of the Members shall agree in writing to dissolve the Company as soon as possible (but in any event not more than 10 days) thereafter.

(c) As soon as possible following the occurrence of any of the events specified in this Section 12.1 effecting the dissolution of the Company, the appropriate representative of the Company shall execute a statement of intent to dissolve in such form as shall be prescribed by the Colorado Secretary of State and file same with the Colorado Secretary of State's office.

(d) If a Member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling his estate or administering his property.

(e) Except as expressly permitted in this Operating Agreement, a Member shall not voluntarily resign or take any other voluntary action which directly causes a Withdrawal Event. Unless otherwise approved by Members owning a Majority Interest, a Member who resigns (a "Resigning Member") or whose Membership Interest is

otherwise terminated by virtue of a Withdrawal Event, regardless of whether such Withdrawal Event was the result of a voluntary act by such Member, shall not be entitled to receive any distributions to which such Member would not have been entitled had such Member remained a Member. Except as otherwise expressly provided herein, a Resigning Member shall become an Economic Interest Owner. Damages for breach of this Section 12.1(e) shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by the Company to which the Resigning Member would otherwise be entitled.

**12.2 Effect of Filing of Dissolving Statement.** Upon the filing by the Colorado Secretary of State of a statement of intent to dissolve, 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 a certificate of dissolution has been issued by 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) 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) If the Company is dissolved and its affairs are to be wound up, the Manager shall:

(i) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Manager may determine to distribute any assets to the Members in kind),

(ii) Allocate any profit or loss resulting from such sales to the Members' and Economic Interest Owners' Capital Accounts in accordance with Article IX hereof,

(iii) Discharge all liabilities of the Company, including liabilities to Members and Economic Interest Owners who are creditors, to the extent otherwise permitted by law, other than liabilities to Members and Economic Interest Owners for distributions, and establish such Reserves as may be reasonably necessary to provide for contingent or liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Economic Interest Owners, the amounts of such Reserves shall be deemed to be an expense of the Company),

(iv) Distribute the remaining assets in the following order:

[A] If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members and Economic Interest Owners shall be adjusted pursuant to the provisions of Article IX and Section 8.3 of this Operating Agreement to reflect such deemed sale.

[B] The positive balance (if any) of each Member's and Economic Interest Owners's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's taxable year during which the liquidation occurs) shall be distributed to the Members, either in cash or in kind, as determined by the Manager, with any assets distributed in kind being valued for this purpose at their fair market value as determined pursuant to Section 12.3(b)(i). Any such distributions to the Members in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

(c) Notwithstanding anything to the contrary in this Operating Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a Deficit Capital Account (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 Capital Contribution, 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.

(d) Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

(e) 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 of 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 Colorado Act. Duplicate originals of such articles of dissolution shall be delivered to the Colorado Secretary of State.

**12.5 Certificate of Dissolution.** Upon the issuance of the certificate of dissolution, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Colorado Act. The Manager shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of an in the name of the Company.

**12.6 Return of Contribution Nonrecourse to Other Members.** Except as provided by law or as expressly provided in this Operating Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of its 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.

### **ARTICLE XIII MISCELLANEOUS PROVISIONS**

**13.1 Notices.** Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to an executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Operating Agreement. Except as otherwise provided herein, any such notice shall be deemed to be given three business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

**13.2 Books of Account and Records.** Proper and complete records and books of account shall be kept or shall be caused to be kept by the Manager in which shall be entered fully and accurately all transactions and other matters relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. Such books and records shall be maintained as provided in Section 9.9. The books and records shall be at all times be maintained at the principal executive office of the Company and shall be open to the reasonable inspection and examination of the Members Economic Interest Owner's or their duly authorized representatives during reasonable business hours.

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

**13.4 Waiver of Action for Partition.** Each Member and Economic Interest Owner irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

**13.5 Amendments.** This Operating Agreement may not be amended except by the unanimous written agreement of all of the Members.

**13.6 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.

**13.7 Construction.** Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

**13.8 Headings.** The headings in this Operating 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 Operating Agreement or any provision hereof.

**13.9 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 Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

**13.10 Rights and Remedies Cumulative.** The rights and remedies provided by this Operating 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.

**13.11 Severability.** If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

**13.12 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 Operating Agreement, their respective heirs, legal representatives, successors and assigns.

**13.13 Creditors.** None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

**13.14 Counterparts.** This Operating 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.

**13.15 Rule Against Perpetuities.** The parties hereto intend that the Rule Against Perpetuities (and any similar rule of law) not be applicable to any provisions of this Operating Agreement. However, notwithstanding anything to the contrary in this Operating Agreement, if any provision in this Operating Agreement would be invalid or unenforceable because of the Rule Against Perpetuities or any similar rule of law but for this Section 13.15, the parties hereto hereby agree that any future interest which is created pursuant to said provision shall cease if it is not vested within twenty-one years after the death of L.C. Fulenwider III and his issue who are living on the effective date of this Operating Agreement.

**13.16 Investment Representations.** The undersigned Members and Economic Interest Owners, if any, understand (1) that the Membership Interests and Economic Interests evidenced by this Operating Agreement have not been registered under the Securities Act of 1933, the Colorado Securities Act or any other state securities laws (the "Securities Acts") because the Company is issuing these Membership Interests and Economic Interests in reliance upon the exemptions from the registrations requirements of the Securities Acts providing for issuance of securities not involving a public offering, (2) that the Company has relied upon the fact that the Membership Interests and Economic Interests are to be held by each Member for investment, and (3) that exemption from registrations under the Securities Acts would not be available if the Membership Interests and Economic Interests were acquired by a Member with a view to distribution.

Accordingly, each Member and Economic Interest Owner hereby confirms to the Company that such Member and Economic Interest Owner is acquiring the Membership Interests and Economic Interests for such own Member's and Economic Interest Owner's account, for investment and not with a view to the resale or distribution thereof. Each Member and Economic Interest Owner agrees not to transfer, sell or offer for sale any of portion of the Membership Interests or Economic Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of Membership Interests or Economic Interests delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such transfer, offer or sale. Each Member and Economic Interest Owner understands that the Company is under no obligation to register the Membership Interests or Economic Interests or to assist such Member or Economic Interest Owner in complying with any exemption from registration under the Acts if such Member or Economic Interest Owner should at a later date, wish to dispose of the Membership Interest or Economic Interest. Furthermore, each Member realizes that the Membership Interests and Economic Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Member is not an "affiliate" of the Company and the Membership Interest or Economic Interest has been beneficially owned and fully paid for by such Member or Economic Interest Owner for at least three years.

Prior to acquiring the Membership Interests and Economic Interests, each Member and Economic Interest Owner has made an investigation of the Company and its business and have

had made available to each such Member and Economic Interest Owner all information with respect thereto which such Member needed to make an informed decision acquire the Membership Interest or Economic Interest. Each Member and Economic Interest Owner considers himself or itself to be a person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Member's or Economic Interest Owner's investment in the Membership Interest or Economic Interest.

**CERTIFICATE**

The undersigned hereby agree, acknowledge and certify that the foregoing Operating Agreement, consisting of 30 pages, excluding the Table of Contents and attached Exhibits, constitutes the Operating Agreement of DIBC Commercial, LLC adopted by the Members of the Company as of December 26, 1996.

**MEMBERS:**

L.C. FULENWIDER, INC., a Colorado corporation

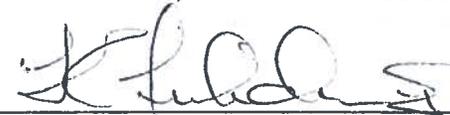
By:



L.C. Fulenwider III, President

FULLY'S III, INC. a Colorado corporation

By:



L.C. Fulenwider III, President

**EXHIBIT A**

<u>Initial Members</u>	<u>Initial Capital Contributions</u>	<u>Share of Total Capital</u>
L.C. Fulenwider III	\$*	100 %
Fully's III, Inc.	\$0.00	0 %

\* Based on the value of the real property described on Exhibit B as of December 26, 1996

STATEMENT TO ACCOMPANY  
FEDERAL FORM FORM 1065 AND  
COLORADO FORM 106  
FOR THE YEAR ENDED 12/31/96

DIBC COMMERCIAL LLC  
EIN 84-1378981

STATEMENT OF BASIS AND FMV OF LAND CONTRIBUTED

L.C. FULENWIDER, INC. HAS CONTRIBUTED THE FOLLOWING ASSET:

<u>ASSET</u>	<u>BASIS</u>	<u>FMV</u>	<u>HOLDING PERIOD</u>
LAND	99,508.30	3,130,848.00	LONG TERM

**EXHIBIT B**

**[LEGAL DESCRIPTION OF THE REAL PROPERTY]**

T. 3 S., R. 66 W., 6th P.M., Adams County, Colorado

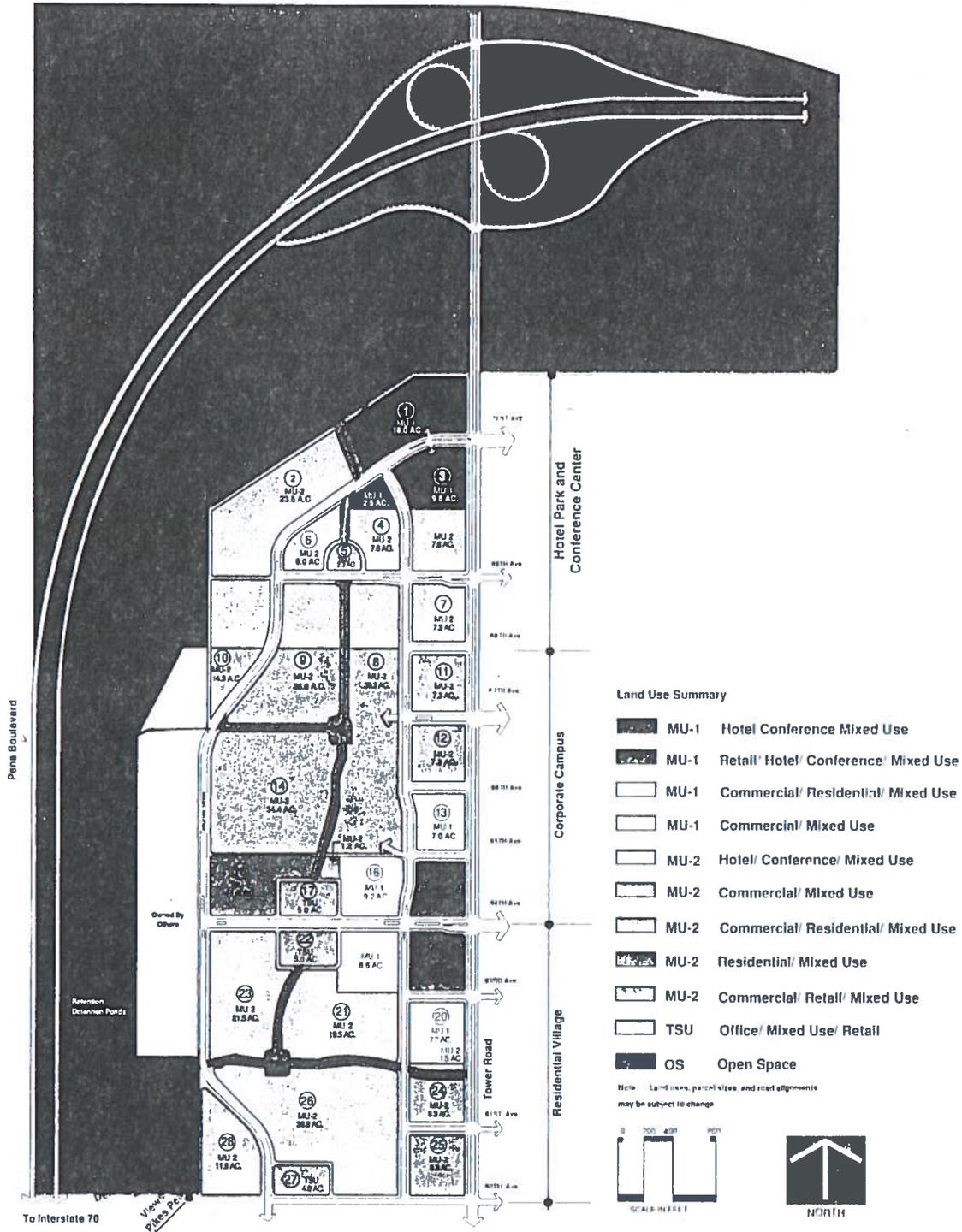
Section 4: SE $\frac{1}{4}$

Except Tract 15 in the SE corner of said SE $\frac{1}{4}$ , as shown on the attached Master Plan of Denver International Business Center.

City and County of Denver, State of Colorado.

# Denver International Business Center

450 Master-Planned Acres at the front door to Denver International Airport.



**L. C. Fulenwider, Inc.**  
 1125 17th Street, Suite 2500  
 Denver, CO 80202  
 FAX: 295-1735

## FULENWIDER

The company to contact first.  
 (303) 295-3071

# DIBC Commercial, LLC

1125 17<sup>th</sup> Street Suite 2500  
Denver, CO 80202

## Review Criteria for Rezoning Request – Lot 1 Block 1 Denver International Business Center Filing No. 7

### Zone Map Amendment (Rezoning) Application

#### Uniformity of District Regulations

- This rezone creates a new, standard zone district for this property. There is no custom zoning in this request.

#### Public Health, Safety and Welfare

- This rezone helps to reinvest in the area and implements approved area plans which help direct and facilitate the public's health, safety and welfare

#### Justifying Circumstances

- Change to the area conditions have occurred due to:
  - Recently adopted Comprehensive 2040, Blueprint Denver 2019 and Far Northeast Area 2019 Plans
  - The property is being rezoned from an old zoning category to a new DZC zoning category which is more consistent with the recently adopted plans

**Pre-Application Rezoning Request Summary dated 2-14-19 provides additional justifications for this rezoning request.**

**In addition to the Pre-Application materials, this rezoning request also addresses the following as it relates to these new and adopted City Plans.**

### **Comprehensive Plan 2040**

### **Blueprint Denver 2019**

#### Goals

- *(2) Ensures all Denver residents have safe, convenient and affordable access to basic services and a variety of amenities.*
- *(4) Supports a welcoming business environment and the growth of employment centers around the City to promote work and educational opportunities to all residents*

#### Equity

- *Improves Access to Opportunity – creating more access to equitable quality of life amenities (in area where there is a greater need for such amenities)*
- *Expands Jobs Diversity – providing a better and more inclusive range of employment options in all neighborhoods. (Provides for better, higher paying job opportunities)*

### Growth Strategy

- *Is located in a Community Center/Corridor in a future growth area*

### Land Use and Built Form

- *03 Ensure the Denver Zoning code responds to the needs of the City*
  - *(A) Rezones properties from former Chapter 59 zoning code so that all properties are within the DZC.*
- *Economics*
  - *01 Captures 90% of Job growth in .....Community Centers and Corridors*
  - *02 Improves equitable access to employment areas .... to ensure all residents have equitable access to employment opportunities*

### Neighborhood Contexts

- *Site located in Suburban Neighborhood Context in a Community Corridor and connected to a bicycle route on adjacent Yampa Street*

## **Far North East Area Plan 2019**

### 1.2 Planning for an Equitable Far Northeast

- Site located in Pena Station North in the DIA Neighborhood
- 1.2.2 Access to Opportunity – provides access to essential facilities, amenities and services
- Located in a Community Corridor – with great access to the community
- Intended to provide employment opportunity (jobs diversity) and services for neighborhood

### 2.1 Land Use and Built Form

- Helps address some of the Community concerns such as:
  - Community services
  - Job creation
- Located in a Community Corridor
- Mix of Uses allowed without residential

### 2.1.8 Zoning and Other Regulations

- Blueprint Denver recommends rezoning out of Former chapter 59 and into new Denver Zoning Code
- Creates new employment opportunities for local residents

### 2.2 Mobility

- Located next to Arterial corridor and a Commercial Collector Street with Bike lanes
- Located less than 1 mile of a Transit Rail Station

### 3.3 DIA Neighborhood

- Located in the DIA Influence Area – No residential allowed.
- Located in Community Corridor
- Community corridors should emphasize retail, services and office/employment

# LEGAL DESCRIPTION

**LOT 1 BLOCK 1 DENVER INTERNATIONAL BUSINESS CENTER FILING NO. 7**

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BY AUTHORITY

ORDINANCE NO. *131*  
SERIES OF 2000

COUNCIL BILL NO. *48*  
COMMITTEE OF REFERENCE:  
LAND USE

A BILL

FOR AN ORDINANCE RELATING TO ZONING, CHANGING THE ZONING CLASSIFICATION FOR A SPECIFICALLY DESCRIBED AREA, GENERALLY BOUNDED BY EAST 56<sup>TH</sup> AVENUE, YAMPA STREET, EAST 54<sup>TH</sup> AVENUE, WACO STREET, EAST 55<sup>TH</sup> AVENUE, URAVAN STREET, EAST 57<sup>TH</sup> AVENUE, WACO STREET, EAST 58<sup>TH</sup> AVENUE, YAMPA STREET, EAST 62<sup>ND</sup> AVENUE, WACO STREET, EAST 63<sup>RD</sup> AVENUE, PENA BOULEVARD, EAST 65<sup>TH</sup> AVENUE, WACO STREET, EAST 66<sup>TH</sup> AVENUE, YAMPA STREET, EAST 70<sup>TH</sup> AVENUE, WACO STREET, PENA BOULEVARD, YAMPA STREET, EAST 72<sup>ND</sup> AVENUE, ARGONNE STREET, PENA BOULEVARD, BISCAY STREET, EAST 69<sup>TH</sup> AVENUE, ARGONNE STREET, EAST 66<sup>TH</sup> AVENUE, BISCAY STREET, EAST 65<sup>TH</sup> AVENUE, DUNKIRK STREET, EAST 63<sup>RD</sup> AVENUE, BISCAY STREET, EAST 62<sup>ND</sup> AVENUE, ARGONNE STREET, EAST 58<sup>TH</sup> AVENUE, BISCAY STREET, EAST 57<sup>TH</sup> AVENUE, AND *SW* DUNKIRK STREET (GATEWAY AREA), RECITING CERTAIN WAIVERS PROPOSED BY THE OWNERS FOR THE ZONING CLASSIFICATION, RECITING CERTAIN REASONABLE CONDITIONS APPROVED BY THE OWNERS FOR THE ZONING CLASSIFICATION AND PROVIDING FOR A RECORDATION OF THIS ORDINANCE.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

**Section 1.** That upon consideration of a change in the zoning classification of the land area hereinafter described, Council finds:

- 1. That the land area hereinafter described is presently classified as part of the Gateway District;
- 2. That the owners propose that the land area hereinafter described be changed to C-MU-20 with reasonable waivers and with reasonable conditions they have approved;
- 3. That in its application the owners have represented that if the zoning classification is changed pursuant to their application, the owners will and hereby do:
  - (i) waive the right to use or occupy the land or to use, occupy, construct, erect, alter or maintain a structure north of East 62<sup>nd</sup> Avenue for the following uses enumerated in Section 59-430.03(1) of the Revised Municipal Code for the C-MU-20 zone district:
    - (a) Residential uses:
      - 1. Artist Studio;

2. Abbey, Convent, Monastery, Priory or other similar residence for clergy;
3. Fraternity or Sorority House;
4. Live/Work Residential;
5. Multiple Unit Dwelling;
6. Residence for Older Persons;
7. Rooming and/or Boarding House; and
8. Single Unit Dwelling.

(ii) waive the right to use or occupy the land or to use, occupy, construct, erect, alter or maintain a structure north of East 56<sup>th</sup> Avenue for a Single Unit Dwelling as enumerated in Section 59-430.03(1)(a)8. of the Revised Municipal Code for the C-MU-20 zone district;

(iii) waive the right to use or occupy the land or to use, occupy, construct, erect, alter or maintain the Parking of Vehicles as a permitted use as enumerated in Section 59-430.03(1)(c)41. of the Revised Municipal Code for the C-MU-20 zone district, unless such use is completely enclosed within a parking garage or parking structure.

4. That the owners approve and agree, as reasonable conditions to the requested change in zoning classifications related to the development, operation and maintenance of the land area hereinafter described:

(i) for zone lots located between East 56<sup>th</sup> Avenue and East 62<sup>nd</sup> Avenue, any portion of a structure occupied as an artist studio, abbey, convent, monastery, priory or other similar residence for clergy, fraternity or sorority house, live/work residential, multiple unit dwelling and/or rooming and/or boarding house shall comply with all construction standards relating to noise mitigations, said standards shall be promulgated by the Director of Planning as rules and regulations;

(ii) for zone lots located north of East 56<sup>th</sup> Avenue, prior to February 11, 2000, the owners shall execute, record and deliver to the Department of Zoning Administration a true copy of an Air Rights Covenant and Avigation Easement, in a form acceptable to the City Attorney, that shall run with the land whereby the owners and their successors and assigns waive any rights and causes of action they may have in the future against the City and County of Denver and others due to noise resulting from aircraft landing at, taking off from, or operating at Denver International Airport and grant an avigation easement.

**Section 2.** That the zoning classification of the land area in the City and County of Denver described as follows or included within the following boundaries shall be and hereby is changed from

1 Gateway to C-MU-20 with certain waivers which waivers are set forth in Subsection 3 of Section 1  
2 hereof and with certain reasonable conditions approved by the owners which reasonable conditions  
3 are set forth in Subsection 4 of Section 1 hereof:

PARCEL 1

A PART OF SECTIONS 3, 4, 9, 10, 15 AND 16, TOWNSHIP 3 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 16 BEING THE CENTERLINE INTERSECTION OF 52<sup>ND</sup> AVENUE AND TOWER ROAD;

THENCE S89°56'19"W, 659.33 FEET ALONG THE CENTERLINE OF 52<sup>ND</sup> AVENUE TO THE CENTERLINE OF YAMPA STREET;

THENCE N0°02'40"E, 1,330.06 FEET ALONG THE CENTERLINE OF YAMPA STREET TO THE CENTERLINE OF 54<sup>TH</sup> AVENUE;

THENCE S89°59'30"W, 658.21 FEET ALONG THE CENTERLINE OF 54<sup>TH</sup> AVENUE TO THE CENTERLINE OF WACO STREET;

THENCE N0°05'32"E, 665.33 FEET ALONG THE CENTERLINE OF WACO STREET TO THE CENTERLINE OF 55<sup>TH</sup> AVENUE;

THENCE N89°58'55"W, 657.65 FEET ALONG THE CENTERLINE OF 55<sup>TH</sup> AVENUE TO THE CENTERLINE OF URAVAN STREET;

THENCE N0°08'23"E, 665.64 FEET ALONG THE CENTERLINE OF URAVAN STREET TO THE CENTERLINE OF 56<sup>TH</sup> AVENUE;

THENCE N0°08'58"W, 659.48 FEET ALONG THE CENTERLINE OF URAVAN STREET TO THE CENTERLINE OF 57<sup>TH</sup> AVENUE;

THENCE S89°53'52"E, 657.85 FEET ALONG THE CENTERLINE OF 57<sup>TH</sup> AVENUE TO THE CENTERLINE OF WACO STREET;

THENCE N0°05'03"W, 658.82 FEET ALONG THE CENTERLINE OF WACO STREET TO THE CENTERLINE OF 58<sup>TH</sup> AVENUE;

THENCE S89°50'24"E, 658.61 FEET ALONG THE CENTERLINE OF 58<sup>TH</sup> AVENUE TO THE CENTERLINE OF YAMPA STREET;

THENCE N0°01'07"W, 1,316.31 FEET ALONG THE CENTERLINE OF YAMPA

STREET TO THE CENTERLINE OF 60<sup>TH</sup> AVENUE;

THENCE N0°05'00"W, 1,324.54 FEET ALONG THE CENTERLINE OF YAMPA STREET TO THE CENTERLINE OF 62<sup>ND</sup> AVENUE;

THENCE N89°43'04"W, 661.10 FEET ALONG THE CENTERLINE OF 62<sup>ND</sup> AVENUE TO THE CENTERLINE OF WACO STREET;

THENCE N0°07'32"W, 662.32 FEET ALONG THE CENTERLINE OF WACO STREET TO THE CENTERLINE OF 63<sup>RD</sup> AVENUE;

THENCE N89°42'50"W, 1,323.18 FEET ALONG THE CENTERLINE OF 63<sup>RD</sup> AVENUE TO THE CENTERLINE OF TELLURIDE STREET;

THENCE N89°50'45"W, 635.79 FEET ALONG THE CENTERLINE OF 63<sup>RD</sup> AVENUE TO THE EASTERLY RIGHT-OF-WAY LINE OF PENA BOULEVARD;

THENCE N0°25'22"E, 661.53 FEET ALONG SAID RIGHT-OF-WAY TO THE CENTERLINE OF 64<sup>TH</sup> AVENUE;

THENCE S89°55'34"E 628.47 FEET ALONG THE CENTERLINE OF 64<sup>TH</sup> AVENUE TO THE CENTERLINE OF TELLURIDE STREET;

THENCE N0°52'21"E, 661.19 FEET ALONG THE CENTERLINE OF TELLURIDE STREET TO THE CENTERLINE OF 65<sup>TH</sup> AVENUE;

THENCE S89°44'13"E, 1,323.83 FEET ALONG THE CENTERLINE OF 65<sup>TH</sup> AVENUE TO THE CENTERLINE OF WACO STREET;

THENCE N0°50'36"E, 661.81 FEET ALONG THE CENTERLINE OF WACO STREET TO THE CENTERLINE OF 66<sup>TH</sup> AVENUE ;

THENCE S89°45'50"E, 673.30 FEET ALONG THE CENTERLINE OF 66<sup>TH</sup> AVENUE TO THE CENTERLINE OF YAMPA STREET;

THENCE ALONG THE CENTERLINE OF YAMPA STREET ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 4°52'15", A RADIUS OF 3,200.00 FEET, A CHORD BEARING N1°36'25"W, 271.95 FEET, AN ARC LENGTH OF 272.03 TO A POINT OF TANGENT;

THENCE N0°49'42"E, 1,052.42 FEET ALONG THE CENTERLINE OF YAMPA STREET TO THE CENTERLINE OF 68<sup>TH</sup> AVENUE;

THENCE N0°49'45"E, 1,313.54 FEET ALONG THE CENTERLINE OF YAMPA STREET TO THE CENTERLINE OF 70<sup>TH</sup> AVENUE;

THENCE N89°56'30"W, 661.08 FEET ALONG THE CENTERLINE OF 70<sup>TH</sup> AVENUE TO THE CENTERLINE OF WACO STREET;

THENCE N0°50'39"E, 884.65 FEET ALONG THE CENTERLINE OF WACO STREET TO THE RIGHT-OF-WAY OF PENA BOULEVARD;

THENCE N56°30'00"E, 775.74 FEET ALONG SAID RIGHT-OF-WAY;

THENCE N89°56'04"E, 20.16 FEET ALONG SAID RIGHT-OF-WAY TO THE CENTERLINE OF YAMPA STREET;

THENCE S0°49'42"W, 656.77 FEET ALONG THE CENTERLINE OF YAMPA STREET TO THE CENTERLINE OF 71<sup>ST</sup> AVENUE;

THENCE N89°59'47"E, 660.91 FEET ALONG THE CENTERLINE OF 71<sup>ST</sup> AVENUE TO THE CENTERLINE OF TOWER ROAD;

THENCE N89°56'24"E, 661.17 FEET ALONG THE CENTERLINE OF 71<sup>ST</sup> AVENUE TO THE CENTERLINE OF ARGONNE STREET;

THENCE N0°46'21"E, 655.88 FEET ALONG THE CENTERLINE OF ARGONNE STREET TO THE SOUTH RIGHT-OF-WAY LINE OF PENA BOULEVARD;

THENCE S89°55'17"E, 490.00 FEET ALONG THE RIGHT-OF-WAY OF PENA BOULEVARD TO THE APPROXIMATE CENTERLINE OF WEST FORK SECOND CREEK;

THENCE ALONG THE APPROXIMATE CENTERLINE OF SAID WEST FORK SECOND CREEK, THE FOLLOWING FIVE (5) COURSES:

1. S04°11'07"W, 335.38 FEET;
2. S32°31'47"W, 380.00 FEET;
3. S6°40'01"E, 926.79 FEET;
4. S59°18'04"E, 313.69 FEET;
5. S00°43'55"W, 220.25 FEET TO THE CENTERLINE OF 69<sup>TH</sup> AVENUE;

THENCE S89°34'15"W, 662.17 FEET ALONG THE CENTERLINE OF 69<sup>TH</sup> AVENUE TO THE CENTERLINE OF ARGONNE STREET;

THENCE S0°46'21"W, 661.93 FEET ALONG THE CENTERLINE OF ARGONNE STREET TO THE CENTERLINE OF 68<sup>TH</sup> AVENUE;

THENCE S0°46'23"W, 1,324.17 FEET ALONG THE CENTERLINE OF ARGONNE STREET TO THE CENTERLINE OF 66<sup>TH</sup> AVENUE;

THENCE N89°28'03"E, 663.61 FEET ALONG THE CENTERLINE OF 66<sup>TH</sup>

AVENUE TO THE CENTERLINE OF BISCAY STREET;

THENCE  $S0^{\circ}43'55''W$ , 661.74 FEET ALONG THE CENTERLINE OF BISCAY STREET TO THE CENTERLINE OF 65<sup>TH</sup> AVENUE;

THENCE  $N89^{\circ}26'19''E$ , 1,328.18 FEET ALONG THE CENTERLINE OF 65<sup>TH</sup> AVENUE TO THE CENTERLINE OF DUNKIRK STREET;

THENCE  $S0^{\circ}39'00''W$ , 661.05 FEET ALONG THE CENTERLINE OF DUNKIRK STREET TO THE CENTERLINE OF 64<sup>TH</sup> AVENUE;

THENCE  $S0^{\circ}05'36''W$ , 662.94 FEET ALONG THE CENTERLINE OF DUNKIRK STREET TO THE CENTERLINE OF 63<sup>RD</sup> AVENUE;

THENCE  $S89^{\circ}25'28''W$ , 1,328.36 FEET ALONG THE CENTERLINE OF 63<sup>RD</sup> AVENUE TO THE CENTERLINE OF BISCAY STREET;

THENCE  $S0^{\circ}01'35''W$ , 662.58 FEET ALONG THE CENTERLINE OF BISCAY STREET TO THE CENTERLINE OF 62<sup>ND</sup> AVENUE;

THENCE  $S89^{\circ}26'23''W$ , 487.58 FEET ALONG THE CENTERLINE OF 62<sup>ND</sup> AVENUE TO THE CENTERLINE OF ARGONNE STREET;

THENCE  $S0^{\circ}02'24''E$ , 1,324.89 FEET ALONG THE CENTERLINE OF ARGONNE STREET TO THE CENTERLINE OF 60<sup>TH</sup> AVENUE;

THENCE  $S0^{\circ}02'49''W$ , 1,316.65 FEET TO THE CENTERLINE OF 58<sup>TH</sup> AVENUE;

THENCE  $N89^{\circ}34'59''E$ , 485.49 FEET ALONG THE CENTERLINE OF 58<sup>TH</sup> STREET TO THE CENTERLINE OF BISCAY STREET;

THENCE  $S0^{\circ}04'13''W$ , 658.81 FEET ALONG THE CENTERLINE OF BISCAY STREET TO THE CENTERLINE OF 57<sup>TH</sup> AVENUE;

THENCE  $N89^{\circ}38'23''E$ , 1,325.20 FEET ALONG THE CENTERLINE OF 57<sup>TH</sup> AVENUE TO THE CENTERLINE OF DUNKIRK STREET;

THENCE  $S0^{\circ}05'36''W$ , 660.12 FEET ALONG THE CENTERLINE OF DUNKIRK STREET TO THE CENTERLINE OF 56<sup>TH</sup> AVENUE;

THENCE  $S0^{\circ}04'56''W$ , 2,660.98 FEET ALONG THE CENTERLINE OF DUNKIRK STREET TO THE CENTERLINE OF 52<sup>ND</sup> AVENUE;

THENCE  $S89^{\circ}44'28''W$ , 2,645.84 FEET ALONG THE CENTERLINE OF 52<sup>ND</sup> AVENUE TO THE POINT OF BEGINNING. CONTAINING 35,709,079 SQUARE

FEET OR 819.768 ACRES MORE OR LESS. EXCEPTING LOT 2, BLOCK 1 OF DENVER INTERNATIONAL BUSINESS CENTER FILING NO. 1 AS RECORDED IN BOOK 30, PAGES 99-100 AT RECEPTION NO. 9500058523; LOT 1, BLOCK 1 OF DENVER INTERNATIONAL BUSINESS CENTER FILING NO. 2, AS RECORDED IN BOOK 31 AT PAGE 49; LOT 1, BLOCK 1 OF SUNRISE GATEWAY FILING NO. 1 AS RECORDED IN RECEPTION NO. 9700049232; BLOCK 1 OF SUNRISE GATEWAY FILING NO. 2 AS RECORDED IN BOOK 31, PAGES 107-108 AT RECEPTION NO. 9700164986; TRACT B AND LOT 1, BLOCK 1 OF DENVER GATEWAY CENTER FILING NO. 1 AS RECORDED IN BOOK 31 AT PAGE 12; TRACTS C, F AND E AND LOTS 1 AND 2, BLOCK 1 OF DENVER GATEWAY CENTER FILING NO. 2 AS RECORDED IN BOOK 31, PAGES 89-90 AT RECEPTION NO. 9700113371; AND DENVER GATEWAY CENTER FILING NO. 3.

AND EXCEPTING A-PARCEL 2;

A PART OF THE SOUTHWEST QUARTER OF SECTION 3, THE SOUTHEAST QUARTER OF SECTION 4, THE NORTHEAST QUARTER OF SECTION 9 AND THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 10, BEING THE CENTERLINE INTERSECTION OF THOWER ROAD AND 64TH AVENUE; THENCE  $N0^{\circ}48'50''E$ , 662.43 FEET ALONG THE CENTERLINE OF TOWER ROAD TO THE CENTERLINE OF 65TH AVENUE AND THE POINT OF BEGINNING;

THENCE  $N89^{\circ}26'19''E$ , 664.09 FEET ALONG THE CENTERLINE OF 65TH AVENUE TO THE CENTERLINE OF ARGONNE STREET;

THENCE  $S0^{\circ}46'21''W$ , 662.09 FEET ALONG THE CENTERLINE OF ARGONNE STREET TO THE CENTERLINE OF 64TH AVENUE;

THENCE ALONG THE CENTERLINE OF ARGONNE STREET, THE FOLLOWING FOUR (4) COURSES:

1.  $S00^{\circ}02'27''E$ , 82.82 FEET TO A POINT OF CURVE;
2. ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF  $41^{\circ}27'45''$ , A RADIUS OF 350.00 FEET, AN ARC LENGTH OF 253.28 FEET TO A POINT OF REVERSE CURVE;
3. ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF  $41^{\circ}27'45''$ , A RADIUS OF 350.00 FEET, AN ARC LENGTH OF 253.28 FEET;
4.  $S0^{\circ}02'24''E$ , 83.98 FEET TO THE CENTERLINE OF 63RD AVENUE;

THENCE S89°24'34"W, 840.02 FEET ALONG THE CENTERLINE OF 63<sup>RD</sup> AVENUE TO THE CENTERLINE OF TOWER ROAD;

THENCE N89°42'35"W, 661.62 FEET ALONG THE CENTERLINE OF 63<sup>RD</sup> AVENUE TO THE CENTERLINE OF YAMPA STREET;

THENCE N0°05'00"W, 634.97 FEET ALONG THE CENTERLINE OF YAMPA STREET TO THE CENTERLINE OF 64<sup>TH</sup> AVENUE;

THENCE ALONG THE CENTERLINE OF YAMPA STREET THE FOLLOWING FIVE (5) COURSES:

1. N0°49'43"E, 85.95 FEET TO A POINT OF CURVE;
2. ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 12°10'09", A RADIUS OF 400.00 FEET, AN ARC LENGTH OF 84.96 FEET TO A POINT OF TANGENT;
3. THENCE N12°59'52"E, 209.24 FEET TO A POINT OF CURVE;
4. ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 12°48'52", A RADIUS OF 500.00 FEET, AN ARC LENGTH OF 111.83 FEET TO A POINT OF TANGENT;
5. N0°11'00"E, 176.91 FEET ALONG SAID TANGENT TO THE CENTERLINE OF 65<sup>TH</sup> AVENUE;

THENCE S89°44'13"E, 599.62 FEET ALONG THE CENTERLINE OF 65<sup>TH</sup> AVENUE TO THE CENTERLINE OF TOWER ROAD AND THE POINT OF BEGINNING CONTAINING 1,751,475 SQUARE FEET OR 40.208 ACRES MORE OR LESS.

AND EXCEPTING A-PARCEL 3;

A PART OF THE SE ¼ OF SECTION 9, SW ¼ OF SECTION 10, NW ¼ OF SECTION 15 AND NE ¼ OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SE CORNER OF SAID SECTION 9, BEING THE CENTERLINE INTERSECTION OF TOWER ROAD AND 56<sup>TH</sup> AVENUE;

THENCE N0°02'49"E, 657.50 FEET ALONG THE CENTERLINE OF TOWER ROAD TO THE CENTERLINE OF 57<sup>TH</sup> AVENUE AND THE POINT OF BEGINNING;

THENCE S89°57'11"E, 839.95 FEET ALONG THE CENTERLINE OF 57<sup>TH</sup>

AVENUE TO THE CENTERLINE OF ARGONNE STREET;

THENCE ALONG THE CENTERLINE OF ARGONNE STREET THE FOLLOWING FOUR (4) COURSES:

1. S0°02'49"W, 76.85 FEET TO A POINT OF CURVE;
2. ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 42°01'09", A RADIUS OF 350.00 FEET, AN ARC LENGTH OF 256.68 FEET TO A POINT OF REVERSE CURVE;
3. ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 42°01'09", A RADIUS OF 350.00 FEET, AN ARC LENGTH OF 256.68 FEET TO A POINT OF TANGENT;
4. THENCE S0°02'49"W, 108.05 FEET TO THE CENTERLINE OF 56<sup>TH</sup> AVENUE;

THENCE N89°41'47"E, 2.45 FEET ALONG THE CENTERLINE OF 56<sup>TH</sup> AVENUE TO THE CENTERLINE OF ARGONNE STREET;

THENCE S0°01'04"W, 664.85 FEET ALONG THE CENTERLINE OF ARGONNE STREET TO THE CENTERLINE OF 55<sup>TH</sup> AVENUE;

THENCE S89°42'27"W, 662.21 FEET ALONG THE CENTERLINE OF 55<sup>TH</sup> AVENUE TO THE CENTERLINE OF TOWER ROAD;

THENCE N89°58'55"W, 657.65 FEET ALONG THE CENTERLINE OF 55<sup>TH</sup> AVENUE TO THE CENTERLINE OF YAMPA STREET;

THENCE N0°02'40"E, 665.03 FEET ALONG THE CENTERLINE OF YAMPA STREET TO THE CENTERLINE OF 56<sup>TH</sup> AVENUE;

THENCE N0°01'08"W, 658.16 FEET ALONG THE CENTERLINE OF YAMPA STREET TO THE CENTERLINE OF 57<sup>TH</sup> AVENUE;

THENCE S89°53'54"E, 657.85 FEET ALONG THE CENTERLINE OF 57<sup>TH</sup> AVENUE TO THE CENTERLINE OF TOWER ROAD AND THE POINT OF BEGINNING CONTAINING 1,798,486 SQUARE FEET OR 41.288 ACRES MORE OR LESS.

1  
2 in addition thereto those portions of all abutting public rights-of-way, but only to the centerline  
3 thereof, which are immediately adjacent to the aforesaid specifically described area.

4 **Section 3.** That the foregoing change in zoning classification is based upon the representations by  
5 the owners that they will waive those certain rights available to them, and, in lieu thereof, agree to  
6 certain limitations which limitations are set forth in Subsections 3 of Section 1 hereof, and is also  
7 based upon the reasonable conditions approved by the said owners which reasonable conditions are  
8 set forth in Subsection 4 of Section 1 hereof; and no permit shall be issued except in strict  
9 compliance with the aforesaid waivers and the aforesaid reasonable conditions. Said waivers and  
10 said reasonable conditions shall be binding upon all successors and assigns of said owners, who  
11 along with said owners shall be deemed to have waived all objections as to the constitutionality of  
12 the aforesaid waivers and the aforesaid reasonable conditions.

13 **Section 4.** That this ordinance shall be recorded by the Department of Zoning Administration  
14 among the records of the Clerk and Recorder of the City and County of Denver.

15 PASSED BY THE COUNCIL February 22 2000

16 Henry Hayes - PRESIDENT

17 APPROVED: Will E. Smith - MAYOR Feb 23 2000

18 ATTEST: Quinn E. Smith - CLERK AND RECORDER,  
19 EX-OFFICIO CLERK OF THE  
20 CITY AND COUNTY OF DENVER

21  
22 PUBLISHED IN THE DEN. ROCKY MTN NEWS Jan. 28, 2000 Feb. 25, 2000

23  
24 PREPARED BY: KAREN A. AVILES, ASSISTANT CITY ATTORNEY 1/18/00

25 REVIEWED BY: Thomas Big L Asst - CITY ATTORNEY January 20, 2000

26 SPONSORED BY COUNCIL MEMBER(S) \_\_\_\_\_

