

AFFORDABLE HOUSING PLAN FOR LORETTO HEIGHTS

THIS AFFORDABLE HOUSING PLAN FOR LORETTO HEIGHTS (this “Affordable Housing Plan”) serves as **Exhibit ___** to that certain Loretto Heights Rezoning and IMP Development Agreement (the “Development Agreement”) between **ACM LORETTO IV LLC**, a Delaware limited liability company (“Owner”), and the City and County of Denver, a municipal corporation organized pursuant to the Constitution of the State of Colorado with a mailing address of Department of Housing Stability, 201 W. Colfax Avenue, Department 615, Denver, CO 80202 (“City”). City and Owner are sometimes referred to together as the “Parties” or singularly, as a “Party.”

RECITALS:

A. Owner is the owner of certain property located Southwest Denver that is bounded by S. Irving Street and S. Julian Street to the west, W. Amherst Avenue to the north, S. Federal Boulevard to the east and W. Dartmouth Avenue to the south, as more particularly described on Exhibit A to the Development Agreement (the “Subject Property”). Owner intends to develop and redevelop the Subject Property for various residential and non-residential uses known as Loretto Heights (the “Project”).

B. In connection with the proposed rezoning and development of the Project and in full and complete satisfaction for all parcels of any linkage fee requirements for the residential uses within the Project, set forth in Article V, Chapter 27 of the Denver Revised Municipal Code (“DRMC”), Owner has agreed to construct certain affordable housing within the Project, as described herein.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. AFFORDABILITY PERCENTAGE. Owner agrees twelve percent (12%) of all residential units constructed within the Project will, for a period of ninety-nine (99) years, be income-restricted units (collectively, the “IRUs”, with rental IRUs referred to herein collectively, as the “Rental IRUs” and for-sale IRUs referred to herein collectively, as the “For-Sale IRUs”).

1.1 PANCRATIA HALL. As of the Effective Date, redevelopment efforts at Pancratia Hall are underway. It is expressly understood that all IRUs developed at Pancratia Hall will be counted towards the 12% IRUs requirement set forth herein.

1.2 FOR-SALE IRUS. A minimum of 14 IRUs must be For-Sale IRUs, located within that area identified on **Schedule A** hereto as the “*For-Sale DU Area*”.

1.3 GRAND PEAK DU AREA. The four parcels depicted and identified on **Schedule B** hereto as the “*Grand Peak DU Area*” will include a combined total of at least 26 Rental IRUs (the “Grand Peak Rental IRUs”).

2. LEVELS OF AFFORDABILITY.

2.1 RENTAL IRUS. At least 40% of Rental IRUs will be offered to households at or below 60% AMI; of the Rental IRUs for households at or below 60% AMI, 30% of those will be offered to households at or below 30% AMI. It is expressly understood that the preceding does not apply to the Grand Peak Rental IRUs, which instead will all be offered to households at or below 80% AMI. All references above to AMI shall be the then-current year's AMI, adjusted for household size, for the Denver metropolitan area as determined by the U.S. Department of Housing and Urban Development.

2.2 FOR-SALE IRUS. The For-Sale IRUs will serve households at or below 100% AMI; with at least 50% of such For-Sale IRUs serving housing households at or below 80% AMI. All references above to AMI shall be the then-current year's AMI, adjusted for household size, for the Denver metropolitan area as determined by the U.S. Department of Housing and Urban Development. Notwithstanding the foregoing, if additional market rate for-sale units are developed beyond what is being contemplated in the For-Sale DU Area, then additional For-Sale IRUs will be provided at the same proportionate rate as required in Section 1 above, and in the same proportion of AMI percentage required in this Section 2.2.

3. **NUMBER OF BEDROOMS.** 30% of all IRUs will include two or more bedrooms per unit.

4. **DEED RESTRICTED LAND.** The parcel legally described as Loretto Heights Filing No. 1, Lot 7, Block 3, identified and depicted on **Schedule C** hereto as the "*Deed Restricted Land*" is intended to be used for additional Rental IRUs in a future phase of the Project.

4.1 DEVELOPMENT OF THE VACANT DEVELOPABLE PARCEL. If the following events occur: (i) the Project's only two remaining parcels left to be developed are the Deed Restricted Land and a final subdivided vacant parcel that is not a superlot (for purposes of this subsection, such subdivided vacant parcel referred to as the "Vacant Developable Parcel"); (ii) a formal site development plan application for the Vacant Developable Parcel occurs before a formal site development plan application for Deed Restricted Land; and (iii) the total IRUs for the Project are less than 12% of all residential units; then the Vacant Developable Parcel must provide at least 50% of any remaining number of Rental IRUs required in this Affordable Housing Plan with all requirements for those Rental IRUs listed above.

4.2 DONATION OF DEED RESTRICTED LAND. If a formal site development plan application for the Deed Restricted Land is not submitted to the City on or before the eight year anniversary of the Effective Date, then Developer shall donate the Deed Restricted Land by conveying fee simple title to the Deed Restricted Land at no cost, with each party being responsible for its own transaction costs, to a nonprofit entity, or an entity with experience in developing affordable housing that is acceptable to the City. This donation must take place within 180 days after the eight-year anniversary of the Effective Date.

5. **PHASING OF THE PROJECT.** The Project will be developed in multiple phases with the first phase producing at least 85 IRUs consisting of both Rental IRUs and For-Sale IRUs. An equitable distribution of IRUs, as required by the Rules and Regulations promulgated under the City's Affordable Housing Permanent Funds Ordinance adopted pursuant to Article V, Chapter 27 of the DRMC (the "Rules and Regulations"), will be included in each subsequent phase until the agreed upon IRUs have been delivered.

6. **CITY SUBSIDIES.** The numbers and types of IRUs designated above presume that the Project will not receive any subsidization from the City to support development of such IRUs other than the City's Department of Housing Stability (HOST) participation in the development of Rental IRUs at Pancratia Hall. The parties acknowledge that if any additional subsidy is received from the City beyond the City's participation in Pancratia Hall or potential participation in the redevelopment of the theater as a community benefit, additional affordability requirements will likely be imposed in addition to those set forth herein. Developers building income restricted units are eligible to apply for City subsidies for only those units that serve households at or below 60% AMI.

7. **SDPs AND COVENANTS.** Owner will construct, maintain, and offer the Rental IRUs and For-Sale IRUs to tenants and buyers, as applicable, in accordance with the requirements of the Rules and Regulations.

7.1 RENTAL IRUS COVENANT. The Rental IRUs will be developed in phases within several SDPs. Each SDP that includes rental residential units will include a chart setting forth the number of Rental IRUs and the specific AMI limitation for such units within such SDP, along with the collective number of Rental IRUs within approved SDPs. For any building within the Project that will contain a Rental IRU, Owner or the owner of such building shall, as a condition to receipt of the first certificate of occupancy for a residential unit in the building, record in the real estate records of the City a covenant running with the title to the land for a period of not less than ninety-nine (99) years from the date of recordation that encumbers the land underlying such building in substantially similar form attached hereto as **Schedule D** which shall constitute a covenant running with the land (the "**Rental Covenant**") in order to ensure that certain rent limitations, occupancy limitations, and administrative requirements are met..

7.2 FOR-SALE IRUS. The For-Sale IRUs will be developed in phases within several SDPs. Each SDP that includes for-sale residential units will include a chart setting forth the number of For-Sale IRUs and the specific AMI limitation for such units within such SDP, along with the collective number of For-Sale IRUs within approved SDPs. For all For-Sale IRUs within the Project, Owner or the owner of such unit shall, prior to and as a condition for the issuance of a certificate of occupancy, record in the real estate records of the City and County of Denver a covenant on such property in substantially similar form attached hereto as **Schedule E** (the "**For-Sale Covenant**"), which shall constitute a covenant running with the land and encumber the unit for a period of not less than ninety-nine years from the date of recordation in order to ensure that certain sale price limitations, occupancy limitations, and administrative requirements for the For-Sale IRUs are met.

7.3 COMPLIANCE. The owner and manager of any Rental IRU shall be responsible for compliance with any applicable Covenant and for periodic reporting to HOST on such compliance. HOST will be responsible for monitoring such compliance. Owners of lots within the Project other than Owner will be obligated to comply with this Affordable Housing Plan and failure to do so will be deemed a breach of agreement. The City shall have all remedies available at law or in equity, including specific performance or damages to compensate the City for the loss of the affordable housing.

8. NON-RESIDENTIAL. Any exceptions to assessment and payment of linkage fees provided as a result of this Affordable Housing Plan shall apply only to residential development within the Subject Property. Assessment of linkage fees shall apply to all Non-Residential development as if this Affordable Housing Plan did not exist. For purposes of this Affordable Housing Plan, "Non-Residential" means the gross floor area does not contain any primary residential uses but expressly excludes any square footage within the Project that is subject to an exception under DRMC Section 27-154, as it may be amended from time to time.

9. AMENDMENT; TERMINATION. This Affordable Housing Plan may only be amended, modified or released only upon a written amendment or release executed by the City and Developer. The Executive Director of HOST, or the Executive Director's designee, is authorized to execute any amendment or release. Any amendment to this Affordable Housing Plan does not require an amendment to the Development Agreement. This Affordable Housing Plan will be in effect until ninety-nine (99) years after the date on which the final certificate of occupancy for the last building to be constructed on the Property (the "Termination Date") is issued, and this Affordable Housing Plan will automatically terminate on the Termination Date. Upon demonstration by an owner at of the Subject Property that the City has issued a final certificate of occupancy for the last building to be constructed on the Subject Property, HOST agrees to execute a document or instrument in recordable form reasonably requested by an owner of any part of the Subject Property confirming that the Termination Date has occurred.

10. RECORDATION; COVENANT RUNNING WITH THE LAND. This Affordable Housing Plan, including any amendments thereto, will be recorded in the public records for the City. The parties agree to execute such additional documents as may be necessary or required to effectuate the intent and purpose of this Affordable Housing Plan.

11. REZONING APPROVAL REQUIRED. The approval of the rezoning of the Subject Property is a condition precedent to Owner's obligations under this Affordable Housing Plan. Should the Denver City Council fail to approve the rezoning within one hundred eighty (180) days after the date of the Development Agreement, or should the approved rezoning ultimately be overturned on appeal at any time, then this Affordable Housing Plan, at the Owner's election may be terminated upon written notice to the City and shall no longer burden title to the Subject Property.

12. SUCCESSORS AND ASSIGNS. This Affordable Housing Plan shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

13. SECTION HEADINGS. The section headings are inserted only for convenient reference and do not define, limit or prescribe the scope of this Affordable Housing Plan.

14. SEVERABILITY. If any terms, covenants or provisions of this Affordable Housing Plan will be illegal or unenforceable for any reason, the same will not invalidate any other term, covenants or provisions, and all of the remaining terms, covenants and provisions will remain in full force and effect.

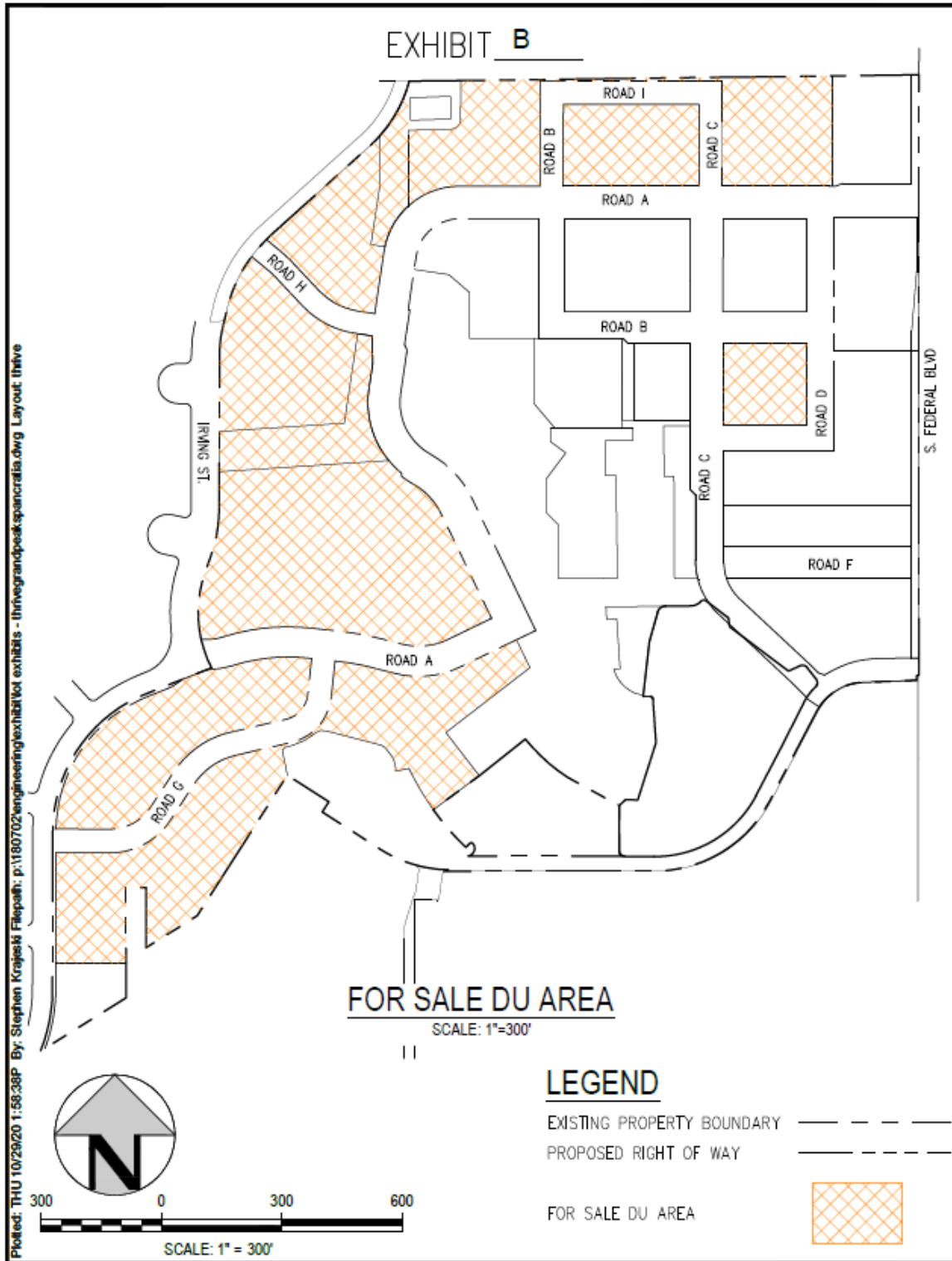
15. ENTIRE AGREEMENT. This Affordable Housing Plan, together with any exhibits or documents referred to in, or supplied pursuant to the terms of this Affordable Housing Plan, contains the entire agreement relative to affordable housing within the Project and supersedes all prior oral representations, covenants, understandings or other agreements between the parties or their agents.

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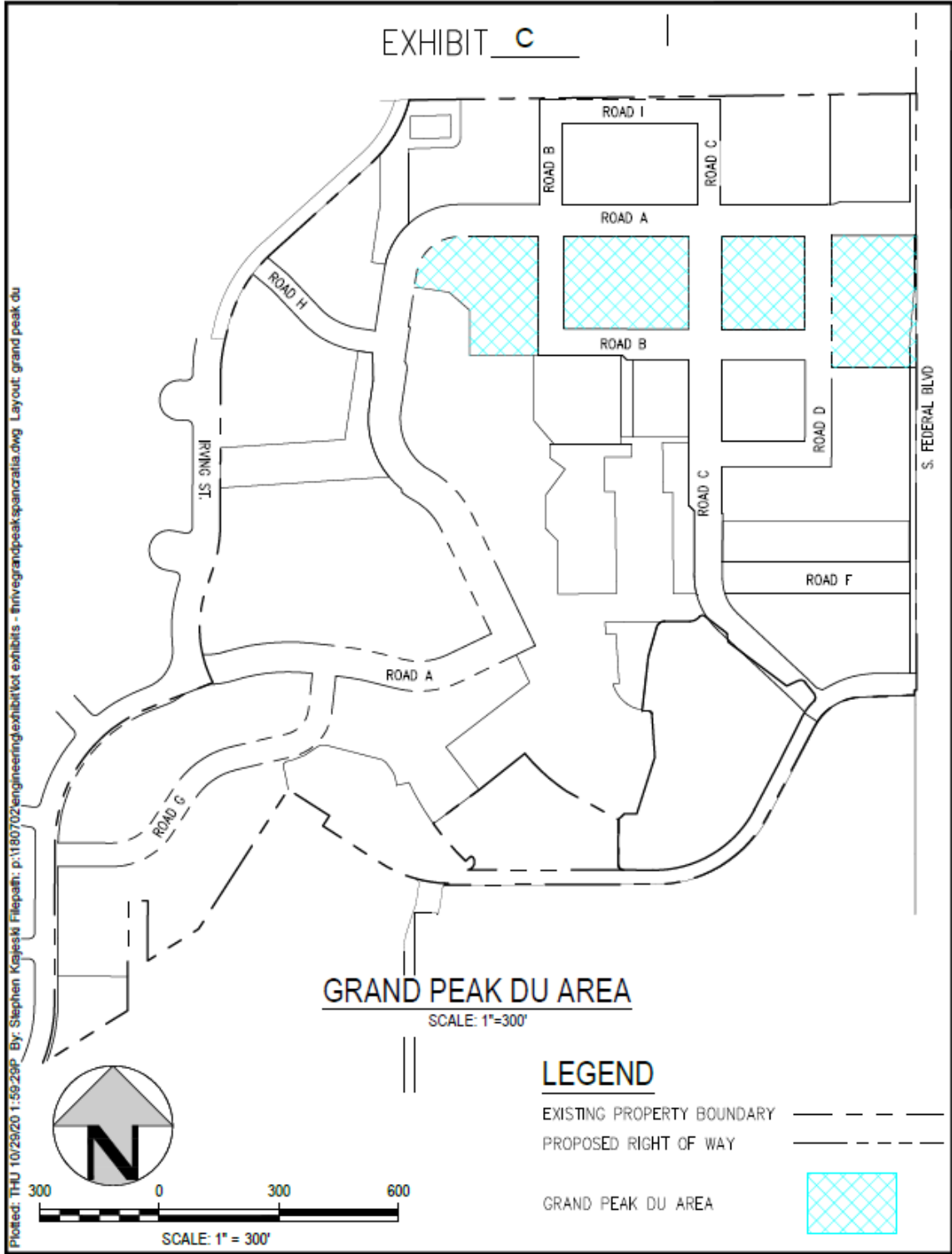
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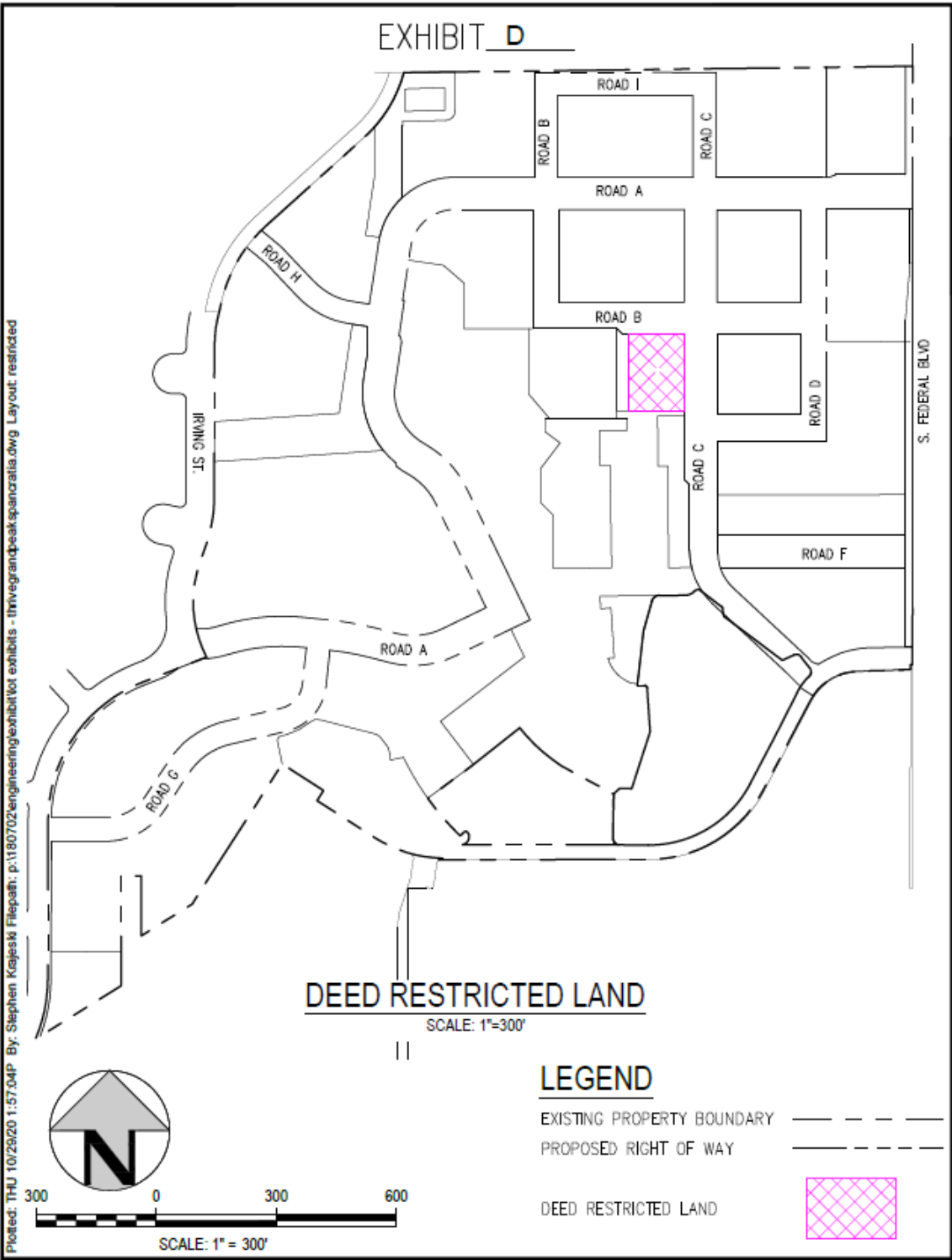
**SCHEDULE A
FOR-SALE DU AREA**



**SCHEDULE B
GRAND PEAK DU AREA**



**SCHEDULE C
DEED RESTRICTED LAND**



**SCHEDULE D
FORM OF RENTAL COVENANT
{WHOLE BUILDING}**

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SCHEDULE E
FORM OF FOR-SALE COVENANT

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