



# Zone Map Amendment (Rezoning) - Application

PROPERTY OWNER INFORMATION*	
<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
Property Owner Name	Drawe Holdings LLC
Address	3106 W County Line Rd
City, State, Zip	Littleton, CO 80129
Telephone	720-758-7602
Email	mikedrawe@alpinegmc.com
*All standard zone map amendment applications must be initiated by owners (or authorized representatives) of at least 51% of the total area of the zone lots subject to the rezoning. See page 4.	

PROPERTY OWNER(S) REPRESENTATIVE**	
<input checked="" type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
Representative Name	HCI Engineering
Address	621 Southpark Dr., Suite 1600
City, State, Zip	Littleton CO 80120
Telephone	303-979-3900
Email	ColeH@Haberergroup.com
**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.	

SUBJECT PROPERTY INFORMATION	
Location (address):	8120 W. Tufts Ave.
Assessor's Parcel Numbers:	09112-00-054-000
Area in Acres or Square Feet:	200,375 sqr ft / 4.6 AC
Current Zone District(s):	PUD 252

PROPOSAL	
Proposed Zone District:	S-MX-3

PRE-APPLICATION INFORMATION	
In addition to the required pre-application meeting with Planning Services, did you have a concept or a pre-application meeting with Development Services?	<input type="checkbox"/> Yes - State the contact name & meeting date _____ <input checked="" type="checkbox"/> No - Describe why not (in outreach attachment, see bottom of p. 3)
Did you contact the City Council District Office regarding this application?	<div style="text-align: right;">12.18.20 email</div> <input checked="" type="checkbox"/> Yes - if yes, state date and method _____ <input type="checkbox"/> No - if no, describe why not (in outreach attachment, see bottom of p. 3)

## REZONING REVIEW CRITERIA (ACKNOWLEDGE EACH SECTION)

<p>General Review Criteria DZC Sec. 12.4.10.7.A</p> <p>Check box to affirm <b>and</b> include sections in the review criteria narrative attachment</p>	<p><input checked="" type="checkbox"/> <b>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.</b></p> <p>Please provide a review criteria narrative attachment describing <b>how</b> the requested zone district is consistent with the policies and recommendations found in <b>each</b> of the adopted plans below. Each plan should have its' own subsection.</p> <p><b>1. Denver Comprehensive Plan 2040</b> In this section of the attachment, describe <b>how</b> the proposed map amendment is consistent with <i>Denver Comprehensive Plan 2040's</i> a) equity goals, b) climate goals, and c) any other applicable goals/strategies.</p> <p><b>2. Blueprint Denver</b> In this section of the attachment, describe <b>how</b> the proposed map amendment is consistent with: a) the neighborhood context, b) the future place type, c) the growth strategy, d) adjacent street types, e) plan policies and strategies, and f) equity concepts contained in <i>Blueprint Denver</i>.</p> <p><b>3. Neighborhood/ Small Area Plan and Other Plans</b> (List all from pre-application meeting, if applicable):</p>
<p>General Review Criteria: DZC Sec. 12.4.10.7. B &amp; C</p> <p>Check boxes to the right to affirm <b>and</b> include a section in the review criteria for Public Health, Safety and General Welfare narrative attachment.</p>	<p><input checked="" type="checkbox"/> <b>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.</b></p> <p><input checked="" type="checkbox"/> <b>Public Health, Safety and General Welfare: The proposed official map amendment furthers the public health, safety, and general welfare of the City.</b></p> <p>In the review criteria narrative attachment, please provide an additional section describing <b>how</b> the requested rezoning furthers the public health, safety and general welfare of the City.</p>
<p>Review Criteria for Non-Legislative Rezonings: DZC Sec. 12.4.10.8</p> <p>For Justifying Circumstances, check box and include a section in the review criteria narrative attachment.</p> <p>For Neighborhood Context, Purpose and Intent, check box <b>and</b> include a section in the review criteria narrative attachment.</p>	<p><b>Justifying Circumstances - One of the following circumstances exists:</b></p> <p><input type="checkbox"/> The existing zoning of the land was the result of an error;</p> <p><input type="checkbox"/> The existing zoning of the land was based on a mistake of fact;</p> <p><input type="checkbox"/> The existing zoning of the land failed to take into account the constraints of development created by the natural characteristics of the land, including, but not limited to , steep slopes, floodplain, unstable soils, and inadequate drainage;</p> <p><input 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 style="padding-left: 20px;">a. Changed or changing conditions in a particular area, or in the city generally; or,</p> <p style="padding-left: 20px;">b. A City adopted plan; or</p> <p style="padding-left: 20px;">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.</p> <p>In the review criteria narrative attachment, please provide an additional section describing the selected justifying circumstance. If the changing conditions circumstance is selected, describe changes since the site was last zoned. Contact your pre-application case manager if you have questions.</p> <p><input checked="" type="checkbox"/> <b>The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District.</b></p> <p>In the review criteria narrative attachment, please provide a separate section describing <b>how</b> the rezoning aligns with a) the proposed district neighborhood context description, b) the general purpose statement, and c) the specific intent statement found in the Denver Zoning Code.</p>

**REQUIRED ATTACHMENTS**

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

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

**ADDITIONAL ATTACHMENTS (IF APPLICABLE)**

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

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

# REZONING GUIDE



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

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

Property Owner Name(s) (please type or print legibly)	Property Address City, State, Zip Phone Email	Property Owner Interest % of the Area of the Zone Lots to Be Rezoned	Please sign below as an indication of your consent to the above certification statement	Date	Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed, (C) title policy or commitment, or (D) other as approved	Has the owner authorized a representative in writing? (YES/NO)
<b>EXAMPLE</b> John Alan Smith and Josie Q. Smith	123 Sesame Street Denver, CO 80202 (303) 555-5555 sample@sample.gov	100%	<i>John Alan Smith</i> <i>Josie Q. Smith</i>	01/12/20	(A)	YES
Mike Drawe	8120 W Tufts Ave Denver, CO 80123 720-758-7602 mikedrawe@alpinegmc.com ellie@alpinegmc.com	100%	<i>Mike Drawe</i>	12/18/20	(B)	YES
						YES
						YES
						YES

LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PART OF LOT 2, BLOCK 2, QUINCY SHORES/SOUTHWEST AUTOPARK SUBDIVISION, A PLAT RECORDED IN THE CITY AND COUNTY OF DENVER CLERK AND RECORDER'S OFFICE IN BOOK 30 AT PAGES 53-55, BEING A PART OF THE NW 1/4 OF SECTION 11, TOWNSHIP 5 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST 1/4 CORNER OF SECTION 11, WHENCE THE CENTER 1/4 CORNER OF SAID SECTION 11 BEARS SOUTH 89°58'18" EAST, A DISTANCE OF 2665.93 FEET SAID LINE FORMING THE BASIS OF BEARINGS FOR THIS DESCRIPTION;

THENCE ALONG SAID SOUTH LINE OF THE NW 1/4, SOUTH 89°58'18" EAST, A DISTANCE OF 798.72 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 00°01'42" EAST, A DISTANCE OF 503.67 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF WEST TUFTS AVENUE;

THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 89°58'18" EAST, A DISTANCE OF 397.83 FEET;

THENCE DEPARTING SAID RIGHT OF WAY LINE SOUTH 00°01'42" WEST, A DISTANCE OF 503.67 FEET TO A POINT ON SAID SOUTH LINE OF THE NW 1/4;

THENCE ALONG SAID SOUTH LINE OF THE NW 1/4, NORTH 89°58'18" WEST, A DISTANCE OF 397.83 FEET TO THE TRUE POINT OF BEGINNING.

**AFTER RECORDING RETURN TO:**  
**Amrock Commercial**  
**662 Woodward Avenue**  
**Detroit, Michigan 48226**  
**Attention: Lisa Wiedbusch**  
*Amrock #63509942*

  
11/27/2018 10:22 AM  
City & County of Denver  
R \$43.00  
WD

**2018151248**  
Page: 1 of 7  
D \$305.00

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SPECIAL WARRANTY DEED ②**

THIS DEED, executed as of the 16<sup>th</sup> day of November, 2018, between **ARGONAUT HOLDINGS LLC**, a Delaware limited liability company ("Grantor"), whose mailing address is 300 Renaissance Center, Mail Code: 489-C19-GRE, Detroit, Michigan 48265, Attention: President, and **DRAWE HOLDINGS, LLC**, a Colorado limited liability company ("Grantee"), whose mailing address is 8120 W Tufts Ave, Denver, Colorado 80123.

WITNESSETH, that the Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00), the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto the Grantee, its successors and assigns forever, all the real property together with improvements, situate, lying and being in the County of Denver, and State of Colorado, described as follows:

**SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN.**

and commonly known as: 8120 West Tufts Ave, Denver, CO 80123 (the "Premises").

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the Grantee, its successors and assigns forever. The Grantor, for itself, its successors and assigns, does covenant and agree that the Grantor shall and will WARRANT AND FOREVER DEFEND the above bargained premises, in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person or persons lawfully claiming the

whole or any part thereof, by, through or under the Grantor and none other except for the matters of record listed on EXHIBIT B.

THE PREMISES ARE SUBJECT to the following representations, warranties and covenants related to restrictions on uses of or at the Premises and will be included in: (1) any agreement transferring complete or partial possession or ownership of the Property through sale, lease, or otherwise to any successor, assign, purchaser, or tenant, and (2) any deed of conveyance transferring complete or partial ownership of the Premises as covenants and restrictions which will run with the Premises and be binding upon Grantee and all subsequent owners, tenants, and users, and will be enforceable against Grantee, its successors, and assigns and inure to the benefit of and be enforceable by Grantor, its successors and assigns:

Grantee shall, at all times, comply with any and all applicable federal, state, or local environmental laws, regulations, or ordinances, including any and all permits, licenses, or authorizations issued thereunder and including, but not limited to, any and all due care requirements under applicable law (herein collectively "Environmental Laws"), in connection with or related to the use, operations, development, excavation, grading, construction, or demolition, at, in, on, or below the Premises. Grantee shall be solely responsible and liable for all any and all alleged or actual violations of any applicable Environmental Laws concerning or related to the Premises.

Grantee acknowledges and agrees that use of groundwater at, in, or under the Premises by any person or entity for any purpose, including potable and non-potable uses, will be strictly prohibited.

Grantee acknowledges and agrees that any and all discarded materials located on and/or under the surface of the Premises, including, but not limited to, building materials from demolition activities; domestic and industrial trash; tires; automotive parts; used containers which held materials such as paint, antifreeze, gasoline, and other household substances; materials painted with lead-based paints or otherwise; wood, and other materials which may have been painted with lead-based paints; roof shingles and other building materials which may contain asbestos-containing materials (collectively, "Debris") and/or soil management and surface water and/or groundwater management required or necessary because of excavation, demolition, or soil disturbance related to the use, operations, development, excavation, grading, construction, or demolition, at, in, on, or below the Premises is the sole obligation and liability of Grantee. Such soil and/or Debris management and surface water and/or groundwater management may include in-place management, excavation, sediment and erosion control, and disposal or other soil and Debris management options which are allowed or required under applicable Environmental Laws.

Grantee shall not "treat," "store" or "dispose" of any "hazardous substances," "hazardous wastes" or "toxic substances" as those terms are defined under CERCLA, 42 U.S.C. 9601 et. seq., RCRA, 42 U.S.C. 6901 et. seq., or TSCA, 15 U.S.C. 2601 et. seq., or under similar Colorado law, statute, or regulation, on, at, or below the Premises, and shall maintain generator-only status; provided, however, that Grantee may (A) accumulate such substances or wastes as allowed under applicable Environmental Laws for off-site treatment, off-site storage, or off-site disposal, (B) use commercial products on-site which may contain such

substances and (C) use and store on-site such substances as are customarily used in the ownership, operation and maintenance of automobile sales, service and body shop businesses in compliance with applicable Environmental Laws.

Grantee acknowledges and agrees that the Premises may only be used by Grantee, its successors, assigns, and tenants for industrial uses and/or those commercial uses that do not require investigation or remediation of the Premises to residential cleanup criteria under applicable law. Grantee acknowledges and agrees that the Premises may not be used for residential uses or any commercial use that requires remediation to residential cleanup criteria. Grantee further acknowledges and agrees that any site modifications required at, in, on, or below the Premises to accommodate such uses (including without limitation, soil and/or Debris management and surface water and/or groundwater management and any other matters relating to the use, operations, development, excavation, grading, construction, or demolition at the Premises) is the sole obligation and liability of Grantee (or the owner of the Grantee at the time of such activities) and will be conducted at Grantee's sole expense.

Grantee acknowledges and agrees that the use or installation of underground storage tanks at, in, or under the Premises by any person or entity for any purpose will be strictly prohibited.

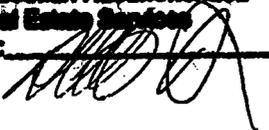
Grantee acknowledges and agrees that any and all management of any utility lines or piping, including, without limitation, any sanitary or storm sewers, any gas, water, electrical, or any other gas, water or electrical utility lines or piping, and any such materials that may be included therein, and any and all management of any septic systems, and any such materials that may be included therein, which may be present at or below the Premises which management may be required or necessary to properly maintain the Premises or because of excavation, demolition, or soil disturbance related to future use, development, or construction at or of the Premises, is the sole obligation and liability of Grantee or the owner of the Premises at the time of such activities.

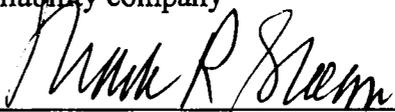
*[Remainder of page intentionally left blank; signature page to follow]*

IN WITNESS WHEREOF, the Grantor has caused its name to be hereunto subscribed, on the day and year first above written.

ARGONAUT HOLDINGS LLC, a Delaware limited liability company

Execution Recommended Real Estate Services

By: 

By: 

Name: Mark R. Sloan  
President

Title: Argonaut Holdings LLC

STATE OF Michigan )  
 ) ss.  
COUNTY OF Wayne )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of November, 2018, by Mark R. Sloan, as President of Argonaut Holdings LLC, a Delaware limited liability company, on behalf of the company.

Witness my hand and official seal.

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

  
Notary Public

KATHLEEN M. RENTENBACH  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Sep 22, 2021  
ACTING IN COUNTY OF Wayne

**EXHIBIT A****LEGAL DESCRIPTION**

**Street Address:** 8120 W Tufts Ave, Littleton, CO 80123-1890

**Legal Description:**

Tax Id Number(s): 0911200054000

Land situated in the City of Denver in the County of Denver in the State of CO:

A parcel of land being a part of Lot 2, Block 2, QUINCY SHORES/SOUTHWEST AUTOPARK SUBDIVISION, a plat recorded in the City and County of Denver Clerk and Recorder's Office in Book 30 at Pages 53-55, being a part of the NW 1/4 of Section 11, Township 5 South, Range 69 West of the 6th Principal Meridian, City and County of Denver, State of Colorado, being more particularly described as follows:

Commencing at the West 1/4 corner of Section 11, whence the center 1/4 corner of said Section 11 bears South 89°58'18" East, a distance of 2665.93 feet said line forming the basis of bearings for this description;

thence along said South line of the NW 1/4, South 89°58'18" East, a distance of 798.72 feet to the true point of beginning;

thence North 00°01'42" East, a distance of 503.67 feet to a point on the Southerly right of way line of West Tufts Avenue;

thence along said right of way line South 89°58'18" East, a distance of 397.83 feet;

thence departing said right-of-way line South 00°01'42" West, a distance of 503.67 feet to a point on said South line of the NW 1/4;

thence along said South line of the NW 1/4, North 89°58'18" West, a distance of 397.83 feet to the true point of beginning.

Address: 8120 W Tufts Ave, Littleton, CO 80123-1890

**EXHIBIT B****PERMITTED ENCUMBRANCES**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Rights, facts, interests or claims which are not shown by the Public Records, but which could be ascertained by an inspection of said Land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water, in each case not shown in the public records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Terms and conditions contained in Agreement recorded March 2, 1918 in Book 205, Page 369.
8. Easements for utility, drainage, storm sewer, sanitary sewer, waterline and landscape purposes, as shown and reserved on the plat of Quincy Shores/Southwest Autopark Subdivision, recorded May 25, 1989 in Book 30, at Page 53.
9. Easement granted to the City and County of Denver recorded March 8, 1983 in Book 2761, Page 584, a portion of said Easement was vacated pursuant to terms of Ordinance 190, Series of 1990, by the Council of the City and County of Denver, State of Colorado, recorded April 6, 1990 at Reception No R-90-0030278.
10. Terms and conditions contained in Improvement Agreement recorded July 13, 1988 at Reception No. R-88-287760.
11. Easements with Covenants and Restrictions Affecting Land recorded August 30, 1988 at Reception No. R-88-0305102.
12. Terms and conditions contained in Denver Water Department Letter recorded September 6, 1988 at Reception No. R-88-0307274.
13. Terms and conditions contained in Denver Water Department Letter recorded November 28, 1988 at Reception No. R-88-0335799.
14. Bills for an Ordinance Relating to Zoning recorded December 9, 1988 at Reception No. R-88-0340234 and recorded January 24, 1989 at Reception No. R-89-0008215.
15. Declaration of Architectural Guidelines/Restrictive Covenants recorded June 1, 1989 at Reception No. R-89-0048872, as Amended by Amendment to Declaration of Architectural Guidelines/Restrictive Covenants recorded January 2, 1992 at Reception No. R-92-0000026, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status, or national origin.
16. Public Service Company of Colorado Utility Easement recorded September 29, 1989 at Reception No. R-89-0090233.
17. Grant of Easement recorded November 30, 1990 at Reception No. R-90-0111032.
18. Public Service Company of Colorado Utility Easement recorded August 29, 1991 at Reception No. 91-0082568.
19. Public Service Company of Colorado Utility Easement recorded June 15, 1995 at Reception No. 9500069321.

20. The effect of Heydman Pontiac, a Planned Unit Development, recorded August 15, 1995 at Reception No. 9500098978.
21. Terms and conditions contained in Easement Agreement recorded August 7, 1995 at Reception No. 9500095274.
22. Terms and conditions contained in Easement and Indemnity Agreement recorded August 15, 1995 at Reception No. 9500098977.
24. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof.
25. Any water rights, claims of title to water, in, on or under the land.
26. Rights of the public and any governmental unit in any part of the land taken, deeded or used for street, road or highway purposes.
27. Rights of tenants now in possession of the land under unrecorded leases or otherwise.



3106 W County Line Rd, Littleton, CO 80129  
303-926-8000

Date: December 17, 2020

To Whom it May Concern

Drawe Holdings LLC

Mike Drawe is a Vice President of Drawe Holdings LLC and is authorized to sign on behalf of Drawe Holdings LLC.

He also authorizes HCI Engineering and Drake Real Estate Services to make application submittals on his behalf with respect to the re-zoning of 8120 W. Tufts Ave.

Sincerely

A handwritten signature in black ink, appearing to read "Mike Drawe", followed by a long horizontal line extending to the right.

Mike Drawe

Vice President

**MINUTES OF SPECIAL MEETING  
OF THE MEMBERS OF  
DRAWE HOLDINGS, LLC**

A Special Meeting of the members of Drawe Holdings, LLC, was held on September 14<sup>th</sup>, 2005, at the office of Robert R. Gallagher, Jr., 7700 East Arapahoe Rd., Suite 350, Centennial, Colorado, for the purpose of discussing the financing of the purchase of the assets of Sonic-Don Massey Pontiac Buick GMC, Inc., and after discussion, it was

**RESOLVED**, that the Administrative Members of Drawe Holdings, LLC, Ivette Dominguez and Michael Drawe, are hereby authorized to borrow, on behalf of the company, such sums of money as they may deem necessary, upon such terms and conditions as they may deem proper from Guaranty Bank and Trust Company, and to apply for and obtain from said bank letters of credit, to execute agreements to secure said bank in connection therewith and to do and perform all acts and sign all agreements, obligations pledges and/or other instruments necessary or required by said bank.

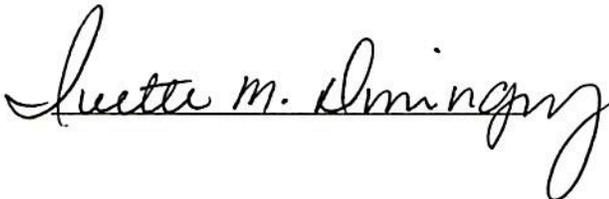
And that Ivette Dominguez and Michael Drawe as the Administrative Members be and hereby authorized and directed to take such actions as may be necessary to effectuate this Resolution.

There being no other business to come before the meeting, upon motion made seconded and unanimously passed, the meeting was adjourned.



Michael Drawe  
Assistant Administrative Member

**MINUTES APPROVED AS TO  
FORM AND CONTENT, AND  
ACTION RECORDED IS APPROVED.**



## RESOLUTION

RESOLVED, that the Administrative Members of Drawe Holdings, LLC, Ivette Dominguez and Michael Drawe, are hereby authorized to borrow, on behalf of the company, such sums of money as they may deem necessary, upon such terms and conditions as they may deem proper from Guaranty Bank and Trust Company, and to apply for and obtain from said bank letters of credit, to execute agreements to secure said bank in connection therewith and to do and perform all acts and sign all agreements, obligations pledges and/or other instruments necessary or required by said bank.

The undersigned hereby certifies that he is Assistant Administrative Member and the custodian of the books and records and seal of Drawe Holdings, LLC, a limited liability company formed pursuant to the laws of the State of Colorado, and the foregoing is a true record of a Resolution duly adopted at a meeting of the Members, and that the meeting was held in accordance with state law and the Operating Agreement of Drawe Holdings, LLC. On September \_\_\_\_\_, 2005, and that the Resolution is now in full force and effect without modification or rescission.

IN WITNESS WHEREOF, I have executed my name as Assistant Administrative Member of the company, and have hereunto affixed the seal of said company this \_\_\_\_\_ day of September, 2005.



Michael Drawe

SEAL



Colorado Secretary of State  
 Date and Time: 08/05/2005 11:25 AM  
 Entity Id: 20051298713  
 Document number: 20051298713

Document processing fee  
 If document is filed on paper \$125.00  
 If document is filed electronically \$ 50.00  
 Fees & forms/cover sheets  
 are subject to change.

To file electronically, access instructions  
 for this form/cover sheet and other  
 information or print copies of filed  
 documents, visit [www.sos.state.co.us](http://www.sos.state.co.us)  
 and select Business Center.

Paper documents must be typewritten or machine printed.

ABOVE SPACE FOR OFFICE USE ONLY

**Articles of Organization**

filed pursuant to §7-90-301, et seq. and §7-80-204 of the Colorado Revised Statutes (C.R.S.)

1. Entity name:

**Drawe Holdings, LLC**

*(The name of a limited liability company must contain the term or abbreviation "limited liability company", "ltd. liability company", "limited liability co.", "ltd. liability co.", "limited", "llc", "l.l.c.", or "ltd." §7-90-601, C.R.S.)*

2. Use of Restricted Words *(if any of these terms are contained in an entity name, true name of an entity, trade name or trademark stated in this document, mark the applicable box):*

- "bank" or "trust" or any derivative thereof
- "credit union"       "savings and loan"
- "insurance", "casualty", "mutual", or "surety"

3. Principal office street address:

**2 Mountain Burch**

*(Street name and number)*

**Littleton**

*(City)*

**CO**

*(State)*

**80127**

*(Postal/Zip Code)*

**United States**

*(Province – if applicable)*

*(Country – if not US)*

4. Principal office mailing address  
 (if different from above):

*(Street name and number or Post Office Box information)*

*(City)*

*(State)*

*(Postal/Zip Code)*

*(Province – if applicable)*

*(Country – if not US)*

5. Registered agent name (if an individual):

**Drawe**

*(Last)*

**Mike**

*(First)*

**Mr.**

*(Middle)*

*(Suffix)*

**OR** (if a business organization):

6. The person identified above as registered agent has consented to being so appointed.

7. Registered agent street address:

**2 Mountain Burch**

*(Street name and number)*

**Littleton**

*(City)*

**CO**

*(State)*

**80127**

*(Postal/Zip Code)*

8. Registered agent mailing address  
(if different from above):

\_\_\_\_\_  
*(Street name and number or Post Office Box information)*

---

\_\_\_\_\_  
*(City) (State) (Postal/Zip Code)*

---

\_\_\_\_\_  
*(Province - if applicable) (Country - if not US)*

9. Name(s) and mailing address(es)  
of person(s) forming the limited  
liability company:

(if an individual): Drawe Mike Mr.  
*(Last) (First) (Middle) (Suffix)*

OR (if a business organization):

2 Mountain Burch  
*(Street name and number or Post Office Box information)*

---

Littleton CO 80127  
*(City) (State) (Postal/Zip Code)*

---

United States  
*(Country - if not US)*

(if an individual) Dominguez Ivette Ms.  
*(Last) (First) (Middle) (Suffix)*

OR (if a business organization)

2 Mountain Burch  
*(Street name and number or Post Office Box information)*

---

Littleton CO 80127  
*(City) (State) (Postal/Zip Code)*

---

United States  
*(Country - if not US)*

(if an individual) \_\_\_\_\_  
*(Last) (First) (Middle) (Suffix)*

OR (if a business organization)

\_\_\_\_\_  
*(Street name and number or Post Office Box information)*

---

\_\_\_\_\_  
*(City) (State) (Postal/Zip Code)*

---

United States  
*(Country - if not US)*

*(If more than three persons are forming the limited liability company, mark this box  and include an attachment stating the true names and mailing addresses of all additional persons forming the limited liability company)*

10. The management of the limited liability company is vested in managers  OR is vested in the members

11. There is at least one member of the limited liability company.

12. (Optional) Delayed effective date: \_\_\_\_\_  
(mm/dd/yyyy)

13. Additional information may be included pursuant to other organic statutes such as title 12, C.R.S. If applicable, mark this box  and include an attachment stating the additional information.

**Notice:**

Causing this document to be delivered to the secretary of state for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the secretary of state, whether or not such individual is named in the document as one who has caused it to be delivered.

14. Name(s) and address(es) of the individual(s) causing the document to be delivered for filing:

Gallagher	Robert	R.	Mr.
<small>(Last)</small>	<small>(First)</small>	<small>(Middle)</small>	<small>(Suffix)</small>
7700 E. Arapahoe Rd., #350			
<small>(Street name and number or Post Office Box information)</small>			
Centennial		CO	80112-6111
<small>(City)</small>	<small>(State)</small>	<small>(Postal/Zip Code)</small>	
United States			
<small>(Province - if applicable)</small>		<small>(Country - if not US)</small>	

*(The document need not state the true name and address of more than one individual. However, if you wish to state the name and address of any additional individuals causing the document to be delivered for filing, mark this box  and include an attachment stating the name and address of such individuals.)*

**Disclaimer:**

This form, and any related instructions, are not intended to provide legal, business or tax advice, and are offered as a public service without representation or warranty. While this form is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form. Questions should be addressed to the user's attorney.

# OPERATING AGREEMENT

OF

DRAWE HOLDINGS, LLC

A COLORADO LIMITED LIABILITY COMPANY

THIS OPERATING AGREEMENT, (the "Agreement") is made and entered into as of the 5<sup>th</sup> day of August, 2005, by and between those Members (as defined herein) listed on Exhibit A attached hereto and made a part hereof, on the following terms and conditions. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in Article XII

## ARTICLE I FORMATION OF COMPANY

### 1.1 Formation; Articles of Organization .

On the 5<sup>th</sup> day of August, 2005, Drawe Holdings, LLC, (the "Company") was organized as a Colorado Limited Liability Company under and pursuant to the Colorado Limited Liability Company Act by filing the Articles of Organization ("Articles") with the Colorado Secretary of State. This Company and this Agreement are subject to, and governed by, the Act and the Articles. Except as provided by law, the rights and obligations of the Company and the Members shall be as provided in this Agreement. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the Act or if any provision of this Agreement is prohibited or ineffective under the Act, this Agreement shall be considered amended in the smallest degree possible in order to make the Agreement effective under the Act. In the event the Act subsequently is amended or interpreted in such a way to make valid any provision of the Agreement that was invalid, such provision shall be considered to be valid under the Agreement from the effective date of such interpretation or amendment.

### 1.2. Name .

The name of the Company is Drawe Holdings, LLC, or such other name as the Members from time to time may determine, and all business of the Company shall be conducted in such name.

### 1.3. Principal Place of Business .

The principal place of business of the Company within the State of Colorado shall be 2 Mountain Birch, Littleton, CO 80127. The Company may locate its places of business at any other place or places as the Members may from time to time deem advisable.

1.4. Registered Office and Registered Agent .

The Company's initial registered agent and such registered agent's address is:

Mike Drawe  
2 Mountain Birch  
Littleton, CO 80127

The registered agent or the registered agent's business address may be changed from time to time by the Members as they deems advisable by filing the name and address of the new registered agent with the Colorado Secretary of State pursuant to the Act. If the registered agent has resigned or a vacancy otherwise has occurred, the Members may designate a replacement registered agent or file a notice of change of address but in all circumstances within 15 days of the change in name or address of the registered agent, the Members shall file a report of such change with the Secretary of State.

1.5. Statutory Requirements.

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

1.6. Property .

All property, real and personal, of the Company shall be owned by and legal title held in the name of the Company, and any conveyance from or to the Company shall be in the Company's name. No Member shall have any ownership interest in the property of the Company. Each Member's Membership Interest in the Company shall be personal property.

1.7. Partnership Classification .

It is the intention of the parties hereto that the Company be treated as a partnership for federal income tax purposes as defined in Section 7701 of the Code and the Members shall insure that the proper box is checked in the Company's initial filings with the IRS to be treated as a partnership for tax purposes.

1.8. No Third-Party Beneficiaries .

None of the terms, covenants, obligations or rights contained in this Agreement is or shall be deemed to be for the benefit of any Person other than the Members and the Company. No third person (including any creditor of the Company or any creditor of any Member) shall, under any circumstances, have any rights under this Agreement except as specifically set forth in this Agreement with respect to assignees of a Membership Interest or holders of a charging order under C.R.S. 7-80-703.

**ARTICLE II  
BUSINESS OF THE COMPANY**

2.1 The business of the company shall be:

- A. To engage in any business activity not prohibited by law in the State of Colorado, and to exercise all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act; and
- B. To engage in all activities necessary, customary, convenient or incident to any of the foregoing.

**ARTICLE III  
MEMBERS AND MEMBER INTERESTS**

3.1. Members and Membership Interests .

The names, addresses, Capital Contributions and Percentage Interests of the Members shall be as set forth on Exhibit A attached hereto and made a part hereof, which Exhibit A shall be amended from time to time upon any change in the Percentage Interests, addresses, or Capital Contributions of the Members, or in the admission or withdrawal of any Member.

3.2. No Additional Capital Contributions .

After the initial Capital Contribution set forth in Exhibit A, no Member shall be required to make any additional Capital Contributions to the Company without the unanimous consent of the Members. Upon the making of such a determination by the Members, the Members shall give written notice to each Member of the amount of required additional Capital Contributions, and each Member shall deliver to the Company its pro rata share thereof (in proportion to the respective Percentage Interest of the Member on the date such notice is given) no later than ten days following the date such notice is given. None of the terms, covenants, obligations or rights contained in this Article 3.2 shall be deemed to be made for the benefit of any Person 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 Members.

Unpaid Capital Contributions, which have been required by the appropriate vote of the Members, shall constitute a debt due and payable by the defaulting Member and enforceable by the non-defaulting Members as follows:

- A. A non-defaulting Member shall have the right at any time, so long as any Capital Contribution remains unpaid, to pay on behalf of the defaulting Member all or any part of

the unpaid Capital Contribution, and the defaulting Member shall pay such Member interest on such amount at the rate of 11% per annum from the date the unpaid Capital Contribution is paid by such Member until the date of repayment in full by the defaulting Member. Until such amounts are paid in full, the defaulting Member consents to the payment, and the Members are empowered to pay to the non-defaulting Member who made such loan all distributions to which the defaulting Member would be entitled under this Agreement.

B. No failure by a defaulting Member to pay a Capital Contribution shall be deemed to have been remedied unless and until that Member shall have paid such Capital Contribution to the Member who paid such amount and all interest accrued thereon under Article 3.2 A. above.

C. Any amount paid by a Member in accordance with Article 3.2 A. above, together with interest thereon, shall constitute a debt due and payable to that Member by the defaulting Member and, without prejudice to any other means of recovery available to the Member, may be recovered in any court of competent jurisdiction.

D. Notwithstanding the foregoing, no obligation to make an additional Capital Contribution by a defaulting Member may be enforced by a creditor of the Company, unless the non-defaulting Member to whom the debt is owed expressly consents to such enforcement or to the assignment of the obligation to such creditor.

### 3.3. Limitation on Liability .

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

### 3.4. Individual Authority .

A Member shall have authority to bind the Company only if such Member has been specifically authorized to bind the Company by the appropriate vote of the Members as set forth in Article 6.0 hereof.

### 3.5. Liability of a Member to the Company .

A Member who receives any distribution is liable to the Company only to the extent now or hereafter provided by the Act. Accordingly, no distribution shall be declared and paid unless, after the distribution is made, the fair value of the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their Capital Contributions.

**ARTICLE IV  
MEMBERS' CAPITAL ACCOUNTS**

4.1. Capital Accounts .

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

4.2. Withdrawal or Reduction of Members' Contributions to Capital; No Right to Withdraw or Resign .

A. No Member shall have the right to retire or resign or to withdraw any amounts of the Member's Capital Contribution or amounts from its Capital Account or to demand and receive property of the Company or any distribution or return for the Member's Capital Contribution, except as may be specifically provided in this Agreement or required by law, including the Act. Any retirement, resignation or withdrawal in violation of this Agreement shall subject such Member to damages for breach of this Agreement, which damages shall offset any amounts otherwise distributable to the Member. Upon such retirement, resignation or withdrawal, a Member shall be treated as set forth in Article 9.2.

B. A Member shall not receive out of the Company's property any part of such Member's Capital Contributions 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.

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

D. No provision is made for the expulsion of a Member.

E. No Member shall be entitled to interest on his or her Capital Contribution.

4.3. Modification of Capital Accounts .

Because the Members intend that Capital Accounts be maintained in accordance with the Code, the Regulations and applicable law, to accomplish that purpose, the Members are authorized to modify the manner in which the Capital Accounts are maintained and adjustments thereto are computed, and to make any appropriate adjustments thereto, to assure such compliance; provided,

however, that such modifications and adjustments shall not materially alter the economic agreement between or among the Members.

4.4. No Obligation to Restore .

As specified in Article 10.3, no Member shall have any liability to restore all or any portion of a Deficit Capital Account of such Member.

**ARTICLE V  
ALLOCATIONS AND DISTRIBUTIONS TO MEMBERS**

5.1. Net Profits.

After giving effect to the special allocations set forth in Article XII, Net Profits for any taxable year of the Company shall be allocated as follows:

A. First, to those Members in proportion to and to the extent of the excess, if any, of (i) the cumulative Net Losses allocated to such Members pursuant to Article 5.2 B. for all prior taxable years, over (ii) the cumulative Net Profits allocated to such Members pursuant to this Article 5.1 A. for all prior taxable years; and

B. The balance, if any, to the Members in proportion to their respective Percentage Interests.

5.2 Net Losses.

After giving effect to the special allocations set forth in Article XII, Net Losses for any taxable year shall be allocated as follows:

A. First, to the Members in proportion to their respective Percentage Interests; provided, however, that Net Losses shall not be allocated pursuant to this Article 5.2 A. to the extent such allocation would cause any Member to have or to increase a Deficit Capital Account at the end of such taxable year; and

B. The balance, if any, to those Members without Deficit Capital Accounts at the end of such taxable year, pro rata in accordance with their positive Capital Account balances, or if no such Members exist, then to the Members in accordance with their respective Percentage Interests in the Company.

5.3. Change in Member's Interest .

If there is a change in any Member's Membership Interest in the Company during a Fiscal

Year, each Member's distributive share of Net Profits or Net Losses or any item thereof for such Fiscal Year shall be determined by any method prescribed by Code Section 706(d) and the Regulations promulgated thereunder and takes into account the varying interests of the Members of the Company during such Fiscal Year.

5.4. Reporting by Members .

The Members agree to report their shares of Net Profits, Net Losses, income, loss, deduction and credit for federal income tax purposes in accordance with this Article 5.0 and Article 12.0.

5.5. Distributions .

Except upon dissolution and liquidation as set forth in Article 11.3, no less than quarterly, the Managers shall distribute the Distributable Cash of the Company, if any, to the Members in proportion to their respective Percentage Interests. For any period, Distributable Cash shall mean all cash funds of the Company on hand from time to time (other than cash funds obtained as Capital Contributions to the Company by the Members and cash funds obtained from loans to the Company) less (i) all current principal and interest payments on indebtedness of the Company reasonably anticipated by the Managers to be payable and all other sums reasonably anticipated to be currently payable to lenders, (ii) all cash expenditures incurred incident to the normal operation of the Company's business but not yet paid, including salaries and other guaranteed payments to Members incident to the normal operation of the Company's business, and (iii) such Reserves as the Managers determines is necessary for the proper operation of the Company's business. Except as required for the establishment of Reserves, Distributable Cash shall not be reduced by depreciation, amortization or similar non-cash allowances. The Managers further shall have the discretion to make distributions of property other than cash, based upon the Managers' determination of the fair market value of such property at the time of the distribution.

5.6. Allocation of Income and Loss and Distributions in Respect of Interest Transferred

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

5.6 Withholding Included .

All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to Article 5.4.

**ARTICLE VI  
VOTING, MEETINGS AND DUTIES**

6.1 General Grant of Management Rights to Members and Administrative Member.

A. General Grant of Management Rights.

The business and affairs of the Company shall be managed by the Members, and the management and conduct of the business of the Company is vested in the Members. The Members shall direct, manage and control the business of the Company to the best of their ability and shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things which the Members shall deem to be reasonably required in light of the Company's business and objectives.

B. Administrative Member.

1. Designation of Administrative Member.

A Majority of the Members shall select one or more of the Members to serve as the administrative member(s) of the Company (the "Administrative Member"). The Administrative Member(s) shall be responsible for the administrative duties associated with the day-to-day business of the Company and for carrying out the decisions of the Members. Subject to the limitations and restrictions set forth in this Agreement, the Administrative Member(s) shall have the full power and authority to execute all instruments and documents necessary or appropriate to the conduct of the business of the Company in accordance with the terms of this Agreement, and no other signature shall be required for any such instrument to bind the Company. The initial Administrative Member(s) shall be Ivette Dominguez and Michael Drawe, and they shall serve until death, resignation, or removal under this Agreement.

2. Resignation of Administrative Member(s).

The Administrative Member(s) may resign as such at any time, after giving not less than thirty (30) days' notice to the other Members. Upon such resignation as Administrative Member(s), a Majority of the Members (including the former Administrative Member) shall select a successor Administrative Member.

3. Removal of Administrative Member.

The Administrative Member may be removed as such at any time by a Majority of the Members (excluding the Administrative Member). Upon such removal as Administrative Member, a Majority of the Members (including the Member that was removed as Administrative Member) shall select a successor Administrative Member.

meeting and the purpose or purposes for which the meeting is called shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting, in accordance with the notice provision of this Agreement.

6.4 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.

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

6.6 Quorum.

A Majority of the Members 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 Percentage Interests so represented may adjourn the meeting from time to time for a period not to exceed 30 days without further notice. However, if the adjournment is for more than 30 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. An abstention on any matter shall serve to exclude the Member abstaining from inclusion in determining the quorum.

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 those Members whose absence would cause less than a quorum.

6.7 Manner of Acting.

If a quorum is present, the affirmative vote of a Majority of the Members shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise specifically required by this Agreement or the Act.

6.8 Proxies.

At all meetings of Members, a Member may vote in person or by proxy executed in writing

4. Limit on Authority of Administrative Member.

Notwithstanding the foregoing powers granted to the Administrative Member, the following actions shall require the consent and joinder of the Members as follows:

a. Majority Approval Required.

The following actions shall require the consent and joinder of a Majority of the Members:

- (i) Merge or consolidate the Company with another Entity; and
- (ii) Sell or otherwise dispose of all or substantially all of the assets and property of the Company as part of a single transaction or plan outside of the ordinary course of business.

b. Unanimous Consent Required.

The following actions shall require the unanimous consent and joinder of the Members:

- (i) Borrow funds on behalf of the Company or require additional contributions of capital;
- (ii) Approve the proposed sale or gift of a Transferring Member's Membership Interest as set forth in Article VIII and Article IX;
- (iii) Admit any New Members or Substituted Members to the Company as set forth in Article IX;
- (iv) Continue the business of the Company upon the Dissociation of a Member as set forth in Article 10.1; and
- (vi) Dissolve, liquidate or terminate the Company.

6.2 No Annual Meeting Required and Place of Meetings.

The Members shall not be required to hold annual meetings but may call meeting when needed. Any Member may call a meeting of Members for any purpose except as proscribed by statute. The Members may designate any place, within the State of Colorado, as the place of meeting for any meeting of the Members. If no designation is made, the place of meeting shall be the principal executive office of the Company in the State of Colorado.

6.3 Notice of Meetings.

Except as otherwise provided herein, written notice stating the place, day and hour of the

by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Members of the Company before or at the time of the meeting. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. A facsimile or photocopy of such proxy or attorney-in-fact designation shall have the same force and effect as the original.

6.9 Action by Members Without a Meeting.

Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Members of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Article 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.

6.10 Telephonic Meetings.

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

6.11 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.

6.12 Attendance Waives Notice.

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

6.13 Assignee Not Entitled to Vote.

Any assignee of a Member's Membership Interest in the Company shall not be entitled to vote or participate in any matters in any meeting unless the assignee becomes a Substituted Member or New Member as provided in Article 9.0 hereof.

6.14 No Requirements of Records of Meetings.

Neither this Agreement nor the Act requires any Member to take or maintain minutes or other

records of any meetings of the Members.

6.15 Devotion to Duty.

A. Duty of Good Faith; Exoneration.

Each Member shall perform its duties as a Member in good faith, in a manner the Member reasonably believes to be in the best interest of the Company and with such care as an ordinarily prudent person in a like position would use under similar circumstances. Unless fraud, deceit, gross negligence, willful misconduct, bad faith or a wrongful taking shall be proved by a nonappealable court order, judgment, decree or decision, a Member shall not be liable or obligated to the other Members for any mistake of fact or judgment or for the doing of any act or the failure to do any act by the Member in conducting the business, operations and affairs of the Company, which may cause or result in any loss or damage to the Company or the other Members.

B. Reliance by Member.

In performing its duties as Member, a Member shall be entitled to rely on information, opinions, reports or statements of the following persons or groups, unless the Member has knowledge concerning the matter in question that would cause such reliance to be unwarranted:

- (1) One or more employees or other agents of the Company whom the Member reasonably believes to be reliable and competent in the matters present; or
- (2) Any attorney, public accountant or other person as to matters which the Member reasonably believes to be within such person's professional or expert competence.

C. Ultra Vires Act.

A Member shall have no authority to do any act in contravention of this Agreement. A Member is an agent of the Company for the purpose of its business, and the act of a Member, including the execution in the Company name of any instrument for apparently carrying on in the usual way the business of the Company, binds the Company unless the Member so acting otherwise lacks the authority to act for the Company and the person with whom the Member is dealing has knowledge of the fact that the Member has no such authority.

6.16 Members Have No Exclusive Duty to Company.

A Member shall not be required to manage the Company as its sole and exclusive function or business, and any Member may have other business interests, which, however, may not compete with the business of the Company, and such Member 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 Agreement, to share or participate in such other investments or activities of any of the Members or to the income or proceeds derived therefrom.

6.17 Bank Accounts.

The Administrative Member may from time to time open bank accounts in the name of the Company, and a Majority of the Members shall determine the signatories thereon.

6.18 Indemnity of Member, Employees and Agents.

A Member shall be indemnified by the Company to the fullest extent provided in the Act, as amended from time to time, and shall be entitled to the advance of expenses, including attorneys' fees, in the defense or prosecution of a claim against him or her in the capacity as a Member. The Company shall indemnify its employees and other agents who are not Members to the fullest extent permitted by law, provided that such indemnification in any given situation is approved by the Members. The Company may purchase and maintain insurance on behalf of a person who is or was a Member, employee, fiduciary or agent of the Company against any liability asserted against or incurred by such person in any such capacity or arising out of such person's status.

6.19 Reimbursement.

Each Member shall be entitled to reimbursement from the Company for all expenses of the Company reasonably incurred and actually paid by the Member on behalf of the Company.

**ARTICLE VII  
BOOKS, RECORDS AND ADMINISTRATION**

7.1 Books and Records.

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

7.2 Location and Access to Books and Records.

All accounts, books and other relevant Company documents shall be maintained by the Members at the Company's principal place of business, or at such other location as the Members shall determine. Upon reasonable request, each Member, and such Member's duly authorized representative, shall have the right, during ordinary business hours, to inspect and copy such Company documents at the Member's expense.

The Company shall keep 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, 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 Agreement, copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property or services, and copies of any financial statements of the Company for the three most recent years;

E. Minutes of any meeting for which minutes were taken;

F. Any written consents obtained from Members for actions taken by Members without a meeting.

7.3 Tax Returns and Other Elections.

The Members shall cause the preparation and timely filing of all tax returns required to be filed pursuant to the Code and all other tax returns deemed necessary 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, the Members shall file with the Colorado Department of Revenue, together with the Company's annual Colorado return, an agreement for each nonresident Member to properly file a Colorado income tax return and to make such timely payment of all Colorado taxes imposed with respect to such Member's share of the Company income, as required by C.R.S. § 39-22-601(4.5) of the Act. All elections permitted to be made by the Company under the federal or state laws shall be made by the Members.

7.4 Tax Matters Partner.

The Administrative Member(s) shall act as tax matters partner(s) of the Company pursuant to Section 6231(A)(7) of the Code. The Member designated as tax matters partner shall take such action as may be necessary to cause each other Member to become a notice partner within the meaning of Section 6223 of the Code. Any reasonable cost incurred by the tax matters partner in connection with performing his or her duties as tax matters partner, including retaining accountants and attorneys, shall be as expenses of the Company.

**ARTICLE VIII. RESTRICTIONS ON TRANSFERABILITY**

8.1 General.

Except as otherwise specifically provided herein, a Member shall not have the right to sell, assign, pledge, exchange or otherwise transfer for consideration (collectively, "sell" or "sale"), or to gift, bequeath or otherwise transfer for no consideration whether or not by operation of law (collectively, "gift") or in any other manner whatsoever dispose of all or any part of the Member's Membership Interest (including, without limitation, voting rights or the rights to receive the Member's share of profits or other compensation by way of income and the return of Capital Contributions) in the Company. Each Member hereby acknowledges the reasonableness of the restrictions on sale and gift of Membership Interests imposed by this Agreement in view of the Company's purposes and the relationship of the Members. Accordingly, the restrictions on sale and gift contained herein shall be specifically enforceable. In the event that any Member pledges or otherwise encumbers any of its Membership Interests as security for repayment of a liability, any such pledge or hypothecation shall be made pursuant to a pledge or hypothecation agreement that requires the pledgee or secured party to be bound by all of the terms and conditions of this Article 8.0.

## 8.2 Right of First Refusal.

A. In the event a Member desires to sell all or any portion of its Membership Interest in the Company to a third party purchaser or to any other Member, the Selling Member shall obtain from such third party purchaser or other Member a bona fide written offer ("Purchase Offer") to purchase such Membership Interest in the Company, 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 of its intention to so transfer such Membership Interest in the Company, furnishing to the remaining Members a copy of the aforesaid Purchase Offer to purchase such Membership Interest in the Company.

B. The remaining Members, and each of them, shall, on a basis pro rata to their Percentage Interests or on a basis pro rata to the Percentage Interests of those remaining Members exercising their right of first refusal (including the Member submitting the Purchase Offer), have the right to exercise a right of first refusal to purchase the Membership Interest proposed to be sold by the Selling Member upon the same terms and conditions as stated in the Purchase Offer to purchase by giving written notification to the Selling Member 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 within said ten (10) day period shall result in the termination of the right of first refusal by the remaining Member or Members who fail to so exercise the right, and the Selling Member shall be entitled to consummate the sale of its Membership Interest in the Company, or such portion of its Membership Interest, if any, with respect to which the right of first refusal has not been exercised, to such third party purchaser or Member submitting the Purchase Offer. For these purposes, the Purchase Offer shall constitute adequate notice by a Member submitting the Purchase Offer of such Member's exercise of its rights hereunder.

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 the Selling Member's Membership Interest in the Company upon the same terms and

conditions as are stated in the Purchase Offer, the remaining Members so exercising this right shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within sixty (60) days after receipt of written notification from the Selling Member of the Purchase Offer.

### 8.3 Additional Requirements.

A. In the event of the sale of the Selling Member's Membership Interest in the Company to a third-party purchaser or any other Member (either pursuant to the Purchase Offer or the right of first refusal under Article 8.2) or the gift of a Membership Interest in the Company, and as a condition to recognizing the effectiveness and binding nature of any such sale and (subject to Article 9.3, below) substitution of a transferee or assignee as a Member with respect to their Membership Interest as against the Company or otherwise, the Managers may require the Selling Member or Gifting Member and the proposed transferee, assignee or successor-in-interest or Substituted Member to execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the Managers may deem necessary or desirable to (i) constitute such purchaser, transferee, assignee, successor-in-interest or Substituted Member as such; (ii) confirm that the transferee, assignee or successor-in-interest desiring to acquire a Membership Interest in the Company, or to be admitted as a Substituted Member, has accepted, assumed and agreed to be subject and bound by all of the terms, obligations and conditions of the Agreement, as the same may have been further amended; (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 an association not taxable as a corporation under the then applicable provisions of the Code; (v) not cause, either alone or when combined with other transactions, a termination of the Company within the meaning of Code Section 708; and (v) assure compliance with any applicable State and Federal Securities laws and regulations.

B. Any sale or gift of a Membership Interest in the Company or substitution of a Member made in compliance with this Article 8.0 shall be deemed effective as of the last day of the calendar month in which the remaining Members' consent thereto was given. The Selling Member and the Gifting Member (collectively, the "Transferring Member") agree, upon request of the Managers, to execute such certificates or other documents and perform such other acts as may be reasonably requested by the Managers from time to time in connection with such sale or gift. The Transferring Member hereby indemnifies the Company, the Managers and the remaining Members against any and all loss, damage, or expense (including, without limitations, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of Article 8.0.

### 8.4 Gifts Not Subject to Right of First Refusal.

Subject to Article 8.5, a Gifting Member may gift all or any portion of its Membership Interest without causing application of the right of first refusal under Article 8.2; provided, however, that (i) the donee or other successor-in-interest (collectively, "donee") complies with Article 9.3; (ii)

the donee is either the Gifting Member's spouse, former spouse or lineal descendant (including adopted children) or a trust created exclusively for one or more of their benefit; and (iii) the donee will hold the Gifting Member's Membership Interest subject to the terms of this Agreement, including, but not limited to, this Article 8.0 with respect to any subsequent sale or gift. In the event of the gift of all or any portion of a Gifting Member's Membership Interest to one or more donees who are under the age of 21 years, one or more trusts shall be established to hold the Gifting Member's Membership Interest or the Membership Interest shall be held by a conservator or custodian for the benefit of such donee until the donee reaches the age of at least 21 years.

#### 8.5 Transferee Not Substituted Member in Absence of Unanimous Consent.

A. Notwithstanding anything contained herein to the contrary, if all of the remaining Members do not approve of the proposed sale or gift of the Transferring Member's Membership Interest by unanimous written consent, the proposed purchaser, transferee, assignee or donee of the Transferring Member's Membership Interest shall have no right with respect to or by virtue of the Transferring Member's Membership Interest to participate in the management of the business and affairs of the Company or to become a Substituted Member. The purchaser, transferee, assignee or donee shall only be entitled to receive the share of profits, losses or other compensation by way of income and the return of Capital Contributions, to which the Transferring Member would otherwise be entitled (the "Economic Interest" of a Member). No transfer of a Member's Membership Interest in the Company, or any part thereof, including an Economic Interest, shall be effective unless and until written notice (including the name and address of the purchaser, transferee, assignee or donee and the date of such transfer) has been provided to the Company and the remaining Members.

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 Transferring Member's other Membership Interests in the Company (including, without limitation, the voting rights of the Transferring Member), the Company may purchase from the Transferring Member, and the Transferring Member shall sell to the Company for a purchase price of \$100.00, all remaining Membership Interests not transferred by the Transferring Member which were previously attributable to the Transferring Member's Membership Interest ("Remaining Interest").

### **ARTICLE IX NEW MEMBERS AND SUBSTITUTED MEMBERS; DISSOCIATION AND CONVERSION OF MEMBERSHIP INTERESTS**

#### 9.1 New Members and Substituted Members.

From the date of the formation of the Company, any Person acceptable to all of the Members by the affirmative vote or consent thereof may become a Member in this Company either by the issuance or sale by the Company of new Company Membership Interests ("New Member") for such consideration as the Members, by unanimous vote, shall determine, or as set forth in Article 8.0 as a transferee of a Member's Membership Interest or any portion thereof, subject to the terms and conditions of this Agreement ("Substituted Member"). No New Members or Substituted Members

shall be entitled to any retroactive allocation of losses, profits, income, expenses or deductions incurred by the Company; however, the Members may, at their 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, profit, income, expense and deductions to a New Member or Substituted Member for that portion of the Company's tax year in which the New Member or Substituted Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder.

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

### A. Dissociation Defined.

A Dissociation shall mean that a Member shall cease to be a Member, and the Membership Interest of the Member shall automatically be converted to an Economic Interest of a transferee, as set forth in subparagraph B of this Article 9.2, upon the happening of any of the following events:

- (1) the withdrawal, retirement or resignation of a Member, whether or not in breach of this Agreement;
- (2) the Bankruptcy of a Member;
- (3) in the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or property;
- (4) in the case of a Member who is not a natural person, the dissolution and commencement of a winding up of the Member; and
- (5) any other event which terminates the continued membership of a Member in a limited liability company under the Act.

### B. Conversion of Membership Interest.

Except as set forth below, upon the Dissociation of a Member, the Membership Interest of such Member shall immediately and automatically convert to an Economic Interest, and the holder of the Economic Interest shall only be entitled to receive the share of profits or other compensation by way of income and the return of Capital Contributions to which the holder of the Membership Interest would otherwise have been entitled; however, the Remaining Interest shall be extinguished and neither the holder of the Economic Interest nor the Dissociated Member shall be entitled to participate in the management of the business and affairs of the Company, to vote on any matter as a Member or to otherwise exercise or enjoy the powers or privileges of a Member under this Agreement, the Articles or the Act. If a Member who is a natural person dies or a court of competent jurisdiction adjudges the Member to be incompetent to manage his or her person or his or her property, the Member's executor, administrator, guardian, conservator or other legal representative may exercise the Member's rights under the converted Economic Interest for the purpose of settling

the Member's estate or administering his or her property. If a Member is not a natural person, and is dissolved or terminated, the powers with respect to the Economic Interest of such Member may be exercised by such Member's legal representative or successor.

Notwithstanding the foregoing, if Dissociation of a Member occurs by reason of clauses 2, 3, 4 or 5 of Article 9.2(A), and another Person succeeds to the interest of such Member (hereinafter referred to as "Successor-in-Interest"), the Membership Interest of such Member shall not immediately and automatically convert to an Economic Interest, if either (i) all of the remaining Members vote or consent to admit the Successor-in-Interest as a Substituted Member and such Substituted Member agrees to satisfy the requirements of Article 9.3 or (ii) such Dissociation occurs by reason of a gift or sale pursuant to Article 8.2 or subparagraphs A, B, C or D of Article 8.3 and the Successor-in-Interest satisfies the requirements of Article 9.3.

### 9.3 Additional Requirements for Admission of a New Member or Substituted Member.

As a condition precedent to admission of any Person as a New Member or Substituted Member, such Person must execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform all such other acts which the Members may deem necessary or desirable to: (i) constitute such New Member or Substituted Member as such; (ii) confirm that the New Member or Substituted Member has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Agreement, as the same may have been further amended; (iii) preserve the Company after the issuance of a Membership Interest to a New Member or the transfer of a Membership Interest to a Substituted Member under the laws of each jurisdiction in which the Company is qualified, organized or does business; (iv) maintain the status of the Company as an association not taxable as a corporation under the then applicable provisions of the Code; (v) not cause, either alone or when combined with other transactions, the termination of the Company within the meaning of Code Section 708; and (vi) assure compliance with any applicable state and federal securities laws and regulations.

## **ARTICLE X. DISSOLUTION AND TERMINATION**

### 10.1 Dissolution.

A. The Company shall be dissolved upon the occurrence of any of the following events (which unless the Members agree to continue the business of the Company as set forth below, shall constitute "Dissolution Events"):

- (1) By the written agreement of all of the Members;
- (2) Upon the Dissociation of a Member (as defined in Article 9.2 A.), unless the business of the Company is continued by the consent of all of the remaining Members or the

remaining Member, if only one, within 90 days, at which time one or more additional Members may be admitted by the consent of all of the remaining Members or the remaining Member, if only one.

B. As soon as possible following the occurrence of any of the Dissolution Events, the Members 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.

#### 10.2 Effect of Filing of Dissolving Statement.

Upon the filing with 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.

#### 10.3 Winding Up, Liquidation and Distribution of Assets.

##### A. Accounting.

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

##### B. Winding Up.

If the Company is dissolved and its affairs are to be wound up, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members and no Member shall take any action that is inconsistent with or not necessary or appropriate for winding up the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the property and assets of the Company have been distributed pursuant to this Agreement and the Certificate has been cancelled in accordance with the Act. All Members shall be responsible for overseeing the winding up and dissolution of the Company, shall take full account of the Company's liabilities and property, shall cause the property to be liquidated as promptly as is consistent with obtaining the fair value thereof (except to the extent the Members determine to distribute any assets to the Members in kind), shall allocate any profit and loss resulting from such sales to the Members as set forth in Article 5.0 and Article 11.0 and shall cause the proceeds therefrom, to the extent thereof, to be applied and distributed in the following order:

(1) First, to the payment and discharge of all the Company's debts and liabilities to creditors other than Members, including all costs related to the dissolution, winding up and liquidation of distribution of assets;

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

(3) Third, to the payment and discharge of all the Company's debts and liabilities to Members, other than on account of such Member's Membership Interest in the Company capital and profits;

(4) The balance, if any, to the Members, in proportion to the Members' respective positive balances in their Capital Accounts, after giving effect to all contributions, distributions and allocations and adjustments for the Company's taxable year during which the liquidation occurs. Any such distribution of Members in respective of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(d)(2) of the Regulations.

C. Valuation of Distributable Assets.

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

D. No Obligation to Restore Capital Account Deficit.

Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the 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 contribution to the capital of the Company, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other person for any purpose whatsoever.

E. Termination; Compliance with Laws.

Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated. The Members 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.

10.4 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 Act.

10.5 Filing of Articles of Dissolution.

A. Duplicate originals of such articles of dissolution shall be filed with the Colorado Secretary of State.

B. 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 Act. The Members 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 and in the name of the Company.

10.6 Return of Contribution Nonrecourse to Other Members.

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

**ARTICLE XI.  
SPECIAL ALLOCATIONS**

Notwithstanding Article 5.0, the following provisions shall govern allocations:

11.1 Qualified Income Offset.

In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations, which create or increase a Deficit Capital Account of such Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated and credited to the Capital Account of such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Deficit Capital Account so created as quickly as possible. It is the intent that this Article 11.1 be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Regulations.

11.2 Gross Income Allocation.

In the event any Member would have a Deficit Capital Account at the end of any Company

taxable year which is in excess of the sum of any amount that such Member is obligated or deemed obligated to restore to the Company pursuant to this Agreement or under Regulations Section 1.704-2(g)(1) and such Member's share of Member nonrecourse minimum gain (as determined in accordance with Section 1.704-2(i)(5) of the Regulations), then the Capital Account of such Member shall be specially allocated and credited with items of Membership income (including gross income) and gain in the amount of such excess as quickly as possible.

### 11.3 Minimum Gain Chargeback.

Notwithstanding any other portion of this Article 11.0 and except as provided in Section 1.704-2(f) of the Regulations, if there is a net decrease in the Company's minimum gain as determined under Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations during a taxable year of the Company, then the Capital Accounts of each Member shall be allocated items of income (including gross income) and gain for such year (and, if necessary, for subsequent years) in an amount equal to the total net decrease in the Company's minimum gain multiplied by the Members' percentage share of the Company's minimum gain at the end of the preceding taxable year determined in accordance with Section 1.704(g) of the Regulations. This Article 12.4 is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. In any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion, the Members may in their discretion (and shall, if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Regulation Section 1.704-2(f)(4).

### 11.4 Allocation of Member Nonrecourse Debt Deductions.

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 Member nonrecourse debt deductions as determined under Section 1.704-2(i)(2) of the Regulations shall be charged to the Members' Capital Accounts in accordance with said Section 1.704-2(i) of the Regulations.

### 11.5 Allocation of Nonrecourse Deductions.

Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Regulations) attributable to nonrecourse liabilities of the Company, and thereafter throughout the full term of the Company, nonrecourse deductions shall be allocated to the Members in accordance with, and as a part of, the allocations of Company Net Losses for such period subject to the preceding provisions of this Article 11.0.

### 11.5 Intention of Allocations.

Any credit or charge to the Capital Accounts of the Members pursuant to Articles 11.1 through 11.5 hereof shall be taken into account in computing subsequent allocations pursuant to Article 5.1, so that the net amount of any items charged or credited to Capital Accounts pursuant to Article 5.1 shall, to the extent possible, be equal to the net amount that would have been allocated to the Capital Account of each Member pursuant to the provisions of Article 5.1 if the special allocations required by Articles 11.1 through 11.5 hereof had not occurred.

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

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

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

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

(1) 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 interest in the Company immediately before the distribution, reduced (but not below zero) by the amount of money received in the distribution, or

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

If any portion of the property contributed consists of property which had been contributed by the distributee Member to the Company, then such property shall not be taken into account under this Article 11.7 and shall not be taken into account in determining the amount of the Net Precontribution Gain. If the property distributed consists of an interest in an Entity, the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property

contributed to such Entity after such interest had been contributed to the Company.

#### 11.8 Revaluation of Capital Accounts.

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

#### 11.9 Recapture.

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

#### 11.10 Other Allocations.

A. For purposes of determining the Net Profits and Net Losses or other items allocable to any period, Net Profits, Net Losses and any other items shall be determined on a daily, monthly, or other basis, as determined by the Members using any permissible method under Code Section 706 and the Regulations thereunder.

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

C. Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the membership within the meaning of Section 1.752-3(a)(3) of the Regulations, the Member's Interest in Company profits are in proportion to their Percentage Interest.

D. To the extent permitted by Section 1.702-2(h)(3) of the Regulations, the Members shall endeavor to treat distributions of Distributable Cash as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such

distributions would cause or increase the Deficit Capital Account for any Member.

11.11 IRC Section 83 Advisement.

If any Member is receiving an interest in this Company in exchange for past or for future services, then such Member hereby is advised that such Member must seek independent tax advice on the application of IRC Section 83 to his or her personal tax liability as IRC Section 83 may require the payment of taxes on the value of the interest received in exchange for services. As to each Member to which Section 83 applies, such Member shall not receive any contribution or indemnification from any other Member or the Company as to such liability.

**ARTICLE XII.  
GLOSSARY OF DEFINED TERMS**

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

12.2 "Agreement"

means this Operating Agreement.

12.3 "Bankruptcy" means that the Member shall have become bankrupt or a debtor under the Federal Bankruptcy Code of 1978, Title 11 of the United States Code, as amended, or an insolvent under state insolvency act.

12.4 "Capital Account" means the capital account of each Member established and maintained in accordance with Article 4.1.

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

12.6 "Code" means the Internal Revenue Code of 1986, as amended, and any successor statute.

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

A. Credit to such Capital Account any amount which such Member is obligated to restore, under Section 1.704-1(b)(2)(ii)(c) of the Regulations, the unpaid principal balance of any promissory note (of which the Member is the maker) contributed to the Company by the Member, and any changes during such year and accompanying minimum gain (as determined in accordance with Section 1.704-2(d)(1) of the Regulations) and in the minimum gain attributable to any

Company nonrecourse debt (as determined under Section 1.704-2(i)(3) of the Regulations; and

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

12.8 "Dissociation" of a Member shall have the meaning set forth in Article 9.2.

12.9 "Dissolution Events" shall have that meaning set forth in Article 10.1.

12.10 "Distributable Cash" shall have the meaning set forth in Article 5.5.

12.11 "Economic Interest" shall have that meaning set forth in Article 8.4 C.

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

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

12.14 "Gifting Member" means any Member who gifts any part of its Membership Interest.

12.15 "Majority" or "Majority of Members," whenever any matter is required or allowed to be approved by a Majority of the Members or a Majority of the remaining Members or a Majority under this Agreement, including but not limited to, determining a quorum, such matters shall be considered approved or consented to upon the receipt of the affirmative approval or consent, either in writing or at a meeting of the Members, of Members having Percentage Interests in excess of 50% of the Percentage Interests of all the Members entitled to vote on a particular matter. Assignees and dissociating Members, in the case of approvals where the consent of the remaining Members is required, shall not be considered Members entitled to vote for the purpose of determining a Majority.

12.16 "Member" means those Persons and Entities listed on Exhibit A attached hereto and those who may become New Members or Substituted Members after the date of this Agreement in accordance with the terms of this Agreement. If there is only one Member then any reference to Members shall mean the sole Member.

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

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

12.19 "Net Profits" means the income and gains of the Company determined in accordance with

accounting principles consistently applied from year to year employed under the method of accounting and adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

12.20 "New Member" shall have the meaning set forth in Article 9.1.

12.21 "Organization Expenses" shall mean those expenses incurred in connection with the formation of the Company.

12.22 "Percentage Interest" of a Member shall mean (a) the right to receive that percentage of the Company's profits, losses or other compensation by way of income and distributions of that percentage of the Company's capital, and (b) that percentage of voting rights and associated rights to participate in the management of the business and affairs of the Company for each Member as set forth on Exhibit A attached hereto and made a part hereof. With respect to a purchaser, transferee, assignee or donee of a Transferring Member's Membership Interest, "Percentage Interest" shall mean that percentage of the Company's profits, losses or other compensation by way of income and the return of Capital Contributions to which the purchaser, transferee, assignee or donee is entitled pursuant to Article 8.4 and shall not include any voting rights or associated rights to participate in the management of the business and affairs of the Company.

12.23 "Person" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so admits.

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

12.25 "Related Party" means the shareholder, partner or member of a corporation, partnership or limited liability company which is a Member.

12.26 "Reserves" means, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Members as set forth herein 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.

12.27 "Remaining Interest" is all remaining Membership Interests not transferred by the Transferring Member which were previously attributable to the Transferring Member's Membership Interest as more fully defined in Article 8.5.

12.28 "Secretary of State" means that Secretary of State of the State of Colorado.

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

12.30 "Selling Member" shall mean any Member which sells, assigns, hypothecates, pledges or otherwise transfers all or any portion of its rights of Membership Interests in the Company, including

both economic and voting rights.

12.31 "Substituted Member" shall have the meaning set forth in Article 9.1.

12.32 "Successor-in-Interest" shall have the meaning set forth in Article 9.2 B.

12.33 "Transferring Member" shall mean collectively a Selling Member and a Gifting Member as set forth in Article 8.4.

12.34 "Two-Thirds of the Members." Whenever any matter is required or allowed to be approved by "Two-Thirds of the Members" or "Two-Thirds of the remaining Members" under this Agreement, such matter shall be considered approved or consented to upon the receipt of the affirmative approval or consent, either in writing or at a meeting of the Members, of Members having Percentage Interests equal to or in excess of 66-2/3% of the Percentage Interests of all the Members entitled to vote on a particular matter. Assignees and dissociated Members shall not be considered Members entitled to vote for the purpose of determining Two-Thirds of the Members.

### ARTICLE XIII MISCELLANEOUS PROVISIONS

#### 13.1 Member's Personal Debts.

In order to protect the property and assets of the Company from any claim against any Member or Related Party for personal debts owed by such Member or Related Party, each Member and Related Party shall promptly pay all debts owing by him, her or it or such Member shall indemnify the Company from any claim that might be made to the detriment of the Company by any personal creditor of such Member or Related Party.

#### 13.2 Alienation of Membership Interest.

No Member shall, except as provided in Article 8.0, sell, assign, mortgage or otherwise encumber his or her Membership Interest in the Company or in its capital assets or property; or enter into any agreement of any kind that shall result in any person, firm or other organization becoming interested with him or her in the Company; or do any act detrimental to the best interests of the Company.

#### 13.3 Notices.

Any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes (i) if delivered personally to the party or to an executive officer of the party to whom the same is directed; (ii) if sent by registered or certified mail, postage and charges prepaid, or by a recognized overnight delivery service, addressed to the Member's and/or Company's address, as appropriate, which is set

13.11 Rights and Remedies Cumulative.

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

13.12 Severability.

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

13.13 Heirs, Successors and Assigns.

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

13.14 Not for Creditors' Benefit.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company. Furthermore, this Agreement is made solely and specifically for the benefit of the parties hereto, their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other person shall have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

13.15 Counterparts.

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

13.16 Reliance on Authority of Person Signing Agreement.

In the event that a Member is not a natural person, neither the Company nor any Member shall (i) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such Entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual or (ii) be required to see to the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such Entity.

forth in this Agreement; or (iii) upon fax transmissions to the fax number, as shown in the Company's records, of the party being notified with a copy of said notice given by one of the other methods set forth in this Section. Except as otherwise provided herein, any such notice shall be deemed to be given under clause (i) upon delivery; under clause (ii) two business days after mailing or one business day after delivery by the overnight delivery service; or under clause (iii) upon completion of the fax transmission.

13.4 Application of Colorado Law.

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

13.5 Waiver of Action of Partition.

Each Member 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.

13.6 Amendments.

This Agreement may not be amended except by the unanimous agreement of the Members.

13.7 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.

13.8 Construction of Terms.

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

13.9 Headings.

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

13.10 Waivers.

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

13.17 Lack of Registration.

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

13.18 Investment Intent.

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

13.19 Creditors' Rights.

If a court of competent jurisdiction charges the Membership Interest of any Member with payment of the unsatisfied amount of any judgment or claim, to the extent so charged, the judgment creditor shall have only the rights of an assignee of the Membership Interest, and the Company shall not be dissolved, unless otherwise dissolved pursuant to the provisions of this Agreement or the Act. Such judgment creditor shall not have the right to be admitted as a Member nor to exercise any rights of a Member under this Agreement or the Act, other than the right to distributions to which the debtor Member would be entitled as a holder of a Membership Interest.

DATED this 5<sup>th</sup> day of August, 2005.

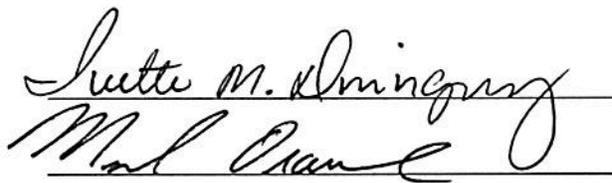
  
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EXHIBIT A  
MEMBERS, CAPITAL AND PERCENTAGES

MEMBER & ADDRESS:

C A P I T A L  
CONTRIBUTION

% INTEREST

To whom It may Concern

Date: 02.09.2021

### **Rezoning Narrative – CCOD Zoning Code Conformance Review for 8120 W. Tufts Ave.**

The following conformance review is for the rezone request of the property located at 8120 W. Tufts Avenue from PUD 252 to S-MX 3. The following is a summary of the request against the following applicable Denver Zoning Code sections:

- Section 12.4.10.7: General Review Criteria Applicable to All Zone Map Amendments,
- Section 12.4.10.8: Additional Review Criteria for Non-Legislative Rezoning's

12.4.10.7: General Review Criteria Applicable to All Zone Map Amendments,  
The City Council may approve an official map amendment if the proposed rezoning complies with all of the following criteria:

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 the adoption of the City's plan.

The applicable adopted plans are the Comprehensive Plan 2040 and Blueprint Denver.

#### **Review**

##### **Comprehensive Plan 2040:**

The Comprehensive Plan 2040 focuses on six vision elements forming a sustainable, comprehensive vision for the City. The proposed rezoning is in alignment with the following goals:

Equitable, Affordable and Inclusive Goal 1: "Ensure all Denver residents have safe, convenient and affordable access to basic services and a variety of amenities".

- *The current zoning is outdated and does not allow for redevelopment to be consistent with the CCOD zoning criteria. Rezoning the site to S-MX-3 would provide redevelopment opportunities consistent with CCOD standards and current zoning. These opportunities will be consistent with diverse service goals listed above.*

Environmentally Resilient Goal 8, Strategy A.: "Promote infill development where infrastructure and services are already in place".

- *Rezoning this site would be consistent with this goal as the subject property is currently surrounded by existing water sewer and storm infrastructure. It is also fully supported by existing street access. This is consistent with the “in-fill” development goals outlined above.*

Environmentally Resilient Goal 8, Strategy B.: “Encourage mixed-use communities where residents can live, work and play in their own neighborhoods”.

- *Rezoning this site would meet this goal by allowing the current auto sales operation to diversify in business growth. This will allow residential within the general area to enjoy a wider range of services in the short term and much larger opportunity of live, work and play opportunities under the S-MX-3 future redevelopment.*

Summary: Rezoning the subject property to S-MX-3 is consistent with Comprehensive Plan 2040 as reviewed above.

## **Review**

### **Blueprint Denver:**

Blueprint Denver provides the basis for citywide policies and recommendations for land use, transportation, and growth. The following are the governing Denver Blueprint documents that support the rezone of this site from PUD 252 to S-MX-3.

Future Neighborhood Context: The site is located within the suburban (S) neighborhood context. (pg. 139)

*The proposed rezone is consistent with Context Map, as S-MX-3 is an allowed zone district within the Suburban Neighborhood Context.*

Future Places: The site is located within the Community Corridor. (pg. 143)

Community Corridor is defined as the following (pg. 146)

Land Uses & Built Form: Typically a balance of either residential and employment; residential and dining/shopping; or employment and dining/shopping uses. Buildings have a distinctly linear orientation along the street with narrow setbacks. Building scale and footprints along community corridors are typically mid- to large-scale, with the highest intensity at mobility hubs. Scale will be dependent upon context and surrounding character.

Mobility: Accessible to a larger area of surrounding neighborhood users by a variety of transportation options. Most community corridors are found along transit priority streets.

Quality of Life / Infrastructure: Public spaces often occur between buildings and social spaces may be found in some setbacks along the street. Green infrastructure, street trees and planting areas are frequently integrated into the streetscape.

- *The general intent of the Community Corridor is to provide a balance between residence and retail/ shopping uses with access to the larger community through transportation paths mostly streets. The rezoning to a S-MX-3 will be consistent with this intent by providing retail services that are accessible to the community at large with primary street access.*

Growth Strategy: Denver's next evolution will strengthen our existing neighborhoods through carefully planned infill development that enhances the city's unique character. (pg. 49 – 50)

- *The subject site exists within a community corridor where job growth is projected to be 20% by 2040. The zoning S-MX-3 will allow for future job generation which is consistent with the Denver Blueprint Growth Plans.*

Street Types: Blueprint Denver categorizes the aspirational nature of Denver's future streets by their future surrounding land use character and functional class. (pg. 156).

- *The site is adjacent to Tufts Ave. which then ties into S. Wadsworth Blvd. Tufts Ave. is a local street and is common in all neighborhood contexts. This street will continue to serve and function as intended with the proposed rezone.*

Summary: Rezoning the subject property to S-MX-3 is consistent with Blueprint Denver as reviewed above.

## **Review**

### **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.

- *The proposed rezone to S-MX-3 creates a new, uniform zone district with applicable standards for the entirety of the proposed site. The new zone district will create a zoning district that will allow for a variety of uses that fit the suburban community corridor context, per the Adopted Plans for this area.*

## **Review**

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

The proposed official map amendment furthers the public health, safety and general welfare of the City.

- *Rezoning to S-MX-3 will allow for the future development of needed goods and services for the surrounding residents. It will also allow for a wider range of uses and job opportunities for the residence of CCOD.*
- *The current PUD allows for a 1.14:1 FAR that will then be open to reuse by other properties that remain within the existing PUD 252. However, this is further restricted by a max 2:1 FAR per lot. Any additional development by other sites would have to utilize vertical elements that would be consistent with Community corridor context.*
- *The rezoning of this site to S-MX-3 allows for possible impervious and landscaping changes to the adjacent properties. However, aerial review noted this site and adjacent sites are already mostly paved with landscaping areas limited to the boundary perimeters and ROW corridors which cannot be reduced or removed by a site rezone. By rezoning, the current Denver standards for landscape will apply to this site at time of redevelopment. This will further enhance the general area as new and modern standards will apply to future development growth of this site.*

## **Review**

### **Justifying Circumstances:**

One of the following circumstances exists

1. The existing zoning of the land was the result of an error;
2. The existing zoning of the land was based on a mistake of fact;
3. 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;
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
  - a. Changed or changing conditions in a particular area, or in the city generally; or,
  - b. A City adopted plan; or
  - c. That the City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning.
5. 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.

- *Circumstance 4 exists in the case of this rezoning. The existing zone district for this site is based on the Former Chapter 59 zoning. This zone map amendment would change the zone district to be in conformance with the current Denver Zoning Code. The City has recently adopted new guiding documents in the Comprehensive Plan 2040 and updated Blueprint Denver, which designate the subject site as a Suburban Community Corridor.*

## **Review**

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

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.

- *The Suburban Neighborhood Context is characterized by single-unit and multi-unit residential, commercial strips and centers, and office parks. The S-MX-3 district applies to areas or intersections served primarily by local or collector streets where a building scale of 1 to 3 stories is desired. The Zone District Purpose for S-MX-3 is intended to promote safe, active, diverse areas and enhance the convenience and ease of shopping and public gathering within and around the city's neighborhoods. In addition, this zone district intends to improve the transition between commercial development and adjacent residential neighborhoods. The Mixed-Use districts are appropriate along corridors, for larger sites and at major intersections. The Zone District regulations allow for a wide variety of uses and building forms. As development proceeds, the permitted uses and building forms are further defined to provide clarity and predictable development outcomes. Multiple building forms are allowed on a single zone lot. The subject property is in an area that is consistent with the description, purpose, and intent of the S-MX-3 zone district by meeting the following:*
  - *The property is in a transition area between the Wadsworth Major Corridor and residential properties to the west.*
  - *Future development of this property under the S-MX-3 zone will allow for a wide range of uses consistent with goals for diverse services under this zone district.*
  - *The property lies within the transition zone between a major corridor and residence which allows for access to and around the site by both vehicular and pedestrian traffic.*
  - *The current property is occupied by a single-story structure consistent with the building scale identified in S-MX3.*

## **Conclusion**

- *Through the analysis above, we find that the proposed rezoning of the subject property to SMX-3 is consistent with the Comprehensive Plan 2040, Blueprint Denver, and complies with the additional review criteria of DZC Sec. 12.4.10.8.*

# HCI ENGINEERING

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A division of  
HABERER CARPENTRY INC.

Date: December 22, 2020

To whom it May Concern

A meeting with Development Services was not requested since no redevelopment of the property at 8120 W. Tufts Ave. is proposed. A pre-submittal meeting was held with planning services.

Sincerely

Cole C. Haberer, P.E.

# HCI ENGINEERING

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A division of  
**HABERER CARPENTRY INC.**

To: Libbie Adams, AICP  
City and County of Denver  
Community Planning and Development

Date: February 9, 2021

Re: Neighborhood Outreach Summary

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To whom it may concern

As part of the neighborhood outreach the following steps were taken.

- An email exchange to the council member was completed.
- A notice of rezoning application was sent to six (6) neighbors of all properties within 200ft. The notice included a quick summary of the proposed rezoning application request and contact info to allow for follow up questions of the applicant. This notice was mailed on 2/9/2021.

Cole C. Haberer, P.E.