

CONTRACT TO EXCHANGE PROPERTY

THIS CONTRACT TO EXCHANGE PROPERTY (“**Agreement**”) is made this ____ day of _____, 2018 between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the “**City**”) and PHC MIXED USE, LLC, a Colorado limited liability company (“**PHC**”), collectively the “**Parties**”.

RECITALS

WHEREAS, the City desires to acquire property in the Park Hill area of Denver for City purposes; and

WHEREAS, PHC owns a parcel of land in the Park Hill area Denver located at 2850 Fairfax Street, 2856 Fairfax Street and 2868 Fairfax Street, Denver, CO and more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (hereinafter referred to as “**PHC Parcel**”) which PHC is willing to transfer to the City; and

WHEREAS, the PHC Parcel is currently vacant land; and

WHEREAS, PHC has agreed to fund certain park improvements on the PHC Parcel subsequent to the PHC Parcel being transferred to the City (“**Improvements**”); and

WHEREAS, PHC desires to acquire a vacant parcel of property currently owned by the City described below; and

WHEREAS, the City owns a parcel of unimproved land located at 2863 Fairfax Street, Denver, CO and more particularly described on **Exhibit B** attached hereto and incorporated herein by this reference (hereinafter referred to as “**City Parcel**”), which the City no longer needs; and

WHEREAS, the City and PHC desire to enter into this Contract to Exchange Property so that the PHC Parcel and the City Parcel may be exchanged subject to the performance of each parties’ obligations as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the benefits of which will inure to each party and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PHC and the City agree as follows:

Section 1. Transfer of Property and Agreements from City to PHC. Pursuant to the terms and conditions set forth herein, and subject to the transfer of the PHC Parcel to the City

and the delivery of funds into the Escrow for the completion of the Improvements, the City agrees to transfer, sell, and quitclaim to PHC, and PHC agrees to accept and receive from the City a Quit Claim Deed, in substantially the form attached hereto as **Exhibit C** and incorporated herein, from the City to PHC transferring the City Parcel property more particularly described in **Exhibit B**, attached hereto and incorporated herein. Any modifications of the Quit Claim Deed from the form attached hereto as **Exhibit C** shall be subject to the approval of the City's Executive Director of Real Estate ("**Director**").

Section 2. Transfer of Property and Agreements from PHC to the City. According to the terms and conditions set forth herein, and subject to the funding of the Escrow as set forth in Section 9.b below, PHC agrees to convey, transfer, grant, sell and deliver to the City, and the City agrees to accept and receive from PHC a Special Warranty Deed, in substantially the form attached hereto as **Exhibit D** and incorporated herein, from PHC to the City conveying the PHC Parcel property more particularly described in **Exhibit A**, attached hereto and incorporated herein.

Section 3. Survey of PHC Parcel. PHC shall complete and deliver to the City an ALTA survey, at its sole cost and expense, for the PHC Parcel. The survey shall be delivered to the City within thirty (30) days of the Effective Date, as defined below. The City shall deliver a copy of any survey of the City Parcel in its possession within the same thirty (30) day period; provided, however that the City shall have no obligation to perform any survey or survey updates.

Section 4. Due Diligence Period. (Note that the parties will be referred to as "**Selling Party**" and "**Acquiring Party**" with regard to due diligence and other matters set forth in this Agreement. The Selling Party shall be PHC as it relates to PHC Parcel, and shall be the City as it relates to City Parcel. The Acquiring Party shall be the City as it relates to PHC Parcel and PHC as it relates to City Parcel.) The time periods set forth below shall be calculated from the date which is ten (10) business days after the complete execution of the Agreement by all signatories to the Agreement by each party (the "**Effective Date**"). PHC acknowledges that there are five (5) signatories for the City signature process. Commencing on the Effective Date and for a period of ninety (90) days thereafter (the "**Due Diligence Period**"), the City and PHC or their respective designees shall have the right to perform, at each party's sole cost and expense, whatever investigations, tests and inspections it desires to conduct upon the PHC Parcel and City

Parcel properties (including without limitation, the environmental audits and tests described in Section 5(c) below and the physical inspections described in Section 6 below) during normal business hours or as otherwise agreed upon by the parties; *provided, however*, that prior to such inspection, (i) the Acquiring Party shall give the Selling Party at least three (3) business days' prior notice thereof; (ii) Selling Party or its representative shall have the right to be present during any such audits, tests or inspections; (iii) each party shall require its contractors and subcontractors to be responsible and pay for any damages or losses that occur to the property inspected and/or are suffered by the Selling Party which arise out of such each such contractor's and subcontractor's audits, tests and inspections which are not caused by the negligence or willful misconduct of Selling Party; and (iv) each party shall not permit claims or liens of any kind against each property for work performed on said property in connection with such audits, tests and inspections. Except as expressly stated in this Agreement and for the Improvements on the PHC Parcel, the parties acknowledge and agree that each one's acceptance of PHC Parcel or City Parcel shall be on an "AS IS" "WHERE IS" basis, without representation or warranty, express or implied, regarding the physical condition thereof, with both parties acknowledging that each has inspected or will inspect the property to be acquired to its satisfaction. The provisions of this Section shall survive Closing or the termination of this Agreement.

Section 5. Environmental Condition.

(a) Environmental Information. Within ten (10) business days of the Effective Date, each party shall disclose to the other all written or graphic documented information it has regarding environmental contamination or the presence of any Hazardous Waste (defined below) or Toxic Substances (defined below) on, under or about the property each one is to convey. In the event the Selling Party subsequently acquires any additional information regarding environmental contamination, it has the ongoing duty to provide such information to the Acquiring Party up to the time of each Closing, and will do so within five (5) business days of the receipt or discovery of such additional information. For purposes hereof, except for Permitted Amounts (defined below), (a) "**Hazardous Wastes**" mean all waste materials subject to regulation under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund or CERCLA), 42 U. S. C., Sec. 9601 et seq., or applicable state law, and any other applicable federal or state laws now in force or hereafter enacted relating to hazardous waste disposal; (b) "**Toxic Substance**" means and includes any materials present on the Property

which are subject to regulation under the Toxic Substance Control Act (TSCA), 15 U. S. C., Sec. 2601 et seq., applicable state law, or any other applicable federal or state law now in force or hereafter enacted relating to toxic substances, including but not limited to asbestos, polychlorinated biphenyls (PCB's), and lead-based paints; and (c) "**Permitted Amounts**" means with respect to any given level of Hazardous Wastes or Toxic Substances, that level or quantity of Hazardous Wastes and Toxic Substance in any form or combination of forms which does not constitute a violation of any environmental laws and is customarily employed in, or associated with, properties similar to the Property.

(b) Environmental Audits. In addition to environmental audits performed by the Selling Party pursuant to this Agreement, the Acquiring Party, at its sole option and expense, may conduct environmental audits and perform other environmental tests on the property during the Due Diligence Period to identify any existing or potential environmental problems located in, on, or under the property, including but not limited to, the presence of Hazardous Waste or Toxic Substances. Such environmental audits may be performed by a consultant or by the City's Department of Public Health and Environment. Subject to the provisions of Section 4, Selling Party hereby grants the Acquiring Party and any of its employees and consultants access to the property to perform such audits and tests.

(c) City's and PHC' Election. Upon completion of each one's environmental audit, either party, in its sole discretion, may elect to proceed to Closing or elect to not proceed to Closing. If the City or PHC elects not to close based upon environmental information, neither party shall have an obligation to convey property or money to the other party and this Agreement shall terminate and be of no further force and effect except for those provisions which are expressly stated or intended to survive termination. Written notice of either party's election shall be given to the other party no later than the expiration of the Due Diligence Period ("**Election Period**"). If the Selling Party does not receive the notice from the Acquiring Party within the Election Period, the party(s) who doesn't give such notice shall be deemed to have accepted the environmental condition of the property to be acquired. Such notice may be signed by, with respect to the City, the Director.

Section 6. Inspection. In addition to the environmental audits described above, during the Due Diligence Period, each party or its designees shall have the right to inspect the physical condition of the property to be acquired at its sole expense. Upon completion of the

inspection, either party, in its sole discretion, may make the election to proceed with Closing or terminate this Agreement in the manner and within the time period as set forth in Section 4 above. If either party does not timely receive the other party's notice, signed by, with respect to the City, the Director, within the Due Diligence Period, the Acquiring Party(s) shall be deemed to have accepted the physical condition of the property to be acquired.

Section 7. Title.

(a) Matters Not Shown by the Public Records. Within ten (10) business days of the Effective Date each party shall deliver to the other true copies of all lease(s) and survey(s) in the seller's possession pertaining to the property to be conveyed and shall disclose to the other party all easements, liens or other title matters not shown by the public records nor contained in the Title Documents (defined below) of which each one has actual knowledge. Each party shall have the right to inspect the other's property to determine if any third party has any right in such property not shown by the public records or the Title Documents (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Upon completion of such review and inspection, each party, in its sole discretion, may make the election to proceed with Closing or terminate this Agreement in the manner and within the Due Diligence Period. If the Selling Party does not timely receive the Acquiring Party's notice, each one shall be deemed to have accepted matters not shown by the public records nor contained in the Title Documents.

(b) Title Review. The Selling Party shall obtain an updated title commitment and all related title documents ("**Title Documents**") from Land Title Guaranty Company (the "**Title Company**") and shall deliver or cause to be delivered all documents to the Acquiring Party no later than fifteen (15) days from the Effective Date so that each party may review such documents. Either party may give written notice to the other party of unmerchantability of title or of unsatisfactory title conditions within sixty (60) days from delivery of such documents by or on behalf of Selling Party to the other party. Written notice by the City of unmerchantability of title or any other unsatisfactory title condition shall be signed by the Director for the City. If PHC does not receive the City's notice within sixty (60) days from delivery of such documents by or on behalf of PHC to the City, the City shall be deemed to have accepted the condition of title. If the City does not receive PHC' notice within sixty (60) days from delivery of such documents by or on behalf of the City to PHC, PHC shall be deemed to have accepted the condition of title. If a Selling Party receives timely notice of any unsatisfactory title condition(s)

and the Acquiring Party does not agree to waive the same, Selling Party shall have the option to either (a) cure such unsatisfactory condition(s) within thirty (30) days of receiving notice thereof from the other party; or (b) terminate this Agreement, and, except for those obligations which are stated or intended to survive termination, the parties shall have no further obligations hereunder. If Selling Party elects to cure the unsatisfactory condition(s) and fails to do so within the applicable time period, the Acquiring Party may make the election in the manner set forth in Section 5(c) above.

(c) Title Insurance Policy. Each party shall have the title insurance policy delivered to the other party as soon as practical after each Closing. Each Party shall pay the basic premium for such title policy for the parcel such party is obtaining and shall direct the Title Company as to the amount of such policy coverages, plus the cost of any endorsements to the title policy which the Party elects, except for an endorsement to cure the timely objection of the other party to title or survey. The cost of the curing endorsement shall be paid, by the curing party if such curing party elects to cure the objection by the issuance of an endorsement. The costs incurred by the City pursuant to this paragraph 7 shall be subject to the Maximum Contract Amount set forth in Section 10 (e) below.

(d) Survey. The Acquiring Party may give written notice to the Selling Party of any unsatisfactory matter reflected on any survey(s) on or before expiration of the Election Period. Written notice by the City of any such unsatisfactory matter shall be signed by the Director for the City, or an attorney in the City Attorney's office. If either Selling Party does not receive the other party's notice on or before expiration of the Election Period, the Acquiring Party shall be deemed to have accepted all matters reflected on such survey(s). If the Selling Party receives timely notice of any unsatisfactory matters and the Acquiring Party does not agree to waive the same, Selling Party shall have the option to either (i) cure such unsatisfactory matters within thirty (30) days of receiving notice thereof from the City; or (ii) terminate this Agreement, in which case, except for those obligations which are stated or intended to survive termination, the parties shall have no further obligations hereunder. If Selling Party elects to cure the unsatisfactory matters and fails to do so within the applicable time period, the Acquiring Party may make the election in the manner set forth in Section 5(c) above.

(e) After the Due Diligence Period, the Selling Party shall have the ongoing duty to disclose any new matters not previously disclosed to the Acquiring Party that come to its

attention at any time prior to the Closing of the Selling Party's property. The Acquiring Party shall have ten (10) days to review and object to any such new disclosure in accordance with the procedures set forth in this Section 4.

(f) Status of Zoning and Other Entitlements. Except for Section 11(g), during the Due Diligence Period and thereafter, either party may explore zoning and other development entitlement matters, however, the obligations to convey the either the PHC Parcel or City Parcel properties shall not be contingent upon such matters being resolved or approved.

Section 8. Cure Period. In the event a party gives timely notice of any unsatisfactory condition(s) as set forth herein ("**Objecting Party**"), and the party receiving such notice shall have the option to either (a) cure such unsatisfactory condition(s) within thirty (30) days of receiving notice thereof from the Objecting Party; or (b) terminate this Agreement, in which case the Title Company shall return all things of value to the depositing party, and, except for those obligations which are stated or intended to survive termination, the parties shall have no further obligations hereunder. If a party elects to cure the unsatisfactory condition(s) and fails to do so within the applicable time period, the other party may make the election in the manner set forth in Section 5(c) above.

Section 9. Closing.

(a) Date. The date of Closing for the transaction shall be no later than thirty (30) days after the expiration of the Due Diligence Period. The hour and place of the Closing shall be as mutually agreed upon by the parties. The date of Closing may be agreed upon, on behalf of the City, by the Director for the City; provided, however, that the closing shall take place at the offices of the Title Company and shall be completed on or before 2:00 p.m. local time on the Closing Date, (the "Closing").

(b) Escrow. On or before the date that is five (5) days after the expiration of the Due Diligence Period, or on an earlier date as otherwise agreed by the Parties in writing (the "Escrow Date"), PHC shall deliver Six Hundred and Fifty Thousand and no/100 Dollars (\$650,000.00) in immediately available good funds via wire transfer as a park completion escrow deposit, (the "Park Completion Escrow Deposit") pursuant to the **Escrow Agreement** attached hereto and incorporated herein by this reference as **Exhibit E**. PHC or the City (or both) may elect to either attend or not attend the Closing in accordance with closing instructions delivered to the Title Company not inconsistent with the terms of this Agreement. The Title Company

shall release the first One Hundred Thousand and no/100 Dollars (\$100,000.00) of the Park Completion Escrow Deposit to the City immediately upon Closing. On the Closing Date, the Title Company shall be prepared to deliver to each Party an Owner's Title Insurance Policy (ALTA Form 2006) (the "Title Insurance Policy") issued pursuant to the respective parcel's Title Commitment in the amounts directed by the respective purchaser of the parcel insuring title to the respective parcels subject to the Permitted Exceptions. Possession of each parcel shall be delivered to the respective Party on the Closing Date.

Section 10. Park Construction.

(a) The City shall design and construct a park facility on the PHC Parcel after closing utilizing the Park Completion Escrow Deposit. The City shall be entitled to the remaining funds from Escrow after PHC and the Escrow Agent have confirmed full execution of a City construction contract for the Improvements. Escrow Agent shall deliver the funds within Fifteen (15) days of submittal of the construction contract by the City. City shall commence construction of the park not later than October of 2019. If the City has not commenced construction of the park prior to October 31, 2019, City shall install sod and maintain, including reasonable irrigation the park property in a reasonable manner or until such time as the construction of the park improvements occurs.

Section 11. Conditions Precedent to Closing.

(a) Any encumbrances required to be paid on either PHC Parcel or City Parcel shall be paid by the Party who caused such encumbrance of the respective property at or before Closing.

(b) The City and PHC shall pay their respective closing costs at Closing. The City's closing costs shall not exceed \$5,000.00 ("Maximum Contract Amount").

(c) General taxes and assessments for the year of closing and the most recent rents, water, sewer, other utility charges and any other customary items shall be prorated to the dates of Closing and shall be paid by the Selling Party at or before Closing.

(d) The closing fee charged by the Title Company shall be split equally between the City and PHC.

(e) From the Effective Date until the Closing or earlier termination of this Agreement, PHC: (a) shall operate and maintain the PHC Property in the manner that it is currently being operated and maintained by PHC; (b) shall not enter into any new lease, lease modification, lease extension or other occupancy or use agreement without obtaining City's prior written consent, which consent may be withheld or delayed in City's sole and absolute discretion; and (c) shall not enter into any contracts or commitments that will survive the Closing other than a contract that is terminated on less than thirty (30) days' notice. PHC shall operate the City Parcel pursuant to the terms and conditions of the Lease attached hereto and incorporated by reference.

(f) Each Party hereto represents to the other Party that:

- i. It has the requisite power and authority to execute and deliver this Agreement and the related documents to which such Party is a signatory;
- ii. The execution and delivery of this Agreement by such Party has been duly authorized by all requisite action(s) and creates valid and binding obligations of such Party, enforceable in accordance with its terms subject to the effect of general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing, the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law, and subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors;
- iii. To the actual knowledge of (a) the Director; and (b) Seller: neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will violate any constitution, statute, regulation, rule, injunction, judgment, order, decree or other restriction of any governmental authority or conflict with, result in a breach of, or constitute a default under any contract, lease, license instrument or other arrangement to which such Party is bound;
- iv. It is authorized to execute this Agreement on behalf of its officers, directors, representatives, employees, subsidiaries, affiliates, members/shareholders, agents, trustees, beneficiaries, attorneys, insurers, successors, predecessors and assigns. Each person who signs this Agreement in a representative capacity represents that he or she is duly authorized to do so;

- v. It has not sold, assigned, granted or transferred to any other person, natural or corporate, any chose in action, demand or cause of action encompassed by this Agreement; and
- vi. IT IS FREELY AND VOLUNTARILY ENTERING INTO THIS AGREEMENT UNCOERCED BY ANY OTHER PERSON AND THAT IT HAS READ THIS AGREEMENT AND HAS BEEN AFFORDED THE OPPORTUNITY TO OBTAIN THE ADVICE OF LEGAL COUNSEL OF ITS CHOICE WITH REGARD TO THIS AGREEMENT IN ITS ENTIRETY AND UNDERSTANDS THE SAME.

(g) Zone Lot Reconfiguration. The parties acknowledge and agree that the Closing shall be contingent upon the completion of a zone lot reconfiguration separating the PHC Parcel from the remainder of the properties adjacent to the PHC parcel. The zone lot reconfiguration shall be accomplished as part of PHC's site development plan process. The Closing shall not occur unless and until the PHC Parcel is the only parcel in its zone lot.

Section 12. Transfer of Title. Subject to (i) tender of the Special Warranty Deed and the Quit Claim Deed at Closing as provided herein; and (ii) compliance with the other terms and provisions hereof, with both properties to be conveyed free and clear of all taxes except the general taxes for the year of closing, if any, and free and clear of all liens and encumbrances, including liens for the Improvements, except (a) those matters accepted by the City or PHC as provided herein (including without limitation, those matters reflected in the Title Documents and accepted by the Acquiring Party in accordance with Section 7 above); (b) matters not shown by the public records of which the City's Director or PHC' authorized representative has actual knowledge and which were accepted by the other party as provided herein; and (c) inclusion of the property within any special taxing district, if any, and subject to building and zoning regulation.

Section 13. Use of PHC Parcel. The City understands and agrees that PHC will continue to use PHC Parcel while PHC builds its project for the purposes of storing soil and lumber. While PHC occupies the PHC Parcel, it will be the obligation of PHC to pay all operating and Improvements expenses for the PHC Parcel.

Section 14. Time is of the Essence/Remedies. It is understood and agreed between the parties that time is of the essence hereof, and all the agreements herein contained shall be

binding upon and for the benefit of each party's successors and assigns. If any payment due in accordance with this Agreement is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

(a) If the City Is in Default. PHC may treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned and both parties shall thereafter be released from all obligations hereunder.

(b) If PHC is in Default. The City may elect to treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned and both parties shall thereafter be released from all obligations hereunder. Except as otherwise provided herein, the City, at its sole option, may elect to treat this Agreement as being in full force and effect and the City shall have the right to specific performance.

(c) Costs and Expenses. Anything to the contrary herein notwithstanding, in the event of any litigation or arbitration arising out of this Agreement, the court may award to the prevailing party all reasonable costs and expense, including attorneys' fees.

Section 15. Termination. If this Agreement is terminated without a default by either party, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder.

Section 16. Authority to Execute. The parties represent that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind the respective parties and that appropriate processes to obtain approval have been accomplished.

Section 17. Cooperation of the Parties. In the event that any third party brings an action against the City or PHC regarding the validity or operation of this Agreement, both parties will reasonably cooperate, at no additional cost to the other party, in any such litigation. If the other party is named as a party by such third party, it shall bear its own legal costs.

Section 18. Severability. The promises and covenants contained herein are several in nature. Should any one or more of the provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provision of this Agreement.

Section 19. No Discrimination in Employment. In connection with the performance of work under this Agreement, PHC agrees not to refuse to hire, discharge, promote or demote,

or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color religion, national origin, gender, age military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

Section 20. When Rights and Remedies Not Waived. In no event shall any performance hereunder constitute or be construed to be a waiver by any party of any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any such breach of default exists shall in no way impair or prejudice any right of remedy available with respect to such breach of default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Agreement shall be deemed or taken to be a waiver or any other default or breach.

Section 21. Subject to Local Laws; Venue. Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and Ordinances of the City and County of Denver, and regulations enacted pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

Section 22. Notices. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph:

If to City:

Mayor
City and County of Denver
1437 Bannock Street, Room 350
Denver, Colorado 80202

With copies to:

Denver City Attorney
Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, Colorado 80202

Director of Real Estate
201 West Colfax Avenue, Dept. 1010
Denver, Colorado 80202

If to PHC:

PHC MIXED USE, LLC
Attn: HM Capital Group LLC, Manager
Ben Maxwell, its Manager
4045 Pecos Street, Suite 200
Denver, Colorado 80211

With copy to:

GC Legal Strategies
Attn: John Palmquist
2520 S. St. Paul Street
Denver, Colorado 80210

Section 23. Parties' Liabilities. Each party shall be responsible for any and all suits, demands, costs, or action proximately resulting from its own individual acts or omissions.

Section 24. Agreement as Complete Integration; Amendments. This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties.

Section 25. Colorado Law. This Agreement is made, shall be deemed to be made, and shall be construed in accordance with laws of the State of Colorado.

Section 26. Paragraph Headings. The paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

Section 27. Third-Party Beneficiary. It is the intent of the parties that no third party beneficiary interest is created in this Agreement. The parties are not presently aware of any actions by them or any of their authorized representatives which would form the basis for

interpretation construing a different intent, and in any event expressly disclaim any such acts or actions, particularly in view of the integration of this Agreement.

Section 28. Counterparts. This Agreement shall be executed in at least two (2) counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document.

Section 29. Subject To Council Approval. This Agreement is subject to the approval of the City Council in accordance with the provisions of the City Charter, and this Agreement shall not take effect until its final approval by City Council and until signed by all appropriate City officials, including the Mayor, the Clerk and Recorder, the Manager of Finance and the Auditor.

Section 30. Appropriation by City Council. All obligations of the City under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City.

Section 31. Reasonableness of Consent or Approval. Whenever under this Agreement “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

Section 32. No Personal Liability. No elected official, director, officer, agent or employee of the City shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

Section 33. Conflict of Interest by City Officer. PHC represents that to the best of its information and belief no officer or employee of the City is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

Section 34. Right to Extend Time for Performance. The parties agree that any time for performance of any term or condition hereunder may be extended for up to three (3) additional thirty (30) day periods by a letter signed by the Director and an authorized representative of PHC. All other amendments to this Agreement must be fully executed by the City and PHC.

Section 35. Merger. The parties intend that the terms of this Agreement shall survive closing and shall not be merged into the deeds conveying the properties.

Section 36. Electronic Signatures and Electronic Records. PHC consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Section 37. No Broker's Fees. Neither party will pay any real estate broker's commissions or fees. In the event a claim for such compensation is made, PHC shall be solely responsible for payment of the compensation and/or defense of the claim, and shall indemnify the City against claims for broker's commissions or fees, including any attorney's fees or other costs incurred by the City.

[Remainder of page intentionally blank.]

Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: FINAN-201842934-00

Contractor Name: PHC Mixed Use, LLC

By: 

Name: BEN MAXWELL
(please print)

**HM Capital Group LLC as Manager
by Ben Maxwell, it's Manager**

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Exhibit A

Park Hill Commons Parcel

Legal Description

Lots 7 through 11,
Except the east 4 feet of said lots,
Block 15,
Park Hill Annex,
City and County of Denver,
State of Colorado.

Exhibit B
City Parcel

Legal Description

Lots 42 through 46,
Block 10,
Park Hill Annex,
City and County of Denver,
State of Colorado.

EXHIBIT C

After recording, return to:
Division of Real Estate
City and County of Denver
201 West Colfax Avenue, Dept. 1010
Denver, Colorado 80202

QUIT CLAIM DEED

(_____)

THIS QUIT CLAIM DEED, is made this ____ day of _____, 201_ between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation and home rule city (“Grantor”), and _____ whose address is _____ (“Grantee”).

WITNESS, that Grantor, for and in consideration of the sum of _____ (**\$0.00**) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold, conveyed, and QUITCLAIMED, and by these presents does remise, release, sell, convey and Quitclaim unto Grantee, it successors and assigns forever the following real property, together with improvements, if any, situate, lying and being in the said County of Denver, and State of Colorado described as follows:

SEE ATTACHED: EXHIBIT A

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of Grantor, either in law or equity, to the only proper use, benefit and behoove of Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantor has executed this deed on the date set forth above.

Attest:

CITY AND COUNTY OF DENVER

By: _____
Clerk and Recorder, Ex-Officio
Clerk of the City and County of
Denver

Michael B. Hancock, Mayor

Approved as to Form:
Kristin M. Bronson, Attorney for
the City and County of Denver

By: _____
_____, Assistant City Attorney

STATE OF COLORADO }
 }ss.
COUNTY OF DENVER }

The foregoing instrument was acknowledged before me this ____ day of _____, 201_, by Michael B. Hancock as Mayor of the City and County of Denver.

WITNESS MY HAND AND OFFICIAL SEAL

NOTARY PUBLIC
My commission expires: _____

EXHIBIT D

After recording, return to:
 Division of Real Estate
 City and County of Denver
 201 West Colfax Avenue, Dept. 1010
 Denver, Colorado 80202

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (“Deed”), made as of this _____ day of _____, 201____, by _____, a _____, whose address is _____ (“Grantor”) to the CITY AND COUNTY OF DENVER, a Colorado municipal corporation of the State of Colorado and home rule city, whose address is 1437 Bannock Street, Denver, Colorado 80202 (“Grantee”).

WITNESSETH, that the Grantor, for and in consideration of the sum of _____ and 00/100 Dollars (\$) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and by these presents does hereby grant, bargain, sell, convey and confirm, unto the Grantee, and its successors and assigns forever, the real property described below, together with all improvements thereon, owned by the Grantor situate, lying and being in the City and County of Denver, State of Colorado, and being more particularly described on Exhibit A attached hereto and incorporated herein (“Property”);

TOGETHER WITH all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all of the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in, and to the above-bargained Property, together with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the Property above bargained and described with the appurtenances, unto the Grantee, and its successors and assigns forever. The Grantor, for itself and its successors and assigns does covenant and agree that it shall and will WARRANT AND FOREVER DEFEND the above-bargained Property in the quiet and peaceable possession of the Grantee, and its successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor.

No separate bill of sale with respect to improvements on the Property will be executed.

IN WITNESS WHEREOF, the Grantor has executed this Deed on the date set forth above.

ATTEST:

GRANTOR

 By: _____
 Title: _____

 By: _____
 Title: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, ____
by _____, as _____ of _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Exhibit E

ESCROW AGREEMENT

Escrow Number:
Commitment Number:
Closer:

Denver, Colorado
Date:

The undersigned deposit with LAND TITLE GUARANTEE COMPANY, a Colorado corporation, as Escrow Holder (the "Escrow Holder"), the items set forth in Schedule A, to be held by Escrow Holder subject to the terms of this Escrow Agreement, the General Provisions to the Escrow Agreement and the Special Instructions in Schedule B (collectively, the "Escrow Agreement").

All cash deposits must be accompanied by a Form W-9 Request for Taxpayer Identification Number.

"SCHEDULE A"

Six Hundred and Fifty Thousand Dollars and No cents (\$650,000.00) ("Park Improvement Escrow Deposit")

"SCHEDULE B"

(Special Instructions)

- Special Instruction No. 1 (Repairs) Attached
- Special Instruction No. 1a (Completions) Attached
- Special Instruction No. 2 (Lender Completion Instructions) Attached
- Special Instruction No. 3 (Indemnity Agreement – Cash Deposit) Attached
- Special Instruction No. 4 (Depository Instructions) Attached
- Special Instruction No. 5 (F.I.R.P.T.A.)
- Special Instruction No. 6 (Resolution of Miscellaneous Issues)
- All others (See attached Exhibit "A")

The parties to the Escrow Agreement, by their signature below, acknowledge and agree that they have read, and will be bound by the Escrow Agreement, including the General Provisions to the Escrow Agreement, and the Special Transactions in Schedule B.

SELLER(S)
(If applicable)

BUYER/BORROWER(S)
(If applicable)

Address: _____

Telephone: _____
Facsimile: _____
Email Address: _____
Contact Person: _____

Address: _____

Telephone: _____
Facsimile: _____
Email Address: _____
Contact Person: _____

LENDER: _____
(if applicable)

By: _____

Address: _____

Telephone #: _____
Contact Name: _____

ESCROW FEES TO BE AS FOLLOWS:

- (a) Set up fee _____
- (b) Annual fee _____
- (c) Miscellaneous _____

Any correspondence regarding this escrow shall be addressed to: Land Title Guarantee Company:
LAND TITLE GUARANTEE COMPANY
5975 Greenwood Plaza Boulevard
Greenwood Village, CO 80111
ATTN: ESCROW COORDINATOR
TELEPHONE: 303-321-1880
FAX: 303-399-8193

Received of the Escrow Deposit and acceptance of the Escrow Agreement hereby acknowledged by
LAND TITLE GUARANTEE COMPANY-ESCROW HOLDER

By: _____

LAND TITLE GUARANTEE COMPANY
GENERAL PROVISIONS TO THE ESCROW AGREEMENT

Initials _____
Initials _____

1. Notices.

Any notices required or permitted to be given under the Escrow Agreement shall have been deemed to have been served:

- i. one business day after the notice is hand delivered with proof of receipt by the addressee, or
 - ii. one business day after transmission by facsimile evidencing confirmation of receipt by the receiving facsimile machine, or
 - iii. one business day after transmission by email evidencing confirmation of receipt by the receiving email address, or
 - iv. if reputable overnight courier (such as United Parcel Service or Federal Express) is used, on the immediately following business day after notice is sent for overnight delivery, or
 - v. if the United States Mail is used, on the third business day after the notice is deposited in the United States Mail, postage prepaid;
- Provided in each case such notice is addressed to the parties at the addresses given on the first page of this Escrow Agreement.

2. Reliance on Notice.

Escrow Holder may act in reliance upon any writing or instrument or signature which Escrow Holder, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized so to do.

3. Laws Relating to Unclaimed Funds.

Seller and Buyer are hereby advised that unclaimed funds may be payable to the State at some future date pursuant to unclaimed property laws, and should Escrow Holder pay any such funds held in the Escrow Deposit, Escrow Holder shall be released from all further responsibility under the Escrow Agreement and shall not be liable to any Party so long as such payment was made pursuant to applicable law.

4. Escrow Deposit and interest Earned on Escrow Deposit

- a. In the event that the Escrow Deposit consists partly or entirely of money, then during the period the Escrow Holder is in possession of the Escrow Deposit, the money will be deposited in an FDIC insured institution (the "Institution").
- b. Upon receipt of written direction of the parties along with a completed W-9, funds will be invested in an interest bearing account.
- c. Deposits of \$100,000.00 or more may be directed by the parties hereto to other types of investments, or the Escrow Holder may invest the Escrow Deposit in Repurchase Agreements for U.S. Treasury obligations or other Federal agency issued securities.
- d. Escrow Holder shall not be responsible for maximizing the yield on the Escrow Deposit. Under no circumstances shall Escrow Holder be liable for loss of funds due to bank or other Institution failure, including employees or agents thereof, suspension or cessation of business, or any action or inaction on the part of the bank or other institution, or any delivery service transporting funds to and from the institution.
- e. All parties hereto shall execute and deliver to Escrow Holder all forms required by federal, state or other governmental agencies relative to taxation matters and Escrow Holder will file appropriate 1099 or other required forms.

5. Fees and Expenses of Escrow Holder.

- a. The Escrow Holder shall be entitled to reimbursement in full, or may demand payment in advance, for all costs, expenses, charges, fees or other payments made or to be made by Escrow Holder in the performance of Escrow Holder's duties and obligations under the Escrow Agreement.
- b. The Seller is liable for the payment to Escrow Holder of all fees and expenses. Escrow Holder is hereby authorized and directed to reimburse to itself in payment of fees or expenses from any funds in the Escrow Deposit, whether from principal or interest or both, at any time, and from time to time, as the same may be due and owing.
- c. Escrow Holder is hereby authorized to withhold any fees or expenses from any disbursement or distribution of Escrow Deposit to any Party hereto or to the Clerk of the Court upon interpleader.
- d. In the event that the Escrow Deposit shall consist of documents only and not funds, Escrow Holder may refuse to distribute any such documents or to otherwise act under this Agreement until all accrued but unpaid fees and expenses have been paid in full.

6. Non-liability of Escrow Holder.

- a. Escrow Holder shall not be liable for any mistakes of fact, or errors of judgment, or for any acts or omissions of any kind unless caused by the willful misconduct or gross negligence of Escrow Holder.
- b. Escrow Holder shall not be liable for any taxes, assessments or other governmental charges which may be levied or assessed upon the Escrow Deposit or any part thereof, or upon the income therefrom.
- c. Escrow Holder may rely upon the advice of counsel and upon statements of accountants, brokers or other persons reasonably believed by it in good faith to be expert in the matters upon which they are consulted, and for any reasonable action taken or suffered in good faith based upon such advice or statements

7. Indemnity of Escrow Holder.

The Seller, agrees to:

- i. indemnify Escrow Holder and hold it harmless as to any liability by it incurred by the Escrow Holder to any other person or persons by reason of this Escrow Agreement, or in connection herewith except for Escrow Holder's own willful misconduct or gross negligence, and
- ii. reimburse Escrow Holder for all its expenses, including, but not necessarily limited to attorneys' fees and court costs incurred in connection herewith.

8. Request for Written Instructions.

- a. Escrow Holder may at any time, and from time to time, request the Seller and Buyer to provide written instructions concerning the propriety of a proposed payment of the Escrow Deposit, distribution of documents, or other action or refusal to act by Escrow Holder.
- b. Should the Seller and Buyer fail to provide such written instructions within a reasonable time, Escrow Holder may take such action, or refuse to act, as it may deem appropriate and shall not be liable to anyone for such action or refusal to act.
- c. Notwithstanding the foregoing, should the terms of the Escrow Agreement be complied with, in the judgment of Escrow Holder, then the Escrow Holder may disburse any funds, distribute documents, or take such action without specific further written instructions from any Party.

9. Disputes and Interpleader.

- a. In the event of any dispute between the Parties as to either law or fact, or in the event any of the parties hereto fail, for any reason, to fully receipt and acquit the Escrow holder in writing, Escrow Holder may refuse, in its discretion, to carry out said escrow instructions or to deliver any funds, documents, or property in its hand to anyone and in so doing shall not become liable to demand.
- b. Escrow Holder shall be entitled to continue, without liability, to refrain and refuse to act:
 - i. until all the rights of the adverse claimants have been finally adjudicated by a court having jurisdiction over the Parties and the items affected hereby, after which time the Escrow Holder shall be entitled to act in conformity with such adjudication; or
 - ii. until all differences shall have been adjusted by agreement and Escrow Holder shall have been notified thereof and shall have been directed in writing signed jointly or in counterpart by the parties and all persons making adverse claims or demand, at which time Escrow Holder shall be protected in acting in compliance therewith.
- c. Escrow Holder also has the right to interplead into a court of competent jurisdiction at the expense of the Parties.

10. Resignation of Escrow Holder.

- a. Escrow Holder may resign under this Agreement by giving written notice to all of the parties hereto, effective 30 days after the date of said notice.
- b. Upon the appointment by the parties of a new escrow holder or custodian, or upon written instructions to Escrow Holder for other disposition of the Escrow Deposit, Escrow Holder shall, after retention of its accrued escrow fees and expenses, if any, shall deliver the Escrow Deposit within a reasonable period of time as so directed, and shall be relieved of any and all liability hereunder arising thereafter.

11. Applicable Law.

This Agreement shall be governed by the laws of the State of Colorado.

12. Counterparts/Facsimile.

The Escrow Agreement may be executed in any number of counterparts, each of which when so executed shall constitute the entire agreement between the Seller and Buyer and may be executed in facsimile and such facsimile signature shall be accepted as original signatures. The Seller and Buyer acknowledge and agree that there are no intended or unintended third party beneficiaries who may rely upon or benefit from the provisions of this agreement.

Special Instructions 1a

Seller and Buyer agree as follows:

1. Buyer shall be responsible for the design and construction of the park improvements. Simultaneous with the delivery of this executed Escrow Agreement to the Title company, Seller has deposited good funds in the amount of Six Hundred and Fifty Thousand Dollars and No/100 (\$650,000.00) ("Park Improvement Escrow Funds") with the Title Company.
2. Title Company shall hold the Park Improvement Escrow Funds until Buyer submits a request for a payment. The parties agree that Buyer shall submit no more than four (4) requests for payment on the following schedule:
 - a. Initial Design of Park Payment – not to exceed \$100,000.00.
 - b. Execution of a Contract for Construction of the Park – not to exceed \$550,000.00.
3. Each Request for Payment shall include a reasonable detail of the use of funds.

EXHIBIT F

Short Term
LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule municipal corporation of the State of Colorado (“City”), and **PHC MIXED USE, LLC**, a Colorado Limited Liability Company, whose address is 4045 Pecos Street, suite 200, Denver, Colorado 80211 (“Lessee”). The City and Lessee shall each be referred to as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, the City and Lessee entered into that certain Contract to Exchange Property Agreement dated _____ (“PEA”) for the City and Lessee to exchange certain properties. The City’s property in the PEA is the property being leased under this Agreement (“Leased Premises”), and

WHEREAS, at the time of closing of the transaction specified in the PEA, Lessee is desirous of leasing the Leased Premises from the City until the earlier of the City commencing construction on the Leased Premises or no later than January 1, 2020; and

WHEREAS, Lessee intends to store soil and lumber on the leased space during construction of the project; and

WHEREAS, Lessee shall sample and analyze soil stored on the leased property as set forth in this PEA and as directed by the Denver Department of Public Health and Environment.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained, the City and the Lessee agree as follows:

1. **CONTINGENCIES**: This Lease shall be contingent upon the City and Lessee entering into the PEA.

2. **LEASED PREMISES**: Subject to the terms of this Lease, the City agrees to lease, demise, and let unto Lessee and the Lessee does hereby lease from the City those certain premises defined as the "Leased Premises", which shall include 2856 Fairfax Street, 2868 Fairfax Street, and a portion of 2850 Fairfax Street, Denver, Colorado 80207, consistent with the legal description, which is **Attachment 1**, attached hereto and incorporated herein. The Leased Premises is vacant land. The depiction contained on **Attachment 1** may be modified upon the written authorization of the City’s Director of Real Estate (the “Director”) to correct minor, technical

errors.

3. **TERM**: The term of this Lease shall begin on the date that the City and Lessee execute the PEA (the “Delivery Date”), and it shall terminate on the first day prior to commencement of construction by the City on the premises (the “Term”), unless earlier terminated as set forth herein.

4. **RENT**: Rent shall be paid by Lessee monthly to the City on the first business day of each month, or to another party as otherwise specified by the City to receive Rent on its behalf. Should the City specify another party to receive Rent, Lessee will be given written notice of such change no less than seven (7) days prior to the next succeeding Rent due date so that Lessee is allowed time sufficient to deliver Rents on or before the due date. Rent payable monthly, in advance, by Lessee during the Term shall be:

Rent \$10.00

If this Lease expires on a date that is not the last day of the month then the rent shall be pro-rated accordingly.

In addition to the foregoing, at such time that the City Assessor assesses a Possessory Interest or other related tax to the Leased Premises, Lessee shall pay before delinquency any and all taxes, assessments, and other charges levied, assessed or imposed, and which become payable during the Term, upon Lessee's operations, occupancy, or conduct of business at the Leased Premises, resulting from Lessee's occupation or subletting of the Leased Premises, or upon Lessee's equipment, furniture, appliances, trade fixtures, and other personal property of any kind installed or located on the Leased Premises. Such taxes include any Possessory Interest taxes resulting from this Lease or a sublease of the Leased Premises.

5. **USE**: The Leased Premises are to be used and occupied by Lessee solely as a staging area for stockpiling of soils for re-use and storage of lumber, and for no other purpose, unless the Director agrees in writing to another use, which consent shall not be unreasonably withheld. Any such soils stockpiled on the Leased Premises shall comply with the Soil Reuse Acceptance Criteria Guidance Table contained in Denver Department of Public Health and Environment’s 2017 Guidance for Reuse of Soil on City Projects, attached as **Attachment 2**. City agrees to allow a volume of approximately 6,000 to 10,000 cubic yards of soil, along with lumber, to be temporarily stored on the parcel. City has made no representations or warranties regarding the suitability of the soil. The soil does not originate from any City owned land. Lessee is utilizing

the soil based solely on its own analysis of the soil. Lessee shall properly transport and utilize the soil for its purposes. Lessee shall conduct dust suppression and erosion control measures while any soils are stockpiled on the Premises. Lessee shall also create and submit to the City prior to stockpiling any soils on the Leased Premises a storm water control plan setting forth Lessee's protocol for mitigating the impacts of storm water on stockpiled soils. The Lessee shall use the Leased Premises in a careful, safe, and proper manner, and shall not use or permit the Leased Premises to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, or the Charter, ordinances or Executive Orders of the City and County of Denver. The Lessee shall not commit or suffer to be committed any waste or damage upon the Leased Premises or any nuisance to be created or maintained thereon. The Lessee shall also keep the Leased Premises free and clear from all trash, debris, and waste resulting from its use or the use by its employees, officers, agents, invitees and visitors. The Lessee shall comply with all applicable State and Federal environmental regulations.

6. **“AS IS” CONDITION:** The Leased Premises are accepted by Lessee in an “AS IS, WHERE IS” condition, with all faults and defects. No additional work will be performed by the City and Lessee hereby accepts the Leased Premises in its as-is condition. The City does not make and disclaims any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Leased Premises.

7. **QUIET ENJOYMENT:** Lessee shall and may peacefully have, hold and enjoy the Leased Premises, subject to the other terms hereof, provided that Lessee pays the rental herein recited and performs all of Lessee's covenants and agreements herein contained.

8. **ENTRY BY CITY:** Lessee shall permit representatives of the City to enter into and upon the Leased Premises at any reasonable time without prior notice from the City to inspect the same, except in the case of emergencies, in which case the City will attempt to contact Lessee and if the City is unable to contact Lessee and the emergency is imminent, in the City's sole discretion, the City may enter into and upon the Leased Premises without notice, and Lessee shall not be entitled to any abatement or reduction of Rent by reason thereof. City shall not cause unreasonable interference in the normal course of Lessee's business and Lessee or an authorized employee or agent shall have the right to accompany the City during its inspections.

9. **CARE AND SURRENDER OF THE LEASED PREMISES:** At the termination

of this Lease, including any exercised option terms, Lessee shall surrender the Leased Premises to the City and deliver the Leased Premises to the City, in substantially the same condition as existed on the date hereof, including cleanup and removal of all lumber and soil, and soil and restoration of existing soil. In addition, Lessee shall have complied with the Soil Reuse Acceptance Criteria Guidance Table contained in Denver Department of Public Health and Environment's 2017 Guidance for Reuse of Soil on City Projects, attached as **Attachment 2**, undertaken dust suppression and erosion control measures, and complied with its storm water control plan.

10. **UTILITIES AND MAINTENANCE EXPENSE**: Lessee shall pay for all water, sewer, gas and electricity, or other utilities or services or fees charged on utilities or other consumables allocable to the Leased Premises. Should Lessee fail to perform any of the items set forth above, City shall have the right, but not the obligation to perform such item and Lessee shall reimburse City for all costs and expenses incurred by City. Any items paid directly by the City as part of a larger bill shall be due within thirty (30) days of the date of the City's billing statement. All past due payments shall accrue interest at the rate of twelve (12%) per annum until paid. Lessee shall be responsible for arranging for, and paying all deposits, fees and charges associated with, (i) water, sewer, gas and electricity (ii) telephone and other communication services to the Leased Premises, (iii) janitorial services, and (iv) trash hauling and any other service provider for the Leased Premises. The City will not be liable for any reason for any loss or damage resulting from an interruption of any of these services.

11. **INDEMNITY**: Lessee shall defend, indemnify, and save harmless the City, its officers, agents and employees from any and all losses, damages, claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including without limitation Workers' Compensation claims, of or by anyone whomsoever, that the City may sustain or on account of injuries to the person or property of the City, its agents or employees or to injuries or death of any other person rightfully on the Leased Premises for any purpose whatsoever, where the injuries are caused by the negligence or misconduct of the Lessee, the Lessee's agents, employees, subtenants, assignees, or of any other person entering upon the Leased Premises under express or implied invitation of the Lessee or where such injuries are the result of the violation of the provisions of this Lease by any of such persons. This indemnity shall survive the expiration or earlier termination of this Lease. Lessee need not, however, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's

officers, agents and employees. This indemnity clause shall also cover the City's defense costs, in the event that the City, in its sole discretion, elects to provide its own defense. Insurance coverage specified herein constitutes the minimum requirements, and said requirements shall in no way lessen or limit the liability of the Lessee under this Lease. Subject to compliance with the provisions of Section 17 below, the Lessee shall procure and maintain, at its own expense and cost, any additional kinds and amounts of insurance that it may deem necessary.

12. **LOSS OR DAMAGE**: The City shall not be liable or responsible to Lessee for any loss or damage to any property or person occasioned by theft or fire, natural disasters, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity other than the City. Likewise, Lessee shall not be liable or responsible to City for any loss or damage to the Leased Premises occasioned by theft, vandalism, fire, natural disasters, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity. In the event of a fire or other casualty in or to the Leased Premises, Lessee shall immediately give notice thereof to City. In case of partial destruction of the Leased Premises by fire, or other casualty, the City at its discretion may repair the Leased Premises with reasonable dispatch after notice of said partial destruction. If the Leased Premises are made untenable by fire, the elements, or other casualty, or if the building in which the Premises are located is partially destroyed to the point where City, within a reasonable time, decides not to rebuild or repair the Leased Premises, then this Lease shall terminate and any Rent shall be prorated and payable only up until the time of the partial or full destruction of the Leased Premises.

13. **HAZARDOUS SUBSTANCES**: Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Leased Premises by Lessee, Lessee's agents, employees, contractors, or invitees except as necessary for the existing operations, and in strict compliance with all Hazardous Substance use, storage, disposal and handling rules, laws, policies and regulations in effect at the time of this Lease, as such items may be amended, replaced or superseded. If Hazardous Substances are used, stored, generated, or disposed of on or in the Leased Premises or to the air or water, or if the Leased Premises become contaminated in any manner due to the actions or inactions of the Lessee, Lessee shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of

the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the Lease Term and arising as a result of those actions or inactions by Lessee. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and that results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the premises. Lessee shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), oils, and other petroleum-based substances.

14. **HOLDING OVER:** If after the expiration of the Term and any extensions of the Term of this Lease, Lessee shall remain in possession of the Leased Premises or any part thereof, and continues to pay Rent, without any express agreement as to such holding, then such holding over shall be deemed and taken to be a periodic tenancy from month-to-month, subject to all the terms and conditions of this Lease, except for the provisions relating to the period of Lessee's occupancy, and at a Rent in the amount of One Hundred Dollars (\$100.00) per day, payable in advance on the first day of each calendar month thereafter. Such holding over may be terminated by City or Lessee upon ten (10) days' notice. In the event that Lessee fails to surrender the Leased Premises upon termination or expiration of this Lease, or such month-to-month tenancy, then Lessee shall indemnify City against loss or liability resulting from any delay of Lessee in not surrendering the Leased Premises.

15. **REMEDIES UPON BREACH:** In the event of a breach of this Lease by Lessee, the City may have any one or more of the following described remedies, in addition to all of the rights and remedies provided at law or in equity:

(a) The City may terminate this Lease and forthwith repossess the Leased Premises and be entitled to recover as damages a sum of money equal to the total of (i) the cost of recovering

the Leased Premises, including reasonable attorneys' fees; (ii) the unpaid Rent earned at the time of termination, plus interest thereon at the rate of twelve percent (12%) per annum from the due date; (iii) the balance of the Rent for the remainder of the Term less any rents the City receives for the Leased Premises for said period; (iv) damages for the wrongful withholding of the Leased Premises by Lessee; (v) unpaid taxes or assessments; and (vi) any other sum of money in damages owed by Lessee to City as a result of its use and occupancy of the Leased Premises.

(b) Before exercising any remedy or right herein or in law or equity, the City shall supply written notice of such default to the Lessee and provide fifteen (15) days from the date of such notice to cure the noted default.

16. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Lease, the Lessee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity, gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

17. **LESSEE'S INSURANCE:**

(1) **General Conditions:** Lessee agrees to secure, at or before the time of execution of this Lease, the following insurance covering all operations, goods or services provided pursuant to this Lease. Lessee shall keep the required insurance coverage in force at all times during the Term of the Lease, or any extension thereof, during any warranty period, and for three (3) years after termination of the Lease. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Lease. Such notice shall reference the City contract number listed on the signature page of this Lease. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Lessee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by

its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Lessee. Lessee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Lease are the minimum requirements, and these requirements do not lessen or limit the liability of the Lessee. The Lessee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Lease.

(2) **Proof of Insurance:** Lessee shall provide a copy of this Lease to its insurance agent or broker. Lessee may not commence services or work relating to the Lease prior to placement of coverages required under this Lease. Lessee certifies that the certificate of insurance attached as **Attachment 3**, preferably an ACORD certificate, complies with all insurance requirements of this Lease. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Lease shall not act as a waiver of Lessee's breach of this Lease or of any of the City's rights or remedies under this Lease. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(3) **Additional Insureds:** For Commercial General Liability, Auto Liability and Pollution/Environmental Liability, Lessee and any sub-lessee's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(4) **Waiver of Subrogation:** For all coverages required under this Lease, with the exception of Professional Liability - if required, Lessee's insurer shall waive subrogation rights against the City.

(5) **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent Lessees, suppliers or other entities providing goods or services required by this Lease) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Lessee. Lessee shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Lessee agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

(6) **Workers' Compensation/Employer's Liability Insurance:** Lessee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Lessee expressly represents to the City, as a material representation upon which the City is relying in entering into this Lease, that none of the Lessee's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Lease, and that any such rejections previously effected, have been revoked as of the date Lessee executes this Lease.

(7) **Commercial General Liability:** Lessee shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(8) **Business Automobile Liability:** Lessee shall maintain Business Automobile Liability, or its equivalent, with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Lease. If transporting wastes, hazardous material, or regulated substances, Lessee shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Lessees Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

(9) Intentionally deleted.

(10) **Additional Provisions:**

(a) For Commercial General Liability, Business Automobile Liability, and Environmental Legal Liability, the policy must provide the following:

- (i) That this Lease is an Insured Contract under the policy;
- (ii) Defense costs are outside the limits of liability;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

- (b) For claims-made coverage:
 - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
- (c) Lessee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Lessee will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

18. **VENUE, GOVERNING LAW:** This Lease shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Lease shall lie in the State District Court in and for the City and County of Denver, Colorado.

19. **ASSIGNMENT AND RIGHT TO SUBLEASE:** The Lessee shall not assign or transfer its rights under this Lease, or sublet the Leased Premises without first obtaining the written consent of the Director, whose consent may be withheld in the Director's sole and absolute discretion.

20. **NO SALE OR ADVERTISING OF TOBACCO PRODUCTS:** The Lessee, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City and County of Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

21. **EXAMINATION OF RECORDS:** The Lessee agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after final payment under this Lease, have access to and the right to examine any directly pertinent books, documents, and records of the Lessee involving matters directly related to this Lease.

22. **AMENDMENT:** No alteration, amendment or modification of this Lease shall be

valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Lease; however, the Director shall have the authority to execute agreements which make technical, minor, or non-substantive changes to this Lease. The failure of either party hereto to insist in any one or more instances upon the strict compliance or performance of any of the covenants, agreements, terms, provisions or conditions of this Lease, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision or condition, but the same shall remain in full force and effect.

23. **SEVERABILITY**: If any portion of this Lease is determined by a court to be unenforceable for any reason, the remainder of the Lease remains in full force and effect.

24. **BINDING EFFECT**: This Lease when executed and when effective, shall inure to the benefit of and be binding upon the successors in interest or the legal representative of the respective parties hereto.

25. **THIRD PARTIES**: This Lease does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties any right to claim damages or to bring any suit, action or other proceeding against the parties hereto because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

26. **NOTICES**: All notices hereunder shall be given to the following by hand delivery or by certified mail, return receipt requested:

To the City: Director of Real Estate
201 W. Colfax Ave., Dept. 1010
Denver, CO 80204

With copies to: Denver City Attorney's Office
201 W. Colfax, Department 1207
Denver, Colorado 80202

To Lessee: HM Capital Group, LLC
4045 Pecos Street, Suite 200
Denver, Colorado 80211
Attn: Ben Maxwell
Manager

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is deposited in the mail or hand-delivered to the Party.

27. **ENTIRE AGREEMENT**: The parties acknowledge and agree that the provisions

contained herein and Exhibits hereto constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect.

28. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any performance hereunder constitute or be construed to be a waiver by any party of or any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any breach or default exists shall in no way impair or prejudice any right or remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Lease shall be deemed or taken to be a waiver of any other default or breach.

29. **NO PERSONAL LIABILITY:** No elected official, director, officer, agent or employee of the City, nor any director, officer, employee or personal representative of Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Lease or because of any breach thereof or because of its or their execution, approval or attempted execution of this Lease.

30. **CONFLICT OF INTEREST BY CITY OFFICER:** Lessee represents that to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interested in this Lease, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

31. **APPROPRIATION:** All obligations of the City under and pursuant to this Lease are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Lease and paid into the Treasury of the City.

32. **AUTHORITY TO EXECUTE:** Lessee represents that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind Lessee.

33. **PARAGRAPH HEADINGS:** The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Lease or to define, limit or describe the scope or intent of this Lease or the particular paragraphs to which they refer.

34. **EXECUTION OF LEASE:** The Lease shall become effective upon execution of the PEA. The PEA, Lease, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The parties agree not to deny

the legal effect or enforceability of the PEA, Lease or other documents solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the PEA or Lease in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Attachment 1 to Leaseback

Attachment 1

Park Hill Commons Parcel

Legal Description

Lots 7 through 11,

Except the east 4 feet of said lots,

Block 15,

Park Hill Annex,

City and County of Denver,

State of Colorado.



DENVER
THE MILE HIGH CITY

Department of Environmental Health

Division of Environmental Quality
200 W 14th Ave, Suite 310
Denver, CO 80204
p: 720-913-1311
f: 720-865-5534
www.denvergov.org/deh

INTEROFFICE MEMORANDUM

TO: City and County of Denver Department Executive Directors

FROM: Bob McDonald, Executive Director

DATE: October 05, 2017

SUBJECT: Guidance for Reuse of Soil on City Projects

There is increasing demand in and around the City and County of Denver (City) for soil available for reuse. Such reuse offers several benefits to the City including reduced waste, hauling costs, disposal fees, and vehicle emissions.

As the local public health authority, the City's Department of Environmental Health (DEH) has determined that all reusable soil must be adequately characterized based on the intended reuse to ensure the protection of public health and the environment. If the soil is not suitable for reuse per these guidelines, it must be disposed at the City-owned Denver Arapahoe Disposal Site (DADS) in accordance with the City's Executive Order No. 115.

This guidance provides criteria by which City employees and/or third parties may, or may not, reuse soil from City projects at both City-owned properties and properties owned by others. DEH sign off will be required for any reuse options. As such, to promote safe and sustainable reuse, it is within DEH's purview to implement the following requirements for City soils to be reused:

1. For onsite reuse, City personnel are responsible for contacting DEH¹ when they want to reuse soil or receive a request to reuse soil. DEH is responsible for promptly informing the requestor of City sampling frequency and analysis requirements based on contaminants of concern from recognized environmental conditions, which are designed to promote safe and sustainable reuse.
2. For off-site reuse and/or material to be imported to a site, the person or entity requesting to reuse the soil must adequately characterize the soil by sampling at least every 500 cubic

¹ Diane DeLillio, 720-865-5448, diane.delillio@denvergov.org



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yards to be excavated (or alternative frequency as determined by DEH) and analyze those soil samples for, at a minimum:

- a. Volatile organic constituents;
 - b. Semi-volatile organic constituents;
 - c. Total petroleum hydrocarbons;
 - d. Pesticides;
 - e. Herbicides;
 - f. Polychlorinated biphenyls (PCBs);
 - g. Arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver; and
 - h. Asbestos – if debris is found and if suspect asbestos-containing material is found in the debris (e.g., transite, ash, brick mortar, asphalt shingles, etc.)
3. In general, the person or entity requesting to reuse the soil shall pay all costs associated with the sampling and analysis of the soil.
 4. Before the City will release the soil for reuse, the party requesting the excess soil must indicate the land use of the accepting site and demonstrate to DEH's satisfaction that the soil meets the criteria based on the designated land use of the receiving site. See Exhibit 1 for additional guidance.
 5. Maintain the documentation for sample collection, analytical results, and the environmental consultant's field notes and evaluation.
 6. Any third party will be required to sign a release to accept the soil from the City and to release the City from liability.

Attachments: Exhibit 1 – Soil Reuse Acceptance Criteria Guidance Table

Exhibit 2 - Draft Release for Third Party Acceptance

CC: Jessica Brody, CAO
Lee Zarzecki, CAO
Zachery Clayton, DEH
Gregg Thomas, DEH



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Department of Environmental Health

Division of Environmental Quality
200 W 14th Ave, Suite 310
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Exhibit 1 - Soil Reuse Acceptance Criteria Guidance Table

Land Use	Examples	Applicable Soil Reuse Acceptance Criteria*
Recreational	Parks, Open Space	All Contaminants except Arsenic (Residential) Arsenic Standard
Residential	Single Family, Multi-family, Mixed-use with residential component	All Contaminants except Arsenic (Residential) Arsenic Standard
Right of Ways (not inclusive of utilities)	Roads, sidewalks, bike paths	All Contaminants except Arsenic (Composite Worker) Arsenic Standard
Utility corridors (underground)	Storm water, Waste water,	All Contaminants except Arsenic (Composite Worker) Arsenic Standard
City-owned facilities	Maintenance garages, office buildings, safety buildings	All Contaminants except Arsenic (Composite Worker) Arsenic Standard

* Screening values presented in the Regional Screening Levels table are based on human health risk from the combined exposure of direct soil ingestion, dermal contact with soil and inhalation of vapors or particulates associated with soil. Other pathways, such as indoor air or groundwater protection, may need to be considered on a site-specific basis. Some sites in sensitive ecological settings may need to be evaluated for potential ecological risk. These screening levels may not be applicable to sites within and/or subject to other regulatory programs (i.e., RCRA Corrective Action, Leaking Underground Storage Tanks, Superfund Operable Unit, etc.)

In addition, the reuse of any regulated asbestos-containing soil (“RACS”) or suspect-RACS must be conducted in accordance with state regulations governing the management of RACS, 6 CCR 1007-2, § 5.5.

DEH is committed to assisting all agencies and projects to perform soil disturbing activities in a cost-effective and sustainable manner while ensuring protection of public health and the environment.





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/26/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Phil Broncucia Agency 1970 Kipling Street Lakewood, CO 80215		303-991-7180		CONTACT NAME: PHONE (A/C, No, Ext): 303-991-7180		FAX (A/C, No): 303-238-7345	
				E-MAIL ADDRESS:			
				INSURER(S) AFFORDING COVERAGE		NAIC #	
				INSURER A : Clear Blue Specialty Ins. Co.			
INSURED PHC Mixed Use, LLC; Park Hill Commons, LLC 4045 Pecos St Ste 200 Denver, CO 80211				INSURER B :			
				INSURER C :			
				INSURER D :			
				INSURER E :			
				INSURER F :			

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		AC010001100	01/03/2018	07/03/2019	EACH OCCURRENCE \$ 3,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 3,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N <input checked="" type="checkbox"/> N / A If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured. In regards to leased property at 2868 Fairfax St. Denver, CO 80207. SIR \$15,000 defense outside the limits.

CERTIFICATE HOLDER		CANCELLATION	
City and County of Denver 201 W. Colfax Ave. Denver, CO 80202		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 	