

## Zone Map Amendment (Rezoning) - Application

PROPERTY OWNER INFORMATION*		PROPERTY OWNER(S) REPRESENTATIVE**	
<input checked="" type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION		<input checked="" type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
Property Owner Name	2535 Asbury Partners, LLC.	Representative Name	John Glaser
Address	2102 S. Jackson Street	Address	2102 S. Jackson Street
City, State, Zip	Denver, CO 80210	City, State, Zip	Denver, CO 80210
Telephone	(949) 923-9826	Telephone	(949) 923-9826
Email	johnglase@gmail.com	Email	johnglase@gmail.com
<p>*If More Than One Property Owner:            All standard zone map amendment applications shall be initiated by all the owners of at least 51% of the total area of the zone lots subject to the rezoning application, or their representatives authorized in writing to do so. See page 3.</p>		<p>**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.</p>	
<p>Please attach Proof of Ownership acceptable to the Manager for each property owner signing the application, such as (a) Assessor's Record, (b) Warranty deed or deed of trust, or (c) Title policy or commitment dated no earlier than 60 days prior to application date.</p> <p>If the owner is a corporate entity, proof of authorization for an individual to sign on behalf of the organization is required. This can include board resolutions authorizing the signer, bylaws, a Statement of Authority, or other legal documents as approved by the City Attorney's Office.</p>			
SUBJECT PROPERTY INFORMATION			
Location (address and/or boundary description):	2535 - 2545 E. Asbury		
Assessor's Parcel Numbers:	05252-05-010-000, (161559154)		
Area in Acres or Square Feet:	.36 acres or 15,900 sq. ft.		
Current Zone District(s):	PUD 278		
PROPOSAL			
Proposed Zone District:	E-MU-2.5		

REVIEW CRITERIA	
<p>General Review Criteria: The proposal must comply with all of the general review criteria DZC Sec. 12.4.10.7</p>	<p><input checked="" type="checkbox"/> <b>Consistency with Adopted Plans:</b> The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of adoption of the City's Plan. Please provide an attachment describing relevant adopted plans and how proposed map amendment is consistent with those plan recommendations; or, describe how the map amendment is necessary to provide for an unanticipated community need.</p> <p><input checked="" type="checkbox"/> <b>Uniformity of District Regulations and Restrictions:</b> The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.</p> <p><input checked="" type="checkbox"/> <b>Public Health, Safety and General Welfare:</b> The proposed official map amendment furthers the public health, safety, and general welfare of the City.</p>
<p>Additional Review Criteria for Non-Legislative Rezoning: The proposal must comply with both of the additional review criteria DZC Sec. 12.4.10.8</p>	<p><b>Justifying Circumstances - One of the following circumstances exists:</b></p> <p><input checked="" type="checkbox"/> The existing zoning of the land was the result of an error.</p> <p><input type="checkbox"/> The existing zoning of the land was based on a mistake of fact.</p> <p><input type="checkbox"/> The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage.</p> <p><input checked="" type="checkbox"/> Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such change may include:</p> <p style="margin-left: 20px;">a. Changed or changing conditions in a particular area, or in the city generally; or</p> <p style="margin-left: 20px;">b. A City adopted plan; or</p> <p style="margin-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. Please provide an attachment describing the justifying circumstance.</p> <p><input checked="" type="checkbox"/> The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District. Please provide an attachment describing how the above criterion is met.</p>
REQUIRED ATTACHMENTS	
Please ensure the following required attachments are submitted with this application:	
<input checked="" type="checkbox"/> Legal Description (required to be attached in Microsoft Word document format) <input checked="" type="checkbox"/> Proof of Ownership Document(s) <input checked="" type="checkbox"/> Review Criteria, as identified above	
ADDITIONAL ATTACHMENTS	
Please identify any additional attachments provided with this application:	
<input checked="" type="checkbox"/> Written Authorization to Represent Property Owner(s) <input checked="" type="checkbox"/> Individual Authorization to Sign on Behalf of a Corporate Entity	
Please list any additional attachments:	
Re-Zoning, Letter of Justification	

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

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

Property Owner Name(s) (please type or print legibly)	Property Address City, State, Zip Phone Email	Property Owner Interest % of the Area of the Zone Lots to Be Rezoned	Please sign below as an indication of your consent to the above certification statement	Date	Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed or deed of trust, (C) title policy or commitment, or (D) other as approved	Has the owner authorized a representative in writing? (YES/NO)
<b>EXAMPLE</b> John Alan Smith and Josie Q. Smith	123 Sesame Street Denver, CO 80202 (303) 555-5555 sample@sample.gov	100%	<i>John Alan Smith</i> <i>Josie Q. Smith</i>	01/01/12	(A)	YES
2535 Asbury Partners, LLC. John Glaser	2535-2545 Asbury Denver, CO 80210 (949) 923-9826 johnglase@gmail.com	100%		02/06/2020	B	Yes



2019166570

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11/27/2019 08:26 AM  
City & County of Denver  
Electronically Recorded

R \$18.00

WD

D \$360.00



State Documentary Fee  
Date: 11-26-19  
\$360.00

**Special Warranty Deed**

(Pursuant to C.R.S. 38-30-113(1)(b))

Grantor(s), **ASBURY BUILDINGS LLC, A COLORADO LIMITED LIABILITY COMPANY**, whose street address is **2535 - 2545 EAST ASBURY AVENUE, DENVER, CO 80210**, City or Town of **DENVER**, County of **Denver** and State of **Colorado**, for the consideration of **(\$3,600,000.00) \*\*\*Three Million Six Hundred Thousand and 00/100\*\*\*** dollars, in hand paid, hereby sell(s) and convey(s) to **2535 ASBURY PARTNERS, LLC, A COLORADO LIMITED LIABILITY COMPANY**, whose street address is **2102 S. JACKSON STREET, DENVER, CO 80210**, City or Town of **DENVER**, County of **Denver** and State of **Colorado**, the following real property in the County of **Denver** and State of **Colorado**, to wit:

**LOTS 23 THROUGH 26, INCLUSIVE, BLOCK 6, UNIVERSITY PARK AMENDED MAP, CITY AND COUNTY OF DENVER, STATE OF COLORADO.**

also known by street and number as: **2535 -2545 EAST ASBURY AVENUE, DENVER, CO 80210**

with all its appurtenances and warrant(s) the title to the same against all persons claiming under me(s), subject to Statutory Exceptions.

Signed this day of 11-26-19.

(SEE ATTACHED "SIGNATURE PAGE")

When recorded return to: **2535 ASBURY PARTNERS, LLC, A COLORADO LIMITED LIABILITY COMPANY**  
**2102 S. JACKSON STREET, DENVER, CO 80210**



**OPERATING AGREEMENT  
OF  
2535 ASBURY PARTNERS, LLC,  
a Colorado limited liability company**

THIS OPERATING AGREEMENT (this “Agreement”) is made and entered into as of October \_\_\_, 2019, by and among the following members:

1. John Glaser
2. Tyler Davis
3. Charles Davis
4. Charles Davis Jr.
5. Adam Davis
6. The Gannaway Revocable Living Trust dated May 19, 2014
7. 2016 Byer Family Trust
8. Dustin Byer
9. Hal Byer and Marihelene Byer Revocable Trust, u/d/t Dated June 6, 2008
10. John Troutman
11. Eric Grombacher
12. Belflower Investments, LLC

Each of the foregoing are referred to herein as a “Member”, and collectively they are referred to herein as the “Members”. The Members have entered into this Agreement with reference to the following:

A. The Members have formed 2535 ASBURY PARTNERS, LLC (the “Company”), as a limited liability company pursuant to the Colorado Limited Liability Company Act, Colorado Revised Statutes § 7-80-101 *et seq.* (the “Act”);

B. The Members desire to provide for the structure and operation of the Company by entering into this Agreement; and

C. For tax purposes it is intended that the Company shall be classified as a “partnership”, and not an “association” taxable as a “corporation”, as those terms are defined in Section 7701 of the Internal Revenue Code of 1986, as amended (the “Code”), and the applicable Treasury regulations promulgated thereunder (the “Regulations”).

NOW, THEREFORE, in consideration of the foregoing Recitals and for the mutual agreements set forth herein, intending to be legally bound, the Members hereby agree that the Company shall be structured and operate as follows:

**ARTICLE 1  
THE LIMITED LIABILITY COMPANY**

1.1 Formation. The Company was formed pursuant to the Act upon the filing of the Company’s Articles of Organization with the Colorado Secretary of State on September 11, 2019. The Members hereby agree to continue the Company as a limited liability company under the Act, upon the terms and subject to the conditions set forth in this Agreement. The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement. The Members are hereby authorized to file and record any amendments to the Articles or Organization and such other documents as may be

reasonably required or appropriate under the Act or the laws of any jurisdiction in which the Company may conduct business or own property.

1.2 Name. The name of the Company is “2535 Asbury Partners, LLC”, and all business of the Company shall be conducted under that name or any fictitious name or names selected by the Members from time to time, provided that any such name reflects the Company’s status as a limited liability company and is otherwise permitted by applicable law.

1.3 Place of Business. The Company’s principal place of business shall be 2102 S. Jackson Street, Denver, Colorado, or such other place or places as the Members may from time to time determine. The Company may also have such offices, anywhere within and outside the State of Colorado, as the Members may from time to time determine, or as the business of the Company may require. The registered agent shall be as stated in the Articles or as otherwise determined by the Members.

1.4 Business and Authority. The Company may engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this Section.

1.5 Agreement; Effect of Inconsistencies with the Act. It is the express intention of the Members that this Agreement shall be the sole source of the agreement of the parties, and, except to the extent a provision of this Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the Act, this Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. To the extent any provision of this Agreement is prohibited or ineffective under the Act, this Agreement shall be deemed to be amended to the smallest degree possible in order to make this Agreement effective under the Act in accordance with the intent of the Members. In the event the Act is subsequently amended or interpreted in such a way to make any provision of this Agreement that formerly was invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. The Members hereby agree that the duties and obligations imposed on the Members as such shall be those set forth in this Agreement, which is intended to govern the relationship among and between the Company and the Members, notwithstanding any provision of the Act or common law to the contrary.

1.6 Events of Dissolution. The Company shall continue until dissolved by: (a) the affirmative vote of at least sixty-five percent of the Members (by Membership Interest); (b) any event which makes it unlawful for the business of the Company to be carried on by the Members; or (c) any other event causing dissolution of a limited liability company under the Act.

1.7 Continuance of the Company. If any event occurs that would terminate a Member’s continued eligibility for membership in the Company and that would otherwise constitute an event of dissolution under the Act, then the remaining Members may elect to continue the business of the Company, within ninety (90) days from the date of the event of dissolution, upon the affirmative vote of the lesser of (a) all remaining Members, or (b) such lesser number as shall not adversely affect the treatment of the Company as other than an association taxable as a corporation for federal income tax purposes.

## **ARTICLE 5 MANAGEMENT**

5.1 Limitation of Liability. No Member shall be personally liable for the debts, obligations or liabilities of the Company. No asset of the Company shall be transferred, encumbered or used for the payment or satisfaction of any personal or individual obligations or liabilities of any Member.

5.2 Management by Members. The Members, within the authority granted by the Act and the terms of this Agreement, shall have the complete power and authority to manage and operate the Company and make all decisions affecting its business and affairs. Except as otherwise provided herein, all decisions and documents relating to the management and operation of the Company shall be made and executed by Members owning a majority of the Membership Interests. When the Manager (defined below) requests the Members' approval of a proposed action to be taken by the Company, each Member will have forty-eight (48) hours to respond via text or email, and the failure of a Member to respond within such time period will constitute such Member's approval. Without limiting the generality of the foregoing, the powers of Members owning a majority of the Membership Interests shall include:

(a) The power to acquire, purchase, construct, improve, maintain and operate any property, real or personal, in connection with the operation of the Company's business, and to enter into contracts or agreements with others (including any affiliates of a Member) with respect to such matters, at such prices and upon such terms and conditions as Members owning a majority of the Membership Interests may deem to be in the best interests of the Company;

(b) The power to borrow money on behalf of the Company as may be necessary or appropriate (as determined by Members owning a majority of the Membership Interests) for the business of the Company and to secure the repayment of such borrowing by executing mortgages or deeds of trust, or otherwise encumbering or subjecting to security interests, all or any part of the assets of the Company, and to refund, refinance, increase, modify, consolidate or extend the maturity of any indebtedness created by such borrowing, or any such mortgage, deed of trust, pledge, encumbrance or other security device, all upon such terms as Members owning a majority of the Membership Interests may deem to be in the best interests of the Company;

(c) The power to perform all the obligations of the Company and enforce all of the rights of the Company under the terms and conditions of all contracts and agreements entered into by the Company;

(d) The power to employ and dismiss from employment any and all employees, managers, agents, independent contractors, brokers, attorneys, and accountants;

(e) The power to purchase from others, at the expense of the Company, contracts of liability, casualty, and other insurance which Members owning a majority of the Membership Interests may deem advisable, appropriate or convenient for the protection of the assets or affairs of the Company or for any purpose convenient or beneficial to the Company;

(f) The power to lend money to the Company; if any Member makes any loan to the Company, the amount of any such loan shall not be treated as a contribution to the capital of the Company, but shall be a debt due from the Company, and the amount of any such loan shall be repayable upon such terms and conditions as Members owning a majority of the Membership Interests shall designate and bear such rate of interest as Members owning a majority of the Membership Interests determine to be reasonable under the circumstances;

(g) The power to delegate all or any administrative duties hereunder to and Members or non-Members who may, under the supervision of Members owning a majority of the Membership Interests, do any of the following: administer the day-to-day operations of the Company; serve as the Company's advisor and consult in connection with policy decisions made by Members owning a majority of the Membership Interests; provide the Company with consultants, accountants, attorneys, brokers, escrow agents, or other service providers deemed necessary or desirable by Members owning a majority of the Membership Interests; perform or assist in the performance of such other Company administrative functions as may be desired by Members owning a majority of the Membership Interests; and perform such other acts or services for the Company as Members owning a majority of the Membership Interests may approve;

(h) The power to pay and advance for the account of the Company any and all organizational expenses incurred in connection with the creation of the Company, including but not limited to accounting fees and expenses;

(i) The power to amend this Agreement and the Certificate of Formation in accordance with the provisions of this Agreement; and

(j) The power to do or cause to be done any other acts as Members owning a majority of the Membership Interests deem necessary, desirable or appropriate for the furtherance of the business of the Company and which are not prohibited by this Agreement or applicable law.

5.3 Major Decisions. Notwithstanding the terms of Section 5.2, the Company shall not take any of the following actions without first obtaining the written consent of all Members:

(a) Make, execute or deliver an assignment for the benefit of creditors; become subject to the authority of any trustee, custodian or receiver or file for or be subject to any proceeding for bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, relief of debtors, dissolution or liquidation or similar proceedings;

(b) Issue guaranties of obligations of any other person or entity;

(c) Amending this Agreement or the Company's Articles of Organization (other than for purposes of changing the Company's registered office);

(d) Any action that would cause the Company to not be treated as a Partnership for income tax purposes (including, without limitation, the making of an election to have the Company treated as an association taxable as a corporation for income tax purposes).

(e) Other than as set forth in Section 1.6, dissolving and/or liquidating the Company;

(f) Doing anything that would cause any Member or require any Member to guaranty or to otherwise become personally liable for indebtedness of the Company;

(g) Issue or repurchase any Membership Interests; or

(h) Agreeing with or committing to any third party to do any of the foregoing.

5.4 Bank Accounts. The Members shall be responsible for the safe keeping and use of all funds and assets of the Company. The funds of the Company shall not be commingled with funds of any Member or any other person and the Members shall not employ, or permit any other person to employ,

such funds in any manner except for the benefit of the Company. The bank accounts of the Company shall be maintained in the name of the Company as currently established through Wells Fargo bank or in such other banking institutions as are approved by Members owning a majority of the Membership Interests. Withdrawals shall be made only in the regular course of the Company's business and as otherwise authorized by Members owning a majority of the Membership Interests.

5.5 Decisions by Members. Whenever in this Agreement reference is made to the decision, consent, approval, judgment, or action of the Members, unless otherwise expressly provided in this Agreement, such decision, consent, approval, judgment, or action shall mean that of Members owning a majority of the Membership Interests. Third parties dealing with the Company shall be entitled to rely conclusively upon the power and authority of Members owning a majority of the Membership Interests to manage and operate the business and affairs of the Company.

5.6 Indemnification.

(a) To the fullest extent permitted by law, the Members shall not be liable, responsible, or accountable in damages or otherwise to the Company or to any other Member for any act, omission, or error in judgment performed, admitted or made in good faith and in a manner the Member believed to be within its scope of authority and in the best interests of the Company, so long as such act, omission, or error in judgment does not constitute fraud, gross negligence, willful misconduct or breach of fiduciary duty.

(b) To the fullest extent permitted by law, the Company shall indemnify and hold harmless each Member from and against any and all loss, expense, damage or injury suffered, sustained or incurred by such Member arising out of any actual or threatened action, suit, proceeding or claim relating to such Member's activities on behalf of the Company, or in furtherance of the interests of the Company, including, but not limited to, any judgment, award, settlement, attorneys' fees, and other costs and expenses incurred in connection with the defense or settlement of any actual or threatened action, suit, proceeding or claim, so long as the acts, omissions, or alleged acts or omissions upon which such actual or threatened action, suit or proceeding or claim is based was undertaken in good faith in a manner believed by such Member to be in the best interests of the Company and did not constitute fraud, gross negligence, willful misconduct or breach of fiduciary duty.

5.7 Records at Principal Place of Business. The Members shall cause the Company to keep the following at the Company's principal place of business: (a) a current list of the name and address of each Member; (b) a copy of the Certificate of Formation and all amendments thereto; (c) copies of the Company's federal, state and local tax returns and reports; (d) copies of any financial statements of the Company and all business and financial records of the Company; and (e) a copy of this Agreement and any and all amendments hereto. All of the above shall be available for inspection by any Member at any reasonable time. The Company may maintain its books, records, financial statements or other information required to be maintained by this Agreement in other than a written form if such form is capable of conversion into written form within a reasonable time.

5.8 Reimbursements. The Company shall reimburse the Members for all reasonable costs and out-of-pocket expenses incurred in managing, promoting and furthering the business and operations of the Company so long as such matters have been approved as required by this Agreement.

5.9 Tax Elections. A Member designated by Members owning a majority of the Membership Interests shall make any and all elections for federal, state, local, and foreign tax purposes including, without limitation, any election, if permitted by applicable law: (a) to adjust the basis of property pursuant to Code Sections 754, 734(b) and 743(b), or comparable provisions of state, local or foreign law,

in connection with transfers of any Member's membership interest and Company distributions; (b) to extend the statute of limitations for assessment of tax deficiencies against the Members with respect to adjustments to the Company's federal, state, local or foreign tax returns; and (c) to the extent provided in Code Sections 6221 through 6231 and similar provisions of state, local, or foreign law, to represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company or the Members in their capacities as Members, and to file any tax returns and execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and the Members. The Member so designated by Members owning a majority of the Membership Interests is specifically authorized to act as the "Tax Matters Member" under the Code and in any similar capacity under state, local, or foreign law.

5.10 Managing Partner. The Members hereby appoint John Glaser to serve as the initial Managing Partner of the Company (in such capacity, the "Manager"), and the Members hereby delegate to the Manager the authority to administer the day-to-day operations of the Company in conformity with the business plan and budget for the Company as have been approved by the Members, *provided, however*, that the Manager shall have no authority to: (a) take any action included in Section 5.3 of this Agreement without first obtaining the written consent of all Members; (b) take any action included in Section 5.2 of this Agreement if such action would be outside of the annually approved business plan without first obtaining the written consent of Members owning a majority of the Membership Interests; or (c) enter into any agreement for the foregoing. In accordance with the initial business plan and budget for the Company, the Members have agreed to pay John Glaser and/or assigned entity a 1% acquisition fee for all services rendered to date through escrow at time of closing. The Manager may resign at any time and may be removed at any time by Members owning a majority of the Membership Interests, whereupon Members owning a majority of the Membership Interests may appoint a successor Manager. The Manager shall not receive any salary or other compensation for services rendered as Manager.

## **ARTICLE 6 ACCOUNTS**

6.1 Fiscal Year, Taxable Year. The fiscal year and the taxable year of the Company is the calendar year.

6.2 Determination of Capital Accounts. Except as otherwise provided in this Agreement, whenever it is necessary to determine the capital account of any Member for purposes of Article 2, the capital account of such Member shall be determined after giving effect to (a) all allocations of profit, loss, income, gains, expenses and deductions of the Company for the current calendar year, and (b) all distributions for such year, in respect of transactions effected prior to the date as of which such determination is to be made.

6.3 Transfers during Year. To avoid an interim closing of the Company's books, the share of profit and loss of any Member who transferred all or part of such Member's interest in the Company, or who became a Member, during any calendar year shall be determined by taking such Member's proportionate share of the amount of the profit and loss for the year. The Members shall determine such proration based on the portion of the calendar year that has elapsed prior to the transfer. The Members shall allocate the balance of the profit and loss attributable to the transferred interest to the transferee of such interest.

6.4 Reports. The Members shall close the Company's books of account promptly after the close of each calendar year and prepare and send to each Member a statement of such Member's distributive share of income and expense for federal and state income tax reporting purposes.

**ARTICLE 7**  
**ROLES OF MEMBERS**

7.1 Rights or Powers. Except as specifically set forth herein, the Members as such shall not have any right or power to take part in the management or control of the Company or its business and affairs or to act for or bind the Company in any way. Notwithstanding the foregoing, the Members have all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act.

7.2 Withdrawal/Resignation. Except as expressly provided herein, no Member shall demand or receive a return on or of such Member's capital contributions or withdraw from the Company without the unanimous approval of the Members.

7.3 Member Compensation. No Member shall receive any interest, salary, or drawing with respect to its capital contributions or for services rendered on behalf of the Company, or otherwise, in its capacity as a Member, except as otherwise expressly provided in this Agreement. Notwithstanding the foregoing, any Member may serve as an employee or consultant to the Company and be compensated in such capacity as may be unanimously agreed upon by the Members.

7.4 Partition. While the Company remains in effect or is continued, each Member agrees and waives its rights to have any property of the Company partitioned, or to file a complaint or to institute any suit, action or proceeding at law or in equity to have any Company property partitioned, and each Member, on behalf of itself, its successors and its assigns hereby waives any such right.

**ARTICLE 8**  
**TRANSFERS OF MEMBERS' INTERESTS**

8.1 Transfers. Except as expressly permitted hereby, no Member may sell, gift, transfer, assign or convey, either directly or indirectly, all or any portion of such Member's interest in the Company, without the written consent of all other Members.

8.2 Legal Incapacity or Death of Member. On the adjudicated legal incapacity or death of a Member, unless the Company exercises its rights under Section 8.3, the successor in interest to the Member (whether an estate, guardian, conservator or otherwise) will receive only the economic right to receive distributions whenever made by the Company and the Member's allocable share of taxable income, gain, loss, deduction, and credit (the "Economic Rights") unless and until a majority of the other Members elect to admit the transferee as a fully substituted Member. Any transfer of Economic Rights pursuant to this Section will not include any right to participate in management of the Company, including any right to vote or consent to any matter, and will not include any right to information on the Company or its operations or financial condition. Following any transfer of only Economic Rights, the transferring Member's power and right to vote or consent to any matter submitted to the Members will be eliminated, and the Ownership Interests of the remaining Members, for purposes only of such votes, consents, and participation in management, will be proportionately increased until such time, if any, as the transferee of the Economic Rights becomes a fully substituted Member.

8.3 Optional Buy Out. Upon the adjudicated legal incapacity or death of a Member, the Company, at its option, may elect to purchase, acquire, and redeem such Member's Membership Interest in the Company pursuant to the provisions of this Section by providing written notice to the estate of the affected Member within 120 days of the adjudication of legal incapacity or death of the Member, as applicable.

(a) The value of a Member's Membership Interest in the Company on the date of such Member's adjudication of legal incapacity or death will be determined by mutual agreement of the other Members and the conservator, guardian or personal representative of the estate of the affected Member. If the parties cannot reach an agreement on the value within 60 days after the Company's election to exercise its rights pursuant to this Section, then the other Members and the conservator, guardian or personal representative each must select a qualified business appraiser within the next succeeding 30 days. The appraisers so selected must attempt to determine the value of the affected Member's Membership Interest at the time of adjudication of legal incapacity or death based solely on their appraisal of the total value of the Company's assets and the amount the decedent would have received had the assets of the Company been sold at that time for an amount equal to their fair market value and the proceeds (after payment of all Company obligations) were distributed in the manner contemplated in Section 9.4. In the event the appraisers cannot agree on the value within 30 days after being selected, the two appraisers must, within 30 days, select a third appraiser, who will appraise the value of the affected Member's Membership Interest in the same manner. The value of the affected Member's Membership Interest in the Company and the purchase price therefor will be the average of the two appraisals nearest in amount to one another. That amount will be final and binding on all parties and their respective successors, assigns, and representatives. The costs and expenses of the third appraiser and any costs and expenses of the appraiser retained but not paid for by the estate of the affected Member will be offset against the purchase price paid for the affected Member's Membership Interest in the Company.

(b) The closing of the sale of the affected Member's Membership Interest will be held at the office of the Company on a date designated by the Company not later than 90 days after the determination of the purchase price for the affected Member's Membership Interest in the Company.

(c) The purchase price for the affected Member's Membership Interest in the Company will be paid in cash at the closing.

(d) At the closing of the sale of the affected Member's Membership Interest, the affected Member's guardian, conservator, estate or personal representative must assign to the Company all of the affected Member's Membership Interest free and clear of all liens, claims, and encumbrances, and, at the request of the Company, the guardian, conservator, estate or personal representative must execute all other instruments as may reasonably be necessary to vest in the Company all of the affected Member's right, title, and interest in the Company. If either the Company or the affected Member's guardian, conservator, estate or personal representative fails or refuses to execute any instrument required by this Section 8.3, the other party is hereby granted the irrevocable power of attorney which, it is agreed, is coupled with an interest, to execute and deliver on behalf of the failing or refusing party all instruments required to be executed and delivered by the failing or refusing party.

(e) Upon the completion of the purchase of the affected Member's Membership Interest, the Membership Interests of the remaining Members will increase proportionately to their then-existing Membership Interests.

## **ARTICLE 9 DISSOLUTION AND TERMINATION**

9.1 Appointment of Liquidator. Upon the Company's dissolution, the Members shall appoint a liquidator, who may but need not be a Member. The liquidator will wind up and liquidate the Company in an orderly, prudent and expeditious manner in accordance with the following provisions of this Article 9. The Company is authorized to pay a reasonable fee to the liquidator for its services performed

pursuant to this Article 9 and to reimburse the liquidator for its reasonable costs and expenses incurred in performing those services.

9.2 Final Accounting. The liquidator will make proper accountings (a) to the end of the month in which the event of dissolution occurred and (b) to the date on which the Company is finally and completely liquidated.

9.3 Duties and Authority of Liquidator. The liquidator will make adequate provision for the discharge of all of the Company's debts, obligations and liabilities. The liquidator may sell, encumber or retain for distribution in kind any of the Company's assets. Any gain or loss recognized on the sale of assets will be allocated to the Members' Capital Accounts in accordance with the provisions of Article 3. With respect to any asset the liquidator determines to retain for distribution in kind, the liquidator will allocate to the Members' Capital Accounts the amount of gain or loss that would have been recognized had the asset been sold at its value as determined in compliance with Section 704 of the Code and related Regulations.

9.4 Final Distribution. The liquidator will distribute any assets remaining after the discharge or accommodation of the Company's debts, obligations and liabilities among the Members as follows:

(a) First, to the Members in proportion to their Capital Accounts, until all Capital Accounts have been reduced to zero; and

(b) Second, to the Members in proportion to their respective Membership Interests.

The liquidator will distribute any assets distributable in kind to the Members in undivided interests as tenants in common. A Member whose capital account is negative will have no liability to the Company, the Company's creditors or any other Member with respect to the negative balance.

9.5 Certificate of Dissolution. Upon the completion of the distribution of Company assets, the Company shall be terminated and the Members shall sign and otherwise cause the Company to execute a certificate of dissolution and take such other actions as may be necessary to terminate the Company.

## **ARTICLE 10 NOTICES AND MEETINGS**

10.1 Method for Notices. All notices hereunder shall be delivered personally or sent by overnight courier or by certified mail, return receipt requested, postage prepaid, and addressed to the Company or any Member, as the case may be, at her or its address as shown in the Company's record. At the written request of a Member made to the Company, the Company or any Member giving notice hereunder shall give notice to any other address subsequently requested by such requesting member.

10.2 Computation of Time. In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

10.3 Annual and Special Meetings. An annual meeting and special meetings of the Members, for any purpose or purposes, may be called by any Member.

10.4 Place of Meeting. A Member calling an annual or special meeting may designate any place as the place for such meeting. Any Member may participate in any annual or special meeting by conference telephone call.

10.5 Effective Date of Notice. Unless otherwise prescribed by statute, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered to each Member of record (as of the date of such notice) not less than five nor more than thirty days before the date of the meeting. If mailed, all notices under this Agreement, including notices of meeting, shall be deemed to be delivered three days after mailing in accordance with Section 10.1 above. If delivered personally, notice shall be effective upon receipt.

10.6 Quorum. Members holding at least 50% of the Membership Interests, represented in person or by proxy, shall constitute a quorum at a meeting of Members.

10.7 Proxies. At all meetings of the Members, a Member may vote in person or by proxy executed in writing by the Member or by such Member's duly authorized attorney in fact.

10.8 Majority Rule. Except for any matter that requires the approval of Members owning more than a majority of the Membership Interests pursuant to this Agreement or the Act, any matter receiving the vote of Members owning a majority of the Membership Interests shall be deemed approved by the Members.

10.9 Informal Actions by Members. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if they consent in writing setting forth the actions so taken.

## **ARTICLE 11 DISPUTE RESOLUTION; BUY/SELL**

11.1 Arbitration of Disputes. Except as otherwise provided in this Agreement, any controversy or dispute arising out of this Agreement, the interpretation of any of the provisions hereof, or the action or inaction of any Member hereunder shall be submitted to arbitration in Denver County, Colorado before a retired Colorado judge selected by the American Arbitration Association under the then-applicable commercial arbitration rules. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof. No action at law or in equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by any Member except (a) an action to compel arbitration pursuant to this Section 11.1, or (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this Section 11.1.

11.2 Waiver of Jury Trial. EACH OF THE MEMBERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY ACTION ARISING OUT OF MATTERS RELATED TO THIS AGREEMENT, WHICH WAIVER IS INFORMED AND VOLUNTARY.

11.3 Buy/Sell Events and Procedure.

(a) Definition of Buy/Sell Events. For purposes of this Agreement, (i) "Buy/Sell Event" means the failure of the Members to agree on any matter that requires the unanimous agreement of all Members pursuant to this Agreement and the election by a Member to declare the occurrence of a Buy/Sell Event; (ii) "Offeror Member" means the Member declaring the Buy/Sell Event; and (iii) "Offeree Members" means the Members who are not the Offeror Member.

(b) Initiation of Buy/Sell. From and after the occurrence of a Buy/Sell Event, the Offeror Member shall initiate the buy/sell procedures set forth in this Section 11.3 by delivering written notice (the “Buy/Sell Notice”) to the Offeree Members. The Buy/Sell Notice shall include a statement setting forth the Offeror Member’s estimate of the gross value of the Company (the “Buy/Sell Value”). On or before the expiration of 60 days following the Offeree Members’ receipt of the accountant’s notice of the Buy/Sell Price (as described below), each of the Offeree Members shall elect, by giving written notice to the other Members, to either: (i) purchase the Membership Interest of the Offeror Member for the Buy/Sell Price, or (ii) sell its Membership Interest to the Offeror Member for the Buy/Sell Price. If the Offeree Member fails to timely deliver such written notice to the Offeror Member, then the Offeree Member shall be deemed to have elected to sell its Membership Interest to the Offeror Member for the Buy/Sell Price. If multiple Offeree Members elect to purchase the Membership Interest of the Offeror Member, then the Offeree Members shall each purchase a portion of the Offeror Member’s Membership Interest in proportion to the Offeree Members’ relative then-existing Membership Interests.

(c) Determination of the Buy/Sell Price. Within fifteen days after the receipt of a Buy/Sell Notice, the Company’s accountants shall determine the amount of cash which would be distributed to each Member based upon a hypothetical liquidation of the Company pursuant to this Agreement if the Company was sold for the Buy/Sell Value as of the date of the Buy/Sell Notice and the Company was liquidated. Upon such determination, the Company’s accountant shall give each Member written notice thereof. The amount determined by the accountants to be distributable to a Member shall constitute the purchase price (the “Buy/Sell Price”) applicable to such Member’s Membership Interest. The determination by the Company’s accountant of such amounts, including the amount of any reserves, shall be conclusive, absent manifest error. In no event may any allegation of manifest error delay the acquisition of a Membership Interest pursuant to this Section, it being agreed and understood by the Members that the sole remedy for an aggrieved Member alleging manifest error shall be to recover the sum of the difference between what the Buy/Sell Price would have been without the error and the Buy/Sell Price as determined by the Company’s accountant.

(d) Closing of Buy/Sell. The closing of a purchase and sale pursuant to this Section shall be held at the Company’s offices on the 75th day following the Members’ receipt of the accountant’s determination of the Buy/Sell Price. The selling Member or Members shall transfer the entire Membership Interest of the selling Member(s) to the purchasing Member or Members free and clear of all liens, security interests and competing claims, and shall deliver to the purchasing Member or Members such instruments of transfer, releases, and such evidence of due authorization, execution and delivery and of the absence of any such liens, security interests or competing claims as the purchasing Member or Members shall reasonably request. The purchasing Member or Members shall pay the Buy/Sell Price at the closing.

## **ARTICLE 12 GENERAL PROVISIONS**

12.1 Amendments. Any Member may propose amendments to this Agreement and to the Certificate of Formation. A proposed amendment shall become effective and binding upon the Members at such time as it has been approved by all Members.

### 12.2 Representations and Warranties.

(a) Each Member represents and warrants to the other Members as follows:

(i) The Member has all requisite power and authority to enter into this Agreement and to conduct the business of the Company as and to the extent set forth herein;

(ii) This Agreement constitutes the legal, valid and binding obligation of the Member enforceable in accordance with its terms;

(iii) No consents or approvals are required from any governmental authority or other person or entity for the Member to enter into this Agreement and perform all actions contemplated hereby;

(iv) The execution and delivery of this Agreement by the Member does not conflict with or contravene the provisions of any agreement or instrument by which such Member is bound or any law, rule, regulation, order or decree to which such Member is subject;

(v) There are no actions, suits, proceedings, or investigations pending or, to the knowledge of such Member, threatened against or affecting such Member or any of such Member's assets or businesses in any court or before or by any governmental department, board, agency, or instrumentality that could, if adversely determined, reasonably be expected to materially impair such Member's ability to perform its obligations under this Agreement or to have a material adverse effect on the financial condition of such Member;

(vi) Such Member is acquiring its membership interest based upon its own investigation, and the exercise by such Member of its rights and the performance of its obligations under this Agreement will be based upon its own investigation, analysis, and expertise; and

(vii) Such Member understands that taxable income and gain allocated to such Member by the Company under this Agreement and the tax on the portion thereof allocated to such Member hereunder for any calendar year may exceed the cash distributions from the Company to such Member and that such Member may have to look to sources other than distributions from the Company to pay such tax.

(b) Each Member agrees to indemnify and hold harmless the Company and each other Member and their successors and assigns from and against any and all loss, damage, liability or expense (including costs and attorneys' fees) which they may incur by reason of, or in connection with, any breach of the foregoing representations and warranties by such Member. All such representations and warranties and the indemnification provisions of this Section 12.2 shall survive the execution and delivery of this Agreement and the termination and dissolution of the Company.

12.3 Further Assurances. Each Member agrees to execute, acknowledge, deliver, file, record and publish such further instruments and documents, and do all such other acts and things as may be required by law, or as may be required to carry out the intent and purposes of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado applicable to agreements made and to be performed wholly within that State.

12.5 Attorneys' Fees. If the Company or any Member obtains a judgment against any Member by reason of the breach of this Agreement or the failure to comply with the terms hereof, reasonable attorneys' fees and costs as fixed by the court shall be included in such judgment.

12.6 Captions. All titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision in this Agreement.

(ii) This Agreement constitutes the legal, valid and binding obligation of the Member enforceable in accordance with its terms;

(iii) No consents or approvals are required from any governmental authority or other person or entity for the Member to enter into this Agreement and perform all actions contemplated hereby;

(iv) The execution and delivery of this Agreement by the Member does not conflict with or contravene the provisions of any agreement or instrument by which such Member is bound or any law, rule, regulation, order or decree to which such Member is subject;

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12.6 Captions. All titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision in this Agreement.

12.7 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective executors, administrators, legal representatives, heirs, successors and assigns, and shall inure to the benefit of the parties hereto and, except as otherwise provided herein, their respective executors, administrators, legal representatives, heirs, successors and assigns.

12.8 Extension Not a Waiver. No delay or omission in the exercise of any power, remedy or right herein provided or otherwise available to a Member or the Company shall impair or affect the right of such Member or the Company thereafter to exercise the same. Any extension of time or other indulgence granted to a Member hereunder shall not otherwise alter or affect any power, remedy or right of any other Member or of the Company, or the obligations of the Member to whom such extension or indulgence is granted.

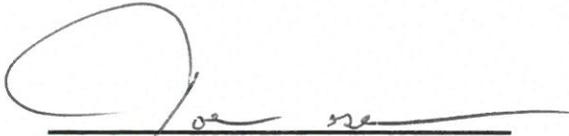
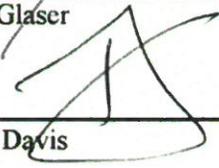
12.9 Severability. In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and other application thereof shall not in any way be affected or impaired thereby.

12.10 Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter hereof and all prior agreements relative hereto which are not contained herein are terminated.

12.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one and the same agreement.

*[signature page follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the introductory paragraph hereof.

  
\_\_\_\_\_  
John Glaser  
  
\_\_\_\_\_  
Tyler Davis

Mailing Address

2102 S. Jackson Street  
Denver, CO 80210

2135 Geri Lane  
Hillsborough, CA 94010

\_\_\_\_\_  
Charles Davis

1600 E. Moonridge Rd.  
Tucson, AZ 85718

\_\_\_\_\_  
Charles Davis Jr.

716 N Country Club Rd.  
Tucson, AZ 84716

\_\_\_\_\_  
Adam Davis

\_\_\_\_\_  
\_\_\_\_\_

The Gannaway Revocable Living Trust  
dated May 19, 2914

60 Farmcote Dr.  
Moreland Hills, OH 44022

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee

2016 Byer Family Trust

458 E 18<sup>th</sup> Street  
Costa Mesa, CA 92627

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee

\_\_\_\_\_  
Dustin Byer

\_\_\_\_\_  
\_\_\_\_\_

Hal Byer and Marihelene Byer Revocable  
Trust, u/d/t dated June 6, 2008

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee

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John Glaser

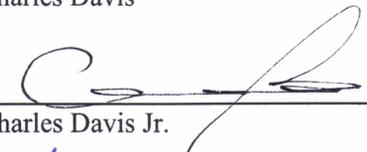
2102 S. Jackson Street  
Denver, CO 80210

\_\_\_\_\_  
Tyler Davis

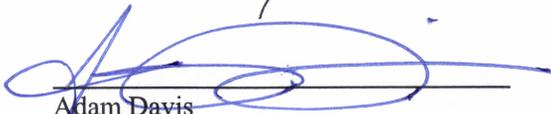
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\_\_\_\_\_  
Adam Davis

\_\_\_\_\_  
\_\_\_\_\_

The Gannaway Revocable Living Trust  
dated May 19, 2014

60 Farmcote Dr.  
Moreland Hills, OH 44022

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee ✓

2016 Byer Family Trust

458 E 18<sup>th</sup> Street  
Costa Mesa, CA 92627

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee

\_\_\_\_\_  
Dustin Byer

\_\_\_\_\_  
\_\_\_\_\_

Hal Byer and Marihelene Byer Revocable  
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\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee ✓

\_\_\_\_\_

26011 Via Viento

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John Glaser

2102 S. Jackson Street  
Denver, CO 80210

\_\_\_\_\_  
Tyler Davis

2135 Geri Lane  
Hillsborough, CA 94010

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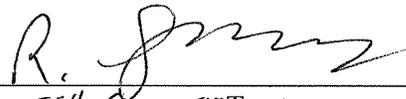
716 N Country Club Rd.  
Tucson, AZ 84716

\_\_\_\_\_  
Adam Davis

\_\_\_\_\_  
\_\_\_\_\_

The Gannaway Revocable Living Trust  
dated May 19, 2014

60 Farmcote Dr.  
Moreland Hills, OH 44022

By:   
Russell Gannaway, Trustee

2016 Byer Family Trust

458 E 18<sup>th</sup> Street  
Costa Mesa, CA 92627

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee

\_\_\_\_\_  
Dustin Byer

\_\_\_\_\_  
\_\_\_\_\_

Hal Byer and Marihelene Byer Revocable  
Trust, u/d/t dated June 6, 2008

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee

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John Glaser

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Charles Davis Jr.

716 N Country Club Rd.  
Tucson, AZ 84716

\_\_\_\_\_  
Adam Davis

\_\_\_\_\_  
\_\_\_\_\_

The Gannaway Revocable Living Trust  
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60 Farmcote Dr.  
Moreland Hills, OH 44022

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee

2016 Byer Family Trust

458 E 18<sup>th</sup> Street  
Costa Mesa, CA 92627

By:  \_\_\_\_\_  
Michael Byer, Trustee

\_\_\_\_\_  
Dustin Byer

\_\_\_\_\_  
\_\_\_\_\_

Hal Byer and Marihelene Byer Revocable  
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By: \_\_\_\_\_  
\_\_\_\_\_, Trustee

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Charles Davis Jr.

716 N Country Club Rd.  
Tucson, AZ 84716

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\_\_\_\_\_

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Moreland Hills, OH 44022

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee

2016 Byer Family Trust

458 E 18<sup>th</sup> Street  
Costa Mesa, CA 92627

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee

  
Dustin Byer

200 McNeil Ln #109  
Newport Beach, CA 92663

Hal Byer and Marihelene Byer Revocable  
Trust, u/d/t dated June 6, 2008

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Trustee

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Charles Davis Jr. Tucson, AZ 84716

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By: \_\_\_\_\_, Trustee

2016 Byer Family Trust 458 E 18<sup>th</sup> Street  
Costa Mesa, CA 92627

By: \_\_\_\_\_, Trustee

Dustin Byer \_\_\_\_\_

Hal Byer and Marihelene Byer Revocable \_\_\_\_\_  
Trust, u/d/t dated June 6, 2008 \_\_\_\_\_

By:  \_\_\_\_\_, Trustee

  
\_\_\_\_\_  
John Troutman

26011 Via Viento  
Mission Viejo, CA 92691

\_\_\_\_\_  
Eric Grombacher

104 Promontory Drive West  
Newport Beach, CA 92660

Belflower Investments, LLC

2965 Rolling Stone Road  
Oklahoma City, Ok 73120

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
John Troutman

26011 Via Viento  
Mission Viejo, CA 92691

\_\_\_\_\_  
Eric Grombacher

104 Promontory Drive West  
Newport Beach, CA 92660

Belflower Investments, LLC

2965 Rolling Stone Road  
Oklahoma City, Ok 73120

By: \_\_\_\_\_

Name: *Paul Belflower*

Title: *Owner, Belflower Investments, LLC*

## 2535 Asbury Partners, LLC.

To: City of Denver, Community Planning & Development  
From: John Glaser – Managing Partner, 2535 Asbury Partners, LLC.  
Date: February 26, 2020

### **Re: Rezoning Application, 2535-2545 Asbury, Denver, Colorado**

This letter is in addition to the Zone Map Amendment Application submitted by 2535 Asbury Partners, LLC. (the “Applicant”). The purpose of this application and memorandum is to take the property from its existing zoning from the former Chapter 59 PUD, PUD 278, and bring consistent with the City and County of Denver’s (the “City”) adopted plans specifically E-MU-2.5. The below narrative will provide background on how the proposed rezoning satisfies all of the zone map amendment criteria in sections 12.4.10.7 and 12.4.10.8 of the Denver Zoning Code (the “Code”).

#### **Background**

2535-2545 Asbury, (the “Property”) was acquired by 2535 Asbury Partners, LLC. on November 26<sup>th</sup>, 2019, and during due diligence it was identified that the current zoning of the Property was within the former Chapter 59 zoning more specifically PUD 278. The Property currently has 2 structures totaling 23 total units, and is located in the University Park neighborhood off Asbury and Clayton, approximately 3 blocks from the University of Denver and ½ mile from the University of Denver RTD Station. To the direct West of the property, there are multi-family properties, duplexes to the south and abuts single family residences to the north and east. Under the current PUD, the property is identified as 21 units, and the Applicant is requesting to bring the zoning into conformance based on being operated as 23 units while bringing into the current Code adopted by the City.

#### **General Review Criteria – Section 12.4.10.7**

As identified in the Code, the review criteria must be consistent with all three of the Codes general review criteria: (1) consistency with adopted plans; (2) uniformity of district regulations; and (3) public health, safety and general welfare.

##### **I. Consistency with Adopted Plans**

The code requires all map amendments be consistent with the City’s adopted plan. The following plans are applicable to the Property:

- A. Comprehensive Plan 2040
- B. Blueprint Denver 2019
- C. University Park Neighborhood Plan (2007)

A. Comprehensive Plan 2040

Denver's Comprehensive Plan was adopted by Denver City Council on April 22, 2019, and is comprised of six elements that inform the long-term goals. The application is consistent with goals 1, 2 and 8, Equitable, Affordable and Inclusive, Strong and Authentic neighborhoods and Environmentally Resilient.

Goal 1 of the Equitable, Affordable and Inclusion elements is to ensure all Denver residents have safe, convenient and affordable access to basic services and a variety of amenities (Comprehensive Plan 2040, p. 28). Strategy A of Goal 1 identifies the need to increase development of housing units close to transit and mixed-use developments. Based on the proximity and walkability from the Property to the University and adjacent amenities including ½ mile walk from the University of Denver RTD Station, the application is consistent with the intent of the goal allowing for more density in close proximity to public transit.

Goal 1 of the Strong and Authentic Neighborhoods is to ensure all Denver's neighborhoods are complete, unique, and reflective of our City's diverse history and remains authentic to its spirit and culture as it evolves (Comprehensive Plan 2040, p. 34). Strategy B of Goal 1 identifies the need to provide a mix of housing types and services for a diverse population. Based on the current tenant profile, the location provides housing for students due to its close proximity to the University but other residents from young professionals to retirees allowing us to provide housing for a diverse population. Strategy D encourages quality infill development consistent with the surrounding neighborhood. Based on the current tenant profile and with the larger scale, more dense properties directly to the West up to University Blvd., the application and proposed zoning is consistent with the intent by providing housing to a diverse population while remaining consistent with the G-MU-5 properties and G-MU-3 property directly across the alley. E-MU-2.5 is an appropriate transition as the buildings lessen in scale moving further east from University Blvd. and compliments the 3, 2 and single story homes that surround the property. Additionally, the proposed application remains authentic to its spirit allowing for more housing in a neighborhood that keeps evolving as evident by the volume of construction projects at the University including additional freshman housing off Asbury and S. High St.

Goal 8 of Environmentally Resilient is to clean our soils, conserve land and grow responsibly (Comprehensive Plan 2040, p. 56). Strategy A identifies the goal of promoting infill development where infrastructure and services are already in place and Strategy C by focusing growth by transit stations and along high and medium capacity transit corridors. The application is consistent with the intent of the goal as the current site is being operated

as multi-family with all the surrounding infrastructure in place while being in close proximity to the public transit.

Ultimately, the application is consistent with Comprehensive Plan 2040 allowing for more density within close proximity to a transit station and mixed-use developments while utilizing the existing infrastructure in place.

#### B. Blueprint Denver 2019

Blueprint Denver 2019 was adopted by Denver City Council on April 22, 2019. The Plan, as noted on p. 6, “provides the foundation for citywide policies and recommendations related to land use, transportation, design and growth.”

The Property is in the Urban Edge neighborhood context which is defined as “homes in the context are typically low-scale single and two unit residential with some small scale multi-unit residential...that is walkable and bikeable with access to transit but still reliant on cars.” Urban Edge accounts for proximity to public transit while providing infrastructure for quality of life around school and civic uses. Additionally, the property is within Low-Residential which states buildings are generally up to 2.5 stories in height with select sites being appropriate to introduce additional residential intensity. Based on the above, E-MU-2.5 meets this plan guidance for context and maximum height.

The application is requesting a zone map amendment from PUD 278 to E-MU-2.5 which is a zone district that would allow a building up to 2.5 stories or less. The Property has been operated as a multi-family property dating back to the '40's as the Applicant has no intention of changing the use from how it's been operated and intended operations dating back to its inception, but to bring into conformance to the applicable Denver Zoning Code while addressing realized and future growth.



The above map shows the diversity of property uses directly surrounding the property with G-MU and U-TU zoning designations. The below map provides a visual on how the Property lies on the exact edge, directly adjacent too General Urban and Urban designations with an alley being the boundary of a 3 story multi-family property directly to the West.



The application is consistent with the Blueprint Denver guidance being directly on the edge and ensuring the Applicant responds to the needs of the City as identified in Goal 6, section A to, “rezone properties from the Former Chapter 59 so that the entire city is covered by the DZC.” Additionally, within Goal 6, section B, we would be limiting the use of customized zoning tools such as the existing PUD. (Blueprint Denver, p.72). As evident by

the surrounding development, with a 5 story building being constructed less than a block away at 2049 Columbine and particularly at the University with Freshman housing, academic commons and other common places currently under construction on campus, E-MU-2.5 allows for anticipated growth while keeping the current use in-tact, preserving the feel of the neighborhood while allowing for growth next to a vibrant area surrounded, not just by the University, but commercial spaces allowing for dining, night life and sporting events. The proposed application is in alignment with the zoning request offering connectivity, remaining sensitive to the existing character of the neighborhood while offering residents a mix of uses and entertainment options. In conclusion, the proposed zoning allows for flexibility at a Property with diverse tenants ranging from college students to retirees. Being on the boundary permits the Property to remain flexible in its use while allowing for additional residential intensity, while adhering to the charm of the neighborhood and further integrating the University with the neighborhood.

### **C. University Park Neighborhood Plan (2007)**

University Park Neighborhood Plan, dated September 8, 2008 has the vision, “To perpetuate and enhance the integrity of the University Park Neighborhood.” As mentioned within the visions is that the overriding plan to create a community based on a wide variety of uses including a goal to enhance the community through the relationship with the University of Denver, and to be a true transit oriented urban-neighborhood (University Park Neighborhood Plan 2007, p. 52,53). The application is consistent with goals 2, 3, and 4, Residential Neighborhood Character Stability, Compact, Mixed-Use Development near Transit and Diverse Housing Options in Appropriate Locations.

Goal 2, Residential Neighborhood Character Stability is to preserve the single-family nature of the University Parks residential neighborhood, and respect the urban design...” (University Park Neighborhood Plan, p. 60). Within this goal, Single-Family Residential identifies a focus to preserve the harmonious relationship between buildings and uses at edges of the neighborhood while minimizing parking impacts on the neighborhood. Additionally, goals of the Urban Neighborhood are to enhance Access to Transit and to be a Catalyst of Development which aims to achieve transit oriented development in Urban Neighborhoods. Additionally, within the District Plan Map (University Park Neighborhood Plan, p. 94), the property lies within the Single Family Residential Neighborhood nestled in between Colorado Station Urban Neighborhood to the East and the University Station Urban Neighborhood to the West. With our property being “Urban Residential” as its alley is the boundary between Urban and General Urban, with close proximity to public transit in addition to being operated as high intensity since the 1940’s, the application is consistent with adhering to goals identified and fostering a greater integrated neighborhood.

Goal 3, Compact, Mixed-Use Development near Transit states to “Create healthy neighborhood edges and encourage dense, compact and transit supportive growth...” (University Park Neighborhood Plan, p. 60). As identified in the below map, the property

resides within a ½ mile of the RTD station, bus stops and the Buchtel Trail facilitating multiple modes of transportation reducing the need for daily use of cars.

Goal 4, Diverse Housing Options in Appropriate Locations which states, “Diversity the mix of housing types near transit amenities to allow residents to age in place, live without the daily use of a car and accommodate the housing needs of empty nesters, students, young professionals and families” (University Park Neighborhood Plan, p. 60). The property and application addresses this goal by providing housing to students, young professionals and empty nesters as seen with the current tenants, while allowing for future growth in alignment with growth as a result of net migrations seen in Denver plus current development around the University.



The application and proposed zoning would allow the Property to continue in its current state of operation. Additionally, the proposed zoning would continue to allow for a wide variety of uses within close proximity to the University and public transit as identified above with the RTD station and multiple bus stops within walking distance effectively eliminating

the daily use of cars. Therefore, the Application is in alignment with the goals established, “Focus compact, mixed-use or high density residential development to places where it maybe be best integrated with the transportation system” (U-Park Neighborhood Plan 2007, p.9). Also, the application achieves goals both identified in Residential and Urban Neighborhoods which is only fitting for the Property based on the alley boundary between Urban and General Urban, allowing and therefore providing diver housing to a wide range of tenants.

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

The code requires that all zone amendments “result in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol designation on the official map.” The application satisfies the code in that the minimum lot size is 6,000 sf where the Property is 15,900 sf and adheres to the setbacks in the proposed zoning.

## **III. Further Public Health, Safety and Welfare**

The Code requires that all zone amendments “further the public health, safety and general welfare of the City.” The application implements the objective by conforming to the vision and goals identified in all three adopted plans: Denver Comprehensive Plan 2040, Blueprint Denver 2019 and University Park Neighborhood Plan (2007).

### **Additional Review Criteria – Section 12.4.10.8**

The code also requires that non-legislative rezoning meet the following additional criteria: (A) justifying circumstances; and (B) consistency with neighborhood context description, zone district purpose and intent statements.

#### **A. Justifying Circumstances**

A few of the Code’s justifying circumstances is that “the existing zoning of the land was the result of an error,” and “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: (c) That the City adopted the Denver Zoning Code and the property retained Former Chapter 59 Zoning.” The application satisfies the code as PUD 278 identifies 21 units when 23 units have been operating at the Property. Additionally, the Property retains the Former Chapter 59 zoning and this application will bring this into current zoning adopted by the City and County of Denver.

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

The code requires that “the proposed map amendment is consistent with the descriptions of the applicable neighborhood context, and with the stated purpose and intent of the proposed zone district.” The application is consistent with the proposed zoning as we convert from the Former Chapter 59 PUD into the adopted Code. Additionally, based on the surrounding properties and growth trends in Denver, this Urban Edge Property would remain at 3 stories or less with close proximity to public transit.

Therefore, the Applications satisfies each of the review criteria provided under section 12.4.10.8

### **Conclusion**

As the foregoing details, the Application satisfies the code’s requirements identified in Section 12.4.10.7 and 12.4.10.8. 2535 Asbury Partners, LLC. respectfully request approval of the Application and we look forward to bringing the Property out of the Former Chapter 59 Zoning, and into the recently adopted plans by the City and County of Denver. Please don’t hesitate to reach out if there are further questions, comments, or concerns.

Best Regards,

John Glaser  
2535 Asbury Partners, LLC.