



Mr. Jeffrey J. Steinberg
Division of Real Estate
Department of Finance
City and County of Denver
201 West Colfax Avenue, Department 1010
Denver, CO 80202

RE: Property Exchange Agreement (“PEA”) by and between the City and County of Denver (the “City”) and Park Hill Commons (the “Commons”) regarding 2863 Fairfax Street (the “City Property”) and a portion of 2850 Fairfax, and all of 2856 Fairfax and 2868 Fairfax Street (the “Commons Property”), Denver, Colorado.

We are pleased to present this Letter of Intent (“LOI”) for the City and the Commons to exchange properties located at 2863 Fairfax Street (the “City Property”) and Lots 7-11, Block 15, Park Hill Annex (the “Commons Property”), subject to the terms and conditions set forth below, it being understood that additional terms and conditions remain to be negotiated between the parties. This LOI will outline the terms and conditions under which the City and the Commons are prepared to enter into a definitive written agreement (the “Property Exchange Agreement”) to exchange fee simple title in the City Property for fee simple title in the Commons Property and all improvements and appurtenances thereto or to be constructed thereon (the “Commons Property Improvements”).

1. The Exchange:

The Commons, at its sole cost and expense, will, prior to closing of the exchange, improve the Commons Property in order to convert the Commons Property into a park, according to the standards of the City’s Parks and Recreation Department, as they may be amended from time to time. Within thirty (30) days following the City’s approval of the completion of certain improvements to the Commons Property, the City shall consummate the exchange and shall convey to the Commons, by Quit Claim Deed, the City Property, in “as is”, “where is” condition with no improvements, and the Commons shall at such time convey to the City, by Special Warranty Deed, the improved Commons Property.

2. Commons Property Improvements:

The Commons shall, prior to the date of the exchange, complete the Commons Property Improvements. Completion of the Commons Property Improvements to City standards shall be a condition precedent to the City’s obligation to consummate the exchange as will be written approval by the Director of Real Estate and the Executive Director of Parks and Recreation .



3. Exchange Date: The property exchange shall occur no later than twenty-four (24) months after the date the PEA is fully executed (the "Exchange Date").
4. Exchange Price: The exchange price for the properties (the "Exchange Price") shall be Ten Dollars (\$10.00) and other good and valuable consideration, including construction of the Commons Property Improvements.
5. Park Completion Escrow: A mutually satisfactory comprehensive Escrow Agreement and Escrow instructions shall be prepared by the City and submitted to the Commons for its review and approval. Escrow shall be opened at Land Title Guaranty Company promptly following execution of the PEA.
By no later than five (5) business days following full execution of the PEA by the City and the Commons, the Common shall deposit in escrow with Land Title Guaranty Company the amount of Two Hundred Thousand Dollars (\$200,000) (the "Park Completion Escrow Deposit"). The Park Completion Escrow Deposit (plus interest accrued thereon) shall be returned to the Commons upon the completion of the exchange. However, in the event the Commons fails to complete the construction of the park improvements, to be described in the PEA, by the Exchange Date (hereinafter defined) and the transaction fails to close due to the Commons' default, the City shall retain the Park Completion Escrow Deposit, including interest accrued thereon, as liquidated damages in lieu of any other right or remedy which the City may have at law or in equity.
6. Maintenance Agreement: Upon closing of the exchange, the City and the Commons shall enter into a Maintenance Agreement wherein the Commons shall agree to maintain the Commons Property as a park for a term of no less than thirty (30) years, according to the standards of the City's Department of Parks and Recreation, as they may be amended from time to time.
7. Due Diligence, Closing and Possession: The City and the Commons shall have ninety (90) days to perform their due diligence. The closing shall occur on or before the twenty-four-month anniversary of full execution of the PEA or any other date mutually agreeable to the City and the Commons.
8. Expenses: Each party shall be responsible for its respective title charges, (including charges for extended coverage and endorsements), survey expenses and all transfer taxes, state deed fees,



recording fees, documentary fees and taxes, one-half of all escrow fees, and other customary expenses due, payable or incurred in connection with the exchange, if any. The City and the Commons shall each pay the fees and expenses of their respective legal counsel incurred in connection with the transaction.

9. **Parking Lease:** Upon full execution of the PEA, the City and the Commons shall enter into a ground lease by and between the City and the Commons whereby the City leases to the Commons the City Property for use by the Commons as a parking lot to be used strictly in connection with the construction of the Commons Property Improvements.
10. **Brokers Fees:** The City shall represent to the Commons and the Commons shall represent and warrant to the City that it has dealt with no brokers with respect to this transaction.
11. **City Council Approval:** The PEA is subject to City Council approval.
12. **Summary and reiteration of agreement upon certain exhibits to the PEA and due diligence process.**

To reiterate certain essential terms, conditions and provisions required to be included in the fully executable PEA, there must be agreement on the following matters:

- The Commons shall produce, at its sole cost and expense, a survey of the Commons Property to be exchanged for the City property, including being subject to City Surveyor approval of the Commons Property survey and legal description, with all easements and other plottable matters of record displayed on such survey
- Specific understanding that the written specifications of the particular City Parks and Recreation standards for the improvements to be made to the Commons Property to bring the facility to Park's standard park requirements will be reduced to writing and incorporated into the PEA as an exhibit.
- Maintenance Agreement- This agreement shall also be reduced to writing and be attached to Property Exchange Agreement as an exhibit. .
- Reduction to writing as an exhibit to the PEA, the Parking Lease Park and Completion Escrow Agreement- Need to agree upon all terms of the Escrow Agreement, including acceptance by escrow agent (Land Title) that will be attached to the Property Exchange Agreement. The definition of terms and conditions controlling Common's Defaults under its Property Exchange Agreement obligations and triggers to release of funds to either party, cure period for Commons' events of default and return of escrowed funds in the event of default of City or project completion. Definition of "park completion" to permit escrow to break. Interpleading funds provisions.
- Provisions for updating due diligence prior to closing to ensure title and survey information has not gone stale.
- Acceptance of Park improvements at closing- Completion and Acceptance Certificate.
- Any zoning issues.

Disclaimer: It is expressly understood that this letter is not binding on the City or the Commons, and that the contemplated PEA when executed shall contain the full agreement between the parties. Should the Commons be in agreement with all of the general terms stated herein, please acknowledge your acceptance by signing in the space provided below.
Accepted and acknowledged by:



Park Hill Commons

By: 

Title: HM Capital Group I.LC as manager, by
Ben Maxwell, it's manager

Date 11-1-2017

Accepted and acknowledged by: City and County of Denver

By: 
Jeffrey J. Steinberg

Title: Director, Division of Real Estate, Department of Finance

Date 4/2/17