

## 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>	
<p>Please attach Proof of Ownership acceptable to the Manager for each property owner signing the application, such as (a) Assessor's Record, (b) Warranty deed or deed of trust, or (c) Title policy or commitment dated no earlier than 60 days prior to application date.</p> <p>If the owner is a corporate entity, proof of authorization for an individual to sign on behalf of the organization is required. This can include board resolutions authorizing the signer, bylaws, a Statement of Authority, or other legal documents as approved by the City Attorney's Office.</p>			
SUBJECT PROPERTY INFORMATION			
Location (address and/or boundary description):			
Assessor's Parcel Numbers:			
Area in Acres or Square Feet:			
Current Zone District(s):			
PROPOSAL			
Proposed Zone District:			

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. 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 Rezonings: 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"/> Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such change may include:</p> <p style="margin-left: 20px;">a. Changed or changing conditions in a particular area, or in the city generally; or</p> <p style="margin-left: 20px;">b. A City adopted plan; or</p> <p style="margin-left: 20px;">c. That the City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning.</p> <p><input type="checkbox"/> It is in the public interest to encourage a departure from the existing zoning through application of supplemental zoning regulations that are consistent with the intent and purpose of, and meet the specific criteria stated in, Article 9, Division 9.4 (Overlay Zone Districts), of this Code. Please provide an attachment describing the justifying circumstance.</p> <p><input type="checkbox"/> The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District. Please provide an attachment describing how the above criterion is met.</p>
REQUIRED ATTACHMENTS	
Please ensure the following required attachments are submitted with this application:	
<p><input type="checkbox"/> Legal Description (required to be attached in Microsoft Word document format)</p> <p><input type="checkbox"/> Proof of Ownership Document(s)</p> <p><input type="checkbox"/> Review Criteria, as identified above</p>	
ADDITIONAL ATTACHMENTS	
Please identify any additional attachments provided with this application:	
<p><input type="checkbox"/> Written Authorization to Represent Property Owner(s)</p> <p><input type="checkbox"/> Individual Authorization to Sign on Behalf of a Corporate Entity</p>	
Please list any additional attachments:	



# REZONING GUIDE

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

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

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

## Legal Description

Lots 16 to 40 inclusive and the South 5 feet of Lot 15, and the vacated alley adjacent to Lots 16 to 33 and the South 5 feet of Lots 15 and 34, Block 6, Rosedale, City and County of Denver, State of Colorado.

The Real Property or its address is commonly known as 235 West Evans Avenue, Denver, CO 80223.

Assessor's schedule or parcel number: 0527206010000

# Denver Property Taxation and Assessment System

[← New Search](#)

235 W EVANS AVE

Owner	Schedule Number	Legal Description	Property Type	Tax District
235 W EVANS LLC 2372 S HUMBOLDT ST DENVER , CO 80210-5113	05272-06-010-000	L 16 TO 40 INC & S 5FT OF L 15& VAC ALLEY ADJ L 16 TO 33 & ADJ S 5FT OF L 15 & ADJ S 5FT OF L 34 BLK 6 ROSEDALE	INDUSTRIAL - WAREHOUSE	DENV

- Summary
- Property Map
- Assessed Values
- Assessment Protest
- Taxes
- Comparables
- Neighborhood Sales
- Chain of Title

**OPERATING AGREEMENT**  
**OF**  
**235 W EVANS LLC,**  
**A COLORADO LIMITED LIABILITY COMPANY**

**Effective Date March 2, 2020**

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**OPERATING AGREEMENT  
OF  
235 W EVANS LLC**

This Operating Agreement of 235 W Evans LLC, a limited liability company organized pursuant to the laws of the State of Colorado, is entered into and shall be effective as of the Effective Date (as defined below), by and among the Company (as defined below) and each Person (as defined below) executing this Operating Agreement (as defined below) as a Member (as defined below) and the Manager (as defined below). Unless defined elsewhere, capitalized terms used in this Operating Agreement shall have the meaning set forth in Article I below.

**ARTICLE I**

**DEFINITIONS**

For purposes of this Operating Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1.1 Act. The Colorado Limited Liability Company Act and all amendments to the Act.

1.2 Additional Member. A Member other than an initial Member or a Substitute Member (as defined below) who has acquired a Membership Interest from the Company.

1.3 Admission Agreement. The agreement between an Additional Member and the Company described in Article XIII.

1.4 Articles. The Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Secretary of State's Office for the State of Colorado.

1.5 Assignee. A transferee of a Membership Interest who has not been admitted as a Substitute Member.

1.6 Bankrupt Member. A Member who: (i) has become the subject of an order for relief under the United States Bankruptcy Code, or (ii) has initiated, either in an original proceeding or by way of answer in any state insolvency or receivership proceeding, an action for liquidation arrangement, composition, readjustment, dissolution, or similar relief.

1.7 Business Day. Any day other than Saturday, Sunday or any legal holiday observed by the State of Colorado.

1.8 Capital Account. The capital account maintained for a Member or Assignee determined in accordance with Article VIII.

1.9 Capital Account Member(s). All Members of the Company for whom a Capital Account is maintained.

1.10 Capital Contribution. Any contribution of property, services or Money (as defined below), or the obligation to contribute property, services or Money, made by or on behalf of a Member or Assignee, which shall be shown on **Exhibit A** attached hereto, as the same may be adjusted from time to time and as the same may be amended pursuant to Article VIII of this Operating Agreement.

1.11 Capital Interest. With respect to each Member the Capital Interest Percentage (as defined below) shown on **Exhibit A** attached hereto, as the same may be adjusted from time to time.

1.12 Capital Interest Percentage. Means with respect to each Capital Account Member, a fraction (expressed as a percentage), the numerator of which is (i) the number of Capital Interests held by such Member, and the denominator of which is (ii) the total number of Capital Interests held by all Members. The initial Capital Interest Percentage for each Capital Interest Member is shown on **Exhibit A** attached hereto, as the same may be adjusted from time to time and as the same may be amended pursuant to the dilution provisions of Section 8.4.

1.13 Code. The Internal Revenue Code of 1986, as amended from time to time.

1.14 Commitment. The Capital Contribution that a Member or Assignee is obligated to make, together with any additional Capital Contribution requested by the Manager in accordance with Article VIII below.

1.15 Company. 235 W Evans LLC, a limited liability company formed under the laws of the State of Colorado and any successor limited liability company.

1.16 Company Liability. Any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

1.17 Company Minimum Gain. An amount determined by first computing for each Company Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument; only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding Taxable Year with the Company Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with §704 of the Code and the regulations issued thereunder, as the same may be issued and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any Taxable Year shall equal (i) the sum of nonrecourse deductions allocated to that Member (and to that Member's predecessors in interest) up to that time and the distributions made to that Member (and to that Member's predecessors in interest) up to that time, of proceeds of a nonrecourse liability allocable to

an increase in Company Minimum Gain minus (ii) the sum of that Member's (and that Member's predecessors' in interest) aggregate share of the net decreases in Company Minimum Gain plus their aggregate share of decreases resulting from revaluations of any Company Property subject to one or more Company Nonrecourse Liabilities.

1.18 Company Nonrecourse Liability. A Company Liability to the extent that no Member or Related Person bears the economic risk of loss (as defined in §1.752-2 of the Regulations) with respect to the liability.

1.19 Company Property. Any property owned by the Company, directly or indirectly, including, without limitation, 235 West Evans Avenue, Denver, Colorado 80223, identified on **Exhibit B** attached hereto.

1.20 Contributing Members. Those Members making contributions as a result of the failure of a Delinquent Member (as defined below) to make the contributions required by the Commitment described in Article VIII.

1.21 Davis Related Entities. An entity or entities that Andrew Davis controls, is controlled by or under common control with. For purposes hereof, the possession, directly or indirectly through individuals or various entities, of the power to generally decide the management and policies of an entity, whether through voting, appointment as manager, contract or otherwise, shall be deemed to be control or management.

1.22 Default Interest Rate. The higher of (i) 18% per annum or (ii) the then-current prime rate quoted by Wells Fargo Bank, National Association (or its successor) plus three percent.

1.23 Delinquent Member. A Member or Assignee who has failed to meet the Commitment of that Member or Assignee to make an additional Capital Contribution required hereunder. For the avoidance of doubt, only Members who have made a Capital Contribution are subject to Additional Contributions addressed in Section 8.2 herein and the dilution provisions addressed in Section 8.4 herein.

1.24 Disposition. Any sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation, or other transfer, absolute or as security (including dispositions by operation of law).

1.25 Dissociation or Disassociated. Any action that causes a Member to cease to be a Member as described in Article XII hereof.

1.26 Dissolution Event. An event, the occurrence of which will result in the dissolution of the Company under Article XIV, unless the Members agree to the contrary.

1.27 Distribution. A transfer of property to a Member on account of a Membership Interest as described in Article IX.

1.28 Distribution Interest Percentage. With respect to each Member, a fraction (expressed as a percentage), the numerator of which is (i) the sum total of the Capital

Contribution held by such Member, and the denominator of which is (ii) the sum total of all Capital Contributions held by all Members. The initial Distribution Interest Percentage for each Member is shown on **Exhibit A** attached hereto, as the same may be adjusted from time to time.

1.29 Downing Street Investments. Downing Street Investment, LLC, a Colorado limited liability company.

1.30 Effective Date. March 2, 2020.

1.31 Profits Interests. The amount that any Member granted a Profits Interest may potentially receive from distributions under Section 9.3, as applicable. The Profits Interests created hereunder are provided to the Members owning such Profits Interests in exchange for the provision of services by such Members to or for the benefit of the Company. The Profits Interests have been intentionally designed and structured to comply with Revenue Procedure 93-27 and Revenue Procedure 2001-43 and qualify as a profits interest (not a capital interest) for federal and state income tax purposes so that no owner of a Profits Interest shall be treated as realizing income for such purposes upon the issuance of such Profits Interest to such owner, and so that neither the Company nor any Member shall be entitled to any deduction (either immediately or through depreciation, cost recovery or amortization) by reason of such issuance. In addition, solely for purposes of complying with Revenue Procedure 93-27 and Revenue Procedure 2001-43, the parties acknowledge that if the Company were liquidated immediately after the issuance to any Member of a Profits Interest, such Member would not be entitled to receive any distribution with respect to his interest in the Company. The parties further acknowledge that the IRS has issued Notice 2005-43 which, upon finalization by the IRS, will cause the issuance of a New RP that will supersede and render obsolete Revenue Procedures 93-27 and 2001-43. Upon issuance of the New RP, the parties agree to cooperate in amending this Operating Agreement to comply with the New RP and to take whatever steps are necessary to cause Profits Interests to comply with the New RP, provided such amendment will not affect amounts distributed to the Members, and to provide Members and the Company with substantially the same rights as were intended by Revenue Procedures 93-27 and 2001-43. The initial Members owning a Profits Interest are identified on **Exhibit A** attached hereto, as the same may be adjusted from time to time in accordance with this Operating Agreement.

1.32 Profits Interest Member. Any Member awarded a Profits Interest in the Company. Profits Interest Members shall not be Voting Members and shall not share in any Distributions pursuant to Section 9.2.

1.33 Profits Interest Percentage. With respect to each Member granted a Profits Interest, a specified percentage share of the Company's proceeds under Section 9.3 held by those Persons and in such amounts identified on **Exhibit A** attached hereto.

1.34 Immediate Family. A Member's Immediate Family includes the Member's spouse (including ex-spouses), children (including natural, adopted and stepchildren), grandchildren and parents.



1.35 Majority. The affirmative vote or consent, either in writing or at a meeting of the Voting Members (as defined below), of more than 50% of the respective Voting Percentages (as defined below) of the Members eligible to vote on any particular matter.

1.36 Manager. Any Person or Persons selected to manage the affairs of the Company under Article VII hereof. The initial Manager is Andrew Davis.

1.37 Member. An initial Member, Substitute Member or Additional Member identified on **Exhibit A** attached hereto and made a part hereof by this reference who have executed this Operating Agreement, but excluding any Assignee and any Dissociated Member.

1.38 Member Minimum Gain. An amount determined by first computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding Taxable Year with the Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Member Minimum Gain and increases and decreases in Member Minimum Gain are intended to be computed in accordance with §704 of the Code and Regulations issued thereunder, as the same may be issued and interpreted from time to time.

1.39 Member Nonrecourse Debt Minimum Gain. Means the term “Member Nonrecourse Debt Minimum Gain” in Treasury Regulation §1.704-2(i)(2) and shall be determined in the manner set forth in Treasury Regulation §1.704-2(i)(3).

1.40 Member Nonrecourse Liability. Any Company Liability to the extent the liability is nonrecourse under state law, and on which a Member or Related Person bears the economic risk of loss under §1.752-2 of the Code because, for example, the Member or Related Person is the creditor or a guarantor.

1.41 Membership Interest. The rights of a Member or, in the case of an Assignee, the rights of the assigning Member in Distributions (liquidating or otherwise) and allocations of the profits, losses, gains, deductions, and credits of the Company. Capital Interests and Profits Interests are Membership Interests.

1.42 Money. Cash or other legal tender of the United States, or any obligation that is immediately reducible to legal tender without delay or discount. Money shall be considered to have a fair market value equal to its face amount.

1.43 Net Losses. The losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in

the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.44 Net Profits. 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 adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.45 Nonrecourse Liabilities. Nonrecourse liabilities include Company Nonrecourse Liabilities and Member Nonrecourse Liabilities.

1.46 Notice. Notice shall be in writing. Notice to the Company shall be considered given when mailed by first class mail postage prepaid addressed to any Manager in care of the Company at the address of the Company's Principal Office. Notice to a Member shall be considered given when mailed by first class mail postage prepaid addressed to the Member at the address reflected in this Operating Agreement unless the Member has given the Company a Notice of a different address.

1.47 Offsettable Decrease. Any allocation that unexpectedly causes or increases a deficit in the Member's Capital Account as of the end of the taxable year to which the allocation relates attributable to depletion allowances under §1.704-1(b)(2)(iv)(k) of the Regulations, allocations of loss and deductions under §§704(e)(2) or §706 of the Code or under §1.751-1 of the Regulations, or Distributions that, as of the end of the year are reasonably expected to be made to the extent they exceed the offsetting increases to such Member's Capital Account that reasonably are expected to occur during or (prior to) the taxable years in which such Distributions are expected to be made (other than increases pursuant to a Minimum Gain Chargeback).

1.48 Operating Agreement. This Operating Agreement of 235 W Evans LLC, including all Admission Agreements and amendments adopted in accordance with this Operating Agreement.

1.49 Organization. A Person other than a natural person. Organization includes, without limitation, corporations (both profit and non-profit), partnerships (both limited and general), joint ventures, limited liability companies and unincorporated associations, but the term does not include joint tenancies and tenancies by the entirety.

1.50 Organization Expenses. Those expenses incurred in the organization of the Company including the costs of preparation of this Operating Agreement and the Articles.

1.51 Permitted Transferee. Any member or partner of the Member's Immediate Family, or an Organization controlled by such Member or by any member or partner of the Member's Immediate Family.

1.52 Person. An individual or Organization permitted to be a member of a limited liability company under the laws of the State of Colorado.

1.53 Proceeding. Any administrative, judicial, or other adversary proceeding, including, without limitation, litigation, arbitration, investigation, administrative adjudication, mediation, and appeal or review of any of the foregoing.

1.54 Regulations. Except where the context indicates otherwise, the permanent, temporary, proposed, or proposed and temporary regulations of the United States Department of the Treasury under the Code, as such regulations may be lawfully changed from time to time.

1.55 Related Person. A Person having a relationship to a Member that is described in §1.752-4(b) of the Regulations.

1.56 Substitute Member. An Assignee who has been admitted to all of the rights of membership pursuant to this Operating Agreement.

1.57 Taxable or Fiscal Year. The taxable year and fiscal year of the Company shall be the calendar year, as determined pursuant to §706 of the Code.

1.58 Taxing Jurisdiction. Any state, local, or foreign government that collects tax, interest or penalties, however designated, on any Member's share of the income or gain attributable to the Company.

1.59 Voting Member. Members who have made a Capital Contribution shall have all voting rights afforded Members under this Operating Agreement. Assignees are not entitled to Vote.

1.60 Voting Percentages. A specified percentage share of Voting Members' rights to vote on Company matters, held by those Voting Members and in such amounts identified opposite such Voting Members' names on Exhibit A.

## ARTICLE II

### FORMATION

2.1 Organization. The Members have organized the Company as a Colorado limited liability company pursuant to the provisions of the Act.

2.2 Agreement. For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members executing this Operating Agreement hereby agree to the terms and conditions of this Operating Agreement, as it may from time to time be amended. It is the express intention of the Members that this Operating Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of this Operating Agreement expressly incorporates federal income tax rules by reference to sections of the Code or the Regulations or is expressly prohibited or ineffective under the Act, this Operating Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. To the extent any provision of this Operating Agreement is prohibited or ineffective under the Act, this Operating Agreement

shall be considered amended to the smallest degree possible in order to make the agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any provision of this Operating Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

2.3 Name. The name of the Company is 235 W Evans LLC, and all business of the Company shall be conducted under that name or under any other name, but in any case, only to the extent permitted by applicable law.

2.4 Effective Date. This Operating Agreement shall become effective as of the Effective Date.

2.5 Term. The Company shall exist in perpetuity, unless sooner dissolved and its affairs wound up in accordance with the terms of this Operating Agreement and the Articles.

2.6 Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles as filed in the office of the Secretary of State for the State of Colorado. The Manager may, from time to time, change the registered agent or office through appropriate filings with the aSecretary of State for the State of Colorado. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Manager shall promptly designate a replacement registered agent or file a notice of change of address as the case may be. If the Manager shall fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement registered agent or file a notice of change of address, and shall be reimbursed for any such expense.

2.7 Principal Office. The principal office of the Company (the "Principal Office") shall be located at 2372 South Humboldt Street, Denver, Colorado 80210, or such other office designated by the Manager.

### **ARTICLE III**

#### **NATURE OF BUSINESS**

The Company shall engage in the business of acquiring, owning, operating, leasing, improving and selling the Company Property. Thereafter, the Company may engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this Article III. In the event that the Company elects to develop the Company Property, there will be a new offering and a new Operating Agreement (or an Amended and Restated Operating Agreement), which the Members may be entitled to participate in on a stepped up basis as set forth in Section 8.4 herein.

## ARTICLE IV

### ACCOUNTING AND RECORDS

4.1 Records to be Maintained. The Company shall maintain the following records at its Principal Office:

4.1.1 A current list of the full name and last known mailing address of each current and former Manager and Member;

4.1.2 A copy of the Articles and all amendments and restatements thereto, together with the executed copies of any powers of attorney pursuant to which any Articles, amendments or restatements have been executed;

4.1.3 Copies of the Company's federal, foreign, state and local income tax returns and reports, if any, for the three most recent years;

4.1.4 Copies of the current and prior Operating Agreement, if any, including all amendments thereto;

4.1.5 Any financial statements of the Company for the three most recent years;

4.1.6 A current statement of the Capital Contributions made by each Member specifying the amount of cash and the agreed value of other property received by the Company and the agreed value of services as a Capital Contribution that each Member has rendered to the Company;

4.1.7 A statement of the cash, property and services that each Member has agreed to contribute or render to the Company in the future, and of the principal balance outstanding under any promissory note payable in respect of a Capital Contribution, and of the amount of the Capital Contribution with which each such Member shall be credited upon receipt of such cash, property or services, or any part thereof, by the Company;

4.1.8 A statement of the times at which, or the events on the happening of which, any additional contributions to or withdrawals from capital to which the Members have agreed are to occur;

4.1.9 Documents or any other writings required to be made available to Members by the Articles or this Operating Agreement; and

4.1.10 All documentation required to be maintained by any lender to the Company.

## 4.2 Reports.

4.2.1 The Manager shall provide reports at least semi-annually to the Members. Such reports may, at the Manager's option, be in the form of the Company's annual federal tax return.

4.2.2 The Manager shall provide all Members with those information returns required by the Code and the laws of any applicable state in which Company files returns, not later than March 15th of each year.

4.3 Accounts. The Manager shall maintain a record of the Capital Account for each Member in accordance with Article VIII.

## **ARTICLE V**

### **NAMES AND ADDRESSES OF MEMBERS**

The names of the Members in the Company are as reflected on **Exhibit A** attached hereto and by this reference made a part hereof as if set forth fully therein. Each Member's current primary residence or principle place of business is set forth on each applicable Member's signature page, as the same may be updated and on file with the Company.

## **ARTICLE VI**

### **RIGHTS AND DUTIES OF MEMBERS**

6.1 Meetings of Voting Members. No annual meeting of the Voting Members shall be held, and all meetings of the Voting Members shall be special meetings. Special meetings of the Voting Members for any purpose or purposes may only be called by either the Manager or Voting Members owning a Majority of the Voting Percentages. Meetings of the Voting Members shall be held at the Principal Office of the Company or, at the Manager's discretion, at another location within the Denver, Colorado metropolitan area. Voting Members may participate in any meeting of the Voting Members. For purposes of establishing a quorum and taking action at the meeting, Voting Members participating pursuant to this provision shall be deemed present in person at the meeting. Such meetings shall be held at the place as set forth above, and on a date and time as shall be determined by the Manager. Voting Members are entitled to at least 10 days written notice of any meeting. The Members may participate in any meeting of the Members by means of conference telephone, electronic mail or similar method of communication whereby all Persons participating in the meeting can communicate with each other. Notice of any such meeting to be conducted by conference telephone or similar equipment shall be given by the Manager to the Members in the original written notice of any such meeting. Such participation in the meeting shall constitute presence in person at the meeting.

6.2 Proxies. At all meetings of Voting Members, a Voting Member may vote in person or by proxy executed in writing by the Member before or at the time of the meeting. No proxy shall be valid after 11 months from the date of its execution, unless otherwise

provided in the proxy. Notwithstanding the foregoing to the contrary, any proxy may be revoked if an instrument revoking it or a proxy bearing a later date is filed with the Manager.

6.3 Quorum, Adjourned Meeting. Voting Members owning a Majority of the Voting Percentages shall constitute a quorum for the transaction of business at any special meeting of the Voting Members. If a quorum is not present at a meeting, the Voting Members present and entitled to vote shall adjourn to such day as they shall agree upon by a vote of the majority in voting interest present and entitled to vote. Notice of any adjourned meeting need not be given if the date, time and place thereof are announced at the meeting at which the adjournment is taken. At adjourned meetings at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed. If a quorum is present, the Members may continue to transact business until adjournment notwithstanding the withdrawal of enough Voting Members to leave less than a quorum.

6.4 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Voting Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by the required number of Voting Members entitled to vote on such matter, as set forth elsewhere herein and delivered to the Manager for inclusion in the minutes or for filing with the Company records. Action taken under this Section 6.4 is effective when the requisite number of Voting Members have signed the consent, unless the consent specifies a different effective date. The record date for determining Voting Members entitled to take action without a meeting shall be the date the first Voting Member signs a written consent.

6.5 Voting Rights. All Voting Members who have not Dissociated shall be entitled to vote on any matter submitted by the Manager to a vote of the Voting Members.

6.6 Majority. Unless otherwise specified in this Operating Agreement, whenever any matter is required or allowed to be approved by a Majority of the Voting Percentages under the Act or this Operating Agreement, such matter shall be considered approved or consented to upon the receipt of the affirmative vote or consent, either in writing or at a meeting of the Voting Members, of a Majority of the Voting Percentages. In the case of a Voting Member who has disposed of that Voting Member's entire Membership Interest to an Assignee, but has not been removed as provided below, the Voting Percentage of such Voting Member shall not be considered in determining a Majority of the Voting Percentages.

6.7 Waiver of Notice. Notice of any special meeting may be waived either before, at or after such meeting in writing signed by the Member entitled to the notice. Attendance by a Member at a meeting shall constitute a waiver of notice of such meeting, unless the Member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

6.8 Liability of Members. No Member shall be liable as such for the liabilities of the Company to third parties. The failure of the Company to observe any formalities or

requirements relating to it being a limited liability company or the exercise of its powers or management of its business or affairs under this Operating Agreement or the Act shall not be grounds for imposing personal liability on the Members or Manager for liabilities of the Company to third parties. When, however, a Member has received the return, in whole or in part, of his/her/its Capital Contribution at a time when the Company's liabilities exceeded its assets (after giving effect to the Distribution), the Member shall remain liable to the Company for a period of six years for any such sum paid to the Member.

6.9 No Authority to Bind the Company. Except to the extent authorized by Section 7.4 herein, no Member shall take any action, as an individual Member to bind the Company, and shall indemnify the Company for any costs or damages incurred by the Company as a result of the unauthorized action of such Member.

6.10 Representations and Warranties. Each Member, and in the case of an Organization as a Member, the person(s) executing this Operating Agreement on behalf of said Organization, hereby represents and warrants to the Company and to each other Member that: (i) if that Member is an Organization, that it is duly organized, validly existing, and in good standing under the laws of its state of organization and that it has full organizational power to execute and agree to this Operating Agreement and to perform its obligations hereunder; (ii) that the Member is acquiring its interest in the Company for the Member's own account as an investment and without an intent to distribute the interest; (iii) the Member acknowledges that the interests in the Company have not been registered under the Securities Act of 1933 or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements; (iv) the Member has been fully informed of the risks inherent in any investment, and has had full opportunity to review any and all information related to the Company, the Company's proposed investment in real property and the proposed management and operation of said real property and (v) such Member and all of said Member's beneficial owners are in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury and in any enabling legislation or other Executive Orders in respect thereof. The Members acknowledge that there are no guaranties of a return of said Member's Capital Contribution, nor have there been any representations or warranties made to said Member by any party, of an anticipated rate of return on said Member's investment.

Each Member, and in the case of an Organization as a Member, further represents that the person(s) executing this Operating Agreement on behalf of said Organization, hereby represents and warrants to the Company and to each other Member that no such Member (and no such Member's beneficial owners) (a) are identified on the OFAC lists or the suspended counterparty list maintained by Federal Housing Finance Agency, or (b) have been convicted of a violation of, or subject to a final enforcement action related to, any federal anti-money laundering laws or regulations including 18 U.S.C. §§ 1956 and 1957, as amended, or the foreign assets control regulations, 31 C.F.R. Chapter V, as amended, and any amending federal legislation or executive order relating thereto, as administered by OFAC, and (c) in case of an Organization as a Member, will institute policies and procedures to prevent the admission of any investor in Member (or such



Member's beneficial owners) that is in violation of the foregoing or of any criminal or civil law or regulation intended to prevent money laundering or the funding of terrorist or illegal drug trafficking activities.

6.11 Profits Interest Representations. The Company discloses to each Member holding a Profits Interest, and such parties acknowledge, that a Profits Interest, as applicable, does not relate to a substantially certain and predictable stream of income from the Company's assets, such as income from high-quality debt securities or a high-quality net lease. The Company is not a publicly traded partnership within the meaning of Code §7704(b).

6.12 Conflicts of Interest.

6.12.1 A Member shall be entitled to enter into transactions that may be considered to be competitive with, or beneficial to, the Company, including the development of other properties located within Colorado or elsewhere. Notwithstanding the foregoing, Members shall account to the Company and hold as trustee for it, any property, profit, or benefit derived by the Member, without the consent of a Majority of the Voting Percentages, from a use or appropriation by the Member of Company property or assets, including information developed exclusively for the Company and opportunities expressly offered to the Company.

6.12.2 A Member does not violate a duty or obligation to the Company merely because of conduct that furthers the Member's own interest. A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a person who is not a Member, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if either (i) the transaction is fair to the Company or (ii) a Majority of the Voting Percentages held by the disinterested Members, knowing the material facts of the transaction and the Member's interest, authorize, approve, or ratify the transaction.

6.12.3 Each Member waives any conflict or interest of the Manager due to the relationship (common ownership) between the Company or any of the Davis Related Entities.

6.13 Indemnity of Guarantor(s). A guarantor of any loan agreement encumbering the Company Property ("Guarantor") shall be indemnified by any Member, or Members, that knowingly and materially breaches any of the terms, conditions or covenants of any loan agreement encumbering the Company Property (each, a "Breaching Member") and as a result of such knowing and material breach by the Breaching Member an action, suit or proceeding is threatened, pending or filed by the lender concerning or relating to Guarantor's personal guaranty. The Breaching Member shall indemnify and hold harmless Guarantor against any judgments, expenses, including attorney's fees, and amounts paid in settlement, actually and reasonably incurred by Guarantor in connection with such action, suit or proceeding. To the extent Guarantor has been successful on the merits or otherwise in defense of any action, suit or proceeding concerning or relating to his/her/its personal

guaranty, the Breaching Member shall indemnify and hold harmless such Guarantor against the expenses, including attorney's fees, actually and reasonably incurred by Guarantor in connection therewith.

6.14 No Partition. Each Member hereby irrevocably waives any and all rights that he/she/it may have to maintain any action for partition of the Company Property.

## ARTICLE VII

### MANAGER

7.1 Management. The business and affairs of the Company shall be managed exclusively by its designated Manager.

7.2 Number and Qualifications of Manager(s). The initial number of Managers of the Company shall be one. Thereafter, such number may be increased or decreased from time to time by action of Members holding equal to or greater than 75% of all the Voting Percentages of the Members entitled to vote on said matter, except that no decrease shall have the effect of shortening the term of any incumbent Manager. The Manager may be any individual over the age of 18 years, or any other Person, and need not be a Member of the Company.

7.3 Term of Office as Manager. The initial Manager shall hold office until he/she/it resigns, is otherwise Disassociated from the Company, or is removed pursuant to Section 7.8 below.

7.4 Authority to Bind the Company. The Manager shall have the authority to bind the Company and to do all things necessary or convenient to carry out the business and affairs of the Company, only as set forth below:

#### 7.4.1 Actions of the Manager.

7.4.1.1 The Members hereby agree that the Manager shall have the authority to bind the Company to do all things necessary or convenient to conduct the Company's routine day-to-day operations.

7.4.1.2 The Manager is authorized, without further approval of the Members, to execute any and all documents that the Manager deems appropriate and necessary to allow the Company to acquire and finance the Company Property. Without limiting the foregoing, the Manager is authorized and without the further approval of any Member, to execute any and all documents (the "Loan Documents") that the Manager deems appropriate and necessary to allow the Company to obtain a loan in their favor from First National Bank, or one of its affiliated entities (together with their successors and/or assigns, "Lender"), in an aggregate amount not to exceed seventy percent (70%) of the fair market value of the Company Property as determined by Lender, also known as the "Loan", and on such additional terms satisfactory to the Manager, to effectuate the Company's purchase of the Company Property. None of the enforcement rights and remedies of the

Lender as provided in the Loan Documents shall be impaired, reduced, or limited by any of the provisions contained in this Operating Agreement.

7.4.1.5 [Reserved.]

7.4.1.6 The Manager shall also have the authority to do the following, without the approval of any Member:

(i) Institute, prosecute and defend any proceeding in the Company's name;

(ii) Purchase, lease or otherwise acquire or improve the Company Property, wherever located and to pay its pro rata share of any closing costs or other expenses related to any such purchase, lease or acquisition;

(iii) Determine in his/her/its reasonable judgment in what amounts of distributions (other than distributions from sale of the Company Property as specifically addressed in Section 9.3) shall be made to the Members;

(iv) Subject in all cases to Section 7.4.2 below, enter into any modification of any loan (including the Loan), or refinance any existing loan (including the Loan), or enter into any new loan on behalf of the Company on such terms and conditions acceptable to the Manager so long as the aggregate principal amount of such loans in the aggregate does not exceed seventy percent (70%) of the value of the Company Property as determined by any subsequent lender and either: (A) the funds from any such modification, refinance or new loan are allocated to, or used for, the maintenance, development, or operation of any Company Property or debt service; or (B) the funds are used to prevent the Company from having to indemnify any Guarantor pursuant to Section 6.13;

(v) Open and close bank accounts, enter into contracts, lease Property to third parties, and perform such other acts that further the business and affairs of the Company in the ordinary course of business;

(vi) Replace the Manager with any Davis Related Entity;

(vii) Seek additional Capital Contributions from the Members pursuant to Section 8.2 herein;

(viii) Retain or contract with vendors and contractors, for goods and services, including without limitation, services related to the operation, maintenance and marketing of the Company Property;

(ix) Make any decision related to the sale or development of the Company Property including, without limitation, any decision to: (a) relet or lease the Company Property to a new tenant; (b) sell the Company Property; (c) rezone or obtain new entitlements for the Company Property; or (d) raze the existing structures located on the Company Property to construct a new structure;

(x) Take such other action as identified throughout this Operating Agreement that specifically requires the consent of the Manager.

(xi) Execute one or more amendments to this Operating Agreement, without the consent of the Members, solely to: update information regarding the Company's ownership of the Company Property; amend or update **Exhibit A** following the transfer or assignment of any Membership Interest pursuant to this Operating Agreement; to correct any typographical error or clarify any term or provision of this Operating Agreement; and make any amendments as are necessary to comply with changes in the law (federal, state or local) or as required by the Lender.

7.4.2 Actions Requiring the Majority Vote of the Members. The Majority of the Voting Percentages shall be required to:

(i) Pay compensation to any Manager or Member on account of services rendered to the Company;

(ii) Admit a Substitute Member or an Additional Member unless otherwise permitted by Sections 11.1 and 11.2 below;

(iii) Continue the Company after a dissolution event; and

(iv) Take such other action as identified throughout this Operating Agreement, which specifically requires the approval of the Members.

7.5 Authorized Fees Related to the Company Property. The Manager is further authorized to pay the following fees for services provided for the benefit of the Company, without further approval of the Members:

7.5.1 Acquisition Fee. The Manager may, without the further approval of any Member, cause the Company to pay to any Davis Related Entities a one-time acquisition fee in the amount of \$150,000.

7.5.2 Guarantee Fee. The Manager may also, without the further approval of any Member, cause the Company to pay to the Guarantor of the Loan an annual fee equal to 50 basis points (0.50%) of the principal amount of the Loan.

7.5.3 Pre-Development Compensation. In the event that the Company elects either to develop the Company Property or sell the Company Property to a third party developer, the Manager shall be entitled to be compensated for its time and efforts in the monthly sum of \$8,000.00 for its pre-development efforts (e.g., working with a developer, rezoning and entitling the Company Property, etc.) for a period not to exceed 12 months.

7.6 Compensation of Manager. Except as set forth in Section 7.5 above, the Manager shall receive no compensation for its services managing the Company's affairs. This provision may be changed only by the consent of a Majority of the Voting Percentages.

## 7.7 Manager's Standard of Care.

7.7.1 A Manager shall exercise his/her/its business judgment in managing the business, operations and affairs of the Company. Unless fraud, deceit, gross negligence, willful misconduct or a wrongful taking by a Manager shall be proven by a nonappealable court order, judgment, decree or decision, a Manager shall not be liable or obligated to the Members for any mistake of fact or judgment or for the doing of any act or the failure to do any act by the Manager in conducting the business, operations and affairs of the company, which may cause or result in any loss or damage to the Company, its Manager or its Members. A Manager does not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. A Manager shall not be responsible to any Members because of a loss of their investments or a loss in operations, unless the loss shall have been the result of fraud, deceit, gross negligence, willful misconduct or a wrongful taking by a Manager proven as set forth in this Section 7.7.1. A Manager shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture.

7.7.2 In discharging his/her/its duties, a Manager shall be fully protected in relying in good faith upon the records required to be maintained under Article IV and upon such information, opinions, reports or statements by any of his/her/its other Managers, Members, or agents, or by any other person, as to matters the Manager believes in good faith are within such other person's professional or expert competence and who has been selected in good faith by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

7.7.3 Notwithstanding anything in the Act to the contrary, a Manager shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture. A Manager does not violate a duty or obligation to the Company or the Members merely because of conduct that furthers the Manager's own interest or may be considered to be competitive with the Company and a Manager may be involved in the development and management of other ventures including, but not limited to, multi-family housing, office buildings, and other developments within Colorado or elsewhere.

7.8 Removal of Manager. Any Manager may be removed, with or without cause, by vote of the Members holding aggregated Voting Percentages equal to or greater than 75% of the Voting Percentages of the Voting Members entitled to vote on said issue.

7.9 Vacancies. Any vacancy occurring in the position of a Manager may be filled by a Majority of the Voting Percentages.

7.10 Indemnity of the Manager. The Manager shall be indemnified by the Company under the following circumstances and in the manner and to the extent indicated:

7.10.1 In any threatened, pending or completed action, suit or proceeding to which a Manager was or is a party or is threatened to be made a party by reason of the fact that he/she/it is or was a Manager of the Company (other than an action by or in the right of the Company) involving an alleged cause of action for damages arising from the performance of his/her/its activities on behalf of the Company, the Company shall indemnify and hold harmless such Manager against expenses, including attorney's fees, judgments and amounts paid in settlement, actually and reasonably incurred by him/her/it in connection with such action, suit or proceeding if the Manager acted in good faith and in a manner he/she/it reasonably believed to be in or not opposed to the best interests of the Company, and provided that his/her/its conduct has not been found by a nonappealable court judgment, order, decree or decision to constitute fraud, deceit, gross negligence, willful misconduct, a wrongful taking or a breach of his/her/its obligations of good faith and fair dealing to the Members. The termination of any action, suit or proceeding by judgment, order, or settlement shall not, of itself, create a presumption that the Manager did not act in good faith and in a manner which he/she/it reasonably believed to be in or not opposed to the best interests of the Company.

7.10.2 To the extent the Manager has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.10.1 above, or in defense of any claim, issue or matter therein, the Company shall indemnify and hold harmless such Manager against the expenses, including attorney's fees, actually and reasonably incurred by him/her/it in connection therewith.

7.10.3 The indemnification set forth in this Section 7.10 shall in no event cause the Members to incur any liability beyond their total Capital Contributions plus their share of any undistributed profits of the Company, nor shall it result in any liability of the Members to any third party.

7.11 Reimbursement of Expenses. The Manager shall be reimbursed by the Company for all direct out-of-pocket expenses resulting from his/her/its activities hereunder including, but not limited to, all costs associated with the creation of the Company, earnest money for the acquisition of any Company Property and the due diligence investigation of the Company Property, including loan application fees, legal expenses and the like, immediately upon the Effective Date, after acquisition of the Company Property.

## ARTICLE VIII

### DISTRIBUTION INTEREST PERCENTAGE CONTRIBUTIONS AND CAPITAL ACCOUNTS

8.1 Initial Capital Contributions. Each initial Member who makes an initial Capital Contribution shall make, in cash, services or property, the Capital Contribution described for that Member on **Exhibit A** attached hereto at the time and on the terms specified on **Exhibit A** attached hereto and shall perform that Member's Commitment. If no time for the contribution is specified, the Capital Contributions shall be made promptly upon the Member's entering into this Operating Agreement. No interest shall accrue on any Capital Contribution and no Member shall have the right to withdraw or be repaid any Capital

Contribution except as provided in this Operating Agreement. Each Additional Member shall make the initial Capital Contribution described in each respective Admission Agreement. The value of the Additional Member's initial Capital Contribution and the time for making such contribution shall be set forth in the Admission Agreement.

8.2 Additional Contributions. In addition to the initial Capital Contributions and the Commitments, the Manager may, at his/her/its discretion, determine from time to time that additional contributions are needed to enable the Company to conduct its business. Upon making such a determination, the Manager shall give Notice to all Members who have made a Capital Contribution at least 10 Business Days prior to the date on which such additional Capital Contribution is due. Such Notice shall set forth the amount of additional Capital Contribution needed, the purpose for which the contribution is needed, and the date by which the Members should contribute. Each Member shall be obligated to contribute a proportionate share of such additional Capital Contribution equivalent to said Member's Distribution Interest Percentage as set forth on **Exhibit A** attached hereto, and as set forth in the Notice, and shall make the additional Capital Contribution, at the time and upon the terms as set forth in the Notice. For purposes of this Section 8.2 and Sections 8.3 and 8.4 below, the Members who have made a Capital Contribution shall be required to make such additional Capital Contribution based upon his/her/its Capital Interest Percentage.

8.3 Enforcement of Commitments. If a Member who is required to make an additional Capital Contribution fails to do so within 30 days after the same shall become due, the Member shall be considered to be a Delinquent Member. The Manager shall thereafter give written notice (the "Delinquency Notice") to all of the other Members of the Delinquent Member's unpaid additional Capital Contribution. The remaining Members shall have the option, exercisable by giving written notice to the Manager and the Delinquent Member within 30 days after the date of the Manager's Delinquency Notice, to pay the additional Capital Contribution required from, but unpaid by, the Delinquent Member. In the event more than one other Member opts to pay the Delinquent Member's unpaid additional Capital Contribution, the first Member to notify the Manager (the "Contributing Member") shall make such additional Capital Contribution on behalf of the Delinquent Member. The Contributing Member shall treat such advance as a loan to the Delinquent Member as set forth herein. The sum paid on behalf of the Delinquent Member shall be treated as a loan to the Delinquent Member bearing interest at the Default Interest Rate secured on a non-recourse basis by the Delinquent Member's Membership Interest. Until the Contributing Member is fully repaid, the Contributing Member shall be entitled to all Distributions to which the Delinquent Member would have been entitled, which said Distributions shall serve to diminish the amount of principal and interest owed to the Contributing Member. No further distribution of Money or other property shall be paid to a Delinquent Member (or his/her/its assignee or other successor) while such loan's principal and interest remains unpaid. The Delinquent Member shall have no personal obligation to repay such loan. Any amounts treated as a loan under this Section 8.3 will not result in the dilution of the Member's Capital Interest Percentage or the Distribution Interest Percentage of the Delinquent Member. When the Contributing Member has received all monies advanced on account of the Delinquent Member plus interest, then the Delinquent Member shall cease to be a Delinquent Member and shall have all rights enjoyed by that Member prior to the delinquency.

8.4 Step Up in Basis Regarding Development of the Company Property. In the event that the Company elects to develop the Company Property, the Company will endeavor to provide the Members an opportunity, but not an obligation, to participate in such development based upon the appreciation of the Company Property. For example, if the Company partners with a developer to raze the existing structures and construct a six story multi-family apartment complex on the Company Property, subject to the developer's approval, each Member will be offered the opportunity either to: (i) have their Membership Interest redeemed; or (ii) receive a step up in basis for his/her/its respective Capital Account as part of the development of the Company Property. In both instances, the redemption price or the step up in basis will be calculated based upon the then fair market value of the Company Property at the time the Company first elects to develop the Company Property as determined in a broker opinion of value from a licensed Colorado commercial real estate broker taking into consideration the requirements of the proposed development project.

8.5 Maintenance of Capital Accounts. The Company shall establish and maintain Capital Accounts for each Member and Assignee. Each Member's Capital Account shall be increased by (i) the amount of any Money actually contributed by the Member to the capital of the Company, (ii) the fair market value of any property contributed, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the Company takes such property, within the meaning of §752 of the Code), and (iii) the Member's share of Net Profits and of any separately allocated items of income or gain except adjustments of the Code (including any gain and income from unrealized income with respect to accounts receivable allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member). Each Member's Capital Account shall be decreased by (1) the amount of any Money distributed to the Member by the Company, (2) the fair market value of any property distributed to the Member (net of liabilities of the Company assumed by the Member or subject to which the Member takes such Property within the meaning of §752 of the Code), and (3) the Member's share of Net Losses and of any separately allocated items of deduction or loss (including any loss or deduction allocated to the Member to reflect the difference between the book value and tax basis of assets contributed by the Member). In addition to the foregoing, all Capital Accounts shall be maintained in accordance with applicable Regulations. No interest shall be paid by the Company on Capital Contributions or on the balances of its Capital Accounts. A Member shall not be entitled to withdraw any part of his/her/its Capital Account except as provided otherwise in this Operating Agreement. Except as required by the Act, no Member shall have any liability for the return of the Capital Contribution of any other Member.

8.6 Sale or Exchange of Interest. In the event of a sale or exchange of some or all of a Member's Membership Interest, the Capital Account of the transferring Member shall become the Capital Account of the Assignee, to the extent it relates to the portion of the Membership Interest transferred.

8.7 Compliance with Section 704(b) of the Code. The provisions of this Article VIII as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of profits, losses, income, gain and credit pursuant to Article IX to have economic effect equivalence under the



Regulations promulgated under §704(b) of the Code, in light of the distributions made pursuant to Article IX and Article XIV and the Capital Contributions made pursuant to this Article VIII; it being the intent that Section 9.3 controls the distribution to the Members in the event of a liquidation. Notwithstanding anything herein to the contrary, this Operating Agreement shall not be construed as creating a deficit restoration obligation.

## ARTICLE IX

### ALLOCATIONS AND DISTRIBUTIONS

9.1 Allocations of Net Profits and Net Losses. Except as may be required by this Operating Agreement, and the special allocations in Section 9.4 below, the Net Profits and Net Losses of the Company shall be allocated among the Members in a manner such that, after giving effect to the special allocations set forth in Section 9.4, the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the distributions that would be made to such Member pursuant to Sections 9.2 and 9.3, as applicable, if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their fair market value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the fair market value of the assets securing such liability), and the net assets of the Company were distributed in accordance with Sections 9.2 and, as applicable, to the Members immediately after making such allocation, minus (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets. Notwithstanding the foregoing, the Manager may make such allocations as he/she/it deems reasonably necessary to give economic effect to the provisions of this Operating Agreement taking into account such facts and circumstances as the Manager deems reasonably necessary for this purpose.

9.2 Distributions During Operations. At least semi-annually, the Manager shall determine in his/her/its reasonable judgment to what extent, if any, the Company's Money on hand from any source, including, but not limited to, any funds received from operations, refinancing any debt on the Company Property, or from any supplemental loans, exceeds the current and anticipated needs, including, without limitation, needs for operating expenses, debt service, acquisitions, reserves, and mandatory distributions, if any. To the extent such excess exists, the Manager shall distribute all of such excess funds to the Members, on a *pari passu* basis in accordance with their respective Distribution Interest Percentages set forth on **Exhibit A** attached hereto, as follows:

9.2.1 100% to the Members on a *pari passu* basis in accordance with their respective Distribution Interest Percentages set forth on **Exhibit A** attached hereto.

For purposes of this Section 9.2, the Members holding a Profits Interest are not entitled to receive any distributions under this Section 9.2 for their Profits Interests.

9.3 The Sale of Company Property. Proceeds realized by the Company from a sale of all or any portion of any portion of the Company Property, within 10 days after receipt of such proceeds (other than such proceeds necessary to retain on hand for the current

and anticipated needs of the Company, as determined by the Manager), shall be distributed as follows:

9.3.1. First, to the payment of costs and expenses associated with the sale of any portion of the Company Property, including, but not limited to, real estate commissions, title insurance fees, loan prepayment penalties, taxes and other costs of sale and prorated expenses;

9.3.2. Second, to the extent required by any lender of the Company or deemed appropriate by the Manager, to the payment of any outstanding debt of the Company; and

9.3.3. Third, to the Members set forth on **Exhibit A** attached hereto as follows and in the following order:

9.3.3.1 First, to the Members that have made Capital Contributions in accordance with their Capital Interest Percentages set forth on **Exhibit A** attached hereto, on a *pari passu* basis until there has been distributed under Sections 9.2.1 and this Section 9.3.3.1 an amount equal to such Members' Capital Contributions;

9.3.3.2 Second, to the Members that have made Capital Contributions in accordance with their Capital Interest Percentages set forth on **Exhibit A** attached hereto on a *pari passu* basis, until there has been distributed under Sections 9.2.1, 9.3.3.1 and this Section 9.3.3.2 amounts to ensure that such Members owning a Capital Interest achieve an average annualized cash on cash return (calculated in the same manner as simple interest) of 6% from the date of each Capital Contribution;

9.3.3.3 Then:

(1) 70% to the Members who have made Capital Contributions and the Members in accordance with their respective Distribution Interest Percentages, which shall be set forth on **Exhibit A** attached hereto; and

(2) 30% to the Members owning a Profits Interest, in accordance with their respective Profits Interest Percentages, which shall be set forth on **Exhibit A** attached hereto.

9.4 **Special Allocations**. The following special allocations shall be made in the following order:

9.4.1 If there is a net decrease in Company Minimum Gain for a Taxable Year, each Member must be allocated items of income and gain for that Taxable Year equal to that Member's share of the net decrease in Company Minimum Gain in the amount of the total net decrease multiplied by the Member's percentage share of the Company Minimum Gain at the end of the immediately preceding Taxable Year. A Member's share of any decrease in Company Minimum Gain resulting from a revaluation of Company Property equals the increase in the Member's Capital Account attributable to the revaluation to the extent the reduction in minimum gain is caused by the revaluation. A Member is not

subject to the Company Minimum Gain chargeback requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of §1.752-2 of the Regulations) for the newly guaranteed, refinanced, or otherwise changed liability.

9.4.2 If during a Taxable Year there is a net decrease in Member Minimum Gain, any Member with a share of that Member Minimum Gain (as determined under §1.704-2(i)(5) of the Regulations) as of the beginning of that Taxable Year must be allocated items of income and gain for that Taxable Year (and, if necessary, for succeeding Taxable Years) equal to that Member's share of the net decrease in the Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is determined in a manner consistent with the provisions of this Section 9.4.2. A Member is not subject to this Member Minimum Gain chargeback, however, to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Liability due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a Company Nonrecourse Liability. The amount that would otherwise be subject to the Member Minimum Gain chargeback is added to the Member's share of Company Minimum Gain. In addition, rules consistent with those applicable to Company Minimum Gain shall be applied to determine the shares of Member Minimum Gain and Member Minimum Gain chargeback to the extent provided under the Regulations issued pursuant to §704(b) of the Code.

9.4.3 In the event any Member, in such capacity, unexpectedly receives an Offsettable Decrease, such Member will be allocated items of income and gain (consisting of a pro rata portion of each item of partnership income and gain for such year) in an amount and manner sufficient to offset such Offsettable Decrease as quickly as possible.

9.4.4 To the extent an adjustment to the adjusted federal income tax basis of any Company asset pursuant to Code §734(b) or Code §743(b) is required, pursuant to Regulations §1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with Regulations §1.704-1(b)(2)(iv)(m).

9.5 Limitations on Distributions. No Distribution shall be declared and paid unless, after the Distribution is made, the assets of the Company are in excess of all liabilities of the Company, except liabilities to Members on account of their Capital Accounts.

## ARTICLE X

### TAXES

10.1 Elections. The Manager may make any tax elections (and, if an election under Section 754 of the Code is requested by a Member that is transferring its Membership Interest in compliance with Article XI, shall make the election under Section 754 of the Code) for the Company allowed under the Code or the tax laws of any state or other jurisdiction having Taxing Jurisdiction over the Company.

10.2 Taxes of Taxing Jurisdictions. To the extent that the laws of any Taxing Jurisdiction require, each Member requested to do so by the Manager will submit an agreement indicating that the Member will make timely income tax payments to the Taxing Jurisdiction and that the Member accepts personal jurisdiction of the Taxing Jurisdiction with regard to the collection of income taxes attributable to the Member's income, and Membership Interest, and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax, penalty and interest determined under the laws of the Taxing Jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a Distribution for purposes of Article IX. The Manager may, where permitted by the rules of any Taxing Jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the Taxing Jurisdiction, in which case the Company shall inform the Members of the amount of such tax, interest and penalties so paid.

#### 10.3 Partnership Representative.

10.3.1 Unless and until the Manager shall otherwise determine, Andrew Davis (or such other Person as the Manager may designate from time to time) shall be the "partnership representative" of the Company, as provided in the regulations promulgated under Section 6223 of the Code, as amended by the Revised Partnership Audit Procedures, as well as for purposes of any state, local, or non-U.S. tax law (the "Partnership Representative"). Each Member shall execute, certify, acknowledge, deliver, swear to, file, and record all documents necessary or appropriate to evidence its approval of this designation as the Partnership Representative in all instances as determined by the Partnership Representative. In such capacity the Partnership Representative shall represent the Company in any disputes, controversies, or proceedings with the Internal Revenue Service or with any state, local, or non-U.S. taxing authority and is hereby authorized to take any and all actions that it is permitted to take by applicable legal requirements when acting in that capacity. The Partnership Representative shall be entitled to take such actions on behalf of the Company in any and all proceedings with the Internal Revenue Service and any other taxing authority as it reasonably determines to be appropriate and that is consistent with this Section 10.3.1. The Partnership Representative shall be reimbursed by the Company for all out-of-pocket costs and expenses reasonably incurred in connection with any such proceeding and shall be indemnified by the Company (solely out of Company assets) with respect to any action brought against such Partnership

Representative in connection with the settlement of any such proceeding. Each Member reserves the right to retain independent counsel of its choice at its expense (which counsel will be entitled to prior review of submissions by the Company in respect of any dispute with relevant taxing authorities). The Company shall indemnify the Partnership Representative for, and hold it harmless against, any claims made against it in its capacity as Partnership Representative. Expenses incurred by the Partnership Representative in such role shall be borne by the Company. Such expenses shall include, without limitation, fees of attorneys and other tax professionals, accountants, appraisers and experts, filing fees, and reasonable out-of-pocket costs and expenses. Any decisions made by the Partnership Representative, including, but not limited to, whether or not to settle or contest any tax matter, whether or not to extend the period of limitations for the assessment or collection of any tax and the choice of forum for such contest shall be made in the Partnership Representative's sole and absolute discretion.

10.3.2 In addition to the matters addressed in Section 10.3.1, the Members acknowledge and agree that it is the general intention of the Members to minimize any obligations of the Company to pay taxes and interest in connection with any audit of the Company and/or any partnerships of which the Company is a partner, by means of annual elections under Section 6221(b) if available, and, if such elections are not available (or not made), by means of elections under Section 6226 of the Code and/or the Members filing amended returns under Section 6225(c)(2), in each case as amended by the Revised Partnership Audit Procedures and as determined by the Partnership Representative. The Members agree to cooperate in good faith (including but not limited to timely providing information reasonably requested by the Partnership Representative to facilitate the modification of imputed underpayments, making elections, and filing amended returns requested by the Partnership Representative) with the Partnership Representative, to be liable to the Company and/or the other Members (as determined by the Partnership Representative) for damages resulting from not so cooperating, and the Partnership Representative shall make such elections as it determines in its discretion to give effect to the preceding. The Company shall make any payments it may be required to make under the Revised Partnership Audit Procedures and the Partnership Representative shall apportion any such payment among the current and/or former Members of the Company for the "reviewed year" to which the payment relates in a manner that reflects the current and/or former Members' respective interests in the Company for such "reviewed year" and any other factors taken into account in determining the amount of the payment. To the extent payments are made by the Company on behalf of or with respect to a current Member in accordance with this Section 10.3.2, such amounts shall, at the election of the Partnership Representative, (i) be applied to and reduce the next distribution(s) otherwise payable to such Member under this Agreement, or (ii) be paid by the Member to the Company within thirty (30) days of written notice from the Partnership Representative requesting the payment. If any such payment is made on behalf of or with respect to a former Member in accordance with this Section 10.3.2, that former Member shall pay over to the Company an amount equal to the amount of such payment made on behalf of or with respect to it within thirty (30) days of written notice from the Partnership Representative requesting the payment. To the extent payments are made by the Company on behalf of or with respect to a current Member in accordance with this Section 10.3.2 that relate to an

interest held by a former Member and where the current Member is a transferee of such interest from the former Member, both the current Member and the former Member shall be jointly and severally liable to the Company and subject to the two preceding sentences, as applicable. The provisions contained Section 10.3 shall survive the dissolution of the Company and the withdrawal of any Member or the Transfer of any Member's interest in the Company.

10.3.3 In order to make the Safe Harbor Election authorized hereby, the Company must, and the Partnership Representative is authorized to, prepare a document, executed by the Partnership Representative, stating that the Partnership Representative is electing, on behalf of the Company and each of its Members, to have the Safe Harbor Election described in Notice 2005-43 apply irrevocably with respect to all Membership Interests transferred in connection with the performance of services while the Safe Harbor Election remains in effect. The Safe Harbor Election must specify the effective date of the Safe Harbor Election, and the effective date for the Safe Harbor Election may not be prior to the date that the Safe Harbor Election is executed. The Safe Harbor Election must be attached to the tax return for the Company for the Taxable Year that includes the effective date of the Safe Harbor Election.

10.3.4 All Members shall comply with the requirements of the Safe Harbor Election and report consistently on their tax returns in accordance therewith, as reasonably requested by the Partnership Representative.

10.3.5 Upon satisfying the requirements under Notice 2005-43 for termination of a Safe Harbor Election, the Partnership Representative may affirmatively terminate a Safe Harbor Election by preparing a document, duly executed by the Partnership Representative, indicating that the Partnership Representative, on behalf of the Company and each of its Members, is revoking its Safe Harbor Election under Notice 2005-43 and the effective date of the revocation, provided that the effective date may not be prior to the date the election to terminate is executed. Such termination election must be attached to the tax return for the Company for the Taxable Year that includes the effective date of the election.

10.4 Cash Method of Accounting. The records of the Company shall be maintained on a cash receipts and disbursements method of accounting.

## **ARTICLE XI**

### **TRANSFERABILITY OF INTERESTS**

11.1 Transfer of Membership Interest. Subject to Article VIII, any Member or Assignee may transfer all or a portion of the Member's or Assignee's Membership Interest only upon compliance with this Section 11.1 and upon approval of the Manager. No Membership Interest shall be transferred or assigned, in whole or in part, either voluntarily or by operation of law, by execution, levy, garnishment, attachment, pledge or bankruptcy:

11.1.1 If such transfer, alone or when combined with other transactions, would result in a termination of the Company within the meaning of §708 of the Code or would violate any portion of any loan agreement or related loan documents encumbering the Company Property;

11.1.2 Without an opinion of counsel satisfactory to the Manager that such assignment is subject to an effective registration under, or is exempt from the registration requirements of, the applicable state and federal securities laws. This requirement, however, may be waived at the discretion of the Manager;

11.1.3 Unless and until the Company receives from the Assignee the information and agreements that the Manager may reasonably require, including but not limited to any taxpayer identification number and any agreement that may be required by any Taxing Jurisdiction; and

11.1.4 Unless such Membership Interest has first been offered to the other Members in accordance with the provisions of Section 11.3 below.

Notwithstanding the foregoing, Sections 11.1.2 and 11.1.4 above shall not be applicable to, and consent of the Members shall not be required for, transfers (i) to the Immediate Family of any Member, (ii) by devise through a will, (iii) to a trust, corporation or limited liability company owned by or for the benefit of any Member or the Immediate Family of the Member, (iv) from a Member that is an entity to another entity which shares common ownership or common control with the existing Member, or (v) from any Member who is or was employed by any of the Davis Related Entities to another then existing Member of the Company (each, a "Permitted Transfer"); however, the Manager's approval shall still be required for any Permitted Transfer. Upon the Manager's approval of a Permitted Transfer, the transferee shall become a Substitute Member without further action of the Members or the Manager, which shall be reflected on an amended **Exhibit A**.

11.2 Reserved.

11.3 Transfer of Profits Interests for Davis Related Entities. Notwithstanding anything to the contrary contained in this Operating Agreement, Andrew Davis shall have the authority to transfer, assign, cancel and withdraw any Profits Interest awarded to any of the Davis Related Entities in its sole discretion without complying with the terms of this Article XI, and the same shall be deemed a Permitted Transfer under this Operating Agreement, which shall be reflected on an amended **Exhibit A**.

11.4 Right of First Refusal. Except as expressly provided herein, no Member shall sell, assign, convey or encumber his/her/its interest in the Company without first offering each of the other Members a right of first refusal to purchase such selling Member's Membership Interest.

Upon receipt from any third party, by any selling Member, of a bona fide offer to purchase all or any portion of such selling Member's Membership Interest, which offer selling Member plans to accept, selling Member shall immediately notify all of the other Members, in writing, of the terms of such third party offer to purchase. Within 30 days after

receipt by the Members of said notice, each Member shall notify the selling Member, in writing, of his/her/its desire to purchase the selling Member's Membership Interest on the same terms as were offered by the third party, or for cash at the same purchase price offered by the third party. Failure to notify the selling Member within said 30-day period shall be deemed a denial of the offer. If any Member accepts the offer, then the accepting Member shall close on his/her/its purchase of the selling Member's Membership Interest not more than 30 days after accepting the selling Member's offer. If two or more Members desire to accept the offer to purchase the selling Member's Membership Interest, then, in the absence of an agreement between them, such Members shall have the right to purchase a portion of the Membership Interest offered in proportion to their respective Distribution Interest Percentages. In the event none of the remaining Members accepts the selling Member's offer to purchase, the selling Member shall be free to sell, assign, or convey his/her/its Membership Interest (or any portion thereof) to the third party on the same terms and conditions as were originally offered by the said third party.

Notwithstanding anything to the contrary contained in this Operating Agreement, unless permitted by the Manager, no Member may transfer all or any portion of his/her/its Membership Interest or Profits Interest if such transfer may cause the Company to cease to be classified as a partnership for federal or, if applicable, state income tax purposes, or may cause the Company to become a "publicly traded partnership," as such term is defined in Code Section 469(K)(2) or Code Section 7704(B).

#### 11.5 Purchase of Membership Interest upon Death of Member.

11.5.1 The Company shall have the option (but not the obligation) to purchase a deceased Member's Membership Interest in the Company if the person or entity which then owns the interest, including the decedent's estate, or a living trust, or the decedent's spouse (the "Owner") so requests, in writing, within 180 days after the date of death of such deceased Member. In the event the Company exercises its option to purchase the deceased Member's Membership Interest, the Owner shall sell the deceased Member's Membership Interest within 90 days from the date the Company receives an appraisal of a Member's Membership Interest as set forth in Section 11.5.2 below. The purchase price shall be payable by the Company, in cash, at any time, within 90 days of the receipt of the appraisal.

11.5.2 The purchase price for the purchase of the Membership Interest of a deceased Member shall be as set forth in this Section 11.5.2. The Manager shall identify a member of the Association of MAI Appraisers in the County and State where the Company Property are located and such appraiser shall be acceptable to the Member's successor in his/her/its reasonable discretion. If the parties are unable to agree on a single appraiser, then each shall appoint an appraiser with the foregoing qualifications, and the two so appointed appraisers shall appoint a third appraiser with the foregoing qualifications, and a majority vote of the three appraisers will control, or if each has a different value, then the value shall be an average, but the low appraisal shall be adjusted in such averaging process to an amount not less than 20% under the middle appraisal, and the high appraisal shall be so adjusted to an amount not more than 20% greater than the middle appraisal. Each party shall pay its own nominated appraiser, and the parties shall split the third



appraiser's fees. An appraisal shall be ordered by the Company within 60 days of the Company's receipt of notice from the deceased Member's estate that it desires to have the deceased Member's Membership Interest purchased by the Company. Such appraisal shall indicate the fair market value of all of the Company Property as of the date of the deceased Member's death. The fair market value of the Company shall then be computed by subtracting from the fair market value of the Company Property, the Company liabilities plus anticipated costs of sale of any Company Property equal to 3% of the value of the Company Property ("Deceased Fair Market Value"). The purchase price for the deceased Member's Membership Interest shall be equal to the amount the deceased Member would receive if the Company were liquidated and the amount of the Deceased Fair Market Value were distributed to the Members in accordance with Sections 9.4 or 9.5, as applicable, less any and all amounts owed by the deceased Member to the Company.

11.6 Purchase of Member's Membership Interest upon Bankruptcy or Judgment Lien placed on a Member's Membership Interest.

11.6.1 In the event any Member becomes a Bankrupt Member, or should a nonconsensual lien, including a judgment lien, be placed upon a Member's Membership Interest and the same is not removed within 30 days after filing, the interest of the insolvent, or liened Member (collectively the "Insolvent Member") shall be offered to the remaining Members at the fair market value of the Member's Membership Interest as set forth below.

11.6.2 The purchase price for the purchase of the Membership Interest of an Insolvent Member shall be as set forth in this Section 11.6.2. The appraiser(s) shall be selected as set forth in Section 11.5.2, and the procedures set forth therein for a determination with and payment of three appraisers shall apply to this Section 11.6.2 as well. An appraisal shall indicate the fair market value of all of the Company Property. The fair market value of the Company shall then be computed by subtracting from the fair market value of the Company Property, the Company liabilities and the anticipated costs of sale of any Company Property equal to 3% percent of the value of such Company Property. The purchase price for the Insolvent Member's Membership Interest shall be equal to the amount the Insolvent Member would receive if the Company were liquidated and the amount equal to the fair market value of the Company Property so determined were distributed to the Members in accordance with Sections 9.4 or 9.5, as applicable, less a discount of 5% for the detriment to the Company that the Bankruptcy may cause, and further less any and all amounts owed by the Insolvent Member to the Company.

Within 30 days after the written appraisal is delivered to the other Members, any or all of those Member(s) may elect, by notice to the Insolvent Member, to purchase a proportionate share of the Insolvent Member's Membership Interest. If said election is made, the closing will take place on or before 30 days after said notice of election is given. Upon closing, the Insolvent Member shall transfer its interest to the other Member(s) and the Member(s) shall pay the purchase price in cash.

11.7 Dispositions Not in Compliance with this Article Void. Any attempted sale, assignment, transfer, exchange, mortgage, pledge, grant, hypothecation, or other transfer, absolute or as security or encumbrance (including dispositions by operation of law) of

Membership Interest, or any part thereof, not in compliance with this Article is null and void *ab initio* and shall not be recognized by the Company.

11.8 Securities Requirements. No Transfer by a Member of all or part of such Member's Membership Interest in the Company shall be effective to convey such interest until the purchaser, Assignee or other transferee thereof and the Manager executes all necessary certificates and other documents and perform all acts required in accordance with state and federal laws to the full extent the same may be necessary to complete such transfer to preserve the exemption of the Company from registration under §4(2) of the Securities Act of 1933 and to preserve the status of the Company after the completion of such transfer in accordance with such laws. Each Member, including the selling, transferring or assigning Member, agrees upon request of the Manager to execute such certificates and other documents and to perform such acts. Unless otherwise agreed in writing, all costs and expenses incurred by the Company or by the Manager in connection with admitting such purchaser, Assignee or other transferee into the Company, either as an Assignee or as a Substitute Member, shall be for the account of, and shall be borne by, such purchaser, Assignee or transferee.

11.9 Drag Along Sales. In the event Members of the Company collectively holding more than 50% of the Voting Percentages approve a transaction which contemplates that all the Membership Interests of the Company shall be sold or transferred to an unrelated third party (a "Drag Along Sale"), then all the Members shall be required to participate in such Drag Along Sale and sell or transfer his/her/its Membership Interest in accordance with the terms governing such Drag Along Sale. Upon the consummation of the Drag Along Sale, the Members shall receive their pro rata share of the proceeds of any such sale pursuant to Section 9.3.

## ARTICLE XII

### DISSOCIATION OF A MEMBER

12.1 Dissociation. A Person shall cease to be a Member upon the happening of any of the following events. The following list and the provisions of this Operating Agreement are intended to be all-inclusive. Any events of Disassociation listed in the Act and not listed below shall not be deemed events of Disassociation herein:

12.1.1 Becoming the subject of an order for relief under the United States Bankruptcy Code or initiating, either in an original Proceeding or by way of answer in any state, an insolvency or receivership proceeding, an action for liquidation arrangement, composition, readjustment, dissolution, or similar relief, including making a general assignment for the benefit of creditors;

12.1.2 In the case of a Member who is a natural person, or a group of natural persons, the entry of an order by a court of competent jurisdiction adjudicating all natural persons constituting the Member incompetent to manage the Member's person or property subject to Section 13.3;

12.1.3 In the case of a Member who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee in which case the substitute trustee shall exercise control of that membership);

12.1.4 In the case of a Member that is other than a natural person, the dissolution and commencement of winding up of such Member;

12.1.5 In the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter;

12.1.6 In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the Company;

12.1.7 The Member ceases to be a Member as provided under applicable Colorado law; or

12.1.8 The Member is removed as a Member in accordance with this Operating Agreement.

12.2 Rights of Dissociating Member. In the event any Member dissociates prior to the expiration of the term of this Operating Agreement, and if the Members do not opt to purchase the Membership Interest of the Dissociating Member pursuant to Section 11.5 above, the dissociating Member shall be treated as an Assignee.

## ARTICLE XIII

### ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS

13.1 Rights of Assignees. An Assignee of a Membership Interest has no right to participate in the management of the business and affairs of the Company or to become a Member. An Assignee is only entitled to receive the Distributions and return of capital, if applicable, and to be allocated the Net Profits and Net Losses (including items of income, gain, loss deduction and credit) attributable to the Membership Interest. An Assignee shall be as obligated as a Member to make additional capital calls, and the remedy for failure to do so shall be the same as set forth in Article VIII herein for a Member.

13.2 Admission of Substitute Members. With the exception of a Permitted Transfer approved by the Manager under Section 11.1 or a Permitted Transfer by Andrew Davis under Section 11.2 to any of the Davis Related Entities, an Assignee of a Membership Interest shall be admitted as a Substitute Member and admitted to all the rights of the Member who initially assigned the Membership Interest only with a Majority Vote of the Voting Percentages. If so admitted, the Substitute Member has all the rights and powers and is subject to all the restrictions and liabilities of the Member originally assigning the Membership Interest. The admission of a Substitute Member, without further written agreement, shall not release the Member originally assigning the Membership Interest from any liability to the Company that may exist prior to the approval.

13.3 Deceased or Incompetent Members. If a Member who is an individual dies or a court of competent jurisdiction adjudges him or her to be incompetent to manage his or her person or his or her property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling his or her estate or administering his or her property. If a Member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that Member may be exercised by its legal representative or successor.

13.4 Admission of Additional Members. No Person may be admitted as an Additional Member without the approval of a Majority of the Voting Percentages. Upon the assignment of a Membership Interest, the Manager shall solicit promptly the consent of the Members as to whether any Person shall be admitted as an Additional Member. The amount of Capital Contribution to be made by any Person proposed as an Additional Member shall be determined and disclosed to the proposed Member prior to soliciting the consent of the Members on the question of admission and the addition of any such Additional Member shall be reflected on an amended **Exhibit A**.

## ARTICLE XIV

### DISSOLUTION AND WINDING UP

14.1 Dissolution. The Company shall be dissolved and its affairs wound up, upon the first to occur of the following events, which shall be considered Dissolution Events. The following list is intended to be all-inclusive. Any conflict between the provisions of this Article XIV and the list of dissolution events set forth in the Act shall be controlled by this Article:

14.1.1 The written consent of Members holding Voting Percentages equal to or greater than 75% of the Voting Percentages of all Members;

14.1.2 The death, incompetence, dissolution, or bankruptcy of the Manager of the Company unless the Manager is replaced, by approval of a Majority of the Voting Percentages, within 120 days after the date of death, incompetence, dissolution, or the filing of a petition in bankruptcy by or against such Manager;

14.1.3 The entry of a decree of judicial dissolution pursuant to the Act; or

14.1.4 The sale of all of the Company Property, unless all Members agree to continue the Company in business; provided, however, that the Company may elect to pursue a like-kind exchange pursuant to Section 1031 of the Code, subject to the right of any Member to have his/her/its Membership Interest redeemed upon the sale of the Company Property at the price the Member would have been entitled to receive if the Company had been liquidated pursuant to Section 14.3 below.

14.2 Effect of Dissolution. Upon dissolution, the Company shall cease carrying on (as distinguished from the winding up of) the Company business, but the Company shall not be terminated, but shall continue until the winding up of the affairs of the Company is

completed and a Statement of Dissolution has been filed with the Secretary of State for the State of Colorado.

14.3 Distribution of Assets on Dissolution. Upon the winding up of the Company, the Company's assets shall be distributed:

14.3.1 To creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of Company Liabilities; and

14.3.2 To Members in accordance with Sections 9.4 or 9.5, as applicable. Liquidation proceeds shall be paid within 60 days after the end of the Company's Taxable Year or, if later, within 90 days after the date of liquidation. Such distributions shall be in cash or property or partly in both, as determined by the Manager.

14.4 Winding Up and Statement of Dissolution. The winding up of the Company shall be completed when all debts, liabilities, and obligations of the Company have been paid and discharged or reasonable adequate provision therefor has been made, and all of the remaining Company Property and assets of the Company have been distributed to the Members. Upon the completion of winding up of the Company, a Statement of Dissolution shall be delivered to the Secretary of State for the State of Colorado for filing. The Statement of Dissolution shall set forth the information required by the Act.

## **ARTICLE XV**

### **LENDER PROVISIONS**

15.1 Lender Provisions. Until the Loan is fully paid, the Company:

15.1.1 shall not acquire or lease any real property, personal property, or assets other than the Company Property;

15.1.2 shall not acquire, own, operate, or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Company Property;

15.1.3 shall not commingle its assets or funds with those of any other Person, unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;

15.1.4 shall maintain its financial statements, accounting records, and other partnership, real estate investment trust, limited liability company, or corporate documents, as the case may be, separate from those of any other Person (unless the Company's assets are included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);

15.1.5 shall have no material financial obligation under any indenture, mortgage, deed of trust, deed to secure debt, loan agreement, or other agreement or instrument to which the Company is a party or by which the Company is otherwise bound,

or to which the Company Property are subject or by which it is otherwise encumbered, other than:

(i) unsecured trade payables incurred in the ordinary course of the operation of the Company Property (exclusive of amounts (1) to be paid out of the Replacement Reserve Account (as defined in the Loan) or Repairs Escrow Account (as defined in the Loan), or (2) for rehabilitation, restoration, repairs, or replacements of the Company Property or otherwise approved by Lender) so long as such trade payables (A) are not evidenced by a promissory note, (B) are payable within 60 days of the date incurred, and (C) as of any date, do not exceed, in the aggregate, 2% of the original principal balance of the Loan; provided, however, that otherwise compliant outstanding trade payables may exceed 2% up to an aggregate amount of 4% of the original principal balance of the Loan for a period (beginning on or after the Effective Date) not to exceed 90 consecutive days;

(ii) if the security instrument grants a lien on a leasehold estate, the Company's obligations as lessee under the ground lease creating such leasehold estate; and

(iii) obligations under the Loan Documents and obligations secured by the Company Property to the extent permitted by the Loan Documents;

15.1.6 shall not assume, guaranty, or pledge its assets to secure the liabilities or obligations of any other Person (except in connection with the Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any consolidation, extension and modification agreement or similar instrument) or hold out its credit as being available to satisfy the obligations of any other Person;

15.1.7 shall not make loans or advances to any other Person; or

15.1.8 shall not enter into, or become a party to, any transaction with any Affiliate, except in the ordinary course of business and on terms which are no more favorable to any such Affiliate than would be obtained in a comparable arm's-length transaction with an unrelated third party.

15.2 Termination of Covenant. Once the Loan is paid in full, this Article XV shall be null and void and of no further force or effect.

## ARTICLE XVI

### MISCELLANEOUS PROVISIONS

16.1 Entire Agreement. This Operating Agreement represents the entire agreement among all the Members and between the Members, the Manager, and the Company.

16.2 No Partnership Intended for Nontax Purposes. The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under

either the State Uniform Partnership Act nor the State Uniform Limited Partnership Act. The Members do not intend to be partners one to another, or partners as to any third party. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

16.3 Rights of Creditors and Third Parties under Operating Agreement. This Operating Agreement is entered into among the Company, the Manager, and the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. This Operating Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Operating Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

16.4 Counterparts. This Operating Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one and the same instrument.

16.5 Time of the Essence. Time is of the essence with respect to all provisions of this Operating Agreement.

16.6 No Implied Waivers. No Member shall be deemed to have waived any provision of this Operating Agreement unless such waiver is in writing and is signed by such Member.

16.7 Governing Law. The laws of the State of Colorado shall govern the validity, construction, enforcement, and interpretation of this Operating Agreement.

16.8 Severability. In the event that any provision of this Operating Agreement is found by any Court or other authority of competent jurisdiction to be illegal or unenforceable, such provision shall be severed or modified to the extent necessary to render it enforceable and as so severed or modified, this Operating Agreement shall continue in full force and effect.

16.9 Captions. The captions and headings of various sections of this Operating Agreement are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

16.10 Dispute Resolution\Attorneys' Fees. Any disputes arising under this Operating Agreement shall be submitted to binding arbitration in Denver, Colorado by an arbitrator chosen from the Judicial Arbitrator Group, or if the Judicial Arbitrator Group ceases to exist, its successor and if there is no successor to the Judicial Arbitrator Group, then another arbitration group recommended by the Colorado Bar Association. In the event of any dispute hereunder, the party prevailing in such arbitration shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees incurred in such action.

16.11 Electronic Signatures. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the parties hereto.

16.12 Operating Agreement May Be Modified. This Operating Agreement may be modified as provided in this Article XVI (as the same may, from time to time be amended). No Member or Manager shall have any vested rights in this Operating Agreement which may not be modified through an amendment to this Operating Agreement.

16.13 Amendment or Modification of Operating Agreement. This Operating Agreement may be amended or modified from time to time only by a written instrument adopted by the Manager pursuant to Section 7.4.1 or by the Manager and by Members holding equal to or greater than 67% of all the Voting Percentages in the Company. Notwithstanding the above, no amendment may reduce the Distribution Interest Percentage or Voting Percentage of any Member without the consent of such Member, except to permit Additional Members pursuant to Section 7.4.2 above.

16.14 Notices.

16.14.1 Any and all notices, consent, offers, elections and other communications required or permitted under this Operating Agreement shall be deemed adequately given only if in writing and delivered either in person or by mail or Federal Express or similar expedited commercial carrier, addressed to the recipient of the notice, postage prepaid and registered or certified with return receipt requested (if by mail), or with all freight charges prepaid (if by Federal Express or similar carrier). Notice given by an attorney on behalf of any Person shall be deemed to have been given by such Person. Additionally, notice shall be deemed proper if sent via email and the recipient confirms receipt via email response or other written response.

16.14.2 All notices, demands and requests to be sent hereunder shall be deemed to have been given for all purposes of this Operating Agreement upon the date of receipt or refusal. All such notices, demands and requests shall be addressed as set forth in this Operating Agreement or to such other address as any person may have designated for itself by written notice to the others in the manner herein prescribed, except that notices of change of address shall be effective only upon receipt.

To Company:                   235 W Evans LLC  
                                      C/O Andrew Davis  
                                      2372 South Humboldt Street  
                                      Denver, CO 80210

To Members:                   At their respective addresses set forth on their Membership  
  Signature Pages herein.

16.15 Investment Representations. The undersigned members understand (i) that the Membership Interests evidenced by this Operating Agreement have not been registered under the Securities Act of 1933, as amended (the "1933 Act"), the Colorado Securities



Act, or any other state securities laws or blue sky laws of any jurisdiction (collectively with the 1933 Act, the "Securities Act") because the Company is issuing these Membership Interests in reliance upon the exemptions from the registration requirements of the Securities Act providing for issuance of securities not involving a public offering, (ii) that the Company has relied upon the fact that a Member's Membership Interest is to be held by each Member for investment, and (iii) that exemption from registrations under the Securities Acts would not be available if such Membership Interest was acquired by a Member with a view to distribution.

Accordingly, each Member hereby confirms to the Company that such Member is acquiring such Member's Membership Interest for his/her/its own account, for investment and not with a view to the resale or distribution thereof. Each Member acknowledges that there is no public market for each Member's Membership Interest, and it is unlikely that such a public market will develop, and that even upon compliance with the Securities Acts, it may not be possible to readily liquidate such Member's Membership Interest. Each Member agrees not to transfer, sell or offer for sale any portion of such Member's Membership Interest unless there is an effective registration or other qualification relating thereto under the 1933 Act and under any applicable state securities laws or unless the holder of such Membership Interest delivers to the Manager an opinion of counsel, satisfactory to the Manager, that such registration or other qualification under the 1933 Act and applicable state securities laws is not required in connection with such transfer, offer or sales. Except as otherwise provided herein, each Member understands that the Company is under no obligation to register a Member's Membership Interest or to assist such Member in complying with any exemption from registration under the Securities Acts if such Member should at a later date, wish to dispose of such Member's Membership Interest. Prior to acquiring such Member's Membership Interest, each Member has made an investigation of the Company and its business and had made available to each such Member all information with respect thereto which such Member needed to make an informed decision to acquire the Membership Interest. Each Member considers himself, herself or itself to be a person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Member's investment in such Member's Membership Interest. Each Member warrants and represents to the other Members that they have had the full and ample time and opportunity to review this Operating Agreement, and the Exhibits and Schedules (collectively the "Exhibits") hereto with an independent lawyer and accountant of their choice, that such member has the experience and sophistication necessary to evaluate the matters set forth in this Operating Agreement, and that each Member fully understands the terms and provisions of this Operating Agreement and the Exhibits hereto, and that each Member is voluntarily entering into this Operating Agreement and the Exhibits hereto.

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

**MANAGER SIGNATURE PAGE**

**Attached to and made a part of the Operating Agreement of 235 W Evans LLC**

**MANAGER:**

By:  \_\_\_\_\_  
Name: Andrew Davis  
Title: Manager

**MEMBER SIGNATURE PAGES / ADMISSION AGREEMENTS (ATTACHED HERETO AND INCORPORATED HERE WITHIN BY THE EXECUTED SUBSCRIPTION AGREEMENTS)**

**Attached to and made a part of the Operating Agreement of 235 W Evans LLC**

The undersigned acknowledges receipt of a copy of this Operating Agreement of 235 W Evans LLC (this "Operating Agreement"), and executes this Operating Agreement as a Member, agreeing and consenting to all the terms and provisions thereof.

THE MEMBER INTERESTS DESCRIBED HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY APPLICABLE STATE SECURITIES ACTS AND MAY NOT BE SOLD OR TRANSFERRED UNLESS THE CONDITIONS OF THE SECURITIES LAWS AND CONDITIONS OF THIS OPERATING AGREEMENT ARE SATISFIED. ALL INDIVIDUAL MEMBERS ACKNOWLEDGE AND CONFIRM THAT THEY MEET THE DEFINITION OF ACCREDITED INVESTOR (OR QUALIFIED PURCHASER) AS THE TERM IS USED BY THE SECURITIES AND EXCHANGE COMMISSION (SEC) UNDER REGULATION D.

**Signature of Member**

**Signature of Member**

*If Member is an Individual:*

*If Member is an Entity:*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Entity

\_\_\_\_\_  
Print Name

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature of Co-Member

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Date of Signature

**MEMBERS HOLDING PROFITS INTERESTS**

Attached to and made a part of the Operating Agreement of  
235 W Evans LLC

By: A. Davis

Name: Andrew Davis

Title: Manager

2372 South Humboldt Street  
Address

Denver, Colorado 80210  
City/State/Zip

(303) 503-4861  
Phone

3/27/20  
Date

# EXHIBIT A

**EXHIBIT B  
LEGAL DESCRIPTION**

Lots 16 to 40 inclusive and the South 5 feet of Lot 15, and the vacated alley adjacent to Lots 16 to 33 and the South 5 feet of Lots 15 and 34, Block 6, Rosedale, City and County of Denver, State of Colorado.

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**Rezoning Application: 235 W Evans**

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**General Review Criteria: Consistency with Adopted Plans:**

Rezoning the property from its current industrial zone district to a commercial mixed-use (C-MX-8) zone district will support increased density that is consistent with the five City adopted plans listed below:

**Criteria for Rezoning:** There are five City adopted plans that guide the use and development of this Property:

1. Denver Comprehensive Plan 2040
2. Blueprint Denver (2019)
3. Evans Station Area Plan (2009)
4. Shattuck District Plan (2003)
5. Overland Neighborhood Plan (1993)

***Denver Comprehensive Plan 2040***

The proposal is consistent with a multitude of Denver Comprehensive Plan 2040 objectives, strategies, and recommendations, including:

- *Equitable, Affordable and Inclusive Goal 1 Strategy A – Increase development of housing units close to transit and mixed-use developments (p. 28)*
- *Equitable, Affordable and Inclusive Goal 2 Strategy B – Create a greater mix of housing options in every neighborhood for all individuals and families (p. 28)*
- *Strong and Authentic Neighborhoods Goal 1, Strategy B – Ensure neighborhoods offer a mix of housing types and services for a diverse population (p. 34).*

The Denver Comprehensive Plan 2040 calls for housing units close to transit and mixed-use developments. That being said, placing an 8-story apartment complex on the corner of W. Evans Avenue and S. Cherokee Street will create more housing opportunities near the Evans Station Light Rail Station as well as a multitude of mixed-use properties along South Broadway and in the Overland Neighborhood. This rezoning will also allow to add variety to the housing market in the surrounding area.

- *Connected, Safe and Accessible Places Goal 8, Strategy B – Promote transit-oriented development and encourage higher density development, including affordable housing, near transit to support ridership (p. 42).*

Given its proximity to the Evans Light Rail, I-25, and Santa Fe Drive, 235 West Evans location is consistent with this goal of the Denver Comprehensive Plan 2040. The Property is two-and-a-half blocks from Evans Station, which is the main transportation hub in the neighborhood. The rezoning will further

enhance Evans Station by increasing density within the immediate area, which will increase both transit patronage and pedestrian activity around the station. Furthermore, rezoning the current Industrial Zone District to a Residential Mixed-Use (C-MX-8) district further supports the Denver Comprehensive Plan 2040 as exhibited below:

- *Environmentally Resilient Goal 8, Strategy A- Promote infill development where infrastructure and services are already in place (p.54).*
- *Environmentally Resilient Goal 8, Strategy C – Focus growth by transit stations and along high and medium-capacity transit corridors (p. 54).*
- *Denver and the Region Goal 2, Strategy A – Direct significant growth to regional centers and community centers and corridors with strong transit connections (p. 64).*

As discussed above, this rezoning opportunity will add to the population density by Evans Station, an important transit hub in Denver. In addition to Evans Station, there is a plethora of mixed-use developments down South Broadway and in the Overland Neighborhood that include: single- and multi-unit residential homes, retail, restaurants, breweries, medical offices, industrial, and offices. With a wide variety of infrastructure already in place along with a well-known transportation station a few blocks away, 235 West Evans can stay consistent with the Denver Comprehensive Plan 2040 upon rezoning.



## ***Blueprint Denver (2019)***

The proposed re-zoning of 235 West Evans is consistent with the guidelines and goals of Blueprint Denver. These goals include:

- *Serve all Denver residents with a diverse range of affordable housing options and quality employment opportunities throughout the city.*
- *Ensure all Denver residents have safe, convenient and affordable access to basic services and a variety of amenities.*
- *Develop safe, high-quality mobility options that prioritize walking, rolling, biking and transit and connect people of all ages and abilities to their daily needs.*

Blueprint Denver calls for affordability in all aspects of living. This has also been a focus of the 235 W Evans development by ensuring 10% of units are IRU's as well as the location of the site provides affordable and convenient access to transportation, food, and outdoor activities.

- *Support a welcoming business environment and the growth of employment centers around the city to promote work and educational opportunities for all residents.*

An 8-story apartment complex will help drive consumer spending and growth in employment in the Overland Neighborhood, further adding to the welcoming business environment.

- *Focus higher intensity growth in walkable mixed-use centers and along transit priority streets.*

The 235 West Evans development is located along Evans Avenue, a transit priority street.

- *Enhance the overall character and sense of place of neighborhoods through all stages of development and reinvestment.*
- *Foster great urban design and the creation of authentic places that thoughtfully integrate streets, public spaces and private property.*
- *Promote enduring and compatible design that responds to an evolving community while embracing historic assets and cultural heritage.*
- *Guide growth to maintain connections to the outdoors, respond to climate change and protect our environment and natural resources.*
- *Promote a healthy community with equitable access to healthy living for all residents.*

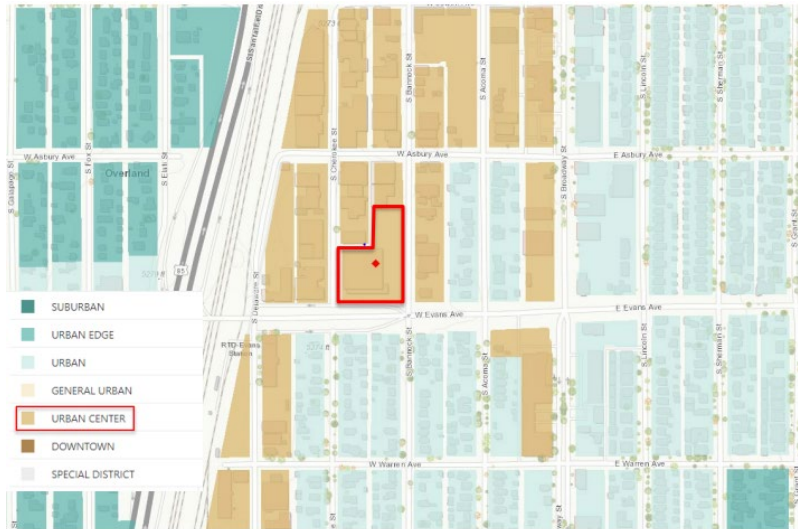
Safe sidewalks and access to public and private amenities are a major part of the apartment complex's design, which promotes Blueprint Denver's goals.

According to the map adopted in the Blueprint Denver Plan, this site is consistent with the future neighborhood context of an Urban Center, future place of a community center, is located on a street type that is intended for 8-story residential development (Evans being an arterial street), and is surrounded by streets that are characterized by residential uses.

### **Future Neighborhood Context: Urban Center**

- Urban center neighborhoods are dense and vibrant areas that support residents and visitors. This context contains high intensity residential and significant employment areas. Development typically contains a high mix of uses, with excellent street activation and connectivity. Residents living in this context are well served by high-capacity transit and have access to ample amenities and entertainment options.

- Urban center areas are easily navigated and accessible due to predictable street grids, well-connected sidewalk networks, and strong connections to rail service and the transit priority street network. These areas offer easy walkability and access to amenities. Parking is predominately managed on-street, with off-street demand met with parking garages (pg. 251).



### **Future Place: Community Center**

Community Centers provide a mix of office, commercial, and residential uses, along with a wide customer draw both of local residents from surrounding neighborhoods and from other parts of the city. Activity levels during different times of the day will vary depending on the type and mix of uses. Buildings are larger in scale than local centers and orient to the street or other public spaces. Strong degree of urbanism with mostly continuous building frontages and distinct streetscape elements that define the public realm. Heights can be generally up to 12 stories in the taller areas and should transition gradually within the center’s footprint to the surrounding residential areas (pg. 256).

### **Future Street Type: Commercial Arterial (Evans Ave)**

Evans Avenue is designated as a Commercial Arterial Street in Blueprint Denver.

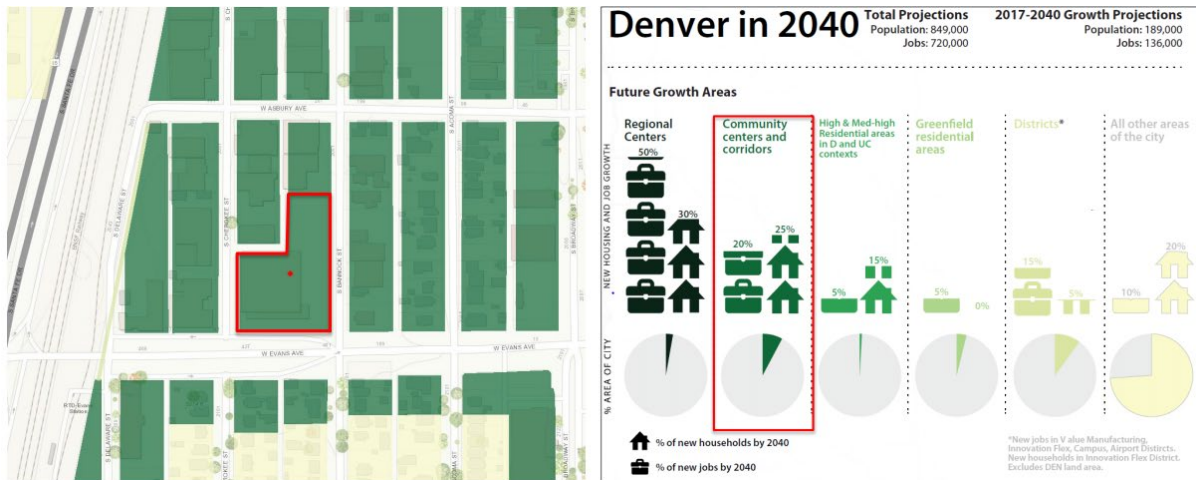
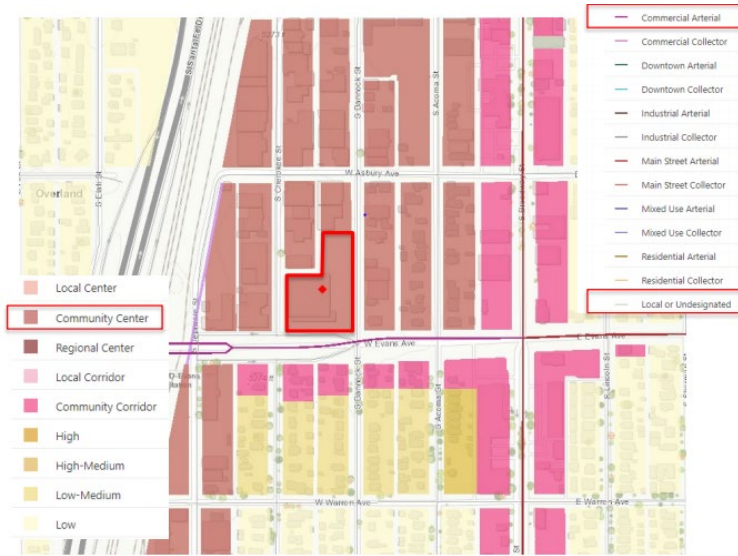
- Commercial streets typically contain commercial uses including shopping centers, auto services and offices. Buildings are often set back with onsite parking (pg. 159).
- Provide adequate sidewalk space for people to walk or roll (pg. 159).

### **Future Street Type: Local or Undesignated (Cherokee St, Bannock St, Evans Ave Access Road)**

The surrounding streets by the subject Property are classified as Local or Undesignated.

- Local streets can vary in their land uses and are found in all neighborhood contexts. They are most often characterized by residential uses (pg. 161).
- Local streets provide the lowest degree of through travel but the highest degree of property access (pg. 161).

The proposed C-MX-8 zone district is intended for areas served primarily by arterial streets. The proposed residential Mixed-Use (C-MX-8) zone district is consistent with the street classifications surrounding the Property.



**Evans Station Area Plan (2009)**

The subject site is located where increased density is desirable. Along with its proximity to surrounding retail, restaurants, and other mixed-use developments, this area is uniquely positioned for dense population given its proximity to Evans Station. The Evans Station Area Plan calls for 8-story developments north of Evans Station along the light rail line where the Property is located. Furthermore, the plan proposes a mixed-use residential Zone District, which is consistent with the proposed rezoning. By rezoning the subject Property, the neighborhood will further its application of the recommendations set by the Evans Station Area Plan.





The Land Use and Urban Design Recommendation 4: Affordable Housing mentions that The Evans Station Area planning process revealed that community members share an interest in keeping housing affordable near the station. Specifically, the increase of supply of housing including for sale and rental housing of varying types and variety of price points. Specific plan recommendations include:

*4a. Increase the supply of housing including for sale and rental housing of varying types and at a variety of price points.*

*4b. Seek funding and partnerships (e.g. land trusts) to facilitate affordable housing developments within the station area.*

*4c. Eliminate regulatory barriers to affordable housing and incorporate effective affordable housing triggers into financing and other requirements within ½ mile of the station area.*

*4d. Create an Affordable and Mixed-Income Housing Strategy for TOD consistent with the TOD Strategic Plan, Chapter 6 (City-wide Policy and Action Recommendations).*

Important to note from the Evans Station Area Plan is pg. 24 that highlights the Land Use and Urban Design Recommendation 7. Building Heights and Transition to Neighborhoods. Specifically, Section 7B outlined below calls for dense, mixed use-residential with buildings ranging from 2 – 5 stories but as tall as 8 stories are recommended for ‘prominent buildings or intersections within a redevelopment project.’

**7b. Mixed Use Residential area north of Evans (2-5 stories; 8 in strategic locations)** - With many acres of land north of Evans held by a single landowner and community support for higher residential densities in Areas of Change, this area represents an opportunity to develop taller buildings. Buildings will range from 2-5 stories primarily. However, buildings as tall as 8 stories are recommended in strategic locations, such as adjacent to the tracks. This higher level of intensity may also be considered for prominent buildings or intersections within a redevelopment project that exceeds the expectations of our TOD principles, listed on page 8.

Lastly, as outlined below 8 story permitting is for the ‘area north of Evans and West of Broadway’

Building heights for the Evans Station area include a range of heights for each land use. The tallest building heights (up to 8 stories) are permitted in the redevelopment area north of Evans and west of Broadway. Existing residential areas have a maximum of 2.5 stories to help maintain the character of the neighborhood. The range of heights ensures compliance with the Washington Park and Harvard Gulch view plane ordinances, incorporates transitions to adjacent neighborhoods and encourages reinvestment in the station area by allowing for variations in building type and market conditions. Figure 7 shows the maximum number of stories recommended.

Transit Oriented Development, *TOD*, integrates transit into neighborhoods and creates lively and vital communities, and calls for a mix of uses at various densities within walking distance of a transit station. The *TOD Strategic Plan* establishes strategies for implantation, and in order to succeed, they address these five guiding principles:

- **Place Making** – *Create safe, pleasant, varied, and attractive station areas with a distinct identity.*

The design of 235 West Evans includes large windows on the main floor, in addition to floor to ceiling windows in the leasing office which will be located on the corner of Evans and Bannock. In addition, over 200 windows will be located above the main floor, which increase safety, a key component of the Evans Station Area Plan as mentioned by the comment “eyes on the street” (pg. 22). Also, more residential units will increase the population in the area, leading to enhanced business and a clearer neighborhood identity.

- **Rich Mix of Choices** – *Provide Housing, employment, transportation, and shopping choices for people of all age, household types, income, and lifestyles.*

This rezoning will add to the rich mix of residential choices in the Overland Neighborhood surrounding Evans Station, which will lead to further investment in the area therefore improving the amount of options for employment, transportation, and shopping for people across the spectrum of age, income, and preferences.

- **Location Efficiency** – *Place homes, jobs, shopping, entertainment, parks, and other amenities close to the station to promote walking, biking, and transit use.*

By placing more housing options closer to the station, it will promote walking, biking, and transit use.

- **Value Capture** – *Take full economic advantage of the amenities associated with enhanced transit services.*

Given the Property’s location in the Overland Neighborhood right off of S. Broadway, residents will be able to take full advantage of everything that the neighborhood has to offer from goods and services provided, employment opportunities, and the convenience of Evans Station.

- **Portal to the Region** – *Understand and maximize the station’s role as an entry point to the regional transit network and as a safe, pleasant, and private place to live.*

By building more housing options in the Evans Station area, it will lead to a growing community that promotes a safe, pleasant, and private place to live.

Approval of the Rezoning Application falls in line with all five of these *TOD* Guiding Principles.

The proposed C-MX-8 zone district is consistent with the vision and recommendations of the Evans Station Area Plan. The zone district will support the transformation of this industrial area into an urban, pedestrian-oriented, mixed-use neighborhood. The eight-story district is consistent with the height recommendations of the plan, and the standards of the district will enable an urban, pedestrian-friendly building. Further, the proposed residential Mixed-Use (C-MX-8) district, which only permits residential or lodging uses above the ground floor, is consistent with the plan’s vision for the primary use in this area to be residential.

A request for C-MX-8 zoning is consistent with the Evans Station Area Plan due to the mutually accepted HOST agreement which we believe exceeds the TOD principles outlined in the Evans Station Area Plan.

### ***Shattuck District Plan (2003)***

The vision identified in the Shattuck District Plan includes a,

“neighborhood where people live and work, where housing is affordable, where there are sufficient employment opportunities, where wages are sufficient and public revenues are being produced, where there are households in numbers sufficient to enhance the climate for businesses on Broadway, where there is a mix of businesses, goods and services available to the neighborhood, and where the quality of life is generally good.” (p 22)

Also, the plan addresses issues and provides guidance specific to the Shattuck site which is two blocks north of the subject Property. The plan lists goals and objectives that the neighborhood and City uses to judge any proposed redevelopment of sites in the district. The guiding principles of the plan include the following:

- *Create redevelopment that is sustainable-renewable, that accommodates near-term markets and leads area development toward economically and environmentally responsible uses in the long term.*
- *Put underutilized commercial / industrial parcels into more productive uses. Create a good mix of land use types incorporating households, employers, and consumer goods and services.*
- *Improve the quality of life in the neighborhood.*

Rezoning the subject site is consistent with the guiding principles of the Shattuck District Plan. The proposed redevelopment of the Property to a residential mixed-use (C-MX-8) building will help accomplish the following:

- Redevelopment of the Property will likely lead to further investment in the Overland Neighborhood.
- Meet current market demand with a mix of uses that are sustainable in the long-term.
- If the Rezoning Application is approved, it will add residential housing, as well as commercial/retail goods and services that will not only serve residents of the subject site, but the neighborhood as a whole.
- Redevelopment will bring new housing and business to the neighborhood and will improve the quality of life in the area. Future residents will also find improved quality of life by living within a short distance of multiple modes of transportation.



### ***Overland Neighborhood Plan (1993)***

The Overland Neighborhood Plan envisions a stable residential neighborhood, a bustling business corridor on South Broadway, and a revitalized industrial area (pg. 3). The plan identifies the subject Property as within the industrial area.

- *Action Recommendation LZ-1 encourages property owners in residential areas to invest time and necessary resources on the beautification of the neighborhood.*
- *Action Recommendation LZ-2 encourages commercial and industrial business to invest in beautification programs for their own business and invest in neighborhood clean-up programs*
- *Action Recommendation LZ-3 encourages the neighborhood to develop the remaining vacant land in a manner that is compatible with the land use character and density of surrounding land uses and existing zoning.*

The proposed rezoning will enable reinvestment and transit-oriented development at the current industrial site. The proposed rezoning is consistent with the Overland Neighborhood Plan.

## **Rezoning Application**

**235 W. Evans Avenue**

### **Review Criteria**

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

C-MX-8 is an Urban Center Residential Mixed-Use (C-MX-8) Zone District that 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. See DZC 7.2.3.1.A. Residential Mixed-use (C-MX-8) zone districts enhance the convenience, ease, and enjoyment of transit, walking, shopping, and public gathering within and around the city's residential neighborhoods. See DZC 7.2.3.1.B. The Residential Mixed-Use (C-MX-8) zone districts standards are also intended to ensure new development contributes positively to establish residential neighborhoods and a character and improves the transition between commercial development adjacent residential neighborhoods. See DZC 7.2.3.1.C

The neighborhood context around the Evans Station today is a mix of legacy industrial zoning along with recently rezoned mixed-use zoning in the on-going transformation of higher-density mixed-use development and greater street activation proximate to the light rail station. The proposed zone district of C-MX-8 for the subject Property will allow the station area to continue to evolve into the intended Urban Center as envisioned in adopted city plans, and meet the intent of this future, desired neighborhood context as a vibrant, walkable Transit-Oriented development area.

According to the zone district intent stated in Denver Zoning Code "C-MX-8 applies to areas or intersections served primarily by arterial streets where a building scale of 2 to 8 stories is desired." (DZC Section 7.2.3.2.B). The site is located on an arterial street, has easy access to I-25 and Santa Fe Drive, and blocks away from Evans Station. These complementary transportation facilities will support Residential Mixed Use that is intended to enhance the convenience, ease and enjoyment of transit, walking, shopping and public gathering within and around the city's residential neighborhoods, and in particular at the Evans light rail station area. The street classifications and desired building heights in this area are consistent with the zone district purpose and intent statements.

#### **General Review Criteria: Uniformity of District Regulations and Restrictions**

Approval of the Rezoning Application will cause the consistent application of building form, use, and design regulations. Once redeveloped, the Property will adhere to all applicable rules on building height, siting design elements, and pedestrian access.

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

Approval of the Rezoning Application will promote the public health, safety, and general welfare by implementing the City's adopted land use policies. Redevelopment of this Property will bring new residents as well as businesses to the neighborhood and Evans Station area, increasing both the population and foot traffic at any time of day, further supporting safety and security in the area. Furthermore, additional residential development in the area will create more development of sidewalks and other neighborhood features that will add to pedestrian safety. This redevelopment will also benefit the surrounding transit by increasing bus and light rail

patronage, promoting public health and general welfare put forward by transportation initiatives adopted by the City.

**General Review Criteria: Justifying Circumstances**

Changes to the surrounding area warrants the approval of the Rezoning Application. Of the justifying circumstances identified in the Denver Zoning Code, the following circumstances are most applicable, “Since the date of the approval of the existing Zone District, there has been a change to such a degree that proposed rezoning is in the public interest. Such changes may include: Changed or changing conditions in the applicable area, or in the city generally.” (DZC Section 12.4.10.8.A.4) The following changing conditions apply:

- New Residential development, such as a site zoned as C-MX-5 called Encore Evans Station, added a significant amount of housing units to the neighborhood. Furthermore, more residential projects are currently under construction, such as SoBo 58, a condominium complex that is located on the corner of S. Bannock Street and E. Jewell Avenue. These two properties, which are located blocks away from the subject site, have added to the neighborhood population and have helped redefine the area from being historically industrial to being compatible with a mix of uses.
- Declaration Brewery, which will be occupied by a new brewery in the coming months along with Bear Creek Distillery, which opened in 2014, have been a driving force in the changing character of the neighborhood. Furthermore, there is a multitude of options of retail, restaurants, offices, industrial, and medical properties along South Broadway and in the surrounding area that further proves that the neighborhood is capable of supporting many different types of uses.

The character of the Overland Neighborhood is changing based on recent redevelopment and future development projects in the area. This recent change in the neighborhood’s zoning provides justification for mixed-use residential zoning for the subject site. A mixed-use residential zoning in the Property’s location will also further enhance the neighborhood’s change in character. Furthermore, approval of the Rezoning Application will lead to additional investment and development in the area, which will aid in achieving a dynamic mix of uses that will increase population, neighborhood employment, goods and services offered, as well as increase the use of the readily available public transportation options.

### **General Review Criteria: Consistency with Neighborhood Context**

Approval of the Rezoning Application will be consistent with the neighborhood context and intent of the proposed Zone District. Consistency with the neighborhood context is proven by other mixed-use developments that have recently been built in the area that are both within two blocks of the subject Property.

### **Joint Venture Details**

Assuming a successful re-zone the property will be co-developed by 235 W Evans LLC and Gables Residential. 235 W Evans owns the land and will contribute the land into the joint venture. Gables, a vertically integrated real estate company and privately held REIT specializes in development and construction and therefore is a complimentary partner for this project. The general partner of 235 W Evans owns other real estate in the South Broadway market and chose Gables as the best partner due to their deep understanding of the neighborhood, willingness to listen to the interests of neighbors regarding the project and the strong financial backing of the Company.

### **Host Agreement for IRU Units**

We have worked with the City of Denver and have a mutually accepted HOST agreement for the project. We have agreed to 10% of the units being designated as IRU's. There is a larger predominance of two bedrooms in the project and we are disproportionately weighting more of the IRU units to these highly desirable two-bedroom floor plans.