

## Zone Map Amendment (Rezoning) - Application

PROPERTY OWNER INFORMATION*		PROPERTY OWNER(S) REPRESENTATIVE**	
<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION		<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
Property Owner Name		Representative Name	
Address		Address	
City, State, Zip		City, State, Zip	
Telephone		Telephone	
Email		Email	
<p><b>*If More Than One Property Owner:</b>            All standard zone map amendment applications shall be initiated by all the owners of at least 51% of the total area of the zone lots subject to the rezoning application, or their representatives authorized in writing to do so. See page 3.</p>		<p><b>**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.</b></p>	
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.			
SUBJECT PROPERTY INFORMATION			
Location (address and/or boundary description):			
Assessor's Parcel Numbers:		Parcel A: 0221431007000, Parcel B: 0221431008000, Parcel C: 0221431002000, Parcel D: 0221431003000, Parcel F: 0221431004000, Parcel G: 0221431009000, Parcel: 0221431005000	
Area in Acres or Square Feet:			
Current Zone District(s):			
PROPOSAL			
Proposed Zone District:			
Does the proposal comply with the minimum area requirements specified in DZC Sec. 12.4.10.3:		<input type="checkbox"/> Yes	<input type="checkbox"/> No

REVIEW CRITERIA	
<p>General Review Criteria: The proposal must comply with all of the general review criteria DZC Sec. 12.4.10.7</p>	<p><input type="checkbox"/> Consistency with Adopted Plans: The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of adoption of the City's Plan.</p> <p>Please provide an attachment describing relevant adopted plans and how proposed map amendment is consistent with those plan recommendations; or, describe how the map amendment is necessary to provide for an unanticipated community need.</p> <p><input type="checkbox"/> Uniformity of District Regulations and Restrictions: The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.</p> <p><input type="checkbox"/> Public Health, Safety and General Welfare: The proposed official map amendment furthers the public health, safety, and general welfare of the City.</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 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 type="checkbox"/> The land or its surroundings has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area to recognize the changed character of the area.</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>Please provide an attachment describing the justifying circumstance.</p> <p><input type="checkbox"/> The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District.</p> <p>Please provide an attachment describing how the above criterion is met.</p>
REQUIRED ATTACHMENTS	
Please ensure the following required attachments are submitted with this application:	
<input type="checkbox"/> Legal Description (required to be attached in Microsoft Word document format) <input type="checkbox"/> Proof of Ownership Document(s) <input type="checkbox"/> Review Criteria	
ADDITIONAL ATTACHMENTS	
Please identify any additional attachments provided with this application:	
<input type="checkbox"/> Written Authorization to Represent Property Owner(s)	
Please list any additional attachments:	

# REZONING GUIDE

Rezoning Application Page 3 of 3

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

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

Property Owner Name(s) (please type or print legibly)	Property Address City, State, Zip Phone Email	Property Owner Interest % of the Area of the Zone Lots to Be Rezoned	Please sign below as an indication of your consent to the above certification statement (must sign in the exact same manner as title to the property is held)	Date	Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed or deed of trust, (C) title policy or commitment, or (D) other as approved	Property owner representative written authorization? (YES/NO)
<b>EXAMPLE</b> John Alan Smith and Josie Q. Smith	123 Sesame Street Denver, CO 80202 (303) 555-5555 sample@sample.gov	100%	<i>John Alan Smith</i> <i>Josie Q. Smith</i>	01/01/12	(A)	NO
Property Owner: CD-INCA LLC  Agent on Behalf of Owner: Lauren Vogl, Craine Architecture	4000-4090 N. Jason Street & 4001 Inca Street Denver, CO 80202	100%	<i>Lauren Vogl</i>	1/20/17	(C)	Yes



## GENERAL INFORMATION

### Addendum Pages to the Proposed Official Zone Map Amendment Application for:

4000 Jason Street: Assessors Number 0221431005000  
4020 Jason Street: Assessors Number 0221431004000  
4024-28 Jason Street: Assessors Number 0221431003000  
4034 Jason Street: Assessors Number 0221431002000  
4000 Jason Street: Assessors Number 0221431008000  
4090 Jason Street: Assessors Number 0221431007000  
  
4001 Inca Street: Assessors Number 0221431009000

**Case Number: 2016I-00138**

### Property Owners:

Property Address: 4000, 4020, 4024, 4034, 4090 Jason Street & 4001 Inca Street  
CD-INCA LLC  
430 Indiana Street, Suite 200  
Golden, CO, 80401

**Current Zoning:** I-A, UO-2

**Proposed Zoning:** C-RX-8

### Authorized Representative:

Lauren Vogl, Craine Architecture  
2490 Welton St  
Denver Colorado 80205  
720-457-2012  
lauren@crainearch.com

**EXHIBIT C | LEGAL DESCRIPTION**

A PARCEL OF LAND BEING THE NORTH/ SOUTH 16 FOOT PUBLIC ALLEY LOCATED IN BLOCK 30, VIADUCT ADDITION TO DENVER, SITUATED IN THE SOUTHEAST 1/4 OF SECTION 21, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 1, OF SAID BLOCK;

THENCE NORTH 89°45'00" EAST COINCIDENT WITH THE SOUTH RIGHT OF WAY LINE OF WEST 41<sup>ST</sup> AVENUE, A DISTANCE OF 16.00 FEET TO THE NORTHWEST CORNER OF LOT 30 OF SAID BLOCK;

THENCE SOUTH 00°13'27" EAST COINCIDENT WITH THE WEST LINE OF LOTS 16 THROUGH 30 OF SAID BLOCK, A DISTANCE OF 374.90 FEET TO THE SOUTHWEST CORNER OF LOT 16 OF SAID BLOCK;

THENCE SOUTH 89°44'32" WEST COINCIDENT WITH THE NORTH RIGHT OF WAY LINE OF WEST 40<sup>TH</sup> AVENUE, A DISTANCE OF 16.00 FEET TO THE SOUTHEAST CORNER OF LOT 15 OF SAID BLOCK;

THENCE NORTH 00°13'27" WEST COINCIDENT WITH THE EAST LINE OF LOTS 1 THROUGH 15 OF SAID BLOCK, A DISTANCE OF 374.90 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 5,998 SQUARE FEET OR 0.138 ACRES, MORE OR LESS.

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE ASSUMPTION THAT THE NORTH/ SOUTH (20.0') RANGE LINE COINCIDENT WITH INCA STREET BETWEEN WEST 40TH AVENUE AND WEST 41ST AVENUE BEARS NORTH 00°13'28" WEST WITH ALL BEARINGS REFERENCED HEREIN RELATIVE THERETO. THE SOUTH RANGE POINT LOCATED AT THE INTERSECTION OF WEST 40TH AVENUE AND INCA STREET IS MONUMENTED WITH A 2IN ALUMINUM CAP IN RANGE BOX STAMPED PLS 24942/ JACOBS 2011. THE NORTH RANGE POINT LOCATED AT THE INTERSECTION OF WEST 41ST AVENUE AND INCA STREET IS MONUMENTED WITH A 2IN ALUMINUM CAP IN RANGE BOX STAMPED PLS 24942/ JACOBS 2011. REFER TO CITY AND COUNTY OF DENVER TIE SHEETS 2012-0029 & 2012-0030 FOR MONUMENT DETAILS.

PREPARED BY: AARON J. HANDL  
PLS 38328

ON BEHALF OF: HARRIS KOCHER SMITH  
1120 LINCOLN STREET, SUITE 1000  
DENVER, CO 80203  
PH: 303.623.6300



Customer Distribution

**Our Order Number:** ABD70500579-10

**Date:** 01-13-2017

**Property Address:** 4001 INCA ST & 4000-4090 JASON ST DENVER

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**For Title Assistance**

DAVID KNAPP  
5975 GREENWOOD PLAZA BLVD  
GREENWOOD VILLAGE, CO 80111  
303-850-4174 (phone)  
303-393-4842 (fax)  
dknapp@ltgc.com

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**PLEASE CONTACT YOUR CLOSER OR CLOSER'S ASSISTANT FOR WIRE TRANSFER INSTRUCTIONS**

**Seller/Owner**

CONFLUENCE BUILDERS, LLC  
Attention: KERRI SMITH  
430 INDIANA STREET  
SUITE 200  
GOLDEN, CO 80401  
303-643-5775 (work)  
ksmith@confluenceco.com  
Delivered via: Electronic Mail

CRAINE ARCHITECTS  
Attention: SHANE SALISBURY  
shane@crainearch.com  
Delivered via: Electronic Mail

CONFLUENCE COMPANIES  
Attention: TIMOTHY WALSH  
15710 W COLFAX AVE #202  
GOLDEN, CO 80401  
303-643-5775 (work)  
303-643-5776 (work fax)  
twalsh@confluenceco.com  
Delivered via: Undetermined



## Land Title Guarantee Company

Estimate of Title Fees

Order Number: ABD70500579-10

Date: 01-13-2017

Property Address: 4001 INCA ST & 4000-4090 JASON ST DENVER

Buyer/Borrower: CD - INCA, LLC, A COLORADO LIMITED LIABILITY COMPANY

Seller: CD - INCA, LLC, A COLORADO LIMITED LIABILITY COMPANY

Visit Land Title's website at [www.ltgc.com](http://www.ltgc.com) for directions to any of our offices.

Estimate of Title Insurance Fees	
ALTA Owners Policy 06-17-06 (Reissue Rate)	To Be Determined
If Land Title Guarantee Company will be closing this transaction, the fees listed above will be collected at closing.	
<b>Total</b>	To Be Determined
<b>THANK YOU FOR YOUR ORDER!</b>	

**ALTA COMMITMENT**  
**Old Republic National Title Insurance Company**  
**Schedule A**

**Order Number:** ABD70500579-10

**Customer Ref-Loan No.:**

**Property Address:**

4001 INCA ST & 4000-4090 JASON ST DENVER

**1. Effective Date:**

01-10-2017 At 05:00:00

**2. Policy to be Issued and Proposed Insured:**

"ALTA" Owner's Policy 06-17-06

To Be Determined

Proposed Insured:

CD - INCA, LLC, A COLORADO LIMITED LIABILITY  
COMPANY

**3. The estate or interest in the land described or referred to in this Commitment and covered herein is:**

A FEE SIMPLE

**4. Title to the estate or interest covered herein is at the effective date hereof vested in:**

CD - INCA, LLC, A COLORADO LIMITED LIABILITY COMPANY

**5. The Land referred to in this Commitment is described as follows:**

PARCEL A:

LOTS 1 TO 3, INCLUSIVE, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL B:

LOTS 4 TO 6, INCLUSIVE, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL C:

LOT 7, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL D:

LOTS 8 TO 10, INCLUSIVE, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL E:

LOTS 11 TO 13, INCLUSIVE, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL F:

**ALTA COMMITMENT**  
**Old Republic National Title Insurance Company**  
**Schedule A**

**Order Number:** ABD70500579-10

**Customer Ref-Loan No.:**

LOTS 14 AND 15, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL G:

LOTS 16 TO 30, INCLUSIVE, BLOCK 30, VIADUCT ADDITION TO DENVER, EXCEPT THAT PORTION CONVEYED TO THE REGIONAL TRANSPORTATION DISTRICT BY THE DEED RECORDED SEPTEMBER 7, 2010 UNDER RECEPTION NO. [2010100125](#), CITY AND COUNTY OF DENVER, STATE OF COLORADO.

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**ALTA COMMITMENT**  
**Old Republic National Title Insurance Company**  
**Schedule B-1**

**(Requirements)**

**Order Number:** ABD70500579-10

**The following are the requirements to be complied with:**

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

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

THIS COMMITMENT IS FOR INFORMATION ONLY, AND NO POLICY WILL BE ISSUED PURSUANT HERETO.

**Old Republic National Title Insurance Company**  
**Schedule B-2**

**(Exceptions)**

Order Number: ABD70500579-10

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

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that 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; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
8. EXISTING LEASES AND TENANCIES, IF ANY.
9. REGISTRATION STATEMENT FOR NON-CONFORMING USE RECORDED MARCH 27, 1956 IN BOOK 7843 AT PAGE [148](#).  
  
(AFFECTS PARCEL E)
10. REGISTRATION STATEMENT FOR NON-CONFORMING USE RECORDED APRIL 24, 1956 IN BOOK 7860 AT PAGE [497](#).  
  
(AFFECTS PARCEL C)
11. APPLICATION FOR A ZONING PERMIT TO AMEND THE BOUNDARIES AND AREA OF A DESIGNATED ZONE LOT RECORDED NOVEMBER 2, 1981 IN BOOK 2477 AT PAGE [573](#).  
  
(AFFECTS PARCELS A AND B)
12. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AND IMPOSED BY ADMINISTRATIVE MODIFICATION #2010AM0085 RECORDED SEPTEMBER 13, 2010 UNDER RECEPTION NO. [2010102495](#).  
  
(AFFECTS PARCEL D)
13. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH

**Old Republic National Title Insurance Company**  
**Schedule B-2**

**(Exceptions)**

**Order Number:** ABD70500579-10

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

AND GRANTED IN EASEMENT DEED BY COURT ORDER IN SETTLEMENT OF LANDOWNER ACTION RECORDED MARCH 19, 2013 UNDER RECEPTION NO. [2013038643](#).

(AFFECTS PARCEL G)

14. DEED OF TRUST DATED OCTOBER 13, 2016, FROM CD - INCA, LLC, A COLORADO LIMITED LIABILITY COMPANY TO THE PUBLIC TRUSTEE OF DENVER COUNTY FOR THE USE OF CITY AND COUNTY OF DENVER TO SECURE THE SUM OF \$3,000,000.00 RECORDED OCTOBER 13, 2016, UNDER RECEPTION NO. [2016141996](#).

(AFFECTS PARCEL G)

15. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN SALE, RENTAL AND OCCUPANCY COVENANT RECORDED OCTOBER 13, 2016 UNDER RECEPTION NO. [2016141997](#).

(AFFECTS PARCEL G)



**JOINT NOTICE OF PRIVACY POLICY OF  
LAND TITLE GUARANTEE COMPANY,  
LAND TITLE GUARANTEE COMPANY - GRAND JUNCTION,  
LAND TITLE GUARANTEE COMPANY OF SUMMIT COUNTY  
LAND TITLE INSURANCE CORPORATION AND  
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

This Statement is provided to you as a customer of Land Title Guarantee Company and Meridian Land Title, LLC, as agents for Land Title Insurance Corporation and Old Republic National Title Insurance Company.

We want you to know that we recognize and respect your privacy expectations and the requirements of federal and state privacy laws. Information security is one of our highest priorities. We recognize that maintaining your trust and confidence is the bedrock of our business. We maintain and regularly review internal and external safeguards against unauthorized access to non-public personal information ("Personal Information").

In the course of our business, we may collect Personal Information about you from:

- ▶ applications or other forms we receive from you, including communications sent through TMX, our web-based transaction management system;
  - ▶ your transactions with, or from the services being performed by, us, our affiliates, or others;
  - ▶ a consumer reporting agency, if such information is provided to us in connection with your transaction;
- and
- ▶ the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates and non-affiliates.

Our policies regarding the protection of the confidentiality and security of your Personal Information are as follows:

- ▶ We restrict access to all Personal Information about you to those employees who need to know that information in order to provide products and services to you.
- ▶ We maintain physical, electronic and procedural safeguards that comply with federal standards to protect your Personal Information from unauthorized access or intrusion.
- ▶ Employees who violate our strict policies and procedures regarding privacy are subject to disciplinary action.
- ▶ We regularly access security standards and procedures to protect against unauthorized access to Personal Information.

**WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT PERMITTED BY LAW.**

Consistent with applicable privacy laws, there are some situations in which Personal Information may be disclosed. We may disclose your Personal Information when you direct or give us permission; when we are required by law to do so, for example, if we are served a subpoena; or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

Our policy regarding dispute resolution is as follows. Any controversy or claim arising out of or relating to our privacy policy, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.



**LAND TITLE GUARANTEE COMPANY**  
**LAND TITLE GUARANTEE COMPANY - GRAND JUNCTION**

**DISCLOSURE STATEMENTS**

**Note:** Pursuant to CRS 10-11-122, notice is hereby given that:

- A) The Subject real property may be located in a special taxing district.
- B) A certificate of taxes due listing each taxing jurisdiction will be obtained from the county treasurer of the county in which the real property is located or that county treasurer's authorized agent unless the proposed insured provides written instructions to the contrary. (for an Owner's Policy of Title Insurance pertaining to a sale of residential real property)
- C) The information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

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

**Note:** Colorado Division of Insurance Regulations 8-1-2 requires that "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed". Provided that Land Title Guarantee Company conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception number 5 will not appear on the Owner's Title Policy and the Lenders Policy when issued.

**Note:** Affirmative mechanic's lien protection for the Owner may be available (typically by deletion of Exception no. 4 of Schedule B-2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:

- A) The land described in Schedule A of this commitment must be a single family residence which includes a condominium or townhouse unit.
- B) No labor or materials have been furnished by mechanics or material-men for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.
- C) The Company must receive an appropriate affidavit indemnifying the Company against un-filed mechanic's and material-men's liens.
- D) The Company must receive payment of the appropriate premium.
- E) If there has been construction, improvements or major repairs undertaken on the property to be purchased within six months prior to the Date of the Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and or the contractor; payment of the appropriate premium fully executed Indemnity Agreements satisfactory to the company, and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.

**Note:** Pursuant to CRS 10-11-123, notice is hereby given:

This notice applies to owner's policy commitments disclosing that a mineral estate has been severed from the surface estate, in Schedule B-2.

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

**Note:** Pursuant to CRS 10-1-128(6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

**Note:** Pursuant to Colorado Division of Insurance Regulations 8-1-3, notice is hereby given of the availability of a closing protection letter for the lender, purchaser, lessee or seller in connection with this transaction.



# Commitment to Insure

## ALTA Commitment - 2006 Rev.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation, (Company) for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the requirements; all subject to the provisions of Schedule A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company. All liability and obligation under this commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

### CONDITIONS AND STIPULATIONS

1. The term "mortgage", when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and the Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at [www.alta.org](http://www.alta.org).

### STANDARD EXCEPTIONS

In addition to the matters contained in the Conditions and Stipulations and Exclusions from Coverage above referred to, this Commitment is also subject to the following:

1. Rights or claims of parties in possession not shown by the Public Records.
2. Easements, or claims of easements, not shown by the Public Records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey or inspection of the Land would disclose and which are not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

IN WITNESS WHEREOF, Old Republic National Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A to be valid when countersigned by a validating officer or other authorized signatory.

Issued by:  
Land Title Guarantee Company  
3033 East First Avenue  
Suite 600  
Denver, Colorado 80206  
303-321-1880

John E. Freyer, Jr.  
President



Old Republic National Title Insurance Company  
a Stock Company  
400 Second Avenue South  
Minneapolis, Minnesota 55401  
(612)371-1111

Mark Billbrey  
President

AMERICAN  
LAND TITLE  
ASSOCIATION



Rande Yeager  
Secretary

# ALTA/ NSPS LAND TITLE SURVEY

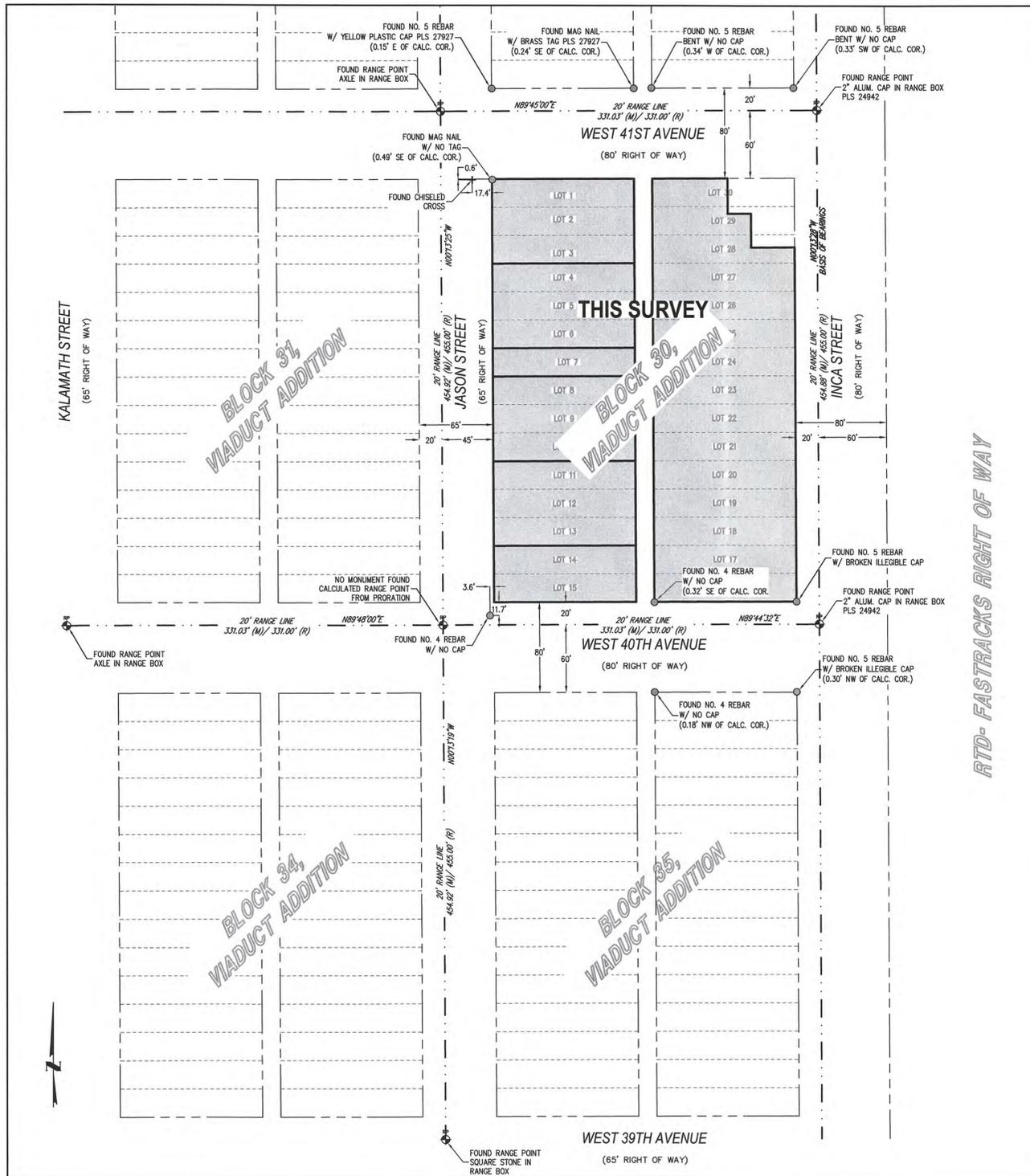
SITUATED IN THE SOUTHEAST 1/4 OF SECTION 21, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M.  
CITY & COUNTY OF DENVER, STATE OF COLORADO.

**LEGAL DESCRIPTION:**

- PARCEL A:  
LOTS 1 TO 3, INCLUSIVE, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.
- PARCEL B:  
LOTS 4 TO 6, INCLUSIVE, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.
- PARCEL C:  
LOT 7, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.
- PARCEL D:  
LOTS 8 TO 10, INCLUSIVE, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.
- PARCEL E:  
LOTS 11 TO 13, INCLUSIVE, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.
- PARCEL F:  
LOTS 14 AND 15, BLOCK 30, VIADUCT ADDITION TO DENVER, CITY AND COUNTY OF DENVER, STATE OF COLORADO.
- PARCEL G:  
LOTS 16 TO 30, INCLUSIVE, BLOCK 30, VIADUCT ADDITION TO DENVER, EXCEPT THAT PORTION CONVEYED TO THE REGIONAL TRANSPORTATION DISTRICT BY THE DEED RECORDED SEPTEMBER 7, 2010 UNDER RECEPTION NO. 2010100125, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

**NOTES:**

1. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY HARRIS KOCHER SMITH TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS-OF-WAY AND TITLE OF RECORD, HARRIS KOCHER SMITH RELIED UPON COMMITMENT FOR TITLE INSURANCE, COMMITMENT NO. AB070500579 ISSUED BY LAND TITLE GUARANTEE COMPANY AND HAVING AN EFFECTIVE DATE OF JUNE 16, 2016 AT 5:00 P.M.
2. NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
3. UTILITIES SHOWN HEREON ARE FROM VISIBLE FIELD INFORMATION, UTILITY MAPS AND UTILITY LOCATES PROVIDED BY TOM RICHARDSON, LLC. THE UTILITY MAPS USED FOR THIS SURVEY INCLUDE THE CITY AND COUNTY OF DENVER DEPARTMENT OF PUBLIC WORKS WASTEWATER MANAGEMENT DIVISION STORM SEWER AND SANITARY SEWER MAPS; XCEL ENERGY GAS AND ELECTRIC MAPS; CENTURY LINK / QWEST TELE-COMMUNICATION MAPS; AND DENVER WATER DEPARTMENT WATER MAP. THE UTILITY NOTIFICATION CENTER OF COLORADO WAS CONTACTED ON JUNE 22, 2016 (REFERENCE UNCC TICKET NO. A616901494-00A) PURSUANT TO ALTA/NSPS TABLE-A ITEM NO. 11. HARRIS KOCHER SMITH DOES NOT GUARANTEE THESE LOCATIONS OR THAT THE UTILITIES SHOWN HEREON COMPRISE ALL UTILITIES IN THIS AREA, EITHER IN SERVICE OR ABANDONED. FOR THE EXACT LOCATION OF ALL UNDERGROUND UTILITIES, CONTACT THE UTILITY NOTIFICATION CENTER OF COLORADO AND THE APPROPRIATE UTILITY COMPANY PRIOR TO CONSTRUCTION.
4. BASIS OF BEARINGS: BEARINGS ARE BASED ON THE ASSUMPTION THAT THE NORTH/ SOUTH (20.0') RANGE LINE COINCIDENT WITH INCA STREET BETWEEN WEST 40TH AVENUE AND WEST 41ST AVENUE BEARS NORTH 001°3'28" WEST WITH ALL BEARINGS REFERENCED HEREIN RELATIVE THERETO. THE SOUTH RANGE POINT LOCATED AT THE INTERSECTION OF WEST 40TH AVENUE AND INCA STREET IS MONUMENTED WITH A 2" ALUMINUM CAP IN RANGE BOX STAMPED PLS 24942/ JACOBS 2011. THE NORTH RANGE POINT LOCATED AT THE INTERSECTION OF WEST 41ST AVENUE AND INCA STREET IS MONUMENTED WITH A 2" ALUMINUM CAP IN RANGE BOX STAMPED PLS 24942/ JACOBS 2011. REFER TO CITY AND COUNTY OF DENVER TIE SHEETS 2012-0029 & 2012-0030 FOR MONUMENT DETAILS.
5. BENCHMARK: BENCHMARK IS A CITY AND COUNTY OF DENVER BRASS CAP STAMPED "494" LOCATED ON THE TOP BACK OF CURB AT THE SOUTHEAST CORNER OF WEST 42ND AVENUE AND PECOS STREET, HAVING A PUBLISHED NAVD 88 ELEVATION OF 5277.64 FT WITH ALL ELEVATIONS REFERENCED HEREIN RELATIVE THERETO.
6. SURVEYED PROPERTY FALLS WITHIN ZONE X OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP, COMMUNITY PANEL MAP NO. 0800460088H, DATED NOVEMBER 20, 2013. ZONE X IS DEFINED AS AREAS OUTSIDE THE 0.2-PERCENT ANNUAL CHANCE FLOODPLAIN.
7. PER THE CITY AND COUNTY OF DENVER ZONING MAP DATED 03/17/2016, THE SUBJECT PARCEL IS ZONED "IA" (LIGHT INDUSTRIAL) AND "U0-2" (BILLBOARD USE OVERLAY DISTRICT). DENVER ZONING CODE- ARTICLE 9, DIVISION 9.1 DEFINES ZONE "IA" TO HAVE THE FOLLOWING SETBACK REQUIREMENTS: (20') MINIMUM SETBACK REQUIREMENT FOR PRIMARY STREETS; (10') MINIMUM SETBACK REQUIREMENT FOR SIDE STREETS; (0') MINIMUM SETBACK REQUIREMENT FOR SIDE INTERIOR; (10') MINIMUM SETBACK REQUIREMENT FOR SIDE INTERIOR ADJACENT TO A PROTECTED DISTRICT; (0') MINIMUM SETBACK REQUIREMENT FOR REAR; (10') MINIMUM SETBACK REQUIREMENT FOR REAR ADJACENT TO PROTECTED DISTRICT WITH ALLEY OR NO ALLEY AND SIDE INTERIOR; (35-40') MINIMUM SETBACK REQUIREMENT FOR UPPER STORY ABOVE 2' ADJACENT TO PROTECTED DISTRICT WITH ALLEY OR NO ALLEY AND SIDE INTERIOR; (35-40') MINIMUM SETBACK REQUIREMENT FOR UPPER STORY ABOVE 51' ADJACENT TO PROTECTED DISTRICT WITH ALLEY OR NO ALLEY AND SIDE INTERIOR. ZONE "IA" HAS A MAXIMUM FLOOR AREA RATIO OF (2.0). THERE ARE NO MAXIMUM STORIES OR MAXIMUM BUILDING HEIGHTS FOR ZONE "IA". SURFACE PARKING BETWEEN BUILDING AND PRIMARY STREETS AND OR SIDE STREETS IS ALLOWED AND ALL OTHER VEHICLE ACCESS IS DETERMINED AS PART OF THE SITE DEVELOPMENT PLAN REVIEW FOR ZONE "IA". DENVER ZONING CODE- ARTICLE 9, DIVISION 9.4 DEFINES ZONE "U0-2" AND SHALL COMPLY WITH THE SIGN STANDARDS AND LIMITATIONS APPLICABLE TO "OUTDOOR GENERAL ADVERTISING DEVICES" STATED IN ARTICLE 10, DIVISION 10.1 OF THE DENVER ZONING CODE. (REFER TO DENVER ZONING CODE FOR FURTHER ZONING DETAILS AND CRITERIA).
8. NO CURRENT EARTHWORK AND OR RE-GRADING WERE OBSERVED DURING THE TIME OF SURVEY.
9. NO DESIGNATED PARKING SPACES WERE OBSERVED DURING THE TIME OF SURVEY.
10. NO DETERMINATION OF PARTY WALLS AND OR LOCATION/ RELATIONSHIP OF DIVIDING WALLS WAS DESIGNATED BY THE CLIENT.
11. SURVEYED PROPERTY SHOWS EVIDENCE OF BEING AN AREA OF REFUSE.
12. ACCESS TO SURVEYED PROPERTY WAS RESTRICTED TO THE OUTSIDE PERIMETER FENCE ONLY PER CLIENT REQUEST. NOT ALL SURFACE APPURTENANCES, IMPROVEMENTS AND OR UTILITIES MAY BE SHOWN.
13. TOPOGRAPHIC DATA FOR THIS SURVEY WAS ACQUIRED BETWEEN 06/21- 06/30/2016. CONTOURS SHOWN HEREON ARE REPRESENTATIVE OF SITE CONDITIONS AS OF SAID DATE AND MAY NOT DEPICT EXISTING CONDITIONS.
14. THE LINEAR UNITS FOR THIS SURVEY ARE U.S. SURVEY FEET.
15. THE SURVEYED PROPERTY IS SUBJECT TO THE TERMS, PROVISIONS, COVENANTS, CONDITIONS, RESTRICTIONS, OBLIGATIONS AND RESERVATIONS CONTAINED IN THE FOLLOWING RECORDED DOCUMENTS IN THE TITLE COMMITMENT AS REFERENCED IN NOTE 1.



VICINITY MAP/ SURVEY CONTROL DETAIL  
SCALE: 1" = 60'

**SCHEDULE B- SECTION 2 EXCEPTIONS:**

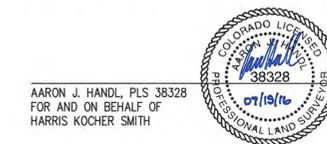
- △1 INDICATES THE EXCEPTION NUMBER WITHIN THE SCHEDULE B-2 OF THE TITLE COMMITMENT REFERENCED IN NOTE 1. (EXCEPTIONS 1-7 ARE STANDARD EXCEPTIONS) (*ITALIC TEXT IS THE SURVEYOR'S PARENTHETICAL NOTE*)
- △8 EXISTING LEASES AND TENANCIES, IF ANY. (*NOT PLOTTABLE*)
- △9 REGISTRATION STATEMENT FOR NON-CONFORMING USE RECORDED MARCH 27, 1956 IN BOOK 7843 AT PAGE 148. (AFFECTS PARCEL E/ *NOT PLOTTABLE*)
- △10 REGISTRATION STATEMENT FOR NON-CONFORMING USE RECORDED APRIL 24, 1956 IN BOOK 7860 AT PAGE 497. (AFFECTS PARCEL C/ *NOT PLOTTABLE*)
- △11 APPLICATION FOR A ZONING PERMIT TO AMEND THE BOUNDARIES AND AREA OF A DESIGNATED ZONE LOT RECORDED NOVEMBER 2, 1981 IN BOOK 2477 AT PAGE 573. (AFFECTS PARCELS A AND B/ *NOT PLOTTABLE*)
- △12 TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AND IMPOSED BY ADMINISTRATIVE MODIFICATION #2010AM0085 RECORDED SEPTEMBER 13, 2010 UNDER RECEPTION NO. 2010102495. (AFFECTS PARCEL D/ *NOT PLOTTABLE*)
- △13 TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT DEED BY COURT ORDER IN SETTLEMENT OF LANDOWNER ACTION RECORDED MARCH 19, 2013 UNDER RECEPTION NO. 2013038643. (AFFECTS PARCEL G/ *NOT PLOTTABLE*)

**SURVEYOR'S CERTIFICATION:**

TO:  
CONFLUENCE COMPANIES, LLC;  
HAINES FAMILY LIMITED PARTNERSHIP, R.L.L.L.P., A COLORADO LIMITED LIABILITY COMPANY;  
AND LAND TITLE GUARANTEE COMPANY;

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 5, 6(c), 7(a-b), 8, 9, 10(a), 11 AND 13 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON JUNE 30, 2016.

DATE OF PLAT OR MAP: 07/19/2016



AARON J. HANDL, PLS 38328  
FOR AND ON BEHALF OF  
HARRIS KOCHER SMITH

**INDEXING STATEMENT:**

DEPOSITED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, AT \_\_\_\_\_ M. IN BOOK \_\_\_\_\_ OF THE  
COUNTY SURVEYOR'S LAND/RIGHT OF WAY SURVEYS AT PAGE(S) \_\_\_\_\_ RECEPTION NUMBER \_\_\_\_\_  
COUNTY SURVEYOR/DEPUTY COUNTY SURVEYOR \_\_\_\_\_

NO CHANGES ARE TO BE MADE TO THIS DRAWING WITHOUT WRITTEN PERMISSION OF HARRIS KOCHER SMITH.



CALL 3 BUSINESS DAYS IN ADVANCE BEFORE YOU DIG, GRADE, OR EXCAVATE FOR THE MARKING OF UNDERGROUND MEMBER UTILITIES.  
CHECKED BY: AWM  
DRAWN BY: AJH



ALTA/ NSPS LAND TITLE SURVEY  
4000- 4090 JASON STREET & 4001 INCA STREET  
DENVER, CO

ISSUE DATE: 07/19/2016	PROJECT #: 160614	SHEET NO. <b>1</b>
DATE	REVISION COMMENTS	
		1 OF 2





CONFLUENCE

c o m p a n i e s

January 13, 2017

Eugene Howard, Associate City Planner  
Community Planning and Development  
City and County of Denver  
201 W. Colfax Ave, Second Floor  
Denver, CO 80206

Re: 4001 Inca St. and 4000, 4020, 4024, 4034 & 4090 Jason St.

Dear Mr. Howard,

This letter serves as authorization for Lauren Vogl of Craine Architecture to act on behalf of CD – Inca, LLC, which owns the property addresses listed above for the purpose of rezoning the property described in this application.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Timothy J. Walsh', with a stylized flourish at the end.

Timothy J. Walsh  
Manager of Confluence Companies, LLC,  
Manager of CD-Inca, LLC



# **OPERATING AGREEMENT**

**OF**

**CD - INCA, LLC**

# OPERATING AGREEMENT

OF

## CD - INCA, LLC

This Operating Agreement (this "Agreement"), dated and entered into as of August 4, 2016, by and among CD - Inca, LLC (the "Company") and the undersigned persons set forth on Schedule A attached hereto (each a "Member"). The persons set forth on Schedule A have caused the Company to be formed as a limited liability company under the Act (defined below) and do hereby adopt this Agreement as the Operating Agreement of the Company, to supersede any prior operating agreement.

In consideration of the premises and the mutual agreements contained herein, the parties hereto agree as follows:

### ARTICLE I - DEFINITIONS

As used herein, the following terms will have the meanings ascribed below, unless the context herein otherwise specifies:

1.1 "Act" means the Colorado Limited Liability Company Act, as may be amended from time to time.

1.2 "Articles" means the Articles of Organization of the Company, as may be amended from time to time, filed with the Colorado Secretary of State.

1.3 "Available Cash" means the aggregate amount of cash on hand or in bank, money market, or similar accounts of the Company as of the end of each fiscal quarter derived from any source (other than Capital Contributions and Liquidation Proceeds) that the Manager determines is available for distribution to the Members after taking into account any amount required or appropriate to maintain a reasonable amount of Reserves.

1.4 "Capital Account" means the separate account established and maintained by the Company for each Member and each transferee pursuant to Section 3.3.

1.5 "Capital Contribution" means with respect to a Member the total amount of cash and the agreed upon net fair market value of property contributed by such Member (or such Member's predecessor in interest) to the capital of the Company for such Member's Interest.

1.6 "Code" means the Internal Revenue Code of 1986, as amended from time to time, or the corresponding provisions of future laws.

1.7 “Credits” means all state and federal tax credits allowed by a taxing authority of the United States, including without limitation all tax credits allowed by the Code, with respect to the activities of the Company or the Property.

1.8 “Distributions” means any distributions by the Company to the Members of Available Cash or Liquidation Proceeds or other amounts.

1.9 “Economic Interest” means a Member’s right under this Agreement and applicable Law to (a) share in the Profits and Losses of the Company and (b) receive distributions of the Company’s assets pursuant to this Agreement and the Act, but will not include (i) any right to participate in the management or affairs of the Company, including, the right to vote on, consent to, or otherwise participate in any decision of the Members or the Manager; (ii) any right to any information or accounting of the affairs of the Company; (iii) any right to inspect the books or records of the Company; or (iv) or any other rights of Members under the Act or this Agreement.

1.10 “Economic Interest Owner” will mean the owner of an Economic Interest who is not a Member.

1.11 “Interest” of a Member as of a particular date means the entire ownership interest of that Member in the Company, including all benefits to which it is entitled under this Agreement and applicable Law, together with the obligations of such Member under this Agreement and applicable Law.

1.12 “Liquidation Proceeds” means all Property at the time of liquidation of the Company and all proceeds thereof.

1.13 “Losses” means, for each Fiscal Year, 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 selected by the Manager, and as reported, separately or in the aggregate, as appropriate, on the Company’s information tax return filed for federal income tax purposes, plus any expenditures described in Code § 705(a)(2)(B).

1.14 “Majority in Interest” means any Member or group of Members holding in the aggregate more than fifty percent (50%) of the Percentage Interests held by all Members.

1.15 “Non-Contributing Member” has the meaning set forth in Section 3.2(c).

1.16 “Percentage Interest,” of each Member will be as set forth on Schedule A as adjusted from time to time as required or permitted by the provisions of this Agreement.

1.17 “Person” means any individual, partnership, limited liability company, corporation, cooperative, trust or other entity.

1.18 “Profits” means for each Fiscal Year, 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 selected by the Manager, and as reported, separately

or in the aggregate, as appropriate, on the Company's information tax return filed for federal income tax purposes, plus any income described in Code § 705(a)(1)(B).

1.19 "Property" means all property (real or personal) and assets that the Company may own or otherwise have an interest in from time to time.

1.20 "Reserves" means amounts set aside from time to time by the Manager pursuant to Section 4.6 of this Agreement.

1.21 "Substitute Member" will have the meaning set forth in Section 7.4.

1.22 "Super-Majority in Interest" means any Member or group of Members holding in the aggregate at least than seventy-five percent (75%) of the Percentage Interests held by all Members.

1.23 "Transfer" means to give, sell, exchange, assign, transfer, pledge, hypothecate, bequeath, devise, or otherwise dispose of or encumber, directly or indirectly, an Interest or Economic Interest, including by way of change in control of an entity.

1.24 "Treasury Regulations" means the regulations promulgated by the United States Department of the Treasury with respect to the Code, as such regulations are amended from time to time, or the corresponding provisions of future regulations.

## ARTICLE II - BUSINESS PURPOSES AND OFFICES

2.1 Business Purpose. The business purpose of the Company is to manage, own and otherwise deal with a membership interest in other entities.

2.2 Powers. In addition to the powers and privileges conferred upon the Company by law and those incidental thereto, the Company will have the same powers as a natural person to do all things necessary or convenient to carry out its business and affairs.

2.3 Principal Office. The principal office of the Company will be located at 430 Indiana St., Suite 200, Golden, Colorado 80401, or at such other place(s) as the Manager may determine from time to time.

2.4 Registered Office and Registered Agent. The location of the registered office and the name of the registered agent of the Company in the State of Colorado will be as stated in the Articles. The registered office and registered agent of the Company in the State of Colorado may be changed, from time to time, by the Members.

2.5 Interest Not Acquired for Resale. Each Member represents and warrants to the Company and to each other Member that: (a) in the case of a Member who is not a natural person, that the Member is duly organized, validly existing, and in good standing under the law of its state of organization and that it has the requisite power and authority to execute this Agreement and to perform its obligations hereunder; (b) the Member is acquiring an Interest for such Member's own account as an investment and without an intent to distribute such Interest; and (c) the Member acknowledges that the Interests have not been registered under the Securities

Act of 1933 or any other securities laws (federal or state), and such Member's Interest may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements.

### ARTICLE III - CAPITAL CONTRIBUTIONS AND LOANS

3.1 Capital Contributions. Upon the execution of this Agreement, each Member will make an initial cash contribution to the capital of the Company in the amount set forth opposite such Member's name on Schedule A (the "Initial Capital Contribution"). The Members agree that their Initial Capital Contributions will be allocated as indicated on Schedule A.

3.2 Capital Contributions.

(a) The Members recognize that the Company may require capital from time to time in order to accomplish the purpose and business for which it is formed. Upon the determination, from time to time, by the Members acting by Majority in Interest, that additional capital contributions are necessary for the Company, the Members will, by written notice, call for any such additional contributions to be made by the Members to the capital of the Company.

(b) Within thirty (30) days following such notice, each Member may contribute cash (the "Contribution") equal to such Member's Percentage Interest multiplied by the aggregate additional capital contributions to be made by all Members. No Member will be obligated to make any Contribution to the Company and, accordingly, no Member will be liable for damage to the Company or any other Member as a result of the failure of such Member to make any such Contribution. The remedies set forth in this Section will be the sole remedies for any such failure.

(c) If any Member fails for any reason to make in a timely manner any part or all of a Contribution (the "Unpaid Contribution"), such Member will be deemed to be a "Non-Contributing Member." The Members will give written notice promptly of the failure to contribute to all Members. Each of the Members contributing their pro-rata share of capital contributions pursuant to Section 3.2(b) (the "Contributing Members") will have the right, but not the obligation, for a period of ten (10) days after notice of such failure to contribute by a Non-Contributing Member is given, to contribute to the Company an amount equal to:

i. the amount of the Non-Contributing Member's Unpaid Contribution multiplied by a fraction, being:

*Numerator:* Contributing Member's Percentage Interest

*Denominator:* The sum of the Percentage Interests of all Contributing Members who desire to contribute

; OR

ii. such other amount of the Non-Contributing Member's Unpaid Contribution as all Contributing Members agree upon.

(d) Each Contribution with respect to the Non-Contributing Member's Unpaid Contribution will be treated as a loan to the Company. Each loan to the Company by a Contributing Member pursuant to this Section 3.2(d) will constitute an obligation of the Company to the Contributing Member and will be evidenced by a promissory note made by the Company to the order of the Contributing Member. The note will bear interest from and after the date of payment to the Company at an annual rate of interest equal to **10%** compounded annually, or if less, the maximum lawful rate of annual interest. The principal balance plus accrued interest will be payable prior to any Distributions being made to the Members.

3.3 Capital Accounts. A separate Capital Account will be maintained for each Member and Economic Interest Owner in accordance with the partnership accounting rules in Section 704(b) of the Code.

(a) *Maintenance of Capital Accounts*. The manner in which Capital Accounts are to be maintained is intended to comply with the requirements of Code § 704(b), and the Treasury Regulations promulgated thereunder. If, in the opinion of the Company's accountants, the manner in which Capital Accounts are to be maintained should be modified in order to comply with Code § 704(b), and applicable Treasury Regulations, then notwithstanding anything the terms of this Section 3.3, the method in which Capital Accounts are maintained will be so modified; provided, however, that any change in the manner of maintaining Capital Accounts must not materially alter the economic agreement between or among the Members.

(b) *Liability to Restore*. Except as otherwise required in the Act, no Member or Economic Interest Owner will have any liability to restore all or any portion of a deficit balance in such Member's or Economic Interest Owner's Capital Account.

3.4 Capital Withdrawal Rights, Interest, and Priority. Except as expressly provided in this Agreement, no Member will be entitled to withdraw or reduce such Member's Capital Account or to receive any Distributions. No Member will be entitled to demand or receive any Distribution in any form other than in cash. No Member will be entitled to receive or be credited with any interest on the balance in such Member's Capital Account at any time. If a Member withdraws as a Member without receiving the prior written consent of each other Member, the Member who has withdrawn in violation of the terms of this Agreement will no longer be considered a Member and will not: (a) be entitled to exercise any voting or approval rights as a Member; (b) receive any further allocations of Profits; or (c) be entitled to any distributions from the Company or return of the Member's Capital Contributions until dissolution of the Company. Upon dissolution of the Company, the Member who has withdrawn in violation of the terms of this Agreement will not be entitled to any distributions or return of any Capital Contributions until such time as all of the other Members have received distributions of the full balances of their Capital Accounts. The Company will have the right to recover damages resulting from the unauthorized withdrawal by a Member and may offset for the damages resulting from any unauthorized withdrawal by a Member against any amount otherwise distributable to the

Member by the Company. Except as may be otherwise expressly provided herein, no Member will have any priority over any other Member as to the return of the balance in such Member's Capital Account.

3.5 Loans. Any Member may make a loan to the Company in such amounts, at such times (including in lieu of a capital contribution under Section 3.2 above) and on such terms and conditions as may be approved by a Majority in Interest. Loans by any Member to the Company will not be considered as contributions to the capital of the Company.

3.6 Profits Interests. Profits interests may be issued to employees of the Company in exchange for services rendered or to be rendered to or for the benefit of the Company and/or for other consideration. Profits interests will be subject to the terms of this Agreement. An issuance of profits interests will not be effective until the holder execute this Agreement (or a counterpart thereof) and an award agreement with the Company.

(a) Except as otherwise specified in the applicable award agreement, profits interests are intended to represent "profits interests" as that term is used in Revenue Procedures 93-27 and 2001-43, and accordingly no holder of profits interests will initially have a balance in its Capital Account in excess of the amount of any contribution made to the Company with respect to any profits interests issued to the holder. It is intended that the profits interests participate, on a pro rata, per Interest, basis, in appreciation in the applicable assets of the Company from the date that they are issued, with such appreciation determined by the fair market value of the Company, as determined in the sole discretion of the Manager. Vested and unvested profits interests will be entitled to treatment as Interests for the purposes of this Agreement and will represent membership interests in the Company, and the owners thereof will be Members.

(b) Except as otherwise set forth in an applicable award agreement at the discretion of the Manager, all profits interests will vest over a four year period, with 25% vesting on each anniversary of the date of issuance of such profits interests, and the unvested profits interests will vest (i) upon the sale by the Company of assets if, as a result of the sale, the holder's employment is terminated or if the holder's compensation or duties are significantly diminished or the holder's job location is changed to more than 25 miles from where the holder is then currently employed, (ii) upon a sale of more than 75% of the Interests to a Person other than a current Member, or (iii) upon a liquidation of the Company.

#### ARTICLE IV - DISTRIBUTIONS AND ALLOCATIONS

4.1 Non-Liquidation Cash Distributions. The amount, if any, of Available Cash will be determined by the Manager quarterly and will be distributed to the Members within forty-five (45) days following the end of each fiscal quarter in accordance with their respective Percentage Interests. No distribution will be paid to any Member until all obligations under any loan pursuant to Section 3.2 are paid in full to the lending Members, and all distributions to a Non-Contributing Member will be diverted to the Contributing Members holding loans made under Section 3.2(c)(iii) until paid in full.

4.2 Liquidation Distributions. Liquidation Proceeds will be distributed in the following order of priority:

(a) To the payment of debts and liabilities of the Company (including to Members to the extent otherwise permitted by law) and the expenses of liquidation.

(b) Next, to the setting up of such reserves as the Person required or authorized by law to wind up the Company's affairs may reasonably deem necessary or appropriate for any disputed, contingent, or unforeseen liabilities or obligations of the Company, provided that any such reserves will be paid over by such Person to an independent escrow agent to be held by such agent or its successor for such period as such Person will deem advisable for the purpose of applying such reserves to the payment of such liabilities or obligations, and, at the expiration of such period, the balance of such reserves, if any, will be distributed as hereinafter provided.

(c) The remainder to the Members in accordance with and to the extent of their respective Capital Account balances after taking into account the allocation of all Profit or Loss pursuant to this Agreement for the fiscal year(s) in which the Company is liquidated.

4.3 Profit, Losses, and Distributive Shares of Tax Items. Subject to the special allocations described at Schedule B, Profit or Losses and Credits for each fiscal year will be allocated among the Members in accordance with their Percentage Interests. To the extent there is any change in the respective Percentage Interests of the Members during the year, Profit, Losses, and Credits will be allocated among the pre-adjustment and post-adjustment periods.

4.4 No Priority. Except as may be otherwise expressly provided herein, no Member will have priority over any other Member as to Company capital, income, gain, deductions, loss, credits, or distributions.

4.5 Tax Distributions. Distributions will be made to the Members, at such time as determined by the Members but no less frequently than annually, to cover federal and state income taxes payable by the Members on the Profits of the Company allocated to the Members (excluding the allocation of gain on the sale of all or substantially all the assets of the Company). For purposes of such distributions, each Member will be deemed to incur federal and state income taxes with respect to taxable income of the Company allocated to such Member for a particular fiscal year at the maximum applicable rate for individuals resident in the state with the highest combined federal and state income tax rate among the Members (as determined by the Company's accountant), based on the assumption that Losses of the Company will be carried forward by each Member and applied against future allocations of Company income, and based on the assumption that Company expenses may be offset against Company income without regard to the limitations imposed by the Code which could theoretically apply to fewer than all the Members. The Manager will have the authority to apply the preceding sentence in any reasonable manner, upon the advice of the Company's counsel or tax accountants. Notwithstanding the foregoing, the Company will not make any distribution to a Member pursuant to this Section 4.5 with respect to a fiscal year in which such Member has received a cash distribution sufficient to pay the tax due on Profits allocated to the Member. In addition, any

distribution to a Member pursuant to this Section 4.5 will be deemed to be an advance of any distribution pursuant to Section 4.1 of funds in advance of contributed capital.

4.6 Reserves. The Members will have the right to establish, maintain, and expend Reserves to provide for working capital, for future maintenance, repair, or replacement of the Property, for debt service, for future investments, and for such other purposes as the Members may deem necessary or advisable.

## ARTICLE V - MANAGEMENT

5.1 Manager. The name of the Manager is initially Timothy J. Walsh. The Manager will serve until its resignation or removal. It is the express intention of the Members that the business and affairs of the Company will be managed by the Manager, and that, unless specifically required by the Act or the terms of this Agreement, action by or meetings of the Members will not be required. The Manager will direct, manage and control the business of the Company to the best of its ability, subject to the Act and the remaining provisions of this Section V.

5.2 Officers. The Manager may designate one (1) or more individuals to be officers of the Company to assist in carrying out the day-to-day operations of the Company, with the authority to perform such duties as the Manager may from time to time delegate to them. Unless the Manager decides otherwise, if the title is one commonly used for an officer of a corporation, then the assignment of such title will constitute the delegation to such officer of the authority and duties that normally are associated with that office. Each officer will hold office until his death, or until he resigns or is removed by the Manager. The Members will establish any Officer's compensation, if any by vote of a Majority in Interest that does not include the proposed candidate. Anthony J. DeSimone is hereby designated as President. Michael G. McBride is hereby designated as Chief Financial Officer.

5.3 Resignation. The Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of the Manager will take effect upon receipt of notice thereof or at such later time as will be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation will not be necessary to make it effective. The resignation of a Manager who is also a Member will not affect the Manager's rights as a Member and will not constitute a withdrawal of a Member.

5.4 Removal. The Manager may be removed by unanimous approval of the Members who are not the Manager. The removal of a Manager who is also a Member will not affect the Manager's rights as a Member and will not constitute a withdrawal of a Member.

5.5 Vacancies. Any vacancy occurring in the office of Manager will be filled by Super-Majority in Interest.

5.6 Restrictions on Authority of Members and the Manager. Any action of the Members requires the affirmative consent of a Majority in Interest. In addition, the following matters require the affirmative vote of a Super-Majority in Interest:

- (a) The approval of a merger or consolidation with another Person;
- (b) The sale or other disposition of all, or substantially all, the Property, with or without the goodwill of the Company;
- (c) The execution of any contract for the borrowing of money or the granting of a security interest in any Property;
- (d) The borrowing of money and/or creation of a lien upon Company Property;
- (e) Any contract providing for payments in excess of \$10,000, or with a term exceeding six (6) months;
- (f) The hiring of any employee or contractor;
- (g) The initiation or settlement of any litigation or dispute with any governmental agency;
- (h) Any contract or transaction between the Company and one of its Members or between the Company and any Person in which one of its Members is a director or officer, or has a financial interest (in which case, the vote of the interested Member will not be counted in the numerator or denominator to determine the existence of Super-Majority in Interest approval); or
- (i) The admission of a new or Substitute Member (in which case, the vote of the transferring Member will not be counted in the numerator or denominator to determine the existence of Super-Majority in Interest approval), and issuance of an Interest or an Economic Interest to a new Member.

5.7 Meetings of Members; Place of Meetings. Meetings of the Members will not be required to be held on any regular frequency. Meetings of the Members may be held for any purpose or purposes, unless otherwise prohibited by law or by the Articles, and may be called by the Members holding not less than a Majority in Interest. Any call for a meeting must be accompanied by a written agenda, and copies of all materials to be discussed or presented at the meeting (if any). All meetings of the Members will be held at the principal office of the Company or at such other place, within or without the State of Colorado, as will be designated from time to time by the Members and stated in the notice of the meeting or in a duly executed waiver of the notice thereof. Members may participate in a meeting of the Members by means of conference telephone or similar communications equipment whereby all Members participating in the meeting can hear and actively participate with each other, and participation in a meeting in this manner will constitute presence in person at the meeting.

5.8 Quorum; Voting Requirement. Each Member will have the right to vote in accordance with such Member's Percentage Interest. The presence, in person or by proxy, of a Majority in Interest will constitute a quorum for the transaction of business by the Members. If less than a Majority in Interest are represented at a meeting, a majority of the Interests so represented may adjourn the meeting to be continued at a specified time and date not longer than

ninety (90) days after such adjournment, with notice to all Members. At such continued meeting at which a quorum will be present or represented by proxy, any business may be transacted that might have been transacted at the meeting as originally noticed. The affirmative vote of a Majority in Interest or Super-Majority in Interest, as applicable, will constitute a valid decision of the Members, except where a larger vote is required by the Act, the Articles, or this Agreement. At any time that a Person will not have the right to vote or to participate in the management of the business and affairs of the Company with respect to a particular Interest, then the Percentage Interest represented by such Interest will be disregarded for the purposes of determining whether a quorum is present at a meeting of Members and in determining whether the requisite Percentage Interest necessary for a valid decision of the Members has been obtained. A duly convened meeting wherein a quorum is present may continue until adjournment notwithstanding the withdrawal of Members from such meeting sufficient to defeat the quorum after such withdrawal. The Members remaining at such meeting may continue to transact business until adjournment, so long as the votes of the withdrawing Members, which will be considered negative votes, are considered in transacting such business.

5.9 Action Without Meeting. Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting if the action is evidenced by one or more written consents setting forth the action to be taken and signed by Member entitled to vote and holding the requisite Percentage Interest to pass the motion.

5.10 Notice of Meetings. Notice stating the place, day, hour, and the purpose for which the meeting is called will be given, not less than ten (10) days nor more than sixty (60) days before the date of the meeting, by or at the direction of the Members calling the meeting, to each Member entitled to vote at such meeting. A Member's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless such Member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the notice of meeting, unless such Member objects to considering the matter when it is presented.

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

5.12 Limitation of Liability; Indemnification.

(a) Limitation. No Person will be liable to the Company or its Members for any loss, damage, liability, or expense suffered by the Company or its Members on account of any action taken or omitted to be taken by such Person as a Member, Manager or officer of the Company, if such Person discharges such Person's duties in good faith, exercising the same degree of care and skill that a prudent person would have exercised under the circumstances in the conduct of such prudent person's own affairs, and in a manner such Person reasonably believes to be in the best interest of the Company.

(b) Right to Indemnification. The Company will indemnify each Person who has been or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, investigative, or appellate (regardless of whether such action, suit, or proceeding is by or in the right of the Company or by third parties), by reason of the fact that such Person is or was a Member, Manager or officer of the Company, against all liabilities and expenses, including, without limitation, judgments, amounts paid in settlement, attorneys' fees, excise taxes, or penalties, fines, and other expenses, actually and reasonably incurred by such Person in connection with such action, suit, or proceeding (including, without limitation, the investigation, defense, settlement, or appeal of such action, suit, or proceeding); provided, however, that the Company will not be required to indemnify any Person from or on account of such Person's conduct that was determined by a court of competent jurisdiction to have been knowingly fraudulent or deliberately dishonest, or amounted to willfull misconduct; provided, further, that the Company will not be required to indemnify any Person in connection with an action, suit, or proceeding initiated by such Person unless the initiation of such action, suit, or proceeding was authorized in advance by the Manager or, if initiated by the Manager, unless authorized in advance by Super-Majority in Interest of the non-Manager Members. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or under a plea of nolo contendere or its equivalent, will not, of itself, create a presumption that such Person's conduct was finally adjudged to have been knowingly fraudulent or deliberately dishonest, or to have amounted to willfull misconduct.

(c) Advancement of Expenses. Expenses (including attorneys' fees) reasonably incurred in defending an action, suit, or proceeding, whether civil, criminal, administrative, investigative, or appellate, may, at the discretion of a Majority in Interest of the disinterested Members, be paid by the Company in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such Person to repay such amount if it will ultimately be determined that such Person is not entitled to indemnification by the Company. In no event will any advance be made in instances where a Majority in Interest of the disinterested Members or independent legal counsel reasonably determines that such Person would not be entitled to indemnification hereunder.

(d) Amendment and Vesting of Rights. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 5.12 will not be amended or repealed and the right to indemnification created hereunder will not be changed, altered, or terminated except by the approval of a Super-Majority in Interest. The rights granted or created hereby will be vested in each Person entitled to indemnification hereunder as a bargained-for, contractual condition of such Person's being or serving or having served as a Member, Manager or officer of the Company and, while this Section 5.12 may be amended or repealed, no such amendment or repeal will release, terminate, or adversely affect the rights of such Person under this Section 5.12 with respect to any act taken or the failure to take any act by such Person prior to such amendment or repeal or with respect to any action, suit, or proceeding with respect to such act or failure to act filed after such amendment or repeal.

(e) Severability. If any provision of this Section 5.12 or the application of any such provision to any Person or circumstance is held invalid, illegal, or unenforceable for any reason whatsoever, the remaining provisions of this Section 5.12 and the application of such provision to other Persons or circumstances will not be affected thereby and, to the fullest extent possible, the court finding such provision invalid, illegal, or unenforceable will modify and construe the provision so as to render it valid and enforceable as against all Persons and to give the maximum possible protection to Persons subject to indemnification hereby within the bounds of validity, legality, and enforceability.

5.13 Other Business Ventures. Any Member may engage in, or possess an interest in, other business ventures of every nature and description, independently or with others, whether or not similar to or in competition with the business of the Company, and neither the Company nor the Members will have any right by virtue of this Agreement in or to such other business ventures or to the income or profits derived therefrom. The Members will not be required to devote all of their time or business efforts to the affairs of the Company, but will devote so much of their time and attention to the Company as is reasonably necessary and advisable to manage the affairs of the Company to the best advantage of the Company.

## ARTICLE VI - ACCOUNTING AND BANK ACCOUNTS

6.1 Fiscal Year. The fiscal year and taxable year of the Company will end on December 31 of each calendar year, unless a different year is required by the Code.

6.2 Books and Records. At all times during the existence of the Company, the Company will cause to be maintained full and accurate books of account, which will reflect all Company transactions and be appropriate and adequate for the Company's business. The books and records of the Company will be maintained at the principal office of the Company. Each Member (or such Member's designated representative) will have the right during ordinary business hours and upon reasonable notice to inspect and copy (at such Member's own expense) all books and records of the Company.

6.3 Financial Reports.

(a) Within seventy-five (75) days after the end of each fiscal year, and within forty-five (45) day after the end of each fiscal quarter, the Members will cause to be prepared and delivered to each Member a balance sheet as of the end of such year or quarter (as applicable) and related financial statements for the year or quarter then ended; and other pertinent information regarding the Company.

(b) Within seventy-five (75) days after the end of each fiscal year, the Members will cause to be prepared and delivered to each Member all information with respect to the Company necessary for the preparation of the Members' federal and state income tax returns.

6.4 Tax Returns and Elections; Tax Matters Member. The Company will cause to be prepared and timely filed all of the Company's federal, state, and local income tax returns or

other returns or statements required by applicable law. The Company will claim all deductions and make such elections for federal or state income tax purposes that the Members reasonably believes will produce the most favorable tax results for the Members. Michael G. McBride is hereby designated as the Company's "Tax Matters Member," to serve with respect to the Company in the same capacity as a "tax matters partner" as defined in the Code, and in such capacity is hereby authorized and empowered to act for and represent the Company before the Internal Revenue Service in any audit or examination of any Company tax return. Michael G. McBride hereby accepts such designation. The Members specifically acknowledge, without limiting the general applicability of this Section, that the Tax Matters Member will not be liable, responsible, or accountable in damages or otherwise to the Company or any Member with respect to any action taken by it in its capacity as a "Tax Matters Member." All out-of-pocket expenses incurred by the Tax Matters Member in the capacity of "Tax Matters Member" will be considered expenses of the Company for which the Tax Matters Member will be entitled to and receive full reimbursement.

6.5 Bank Accounts. All funds of the Company will be deposited in a separate bank, money market, or similar account(s) approved by the Members and in the Company's name. Withdrawals therefrom will be made only by persons authorized to do so by the Members.

## ARTICLE VII - TRANSFERS OF INTERESTS AND EVENTS OF WITHDRAWAL

7.1 Member Interests Generally Not Assignable. Except as otherwise provided in this Article VII, the Economic Interest of an Economic Interest Owner and Interest of a Member may not be assigned or encumbered in any manner. Any purported Transfer of an Interest in violation of the terms of this Agreement will be null and void and of no effect. Notwithstanding the foregoing, any Member may, without the consent of any other Member: (i) make an assignment or other Transfer solely for purposes of security for funds borrowed; (ii) assign or make any other Transfers to or between any other Member; or (iii) make a Transfer under Section 7.2.

7.2 Transfers For Estate Planning. A Member's Economic Interest may be assigned to a Member's legal spouse, child, or sibling pursuant to a Member's estate plan, upon the death of the Member, without any required consent, whether such assignment is direct, in trust, or otherwise conveyed; provided that the Member transferring the Economic Interest as permitted herein will continue as the Member with all of the voting and other non-economic rights with respect to the Member Interest. The assignment of a Member's Economic Interest as a result of death or otherwise will not result in the assignee of such Interest becoming a Substitute Member unless the assignee is admitted as a Substitute Member as set forth in this Agreement, nor will it entitle the assignee to any acceleration of or priority to any distributions, including, but not limited to, the return of the assigning Member's Capital Contribution. In the event of the death of a Member, if the assignee of his or her Economic Interest is not admitted as a Substitute Member, the Company will purchase from the deceased Member's estate, and the deceased Member's estate must sell to the Company for a purchase price of \$100.00, all rights and interests relating to the deceased Member's Interest other than the Economic Interest.

7.3 Right of First Refusal.

(a) If a Member receives a bona fide written offer to Transfer his, her or its Interest (the "Offered Interest") that the Member is willing to accept, written notice of such offer will be delivered to the Company and the other Members. A "bona fide" offer is an offer from a third party that is not related to or affiliated with the Member. Such notice will include all of the terms of the offer, including, without limitation, the name of the proposed transferee (the "Offeror") and, in the case of a sale, the price (subject to the succeeding sentence, the "Purchase Price"), such information as is reasonably necessary to evidence the financial ability of the Offeror to complete the purchase pursuant to the bona fide offer and other terms of the proposed sale. If the bona fide offer provides for consideration other than cash as payment for the Offered Interest, the other Members (acting by Majority in Interest of such other Members) and the Selling Member will determine in good faith the cash value of such consideration and the cash value so determined will constitute the Purchase Price. Absent such an agreement, such determination should be made by a mutually acceptable appraiser.

(b) Each of the other Members will have fifteen (15) days after the receipt of such notice to elect to purchase their pro rata share of the portion of the Offered Interest at the Purchase Price and on the terms set forth in the bona fide written offer by giving written notice to the Selling Member, along with an earnest money deposit of 10% of the purchasing Member's share of the Purchase Price. If the Other Members do not agree to purchase all of such Offered Interest from the Selling Member in accordance with the foregoing procedures, then the Selling Member may sell or transfer the Offered Interest to the Offeror at the Purchase Price and on the terms set forth in the bona fide written offer, subject to the provisions of this Agreement. Any sale to a third party Offeror must be completed with ninety (90) days after notice of the offer was provided to the other Members, or else the terms of this Section 7.3 will apply again.

7.4 Substitute Members. No assignee of all or part of a Member's Interest will become a Member in place of the transferor (a "Substitute Member") unless and until each of the following conditions is satisfied:

(a) The transferor (if living) has stated such intention in the instrument of assignment;

(b) The transferee has executed an instrument accepting and adopting the terms and provisions of this Agreement;

(c) The transferor or transferee has paid all reasonable expenses of the Company in connection with the admission of the transferee as a Substitute Member; and

(d) The Members holding a Super-Majority in Interest of the disinterested Percentage Interests, in their sole and absolute discretion, consent in writing to such transferee becoming a Substitute Member.

Upon satisfaction of all of the foregoing conditions with respect to a transferee, the Members will cause this Agreement to be duly amended to reflect the admission of the transferee as a Substitute Member.

## 7.5 Involuntary Transfers.

(a) If a Member dies, the Company may elect to redeem, and the estate or personal representative of the former Member will sell to the Company, all of the Interests owned by the former Member. Any such election must be made within forty-five days after death. If the Company elects to purchase the Interest of the deceased Member, then fair market value of the Company will be mutually agreed upon within one hundred twenty days after death. If there is no such agreed valuation, then the estate or representative of the decedent and the Company will each appoint a valuator. If those valuations are within 10% of each other, then the average of the two valuations will control. If the higher valuation is more than 10% greater than the lower, then a third valuator will be designed by the prior two valutors, and the third valuator will pick one of the prior two valuations without modification. Minority discounts, discounts for lack of control, and discounts for lack of liquidity will not be applied. The Members will explore options to insure the lives of the Members. If the Company purchases life insurance to fund such repurchase, then the portion of the purchase price that is covered by the insurance death benefit will be paid upon receipt, and any remaining portion of the purchase price will be paid as follows: (1) if less than \$100,000, within thirty days after the later of receipt of the insurance death benefit and determination of fair market value; (2) if more than \$100,000, within sixty months after the later of receipt of the insurance death benefit and determination of fair market value, with such obligation documented by a promissory note generating simple interest of 5% annual interest, and payments of principal and interest due on a calendar quarterly basis beginning on the first day of the immediately following calendar quarter. The promissory note would be secured by a lien upon the Interest sold.

(b) If a Member (i) makes an assignment for the benefit of creditors or admits in writing his, her or its inability to pay debts generally as they become due, (ii) applies to any court for the appointment of a trustee or receiver of any substantial part of his, her or its assets, (iii) commences any voluntary proceedings under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or other liquidation laws of any jurisdiction, (iv) becomes the subject of any involuntary proceedings and the Member indicates his, her or its approval, consent or acquiescence, (v) becomes the subject of an order appointing a trustee or receiver, adjudicating it bankrupt or insolvent, or approving a petition in any such involuntary proceeding, and such order remains in effect for sixty (60) days, or (vi) is involved in a divorce proceeding or dissolution that becomes final and in which an involuntary transfer of any of the Member's Interest is ordered (each a "Triggering Event"), the other Members will have the option (in their sole discretion), but not the obligation, to cause the Company (or alternatively to permit the other Members, on a pro rata basis) to purchase that Member's Interest (except in the case of subsection (vi) above, in which case the Company or Members (as applicable) will only have the right to purchase the interest to be involuntarily transferred), for the price and on the terms upon which the Triggering Event occurs. The Company (or Members, as applicable) may exercise its or their option under this Section 7.5 by giving written notice of exercise to the Member or his, her or its personal representative within thirty (30) days of the date of a Triggering Event.

7.6 Effect of Admission as a Substitute Member. Unless and until admitted as a Substitute Member, a transferee will be an Economic Interest Owner only.

7.7 Additional Members and Interests. Additional Members may be admitted to the Company and additional Interests may be issued only upon the approval of a Super-Majority in Interest. Whenever any additional Member is admitted to the Company, or any additional Interest is issued, in accordance with this Section 7.7, the Percentage Interest of each Member outstanding immediately prior to such admission or issuance will be decreased proportionately, as appropriate, to maintain the aggregate Percentage Interests of the Members at one hundred percent (100%). The Members will cause Schedule A to this Agreement to be amended to reflect any adjustment in the Percentage Interests of the Members.

7.8 Drag-Along. If a Super-Majority in Interest consents to the sale of the Company by sale of all or substantially all Property or by sale of a majority of the Interests, then the Manager may consummate the transaction upon substantially the same material terms and conditions as approved by such Super-Majority in Interest, and upon written demand from the Manager to the Members (provided in the sole discretion of the Manager), all remaining Members must vote in favor of the transaction (if a vote is required), and consummate the transaction by selling their Interest at a price determined on the basis of same terms and conditions as negotiated by the Manager; provided that all Members receive the same form and pro-rated amount of consideration.

#### ARTICLE VIII - DISSOLUTION AND TERMINATION

8.1 Events Causing Dissolution. The Company will be dissolved upon the first to occur of the following events:

- (a) The expiration of any period of duration specified in the Articles.
- (b) An event specified in the Articles requiring the winding up, dissolution, or termination of the Company.
- (c) An event specified under the Act requiring the winding up or termination of the Company.
- (d) A decree by a court of competent jurisdiction requiring the winding up, dissolution, or termination of the Company, rendered under the Act or other law.
- (e) Upon the approval of a Super-Majority in Interest.
- (f) When the Company is not the surviving entity in a merger or consolidation under the Act.

8.2 Effect of Dissolution. Except with respect to the occurrence of an event referred to in Section 8.1, and except as otherwise provided in this Agreement, upon the dissolution of the Company, the Members will take such actions as may be required pursuant to the Act and will proceed to wind up, liquidate, and terminate the business and affairs of the Company. In connection with such winding up, the Members will have the authority to liquidate and reduce to

cash (to the extent necessary or appropriate) the assets of the Company as promptly as is consistent with obtaining fair market value therefor, to apply and distribute the proceeds of such liquidation and any remaining assets in accordance with the provisions of Section 8.3, and to do any and all acts and things authorized by, and in accordance with, the Act and other applicable laws for the purpose of winding up and liquidating the Company.

8.3 Application of Proceeds. Upon dissolution and liquidation of the Company, the assets of the Company will be applied and distributed in the order of priority set forth in Section 4.2.

## ARTICLE IX - MISCELLANEOUS

9.1 Title to the Property. Title to the Property will be held in the name of the Company. No Member will individually have any ownership interest or rights in the Property, except indirectly by virtue of such Member's ownership of an Interest. No Member will have any right to seek or obtain a partition of the Property, nor will any Member have the right to any specific assets of the Company upon the liquidation of or any distribution from the Company.

9.2 Nature of Interest in the Company. An Interest and Economic Interest will be personal property for all purposes.

9.3 Organizational Expenses. Each Member will pay such Member's own expenses incurred in connection with the creation and formation of the Company and review and negotiation of this Agreement.

9.4 Notices. Any notice, demand, request or other communication (a "Notice") required or permitted to be given by this Agreement or the Act to the Company, any Member, or any other Person will be sufficient if in writing and if hand delivered or mailed by registered or certified mail to the Company at its principal office or to a Member or any other Person at the address of such Member or such other Person as it appears on the records of the Company or sent by electronic mail ("e-mail") transmission to the e-mail address on the records of the Company. All Notices that are mailed will be deemed to be given when deposited in the United States mail, postage prepaid. All Notices that are hand delivered will be deemed to be given upon delivery. All Notices that are given by e-mail transmission will be deemed to be given upon receipt, it being agreed that the burden of proving receipt will be on the sender of such Notice.

9.5 Waiver of Default. No consent or waiver, express or implied, by the Company or a Member with respect to any breach or default by another Member hereunder will be deemed or construed to be a consent or waiver with respect to any other breach or default by such Member of the same provision or any other provision of this Agreement. Failure on the part of the Company or a Member to complain of any act or failure to act of another Member or to declare such other Member in default will not be deemed or constitute a waiver by the Company or the Member of any rights hereunder.

9.6 No Third Party Rights. None of the provisions contained in this Agreement will be for the benefit of or enforceable by any third parties, including, but not limited to, creditors of

the Company; provided, however, the Company may enforce any rights granted to the Company under the Act, the Articles, or this Agreement.

9.7 Entire Agreement. This Agreement, together with the Articles, constitutes the entire agreement between the Members, in such capacity, relative to the formation, operation and continuation of the Company.

9.8 Amendments to this Agreement. Except as otherwise provided herein, this Agreement will not be modified or amended in any manner other than by the written agreement of a Super-Majority in Interest at the time of such modification or amendment.

9.9 Severability. In the event any provision of this Agreement is held to be illegal, invalid, or unenforceable to any extent, the legality, validity, and enforceability of the remainder of this Agreement will not be affected thereby and will remain in full force and effect and will be enforced to the greatest extent permitted by law.

9.10 Binding Agreement. Subject to the restrictions on the disposition of Interests herein contained, the provisions of this Agreement will be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors, and permitted assigns.

9.11 Headings. The headings of the Sections of this Agreement are for convenience only and will not be considered in construing or interpreting any of the terms or provisions hereof.

9.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which, when taken together, will constitute one agreement that is binding upon all of the parties hereto, notwithstanding that all parties are not signatories to the same counterpart.

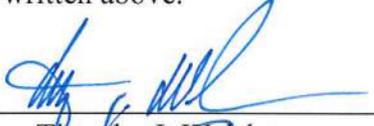
9.13 Governing Law; Forum Selection. This Agreement will be governed by, and construed in accordance with, the laws of the State of Colorado, without regard to rules regarding the conflict of laws that would cause any other jurisdiction's law to apply. Any dispute arising under, in connection with, related to, or associated with any matter that is the subject of this Agreement will be subject to, and must be enforced in, the exclusive jurisdiction of a state or federal court located in the City and County of Denver, Colorado having competent jurisdiction over such matter.

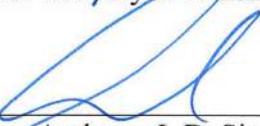
9.14 Remedies. In the event of a default by any party in the performance of any obligation undertaken in this Agreement, in addition to any other remedy available to the non-Contributing parties, the defaulting party will pay to each of the non-defaulting parties all costs, damages, and expenses, including reasonable attorneys' fees, incurred by the non-defaulting parties as a result of such default. In the event that any dispute arises with respect to the enforcement, interpretation, or application of this Agreement and court proceedings are instituted to resolve such dispute, the prevailing party in such court proceedings will be entitled to recover from the non-prevailing party all costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred by the prevailing party in such court proceedings.

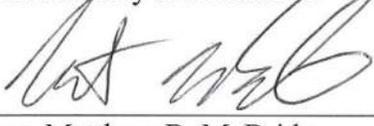
9.15 Legal Representation. The Members hereby acknowledge that this Agreement was prepared by the law firm of Husch Blackwell LLP on behalf of the Company. Each Member hereby acknowledges that:

- (a) A conflict of interest may exist between such Member's interests and those of the Company and the other Members;
- (b) Such Member has had the opportunity to seek the advice of independent legal counsel;
- (c) This Agreement has tax consequences; and
- (d) Such Member has had the opportunity to seek the advice of independent tax counsel.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

By:   
Name: Timothy J. Walsh

By:   
Name: Anthony J. DeSimone

By:   
Name: Matthew B. McBride

By:   
Name: Michael G. McBride

**SCHEDULE A**

<b><u>Name and Address of Member</u></b>	<b><u>Capital Contribution</u></b>	<b><u>Percentage Interest</u></b>
Timothy J. Walsh 71 S. Indiana St. Golden, CO 80401	\$30.00	30.00%
Anthony J. DeSimone 1171 Titanite Pl Castle Rock, CO 80108	\$30.00	30.00%
Matthew B. McBride 2525 S. Gilpin St. Denver, CO 80210	\$25.00	25.00%
Michael G. McBride 22411 E. Frost Pl. Aurora, CO 80016	\$15.00	15.00%



## **PROPOSED AMENDMENT SUMMARY**

### **INTENT**

C-RX-8 Zoning is proposed to allow for redevelopment of the entire city block (2.08 Acre Parcel) that sits at the corner of 41<sup>st</sup> and Inca Street in the Sunnyside Neighborhood. The 41<sup>st</sup> & Fox Station pedestrian bridge lands on the northeast portion of the block, making this an ideal location for a transit oriented development with residential, retail, & commercial space proposed. A mix of for sale and for rent residential product will be offered with a portion of that being workforce housing. The lower level along Inca Street will be reserved for Retail & Commercial use, activating the street edge along Inca and adjacent to the bridge entrance. The intended use of the site matches C-RX-8 neighborhood context descriptions and intent found in The Denver Zoning Code. The proposed zoning also aligns with adopted plans as defined in the following Review Criteria. Most notably, this area of Denver has been identified as an area of change by Blueprint Denver and the proposed C-RX-8 zoning at this location is in line with the recommendations of the 41<sup>st</sup> & Fox Station Area Plan, which describes this area as Urban Residential 2-8 Stories.



## EXHIBIT A | REVIEW CRITERIA : DESCRIPTION OF CONSISTENCY WITH ADOPTED PLANS

### REVIEW CRITERIA

The proposed map amendment is consistent with the following adopted plans:

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

### DENVER COMPREHENSIVE PLAN (2000)

The Fox Station Area Plan is supplemental to the Comprehensive Plan 2000 which coordinates its efforts with the near and long term goals, issues and recommendations for future development. The proposed zoning is consistent with many of the Comprehensive Plan objectives:

#### ENVIRONMENTAL SUSTAINABILITY | OBJECTIVE 2: STEWARDSHIP OF RESOURCES

- Ensure environmental stewardship of natural resources, taking into account the entire ecosystem, not just human needs. Preventing pollution will be the action of the first choice in accomplishing this objective.
  - **2-F:** Conserve land by: Promoting infill development within Denver at sites where services and infrastructure are already in place. Designing mixed-use communities and reducing sprawl, so that residents can live, work and play within their own neighborhoods. Creating more density at transit nodes.

#### LAND USE | OBJECTIVE 1: CITYWIDE LAND USE AND TRANSPORTATION PLAN

- Balance and coordinate Denver's Mix of land uses to sustain a healthy economy; support the use of alternative transportation and enhance the quality of life in the city.
  - **1-B:** Ensure that the Citywide Land Use and Transportation Plan reinforces the city's character by building on a legacy of high-quality urban design and stable, attractive neighborhoods; encouraging preservation of historic buildings, districts and landscapes; and maintaining the integrity of the street grid, parks, parkways and open space system.
  - **1-H:** Encourage development of housing that meets the increasingly diverse needs of Denver's present and future residents in the *Citywide Land Use and Transportation Plan*

#### LAND USE | OBJECTIVE 3: RESIDENTIAL NEIGHBORHOODS AND BUSINESS CENTERS

- Preserve and enhance the individuality, diversity and livability of Denver's neighborhoods and expand the vitality of Denver's business centers.
  - **3-B:** Encourage quality infill development that is consistent with the character of the surrounding neighborhood; that offers opportunities for increased density and more amenities; and that broadens the variety of compatible uses.
  - **3-D:** Identify and enhance existing focal points in neighborhoods, and encourage the development of such focal points where none exist.

#### LAND USE | OBJECTIVE 4: LAND USE AND TRANSPORTATION

- Ensure that Denver's Citywide Land Use and Transportation Plan and regulatory system support the development of a clean efficient and innovative
  - **4-A:** Encourage mixed-use, transit-oriented development that makes effective use of existing transportation infrastructure, supports transit stations, increases transit patronage, reduces impact on the environment, and encourages vibrant urban centers and neighborhoods.
  - **4-B:** Ensure that land-use policies and decisions support a variety of mobility choices, including light rail, buses, paratransit, walking and bicycling, as well as convenient access for people with disabilities.

#### LAND USE | OBJECTIVE 5: METROPOLITAN LAND-USE PLANNING



- Pursue regional approaches to land-use planning and policy development with Denver's metropolitan neighbors
  - **5-B:** Considers formulating and implementing a cooperative regional approach to revenue-sharing and cost-sharing for significant regional issues such as affordable housing, open space and public transportation. Evaluate use of incentives for development or expansion of major centers of jobs, transportation, retail and housing.

**MOBILITY | OBJECTIVE 3: ACCOMMODATING NEW DEVELOPMENT**

- In Urban centers and new development areas, plan, design and invest in transportation infrastructure systems that support the principal uses within the area, provide well integrated connections to urban centers and other destinations, and address the mobility needs of frequent users.
  - **3-B:** Promote transit-oriented development (TOD) as an urban design framework for urban centers and development areas. Development at transit stations should provide both higher ridership to the transit system and viability and walkability in the area.



## BLUEPRINT DENVER: A LAND USE TRANSPORTATION PLAN (2002) | CITYWIDE PLAN

Several key elements of Plan 2000 provided the framework for Blueprint Denver.

- Goals of Blueprint Denver will direct growth to *Areas of Change* and manage and limit change in *Areas of Stability*. *Areas of Change* are planning to benefit from and thrive on an infusion of population, economic activity and investment (pg. 5). This zone map amendment is in 1 of the 26 *Areas of Change*. In this specific case this is an area where land use and transportation are closely linked.
  - One of the reasons why these Areas of Change have not developed already is that they are incorrectly zoned for future development. (pg.23)
- **URBAN RESIDENTIAL**
  - These neighborhoods are higher density and primarily residential but may include a noteworthy number of complementary commercial uses. New housing tends to be in mid- to high-rise structures, and there is a greater housing base than employment base. A mixture of housing types is present, including historic single-family houses, townhouses, small multi-family apartments and sometimes high-rise residential structures.(pg. 41-42)
    - 0.75 FAR to 4.0 + FAR / Above 20, sometimes more than 100 D.U.A. (Dwelling Units per Acre)
- **TRANSIT-ORIENTED DEVELOPMENT (TOD)**
  - Creating links between land use and transportation are critical elements. These development sites are located at stations or stops along bus or rail lines within a mass transit network. TODs offer an alternative to traditional development patterns by providing housing, services, and employment opportunities for a diverse population in a configuration that facilitates pedestrian and transit access. (pg. 44)
    - High degree of connectivity between station area and surrounding neighborhoods.
    - Attractive, multi-story buildings facing the station and adjacent streets
    - 0.5 FAR to 4.0 FAR / Between 12 and 100 D.U.A. (Dwelling Units per Acre)





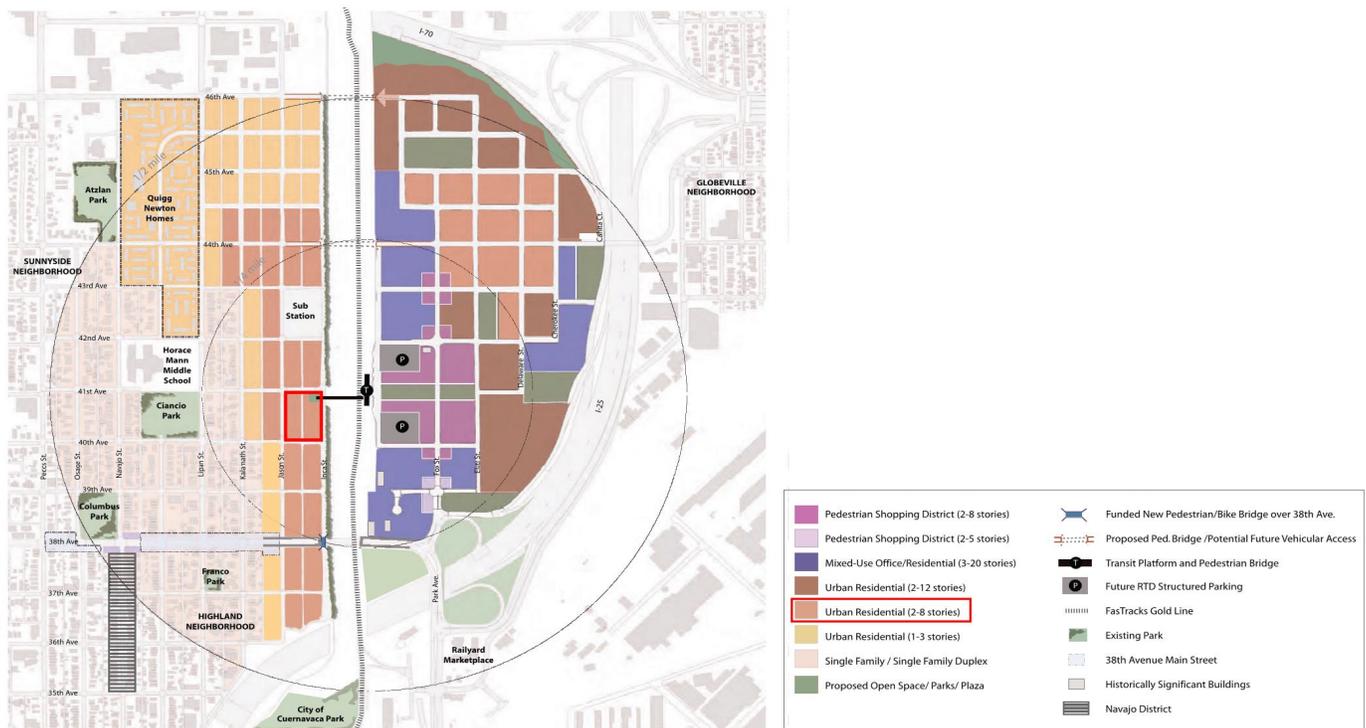
## 41ST & FOX STATION AREA PLAN (2009) | AREA PLAN

The Fox Station Area Plan is supplemental to the Comprehensive Plan 2000 which coordinates its efforts with the near and long term goals, issues and recommendations for future development.

- THE VISION
  - Improve pedestrian connections to the station, between neighborhoods, and along major corridors
  - Create opportunities to add more housing, jobs and services to the station area
  - Incorporate plazas, parks and open space into redevelopment areas
  - Capitalize on the station area's proximity to Downtown and location on the Gold Line and Northwest Rail corridors
  - Balance the needs of new development and existing uses
- URBAN RESIDENTIAL (2-8 stories)
  - Urban residential is found in two parts of the station area: north of the existing Regency Student Housing and along the west side of the tracks along Inca Street near the station.
- The Fox Station Area Plan identified this city block as having a future use of Urban Residential (2-8 stories) vs. the currently zoned Industrial / Use Overlay: I-A, UO-2. The proposed zoning change aligns with the vision of the Fox Station Area Plan by "Improving pedestrian connections to the station, between neighborhoods, and along major corridors" and "Creates opportunities to add more housing, jobs and services to the station area" by a mix of commercial and residential uses.

41st and Fox Station Area Plan – Plan Concept

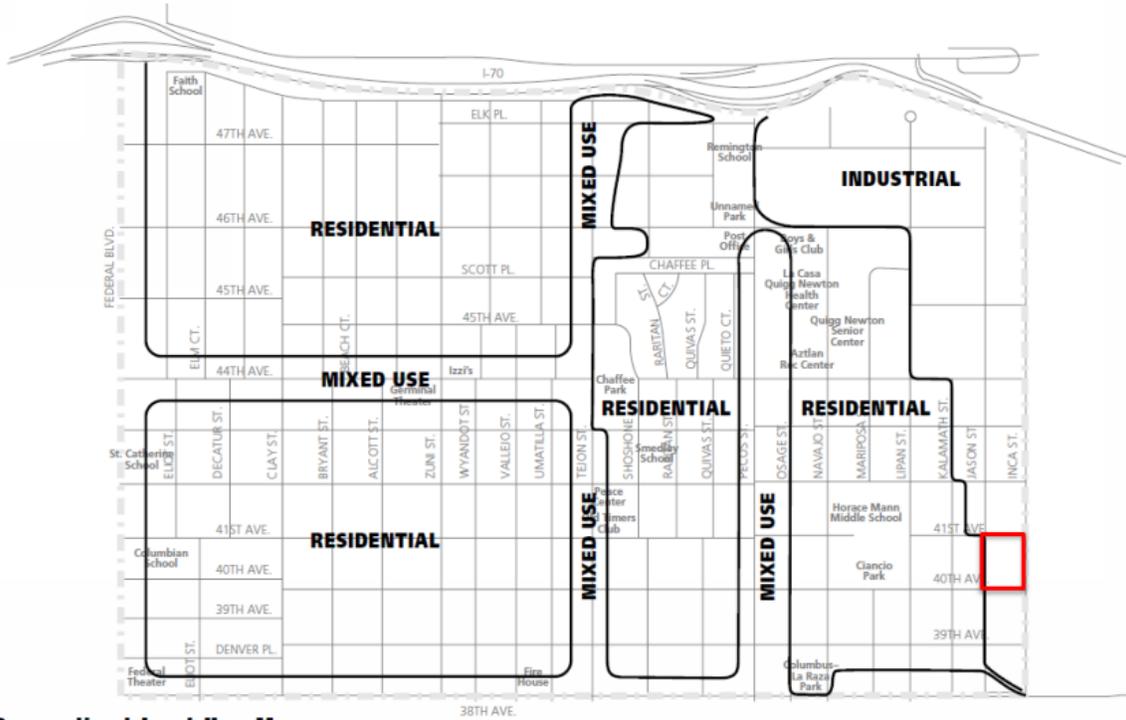
### Land Use Plan





### SUNNYSIDE NEIGHBORHOOD PLAN (1992) | NEIGHBORHOOD PLAN

As shown on the land use map below, the site lies within the Industrial portion of the Sunnyside Neighborhood Plan from 1992. However, the 41<sup>st</sup> & Fox Station Area plan gives more up to date recommendations for this area, taking into account new changes brought on by the commuter rail station, pedestrian bridge, and mixed-use walking & bike path connection to downtown.



**Generalized Land Use Map**



**SECTION B | UNIFORMITY of DISTRICT REGULATIONS & RESTRICTIONS**

The proposed rezoning from I-A, UO-2 to C-RX-8 will result in the uniform application of zone district building for, use, and design regulations.

We have communicated with the Sunnyside United Neighbors Inc. as well as with Rafael Espinosa, City Council Member District #1, about the zoning change.

**SECTION C | PUBLIC HEALTH, SAFETY and GENERAL WELFARE**

The proposed official map amendment promotes the public health, safety, and general welfare of the City of Denver through implementation of the City's adopted land use plans.



## EXHIBIT B | ADDITIONAL REVIEW CRITERIA

### SECTION A | DESCRIPTION OF JUSTIFYING CIRCUMSTANCES

**The land or its surroundings has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or to recognize the changed character of the area.**

The proposed C-RX-8 zoning is proposed due to changing conditions in the Sunnyside neighborhood and the areas near the 41<sup>st</sup> and Fox Station. The first change to be noted is the newly introduced 41<sup>st</sup> & Fox commuter rail station and the connecting bridge, bringing with it rail connections to downtown, the airport, and surrounding communities. The connection to this station activates the edge along Inca street, creating an area ideal for residential, retail, and commercial use, opposed to the current Industrial zoning. Second, Sunnyside's recent growth due to it's adjacency to the downtown and connections via the recently completed multi-use bike and walking path on Inca Street which connects to a bridge over 38<sup>th</sup> Avenue and to the downtown. These changes make this a desirable place for residential growth, and encourage higher density and mixed use development. It should also be noted that areas adjacent to the site and across the tracks near the 41<sup>st</sup> & Fox station have pursued rezoning for similar circumstances, further reinforcing that the area is changing and it is in public interest to encourage redevelopment in this area.

### SECTION B | NEIGHBORHOOD CONTEXT

**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 proposed zone district is within the Urban Center Neighborhood context, which per the Denver Zoning Code 7.1.1, consists of multi-unit residential and mixed-use commercial strips and commercial centers. The general purpose (Denver Zoning Code 7.2.3.1) of the Residential Mixed Use zone district (in this case C-RX-8) is intended to promote safe, active, and pedestrian scaled diverse areas through the use of building forms that clearly define and activate the public realm. The Denver Zoning Code further describes the specific intent of the proposed C-RX-8 in 7.2.3.2 stating that it applies to residentially-dominated areas served primarily by collector or arterial streets where building scale of 2-8 stories is desired.

The proposed zoning is consistent with the described neighborhood context, and stated purpose and intent of the Zone District, as the zoning is intended to provide for residential mixed use development with 8 stories. The proposed C-RX-8 zoning shares a block with the pedestrian bridge to the 41<sup>st</sup> and Fox station, creating commuter rail access, and aligns with recommended zoning within Blueprint Denver and the 41<sup>st</sup> and Fox Station area plan.