

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>*If More Than One Property Owner: All standard zone map amendment applications shall be initiated by all the owners of at least 51% of the total area of the zone lots subject to the rezoning application, or their representatives authorized in writing to do so. See page 3.</p>		<p>**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.</p>	
<p>Please attach Proof of Ownership acceptable to the Manager for each property owner signing the application, such as (a) Assessor's Record, (b) Warranty deed or deed of trust, or (c) Title policy or commitment dated no earlier than 60 days prior to application date.</p>			
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:			
Does the proposal comply with the minimum area requirements specified in DZC Sec. 12.4.10.3:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

REVIEW CRITERIA	
<p>General Review Criteria: The proposal must comply with all of the general review criteria DZC Sec. 12.4.10.7</p>	<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.
	<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.
	<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>Additional Review Criteria for Non-Legislative Rezoning: The proposal must comply with both of the additional review criteria DZC Sec. 12.4.10.8</p>	<p>Justifying Circumstances - One of the following circumstances exists:</p> <input type="checkbox"/> The existing zoning of the land was the result of an error. <input type="checkbox"/> The existing zoning of the land was based on a mistake of fact. <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. <input type="checkbox"/> The land or its surroundings has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area to recognize the changed character of the area. <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.
	<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</p> <p>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) <input type="checkbox"/> Proof of Ownership Document(s) <input type="checkbox"/> Review Criteria
<p>ADDITIONAL ATTACHMENTS</p> <p>Please identify any additional attachments provided with this application:</p> <input type="checkbox"/> Written Authorization to Represent Property Owner(s)	
<p>Please list any additional attachments:</p>	

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

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

Property Owner Name(s) (please type or print legibly)	Property Address City, State, Zip Phone Email	Property Owner Interest % of the Area of the Zone Lots to Be Rezoned	Please sign below as an indication of your consent to the above certification statement (must sign in the exact same manner as title to the property is held)	Date	Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed or deed of trust, (C) title policy or commitment, or (D) other as approved	Property owner representative written authorization? (YES/NO)
EXAMPLE John Alan Smith and Josie Q. Smith	123 Sesame Street Denver, CO 80202 (303) 555-5555 sample@sample.gov	100%	<i>John Alan Smith</i> <i>Josie Q. Smith</i>	01/01/12	(A)	NO
Fortune Cookie Factory LLC	421 W. 4th Ave. Denver, CO 80223 720-280-3882 amandaprecourt@gmail.com	100%	<i>Amanda Precourt</i>	12.19.2017	(A)	YES

List of Exhibits

- Exhibit A:** Property Legal Description
- Exhibit B:** Description of Consistency with Adopted City Plans (DRMC 12.4.10.13 (A, B & C))
- Exhibit C:** Description of Justifying Circumstances and Neighborhood Context (DRMC 12.4.10.14 (A&B))
- Exhibit D:** Letter of Authorization for STARBOARD Realty Group, LLC to act as Representative
- Exhibit E:** Proof of Ownership, Assessors Record
- Exhibit F:** Signature Authority Authorization for Fortune Cookie Factory, LLC

Exhibit A
Legal Description

LOTS 19 TO 23, BLOCK 2, M. SUMNER'S ADDITION TO THE CITY OF DENVER,
CITY AND COUNTY OF DENVER, STATE OF COLORADO

EXHIBIT B
Description of Consistency with Adopted City Plans

REVIEW CRITERIA - The proposed map amendment is consistent with the following three adopted plans:

1. Denver Comprehensive Plan (2000)
2. Blueprint Denver (2002)
3. Baker Neighborhood Plan (2003)

Statement of Consistency with Adopted City Plans:

1. The proposed map amendment is consistent with many objectives of ***Denver Comprehensive Plan 2000*** including:

Form and Use Strategy 1-B: “Ensure that the *Citywide Land Use and Transportation Plan* reinforces the city’s character by building on a legacy of high-quality urban design and stable, attractive neighborhoods; encouraging preservation of historic buildings, districts and landscapes; and maintaining the integrity of the street grid, parks, parkways and open space system.”

Form and Land Use Strategy 3-B: “Encourage quality infill development that is consistent with the character of the surrounding neighborhood; that offers opportunities for increased density and more amenities; and that broadens the variety of compatible uses.” As well as: “Support retention and expansion of businesses in industries historically important to Denver, including small business, health care, manufacturing, and federal and state government.”

Mobility Strategy 4-E: “Continue to promote mixed-use development, which enables people to live near work, retail and services.”

Legacies Strategy 3-A: “Identify areas in which increased density and new uses are desirable and can be accommodated.”

The proposed map amendment will also contribute to preserving and enhance the individuality, diversity and livability of Denver’s neighborhoods by fostering the following Plan objectives:

Congruency of land use and zoning: “...a built environment with greater overall urban design integrity, stronger connections among urban centers, and a richer and more diverse mix of uses within geographically proximate areas.”

Compact development: “...improved neighborhood cohesion, reduced urban sprawl and residents more directly connected to services and amenities within their immediate living environment.”

2. The proposed map amendment is consistent with many objectives of **Blueprint Denver** including:

The **Blueprint Denver** future land use designation for the subject property is Single Family / Duplex Residential. The Property is also located in an Area of Stability.

Blueprint Denver describes Single Family / Duplex Residential neighborhoods as “are moderately dense areas that are primarily residential but with some complementary, small-scale commercial uses. However, the employment-base is minor compared to the housing base. There is a mixture of housing types, including single-family houses, duplexes, townhouses and small apartment buildings”

Blueprint Denver also states that “Areas of Stability represent the majority of Denver’s residential areas where there is a prevailing character that should be preserved or enhanced through reinvestment.”

The **Blueprint Denver** Plan Strategy: Preserve Stable Neighborhoods – the Property is in a **Blueprint Denver** identified Area of Stability and also meets the following **Blueprint Denver** Areas of Stability criteria, goals and objectives:

- The goal for the Areas of Stability is to identify and maintain the character of an area while accommodating some new development and redevelopment.
- Second, in stable residential neighborhoods there often are areas that would benefit from change, such as stagnant commercial development that would benefit from revitalization and possibly provide some neighborhood services. These areas, due to their lack of reinvestment, have a negative visual impact on the surrounding area.
- The Property is in an area undergoing positive change that is expected to continue
- The Property also provides opportunities for the following **Blueprint Denver** Strategies including:
 - Housing, including affordable housing
 - Infill and redevelop vacant and underused properties
 - Compatibility between new and existing development
 - Balanced mix of uses
 - Economic activity—business retention, expansion and creation

The Areas of Stability can be thought of as belonging predominantly to one of the following two categories: “Committed Areas” and “Reinvestment Areas.”

Reinvestment Areas:

Reinvestment areas are neighborhoods with a character that is desirable to maintain but that would benefit from reinvestment through modest infill and redevelopment or major projects in a small area. These areas would encourage investment but in a more limited and targeted way than in Areas of Change. The Property is clearly in a reinvestment area.

Correct Significant Land Use-Zoning Discrepancies:

As illustrated on the Areas of Stability map, Chapter 7, a few areas within Areas of Stability have a significant discrepancy between land use and zoning. The most dramatic of these should be corrected. The existing Row House zoning is inconsistent with the building form and siting of structures on the Property.

New U-MX-2 zoning for the Property will allow these **Blueprint Denver** goals to be implemented.

Blueprint Denver also is relevant to the Property and positively informs the rezoning request as follows:

- Neighborhood reinvestment and character preservation creates stability in residential areas.
- Plan Strategy: Preserve Stable Neighborhoods

Areas of Stability

These areas represent the bulk of the residential portions of the city and employment areas not designated as Areas of Change. Preserving and revitalizing neighborhood character has been a prevailing concern throughout the planning process. The need to direct and manage the location, type and intensity of future development is balanced by an equally strong desire to preserve those areas of the city with an established character. Within Areas of Stability there may be places such as stagnant commercial centers where reinvestment would be desirable to make the area an asset to and supportive of the surrounding neighborhood. Generally, Areas of Stability face two types of concerns: character preservation and reinvestment:

Strategies: Address incompatible zoning and land use issues; ensure that new buildings in the Areas of Stability are compatible with current conditions and character.

Map amendments: In some instances it may be appropriate to change the zoning in Areas of Stability to create a better match between existing land uses and the zoning

New U-MX-2 zoning for the Property will allow this **Blueprint Denver** goal to be implemented.

3. The proposed map amendment is consistent with many objectives of the **Baker Neighborhood Plan** including:

The applicable neighborhood plan for the property is the **Baker Neighborhood Plan**, which was adopted in February of 2003. Some of the stated goals for this plan include:

- “New residential developments show innovative and complementary architecture within a common urban design framework: the scale, orientation to the street, vehicular access, open space and building setbacks are consistent, while a diversity of architecture and richness of design is apparent. Expansions and new buildings are designed in a manner that complements the historic character of the community.” **PG 16**
- “Add new businesses in appropriate infill locations.” **PG 20**
- “Preserve and improve the existing stock of housing, especially encourage the rehabilitation and re-occupancy of vacant buildings.”
- “Preserve and improve the quality of the neighborhood. An important element is to preserve and improve the existing stock of housing, especially the rehabilitation and re-occupancy of vacant buildings.”

New U-MX-2 zoning for the Property will allow these **Baker Neighborhood Plan** goals to be implemented.

The Property is located in the Single Family and Rowhouse Residential Sub Area of the **Baker Neighborhood Plan**.

The Plan goals in this sub area are articulated on pages 42- 46 of the Plan, where it is acknowledged and recognized that small pockets of commercial property (such as the Property subject to this application) are imbedded in the neighborhood and their ongoing viability needs to be planned for and accommodated through future land use and regulatory decisions including rezonings.

The **Baker Neighborhood Plan** identifies the following with regard to the Sub Area and the 421 W 4th Ave. Property:

Land Use Primary Issues and Objectives:

- “Vacant and underutilized commercial buildings offer opportunities for services and retail at an appropriate neighborhood scale.”

Goals:

- “Rehabilitate and reuse existing commercial structures for neighborhood scale commerce

Recommendations:

- “Increase level of property maintenance.”
- “Identify opportunities for additional parking areas adjacent to commercial areas.”

New U-MX-2 zoning for the Property will allow these ***Baker Neighborhood Plan*** goals to be implemented.

EXHIBIT C

Description of Justifying Circumstances and Neighborhood Context

Justifying Circumstances - One of the following circumstances exists:

1. The land or its surroundings has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area to recognize the changed character of the area.
2. 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.

Statement of Justifying Circumstances:

The 421 W. 4th Ave. Property, located in the Residential and Row House Sub Area of the Baker Neighborhood is being rezoned to U-MX-2 is in a part of Denver undergoing significant transformation. The Baker community is undergoing tremendous change and experiencing development pressures driven by big transformative projects such as Broadway Market Place / Denver Design Center, Alameda Station and Broadway Station, as well as areas along Broadway, Santa Fe, Kalamath and at the Denver Health Campus. While many attributes of these changes are positive, Baker is also experiencing gentrification, a lack of affordability, reducing home ownership and displacement of local arts and entrepreneurial businesses. Rapid development with rising prices is the norm. The proposed map amendment is in response to these changing conditions and the need for increasing the supply of appropriate neighborhood scale mixed use buildings and adaptive reuse of existing structures such as galleries, artist studios and artist residences. (As anticipated in the ***Baker Neighborhood Plan.***)

The Property consists of underutilized buildings and vacant land that is efficiently served by existing infrastructure. Rezoning will further the policy goals and multiple City plan directions of converting the Property to a small neighborhood compatible vibrant home ownership, rental housing and arts community with affordable rents encouraging investment in and available space for the local arts scene. Conditions in the neighborhood and prices are rising exponentially, increasing the need for such development thereby providing the legal basis for this map amendment application and rezoning request.

This rezoning will be an implementation step of the policy, land use and transportation goals identified in the aforementioned Plans. Once rezoned, the Property can accommodate the neighborhood reinvestment at a scale anticipated by and prescribed in the plans. This rezoning is necessary for the following reasons:

1. Conformance with ***The Baker Neighborhood Plan.***
2. The ability to meet demand for additional affordable housing dwelling units in the City.
3. Further implementation of ***Blueprint Denver.***

Completed, planned and underway development throughout the Baker Neighborhood has already or will imminently transform the area into a developing mixed-use urban infill community.

All these changing conditions justify the rezoning of the Property to U-MX-2.

The proposed rezoning to U-MX-2 and the development program offered by the applicant provide the form-based context to enable what the market, the community and Denver's elected officials desire for the furtherance of the neighborhoods goals. Design elements imbedded in the U-MX-2 Zone District as building height and orientation will help create a quality community the City and its residents will be proud of.

Statement of Consistency with Neighborhood Context and General Purpose of Zone Districts:

This map amendment application requests approval of the U-MX-2 Zone District for the Property. The "U" Zone Districts are appropriate as they are intended for use in more Urban areas such as the Baker Neighborhood.

The **General Intent** for this rezoning to U-MX-2 is as follows:

1. To Implement the Denver Comprehensive Plan and its supplements.
2. To implement both ***Blueprint Denver*** as well as the ***Baker Neighborhood Plan***.
3. Encourage minimizing new development with extremely low site coverage ratios and discourage low density, single use development with excessive parking.
4. To facilitate implementation of appropriate neighborhood scale reinvestment and provision of services in Areas of Stability.
5. To implement the ***Baker Neighborhood Plan*** stated goals of (i) rehabilitating and reusing existing commercial structures to provide services and retail at an appropriate neighborhood scale; and (ii), removing nonconforming uses in residential areas.
6. The zoning standards are also intended to ensure new development contributes positively to established neighborhoods and character, and improves the transition between commercial development and adjacent residential neighborhoods.

REVIEW CRITERION DZC § 12.4.10.7.C - 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.

Future development of the Property will result in uniformity of U-MX-2 district regulations and restrictions.

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

The proposed map amendment will further the public health, safety, and general welfare of the City by facilitating the improvement and development of the Property as desired by the City's adopted plans.

EXHIBIT D

Letter of Authorization for STARBOARD Realty Group, LLC to act as Representative

**Fortune Cookie Factory LLC
P.O. Box 772
Avon, CO 81620**

December 12, 2017

Mr. Bruce O'Donnell
STARBOARD Realty Group, LLC
770 Sherman Street, Suite 108
Denver, CO 80203
bodonnell@starboardrealtygroup.com
720-441-3310

Dear Bruce,

This letter serves as authorization for STARBOARD Realty Group, LLC to act on behalf of and represent Fortune Cookie Company, LLC for the purpose of submitting and processing the rezoning application for the property owned by Fortune Cookie Company, LLC located at 421 W. 4th Ave. in Denver, CO.

Sincerely,

Fortune Cookie Factory, LLC

BY: 

Amanda J. Precourt
Manager & Authorized Representative

EXHIBIT E

Proof of Ownership, Assessors Record

421 W 4TH AVE

Owner	FORTUNE COOKIE FACTORY LLC PO BOX 772 AVE AVON , CO 81629
Schedule Number	0510212014000
Legal Description	M SUMNERS ADD B2 L19 TO 23
Property Type	INDUSTRIAL - PRINTING PLANT
Tax District	DENV

Property Description			
Style:	OTHER	Building Sqr. Foot:	7158
Bedrooms:		Baths Full/Half:	0/0
Effective Year Built:	1943	Basement/Finish:	0/0
Lot Size:	15,625	Zoned As:	U-RH-2.5

Note: Valuation zoning may be different from City's new zoning code.

Current Year			
Actual	Assessed	Exempt	
Land			\$0
Improvements	\$515,800	\$149,580	
Total	\$596,900	\$173,100	

Prior Year			
Actual	Assessed	Exempt	
Land			\$0
Improvements	\$394,500	\$114,410	
Total	\$419,900	\$121,780	

Real Estates Property Taxes for current tax year			
Please click on additional information below to check for any delinquencies on this property/schedule number and for tax sale information.			
	Installment 1 (Feb 28)	Installment 2 (Jun 15)	Full Payment (Due Apr 30)



For this Record...

- Filing history and documents
- Get a certificate of good standing
- File a form
- Subscribe to email notification
- Unsubscribe from email notification

- Business Home
- Business Information
- Business Search

- FAQs, Glossary and Information

Summary

Details			
Name	Fortune Cookie Factory LLC		
Status	Good Standing	Formation date	09/14/2017
ID number	20171693475	Form	Limited Liability Company
Periodic report month	September	Jurisdiction	Colorado
Principal office street address	887 Lake Creek Road, Edwards, CO 81632, United States		
Principal office mailing address	n/a		

Registered Agent	
Name	Amanda J Precourt
Street address	887 Lake Creek Road, Edwards, CO 81632, United States
Mailing address	n/a

- [Filing history and documents](#)
- [Get a certificate of good standing](#)
- [Get certified copies of documents](#)
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- [Set up secure business filing](#)
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Exhibit F
Signature Authority Authorization

OPERATING AGREEMENT
OF
Fortune Cookie Factory LLC

A COLORADO LIMITED LIABILITY COMPANY

DATED AS OF September 14, 2017

Amanda J. Precourt, as the sole member of FORTUNE COOKIE FACTORY LLC, a Colorado limited liability company organized pursuant to the Act (the “Company”), hereby declares the following writing and any amendments thereto to be the “Operating Agreement” of the Company within the meaning of the Act, effective as of September 14, 2017 (the “Effective Date”):

ARTICLE I. DEFINITIONS

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

1. “Act.” The Colorado Limited Liability Company Act at Colorado Revised Statutes § 7-80-101, et seq., and, where appropriate, the Colorado Corporations and Associations Act at Colorado Revised Statutes § 7-90-101 et seq.
2. “Additional Member.” A Member other than the initial member who has acquired a Membership Interest from the Company.
3. “Admission (Admit).” The act by which the transferee of a Membership Interest or an Additional Member becomes a Member of the Company.
4. “Articles.” The Articles of Organization of the Company as filed with the Secretary of State pursuant to the Act and as may be amended from time to time.
5. “Capital Contribution.” The cash, cash equivalents or the agreed fair market value of Property which a Member contributes to the Company, net of any liabilities secured by such contributed property which the Company is considered to have assumed or taken subject to.
6. “Company.” FORTUNE COOKIE FACTORY LLC, a limited liability company formed under the Act, and any successor limited liability company.
7. “Distribution.” A transfer of Property to a Member on account of a Membership Interest.
8. “Disposition (Dispose).” Any Transfer or any mortgage, pledge, grant, hypothecation, or other transfer as security or encumbrance.
9. “Manager.” One or more Managers of the Company designated as provided in Article VII. Specifically, “Manager” shall collectively refer to Amanda J. Precourt, or any other person or persons that succeed Amanda Precourt in that capacity. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.

10. “Member.” The party who executes a counterpart of this Operating Agreement as a Member and each of the parties who may hereafter become Members.

11. “Membership Interest.” A Member’s entire interest in the Company including such Member’s economic interest and such other rights and privileges that the Member may enjoy by being a Member.

12. “Operating Agreement.” This Operating Agreement as originally executed and as amended from time to time.

13. “Person.” Any individual or any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization, and the heirs, executors, administrators, legal representatives, successors, and assigns of such “Person” where the context so permits.

14. “Proceeding.” Any judicial or administrative trial, hearing or other activity, civil, criminal or investigative, the result of which may be that a court, arbitrator, or governmental agency may enter a judgment, order, decree, or other determination which, if not appealed and reversed, would be binding upon the Company, a Member or other Person subject to the jurisdiction of such court, arbitrator, or governmental agency.

15. “Property.” Any property real or personal, tangible or intangible (including goodwill), including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

16. “Secretary of State.” The Secretary of State of Colorado.

17. “Transfer.” Any sale, assignment, conveyance, exchange, or other absolute transfer (including dispositions by operation of law) but not including any mortgage, pledge, grant, hypothecation, or other transfer as security or encumbrance except with respect to an absolute transfer in payment or by way of foreclosure of the obligation secured by such mortgage, pledge, grant, hypothecation, or other security or encumbrance.

18. “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.

ARTICLE II. FORMATION

1. Organization. On September 14, the Articles were delivered to the Secretary of State for filing in accordance with and pursuant to the Act. The Company and the Member hereby forever discharge the filer, and the filer shall be indemnified by the Company and the Member from and against, any expense or liability actually incurred by the filer by reason of having been the filer of the Company.

2. Operating Agreement, Effect of Inconsistencies with Act. It is the express intention of the Member that this Operating Agreement shall be the sole governing document for the Company and, except to the extent a provision of this Operating Agreement is expressly prohibited or ineffective under a nonwaivable provision of 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 a nonwaivable provision of the Act, this Operating Agreement shall be considered amended to the least degree possible in order to make this Operating Agreement effective under the Act. If 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. The Member and the Manager shall be entitled to rely on the provisions of this Operating Agreement, and the Member and the Manager shall not be liable to the Company for any action or refusal to act taken in good faith reliance on the terms of this Operating Agreement.

3. Name. The name of the Company is FORTUNE COOKIE FACTORY LLC, and all business of the Company shall be conducted under that name or under any other name determined by the Member, but in any case, only to the extent permitted by applicable law.

4. Existence. The Company shall have perpetual existence and shall continue until dissolved in accordance with this Operating Agreement or the Act.

5. 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. The Manager, may, from time to time, change the registered agent or office through appropriate filings and appropriate payment of fees to the Secretary of State. 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, the Member may designate a replacement registered agent or file a notice of change of address.

6. Principal Office. The principal office of the Company shall be located at 887 Lake Creek Road, Edwards, Colorado 81632.

ARTICLE III. NATURE OF BUSINESS

The Company may carry on any lawful business, purpose or activity except as prohibited by the Act. The Company shall have the authority to do all things necessary or convenient to accomplish such business, purpose, or activity.

**ARTICLE IV.
ACCOUNTING AND RECORDS**

1. Records to be Maintained. The Manager shall maintain the records required by the Act to be maintained at the principal office.
2. Method of Accounting. The records of the Company shall be maintained on the method of accounting determined from time to time by the Manager.

**ARTICLE V.
NAME AND ADDRESS OF THE MEMBER**

The name and address of the Member is: Amanda J. Precourt
15 West Lake Creek Road
Edwards, Colorado
81632

**ARTICLE VI.
RIGHTS AND DUTIES OF THE MEMBER**

1. Consent of the Member. At any time that the Company only has one Member, the affirmative consent (regardless of whether written, oral or by course of conduct) of the Member shall constitute “written consent of all members” for purposes of the Act, except to the extent that a nonwaivable provision of the Act requires that such consent be in writing, in which case the written consent of the Member shall constitute the written consent of all the Members.
2. Liability of Member and Manager. Neither the Member nor any Manager shall be liable as such for the liabilities of the Company. The failure of the Company to observe any formalities or requirements relating to 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 Member or any Manager for liabilities of the Company.
3. Indemnification. The Company shall indemnify the Member and any Manager for any and all costs, losses, liabilities and damages paid or accrued by the Member or Manager in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of Colorado. In addition, the Company may indemnify any other employee or other agent of the Company. The Company may, as determined by the Member, advance costs of defense of any Proceeding to the Member, any Manager, or any other agent of the Company.
4. Conflicts of Interest.
 - 4.1 The Member and any Manager shall be entitled to enter into transactions on their own behalf that may be considered to be competitive with, or a

business opportunity that may be beneficial to, the Company, it being expressly understood that the Member and any Manager may enter into transactions that are similar to the transactions into which the Company may enter.

4.2 A Member or Manager does not violate a duty or obligation owed to the Company merely because the Member's conduct furthers the Member's or Manager's own interest. A Member may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with the Company, and has the same rights and obligations with respect to any such matter 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 the Member or any Manager has a direct or indirect interest in the transaction if the transaction is fair to the Company.

ARTICLE VII. MANAGERS

The Member may, but need not, appoint one or more Managers as the Member determines. Each Manager shall have the authority to transact business on behalf of the Company as specified below. At any time the Member has not appointed a Manager, the Member shall act as Manager. The Member may, from time to time, remove or replace the Manager with or without cause. The currently acting Manager of the Company is Amanda J. Precourt. At any time that more than one Manager is serving, each Manager has the authority to act alone. Managers need not be residents of Colorado.

ARTICLE VIII. MANAGEMENT AND AUTHORITY

1. Management. Except with respect to the amendment of this Operating Agreement, the Admission of Members, the determination of whether to dissolve the Company, and any matter with respect to which the Member has communicated to the Manager the Member's intention to exercise management rights, all decisions concerning the business affairs of the Company shall be made by the Manager.

2. Authority of Manager to Bind the Company. Only the Manager, and, to the extent authorized by the Manager, any other agent of the Company, shall have the authority to bind the Company. These Persons have the power, acting alone and on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company, including without limitation:

2.1 The institution, prosecution and defense of any Proceeding in the Company's name;

2.2 The purchase, receipt, lease, acquisition, ownership, holding, improvement, and use of, and other dealing with, Property, wherever located;

2.3 The Distribution of Property;

2.4 The Disposition of Property;

2.5 The entering into of contracts and guaranties; incurring of liabilities; borrowing of money; issuance of notes, bonds, and other obligations; and securing of any of the Company's obligations by mortgage or pledge of any of the Company's Property or income;

2.6 The lending of money; investment and reinvestment of the Company's funds; and receipt and holding of Property as security for repayment, including, without limitation, the loaning of money to, and otherwise helping the Member, Manager, employees, and agents of the Company;

2.7 The conduct of the Company's business, the establishment of Company offices, and the exercise of the powers of the Company anywhere in the world;

2.8 The appointment of employees and agents of the Company, the defining of their duties, and the establishment of their compensation;

2.9 The payment of pensions and establishment of pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of the current or former Managers, employees, and agents of the Company;

2.10 The making of donations to the public welfare or for religious, charitable, scientific, literary or educational purposes;

2.11 The payment or donation, or any other act, that furthers the business and affairs of the Company;

2.12 The payment of compensation, or additional compensation, to the Manager and employees of the Company on account of services previously rendered to the Company, whether or not an agreement to pay such compensation was made before such services were rendered;

2.13 The purchase of insurance for the life of the Member, Manager, or employees for the benefit of the Company;

2.14 The participation in limited liability companies, partnerships, joint ventures, or other associations of any kind with any Person; and

2.15 The indemnification of the Member, Manager or any other Person.

3. Authority of the Manager. The Manager is authorized to act on behalf of the Company. Any act of the Manager, or other agent with the authorization of the Manager, regardless of whether such action is for the purpose of carrying on the usual business or affairs of the Company, including the exercise of the authority indicated in this Operating Agreement, shall bind the Company, and no Person dealing with the

Company shall have any obligation to inquire into the power or authority of the Manager, acting on behalf of the Company.

4. Compensation of Manager. The Manager shall be reimbursed for all reasonable expenses incurred in managing the Company and shall be entitled to reasonable compensation, in an amount to be determined from time to time by the Member.

5. The Manager's Duty of Care. The Manager's duty of care in the discharge of the Manager's duties to the Company is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. In discharging its duties, the 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 made by any of its agents, or by any other Person, as to matters the Manager reasonably believes are within such other Person's professional or expert competence and who or which has been selected with reasonable care 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 the Member might properly be paid.

6. Officers of the Company. The Manager has the authority to elect officers of the Company at any time and from time to time. Subject to the authority of the Manager, such officers shall have full and complete discretion to manage and control the day-to-day business, operations and affairs of the Company in the ordinary course of business, to make all decisions affecting the day-to-day business, operations and affairs of the Company in the ordinary course of its business and to take all such actions as they deem necessary or appropriate to accomplish the foregoing, unless such powers have otherwise been restricted by the Manager (specifically or generally). In addition, the officers shall have such other powers and duties as may be prescribed by the Manager. Each officer so appointed shall continue in office until his successor shall be elected or appointed and shall qualify, or until his earlier death, resignation or removal. The Manager may remove any officer appointed at any time, with or without cause.

ARTICLE IX. CONTRIBUTIONS

The Member may, but shall not be obligated to, make Capital Contributions from time to time.

ARTICLE X. DISTRIBUTIONS

Except to the extent prohibited by the Act, the Company may make Distributions as determined by the Manager from time to time.

**ARTICLE XI.
TAXES**

1. Elections. The Manager may make any tax elections for the Company allowed under the Internal Revenue Code of 1986 as amended from time to time or the tax laws of any Taxing Jurisdiction.

2. Taxes of Taxing Jurisdictions. To the extent that the laws of any Taxing Jurisdiction require, the Member shall submit an agreement indicating that the Member shall make timely income tax payments to the Taxing Jurisdiction and that the Member shall accept personal jurisdiction of the Taxing Jurisdiction with regard to the collection of income taxes attributable to the Member's income, and 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, interest and penalty 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 XI.

**ARTICLE XII.
DISPOSITION OF MEMBERSHIP INTEREST
AND ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS**

1. Disposition. The Member's Membership Interest is transferable either voluntarily or by operation of law. The Member may Dispose of all or a portion of the Member's Membership Interest. In the event of the Transfer of less than all of the Member's Membership Interest, the transferee shall be Admitted on such terms and conditions as the Member and the Additional Member shall agree upon. In the event of the Transfer of the Member's entire Membership Interest, the transferee shall succeed to all the Member's rights under this Operating Agreement. Upon Transfer of a portion of the Member's Membership Interest, the transferee shall only be Admitted as an Additional Member upon the written consent of the Member.

2. Admission of Additional Members. The Company may, to the extent and on the terms determined by the Member, Admit Additional Members and determine the Capital Contributions, rights and duties of such Additional Member.

**ARTICLE XIII.
DISSOLUTION AND WINDING UP**

1. Dissolution. The Company shall be dissolved and its affairs wound up at the time determined by the Member. The death, bankruptcy, dissolution, or incompetence of the Member shall not result in the dissolution of the Company.

2. Effect of Dissolution. Upon dissolution, the Company shall cease carrying on, as distinguished from the winding up of, the business and affairs of the Company, but the Company is not terminated, but continues until the winding up of the affairs of the Company is completed and the certificate of cancellation has been filed with the Secretary of State.

3. Distribution of Assets on Dissolution. Upon the winding up of the Company, the Company Property shall be distributed:

3.1 To creditors, including the Member if it is a creditor, to the extent permitted by law, in satisfaction of the Company's liabilities (whether by payment or the making of reasonable provision for payment thereof);

3.2 To the Member in cash or Property, or partly in both, as determined by the Manager.

4. Winding Up and Certificate of Cancellation. The winding up of the Company shall be completed when all debts, liabilities, and obligations of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining Property and assets of the Company have been distributed to the Member. Upon the completion of winding up of the Company, a certificate of cancellation shall be delivered to the Secretary of State for filing. The certificate of cancellation shall set forth the information required by the Act.

ARTICLE XIV. AMENDMENT

This Operating Agreement may be amended or modified from time to time only by a written instrument adopted and executed by the Member.

ARTICLE XV. MISCELLANEOUS PROVISIONS

1. Entire Agreement. This Operating Agreement represents the entire operating agreement governing the relationship between the Member and the Company.

2. Rights of Creditors and Third Parties under Operating Agreement. This Operating Agreement is adopted by the Member for the exclusive benefit of the Company, its Member, and their successors and assigns. Except with respect to Section 3 of Article XIII, 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 the Member with respect to any Capital Contribution or otherwise.

IN WITNESS WHEREOF, the undersigned has executed this Operating Agreement as of the Effective Date set forth above.

Amanda J. Precourt

