

### **THIRD AMENDMENT TO DEVELOPMENT AGREEMENT**

This THIRD AMENDMENT TO DEVELOPMENT AGREEMENT, dated as of the date on the City's signature page ("Effective Date"), is between THE CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the "City"), and COUNTRY CLUB GARDENS INVESTMENTS, LTD., a Colorado limited partnership ("Owner"), (this "Third Amendment").

#### **RECITALS**

This Third Amendment is made with respect to the following facts:

A. The City and Owner entered into that certain Development Agreement dated October 5, 2001 (the "Original Development Agreement").

B. The City and Owner entered into that certain First Amendment to Development Agreement dated December 16, 2008 (the "First Amendment"), modifying, among other things, the Development Area under the Original Development Agreement.

C. The City and Owner entered into that certain Second Amendment to Development Agreement dated December 4, 2009 (the "Second Amendment"), providing, among other things, for renovations to the Country Club Gardens Apartments and providing for extension of the term of vested development rights under the Original Development Agreement.

D. The Original Development Agreement, the First Amendment, and the Second Amendment are collectively referred to herein as the "Development Agreement."

E. Section 5.6 of the Development Agreement provides that the Development Agreement cannot be amended except through a written statement signed by each party and approved by City Council. This Third Amendment constitutes a written statement in compliance with such Section 5.6.

F. The City and Owner acknowledge that all required notices were provided in accordance with Section 5.7 of the Development Agreement.

G. The City and Owner now desire to amend the Development Agreement as more particularly described below.

#### **AGREEMENT**

In consideration of the facts set forth in the Recitals, the Development Agreement and the mutual agreements set forth below, the receipt and sufficiency of which is hereby acknowledged, the City and Owner hereby agree as follows:

1. Defined Terms. All capitalized terms used but not defined in this Third Amendment will have the meanings set forth for such terms in the Development Agreement. All terms that are defined in this Third Amendment and used in any provisions that are added to the

Development Agreement pursuant to this Third Amendment have the meanings set forth for such terms in this Third Amendment.

2. Modification of Development Area. All of the exhibits to the First Amendment are hereby deleted and nullified, and shall be of no force and effect from the date of this Third Amendment. This Third Amendment amends the Development Agreement by changing the Development Area to include the area shown and legally described on **Exhibit C-3** attached to this Third Amendment. Anywhere in the Development Agreement that the Development Area is depicted or described, the Development Agreement shall refer instead to the Development Area as depicted on Exhibit C-3 attached to this Third Amendment. The Replacement Improvements shall be constructed entirely within the building envelope of the project as depicted on Exhibit C-3 attached to this Third Amendment (“Building Envelope”).

The following is hereby agreed to with respect to the Development Area and Building Envelope shown on Exhibit C-3:

(a) All dimensions describe the maximum Building Envelope as measured to the primary outside wall surface, with the exception of a six-foot balcony depth outside of the building envelope. Owner may construct improvements anywhere within the maximum Building Envelope.

(b) All vertical dimensions describe the maximum Building Envelope to the top of the roof slab.

(c) The base historical grade elevation for all vertical height measurements in Exhibit C-3 shall be 5,307 feet above mean sea level (the “Base Elevation”).

(d) Section C.2.a of Exhibit C as attached to the Original Development Agreement, is hereby deleted in its entirety and replaced with the following language:

“New buildings shall be constructed only within the Development Area as shown on Exhibit C-3. New buildings shall not exceed 300 feet in height to top of roof slab as measured from Base Elevation. As stated in Former Chapter 59-2(52), unoccupied building features such as church spires, towers, flagpoles, antennas, chimneys, flues and vents, cooling towers, enclosures for tanks and elevator penthouses serving the roof including any vertical or sloped screen walls may extend a maximum of twenty-eight (28) feet above the permitted 300 feet of the building. Elevator penthouses not serving the roof and other enclosed or unenclosed mechanical equipment including vertical or sloped screen walls for such equipment shall not exceed a height of twelve (12) feet above the permitted height of the building.”

(e) The City and the Owner acknowledge discussion that Owner may apply for a single-level connecting structure (up to a maximum 15-foot floor-to-ceiling height) that may extend above the 45-foot height level of the roof slab of the parking structure in the area between the two residential towers. Such connecting structure shall be subject to Landmark Preservation Commission design review and approval. Denial of the connecting structure by the

Landmark Preservation Commission shall not constitute a default under Section 4.1(b) of the Development Agreement.

(f) All measurements within the Building Envelope are maximums. New structures may be constructed anywhere within the Building Envelope and are not required to be built to the maximum Building Envelope.

3. Ratification; Counterparts. Except as amended in this Third Amendment, the Development Agreement is affirmed and ratified in each and every particular. In the event of any inconsistency or conflict between this Third Amendment and the Development Agreement, the provisions of this Third Amendment shall control. This Third Amendment may be executed in counterparts, all such counterparts will constitute the same agreement and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart.

4. Electronic Signatures and Electronic Records: Owner agrees that the Development Agreement and any other documents requiring a signature hereunder may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of the Development Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the Development Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

*[Signature pages follow]*

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** CPLAN-XC72155-03

**Contractor Name:** Country Club Gardens Investments, Ltd.

By: see attached

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**ATTEST: [if required]**

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**COUNTRY CLUB GARDENS  
INVESTMENTS, LTD.,**  
a Colorado limited partnership

By: Country Club Gardens, Inc., a  
Colorado corporation, its general  
partner

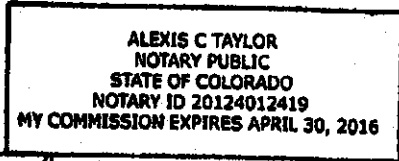
By: [Signature]  
Name: Sean Broe  
Title: principal

STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 22 day of July,  
2014 by Sean Broe, as Principal of Country Club  
Gardens, Inc., as general partner of COUNTRY CLUB GARDENS INVESTMENTS. LTD., a  
Colorado limited partnership.

Witness my hand and official seal.

My commission expires: April 30, 2016



[Signature]  
Notary Public  
Address 816 S Flower St Lakewood, CO  
80226



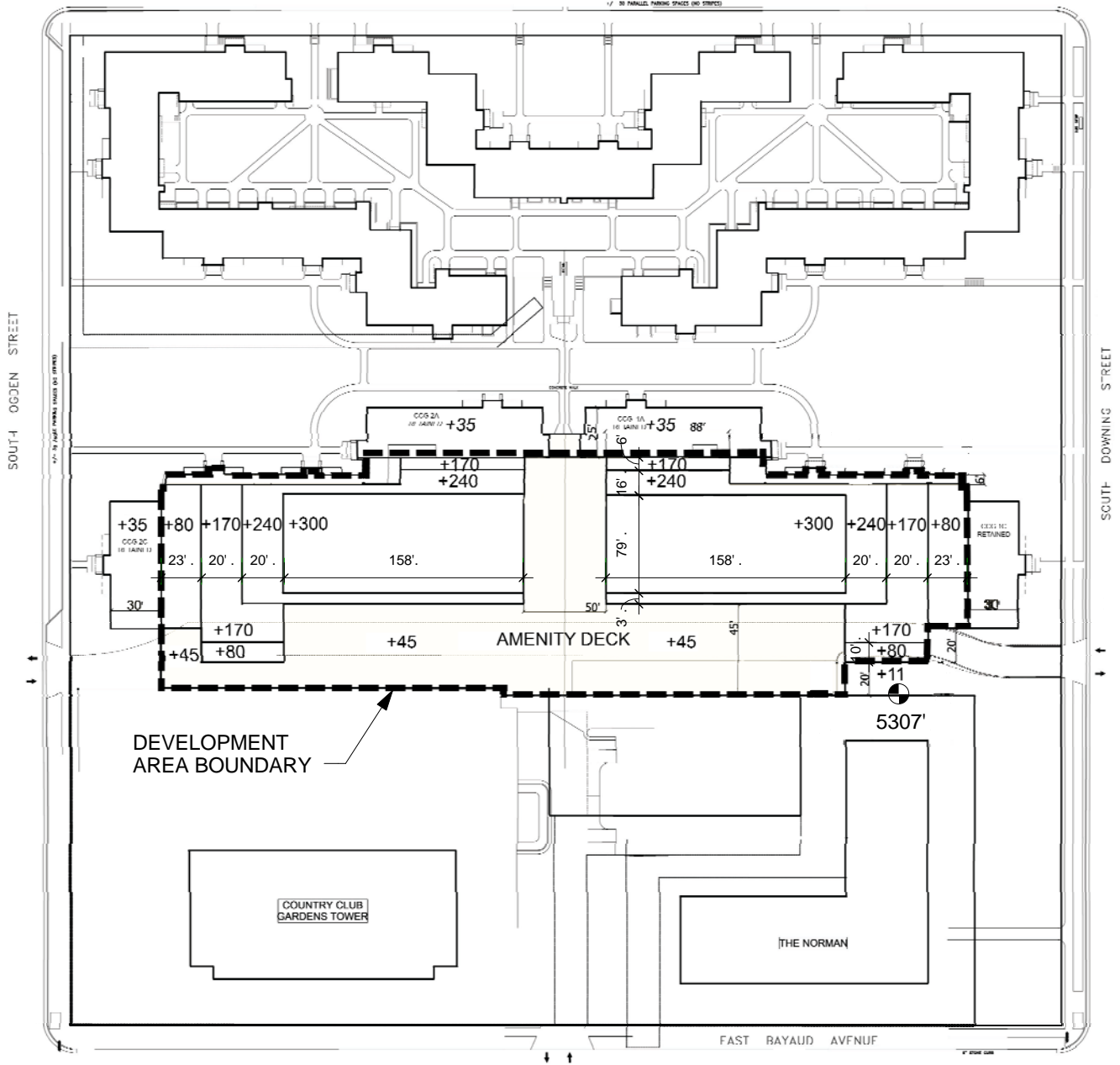
**EXHIBIT C-3  
DEVELOPMENT AREA**

# DEVELOPMENT AREA AND BUILDING ENVELOPE COUNTRY CLUB GARDENS

EAST ELI SWORTH AVENUE



0' 40' 80'



ISSUED: 07.22.14



## DEVELOPMENT AREA LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PART OF BLOCKS 5 AND 6, SHACKELTON PLACE AS RECORDED IN BOOK 2 AT PAGE 65 IN THE RECORDS OF THE CITY AND COUNTY OF DENVER CLERK AND RECORDER'S OFFICE AND SITUATED WITHIN THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE SOUTHEASTERLY CORNER OF SAID BLOCK 5, AND CONSIDERING THE EASTERLY LINE OF SAID BLOCK 5 TO BEAR NORTH 00°27'13" WEST, WITH ALL BEARINGS HEREON BEING REFERENCED TO THIS LINE;

THENCE NORTH 33°38'46" WEST, A DISTANCE OF 239.57 FEET TO THE **POINT OF BEGINNING**;

THENCE SOUTH 89°32'16" WEST, A DISTANCE OF 208.60 FEET;

THENCE NORTH 00°27'44" WEST, A DISTANCE OF 3.98 FEET;

THENCE SOUTH 89°32'16" WEST, A DISTANCE OF 207.22 FEET;

THENCE NORTH 00°27'44" WEST, A DISTANCE OF 129.37 FEET;

THENCE NORTH 89°32'16" EAST, A DISTANCE OF 27.52 FEET;

THENCE NORTH 00°27'44" WEST, A DISTANCE OF 4.23 FEET;

THENCE NORTH 89°32'16" EAST, A DISTANCE OF 11.70 FEET;

THENCE SOUTH 00°27'44" EAST, A DISTANCE OF 4.23 FEET;

THENCE NORTH 89°32'16" EAST, A DISTANCE OF 47.50 FEET;

THENCE NORTH 00°27'44" WEST, A DISTANCE OF 4.23 FEET;

THENCE NORTH 89°32'16" EAST, A DISTANCE OF 11.80 FEET;

THENCE SOUTH 00°27'44" EAST, A DISTANCE OF 4.23 FEET;

THENCE NORTH 89°32'16" EAST, A DISTANCE OF 24.03 FEET;

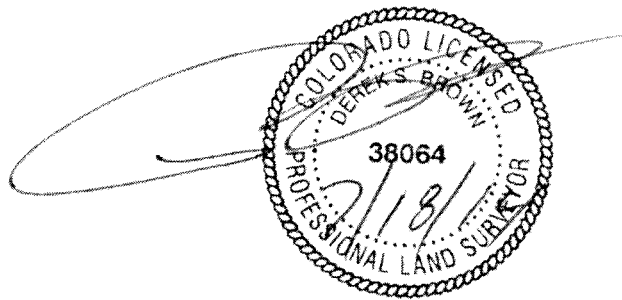
THENCE NORTH 00°27'44" WEST, A DISTANCE OF 15.46 FEET;

THENCE NORTH 89°32'16" EAST, A DISTANCE OF 246.00 FEET;

THENCE SOUTH 00°27'44" EAST, A DISTANCE OF 15.46 FEET;

THENCE NORTH 89°32'16" EAST, A DISTANCE OF 24.03 FEET;

THENCE NORTH 00°27'44" WEST, A DISTANCE OF 4.23 FEET;  
THENCE NORTH 89°32'16" EAST, A DISTANCE OF 11.80 FEET;  
THENCE SOUTH 00°27'44" EAST, A DISTANCE OF 4.23 FEET;  
THENCE NORTH 89°32'16" EAST, A DISTANCE OF 47.50 FEET;  
THENCE NORTH 00°27'44" WEST, A DISTANCE OF 4.23 FEET;  
THENCE NORTH 89°32'16" EAST, A DISTANCE OF 11.70 FEET;  
THENCE SOUTH 00°27'44" EAST, A DISTANCE OF 4.23 FEET;  
THENCE NORTH 89°32'16" EAST, A DISTANCE OF 27.52 FEET;  
THENCE SOUTH 00°27'44" EAST, A DISTANCE OF 93.35 FEET;  
THENCE SOUTH 89°32'16" WEST, A DISTANCE OF 23.00 FEET;  
THENCE SOUTH 00°27'44" EAST, A DISTANCE OF 20.00 FEET;  
THENCE SOUTH 89°32'16" WEST, A DISTANCE OF 52.28 FEET;  
THENCE SOUTH 00°27'44" EAST, A DISTANCE OF 20.00 FEET TO THE **POINT OF BEGINNING.**  
CONTAINING AN AREA OF 1.531 ACRES, (66,698 SQUARE FEET), MORE OR LESS.  
EXHIBIT ATTACHED AND MADE A PART HEREOF.



DEREK S. BROWN, PLS  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 E. MINERAL AVENUE, SUITE 1, LITTLETON, CO 80122  
303-713-1898