

**DEVELOPER AND COMMUNITY BENEFIT AGREEMENT  
AND DECLARATION OF RESTRICTIVE COVENANTS**

by

**CHERRY CREEK WEST DEVELOPMENT COMPANY, LLC,**  
a Delaware limited liability company

to and for the benefit of

**THE CHERRY CREEK STEERING COMMITTEE, CHERRY CREEK NORTH  
NEIGHBORHOOD ASSOCIATION, CHERRY CREEK EAST NEIGHBORHOOD  
ASSOCIATION, COUNTRY CLUB HISTORIC NEIGHBORHOOD, INC., AND  
HILLTOP NEIGHBORHOOD ASSOCIATION, EACH  
A REGISTERED NEIGHBORHOOD ORGANIZATION WITHIN  
THE CITY AND COUNTY OF DENVER, COLORADO**

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**DEVELOPER AND COMMUNITY BENEFIT AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

**THIS DEVELOPER AND COMMUNITY BENEFIT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS** (this “Agreement”) is made and entered into as of the 16th day of September, 2024, by and among Cherry Creek West Development Company, LLC, a Delaware limited liability company (“Developer”), and with, to and for the benefit of the Cherry Creek Steering Committee (the “CCSC”), a Colorado unincorporated nonprofit organization representing and comprised of, among others, the Registered Neighborhood Organizations of Cherry Creek North Neighborhood Association, a Colorado nonprofit corporation (“CCNNA”) Cherry Creek East Association, a Colorado nonprofit corporation (“CCEA”) Country Club Historic Neighborhood, Inc., a Colorado nonprofit corporation (“CCHN”) and Hilltop Neighborhood Association, a Colorado nonprofit corporation (“Hilltop”) (collectively CCNNA, CCEA, CCHN and Hilltop, the “Area RNOs” and together with the Developer, the “Parties”), all with the consent of Temple Hoyne Buell Foundation, a Colorado nonprofit corporation (“Buell”), and TCCLP (defined below). Capitalized terms used in this Agreement shall have the meaning given such terms where parenthetically defined or, if not parenthetically defined, in Section 1.01 of this Agreement.

**RECITALS:**

A. Each of the Area RNOs is a registered “neighborhood organization” (RNO) formed as Colorado non-profit corporations and registered under Sections 12-91 through 12-98 of the Denver Municipal Code in effect as of the date of this Agreement, which is defined in Section 12-92 of the Code to mean “a voluntary group of individual residents and owners of real property, including businesses, within a certain prescribed area of the city, and/or a coalition of such groups formed for the purpose of collectively addressing issues and interest common to and widely perceived throughout the Cherry Creek statistical neighborhood and the surrounding neighborhoods”.

B. Buell is the fee owner of that certain real property consisting of approximately 12.86 acres, which is more particularly described on Exhibit A attached hereto and incorporated herein (the “Property”). Taubman-Cherry Creek Limited Partnership (“TCCLP”) is the ground lessee of the Property, and TCCLP and Developer, with the consent and approval of Buell on the conditions and requirements set forth therein, have entered into a Sub-Ground Lease dated August 18, 2023 (“Sub-Ground Lease”), with respect to the Property.

C. Developer desires to develop the Property in accordance with the Sub-Ground Lease and one or more future Site Plans for the development of the Property (as may be modified from time to time to reflect regulatory, design, and construction-related revisions, the “Site Plan”) to be submitted to the City for approval in conformance with the Code and this Agreement (“Project”), and as generally contemplated in the conceptual plans set forth in the Presentation Materials, and, to that end, Developer, with the written consent of and authorization from Buell, filed an application for rezoning of the Property to the Planned Unit Development District pursuant to the PUD-G 36 (“PUD-G 36”) under the Code accepted as of May 31, 2024, and to which the City has assigned the number 2022i-00264 (the “Rezoning Application”).

D. The CCSC and the Area RNOs are the official neighborhood organizations for the area known as the Cherry Creek statistical neighborhood and immediately surrounding residential areas (collectively, the “*Cherry Creek Area*”) in which the Property is located and. In connection with the development of the Property, Developer has notified and presented the proposed Project as set forth in the Presentation Materials to the CCSC and the Area RNOs for a period in excess of two and a half years through multiple meetings and presentation of the Presentation Materials in person meetings, by on-line platform meetings and through the Developer’s detailed website www.CherryCreekWest.com.

E. The CCSC and the Area RNOs have worked collaboratively and individually as organizations to disseminate the Project information throughout the Cherry Creek Area and sought input from stakeholders and interested parties on the advantages and disadvantages of the Project and has taken the concerns of residents and businesses into account in seeking to work with the Developer to reach agreement on specific issues of concern to such residential and business neighbors throughout the Cherry Creek Area, including perceived issues of density, traffic and consistency of development form and context, with the intent of reaching agreement on those community benefits for the Cherry Creek Area that will offset the perceived and expressed concerns with the Project, its development and overall impact on the Cherry Creek Area.

F. The CCSC and the Area RNOs have each sought and obtained approval for the Rezoning Application through their respective boards of directors in accordance with their Bylaws (as noted on the signature page for each such entity) on the express condition of this Agreement being entered into and implemented in accordance with the terms hereof and the same being completed and recorded against the Property prior to proceeding through the final City Council approval process.

G. Developer, the CCSC and the Area RNOs now desire to set forth the agreements with respect to the Property and the Project reached with and for the community benefit the CCSC and the Area RNOs, including its agreements concerning the land use concepts governing the Property and the overall redevelopment of the Property, and the Project being developed and used thereon in accordance with this Agreement.

NOW, THEREFORE, in consideration of the conditions of rezoning of the Property, covenants, conditions, restrictions and undertakings set forth herein, and for ten dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE 1

### DEFINITIONS

**Section 1.01 Definitions and Interpretation.** The following terms shall have the respective meanings assigned to them in this Section 1.01 unless otherwise parenthetically defined elsewhere in this Agreement:

“*Affiliated Party*” means a limited or general partner or member of Developer or any party who controls or is controlled by Developer which has a legal right to develop any portion of the Property.

“*Agreement*” means this Developer and Community Benefit Agreement and Declaration of Restrictive Covenants, as it may be amended from time to time.

“*Area RNOs*” has the meaning given such term in the preamble to this Agreement.

“*Buell*” has the meaning given such term in the preamble to this Agreement.

“*Board*” means the board of directors of the Area RNOs, as appointed or elected pursuant to the organizational documents and bylaws of each such Area RNO.

“*Blueprint Denver*” means the City’s integrated Land Use and Transportation Comprehensive Plan 2040 adopted April 22, 2019, as amended from time to time.

“*Building*” has the meaning given such term in Section 2.02(i).

“*CCEA*” has the meaning given such term in the preamble to this Agreement.

“*CCHN*” has the meaning given such term in the preamble to this Agreement.

“*CCN District*” means the Cherry Creek North zone district set forth in the applicable provisions of the Code, including without limitation Article 7, Section 7.2.5 and Section 7.3.

“*CCNNA*” has the meaning set forth in the preamble to this Agreement.

“*CCSC*” has the meaning given such term in the preamble to this Agreement.

“*Changed Market Condition*” has the meaning given such term in Section 2.02(a).

“*Cherry Creek Area*” has the meaning given such term in Recital D.

“*City*” means the City and County of Denver, State of Colorado.

“*City-Owned Gateway Area*” has the meaning given such term in Section 2.02(g).

“*Code*” means the Denver Municipal Code in effect as of the date of this Agreement, as the same may be modified from time to time and includes the Denver zoning code and the Denver building code and the rules and regulations promulgated thereunder.

“*Cross Walk Porkchops*” has the meaning given such term in Section 2.02(e)(ii).

“*Design Standards and Guidelines*” means those certain provisions of the Cherry Creek North Design Standards and Guidelines applicable to “Subarea 3” to be adopted by the City.

“*Developer*” has the meaning given such term in the initial paragraph of this Agreement, together with its successors and assigns and together with any Affiliated Party that acquires the right to develop or redevelop property within the Property.

“*Development Documents*” means, collectively, the Rezoning Application, the Site Plan the City Development Agreement, the IMP, the TDM Plan and any and all documents and instruments (including, without limitation, all building plans, permits and authorizations) by and between Developer and the City or Developer and the CCSC and the Area RNOs or any third party relating to the use, development or construction of the Project.

“*Development Period*” means the period commencing on the date upon which the Rezoning Application is approved by the City, and continuing through the initial entitlement, development, and final construction of the Project as evidenced by the certificates of occupancy (temporary or final) for the use and occupancy of the last of the buildings to be constructed on the Property in both the First Building Phase and the Final Building Phase pursuant to the Project Documents.

“*Event of Default*” has the meaning given such term in Section 3.05.

“*Final Building Phase*” means the final phase of the proposed Project, which is intended to include the western portion of the Property, including four (4) buildings and related improvements and supporting infrastructure, substantially as shown in the Presentation Materials, as the same may be modified pursuant to Section 2.01(b).

“*First Building Phase*” means the first phase of the proposed Project, which is intended to include First Phase infrastructure improvements and three (3) buildings and related improvements included on the eastern portion of the Property, substantially as shown in the Presentation Materials, as the same may be modified pursuant to Section 2.01(b).

“*First Phase*” means the first phase of the proposed Project, which is intended to include the eastern portion of the Property, including The Green, as generally depicted in the IMP and including the infrastructure required under the IMP to include Clayton Lane, the bikeway improvements, the Cherry Creek Trail improvements and related supporting infrastructure, as the same may be modified pursuant to Section 2.01(b).

“*Gateway Area*” has the meaning given such term in Section 2.02(g).

“*Gateway Improvements*” means the infrastructure, whether signage, plantings, sculptures or a combination thereof, to identify the Cherry Creek statistical neighborhood area as a separate and unique area for residents and businesses that support the “urban center” context of the Cherry Creek Area, including its rich residential, retail, art and mixed used character. This includes the mixed-use character of the neighborhood and the importance of pedestrian links and emphasis on pedestrian based travel, as such amenities are further described in the Cherry Creek Area Plan and Blueprint Denver. To the extent required by the Legal Requirements, the Gateway Improvements shall be approved by the City.

“*Hilltop*” has the meaning given such term in the preamble to this Agreement.

“*IMP*” has the meaning given such term in Section 2.02(e)(i).

“*Intersection Improvements*” has the meaning given such term in Section 2.02(e)(ii).

“*Legal Requirements*” means all laws, rules, regulations, ordinances, codes, statutes and guidelines relating to the performance of Developer in connection with construction of improvements on the Property, including, without limitation, those under the Code.

“*Neighborhood Bikeway*” has the meaning given such term in Section 2.02(e)(iii).

“*Non-Vehicular Area*” has the meaning given such term in Section 2.02(h).

“*Notice of Default*” has the meaning given such term in Section 3.05.

“*Overall TDM Commitment*” has the meaning given such term in Section 2.02(e)(i)(2).

“*Parties*” has the meaning given such term in the preamble to this Agreement.

“*Presentation Materials*” means the proposed site plan layout, building identification and uses thereof that have been presented over time to the CCSC, as the same are set forth on Exhibit B hereto.

“*Project*” has the meaning given such term in Recital C.

“*Property*” has the meaning given such term in Recital B.

“*PUD-G 36*” has the meaning given such term in Recital C.

“*Recorded Covenants*” has the meaning given such term in Section 3.02.

“*Reset Event*” means an event that impacts what Developer can or is willing to develop on any undeveloped portions of the Property, which event occurs under the following conditions: (i) such event occurs, or becomes applicable to the Property after the expiration of the fifteen year vesting period established by the City Development Agreement (as the setting of such period is allowed pursuant to C.R.S 24-68-104(2)) has expired, as the same may be extended after notice and hearing, and (ii) such event involves a material change to the applicable Legal Requirements that will apply to the Property on a going-forward basis, which may include without limitation changes to the City’s affordable housing ordinance, applicable zoning regulations, urban design standards, or other City policies or ordinances such that Developer is required by such changed Legal Requirements to develop a substantially different project on the remaining undeveloped portions of the Property than what is set forth in the Presentation Materials, as the same may be modified pursuant to Section 2.01(b), or that substantially increased fees would be due in connection therewith, or Developer reasonably determines, in its discretion that such changed Legal Requirements would have a material and adverse impact upon the Project, including without limitation financial impacts, relative to the Project contemplated by the Presentation Materials, as the same may be modified pursuant to Section 2.01(b).

“*Rezoning Application*” has the meaning given such term in Recital C.

“*Site Plan*” has the meaning given such term in Recital C.

“*Sub-Ground Lease*” has the meaning given such term in Recital B.

“*TCCLP*” has the meaning given such term in the preamble to this Agreement.

“*TDM Plan*” has the meaning given such term in Section 2.02(e)(i).

“*The Green*” has the meaning given such term in Section 2.02(f).

“*Turn Lane*” has the meaning given such term in Section 2.02(e)(ii).

**Section 1.02 Use of Defined Terms.** Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender shall be construed to include each other gender and words of the singular number shall be construed to include the plural number, and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

**Section 1.03 Titles and Headings.** The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

## ARTICLE 2

### DEVELOPMENT OBLIGATIONS AND REQUIREMENTS

**Section 2.01 Development of the Property Generally; Process and Requirements.** The recitals set forth above are incorporated herein. In connection with the request for approval of the proposed changes pursuant to the Rezoning Application being made to the City, and in connection with ownership, development, construction and use of the Project on the Property or on any portion of the Property, Developer covenants and agrees as follows:

(a) **Rezoning.** Developer shall seek approval from the City for a change in the zoning for the Property in a manner consistent with the Rezoning Application. Developer agrees that the use of the Property will be subject to the limitations and agreements set forth in this Agreement.

(b) **Development Process; Ongoing Communications to the CCSC and Area RNOs.** Developer shall notify the City of this Agreement in connection with the processing of the Rezoning Application and the future Site Plan and site planning process for the Project. In connection with the completion of the Development Documents and the Site Plan process, during the Development Period, Developer agrees to continue to seek to implement the development of the Project in substantial compliance with the spirit and intent of the Presentation Materials, as the same may be further defined and fleshed out in the site planning process with the City and pursuant to Section 2.01(b). In furtherance of the foregoing, the CCSC and the Area

RNOs acknowledge that the Presentation Materials are intended to serve as a conceptual depiction of the Project, and that Developer has not, as of the date of this Agreement, completed economic or market analysis, design, engineering, or construction drawings of any buildings, infrastructure, landscaping, or other improvements with respect to the Project, and that Developer will have the right to further develop the specific designs of the Project which may necessarily include changes to the Presentation Materials from time to time in order to reflect the progression of the Project, and such Presentation Materials may be modified by Developer to reflect the foregoing, including without limitation modifications with respect to the location of buildings, uses, open space, landscaping, and accessways within the Project; provided, however, that in no event shall such modifications be deemed to waive or in any way limit the applicable terms and conditions of this Agreement, including without limitation, the covenants and restrictions set forth in Section 2.02, without the approval of the CCSC, as set forth in Section 3.08. Developer shall keep the CCSC and the Area RNOs reasonably informed, including without limitation, upon request from the CCSC, by presentation at the regularly scheduled meetings with the CCSC generally and from time to time at general meetings of the Area RNOs, as to the status of development of the Project, including updates regarding the Rezoning Application and the Site Plan process and presentation of the design development of the Project, including overall elevations and materials selected by Developer for the Project, and further progression of the designs as compared to the Presentation Materials in accordance with the foregoing sentence. Upon request from the CCSC during the Development Period, Developer shall also provide to the CCSC a copy of the traffic and mobility study(s) submitted to the City in connection with each Site Plan process.

(i) The CCSC, as Main Contact. For all purposes pursuant to this Agreement, including without limitation of notice and presentations, the Area RNOs agree that the CCSC shall be the main point of contact for communications with the Developer, and further that all Area RNOs shall be deemed to have received notice hereunder if Developer has notified the CCSC in accordance with the applicable provisions of this Agreement. The CCSC shall work with the Area RNOs to disseminate information to the members of the CCSC who, in turn, shall communicate the information as appropriate to the members of their respective Area RNOs.

(ii) Limitation on Developer Requirements for Area RNO Participation. Developer shall deliver all notices, presentations and materials required hereunder to the CCSC and shall not be responsible for duplicative notices or updated presentations to the Area RNOs; provided, however, that, during the Development Period, Developer will participate in periodic general meeting or board presentations to the Area RNOs at their reasonable request and upon prior written notice and request, not to exceed twice per year. Area RNOs shall direct questions or concerns with the application of this Agreement to the CCSC, which shall be responsible to addressing such concerns that are common to the Area RNOs and which focus on the implementation or enforcement of this Agreement.

(c) ***Limitation on Buell's and TCCLP's Liability.*** Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that Buell's and TCCLP's execution of the attached consents to this Agreement are solely in their respective capacities as the owner and ground lessee of the Property, and shall not in any event be deemed an assumption of any obligations or other liability hereunder by Buell or TCCLP, unless and until Buell or TCCLP has assumed the role of Developer hereunder, whereupon Buell, TCCLP, or its respective assignee shall be deemed the "Developer" hereunder.

(d) ***Developer to Remain Primary Developer.*** Except with respect to the right of Buell or TCCLP to take over as developer or remove Developer as the developer under the Sub-Ground Lease, or upon the exercise of the rights and remedies of Developer's lenders and investors under their applicable investment and loan documents to replace Developer as the developer, or further subject to the exercise of Developer's own rights and remedies to exit the Project, in its discretion, Developer agrees to remain the primary developer for the Property and shall not transfer its development rights pursuant to the Sub-Ground Lease to any sub-developer or third party developer without the prior written consent of the CCSC and the Area RNOs.

**Section 2.02 Permitted Uses, Covenants and Restrictions.** Developer intends to construct on the Property a mixed-use Project containing, at completion of the Development Period, a minimum number of affordable housing units required to qualify as "IRUs" pursuant to the City Development Agreement, but Developer shall make available not less than 99 affordable housing units meeting the definition of "IRUs" thereunder. Developer may construct, erect, use and maintain improvements permitted in the proposed PUD-G 36 pursuant to the Code and as outlined in the Rezoning Application for the Property, subject to the following covenants, conditions and restrictions:

(a) ***Uses.*** Uses of the Property may include any uses allowed under PUD-G 36, except that, for a period commencing on the date of approval of the Rezoning Application and expiring on the earlier of 20 years following such date or the date of the occurrence of a Reset Event, no building in the Project shall be used for "dental/medical office and clinic" uses, as that term is defined by Section 11.12.4.6.B.1 of the Code; provided, however, that nothing in this Section 2.02 shall be deemed to prohibit (i) any medical related uses for which the primary services do not include the in-person treatment of patients or clients, including, without limitation, office uses related to the development, financing or sale of medical devices, (ii) any medical related uses, including without limitation physical therapy, acupuncture, and other "medical concierge" type uses established in connection with another primary use, such as a gym or fitness center, residential, or office use, and available only to members, customers, and/or tenants of such primary use, (iii) any day spa and boutique uses, or (iv) any dental offices and clinic that do not provide medical services unless otherwise permitted pursuant to clauses (i), (ii), or (iii). Notwithstanding the foregoing, if after a period of ten (10) years, the Developer reasonably determines through a market analysis that the anticipated Final Building Phase cannot be used for the anticipated uses as restricted herein,

then Developer shall deliver to the CCSC written notice of such changed condition (a “*Changed Market Condition*”) setting forth the Changed Market Condition explanation for such proposed changes and describing the modifications in detail in a proposed draft amendment to this Agreement. Upon receipt of such Changed Market Condition notice, the CCSC shall engage the Developer, the CCSC members and the Area RNOs in discussions with the Developer to review any such proposed changes and the underlying Changed Market Conditions which are the basis therefor. Developer shall invite the City planning and zoning representatives working on such revised plans and shall allow the CCSC and Area RNOs to comment upon the revisions. The CCSC and the Area RNOs agree to use reasonable good faith efforts to address and reach approval of Developer’s request to amend the Agreement to include the proposed changes. In making its determination on consenting to and approving such changes, the CCSC shall be entitled to examine (i) any increased traffic studies reflecting updated traffic data for the area and for the revised project uses and any then-existing improvements to the traffic corridor in the Cherry Creek Area, including whether bus rapid transit or other transit improvements have been made by the City, DRCOG or RTD, (ii) any increased needs of the greater Cherry Creek Area community for uses otherwise not allowed pursuant to this Agreement, (iii) any increased and more robust infrastructure that has been implemented in connection with or following the completion of the first phase of the Project, and (iv) the manner in which the First Building Phase of the Project development has been successful in bringing to the Cherry Creek Area the material benefits intended to be provided pursuant to this Agreement.

(b) ***Car Parking.*** The parking garage to be constructed below grade as part of the Project will provide parking for cars, the number of spaces for which shall meet or exceed the minimum number of parking spaces required by PUD-G 36 for uses in the Project. Notwithstanding the foregoing, Developer shall not voluntarily agree to any requirements that would provide for a maximum parking requirement. The exact number of spaces in excess of the minimum required for the Project, if any, shall be determined through the Site Plan review process with the City.

(c) ***Bike Parking; Biking Infrastructure and Facilities for the Benefit of the Community.*** Bicycle parking areas shall meet or exceed the number required by PUD-G 36 for the uses in the Project. The exact number of bicycle parking areas in excess of the minimum required for the Project, if any, shall be determined through the Site Plan review process with the City. In addition, Developer shall develop as a part of the First Phase of the Project a bike mobility hub for the storage, use and facilitation of bikers as contemplated by the TDM Plan.

(d) ***Site and Overall Design Standards.*** Developer shall continue to design the Project through the City Site Development Review process and shall seek to implement, to the extent possible, the spirit and intent of the design set forth in the Presentation Materials, as the same may be modified pursuant to Section 2.01(b). Developer shall cause the buildings on the Project to comply with the Design Standards and Guidelines, subject to any waivers of such Design Standards and

Guidelines that are allowed or otherwise provided for in accordance with the terms and conditions of the Design Standards and Guidelines.

(e) *Alternative Transportation Strategies.* The CCSC and Area RNOs have been informed regarding the adoption of Denver Moves Cherry Creek and the infrastructure recommendations set forth therein and they continue to participate in other initiatives with the City and other entities seeking to reduce traffic congestion and improve air quality in the Cherry Creek area. In order to provide for a community benefit to the CCSC, the Area RNOs and the surrounding Cherry Creek area, during the Development Period, Developer shall participate in good faith with the CCSC and business owners in the Cherry Creek Area to discuss and address such issues in ongoing forums and organized discussions. During the Development Period, Developer shall employ all commercially reasonable efforts to encourage and adopt transportation strategies that are commensurate with Blueprint Denver, the transportation plan therein and the rules and regulations adopted by the City and its Department of Transportation and Infrastructure; provided, however, that Developer shall have no obligation to incur any cost or expense in connection therewith, except as contemplated by this Agreement and the Development Documents. In connection therewith:

(i) *TDM Plan Required.* Developer acknowledges its obligation to enter into a transportation demand management plan (a “*TDM Plan*”) as a part of its development of the Project and specifically incorporated into the Infrastructure Master Plan for the Project (the “*IMP*”). The TDM Plan is an approved plan of strategies, which may include, without limitation, the following elements and agreements of the Developer:

1. The TDM Plan shall include supportive infrastructure and TDM Plan programmatic strategies to maximize options for and facilitate the use of non-single occupancy vehicle travel modes for building occupants/residents and visitors.

2. Prior to the date of this Agreement, Developer has delivered to the CCSC for review a copy of the current draft TDM Plan, which includes a commitment by Developer to a minimum of 17.5 percent TDM Reduction on a Project-wide basis (the “*Overall TDM Commitment*”), by incorporating a selection of strategies more specifically set forth in the TDM Plan. Developer has pursued approval of such TDM Plan concurrently with the preparation of the IMP for the Project; provided, however, that any reduction in the Overall TDM Commitment or the modification of such Overall TDM Commitment in any material respect will require the prior approval of the CCSC, in its reasonable

discretion, except with respect to any such changes required by the City.

3. Developer shall maintain compliance with the approved TDM Plan as implemented for each of the First Building Phase and the Final Building Phase following the issuance of the first certificate of occupancy within such applicable building phase. During the Development Period, Developer shall keep the CCSC reasonably informed of about the status of, and Developer's compliance with, the Overall TDM Commitment, as well any other initiatives and efforts to reduce traffic congestion caused by the increased density associated with the Project.

4. Following City approval of the TDM Plan as set forth in the IMP, Developer shall obtain the prior written approval of the CCSC with respect to any reduction in the Overall TDM Commitment or modification that would materially modify the Overall TDM Commitment, which approval shall not be unreasonably withheld, conditioned, or delayed so long as the same is supported by Transportation Solutions or the then applicable transportation management association for the Cherry Creek Area; provided, however, that such approval right shall not apply to any such changes recommended or required by the City.

5. The Developer shall continue its participation with Transportation Solutions (or such other transportation management association for responsibility for the Cherry Creek Area) to continue to review and provide comments and recommendations on transportation solutions to address and mitigate traffic impacts of the Project.

6. Developer shall consider participation in any parking district that is adopted for the CCN District to the extent requested by the City, to the extent legally possible or, if it is not legally possible for the Project to be included in any such parking district so adopted for the CCN District, then Developer shall consider implementation of an inter-governmental or other agreement with the BID or such parking district to realize the material benefits intended to be provided by inclusion in the parking district, including the sharing of expenses and income for the betterment of parking in the Cherry Creek Area.

(ii) Removal of Turn Lanes. Developer acknowledges that Denver Moves Cherry Creek recommends certain public improvements for

the 1<sup>st</sup> Avenue and University Boulevard intersection, including studying removal of the existing pedestrian island for the cross-walk across First Avenue commonly referred to as the ‘porkchops’ (the “Cross Walk Porkchops”), and straightening or otherwise modifying the slip lane from the northbound University Boulevard turning east onto First Avenue (the “Turn Lane”) to provide for a ‘right turn on red only’ when the traffic so allows, in each instance subject to the final approval of the City (collectively, “Intersection Improvements”). To the extent possible and acceptable to the City, this intersection reconfiguration will include a First Avenue median to allow for a safer pedestrian crossing. Developer shall use commercially reasonable efforts, subject to Legal Requirements, to incorporate input from the CCSC into the design of any improvements that are to be located on the Cross Walk Porkchops and Turn Lane following the Intersection Improvements, and Developer or its successor with respect to the Project shall bear the cost of the initial installation of such improvements and maintain the same in perpetuity; provided that nothing in the foregoing clause (ii) shall be deemed to reduce or limit Developer’s obligations regarding the Gateway Improvements as set forth in Section 2.02(g).

(iii) Neighborhood Bikeways. Developer acknowledges that Denver Moves Cherry Creek recommends certain public improvements for a north-south neighborhood bikeway on Clayton Lane within and abutting the Property, and continuing north on either Clayton Lane or Detroit Street (“Neighborhood Bikeway”). Developer shall accommodate the portion of the Neighborhood Bikeway within the Property subject to (1) the terms and conditions of the Sub-Ground Lease that require such improvements to be located on an easement basis and not in fee and (2) other Legal Requirements, and upon approval, to cause the design and construction of such portion of the Neighborhood Bikeway at its cost. During the Development Period, Developer agrees to participate in the contribution with adjacent property owners on the north side of 1<sup>st</sup> Avenue to construction of such portion of the Neighborhood Bikeway an amount sufficient to fund the Project’s pro rata share of the improvements of the portion of the Neighborhood Bikeway that crosses the public right-of-way for 1<sup>st</sup> Avenue, whether at Clayton Street or Detroit Street as may be approved by DOTI, but shall have no further obligation for any extension of the Neighborhood Bikeway outside of the Property.

(f) ***The Green***. The CCSC and the Area RNOs acknowledge that, pursuant to the Sub-Ground Lease, the Project must include a designated private open space (“The Green”), which Developer intends to incorporate into the Project in the location generally depicted on the PUD-G 36. Further, during the Development Period, in connection with the use and enjoyment of The Green, Developer agrees to keep the BID and the CCSC reasonably informed as to the status of upcoming planned and proposed community and private events occurring at The Green, which information may be by reference to publicly and/or generally available information regarding such programming. The Green shall be open to the public,

subject to the PUD and the Development Documents, and may be made available to the CCSC and Area RNOs for community-serving events on substantially the same terms and conditions as applicable to other third-party users, if any. Developer shall implement policies to monitor The Green so as to limit off-leash animals and include stations for disposal of pet waste.

(g) ***1<sup>st</sup> and University Gateway Improvements.*** The Cherry Creek Area Plan and Blueprint Denver contemplate that there will be an entry identification ‘gateway’ of some sort for the location of Gateway Improvements at major intersections bounding the Cherry Creek. The CCSC and/or any entity formed by or in concert with the CCSC and the Area RNOs (provided that all such entities have agreed with respect to the proposed Gateway Improvements concepts) may elect to design certain Gateway Improvements identifying the gateway or entrance to the Cherry Creek Area as a whole, to be located within or adjacent to the Intersection Improvements in a location to be more specifically set forth in connection with the Development Documents, subject to Legal Requirements and Developer’s approval (the “Gateway Area”); provided, however, that in no event shall the Gateway Area be deemed to include any City-owned land unless the City has approved the location thereof by license or other agreement allowing such Gateway Improvements to be located on such City-owned land (“City-Owned Gateway Area”) and, provided further, Developer will cooperate with the CCSC’s efforts to obtain appropriate City approvals for any Gateway Improvements intended to be located on City-Owned Gateway Area under license or other approvals. Such Gateway Improvements, including any sculpture art or third-party prepared elements for the Gateway Improvements, if any, shall be owned and maintained by the CCSC or any entity formed by or in concert with either or both of them (provided that all such entities have agreed with respect to the proposed Gateway Improvements), and Developer will cause a license agreement to be established for the location of such Gateway Improvements within the Gateway Area (but excluding any City-Owned Gateway Area), subject to the terms and conditions of the Sub-Ground Lease and Legal Requirements. Developer or its successor with respect to the Project shall bear the cost of the initial installation of the infrastructure for the Gateway Improvements (including, without limitation, water for irrigation or fountains and lighting) within the Gateway Area, and shall maintain the same (including ongoing expenses of providing water and electricity needed for such Gateway Improvements) in perpetuity except to the extent such as been assumed by the City, the BID or another entity acceptable to the CCSC.

(h) ***Open Space.*** Developer shall cause the Project to provide a minimum of 37% percent of “Non-Vehicular Area” (defined below) within the Property as “pedestrian priority area” upon which no above-grade, permanent structure, or any portion thereof, that is intended for occupancy may be constructed, except that the foregoing shall not be deemed to prohibit the construction of (i) elevator lobbies, staircases, and similar ancillary portions of structures (e.g., such features serving underground parking areas or other non-“buildings” as defined in Section 2.02), (ii) structures intended to complement the use and enjoyment of The Green or other open space, such as, for example, shade structures, restrooms, point

of service stations, and performance areas, and/or (iii) structures necessary or appropriate for the intended use and enjoyment of the pedestrian priority area, which uses may include, without limitation, sidewalks, amenity areas, cycle tracks, parkways, and open space. As used herein, “*Non-Vehicular Area*” means the entire area of the Property, less and except any portions of Roads R and H, Clayton Lane, and Cherry Creek North Drive (as generally defined in the PUD), that are intended for vehicular traffic. For purposes of clarification, Non-Vehicular Area expressly includes any and all area intended for sidewalks, tree lawns, parkway, cycle tracks, and similar purposes not intended to facilitate vehicular traffic.

(i) **Height.** No improvements on the Property shall exceed that height of 168’, subject to mechanical and other supporting building elements otherwise allowed to exceed the maximum height under applicable Legal Requirements. Developer shall not cause or permit the construction of more than four (4) buildings within the Property to meet the maximum height allowed under the PUD and, for such buildings, (i) any buildings which include thirteen (13) stories shall be for primarily residential uses (provided that “primarily residential” shall not be deemed to restrict as such buildings allowing retail or other uses on the main/ground, second, or third levels ) and all such thirteen (13) storied buildings shall be residential and, in the aggregate, include the minimum number of affordable housing units in accordance with the City Development Agreement that is a part of the Development Documents, and (ii) any buildings that are not “primarily residential” shall not exceed eleven (11) stories in height. Any remaining buildings within the Property are currently anticipated to include (and the heights shall not exceed) three (3) buildings at eight (8) stories in height. As used in this Agreement, the term “building” may include a single primary structure as defined in the Code intended for permanent occupancy, or may include a series of attached buildings similar to the building forms found throughout the CCN District so long as the such series of buildings are attached above-ground, for the majority of an interior wall, with no intersecting streets and the location thereof (as so configured) is substantially consistent with the location of the applicable structure therefor as set forth in the Presentation Materials, as the same may be modified pursuant to Section 2.01(b).

**Section 2.03 Good Neighbor Construction Practices.** Developer acknowledges that the size of the Project will require the implementation of certain construction regulations in order to decrease the negative impact of such construction on the neighborhood. Accordingly, during the Development Period, Developer agrees to implement construction practices to keep construction traffic to a minimum on side streets within the neighborhood. Developer further acknowledges the requirement to file and implement a construction parking and implementation plan with the City and which shall incorporate such policies as are substantially similar to the policies outlined on Exhibit C. A copy of such plan shall be provided to the CCSC prior to commencing construction on the Property or, during the Development Period, any portion thereof for which a building permit shall be required.

**Section 2.04 Continuity; Design Review.** During the Development Period, Developer agrees to keep the CCSC and the applicable zoning or development committees of the Area RNOs reasonably informed as the Project proceeds, including without limitation with respect to matters

relating to the implementation of this Agreement. Developer and the CCSC and Area RNOs acknowledge and agree that, pursuant to the Design Standards and Guidelines, the Project will be subject to the review and approval of the Cherry Creek North Design Advisory Board, that meetings of such Cherry Creek North Design Advisory Board are open to the public and may include members and representatives of the CCSC from time to time as the Project design and Development Documents progress.

**Section 2.05 Planned Community Project.** Developer intends to establish on the Project one or more planned community projects under the provisions of the Common Interest Ownership Act, as the same has been codified (and as amended from time to time) in Colorado Statutes as Sections 38-33.3-101, et seq., the covenants, conditions and restrictions or other declarations therefor shall (1) refer to and incorporate the applicable restrictions and requirements contained in this Agreement, specifically for cooperation with respect to The Green pursuant to Section 2.02(f), and (2) provide that the ownership association adopt rules and regulations. In no event shall the foregoing be deemed to grant the CCSC an approval right with respect to any such declarations, rules and regulations, or other similar documents; provided that Developer agrees that any such rules and regulations shall include the following restrictions: (y) requirements that prohibit the storage, including the storage of bicycles or sporting equipment on any outdoor balconies and patios, (z) requirements that window coverings' exterior facings/linings shall be restricted to a uniform lining or color to provide for a congruous view of the exterior of the building.

**Section 2.06 The CCSC Approvals; Board/Member Participation.** The CCSC agrees to prepare a letter in support of the Rezoning Application proposed by Developer on the conditions as outlined herein on its behalf and on behalf of the Area RNOs, representatives of which shall each execute such support letter and, notwithstanding anything to the contrary in this Agreement, execution and delivery of such support letter by the CCSC and all Area RNOs shall be a condition precedent to the effectiveness of this Agreement. The CCSC further agrees that, so long as Developer has not been reasonably alleged by the CCSC to be in default or otherwise noncompliant in the terms and conditions of this Agreement as of the applicable date, the CCSC and the Area RNOs will not oppose the Project or the approval of any subsequent Development Documents, including without limitation by filing any appeal thereto. Notwithstanding such letters of support, Developer acknowledges that there may be members or non-members of the CCSC or any Area RNO who may take individual actions inconsistent with the approved actions of the CCSC or the Area RNOs or their respective Boards or committees. Developer acknowledges that each of the CCSC and the Area RNOs is a non-profit organization with a volunteer Board. Developer agrees to hold harmless the individual members of each of the Boards (whether serving prior to or as of the date of this Agreement or in the future) in their individual capacity for any loss, expenses, damages or harm accruing to Developer and resulting out of this Agreement or from and against any actions by or through the CCSC or the Area RNOs (acting through or under their respective Boards) in the negotiation, adoption, implementation and enforcement of this Agreement or in processing any changes hereto or in the implementation of the obligations hereunder.

**Section 2.07 Modifications to Code.** Developer agrees that (i) to the extent that the Code is modified to relax or change any zoning or use restrictions contemplated herein, then this Agreement shall continue to control with respect to the matters so modified, and (ii) to the extent that the Code is modified to impose more restrictive zoning and/or use requirements than those

that are contemplated herein, then the modified zoning code provisions control with respect to such matters made more restricted. This Agreement shall continue to be effective notwithstanding the implementation of revisions to or restatements of the Code and shall, to the extent possible, be read to be in conformity with such Code. In the event of a conflict between the Code and this Agreement, this Agreement shall control; provided, however, that (y) if the applicable provisions of the Code prohibit any improvements, development, or other action that is required by this Agreement, then the applicable prohibition of the Code shall control, and similarly, (z) if the applicable provisions of the Code affirmatively require any improvements, development, or other action that is required or prohibited by this Agreement, then the applicable requirement of the Code shall control.

### ARTICLE 3

#### BINDING NATURE OF AGREEMENT; ENFORCEMENT

**Section 3.01 Effective Date and Binding Nature of Agreement; Recorded.** This Agreement and all and each of the provisions hereof shall become effective upon the date first set forth above, and shall remain in full force and effect for the term of this Agreement, as set forth in Section 3.07. This Agreement or a memorandum hereof in form and substance satisfactory to the CCSC shall be recorded by Developer, with the consent of Buell and TCCLP, against the Property in order to restrict such parcels in accordance with this Agreement. Developer agrees that the covenants and obligations set forth herein shall be binding upon the Property and the development of the Project. Developer agrees that, if Developer transfers all or any portion of its interest in the Property or any portion thereof, such transfer shall be subject to the provisions of this Agreement and any such successor shall be required to expressly assume the covenants and obligations of Developer set forth herein, except as expressly contemplated by Section 3.06.

**Section 3.02 Recording of Conditions; Covenants To Run With the Land.** Developer hereby subjects the Property and the Project (including any portion of the Property that Developer may in the future control or acquire any interest therein or in Affiliated Party therefor) to the covenants, reservations and restrictions set forth in this Agreement ("Recorded Covenants"), it being expressly agreed and understood that the provisions hereof are intended to survive the transfer, sale or assignment (whether by voluntary transfer, foreclosure or otherwise) of any portion of the Property, except as expressly contemplated by Section 3.06. In addition, in the event of demolition and reconstruction of the Project, the covenants and restrictions contained herein shall apply to any reconstruction of the Project on the Property and, to effectuate such agreement, the restrictions contained herein shall be incorporated into the Recorded Covenants to bind any reconstruction. The Recorded Covenants and restrictions contained herein shall be recorded by Developer, with the consent of Buell and TCCLP, against the Property prior to completing the rezoning under the Rezoning Application and prior to applying for any permit for construction of the Project. The CCSC, the Area RNOs and Developer hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon each of Developer's successors to the Project, except as expressly contemplated by Section 3.06. The Recorded Covenants and each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and

restrictions are set forth in such contract, deed or other instruments, except as expressly contemplated by Section 3.06.

**Section 3.03 Burden and Benefit.** Developer hereby declares its understanding and intent that the burden of the covenants, conditions and agreements set forth herein touch and concern the land in that its legal interest in the Project and the Property are burdened by the provisions of this Agreement.

**Section 3.04 Uniformity; Common Plan.** The covenants, reservations and restrictions hereof shall apply uniformly to the entire Property in order to establish and carry out a common plan for the use, development and improvement of the Property.

**Section 3.05 Default; Enforcement** by the CCSC. If Developer defaults in the performance or observance of any covenant, agreement or obligation of Developer set forth in this Agreement or in any of the Recorded Covenants, then written notice thereof shall be given to Developer by the CCSC. For purposes of the enforcement of this Agreement, the CCSC shall have a right to identify facts under which the CCSC asserts constitutes a default by Developer under this Agreement and the CCSC shall confirm such assertion by and through the CCSC, acting in accordance with its bylaws, for or on behalf of CCSC (following a formal vote of the CCSC in accordance with the bylaws or adopted processes). Notwithstanding anything herein to the contrary, nothing herein shall give any individual member of the CCSC, any Area RNO or any individual owner or resident within Cherry Creek Area any right to enforce the provisions hereof, it being the intent that only an action by and through the CCSC has the right to take action under this Agreement. In the event that the CCSC agrees that a Developer default has occurred, then the CCSC shall deliver written notice of such default to Developer with a copy to Buell, TCCLP, and to the City (the “*Notice of Default*”). If such Notice of Default remains uncured by Developer during the sixty (60) day period following the date of such notice of default, then an “*Event of Default*” shall be deemed to have occurred hereunder; provided, however, that if the Event of Default stated in the Notice of Default is of such a nature that it cannot be corrected within 60 days, such default shall not constitute an Event of Default hereunder so long as Developer institute corrective action within said 60 days and diligently pursues such action until the default is corrected. Following the declaration of an Event of Default hereunder, this Agreement may be enforced as follows:

(a) By mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, requiring Developer to perform its obligations and covenants hereunder or enjoining any acts or things which may be unlawful or in violation of the rights or obligations hereunder.

(b) By taking such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Developer hereunder, including seeking damages, equitable remedies or both.

(c) If the CCSC institutes any action or proceeding in court to enforce any provision hereof against Developer for breach of this Agreement or for damages by reason of any alleged breach of any provision of this Agreement or for any other

judicial remedy, the CCSC shall be entitled to recover all reasonable court costs and attorneys' fees incurred in connection with such proceeding.

(d) Developer hereby agrees that specific enforcement of Developer agreements contained herein is the only means by which the CCSC may obtain the benefits of such agreements made by Developer herein and Developer therefore agrees to the imposition of the remedy of specific performance against them in the case of any default by Developer hereunder. Notwithstanding anything herein to the contrary, nothing herein shall be deemed to require the CCSC to act on any uncured Event or Default or to expend funds for enforcement of this Agreement. Any costs so expended to enforce this Agreement shall be recoverable by in accordance with Section 3.05(c).

**Section 3.06 Contingency.** Notwithstanding anything to the contrary in this Agreement, in the event of a termination of the Sub-Ground Lease prior to final, unappealable and unappealed approval of the Rezoning Application, Developer, Buell, TCCLP, and, as contemplated by Section 1.01, the Property, shall be immediately released from this Agreement, including but not limited to the Recorded Covenants, and as of the date of such termination, this Agreement and the Recorded Covenants shall have no further force and effect with respect to the Property, and Developer shall use commercially reasonable efforts to withdraw the Rezoning Application. Additionally, if pursuant to the Agreement, this Agreement and/or the Recorded Covenants have been recorded in any forum, including but not limited at the Clerk and Recorder of the City and County of Denver, Colorado, a release of such recoding(s) shall be filed immediately at every place of recording.

**Section 3.07 Term; Surviving Covenants and Restrictions.** . Subject to Section 3.06, above, the Recorded Covenants shall be binding on the Property in perpetuity and shall become applicable to and shall bind Developer or any Affiliated Party and all property interests acquired by them within the Project for a period commencing on the date upon which the Rezoning Application is approved by the City and continuing until the earlier to occur of the expiration or other termination of the Development Period; provided that the Recorded Covenants comprised of the benefits set forth in Section 2.02(a) regarding medical office uses, 2.02(e)(iii) regarding the Neighborhood Bikeway, and 2.02(c) regarding the bike mobility hub for the storage, use and facilitation of bikers as contemplated by the TDM Plan, unless the City, Transportation Solutions, or the then applicable transportation management association for the Cherry Creek Area recommends or requires modification or replacement thereof, or the TDM Plan is otherwise amended as provided herein, 2.02(e)(i)(4) regarding the requirement for approval of amendments to the TDM Plan, and 2.02(g) regarding the on-going maintenance of the infrastructure for Gateway Improvements, shall not terminate at the end of such period, but shall continue as covenants and restrictions against the Property for a period expiring on the expiration of the Sub-Ground Lease or earlier in the case of Section 2.02(a) where an earlier expiration date is set forth in such section. This Agreement, including without limitation the Recorded Covenants, may also be earlier terminated upon (i) a rezoning of the Property (or as to any portion thereof) subsequent to the rezoning pursuant to the Rezoning Application which is the subject of this Agreement so long as such further rezoning is in accordance with the rezoning procedures of the City and the CCSC, the Area RNOs or any then applicable registered neighborhood organizations existing under the then applicable Code are notified and given an opportunity to comment, support, or

contest such rezoning in accordance with applicable Legal Requirements, (ii) by amendment or termination agreement in writing executed by Developer, the CCSC and the Area RNOs, including written approvals of the Boards thereof, (iii) if Developer elects to withdraw the Rezoning Application at any point prior to final, unappealable and unappealed approval of the Rezoning Application, then by written notice from Developer to the CCSC and the Area RNOs following such withdrawal, or (iv) the occurrence of a Reset Event solely to the extent of the remaining undeveloped Property that is the subject thereof.

**Section 3.08 Amendments of Agreement; Authority of CCSC to Bind Area RNOs on Majority Vote.** This Agreement may be amended or terminated by an amendment or termination agreement executed by Developer, the CCSC and the Area RNOs and recorded against the Property. Notwithstanding the foregoing, the Area RNOs agree that, for the purposes of entering into amendments or granting other approvals and agreements expressly allowed or called for pursuant to this Agreement, the CCSC shall call for and hold a vote of the Area RNO members of the CCSC on any such amendment or other approval or termination agreement and a vote of the majority of the Area RNOs submitting votes within 30 days of such request to approve or disapprove such amendment, approval, termination or other agreement shall carry and bind all Area RNO members that are Parties to this Agreement for all purposes hereunder. In the event that an Area RNO fails to respond within such 30-day period, such failure shall be deemed an abstention in the vote for or against such amendment, approval, termination or other agreement and, in the event of a tie vote from the Area RNOs, the CCSC shall have a tie-breaker vote. The Area RNOs agree to execute any and all documents required to be executed by them consistent with the CCSC majority vote provision set forth in this Section 3.08. If any Area RNO fails to execute any such amendment, approval or agreement that has been approved by a majority vote through the CCSC as provided above, then the CCSC is hereby authorized and directed to execute such documents on behalf of the Area RNOs as may be necessary to evidence the majority vote of the Area RNOs as allowed hereunder and the CCSC is hereby given a limited power of attorney (coupled with an interest) only for the purpose of such execution of amendment, approval or agreement documents as required above in the event that the Area RNO fails to execute the same.

**Section 3.09 Reconstruction.** The provisions of this Agreement shall apply to any improvements constructed on the Property and to any reconstructed improvements which, from time to time, may be constructed on the Property.

## ARTICLE 4

### MISCELLANEOUS PROVISIONS OF GENERAL IMPORT

**Section 4.01 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

**Section 4.02 Binding Effect.** All the covenants, agreements, terms and conditions to be observed and performed by Developer shall be applicable to and binding upon their respective Affiliated Parties and their successors and assigns, except as expressly contemplated by Section 3.06.

**Section 4.03 Notices.** Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below for each of the parties hereto, or at such other addresses as may be specified in writing by the parties hereto to the other parties or by email or other electronic delivery so long as such delivery of communication is confirmed received. Such notices being delivered to the CCSC by email shall be sent to the CCSC Chair at the email address for contact purposes as shown below or as updated from time to time. Copies of any notices shall also be given to the Denver City Councilperson for the District in which the Property is located. Notices shall be deemed delivered on the date that confirmed delivery is made if by courier service or registered or certified mail or by email/electronic delivery methods.

**If to Developer:** Cherry Creek West Development Company, LLC  
1550 Wewatta Street, Suite 540  
Denver, CO 80202  
Attention: Amy Cara

**If to the CCSC:** To the Chair of the Board of the CCSC  
c/o the BID Office  
2401 E. 2nd Ave, Suite 150,  
Denver, CO 80206  
Attn: M. Lou Raders

**If to the Area RNOs:** to the address of record with the Secretary of State or with the City's Registered Neighborhood Organization Filing System  
Attention: President of the Board of Directors

**IN EACH CASE, WITH A COPY TO THE CITY COUNCILPERSON FOR THE DISTRICT IN WHICH THE PROJECT IS LOCATED.**

**Section 4.04 Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**Section 4.05 Multiple Counterparts.** This Agreement may be simultaneously executed in multiple counterparts, and by electric signature, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

**Section 4.06 Third Party Beneficiaries.** This Agreement is not intended nor shall it be construed to create any third-party beneficiary rights in any person who is not a party hereto unless expressly otherwise provided herein. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, it being the intention and understanding of Developer that the benefits and burdens created by this Agreement shall be limited to and for the purposes herein specified.

**Section 4.07 Recorded Covenants Prior to Any Mortgage or Financing.** Any mortgage or financing liens against the Property shall be subject to the Recorded Covenants. Developer shall obtain the written consent to this Agreement by any lenders prior to this Agreement becoming binding on the parties hereto and such consents shall be in recordable form

and shall be recorded concurrently with the recordation of this Agreement. Such lender consents to this Agreement shall be obtained by Developer prior to appearing before City Council seeking the approval of the Rezoning Application.

**Section 4.08 Integration; Controlling Documents.** This Agreement constitutes the final agreement of the parties hereto as to the matters set forth herein. This Agreement controls as to any prior term sheet, outline or other communications regarding the Project and the CCSC's and Area RNOs' positions with respect thereto.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Developer has duly executed this Agreement as of the date first set forth above.

**Developer:**

Cherry Creek West Development Company, LLC, a Delaware limited liability company

By: [Signature]  
Name: Amy Cara  
Title: Authorized Signatory

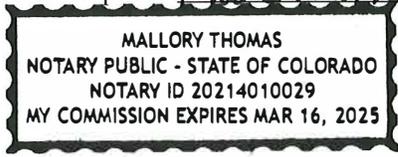
STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of September, 2024, by Amy Cara, as Auth Signatory of Cherry Creek West Development Company, LLC, a Delaware limited liability company.

Witness my hand and official seal.

My commission expires: March 16, 2025

[SEAL]



Mallory Thomas  
Notary Public (or official title)

**[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]**

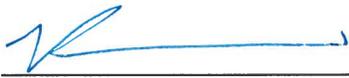


**TCCLP:**

TAUBMAN-CHERRY CREEK LIMITED  
PARTNERSHIP,  
a Colorado limited partnership

By: Cherry Creek Holdings LLC,  
a Delaware limited liability company  
Its: General Partner

By: The Taubman Realty Group, LLC  
a Delaware limited liability company  
Its: Sole Member

By:   
Name: Michele L. Walton  
Title: Authorized Signatory

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF OAKLAND )

The foregoing instrument was acknowledged before me this 11th day of September, 2024, by Michele L. Walton as Auth. Sign. of The Taubman Realty Group, LLC, a Delaware limited liability company, as Sole Member of Cherry Creek Holdings LLC, a Delaware limited liability company, as General Partner of TAUBMAN-CHERRY CREEK LIMITED PARTNERSHIP, a Colorado limited partnership.

WITNESS my hand and official seal.

My commission expires: 05/04/2029

  
Notary Public

***[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]***

**MONA K. JABR - NOTARY PUBLIC**  
Oakland County, Michigan  
My Commission Expires: 05/04/2029  
Acting in Oakland County, MI

CCSC:

Cherry Creek Steering Committee:

By:

*[Handwritten signature of M. Lou Raders]*

M. Lou Raders, acting Chairperson of the Cherry Creek Steering Committee on behalf thereof and as so approved by the Cherry Creek Steering Committee by Resolution dated August 28, 2024.

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

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of September, 2024, by Ms. Lou Raders, as Chairperson of the Cherry Creek Steering Committee, a Colorado unincorporated nonprofit association.

Witness my hand and official seal.

My commission expires: 07/19/2028

[S E A L]

*[Handwritten signature of Tiffany Camille Lester]*  
\_\_\_\_\_  
Notary Public (or official title)

*[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]*

TIFFANY CAMILLE LESTER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20244027215  
MY COMMISSION EXPIRES 07/19/2028



**CCEA:**

**Cherry Creek East Association:**

By: Robin Pittman

Robin Pittman, acting President of the Cherry Creek East Association on behalf thereof and as so approved by the Cherry Creek East Association Board of Directors by Resolution dated September 11, 2024.

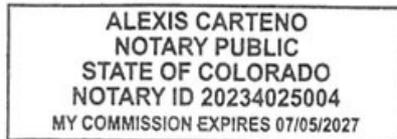
STATE OF COLORADO                    )  
CITY AND                                    ) ss.  
COUNTY OF DENVER                    )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of September, 2024, by Robin Pittman, as President of the Cherry Creek East Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 07/05/27

[S E A L]



[Signature]  
Notary Public (or official title)

***[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]***

**Hilltop:**

**Hilltop Neighborhood Association:**

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

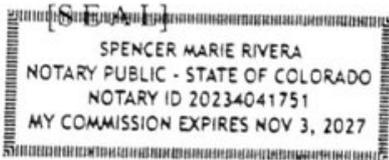
Graham Kaltenbach, acting President of the Hilltop Neighborhood Association on behalf thereof and as so approved by the Hilltop Neighborhood Association Board of Directors by Resolution dated September 10, 2024.

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

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of September, 2024, by Graham Kaltenbach, as President of the Hilltop Neighborhood Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 11/3/27



[Signature]  
Notary Public (or official title)

*[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]*

CCHN:

Country Club Historic Neighborhood, Inc.:

By: Douglas Hsiao

Douglas Hsiao, Vice President of the Country Club Historic Neighborhood, Inc., on behalf thereof and as so approved by the Country Club Historic Neighborhood, Inc., Board of Directors by Resolution dated September 10, 2024.

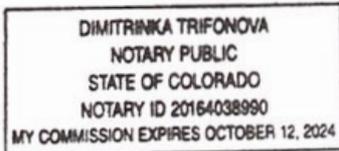
STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of September, 2024, by Douglas Hsiao, as Vice President of the Country Club Historic Neighborhood, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 10/12/2024

[SEAL]



[Signature]  
Notary Public (or official title)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

A PARCEL OF LAND IN THE SOUTHWEST 1/4 OF SECTION 12, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, IN THE CITY AND COUNTY OF DENVER, COLORADO, DESCRIBED AS:

COMMENCING AT A 3-1/4 INCH DIAMETER BRASS CAP MARKED PLS 34579 IN RANGE BOX FOUND FOR THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 12;

THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 12, SOUTH 89°50'37" EAST, FOR 130.26 FEET;

THENCE PERPENDICULAR TO THE PREVIOUSLY DESCRIBED LINE, SOUTH 00°09'23" WEST, FOR 133.73 FEET TO THE NORTHWEST CORNER OF SAID B-3 DISTRICT AND THE POINT OF BEGINNING.

THENCE ALONG THE LINES OF SAID B-3 DISTRICT THE FOLLOWING FOUR (4) COURSES:

1. EASTERLY FOR 62.06 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 65.00 FEET AND A CENTRAL ANGLE OF 54°42'12", THE CHORD OF WHICH BEARS NORTH 73°30'30" EAST FOR 59.73 FEET;
2. THENCE SOUTH 79°08'24" EAST FOR 58.20 FEET;
3. EASTERLY FOR 188.68 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1010.00 FEET AND A CENTRAL ANGLE OF 10°42'12", THE CHORD OF WHICH BEARS SOUTH 84°29'30" EAST FOR 188.40 FEET;
4. SOUTH 89°50'37" EAST FOR 520.41 FEET;

THENCE SOUTH 00°05'28" WEST FOR 688.28 FEET TO THE SOUTH LINE OF SAID B-3 DISTRICT;

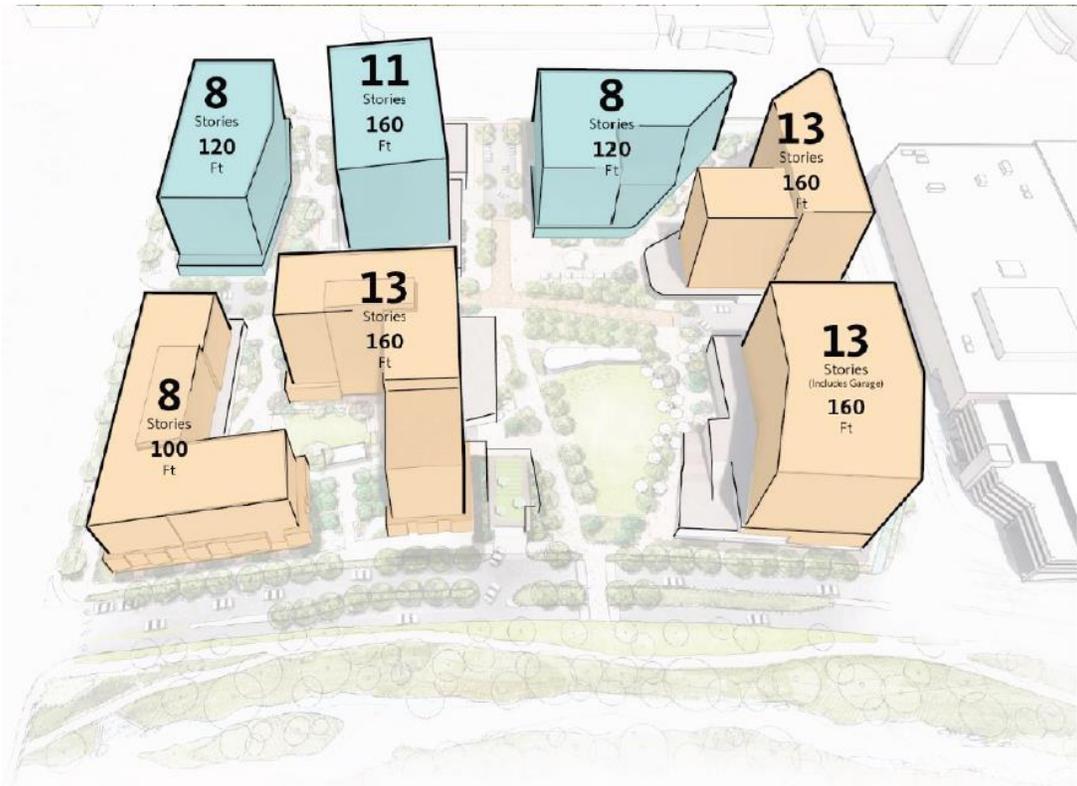
THENCE ALONG THE LINES OF SAID B-3 DISTRICT THE FOLLOWING TWO (2) COURSES:

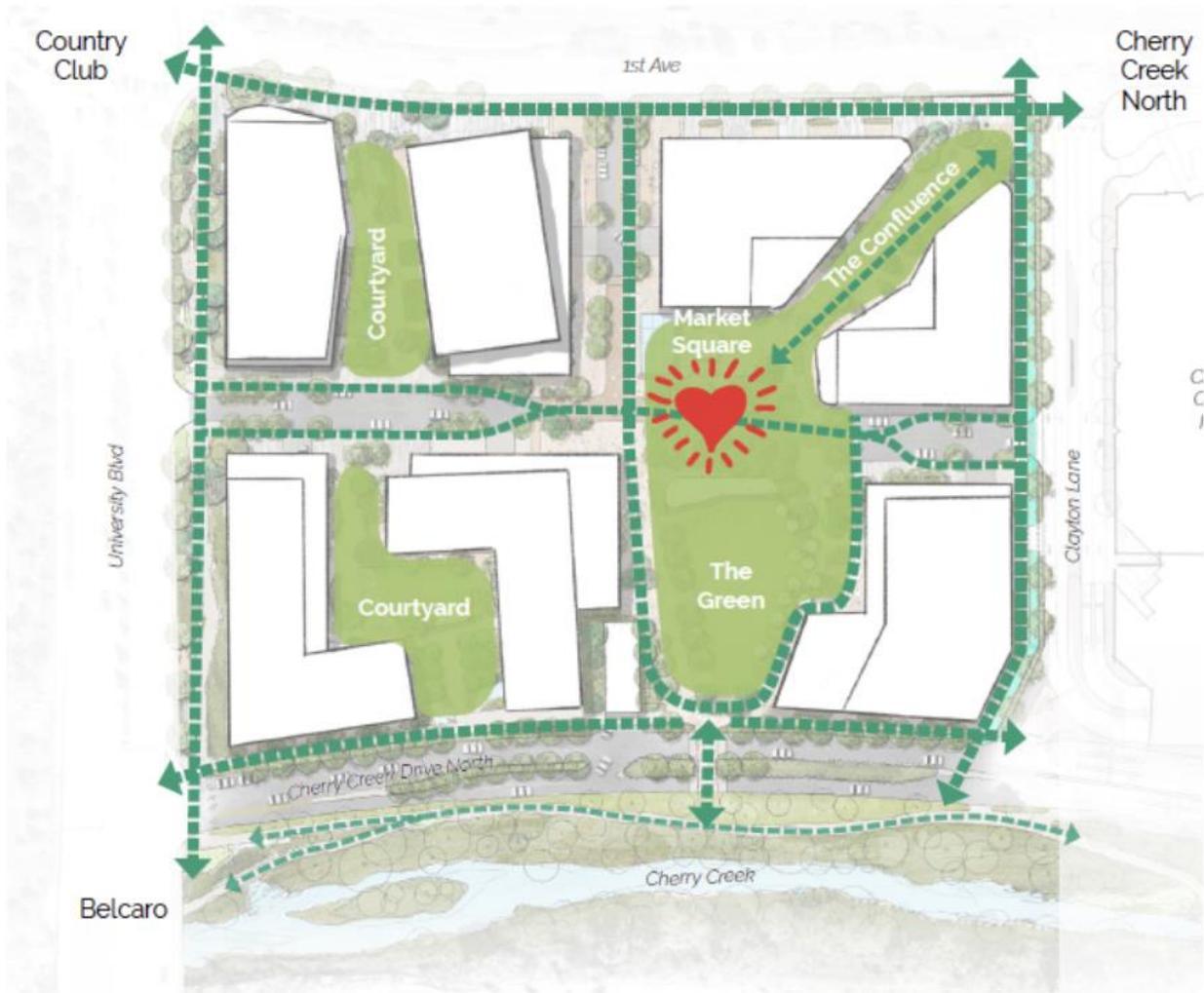
1. WESTERLY FOR 825.05 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2751.75 FEET AND A CENTRAL ANGLE OF 17°10'44", THE CHORD OF WHICH BEARS SOUTH 88°55'10" WEST FOR 821.97 FEET;
2. THENCE NORTH 00°02'37" EAST FOR 717.29 FEET TO THE POINT OF BEGINNING;

CONTAINING AN AREA OF 560,026 SQUARE FEET OR 12.856 ACRES, MORE OR LESS.

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN IS ASSUMED TO BEAR N00°02'37"E, MONUMENTED ON THE NORTH BY A 3-1/4" BRASS CAP STAMPED PLS 34879 IN RANGE BOX AND MONUMENTED ON THE SOUTH BY A 2" BRASS CAP, ILLEGIBLE, IN RANGE BOX.

**EXHIBIT B  
PRESENTATION MATERIALS OF PROJECT CONCEPTUAL DESIGN**





## **EXHIBIT C GOOD NEIGHBOR CONSTRUCTION POLICY**

Developer agrees to implement a plan of construction management techniques, including the following:

- Project manager cell phone 24/7
- Address parking for workers (on-site if possible)
- Trash picked up/enclosed port of lets out of sight
- No trucks using audible back up alarms before 7 a.m.
- Construction weekdays 7a.m. – 9 p.m. / weekends 8 a.m. – 5 p.m., except for any construction that may be performed without any material and adverse impacts to adjacent properties, including without limitation pouring concrete
- Dust mitigation methods, including without limitation, water wagons for construction dust control.
- Use a website for the purpose of updating the CCNNA of important dates (such as street closures and water interruption) and generally for project updates. Provide a complaint forum via email so that neighborhood concerns are able to be expressed on a timely basis.

Developer will comply with all applicable Legal Requirements to file a construction parking plan and will share the same with the CCSC.

Developer shall not permit trucks hauling demolition and excavation debris from the Property and within the Cherry Creek Area to route through streets considered “local or undesignated” pursuant to Blueprint Denver.

### **Developer will adhere to the “4 C’s”**

Communication with Neighbors Can Facilitate Cooperation and Support

The 4-C Solution:

1. Communication:

Builders who communicate while attempting to limit the impact that construction invariably causes will win the tolerance of the neighboring residents. A sign on the site, a flyer, a letter to residents in the immediate area explaining the project and the anticipated schedule can alleviate much of the residents’ concerns about the short-term problems commonly generated by construction.

2. Common Sense:

While it is the nature of construction to be messy, noisy and paced to meet the pressure of deadlines and budgets, neighborhood sites require special consideration. Neighbors and builders

must acknowledge the root of the situation – the area is both a neighborhood, where people retreat from the work-a-day world, and a job site, where time is money and money is the bottom line. Residents’ concerns arise when construction practices continually go beyond the limits of common sense.

3. **Courtesy:**

Builders can work to the limit of the law, which allows construction noise from 7 AM to 9 PM seven days a week. Thoughtful contractors who make the effort to schedule the more disruptive aspects of the project to take place during weekdays between 8 AM and 5 PM should expect few complaints from the surrounding residents. Builders who respect neighbors’ concerns and take action to remedy or modify a problem will find that that kind of consideration should gain friendly support during the project. By responding with common courtesy, the contractor may attract a future project from another homeowner.

4. **Compromise:**

Compromise begins when builders and neighbors consider each other’s point of view. Compromise takes place through friendly communication between neighbors, Developer and the contractors.

**GUIDELINES FOR BUILDERS**

Informing Neighbors: At least two days in advance of construction or demolition, Developer should:

1. Call or meet with as many adjacent neighbors as possible
2. Mail letter or flyers describing the project
3. Post a sign at the site with a phone number for questions

During Construction: Considerate site policies and procedures should be specifically outlined for the contractors’ employees as well as any sub-contractors on the job.

1. Limit working hours of high noise operations to the middle of the day at least until the structure is fully enclosed
2. Limit and control radio noise
3. Consider neighbor’s exposure in siting and screening the project’s mechanical equipment
4. Place the dumpster on the lot or on the street in the middle of the site
5. Avoid blowing debris and accumulation of clutter
6. Cover the dumpster with a tarp bound by cord to contain dust and debris and to control unauthorized use of the dumpster

7. Park construction vehicles off-street if possible. Turn off engines unless operating other equipment
8. Place portable toilets away from property lines in less visible locations; arrange for regular service
9. Control dust with water and chutes
10. Avoid unnecessary damage to trees and landscaping