

**DEVELOPMENT AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

by and among

**ZEPPELIN DEVELOPMENT COMPANY, JACKSON CORNER LLC, A COLORADO
LIMITED LIABILITY COMPANY, CREEKSIDE ELEVEN, INC. [AND JACK GREEN,
LLC, A COLORADO LIMITED LIABILITY COMPANY], 260 SOUTH JACKSON,
LLC, A COLORADO LIMITED LIABILITY COMPANY AND GREENHOUSE
ASSOCIATES, LLC, A COLORADO LIMITED LIABILITY COMPANY**

to and for the benefit of

**CHERRY CREEK EAST ASSOCIATION, A REGISTERED NEIGHBORHOOD
ORGANIZATION WITHIN THE CITY AND COUNTY OF DENVER, COLORADO**

February ____, 2010

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DEVELOPMENT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS DEVELOPMENT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this “*Agreement*”) is made and entered into as of ____ day of _____, 2010, by and among Jackson Corner LLC, a Colorado limited liability company (“*LLC 1*”), Creekside Eleven, Inc. and Jack Green, LLC, a Colorado limited liability company (“*LLC 2*”) [for 260 So Jackson], 260 South Jackson, LLC, a Colorado limited liability company (“*LLC 3*”) [for 250 So. Jackson], Greenhouse Associates, LLC, a Colorado limited liability company (“*LLC 4*”), Zeppelin Development Company, a _____ (“*Zeppelin Development*” and together with LLC 1, LLC 2, LLC 3 and LLC 4, collectively, and together with any successors or assigns, the “*Owners*”) to and for the benefit of Cherry Creek East Association, a registered neighborhood association in the City and County of Denver (“*CCEA*”) and to and for the benefit of CCEA. 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. CCEA is a registered “neighborhood organization” formed as a Colorado non-profit corporation and registered under Sections 12-91 et. seq. of the Denver Municipal Code in effect as of the date of this Agreement (the “*Code*”), 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 area.”

B. LLC 1 owns the real property in the City and County of Denver, State of Colorado commonly referred to as 220, 226, 230, 244, and 266 So. Jackson Street more particularly described as such on Exhibit B attached hereto (the “*Jackson Street Property*”).

C. LLC 2 owns the real property in the City and County of Denver, State of Colorado commonly referred to as 260 So. Jackson Street and more particularly described as such on Exhibit B attached hereto (the “*Creekside Eleven Property*”).

D. LLC 3 owns the real property in the City and County of Denver, State of Colorado commonly referred to as 250 So. Jackson Street and more particularly described as such on Exhibit B attached hereto (the “*260 So. Jackson Street Property*”).

E. LLC 4 owns the real property in the City and County of Denver, State of Colorado referred to as the Harrison Street Property more particularly described as such on Exhibit B attached hereto (the “*Harrison Street Property*”).

F. Zeppelin Development is the developer of the Project and Mickey Zeppelin is the manager of each of LLC 1, LLC 2, LLC 3 AND LLC 4.

G. The Project Site is currently subject to an approved Planned Unit Development zoning described as PUD 115 (the “*Existing PUD*”).

H. The City and County of Denver (the “*City*”) has initiated a process to revise the zoning code applicable to properties within the City, including areas adjacent to the Project Site in a manner as set forth in the current version of the draft New Zoning Code.

I. The Owners desire to apply a new zoning designation to the Project Site in place of the Existing PUD applicable thereto and have requested and applied for the designation of the Project Site to be effectively re-zoned in connection with the adoption of the New Zoning Code in a manner so as to replace the Existing PUD applicable thereto to a combination of C-RX-8 and G-MU-5, with restrictions as described in this Agreement (collectively, the “*Rezoning Application*”).

J. The Owners (whether for themselves or through an Affiliated Party) desire to acquire additional property within the Project Site and to develop, construct, own and operate on the Development Property and any other property acquired within the Project Site, a quality primarily residential and mixed use project which will become integrated with and which will serve the Neighborhood and which will enhance and serve as a southern gateway to the Neighborhood.

K. CCEA is the registered neighborhood organization in which the Project Site and, specifically, the Development Property, is located and, as such, the Owners are required to notify CCEA of the Development Project rezoning efforts, disseminate information within the CCEA neighborhood boundaries and seek CCEA’s input.

L. The Owners now desire to set forth their agreements with respect to the Development Property and the Project Site, including their agreements concerning the land use concepts governing the Development Property and the overall redevelopment of the Project Site and to ensure that the Project Site will be developed in accordance with the representations made by the Owners to CCEA.

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

ARTICLE I

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:

“*260 So. Jackson Street Property*” has the meaning given such term in Recital D.

“Affiliated Party” means a limited or general partner or member of the Owners or any party who controls or is controlled by Morton [Mickey] Zeppelin, Zeppelin Development or any of the other Owners which owns any portion of the Project Site.

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

“Approved Development Plan” means the development plan for the Project approved by the City, as amended from time to time, that anticipates a development program and the necessary infrastructure systems (road network, drainage, and open space, utilities) to support the conceptual development on the Development Property in a manner consistent with this Agreement. The Approved Development Plan for the Project must adhere to any restriction, prohibition or requirement made by this Agreement. However, any restriction, prohibition or requirement that is not approvable by the City in order to reflect an “Approved Development Plan” will not be enforceable.

“Authorized Owners Representative” means any person who at the time and from time to time may be designated as such by the Owners containing the specimen signature of such person and signed on behalf of the Owners by a general partner or manager of the Owners.

“Blueprint Denver” means the City’s integrated Land Use and Transportation Plan and is a supplement to the Denver Comprehensive Plan.

“Building Height” means the height of a building as measured by and as defined by the City’s Zoning Code.

“CCEA” has the meaning given such term in the initial paragraph of this Agreement.

“CCEA Board” has the meaning given such term in Section 2.07 of this Agreement.

“CCRs” means the covenants, conditions and restrictions imposed by the Owners as the declarant of any condominium or townhouse portion of the Project under the provisions of the Common Interest Ownership Act, as the same has been adopted and codified in Colorado Statutes as Sections 38-35-101, et seq., which govern the ownership, use and occupancy of the units in the Project and which are binding on the owners of the units, their successors and assigns.

“Cherry Creek Area” means the neighborhoods and commercial district bounded by Sixth Avenue on the north, Colorado Boulevard on the east, Alameda Avenue and the actual creek known as Cherry Creek on the South, and University/Josephine on the west.

“Cherry Creek East Neighborhood” means the neighborhood bounded by First Avenue on the north, Colorado Boulevard on the east, Alameda Avenue on the south, and Steele Street on the west, the representative registered neighborhood organization for which is CCEA.

“Cherry Creek East Design Guidelines” means the design guidelines dated March 1999, as the same may be amended from time to time.

“*Cherry Creek Neighborhood Plan*” means the neighborhood plan dated January 30, 2000, that is a component of the Denver Comprehensive Plan and acts as a guideline to development in the Cherry Creek East Neighborhood, as the same may be amended from time to time.

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

“*City Zoning Code*” means the zoning ordinances, laws, rules and regulations relating to zoning matters adopted by the City and codified in the City Zoning Code in effect as of the date of this Agreement and which is a part of the City Municipal Code, but which are, as of the date of this Agreement, in the process of being re-written to the New Zoning Code (as defined herein).

“*Code*” has the meaning given such term in Recital A.

“*Creekside Eleven Property*” has the meaning given such term in Recital C.

“*C-RX-8 Zone District*” means the C-RX-8 Mixed Use Commercial and Residential District as defined in the New Zoning Code draft in effect on the date of this Agreement.

“*Denver Comprehensive Plan*” means the Denver Comprehensive Plan 2000.

“*Design*” has the meaning given such term in Section 2.03(e).

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

“*Development Property*” means the Jackson Street Property, the Creekside Eleven Property, the 260 So. Jackson Street Property and the Harrison Street Property owned by the Owners or and Affiliated Party and that are included in the Existing PUD, but excepting therefrom the Greenhouse Condominium Property, as such development property is subject to the Rezoning Application being proffered by the Owners and which parcels are part of the Project as the same as described on the Site Plan attached as Exhibit D hereto.

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

“*G-MU-5 Zone District*” means the G-MU-5 Residential District as defined in the New Zoning Code draft in effect on the date of this Agreement.

“*Harrison Street Property*” has the meaning given such term in Recital E.

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

“*Legal Requirements*” means all laws, rules, regulations, ordinances, codes, statutes and guidelines relating to the performance of Owners in connection with construction of

improvements on the Development Property, including, without limitation, those under the Code, the City Zoning Code, the applicable building codes and the New Zoning Code.

“*Mortgage*” means any mortgage or deed of trust securing the executed by the Owners or any Affiliated Party with respect to the Development Property or any other property acquired within the Project Site, as any such document may be amended, supplemented or otherwise modified from time to time to the extent permitted herein.

“*New Zoning Code*” means the new zoning code being drafted for consideration by the City Council to implement a “form-based” zoning code for the City and which is anticipated to be presented for approval in 2010 and the draft of which in existence as of the date of this Agreement shall be deemed to govern the terms and conditions of this Agreement as if such draft were substantially completed and approved for implementation in 2010 and, in any event, prior to the initiation of development of the Project Site.

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

“*Owners*” has the meaning given such term in the initial paragraph of this Agreement, together with their respective successors and assigns and together with any Affiliated Party that acquires property within the Project Site.

“*Pedestrian Lighting*” means the street lighting fixture type and locations described in the Cherry Creek East Guidelines or such alternate pedestrian lighting plan contemplated as used in the CCN District or such other pedestrian lighting plan that promotes the pedestrian uses contemplated in this Agreement for the Development Property in a manner consistent with the architectural style of the Project and the adjacent neighborhood.

“*Phase II*” means that portion of the Project Site property comprising the one-half block located on the north-east corner of East Cedar Avenue and South Harrison Street as depicted on the Site Plan attached as Exhibit D (such Phase II property, the “*Phase II Property*”).

“*Phase III*” means that portion of the Project Site property comprising the one-half block located on the south-west corner of Alameda Avenue and South Jackson Street as depicted on the Site Plan attached as Exhibit D (such Phase III property, the “*Phase III Property*”).

“*Phase IV*” means that portion of the Project Site property comprising the one-half block located on the north-west corner of East Cedar Avenue and South Jackson Street as depicted on the Site Plan attached as Exhibit D (such Phase IV property, the “*Phase IV Property*”).

“*Phases*” means, collectively, Phase II, Phase III and Phase IV of the Project.

“*Project*” means the residential and mixed use development planned to be developed on the Project Site by the Owners.

“*Project Site*” means all of the real property subject to the Existing PUD, less and excepting the first phase thereof which has been developed as the Greenhouse Condominiums which have been sold to third party purchasers, and together with all rights and appurtenances pertaining thereto.

“*Recorded Covenants*” means the covenants, conditions and restrictions (including, without limitation, any CCRs for the Project) recorded against the Development Property for the purpose of implementing this Agreement.

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

“*Service Yards*” means area for loading and unloading of goods, furnishings, commercial materials, trash, recycling and other materials (both incoming and removal thereof) that are used to service building and all uses for the development. This includes truck loading and unloading, trash, recycling, storage and other building support activities.

“*Site Plan*” means the Site Plan for the Project Site that the Owners will implement in connection with the development of the Project in substantial conformity to the plan attached as Exhibit D.

“*Zeppelin Development*” has the meaning given such term in the first paragraph of this Agreement.

“*Zone District*” shall mean a designated zone district as set forth in the New Zoning Code.

Section 1.02. Use of Defined Terms. Unless the context clearly requires otherwise, as used in this Development 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 Development 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 Development 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 Development Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

ARTICLE II

DEVELOPMENT OBLIGATIONS AND REQUIREMENTS

Section 2.01. Development of the Project Generally; Site Plan Process. The recitals set forth above are incorporated herein. In connection with the request for approval of the proposed changes to the Rezoning Application being made by the Owners to the City, and in connection with the ownership and development of the Project on the Development Property or on any portion of the Project Site that the Owners may acquire or otherwise come to own or control in the future, the Owners covenant and agree as follows:

- (a) **Rezoning.** The Owners shall seek approval from the City for a change in the zoning for the Project Site under the New Zoning Code in a manner consistent with this Agreement.

(b) **Development Process.** The Owners shall notify the City of the Owner's obligations under this Agreement in connection with the Owner's processing of the Rezoning Application and the future Site Plan and permitting for the Project. In connection with the completion of the Development Documents and the Site Plan process, the Owners agree to keep CCEA reasonably informed by attending periodic presentations at the regularly scheduled meetings of CCEA or to the CCEA Board or any committee formed for such purpose, not less than quarterly, as to the development of the Project, including updates regarding the Rezoning Application and the Site Plan process and timing of the Owners' plans to proceed with development of the Project.

Section 2.02. Permitted Uses; Restrictions. The Owners shall not construct more than a total of 161 residential units as a part of Phases II and III of the Project. Phase IV shall contain only so many residential units as would be allowed for a four story building under the New Zoning Code for the G-MU-5 Zone District. The Owners may construct, erect, alter, or maintain improvements permitted in the applicable zone district described in the New Zoning Code as follows:

(a) **Phase II.** Phase II shall be as described in the C-RX-8 Zone District, with the following agreed restrictions: (1) the height shall be limited to six (6) stories not exceeding 72 feet in height and stepping back as provided in the New Zoning Code; (2) uses that may be included in the Project shall include only the uses allowed in the C-RX-8 Zone District as described in the New Zoning Code and shall be residential other than on the first floor (street level); provided that not more than 13,000 square feet on the first floor (street level) may be used for the non-residential specified uses allowed in C-RX-8 including, without limitation, a café/coffee house (with light food fare), an early childhood education facility and other neighborhood business uses otherwise allowed under the C-RX-8 uses specified in the New Zoning Code, but not including (A) any medical use which would involve marijuana growth or distribution (which uses are expressly prohibited), (B) a manicure and/or pedicure nail only salon, (C) a retail banking facility (except that an ATM shall be allowed), (D) a convenience store, (E) a dry cleaning facility, (F) a bed and breakfast lodging facility, (G) student housing, (H) a public safety facility, (I) an elementary or secondary school, (J) a transportation terminal of any size or nature, (K) a university or college, (L) any drive-up facility, (M) above-ground parking garage, and (N) transportation facilities. The set-backs and step-backs for Phase II shall be as required under the New Zoning Code; provided, however, that both Jackson Street and Harrison Street shall be treated as "primary streets" for purposes of the configuration of the building and for set-back and step-back requirements and each building thereon shall have a minimum set-back as provided in the applicable Zone District.

(b) **Phase III.** Phase III shall be used only for the residential uses described in the New Zoning Code in the G-MU-5 Zone District as "Household Living" uses (but not including "Group Living" uses) and for accessory uses relating thereto (including common spaces), with the agreed restriction that the height shall be limited to not more than five (5) stories not to exceed 62 feet for the building described as building 3A on the Site Plan and stepping down to not more than four (4) stories not to exceed 42 feet for Building 3B on the Site Plan. All improvements in the Phase III Property shall have a set-back of at least ten (10) feet from the property line along Jackson Street;

(c) **Phase IV.** Phase IV shall be used only for the residential uses described in the New Zoning Code in the G-MU-5 Zone District as "Household Living" uses (but not including "Group Living" uses) and for accessory uses relating thereto, with agreed restrictions that the height shall be limited to not more than four (4) stories not to exceed 42 feet and such improvements shall have

a set-back of at least ten (10) feet from the property line along Jackson Street and shall otherwise comply with the Cherry Creek East Design Guidelines.

Upon the processing of the Rezoning Application and the process of finalizing the rezoning map of the City in connection with the adoption of the New Zoning Code, the Owners agree to deliver a copy of this Agreement to the City as a part of such Rezoning Application. When so adopted the New Zoning Code and map shall replace the Existing PUD with the restrictions applicable to the Project Site as set forth herein, but which shall otherwise establish the uses for the Development Property as uses by right under the applicable Zone District. Where more restrictive than the New Zoning Code shall allow, this Agreement shall control.

Section 2.03. Contextual and Architectural Design Elements and Requirements. The Owners shall develop the improvements on the Project Site in an architecturally complimentary manner to the existing Greenhouse project and otherwise in accordance with the Cherry Creek Design Guidelines. The building and site design shall relate to and be sensitive to the context of the immediate Cherry Creek East neighborhood as well as the larger context of the entire Cherry Creek Area. The pedestrian experience at the base of the building shall be enhanced with site improvements, highly active streetscapes including outdoor patio areas serving the residential units (which residential patios shall be reasonably restricted for residents' use.) The specific requirements shall include, without limitation, the following:

(a) ***Height Limitation and Grade.*** The Building Height of any improvements constructed on the Development Property or any other property acquired by the Owners or any Affiliated Party within the Project Site shall not exceed the height limitations set forth in Section 2.02. Such height limitations will be measured in accordance with the New Zoning Code. Such height limitation shall not include HVAC or other utilities only as allowed under the New Zoning Code on the roof of such structures.

(b) ***Setbacks & Built-to Lines.*** Minimum building setback lines shall be as defined for the applicable Zone District; provided that the minimum set-back shall be 10 feet on Jackson Street. Both Jackson Street and Harrison Street shall be treated as "primary streets" for purposes of the configuration of the building and for set-back and step-back requirements and each building thereon shall have a minimum set-back as provided in the applicable Zone District and shall include tree lawns in accordance with the New Zoning Code and the Cherry Creek Guidelines.

(c) ***Pedestrian Flow and Connectivity.*** The Site Plan developed for the Development Property shall encourage both on-site and off-site pedestrian "links" to neighboring parcels and established or new public pedestrian crossings that will create pedestrian corridors benefitting the Neighborhood in a manner consistent with the Cherry Creek Guidelines and related City regulations. Connectivity should be enhanced by street level design that invites pedestrian access and any commercial and/or retail uses shall be developed in a manner that supports neighborhood interaction within the Cherry Creek East Neighborhood, including providing walkways within the Site Plan that are open to the public for access to uses within the Project Site to and from other areas within the Cherry Creek East Neighborhood. Walkways on the north side of any buildings located on the street level shall include designs that promote safe walking areas, including, without limitation, consideration of ample lighting and sidewalk heating amenities to compensate for the

density of the proposed buildings and the inevitable shading affect on the adjacent public walkways.

(d) ***Open Space; Gardens.*** The Project Site shall include open space as required under the New Zoning Code applicable to the Zone Districts in which the buildings are located. Open space shall include portions of the Project Site as allowed under the New Zoning Code. Gardens serving the Project Site and the Greenhouse Property shall be included as a part of the overall Site Plan landscaping requirements.

(e) ***Building Façade Design; Building Materials.*** Exterior faces of buildings shall not be in a single plane. Fenestrations shall have setbacks, overhangs and reliefs which breakup each building façade and with such tiering as may otherwise be allowed and/or required under the New Zoning Code and within the spirit and intent of the Cherry Creek East Design Guidelines. The design of the footprint of the Project building layout shall be generally consistent with the conceptual Site Plan plans and drawings shown on Exhibit D attached hereto and incorporated herein (the “*Design*”), with such changes as may be deemed appropriate by the City; provided, that there shall not be any material changes to the overall Design of the Project without the Owners presenting such changes to CCEA and obtaining the approval of the CCEA Board in writing; which approval shall not be unreasonably withheld so long as the City planning department approves such changes. The Owners shall construct the improvements on the Project Site in a good and workmanlike manner in accordance with the Approved Development Plan, Denver Comprehensive Plan, Blueprint Denver, Cherry Creek Neighborhood Plan, the Cherry Creek East Design Guidelines and all applicable Legal Requirements.

(f) ***Service Yards; Building Equipment.*** The Owners shall locate all service yards, trash and storage areas so that such yards and areas are screened from view from adjoining properties, drives and roadways (to the extent permitted by the City). The Owners shall cause such yards and areas to be kept in a neat and orderly fashion. The Owners shall screen roof top mechanical equipment and shall integrate all exterior vents and intake grilles with the building exterior Design in manner consistent with the New Zoning Code.

(g) ***Lighting.*** No lighted commercial building signage shall be located on the face of any of the building comprising the Project, except for in Phase II and then only pedestrian level scaled signage for identification of the business uses allowed herein; provided that such signage shall only face South Harrison Street. Pedestrian lighting shall be installed on all street sides of the Project in accordance with the Cherry Creek East Design Guidelines. Such lighting shall be designed and installed so as to further the goal of transitioning the lighting used in the residential and mixed uses to the east of the Project Site to the uses to the north and west of the Project Site, as such areas are and will be redeveloped in the future through the planning process involving the Neighborhood.

(h) ***Utilities.*** Assuming the alley is vacated, the Owners shall seek to locate all utility lines, including without limitation, water, gas, telephone, electrical, and cable, underground. The Owners shall locate all utility meters to the interior of the Project Site (if approved by the responsible utility companies) or shall screen from view from adjoining properties.

(i) ***Alley Vacation.*** The Owners shall seek to vacate the alley between Alameda and East Cedar (on the south and north of the Project Site, respectively) and between South Jackson Street and South Harrison Street (on the west and east of the Project Site, respectively.) The Owners shall seek the participation of the adjacent property owners for such purpose, if possible.

Section 2.04. Traffic and Transportation Impacts. The Owners shall use commercially reasonable efforts to mitigate traffic impacts on adjoining properties and on the major streets within the CCEA neighborhood, including Cedar Avenue and Jackson and Harrison Streets. To that end, the Owners agree as follows:

(a) ***Ingress and Egress.*** Vehicular ingress to the Project shall be from Harrison Street as shown on the Site Plan.

(b) ***Parking.*** The Owners shall include the quantity of parking spaces required under the New Zoning Code for all uses on the Project to be accommodated via underground parking accessible by ramp off of Harrison Street as depicted on the Site Plan; provided, however, that contiguous on-street parking shall be allowed for temporary visitors, loading, drop-off and business use. On grade bicycle parking shall be provided for in an area accessible to any commercial uses and below grade bicycle parking shall be provided for the residential uses within the Project Site.

(c) ***Traffic Study.*** The Owners shall perform such traffic studies as may be reasonably required to address traffic flow within the Cherry Creek Area and the Project Site.

Section 2.05. Good Neighbor Construction Practices. The Owners acknowledge that the size and density 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, the Owners agree to implement construction practices to keep construction traffic on side streets to a minimum within the neighborhood. The Owners shall implement a plan to address construction concerns in a manner that incorporates the spirit and intent of the policies outlined on Exhibit C. Such plan shall be presented to CCEA prior to commencing construction on the Development Property and shall be posted on the developer's website and made available to all members of CCEA.

Section 2.06. Continuity; Periodic Presentations. Owners agree to work with CCEA as the Project proceeds and, from time to time, Owners agree to meet and present to CCEA to address matters relating to the implementation of this Agreement and, if deemed reasonably necessary by any of the parties hereto, to address changes or modifications to the Project Design as may be required by the City or otherwise required to meet a specific need or concern of the Owners in their development of the Project.

Section 2.07. CCEA Approval; CCEA Board Participation. CCEA supports the Rezoning Application proposed by the Owners as outlined herein. The Owners acknowledge that such approval may encourage the City to review areas of expressed concern to CCEA members in connection with the City's normal procedures when reviewing the Site Plan. While CCEA shall support the modifications to the Rezoning Application, the Owners acknowledge that there may be members or non-members of CCEA who may take individual actions inconsistent with the approved actions of CCEA. The Owners acknowledge that CCEA is a non-profit organization with a voluntary board of directors (the "CCEA

Board”). The Owners agree to hold harmless the individual members of the CCEA Board (whether serving as of the date of this Agreement or in the future) in their individual capacity for any loss, expense or damages or harm accruing to the Owners and resulting out of this Agreement or from and against any actions by or through CCEA (acting through or under the CCEA Board) 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 2.08. Modifications to Zoning Code. The Owners agree that (i) to the extent that the New Zoning Code is further modified to relax any zoning or use restrictions contemplated herein with respect to any Zone District contemplated herein, then this Agreement shall continue to control with respect to the matters so modified and relaxed and the parties agree to amend the Agreement to implement such new and modified provisions, and (ii) to the extent that the New Zoning 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 the New Zoning Code and shall, to the extent possible, be read to be in conformity with such New Zoning Code. In the event of a conflict between the New Zoning Code and this Agreement, this Agreement shall control. In the event that the New Zoning Code is not adopted, then CCEA agrees to support a modification to the PUD to implement the terms of this Agreement with such additional provisions included in the modified PUD as necessary to conform the modified PUD to the intended changes to be provided by the New Zoning Code and this Agreement.

ARTICLE III

BINDING NATURE OF AGREEMENT; ENFORCEMENT

Section 3.01. Effective Date and Binding Nature of Agreement; Recorded. This Development Agreement and all and each of the provisions hereof shall become effective upon its execution and delivery, and shall remain in full force and effect as if fully set forth in the Rezoning Application. This Development Agreement or a memorandum hereof in form and substance satisfactory to CCEA shall be recorded by the Owners against Development Property in order to restrict such parcels in accordance with this Agreement. The Owners agree that the covenants and obligations set forth herein shall be binding upon the development of the Project and the Owners agree that, if the Owners transfer the Project Site or any portion thereof, such transfer shall be subject to the provisions of this Development Agreement and any such purchaser shall be required to assume the covenants and obligations of the Owners set forth herein.

Section 3.02. Recording of Conditions; Covenants To Run With the Land. The Owners hereby subjects the Development Property and the Project (including any portion of the Project Site that the Owners may in the future own, control or acquire any interest therein or in the ownership entity therefor) to the covenants, reservations and restrictions set forth in this Development Agreement by 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 Development Property or the Project Site. 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 Project Site 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 the Owners against the Development Property prior to completing the rezoning under the Rezoning Application and prior to applying for any permit for construction of the Project. The Owners 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 the Owner's successors in title to the Project. The Recorded Covenants and each and every contract, deed or other instrument hereafter executed covering or conveying the Project 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. No breach of any of the provisions of this Agreement shall impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Project or any portion thereof. The provisions hereof shall automatically terminate upon rezoning in accordance with Section 3.06.

Section 3.03. Burden and Benefit. Owners hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Owner's legal interest in the Project and the Development Property is 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 Project in order to establish and carry out a common plan for the use, development and improvement of the Project Site.

Section 3.05. Default; Enforcement. If Owners default in the performance or observance of any covenant, agreement or obligation of the Owners set forth in this Development Agreement or in any of the Recorded Covenants, then written notice thereof shall be given to the Owners' Representative by CCEA. For purposes of the enforcement of this Agreement, the assertion shall be set forth in writing (with sufficient detail to identify the factual basis therefor), it being the intent that any and all declarations of default hereunder shall be made by and through CCEA. No individual resident or individual member of CCEA shall have a right to independently enforce this Agreement; provided, however, nothing herein shall limit the City or any citizen working with or through the City to separately enforce the Owners' obligations under the New Zoning Code and any related development requirements with the City. CCEA shall deliver written notice of such default to the Owners with a copy to the City (the "*Notice of Default*"). Upon receipt of the Notice of Default, at the election of the Owners and written notice to CCEA, the parties agree to seek mediation by and through any available City mediation service, or if not so available through the City, then through a commercial mediation service, the cost of which shall be paid for by the Owners. If the mediation fails to facilitate a plan of correction, then if the matters set forth in the Notice of Default remain uncured by the Owners during the sixty (60) day period following the failure of the mediation, 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 the Owners 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 the Owners 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) taking such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owners hereunder; and

(c) the successful party in any such proceedings shall be entitled to recover all reasonable court costs and attorneys' fees incurred in connection with such enforcement proceedings; provided, however, that no individual Board member or CCEA member shall be liable for any such costs or expenses.

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

Section 3.06. Termination or Amendment of Agreement. The Recorded Covenants shall be binding on the Development Property in perpetuity and shall become applicable to and shall bind the Owners or any Affiliated Party and all property acquired by them within the Project Site, unless otherwise terminated as provided herein. This Agreement may be amended or otherwise terminated only upon (i) a rezoning of the Project Site (or as to any portion thereof) subsequent to the rezoning of the Development Property as described in Recital I in accordance with the rezoning procedures of the City and after notice to CCEA or any then applicable registered neighborhood organization existing under the then applicable Code, after which this Agreement shall be deemed automatically void without further notice or writing, or (ii) by written amendment or termination agreement in writing executed by the Owners and CCEA. If so terminated, and upon the written request the Owners, CCEA agrees to record a document confirming such termination.

Section 3.07. Reconstruction. The provisions of this Agreement shall apply to any improvements constructed on the Project Site and to any reconstructed improvements which, from time to time, may be constructed on the Project Site, in addition to the laws and regulations under the Zoning Code for the applicable Zone District.

ARTICLE IV

MISCELLANEOUS PROVISIONS OF GENERAL IMPORT

Section 4.01. Governing Law. This Development 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 the Owners shall be applicable to and binding upon their respective successors and assigns.

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. Notices shall be deemed delivered on the date that confirmed delivery is made if by courier service or registered or certified mail.

If to the Owners: Mr. Mickey Zeppelin
3455 Ringsby Court
Denver, CO 80216

If to CCEA: to the address of record with the Secretary of State
Attention: President of the CCEA Board of Directors

Section 4.04. Severability. If any provision of this Development 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 Development Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 4.06. No 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, nor shall this Agreement be deemed to give any individual property owner any rights herein. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Development Property (or any portion of the Project Site acquired in the future by the Owners or any Affiliated Party) to the general public, it being the intention and understanding of the Owners 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 Development Property shall be subject to the Recorded Covenants. The Owners shall obtain the written consent to this Agreement by the Owners' 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 the Owners prior to the Owners' appearing before City planning board and/or City Council seeking 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 CCEA's positions with respect thereto.

[Remainder of page intentionally left blank]

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

THE OWNERS:

Jackson Corner LLC, a Colorado limited liability company

By: _____,
_____, Manager

Creskide Eleven, Inc. [Jack Green, LLC, a Colorado limited liability company]

By: _____,
_____, Manager

260 South Jackson, LLC, a Colorado limited liability company

By: _____,
_____, Manager

Greenhouse Associates, LLC, a Colorado limited liability company

By: _____,
_____, Manager

Zeppelin Development Company, a _____,
a Colorado limited liability company

By: _____,
_____, Manager

CCEA:

**CHERRY CREEK NEIGHBORHOOD
ASSOCIATION**

By: _____

Acting CCEA Board President, on behalf of the
CCEA Board and as approved by the CCEA
Board by Resolution dated

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EXHIBIT A

DESCRIPTION OF PROJECT SITE

PHASE II:

Lots 32-40 except the south 8 feet, Block 44,
Burlington Capitol Hill Addition,
City and County of Denver, State of Colorado

PHASE III:

Lots _____, Block _____,
Burlington Capitol Hill Addition,
City and County of Denver, State of Colorado

PHASE IV:

Lots _____, Block _____,
Burlington Capitol Hill Addition,
City and County of Denver, State of Colorado

EXHIBIT B

LEGAL DESCRIPTION OF OWNERS PARCELS AND DEVELOPMENT PROPERTY

1. *Jackson Corner Property:* Lots 5 through 12, inclusive, Block 44 and
Lots 17 and 18, Block 44,
Burlington Capitol Hill Addition,
City and County of Denver, State of Colorado

2. *Creekside Eleven Property:* Lots 15 and 16, Block 44
Burlington Capitol Hill Addition,
City and County of Denver, State of Colorado

3. *260 South Jackson Property:* Lots 13 and 14, Block 44,
Burlington Capitol Hill Addition,
City and County of Denver, State of Colorado
Known as 250 So. Jackson Street

4. *Harrison Street Property:* Lots 32-40 except the south 8 feet, Block 44,
Burlington Capitol Hill Addition,
City and County of Denver, State of Colorado

EXHIBIT C

GOOD NEIGHBOR CONSTRUCTION POLICY

The Owners agree to implement a plan of construction management techniques, including the following:

- A good neighbor agreement for construction etiquette
- 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 and back up beeps before 8 a.m.
- Construction weekdays 7a.m. – 7 p.m. / weekends 8 a.m. – 5 p.m.
- Dust mitigation methods, including without limitation, water wagons for construction dust control.
- Use a website for the purpose of updating the Cherry Creek Area property owners 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.

The Owners 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, the Owners and the contractors.

GUIDELINES FOR BUILDERS

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

1. Call or meet with as many 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 damage to trees and landscaping

GUIDELINES FOR NEIGHBORS

The primary challenge for residents is to reduce the construction project's impact on their home life and routine.

1. Accept change in the neighborhood
2. Recognize that style is not regulated except in Historic Landmark Districts and overlay districts
3. Solicit information regarding the extent of the project
4. Expect construction to be noisy and messy, especially at first
5. Be familiar with City ordinances regulating construction operations
6. Don't use the job site dumpster
7. Know the project time frame as outlined by the Owners to CCEA from time to time in neighborhood update materials and meetings.

EXHIBIT D

SELECTED DEPICTIONS OF THE SITE PLAN FOR THE PROJECT AS PROPOSED BY
THE OWNERS