

LORETTO HEIGHTS REZONING AND IMP DEVELOPMENT AGREEMENT

THIS LORETTO HEIGHTS REZONING AND IMP DEVELOPMENT AGREEMENT (this "**Development Agreement**") is made and entered into as of the date set forth on the City's signature page below (the "**Effective Date**"), by and among the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation and home rule city (the "**City**"), **ACM Loretto VI LLC**, a Delaware limited liability company, and its successors and assigns ("**Developer**"), **Loretto Heights Metropolitan District No. 1**, a Colorado political subdivision, **Loretto Heights Metropolitan District No. 2**, a Colorado political subdivision, **Loretto Heights Metropolitan District No. 3**, a Colorado political subdivision, **Loretto Heights Metropolitan District No. 4**, a Colorado political subdivision, **Loretto Heights Metropolitan District No. 5**, a Colorado political subdivision, **Loretto Heights Programming Metropolitan District**, a Colorado political subdivision (each a "**District**," collectively, the "**Districts**") with respect to Sections 4, 10 and 12.8 only and **Pancratia Hall Partners, LLC**, a Colorado limited liability company ("**Pancratia Partners**") with respect to Sections 6, 9 and 12 only. City, each District, Pancratia Partners and Developer are sometimes referred to together herein as the "**Parties**" or singularly, as a "**Party**."

Recitals

This Development Agreement is made with respect to the following facts:

A. Developer and Pancratia Partners are the owners of certain real property that is depicted and legally described on **Exhibit A** attached hereto and made a part hereof (the "**Property**"). The Property is located in Southwest Denver and 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.

B. Pancratia Partners own a small portion of the Property, commonly known as Pancratia Hall, and are rehabilitating Pancratia Hall for affordable residential uses. As master developer, Developer seeks to redevelop the remaining portion of the Property (the "**Project**") by celebrating the rich history of the campus core through preservation of significant historic buildings woven together with modern urban buildings in a manner uniquely positioned to deliver valuable community benefits. Community benefits generated from this Project include affordable and attainable housing options, preservation of historic buildings and structures, open space and view corridors, together with diversity of uses and community spaces to stimulate local economic activity. The Project represents one of the few development/redevelopment projects of this scale and nature in this area of Denver in decades.

C. The Denver City Council (the "**City Council**"), by Ordinance No. 0818, Series of 2019, has adopted the Loretto Heights Small Area Plan ("**Loretto Area Plan**"). The Loretto Area Plan creates a community vision for the redevelopment of the Loretto Heights campus. Implementation of the Loretto Area Plan framework, vision elements, strategies, transformative projects and implementation strategies, includes but is not limited to vibrant streets, multi-modal features, new connections, active parklands, resilient infrastructure and affordable and attainable

housing, which may be achieved through appropriate uses and development intensity to activate the area and help finance the recommended improvements.

D. The Large Development Review Process for the Project was concluded with a Final Framework Development Document recorded on February 2, 2020, at Reception No. 2020018011.

E. Simultaneously with the execution of this Development Agreement, the City Council, pursuant to Council Bill No. BR21-0333, has rezoned the Property to PUD-G 24, PUD-G 25 and U-MX-3 , with waiver up to 5 stories, to accommodate development of the Project (the "**Rezoning**"). This Development Agreement memorializes certain basic parameters, standards and expectations for the Project in connection with the Rezoning based upon certain Project feasibility studies, reviewed, completed and adopted City plans and goals as of the Effective Date.

F. In addition, the Infrastructure Master Plan ("**IMP**") for the Property has been reviewed and approved, conditioned upon approval of the Rezoning and this Development Agreement, by the City's Development Review Committee ("**DRC**") through the standard Development Services process. The IMP serves as the guiding document of needed infrastructure to serve development on the Property and infrastructure master plan concepts and layout of all land use, development parcels, streets, sanitary sewer, storm drainage, water, pedestrian, bike, and transit facilities, and open spaces needed to service and support the development of the Project. The Property will be developed in multiple phases, with the first phase of construction already underway with the redevelopment of Pancratia Hall. The IMP includes a phasing plan detailing the timing and triggers of the IMP infrastructure improvements to support individual subareas of the proposed development (collectively, the "**Phasing Plan**"). The IMP and supporting engineering studies will be utilized to evaluate Project-specific development as it occurs within the Property and will serve as the basis for future Property plan and engineering design.

G. The Property includes historic buildings that have been identified for preservation. To ensure preservation is achieved at the highest level that includes sensitivity to design and historic significance, private design guidelines have been developed.

H. Development of the Project, to the full extent of the Loretto Area Plan and the zoning, will require substantial investments in infrastructure improvements and public facilities, including, without limitation, streets, drainage facilities, sanitary sewer facilities, water lines and parks that will serve the needs both of the Property and the surrounding neighborhoods of the City. Completion of these improvements and facilities will involve substantial investments by Developer, other future owners of portions of the Project and the Districts that have been created for the Project.

I. The legislature of the State of Colorado adopted Sections 24-68-101, et seq. of the Colorado Revised Statutes (the "**Vesting Statute**") to provide for the establishment of vested property rights for certain site-specific development plans in order to ensure reasonable certainty in the land use planning process, stability and fairness in the land use planning process and in order to stimulate economic growth, secure reasonable investment-backed expectations of landowners and foster cooperation between the public and private sectors in the area of land use planning. The

Vesting Statute and the City's home rule powers under Article XX of the Colorado Constitution authorize the City to enter into agreements with landowners providing for vesting of certain development rights.

J. The City has determined that development of the Property in accordance with this Development Agreement will provide for orderly growth in accordance with the policies and goals set forth in the City's Comprehensive Plan 2040 (the "**Comprehensive Plan**"), Blueprint Denver and the Loretto Area Plan.

K. In exchange for these benefits and the other benefits to the City contemplated by this Development Agreement or other related agreements and/or derived by the City from development of the Property, Developer desires to receive the assurance that it may proceed with development of the Property pursuant to the terms and conditions contained in this Development Agreement. The City has determined that considering the size, phasing and duration of the Project and the unpredictability of economic cycles and market conditions over the life of the development of the Property, it is appropriate to provide certain assurances to Developer and its successors and assigns through this Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Recitals.** All of the recitals above are hereby confirmed and incorporated herein as part of this Development Agreement.

2. **Affordable Housing Plan.** The Parties agree that the Project will satisfy the City's current or future affordable housing requirements, as set forth in Chapter 27, Article V of Denver Revised Municipal Code ("**DRMC**"), as may be amended, by complying with the Affordable Housing Plan. For the avoidance of doubt, this **Section 2** shall mean that compliance with the Affordable Housing Plan attached hereto and incorporated as **Exhibit B** will satisfy the affordable housing requirements for the Project notwithstanding any future amendments to Chapter 27, Article V of the DRMC or any other changes to the City's affordable housing requirements wherever codified.

3. **Open Space for Large Developments.**

3.1 Unless a later date is approved by the Executive Director of Community Planning Department ("**CPD**") prior to approval of any Site Development Plan ("**SDP**") for vertical development on a parcel required to develop open space, Developer shall convey to the City and the general public an easement for each area of open space located within the parcel for which SDP or subdivision approval is sought. Such easements will be in substantially the form set forth in **Exhibit C** (the "**OS Easement**"); provided, however, that the effectiveness of each OS Easement will be expressly conditioned on the City's final approval of the SDP or subdivision on the respective parcels. Further, the OS Easement for each parcel of open space will be recorded no later than the City's final approval of the SDP or subdivision on the respective parcels.

3.2 **Open Space Requirements.** The IMP includes an open space plan within the Project that contains defined “Required Open Space”. In accordance with Section 10.8 of Denver Zoning Code, as amended, the Project shall include a minimum of ten (10%) of the net developable area of the Project that will be perpetually set aside as publicly accessible open space. Acreage will be calculated with each SDP, and shall total no less than 5.66 acres.

4. **Offsite Improvements for Parks.** To assist in future improvements to Loretto Heights Park, Developer shall pay to the City or shall cause a District, to pay to the City an off-site park improvement fee in the total amount of Three Hundred Thousand Dollars (\$300,000) (the “**Park Improvement Fee**”). The Park Improvement Fee shall be paid on or before six (6) months after the Effective Date or prior to the first building permit issued after the Effective Date, whichever occurs first.

5. **Street Improvements.** Denver Moves has identified Irving as a neighborhood bikeway. The facility should be elevated to a standard bike lane due to the increase in density and challenging topography of this segment. The Developer shall construct the recommended bicycle facility on Irving and Julian in locations as generally shown in the IMP and in accordance with the standards and requirements of the City’s Department of Transportation and Infrastructure (“DOTI”) and [Bicycle Facility Design Manual](#).

5.1 **Irving.** Install DOTI compliant bike lanes on Irving between Dartmouth and Amherst. This provides connection to the Lowell Blvd bike lanes to south and future Irving Neighborhood Bikeway to the north.

44' curb to curb:
20' travel lanes (10' each)
12' bike lanes (6' each)
4' buffer between travel and bike lanes (2' each)
8' on street parking (one side)

Construction and striping of bike lanes will comply with DOTI standards.

5.2 **Julian.** Same as Irving above - there should be no parking on either side of the street (36' ex FL-FL).

6. **Historic Preservation.** The Project includes several historic buildings that will be redeveloped and preserved in accordance with this **Section 6**, as such buildings are identified and defined in **Exhibit D**.

6.1 **Historic Buildings.** Developer and Pancratia Partners, as applicable, shall apply to designate for preservation, per Chapter 30 of the DRMC (“**Historic Designation**”), the following individual, existing structures (each a “**Historic Building**”, collectively, the “**Historic Buildings**”) within the Project: (a) Administration Building and Chapel; (b) Priest’s House; and (c) Pancratia Hall.

6.1.1. *Timing of Application.* Developer and Pancratia Partners, as applicable, shall submit an application for Historic Designation for each Historic

Building on an individual basis upon the first to occur of the following events: (a) five (5) years after the Effective Date; or (b) 60 days after the City's issuance of a certificate of occupancy for construction for any Historic Buildings (or final building inspection for construction that does not require issuance of a new certificate of occupancy). Notwithstanding anything to the contrary in the Development Agreement, in no event shall the issuance of a certificate of occupancy for construction (or final building inspection for construction that does not require issuance of a new certificate of occupancy) for a single Historic Building result in a requirement to submit an application for Historic Designation for all Historic Buildings.

6.2 Short Term Protection. Developer and Pancratia Partners shall provide immediate short-term protection from incompatible alteration to the Historic Buildings until such time that they are locally designated for preservation.

6.2.1. Any alterations to the exterior of the Historic Buildings that occur prior to Developer and/or Pancratia Partners submitting a designation application for the structures must comply with the Federal Secretary of the Interior's Standards for Rehabilitation (36 CFR 67), as may be amended (the "**Standards**"). Compliance with the Standards will be determined by the City Landmark Preservation staff at the time a zoning or building permit is requested for any exterior alterations. Compliance with the Standards for Pancratia Hall's initial rehabilitation that is currently underway and scheduled to be complete in the Fall of 2021 shall be determined by the National Park Service instead of Landmark Preservation staff. Such zoning or building permit will not be issued without City Landmark Preservation staff prior approval.

6.2.2. Developer represents that it will execute and record a Deed of Conservation Easement with Historic Denver, Inc. for the Administration Building and Chapel concurrently to the execution of the Development Agreement.

6.3 Demolition by Neglect. The Historic Buildings, Machebeuf Hall, and May Bonfils Stanton Theater & Library shall be maintained to avoid severe deterioration and severe decay and kept free from severe structural defects. This does not mean that deferred maintenance shall be addressed before full rehabilitation, only those conditions that shall result in severe deterioration and lead to the condition of Demolition by Neglect. If any of the structures listed in this Section 6.3 are designated by the City Council of the City and County of Denver as historic structures, or included as part of a historic district designated by the City Council of the City and County of Denver, then all maintenance obligations of Chapter 30, DRMC will apply to those structures.

7. Redevelopment of the Theater. The redevelopment of the Theater will occur, if at all, in accordance with this **Section 7**.

7.1 Theater Redevelopment Plan. Commencing on the Effective Date and continuing for a period of four years from the anniversary of the Effective Date (the "**Plan Development Period**"), the City and Developer will work together, in good faith, to

develop the plan (the “**Theater Project**”) to rehabilitate and operate the May Bonfils Stanton Theater (the “**Theater**”). Such redevelopment plan (the “**Theater Redevelopment Plan**”) will include:

7.1.1. A defined scope of work that incorporates the recommendations from the City’s Loretto Theater Task Force and accompanying Theater Feasibility Study completed in 2019 (the “**Theater Study**”). The Theater Study specifies the necessary life/safety improvements required to bring the theater up to state-of-the-art and includes a line-item inventory of costs associated with the theater. In addition, the scope of work will identify the phased construction improvements that can be constructed over time and specify the improvements required for three different use scenarios. All scenarios should consider current and future parking constraints and parking requirements based on DMRC use and parking classifications, unless otherwise addressed in the Rezoning.

7.1.2. Identification and commitment of a public/non-profit entity to serve as developer and owner of the Theater.

7.1.3. Development of a proforma that identifies all funding sources for the Theater Project.

7.1.4. Confirmation of secured financial commitments for all funding sources to complete the Theater Project, including any tax-increment financing from the Denver Urban Renewal Authority, as well as any financial commitments needed to operate and maintain the Theater Project.

7.1.5. Establishment of a construction schedule for the Theater Project.

7.2 Contribution Agreement. Within a reasonable time before securing commitments for all funding sources for the Theater Project but not prior to a viable financing plan for the Theater Project, the City and Developer will work together in good faith to agree upon the terms of a future, separate “Contribution Agreement” pursuant to which (and subject to City’s due diligence processes and Executive Order No. 100), Developer will contribute to the City the real property required for the Theater Project, for the transfer price of \$10.00, at the time of the closing for the construction loan for the Theater Project. If the Contribution Agreement is not executed prior to the end of the Plan Development Period, then any and all obligations related to the Theater Project as specified in this **Section 7** will be immediately, and without further action by the Parties, terminated and not apply to Developer or the Project. Thereafter, Developer may develop the Theater property for any permitted use or purpose.

8. **Denver Green Code.** Developer shall comply with the Denver Green Code through all relevant phases of the project (“**DGC**”) for residential structures within the Residential PUD that require the incentive height up to 45’. Specifically, qualifying structures, including structures proposing additions to existing structures that would result in the use of the height incentive, shall be subject to the following requirements:

8.1 Building permit plans shall contain reference to the current version of DGC in place at the time of submittal.

8.2 Each SOP must include a note regarding intent to apply for incentive height and requirements for such incentive.

8.3 Each SDP shall show a cumulative total of structures submitted as DGC-conforming buildings.

9. **Vesting of Property Rights.** In recognition of the size and nature of the development contemplated under this Development Agreement, the substantial investment and time required to complete the development of the Project, the phased development of the Project, and the possible impact of economic cycles and varying market conditions during the course of development, Developer and the City agree that the initial vested property rights established under this Development Agreement shall commence on the Effective Date and shall continue for a term of fifteen (15) years from the Effective Date (the "**Term**"). For purposes of this Development Agreement, the period of time commencing on the Effective Date until the expiration of the Term shall be considered the "**Vesting Period**". After the expiration of the Vesting Period, the provisions of this **Section 9** and **Exhibit E** attached hereto shall be deemed terminated and of no further force or effect; provided, however, that such termination shall not affect (a) any common-law vested rights obtained prior to such termination, or (b) any right arising from City permits, approvals or other entitlements for the Property or the Project which were granted or approved prior to, concurrent with, or subsequent to the approval of this Development Agreement. Developer and the City agree that this **Section 9** and the matters described on **Exhibit E** constitute an approved "Site-specific development plan" as defined in the Vesting Statute and shall constitute a vested property right pursuant to the Vesting Statute.

9.1 Vested Rights. The entitlements for the Property described below (the "**Vested Rights**") shall be vested for the Vesting Period:

9.1.1. The height allowance of the U-MX-3 with waiver for five stories zone district, as set forth on **Exhibit E**.

9.1.2. The right to develop under PUD-G 24, as enacted in Council Bill 21-0333.

9.1.3. The right to develop under PUD-G 25, as enacted in Council Bill 21-0333.

9.1.4. Open Space Requirements set forth in **Section 3**.

9.1.5. The following items within the fMP:

(a) the location and general specifications for a network of internal pedestrian walkways and connections to primary uses within the IMP area and to adjacent development or public amenities/facilities such as schools, parks, and open space

(b) the location and functional classification of the future street network within the IMP area, as applicable;

- (c) the designation of Primary Streets to guide future development in compliance with the Denver Zoning Code;
- (d) the location of future publicly accessible open space and parks; and
- (e) the location of future public facilities, as applicable.

9.2 Provisions Related to Vested Rights.

9.2.1. The establishment of Vested Rights herein shall not preclude the application of any other City ordinances or regulations.

9.2.2. This Development Agreement shall constitute a "development agreement" between the City and Developer for purposes of the Vesting Statute.

9.2.3. "Vested," as used in this **Section 9** and in **Exhibit E** means the right to develop, plan and engage in land uses within the Property in the manner and to the extent set forth in, and in accordance with the parameters set forth in this **Section 9** and **Exhibit E**.

9.2.4. The City agrees that any conditions, standards, requirements and dedications imposed on the Property shall not have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise materially and adversely affecting any of the Vested Rights.

9.2.5. Except as set forth below, the City shall not initiate any zoning, land use or other legal or administrative action that would have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise materially and adversely affecting any of the Vested Rights.

9.2.6. The establishment of Vested Rights under this Development Agreement shall not exempt the Project from subsequent reviews and approvals by the City to ensure compliance with the terms and conditions of City ordinances, standards and regulations, including, without limitation, all infrastructure requirements and standards for the Project, provided that such subsequent reviews and approvals shall not, in their application to the Project or the Property, have the effect of altering, impairing, preventing, diminishing, imposing a moratorium on development, or delaying or otherwise materially adversely affecting any of the Vested Rights set forth in **Exhibit E** or the agreements of the City set forth in **Section 9** of this Development Agreement.

9.2.7. Subject to the terms, conditions and limitations of the Vesting Statute and except as otherwise provided in this Development Agreement, the establishment of vested property rights pursuant to this Agreement shall not preclude the City's non-discriminatory application of its health and safety

regulations, its regulations of general applicability (including, but not limited to, street and streetscape regulations, building, fire, plumbing, electrical and mechanical codes, the Denver Revised Municipal Code, and other City rules and regulations) or the application of state or federal regulations, as all of such regulations exist on the date of this Development Agreement or may be enacted or amended after the date of this Development Agreement. Developer does not waive its right to oppose the enactment or amendment of any such regulations or to challenge the validity of such regulations through proper means.

9.3 Elimination of Zone District Category; Changes in Zoning. In the event that the City eliminates altogether the U-MX-3 zone district category or any of such categories or the City initiates a change of the zoning of any of the Property to a different zone district, Developer shall, during the Vesting Period, be entitled to develop any such affected parcel in accordance with the Vested Rights in **Exhibit E** that are related to the zoning of such parcel as of the Effective Date.

10. **Accommodation of Property Development.** The Parties acknowledge that development of the Project may require certain right-of-way vacations, easement relinquishments or right-of-way acquisitions by Developer and/or a District, as identified in the IMP. In such an instance, the City will process in normal course any request by Developer and/or a District regarding the same. Nothing in this Section 10 binds the City's City Council to any specific decision regarding any requests, including right-of-way vacations, easement relinquishments or right-of-way acquisitions.

11. **No Obligation to Develop.** Developer shall have the right to develop the Property in the order, at the rate and at the time as market conditions dictate, subject to the terms and conditions of this Development Agreement and the IMP. Developer shall have no obligation to the City to commence construction of any phase; provided, however, it is expressly understood that Developer may not receive a certificate of occupancy for any phase unless Developer has constructed all necessary public and private improvements within, or to support, such a phase. Developer shall have no obligation to develop all or any portion of the Property, notwithstanding the development or nondevelopment of any phase.

12. **General Provisions**

12.1 Time is of the Essence. 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.

12.2 Default by City. A "breach" or "default" by the City under this Development Agreement shall be defined as the City's failure to fulfill or perform any material obligation of the City contained in this Development Agreement.

12.3 Default by Developer. A "breach" or "default" by Developer shall be defined as Developer's failure to fulfill or perform any material obligation of Developer contained in this Development Agreement.

12.4 Default by District. A "breach" or "default" by District shall be defined as District's failure to fulfill or perform any material obligation of District contained in this Development Agreement.

12.5 Default by Pancratia Partners. A "breach" or "default" by Pancratia Partners shall be defined as Pancratia Partners' failure to fulfill or perform any material obligation of Pancratia Partners contained in this Development Agreement.

12.6 Notices of Default; Cure Period. In the event of a default by either Party under this Development Agreement, the non-defaulting Party shall deliver written notice to the defaulting Party of such default, at the address specified in **Section 16** below, and the defaulting Party shall have 30 days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 30-day period and the defaulting Party gives written notice to the non-defaulting Party within such 30-day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure.

12.7 Remedies. If any default under this Development Agreement is not cured as described above, the non-defaulting Party shall have all remedies available at law or in equity, including an action for injunction and/or specific performance, but each Party hereby waives the right to recover, to seek and to make any claim for damages for default under this Development Agreement, or for attorneys' fees or costs.

12.8 Authority to Execute. The Parties each represent that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind each Party. Developer and Pancratia Partners represent and warrant that each of them lawfully seized and possessed of the Property; has good and lawful right, power and authority to bind and encumber the Property.

12.9 Cooperation of the Parties. If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of any provision of this Development Agreement, the City and Developer shall reasonably cooperate in defending such action or proceeding, each to bear its own expenses in connection therewith. Unless the City and Developer otherwise agree, each Party shall select and pay its own legal counsel to represent it in connection with such action or proceeding.

12.10 Assignment. Except as set forth in this **Section 12.10** the rights and obligations under this Development Agreement may not be assigned to any entity without the prior written consent of the other Party, except that any responsibility for the financing, acquisition, planning, design, engineering, permitting, remediation or engineering controls, construction, completion, operation, maintenance, repair or replacement of any park, recreation or storm drainage facility or any other public infrastructure specified in this Development Agreement may be assigned to and performed by any of the Districts in accordance with such District's service plan. Any assignment must ensure close cooperation and coordination with the City in the development of public

spaces/infrastructure. Written notice of any such assignment shall be given to the City. If this Development Agreement is assigned, all the covenants and agreements herein contained shall be binding upon and inure to the benefit of the successors, assigns, heirs and personal representatives of the respective parties. Notwithstanding the foregoing or anything to the contrary set forth in this Development Agreement, Developer shall have the right, without the consent of the City, to assign or transfer all or any portion of its interests, rights and obligations under this Development Agreement to third parties acquiring an interest or estate in the Property, including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property, provided that to the extent Developer assigns any of its obligations under this Development Agreement, the assignee of such obligations shall expressly assume such obligations. The express assumption of any of Developer's obligations under this Development Agreement by its assignee (including, without limitation, any District) shall thereby relieve Developer of any further obligations under this Development Agreement with respect to the matter so assumed.

12.11 Severability. The promises and covenants contained herein are several in nature. Should any one or more of the provisions of this Development Agreement be judicially adjudged invalid, void or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Development Agreement, so long as each Party receives substantially all the benefits contemplated in this Development Agreement and so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining.

12.12 No Discrimination in Employment. In connection with the performance of work under this Development Agreement, the Parties agree 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 agree to insert the foregoing provision in all subcontracts hereunder.

12.13 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 or default exists shall in no way impair or prejudice any right of 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 this Development Agreement shall be deemed or taken to be a waiver of any other default or breach.

12.14 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 City Charter, and the ordinances, executive orders, rules, and regulations of the City and County of Denver. Venue for any legal action relating to this Development

Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

12.15 Extensions: Amendments. Except as otherwise provided for herein, no prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. Except as otherwise provided for herein, no subsequent notation, renewal, addition, deletion, or other amendment to or termination of this Development Agreement shall have any force or effect unless embodied in a written amendatory or other agreement executed by the Parties, with the same formality as this Development Agreement. City Council approval shall be required for amendments only if and to the extent required by the Charter. The Parties agree that any time for performance of any term or satisfaction of any condition hereunder may be extended for up to two (2) years by a letter signed by the City's Director of Public Works and the City's Director of CPD and an authorized representative of Developer. It is expressly understood that Pancratia Partners will only be required to execute an amendment to this Development Agreement if an amendment impacts Pancratia Hall in such a manner that approval of the amendment by Pancratia Partners would be warranted. For the purposes of any amendment to or termination of this Development Agreement, "Developer" shall mean only ACM Loretto VI LLC and those parties, if any, to whom ACM Loretto VI LLC may specifically grant, in writing, the power to enter into such amendment or termination.

12.16 Section Headings. The section 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 Development Agreement or to define, limit or describe the scope or intent of this Development Agreement or the particular sections hereof to which they refer.

12.17 No Third-Party Beneficiary. It is the intent of the Parties that no third-party beneficiary interest is created in this Development Agreement except for an assignment pursuant to this Development 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 Development Agreement.

12.18 Counterparts, Electronic Signatures and Electronic Records. This Development Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one of the same document. Facsimile signatures shall be accepted as originals. The Parties consent to the use of electronic signatures by any Party hereto. This Development Agreement and any other documents requiring a signature may be signed electronically by each Party in the manner specified by that Party. The Parties agree not to deny the legal effect or enforceability of this Development 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 this Development Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

12.19 Appropriation. All monetary obligations of the City under and pursuant to this Development Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Development Agreement and paid into the treasury of the City.

12.20 Reasonableness of Consent or Approval. Whenever under this Development 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.

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

12.22 Conflict of Interest by City Officers. Developer 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 Development Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

12.23 No Merger. The Parties intend that the terms and conditions of this Development Agreement shall survive any conveyance of real property and shall not be merged into any deed conveying real property.

12.24 Effective Date. The Effective Date of this Development Agreement shall be the date that this Development Agreement has been fully signed by the Mayor of the City, and if required by Charter, approved by the City Council.

12.25 Recording. This Development Agreement shall be recorded in the real property records of the City and County of Denver after executed by Developer, Pancratia Partners, City and the City Auditor. Upon such recording, this Development Agreement shall run with the Property and any other portion of the Property subsequently acquired by Developer and/or Pancratia Partners.

12.26 Examination of Records. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Developer's performance pursuant to this Development Agreement, provision of any goods or services to the City, and any other transactions related to Developer's obligations under this Development Agreement. Developer shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Development Agreement or expiration of the applicable statute of limitations. When conducting an audit

of this Development Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Developer to make disclosures in violation of state or federal privacy laws. Developer shall at all times comply with DRMC Section 20-276.

13. **Findings.** The City hereby finds and determines that execution of this Development Agreement is in the best interests of the public health, safety, and general welfare and the provisions of this Development Agreement are consistent with the Comprehensive Plan and development laws, regulations and policies of the City.

14. **Further Assurances.** Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Development Agreement in order to provide and secure to the other Party the full and complete enjoyment of its rights and privileges under this Development Agreement.

15. **Police Powers.** Nothing in this Development Agreement shall impair or limit the City's exercise of its police powers.

16. **Notices.** Any notices, demands or other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally, delivered by overnight courier service, or sent by certified mail, postage prepaid, return receipt requested, addressed to the Parties at the addresses set forth below, or at such other address as either Party may hereafter or from time to time designate by written notice to the other Party given in accordance herewith. Notice shall be considered given at the time it is personally delivered, the next business day following being placed with any reputable overnight courier service for next business day delivery, or, if mailed, on the third business day after such mailing.

If to the City:

Mayor
1437 Bannock Street, Room 350
Denver, Colorado 80202

With copies to:
Denver City Attorney
1437 Bannock Street, Room 353
Denver, Colorado 80202

Executive Director of DOTI
201 W. Colfax, Dept. 608
Denver, CO 80202

Chief Financial Officer
201 W. Colfax, Dept. 1010
Denver, CO 80202

Executive Director of Economic Development
201 W. Colfax, Dept. 1005
Denver, CO 80202

Executive Director Department of Housing
Stability
201 W. Colfax Ave., 6th Floor
Denver, CO 80202

Executive Director of Parks and Recreation
201 W. Colfax, Dept. 601
Denver, CO 80202

Executive Director of Community and Planning
Department
201 W. Colfax, Dept. 205
Denver, CO 80202

Executive Director of Environmental Health
200 W. 14th Ave
Denver, CO 80204

Maureen McGuire
City Attorney's Office
201 W. Colfax Avenue, Department 1207
Denver, Colorado 80202

Nate Lucero
City Attorney's Office
201 W. Colfax Avenue, Department 1207
Denver, Colorado 80202

If to Pancratia Partners

Pancratia Hall Partners, LLC
Jim Hartman
2120 Bluebell Avenue
Boulder, Colorado 80302
jim@hartmanelyinvestments.com
grant@proximitygreen.com

If to Developer:

ACM Loretto VI LLC
C/o Westside Development Partners
Mark Witkiewicz
4100 E. Mississippi Ave Suite 500
Glendale, Colorado 80246

With a copy to:

Foster Graham Milstein and Calisher, LLP
Keirstin Beck
360 S. Garfield, Suite 600
Denver, CO 80209

17. Additional City Required Provisions.

17.1 Colorado Governmental Immunity Act. The Parties understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, et seq.

17.2 No Authority To Bind City To Contracts. Developer lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the DMRC.

17.3 Permits, Licenses, Taxes, Charges, And Penalties. Developer agrees to pay promptly all taxes, excises, license fees, and permit fees of whatever nature applicable to its operations or activities under this Development Agreement, and to take out and keep current all required licenses or permits (federal, state, or local) required for the conduct of its business hereunder, and further agrees not to permit any taxes, excises, license or permit fees to become delinquent. Developer further agrees to pay promptly when due all properly payable bills, debts and obligations incurred by it in connection with its operations and the performance of this Development Agreement in accordance with Developer's ordinary business practices and not to permit the same to become delinquent except to the extent Developer in good faith disputes any such bills, debts and/or obligations. The City is not liable for the payment of taxes, late charges or penalties of any nature. Developer shall not allow any lien, mortgage, judgment or execution to be filed against City property.

[SIGNATURE PAGES FOLLOW]

DEVELOPER:

ACM LORETTO VI LLC, a Delaware limited liability company

By: [Signature]
Name: ANDREW KLEIN
Title: AUTH SIGNATORY

STATE OF CO)
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me on the 20 day of April, 2021, by Andrew R. Klein, as Authorized Signatory of ACM Loretto VI LLC, a Delaware limited liability company.

WITNESS my hand and official seal.

PATRICK JOHN SCHMITZ
NOTARY PUBLIC
STATE OF COLORADO
Notary ID 20154049532
My Commission Expires December 31, 2023

[Signature]
Notary Public
My commission expires: 12/31/23

CITY:

CITY AND COUNTY OF DENVER, a
Colorado municipal corporation and home
rule city

By: _____

Name: _____

Title: _____

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me on the _____ day of
_____, 20____, by _____, as _____ of the City and
County of Denver, a Colorado municipal corporation and home rule city.

WITNESS my hand and official seal.

Notary Public

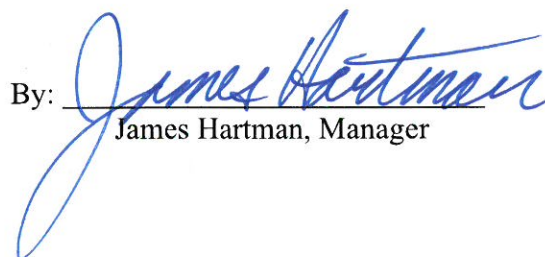
My commission expires: _____

with respect to Sections 6, 9 and 12 only:

PANCRATIA PARTNERS:

PANCRATIA HALL PARTNERS, LLC, a Colorado limited liability company

By: PANCRATIA MM, LLC, a Colorado limited liability company, its Managing Member


By: 
James Hartman, Manager

STATE OF Colorado)
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me on the 21 day of April, 2021, by James Hartman, as Manager of Pancratia MM, LLC, a Colorado limited liability company, as Managing Member of Pancratia Hall Partners, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

BLAKE AMEN
Notary Public
State of Colorado
Notary ID # 20204027915
My Commission Expires 08-12-2024


Notary Public
My commission expires: 8/12/24

with respect to Sections 4, 10 and 12.8 only:

DISTRICTS:

LORETTO HEIGHTS METROPOLITAN
DISTRICT NO. 1, a Colorado political subdivision

By: [Signature]
Name: Kevin Smith
Title: Treasurer

STATE OF COLORADO)
)
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me on the 23 day of April, 2021, by Kevin Smith, as Treasurer of Loretto Heights Metropolitan District No. 1, a Colorado political subdivision.

WITNESS my hand and official seal.

[Signature]
Notary Public
My commission expires: 12/31/23

PATRICK JOHN SCHMITZ
NOTARY PUBLIC
STATE OF COLORADO
Notary ID 20154049532
My Commission Expires December 31, 2023

LORETTO HEIGHTS METROPOLITAN
DISTRICT NO. 2, a Colorado political subdivision

By: [Signature]
Name: Kevin Smith
Title: Treasurer

STATE OF COLORADO)
)
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me on the 23 day of April, 2021, by Kevin Smith, as Treasurer of Loretto Heights Metropolitan District No. 2, a Colorado political subdivision.

WITNESS my hand and official seal.

PATRICK JOHN SCHMITZ
NOTARY PUBLIC
STATE OF COLORADO
Notary ID 20154049532
My Commission Expires December 31, 2023

[Signature]
Notary Public
My commission expires: 12/31/23

LORETTO HEIGHTS METROPOLITAN
DISTRICT NO. 3, a Colorado political subdivision

By: [Signature]
Name: Kevin Smith
Title: Treasurer

STATE OF COLORADO)
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me on the 23 day of April, 2021, by Kevin Smith, as Treasurer of Loretto Heights Metropolitan District No. 3, a Colorado political subdivision.

WITNESS my hand and official seal.

PATRICK JOHN SCHMITZ
NOTARY PUBLIC
STATE OF COLORADO
Notary ID 20154049532
My Commission Expires December 31, 2023

[Signature]
Notary Public
My commission expires: 12/31/23

LORETTO HEIGHTS METROPOLITAN
DISTRICT NO. 4, a Colorado political subdivision

By: [Signature]
Name: Kevin Smith
Title: Treasurer

STATE OF COLORADO)
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me on the 23 day of April, 2021, by Kevin Smith, as Treasurer of Loretto Heights Metropolitan District No. 4, a Colorado political subdivision.

WITNESS my hand and official seal.

PATRICK JOHN SCHMITZ
NOTARY PUBLIC
STATE OF COLORADO
Notary ID 20154049532
My Commission Expires December 31, 2023

[Signature]
Notary Public
My commission expires: 12/31/23

LORETTO HEIGHTS METROPOLITAN
DISTRICT NO. 5, a Colorado political subdivision

By: [Signature]
Name: Kevin Smith
Title: Treasurer

STATE OF COLORADO)
)
COUNTY OF Arapahoe)


The foregoing instrument was acknowledged before me on the 23 day of April, 2021, by Kevin Smith, as Treasurer of Loretto Heights Metropolitan District No. 5, a Colorado political subdivision.

WITNESS my hand and official seal.

[Signature]
Notary Public
My commission expires: 12/31/23

PATRICK JOHN SCHMITZ
NOTARY PUBLIC
STATE OF COLORADO
Notary ID 20154049532
My Commission Expires December 31, 2023

LORETTO HEIGHTS PROGRAMMING
METROPOLITAN DISTRICT, a Colorado
political subdivision


By: 
Name: Kevin Smith
Title: Treasurer

STATE OF COLORADO)
)
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me on the 23 day of April, 2021, by Kevin Smith, as Treasurer of Loretto Heights Programming Metropolitan District, a Colorado political subdivision.

WITNESS my hand and official seal.

PATRICK JOHN SCHMITZ
NOTARY PUBLIC
STATE OF COLORADO
Notary ID 20154049532
My Commission Expires December 31, 2023


Notary Public
My commission expires: 12/31/23

Contract Control Number:
Contractor Name:

CPLAN-202158616-00
ACM LORETTO VI LLC

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:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

CPLAN-202158616-00
ACM LORETTO VI LLC

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

LEGAL DESCRIPTION

KNOW ALL MEN BY THESE PRESENTS THAT ACM LORETTO VI, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS OWNER, HAS LAID OUT, PLATTED, AND SUBDIVIDED INTO BLOCKS, LOTS, AND TRACTS, AS SHOWN ON THIS PLAT, THE LAND DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LOCATED IN THE WEST HALF OF SECTION 32, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 32; THENCE ALONG THE SOUTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 32, S89°33'49"W A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID SOUTHERLY LINE, S89°33'49"W A DISTANCE OF 5.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF SOUTH FEDERAL BOULEVARD;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE, S00°05'27"W A DISTANCE OF 12.08 FEET TO A POINT ON THE SOUTHERLY LINE OF THE ACCESS EASEMENT RECORDED AT RECEPTION NUMBER 1987119025;

THENCE ALONG SAID SOUTHERLY LINE OF THE ACCESS EASEMENT RECORDED AT RECEPTION NUMBER 1987119025 THE FOLLOWING NINE (9) COURSES:

- 1) S87°59'04"W A DISTANCE OF 134.14 FEET TO A POINT OF CURVATURE;
- 2) THENCE 143.91 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 136.75 FEET, A CENTRAL ANGLE OF 60°17'44" AND A CHORD WHICH BEARS S57°50'12"W A DISTANCE OF 137.36 FEET;
- 3) THENCE S27°41'20"W A DISTANCE OF 253.09 FEET TO A POINT OF CURVATURE;
- 4) THENCE 350.73 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 323.00 FEET, A CENTRAL ANGLE OF 62°12'53" AND A CHORD WHICH BEARS S58°47'47"W A DISTANCE OF 333.75 FEET;
- 5) THENCE S89°54'13"W A DISTANCE OF 525.55 FEET;
- 6) THENCE 11.55 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 44°07'32" AND A CHORD WHICH BEARS N68°51'04"E A DISTANCE OF 11.27 FEET TO A POINT OF CUSP;
- 7) THENCE 180.40 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 325.00 FEET, A CENTRAL ANGLE OF 31°48'10" AND A CHORD WHICH BEARS N73°12'20"W A DISTANCE OF 178.09 FEET;
- 8) THENCE N57°18'15"W A DISTANCE OF 171.21 FEET;

9) THENCE N32°41'45"E A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTHERLY LINE OF THE VILLAGE AT LORETTO HEIGHTS AT RECORDED AT RECEPTION NUMBER 1987146151;

THENCE ALONG SAID NORTHERLY AND WESTERLY LINE OF THE VILLAGE AT LORETTO HEIGHTS THE FOLLOWING EIGHT (8) COURSES:

- 1) N57°18'15"W A DISTANCE OF 123.00 FEET;
- 2) THENCE S32°41'45"W A DISTANCE OF 416.23 FEET;
- 3) THENCE S58°04'44"W A DISTANCE OF 150.00 FEET;
- 4) THENCE N00°06'48"E A DISTANCE OF 150.00 FEET;
- 5) THENCE N89°53'12"W A DISTANCE OF 50.00 FEET;
- 6) THENCE S00°06'48"W A DISTANCE OF 275.00 FEET;
- 7) THENCE S58°04'44"W A DISTANCE OF 250.00 FEET;
- 8) THENCE N67°42'28"W A DISTANCE OF 0.96 FEET TO A POINT ON THE EASTERLY BOUNDARY OF DARTMOUTH HEIGHTS SUBDIVISION AS RECORDED AT RECEPTION NUMBER 018241;

THENCE ALONG SAID EASTERLY LINE OF DARTMOUTH HEIGHTS THE FOLLOWING TEN (10) COURSES:

- 1) 154.60 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 400.00 FEET, A CENTRAL ANGLE OF 22°08'40"AND A CHORD WHICH BEARS N11°11'13"E A DISTANCE OF 153.64 FEET;
- 2) THENCE N00°06'52"E A DISTANCE OF 395.59 FEET TO A POINT OF CURVATURE;
- 3) THENCE 441.51 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 370.00 FEET, A CENTRAL ANGLE OF 68°22'12"AND A CHORD WHICH BEARS N34°17'58"E A DISTANCE OF 415.78 FEET;
- 4) THENCE N68°29'04"E A DISTANCE OF 173.81 FEET;
- 5) THENCE 242.79 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 300.00 FEET, A CENTRAL ANGLE OF 46°22'09"AND A CHORD WHICH BEARS N04°04'12"W A DISTANCE OF 236.22 FEET;
- 6) THENCE N19°06'52"E A DISTANCE OF 50.00 FEET TO A POINT OF CURVATURE;
- 7) THENCE 116.06 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 350.00 FEET, A CENTRAL ANGLE OF 19°00'00"AND A CHORD WHICH BEARS N09°36'52"E A DISTANCE OF 115.53 FEET;
- 8) THENCE N00°06'52"E A DISTANCE OF 379.80 FEET TO A POINT OF CURVATURE;
- 9) THENCE 70.76 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 315.00 FEET, A CENTRAL ANGLE OF 12°52'16"AND A CHORD WHICH BEARS N06°33'01"E A DISTANCE OF 70.61 FEET;

10) THENCE N12°59'09"E A DISTANCE OF 17.02 FEET TO A POINT ON THE EASTERLY LINE OF SOUTH IRVING STREET AS RECORDED IN ORDINANCE 626 SERIES 1986;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY THE FOLLOWING FOUR (4) COURSES

1) N12°58'52"E A DISTANCE OF 26.19 FEET;

2) THENCE 222.97 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 365.00 FEET, A CENTRAL ANGLE OF 35°00'00" AND A CHORD WHICH BEARS N30°28'00"E A DISTANCE OF 219.52 FEET;

3) THENCE N47°58'00"E A DISTANCE OF 330.00 FEET TO A POINT OF CURVATURE;

4) THENCE 192.61 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 335.00 FEET, A CENTRAL ANGLE OF 32°56'34" AND A CHORD WHICH BEARS N31°29'43"E A DISTANCE OF 189.97 FEET TO A POINT ON THE SOUTHERLY LINE OF SHARON PARK SUBDIVISION RECORDED AT RECEPTION NUMBER 52537;

THENCE ALONG SAID SOUTHERLY LINE OF SHARON PARK, N89°16'41"E A DISTANCE OF 1271.76 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF SOUTH FEDERAL BOULEVARD;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, S00°01'10"W A DISTANCE OF 1496.06 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PART CONVEYED TO SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER, BY SPECIAL WARRANTY DEED RECORDED MAY 2, 2017 UNDER RECEPTION NO. 2017058236 AS AMENDED BY AFFIDAVIT REGARDING SCRIVENER'S ERROR RECORDED AUGUST 31, 2017 UNDER RECEPTION NO. 2017114942.

SAID PARCEL CONTAINS 3,359,251 SQUARE FEET OR 70.83 ACRES, MORE OR LESS.

UNDER THE NAME AND STYLE OF LORETTO HEIGHTS FILING NO. 1, AND BY THESE PRESENTS DOES HEREBY DEDICATE TO THE CITY AND COUNTY OF DENVER THE STREETS, AVENUES, EASEMENTS, AND OTHER PUBLIC PLACES SHOWN HEREON AND NOT ALREADY OTHERWISE DEDICATED FOR PUBLIC USE.

EXHIBIT B

AFFORDABLE HOUSING PLAN

AFFORDABLE HOUSING PLAN FOR LORETTO HEIGHTS

THIS AFFORDABLE HOUSING PLAN FOR LORETTO HEIGHTS (this “Affordable Housing Plan”) serves as **Exhibit B** to that certain Loretto Heights Rezoning and IMP Development Agreement (the “Development Agreement”) between **ACM LORETTO VI LLC**, a Delaware limited liability company (“Owner”), **PANCRATIA PARTNERS, LLC**, a Colorado limited liability company (“**Pancratia Partners**”) 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, Owner and Pancratia Partners are sometimes referred to together as the “Parties” or singularly, as a “Party.”

RECITALS:

A. Pancratia Partners and Owner are the owners 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”). Pancratia Partners and Owner intend 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”), Pancratia Partners and Owner have 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. Except as described below in Section 1.1, 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. As a condition of receiving funds through a loan agreement from the City, Pancratia Partners executed a rental and occupancy covenant on October 1, 2020, and recorded on October 2, 2020 at Reception No. 2020162118 in the real property records of the City and County of Denver, to ensure that rental and occupancy limitations would apply to a certain number of units at Pancratia Hall (the “Pancratia Hall Covenant”). It is expressly understood that the units

encumbered by the Pancratia Hall Covenant (or any number of units encumbered through an amendment to the Pancratia Hall Covenant) and developed at Pancratia Hall will be counted towards the 12% IRUs requirement set forth herein; however, no other requirements of this Affordable Housing Plan will apply to development of residential units within the real property legal described in the Pancratia Hall Covenant.

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. Pancratia Partners and 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 Owner. 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.

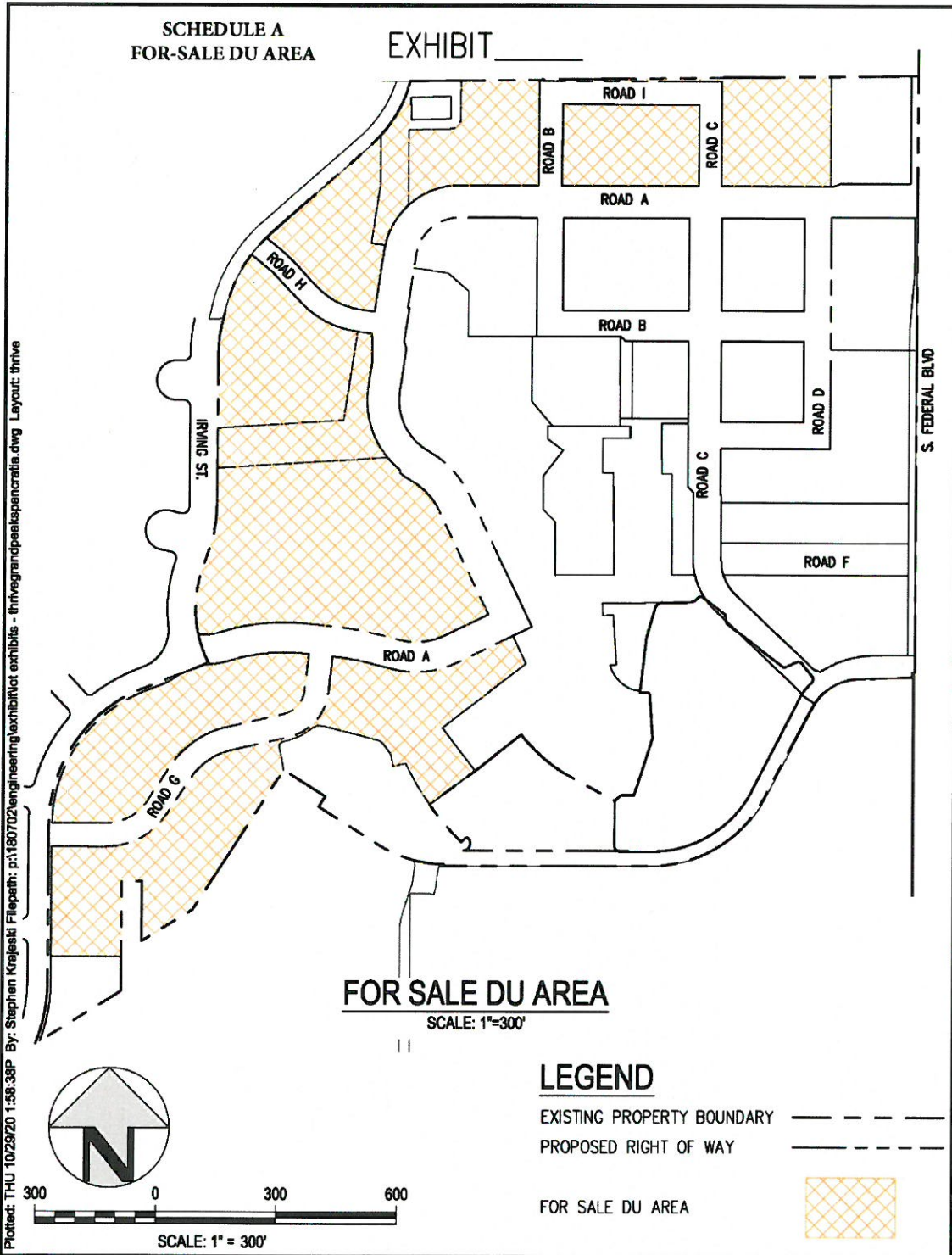
14. SEVERABILITY. If any terms, covenants or provisions of this Affordable Housing Plan will be illegal or unenforceable for any reason, the same will not invalidate any other term, covenants or provisions, and all of the remaining terms, covenants and provisions will remain in full force and effect.

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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SCHEDULE A
FOR-SALE DU AREA




EXHIBIT _____



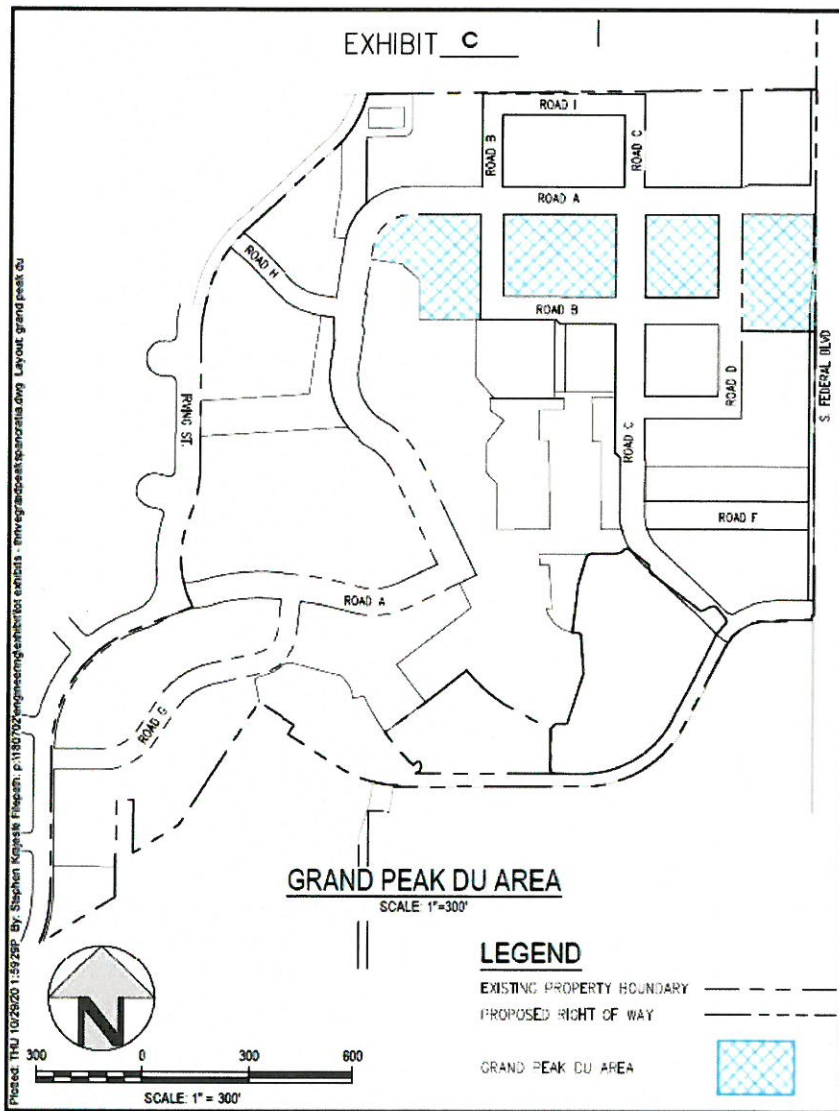
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FOR SALE DU AREA
SCALE: 1"=300'

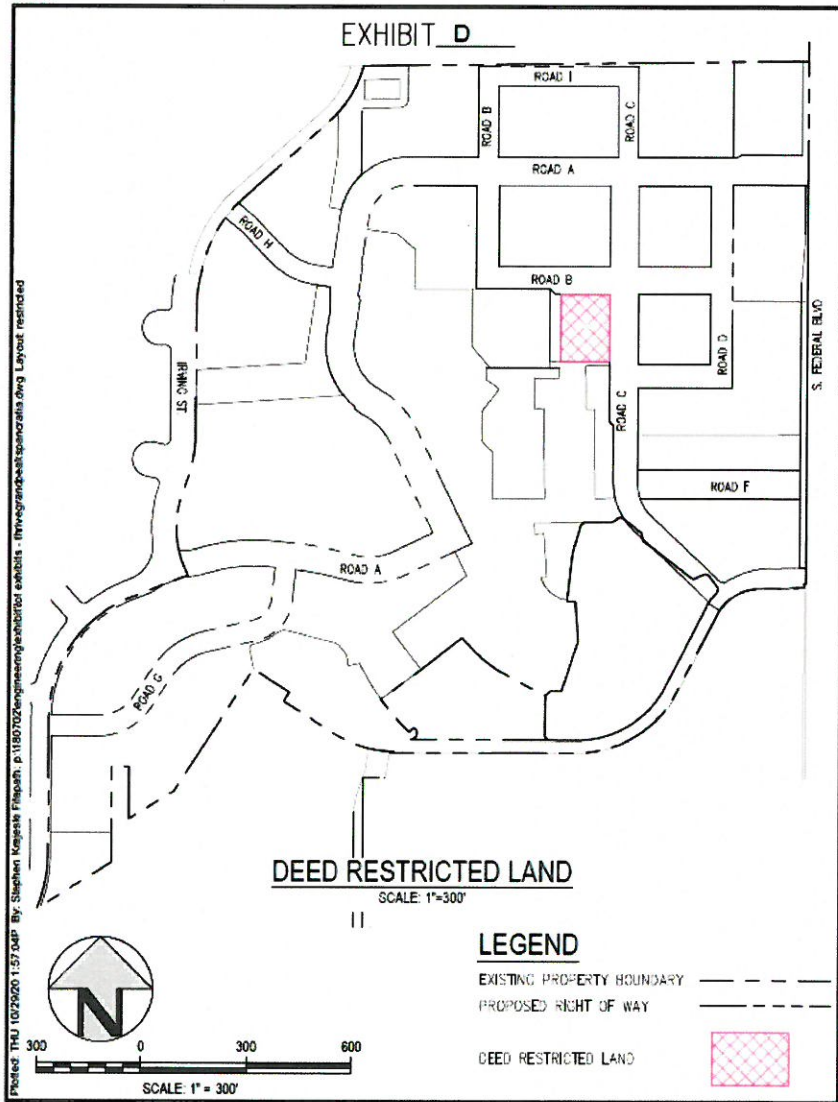
LEGEND

- EXISTING PROPERTY BOUNDARY 
- PROPOSED RIGHT OF WAY 
- FOR SALE DU AREA 

**SCHEDULE B
GRAND PEAK DU AREA**



**SCHEDULE C
DEED RESTRICTED LAND**



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

WHEN RECORDED MAIL TO:

Department of Housing Stability
Attention: _____
201 W. Colfax Ave., Dept. 615
Denver, CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

RENTAL AND OCCUPANCY COVENANT

THIS RENTAL AND OCCUPANCY COVENANT is made this ____ day of _____, 20 ____, by _____, a _____ (“Owner”), and enforceable by the City and County of Denver, Colorado (“City”).

RECITALS:

WHEREAS, Owner is the owner of the following described real property in the City and County of Denver, State of Colorado (the “Subject Property”):

[fill in]

WHEREAS, pursuant to the provisions of the Affordable Housing Dedicated Fund Ordinance as set forth in Article V of Chapter 27 of the Denver Revised Municipal Code (the “AHDF Ordinance”) and the Affordable Housing Permanent Funds Ordinance Administrative Rules and Regulations (“AHDF Rules”), and as an alternative to payment of the Linkage Fee (as defined in the AHDF Ordinance), Owner has agreed that certain units within the Subject Property will be built as Income Restricted Units as defined in the [AGREEMENT] (as defined below), and this Covenant);

WHEREAS, in order to document its plan for construction of the Income Restricted Units, the Owner entered into that certain [AGREEMENT] (“Agreement”) with the City and County of Denver, Colorado (the “City”) dated _____ and recorded under Reception No. _____ in the real estate records of the City and County of Denver; and

WHEREAS, Owner has now agreed to record a covenant to run with title to the Subject Property to ensure that certain rental and occupancy limitations, and administrative requirements for the Income Restricted Units are met and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, the following are established as covenants running with the Subject Property:

1. **Definitions.**

- i. "Adjusted Median Income" (AMI) means the area median income, adjusted for household size, for the Denver metropolitan area as determined by the U.S. Department of Housing and Urban Development.
- ii. Income Restricted Units ("IRUs") means those _____ rental housing units located within the Subject Property as are designated from time to time by Owner. Income Restricted Units must be restricted as to the rent charged and tenants allowed pursuant to the Covenant.
- iii. "Compliance Report" means the report, the form of which is attached to this Covenant as Exhibit A, that Owner shall prepare and provide to the City pursuant to and at the times specified in Section 5.
- iv. "Eligible Household" means a natural person who, at the time of entering into the lease for a IRU or a renewal of such lease, verifies to Owner on the Income Verification that the total gross income earned by such person is _____ percent (___%) or less of the of AMI for the tenant's household size.
- v. "Income Verification" means the form attached to this Covenant as Exhibit B.
- vi. "Initial Leasing Period" means the period commencing on the first date a certificate of occupancy is issued for any building within the Subject Property that contains IRUs and ending on the date when all IRUs have been fully leased.

2. **Amount of Income Restricted Units.** Owner shall provide no less than () IRUs on the Subject Property.

3. **Rent Limitations.** IRUs shall have the same rent limitations as Build Alternative Units as defined in the AHDF Ordinance and AHDF Rules. The City and County of Denver's Department of Housing Stability ("HOST"), or any successor agency which is assigned responsibility for the City's AHDF Ordinance, will post a table showing maximum allowable rents for Build Alternative Units each year on its website, based upon an Eligible Household applying no more than thirty percent (30%) of its monthly gross income from all sources to a rental payment. Any tenant association fees shall be included in the rent calculation. The

maximum rent shall deduct utility allowance costs which are published periodically by HUD or CHFA.

4. **Occupancy/Income Limitations.** The IRUs shall be occupied by Eligible Households. Owner shall have responsibility to assure that a household or individual is an Eligible Household under the requirements of the AHDF Ordinance, AHDF Rules, and the Covenant before executing a lease contract, and shall complete an Income Verification for each Eligible Household. Owner shall also offer the IRUs to Eligible Households through a fair and equitable system and use good-faith efforts to enter into leases with and marketing to Eligible Households.

5. **Compliance and Reporting.**

- i. During the Initial Leasing Period, Owner shall submit a Compliance Report by the tenth (10th) day of each calendar quarter indicating how many IRUs were made available and leased during the preceding calendar quarter, and a copy of an Income Verification completed by each Eligible Household that entered into a lease during the Initial Leasing Period.
- ii. All IRUs shall be made available to Eligible Households no later than the end of the calendar month in which the certificate of occupancy is issued for the building on the Subject Property containing IRUs.
- iii. Owner shall demonstrate continued compliance with this Covenant after the Initial Leasing Period by submitting to the City a Compliance Report on a semi-annual basis during the Term. Each such Compliance Report shall be accompanied by copies of Income Verifications for any Eligible Household that entered into a new lease or lease renewal during that half year.
- iv. The Income Verifications for each Eligible Household shall be maintained by Owner at the management office at the Subject Property or such other place where Owner's books and records are kept in the Denver metropolitan area for so long as the Eligible Household occupies an IRU.
- v. Upon reasonable notice and during the normal business hours maintained by Owner at the management office at the Subject Property or such other place where the requested books and records are kept in the Denver metropolitan area, Owner shall permit any duly authorized representative of the City to inspect any

books or records of Owner pertaining to the project at the Subject Property containing IRUs which reasonably relate to Owner's compliance with the terms and conditions of this Covenant.

- vi. Owner acknowledges that the City may, at its election, hire a compliance agent, to monitor Owner's compliance with this Covenant. In such an event, Owner shall be authorized to rely upon any written representation made by the compliance agent on behalf of the City.

6. **Termination of Lease.** The form of lease to be used by Owner in renting any IRUs to Eligible Households shall also provide for termination of the lease and consent by such tenant to immediate eviction if such tenant subleases the IRU, attempts to sublease the IRU, or provide the IRU as a short term rental as defined by Article III, Chapter 33 of the Denver Revised Municipal Code.

7. **Term.** This Covenant shall encumber the Subject Property for a period of _____ (____) years from the date of recording hereof and shall not be amended or modified without the express written consent of the City and County of Denver.

8. **Run with the Land.** The Covenant shall run with the Subject Property and shall be binding on all persons having or acquiring an interest in title to the Subject Property, all upon terms, provisions, and conditions set forth in this Covenant.

9. **Seniority of Covenant.** The Covenant is senior to all instruments securing permanent financing.

10. **Survivability.** If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

11. **Enforcement.** This Covenant may be enforced by the City and County of Denver, or the Executive Director of HOST.

12. **Memorandum of Acceptance.** Upon any sale of the Subject Property, Owner shall require the grantee of the Subject Property to execute a Memorandum of Acceptance, and

shall deliver a copy of such Memorandum of Acceptance to the Executive Director of HOST not less than thirty (30) days after such sale is consummated.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Owner has caused this Covenant to be executed on the date first written above.

OWNER: _____,

a _____

By: _____

Name: _____

Title: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____
_____, 20__, by _____ as _____
of _____, a _____
_____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

ACCEPTANCE BY THE CITY AND COUNTY OF DENVER

The foregoing Rental and Occupancy Covenant, and its terms are hereby accepted by the City and County of Denver, Colorado.

CITY AND COUNTY OF DENVER, COLORADO

By: _____
Name: _____
Title: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of the City and County of Denver, Colorado.

Witness my hand and official seal.
My commission expires: _____.

Notary Public

EXHIBIT A
COMPLIANCE REPORT



DEPARTMENT OF HOUSING STABILITY
 Rental Restriction Compliance Report

201 W. Colfax Ave. #204
 Denver, CO 80202
 Phone: 720-913-1999
www.denver.gov/development

Build Alternative Project Address:
 recordation # Total Number of Units: Total Number of Rent Restricted Units:

Units	O or V*	I or RV**	Tenant Name	# of Occupants	Lease Dates		Unit Sq. Ft.	# Bedrooms	Allowable % Rent & Income	Rent Amount	Total Income ***	Additional Fees		Does rent include utilities? Please list each utility, include amount charged & whether included in rent.	
					Begin	End						Description	Amount		

CERTIFICATION

I, _____ being a duly authorized agent or employee of: _____ state that I have completed all information fully and truthfully for each household occupying an affordable restricted unit.

Printed Name _____ Signature _____ Date _____

O = Occupied OR V = Vacant ** = Initial Income Verification OR RV = Re-income Verification *** = must match income verification/eligibility form

Note: Each unit indicated above should be accompanied by the required income verification & eligibility form and associated income documentation.

EXHIBIT B
INCOME VERIFICATION



INCOME VERIFICATION & ELIGIBILITY FORM

Return completed application to:
 Department of Housing Stability
 Attn: Affordable Housing Program Coordinator
 201 W. Colfax Avenue - Dept. 204 Denver, CO 80202
 E-Mail: housingcompliance@denvergov.org

Income verification should tie to the period of the property's lease/renewal

Project Information:

Name of Project: _____
Project Address: _____
Contact: _____
Telephone: _____
E-Mail: _____


Household Information:

Provide information for each household member who will be living in the home INCLUDING anyone who will be on the property title or lease and denote such.

Name (list applicant first)	Relationship to Applicant	Age	Date of Birth	Days per year child resides with you	✓ If Employed
					<input type="checkbox"/> Employed
					<input type="checkbox"/> Employed
					<input type="checkbox"/> Employed
Total number of members in household:					

Projected Annual Income:

Regular Income	Name:	Name:	Name:	Name:	Name:	Total
Wages/Salaries						
<i>How often paid?</i>						
Benefits/Pensions						
<i>How often paid?</i>						
Public Assistance						
<i>How often paid?</i>						
Child Support						
<i>How often paid?</i>						
Alimony						
<i>How often paid?</i>						
Awards:						
<i>How often paid?</i>						
Misc Income: _____						
<i>How often paid?</i>						
Total Anticipated Income:						

 <p>DENVER ECONOMIC DEVELOPMENT & OPPORTUNITY</p> <p>Income verification should tie to the period of the property's lease/renewal</p>	<p align="center">INCOME VERIFICATION & ELIGIBILITY FORM</p> <p align="center"><i>Return completed application to:</i> Department of Housing Stability Attn: Affordable Housing Program Coordinator 201 W. Colfax Avenue - Dept. 204 Denver, CO 80202 E-Mail: housingcompliance@denvergov.org</p>
<p><i>Other Income can include but is not limited to:</i></p>	<p><i>Periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, unemployment, disability compensation, welfare (or other similar type of government payments), alimony, child support, pay associated with the armed forces or any other similar type of periodic payments received.</i></p>



INCOME VERIFICATION & ELIGIBILITY FORM

Return completed application to:
 Department of Housing Stability
 Attn: Affordable Housing Program Coordinator
 201 W. Colfax Avenue - Dept. 204 Denver, CO 80202
 E-Mail: housingcompliance@denvergov.org

Income verification should tie to the period of the property's lease/renewal

Assets: If any household member has any net income of any kind from assets, being real or personal property, provide the following:

	Name:	Name:	Name:	Name:	Name:	Name:
Interest						
Dividends						
Total Amount of Income (expected in next 12 months)						

Certifications:

I, the undersigned, state that I have read and answered fully and truthfully each of the preceding questions for all members of the household who are to occupy the unit in the above named development for which application is made, all of whom are listed in this application.

I have attached one of the following for each household member to support the information supplied in this Income Verification and I certify that what is attached is a true and accurate copy of what it purports to be. *(please check which document submitted)*

Copy of signed, submitted most recent year of federal tax return (including all attachments - such as W-2, etc.)

Only if income information is current; if not, please provide either of the following:

Two (2) months of most recent pay stubs from current employer.

Letter from each current employer regarding current salary - must include average weekly hours worked and at what rate or yearly salary, including bonuses, commissions, etc. (An OED Verification of Employment form may be used as an alternative.)

NOTE:

- If additional income is denoted, provide supporting documentation.
- If household member is unemployed, provide copy of unemployment award.
- If no income is denoted for a household member, provide signed written explanation

I acknowledge that I have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the owner of the above named project to lease a unit in the same project and will entitle the owner of said project to prevent or terminate my/our occupancy of the unit by institution of an action of ejection or other appropriate proceedings.

Signatures:

Applicant _____ Date _____

Co-Applicant _____ Date _____

Optional Information: This information is requested for demographic and statistical purposes only. It is not used in determining your eligibility



Race: Black/African White Asian AIAN* Pacific Islander Other

Ethnicity: Hispanic/Latino *American Indian and Alaska Native

Referred By: Developer Newspaper Website Brochure Word of Mouth Other



Income verification should tie to the period of the property's lease/renewal

INCOME VERIFICATION & ELIGIBILITY FORM

Return completed application to:
Department of Housing Stability
Attn: Affordable Housing Program Coordinator
201 W. Colfax Avenue - Dept. 204 Denver, CO 80202
E-Mail: housingcompliance@denvergov.org

EQUAL OPPORTUNITY: There will be no discrimination against an applicant on the basis of race, age, sex, marital status, sexual orientation, national origin, religion, handicap, or source of income. If you need special accommodations to enable you to apply for, or access to the Income Verification Process, please contact us at 720-913-1800.

SCHEDULE E
FORM OF FOR-SALE COVENANT

**NOTICE OF VOIDABLE TITLE TRANSFER AND MASTER COVENANT
FOR THE OCCUPANCY AND RESALE OF FOR SALE UNITS**

_____ [project name]

THIS NOTICE OF VOIDABLE TITLE TRANSFER AND MASTER COVENANT FOR THE OCCUPANCY AND RESALE OF UNITS at

_____, (the "Covenant") is

[project name]

made and entered into this _____ day of _____, 20____, by _____ (the

[developer entity]

"Declarant"), and enforceable by the CITY AND COUNTY OF DENVER, COLORADO, or its designee (the "City").

WITNESSETH:

WHEREAS, Declarant owns the real property legally described as follows:

[INSERT LEGAL LOT DESCRIPTIONS]

OR

[Condominium Unit Nos. [INSERT INCOME RESTRICTED UNIT NUMBERS] in _____, according to the Condominium Declaration for _____ recorded under Reception No.

_____ and the Condominium Map of _____]

OR

[Townhome units located at [INSERT STREET ADDRESS] and identified by Assessor's Parcel Numbers _____]

(each such unit being referred to herein as a "IRU", and two or more of such units being referred to herein as "IRUs").

WHEREAS, Declarant has entered into that certain [AGREEMENT] dated _____ and recorded under Reception No. _____ in the real estate records of the City and County of Denver, Colorado (the "Agreement").

WHEREAS, Declarant desires to satisfy the conditions of the Agreement by selling the IRUs at affordable prices to households meeting certain income requirements, restricting the use and occupancy of the IRUs, restricting the price for future sales, and imposing income

requirements for future purchasers of the IRUs, all as set forth herein;

WHEREAS, Declarant acknowledges and agrees that the covenants set forth herein shall run with the land and shall bind each IRU and all future owners of (and other parties with an interest in title to) such IRU until the Final Sale thereof;

WHEREAS, upon the Final Sale of each IRU, such IRU shall be released from the provisions of this Covenant;

NOW, THEREFORE, for consideration hereby acknowledged by Declarant, Declarant hereby represents, covenants and declares as follows:

1. **Definitions.** The following terms shall have the following meanings when used in this Covenant:

(a) "AHDF Rules" means the Affordable Housing Permanent Funds Ordinance Administrative Rules and Regulations adopted by the City, as they pertain to build alternative for-sale units. Such AHDF Rules shall be applicable to the IRUs, Owner, and Declarant and its successors in interest as if the IRUs were "Build Alternative For-Sale Units," as such term is defined therein.

(b) "AMI" or "adjusted median income" or "median income" or "area median income" means the median income for the Denver metropolitan area, adjusted for household size as calculated by HUD.

(c) "Covenant Period" means, for each IRU, a period of _____ () years, commencing on the date of building permit issuance of such IRU.

(d) "Director" means the Executive Director of HOST or his or her designee.

(e) "Eligible Household" means a household that holds a valid verification of eligibility from HOST (as described in Section 4 below) that entitles the household to buy an IRU. To be eligible to purchase an IRU at Initial Sale or resale, households must be earning no more than _____ percent (%) of the AMI at the time of execution of a contract for purchase of an IRU and meet all other requirements set forth in the AHDF Rules.

(f) "Final Sale" means, with respect to each IRU, the first resale of such IRU occurring after the end of the Covenant Period in compliance with the terms and restrictions set forth herein. If the IRU is not resold within the period beginning on the expiration date of the Covenant Period and ending on the ten (10) year anniversary of such date, the Final Sale of such IRU shall be deemed to have occurred on such ten (10) year anniversary.

(g) "HOST" means the City and County of Denver's Department of Housing Stability or any successor agency which is assigned responsibility for the City's Affordable Housing Permanent Funds Program.

(h) "HUD" means the U.S. Department of Housing and Urban Development.

(i) "Initial Sale" means the first sale of an IRU by Declarant;

(j) "Maximum Gross Income" means the pre-tax income from all acceptable income sources as defined in the HUD Technical Guide for Determining Income;

(k) "Maximum Sale Price" means the maximum amount for which an IRU may be sold by Declarant, as set forth in Section 3(a) below or sold by a subsequent Owner, as set forth in Section 7 below.

(l) "Memorandum of Acceptance" shall have the meaning set forth in paragraph 5 below.

(m) "Owner" means any Eligible Household that purchases an IRU from the Declarant and any subsequent buyer, devisee, transferee, grantee or owner of, or holder of title to, any IRU, provided that if the City shall for any reason take title to the IRU, it shall not be considered an "Owner" for purposes of this Covenant.

(n) "Purchase Money First Lien Holder" means the lender who advances funds to an Eligible Household for the purchase an IRU and who is a holder of a purchase money first priority deed of trust against the IRU. The Purchase Money First Lien Holder shall be deemed to include assigns of the first lien holder but shall not include lenders who re-finance an IRU.

(o) "Transfer" means any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in an IRU, including, but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of an IRU is transferred and the Owner obtains title.

2. Property Subject to Covenant. Declarant and each subsequent Owner of any IRU, and every party with an interest in title to any IRU hereby covenants and agrees that their IRU will be used, occupied and Transferred strictly in conformance with the provisions of this Covenant, the AGREEMENT for so long as this Covenant remains in force and effect with respect to such IRU.

3. Initial Sale. The Initial Sale of each IRU by Declarant shall be subject to the following restrictions:

(a) The Initial Sale of each IRU shall be at a price no greater than _____ and No/100 Dollars (\$_____).

(b) No less than thirty (30) days prior to the proposed offering of any IRU, Declarant shall provide written notice to HOST containing the information required by the AHDF Rules. Within ten (10) days after receipt of such notice, HOST shall notify Declarant whether the notice is adequate or materially deficient. If the notice is deemed to be deficient, the offering cannot proceed until the deficiency has been cured and approved by HOST. If the notice is deemed adequate or if HOST does not make a determination within such ten (10) day period, Declarant may proceed with the offering.

(c) Declarant shall make a good faith effort, as described in the AHDF Rules, to market each IRU for sale to households that are expected to qualify as Eligible Households and use the IRU as their own primary residence.

(d) If, during Declarant's marketing of the IRUs, more than one offer is received for a particular IRU, the Declarant shall use a fair selection process to select among the prospective purchasers.

(e) The Declarant shall not close on any sale of any IRU without first obtaining a verification of eligibility issued by HOST for the buyer as set forth in Section 4 below. A copy of each verification shall be furnished by HOST and maintained on file by HOST.

(f) Upon closing of the Initial Sale of each IRU, the purchase contract, Memorandum of Acceptance, appraisal (if necessary), the warranty deed and a copy of the HUD-1 Settlement Sheet (or similar documentation), and any other documentation deemed necessary by HOST shall be filed with HOST to verify the sale of the IRU.

4. Eligible Household Verification.

(a) Within five (5) days after the date of full execution of a purchase and sale contract for any IRU, the seller shall ensure that the purchaser completes and submits to HOST a request for income verification (on the form provided by the City), which shall constitute a request for determination that the purchaser meets all requirements to be deemed an Eligible Household and that the purchase price does not exceed the Maximum Sale Price.

(b) Within ten (10) business days after receipt of the income verification request, the City shall verify the potential purchaser's household income based on the potential purchaser's Maximum Gross Income and the AHDF Rules and either (i) issue a verification, signed by the City, stating that the purchaser is an Eligible Household and that the purchase price does not exceed the Maximum Sale Price (the "Verification"); or (ii) deliver notice to the selling Owner and purchaser specifying the reasons that a Verification cannot be issued. Failure by the City to make its determination and deliver a Verification or non-issuance notice within the ten (10) business day period described above shall be deemed an approval of the purchaser and the purchase price, and the City shall thereafter issue a Verification with respect to the transaction immediately upon request by the selling Owner or the purchaser.

5. Memorandum of Acceptance. Each Owner shall execute and record a Memorandum of Acceptance in substantially the form attached hereto as Exhibit B (completed with the appropriate information relating to the IRU and such Owner) in the real property records of the City and County of Denver, Colorado concurrently with the recordation of such Owner's deed to his or her IRU. Such Memorandum of Acceptance shall state that the conveyed property is an IRU and is subject to the restrictions contained in this Covenant.

Upon any sale or resale of the IRU, a Memorandum of Acceptance shall be recorded with the Clerk and Recorder of the City and County of Denver concurrently with the deed for the IRU. If the Memorandum of Acceptance is not so recorded, then the transfer shall be voidable at the option of the City.

6. Use and Occupancy.

(a) Purchasers of an IRU shall occupy the IRU within thirty (30) days after closing of their purchase thereof.

(b) At all times during the Covenant Period the IRU Owner shall occupy the IRU as the Owner's sole, exclusive and permanent place of residence. A permanent residence shall mean the home or place in which one's habitation is fixed and to which one, whenever one is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence. In determining what is a permanent residence, the City may consider the following circumstances relating to the Owner: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents,

spouse and children, if any, location of personal and real property, and motor vehicle registration. Temporary exceptions allowing the Owner of an IRU to rent out the IRU (subject to the limitations set forth in the AHDF Rules) may only be granted by HOST as permitted by and justified under the AHDF Rules. Under no circumstances shall an IRU be used as a short-term rental, as defined by Article III, Chapter 33 of the Denver Revised Municipal Code.

(c) If an IRU Owner dies, at least one person taking title by will or by operation of law, whether eligible or not, either shall occupy the IRU as his, her, or their primary residence during the Covenant Period, or shall sell the IRU as provided herein. In no event shall the death of an IRU Owner affect the operation of the Covenant or the AHDF Rules

7. IRU Resale.

(a) If, at any time during the Covenant Period, an Owner desires to sell their IRU, the Owner shall, at least ten (10) days prior to offering such IRU for sale, complete and submit to HOST a Maximum Resale Request (on the form provided by the City). Such form shall include the date on which the Owner will be ready to begin the marketing to Eligible Households.

(b) HOST's determination of Maximum Sale Price for the IRU shall be based on the affordable sale price for a unit of similar size, as published by HOST annually in accordance with the AHDF Rules.

(c) The Owner may not list the IRU for sale prior to receipt of HOST's written determination of the Maximum Sale Price. After receiving such determination from the City, the selling Owner may list the IRU for sale to potential Eligible Households at or below such Maximum Sale Price. THE MAXIMUM SALE PRICE IS ONLY AN UPPER LIMIT ON THE RESALE PRICE FOR THE IRU, AND NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION, WARRANTY OR GUARANTEE BY THE CITY OR DECLARANT THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM SALE PRICE. DEPENDING UPON THE CONDITION OF THE UNIT AND CONDITIONS AFFECTING THE REAL ESTATE MARKET, THE OWNER MAY OBTAIN LESS THAN THE MAXIMUM SALE PRICE FOR THE IRU UPON RESALE.

(d) The Owner shall make a good faith effort to market the IRU in accordance with the requirements set forth in the AHDF Rules to purchasers that are expected to qualify as Eligible Households.

(e) The Owner may only enter into a contract for the sale of the IRU with a purchaser who is reasonably expected to qualify as an Eligible Household.

(f) The Owner may enter into a contract for the sale of the IRU upon such terms and conditions as the selling Owner shall deem acceptable, provided, however, that the following conditions apply:

(i) the purchase price shall not exceed the Maximum Sale Price;

(ii) the selling Owner must believe in good faith that the purchaser will be verified by HOST as an Eligible Household; and

(iii) the contract must state as a contingency that the purchaser will submit an income verification request in accordance with Section 4 above and that the selling Owner's obligations under the contract are expressly contingent upon the City's determination (by issuance of the Verification described in Section 4) that the purchaser is an Eligible Household

and that the purchase price does not exceed the Maximum Sale Price. All earnest money must be returned in the event that the contingencies above are not met.

(g) The verification procedure described above in Section 4 shall apply to each resale of any IRU.

(h) Upon the transfer of the IRU, the purchaser must sign and record a Memorandum of Acceptance as described above in Section 5.

(h) The Director may waive the restrictions on the resale prices for IRUs if the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent Eligible Households from buying dwelling units under the IRU program. Any waiver shall be in writing, shall reference the recorded covenant, and shall be recorded in the records of the Clerk and Recorder for the City and County of Denver, Colorado.

8. Remedies in the Event of Breach.

(a) In the event that HOST has reasonable cause to believe that an Owner is violating the provisions of this Covenant, an authorized representative of HOST may seek permission to enter the IRU, if necessary to determine compliance.

(b) In the event the City becomes aware of an alleged violation of this Covenant, the City or HOST shall send a notice of such alleged violation to the Owner detailing the nature thereof and allowing the Owner fifteen (15) days to cure such default or request a hearing before the City using the linkage fee appeals process described in the AHDF Rules, with the Director serving as the designated official in the stead of the Director of CPD. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Covenant. If a hearing is held before the City, the decision of the City based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

(c) There is hereby reserved to the City, HOST and the Director the right to enforce this Covenant, including any and all remedies provided pursuant to the Denver Revised Municipal Code.

(d) Any Owner who violates the occupancy provisions of Section 6(b) above may be required by the Director to occupy such IRU as Owner's domicile, offer the IRU for resale to an Eligible Household, and/or turn over to the City all rents received without a City exception.

(e) Subject to the limitations set forth in Section 8(f) below, in the event the IRU is Transferred in a manner that is not in full compliance with the terms and conditions of this Covenant, such Transfer shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every Transfer of the IRU, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, regardless of reference therein to this Covenant.

(f) Notwithstanding anything in this Covenant to the contrary, in the event that the IRU is encumbered by a deed of trust from a Purchase Money First Lien Holder and such deed of trust is insured by HUD, the City's remedies shall specifically not include remedies prohibited by HUD, such as: (i) voiding a conveyance, including a lease, by the Owner; (ii) terminating the Owner's interest in the IRU; or (iii) subjecting the Owner to contractual liability including damages, specific performance or injunctive relief, other than requiring repayment at a reasonable

rate of interest any amount paid for an IRU above the Maximum Sale Price.

9. Seniority of Covenant. This Covenant is senior to all instruments securing permanent financing, except as otherwise permitted herein.

10. Release of Covenant in Foreclosure.

(a) In the event that Owner receives a notice of default or notice of foreclosure from the Purchase Money First Lien Holder, the Owner shall send a copy of said notice to HOST within seven (7) days of receipt.

(b) In the event of (i) a foreclosure action being brought by the Purchase Money First Lien Holder, or (ii) the request for the Purchase Money First Lien Holder to accept title to the IRU by deed in lieu of foreclosure, the Owner shall give a copy of any notice of intent to foreclose or request for deed in lieu to HOST within ten (10) days of receipt of such notice or request. Notice to HOST shall be to the address of HOST as provided in this Covenant with a copy to the City Attorney's Office. In the event that the Purchase Money First Lien Holder takes title to the IRU pursuant to a deed in lieu of foreclosure, the Owner shall give notice to HOST with a copy to the City Attorney's Office upon the vesting of title to the IRU in Purchase Money First Lien Holder.

(c) As to any IRU encumbered by a HUD-insured mortgage, this Covenant shall automatically and permanently terminate upon foreclosure of a deed of trust or acceptance of a deed in lieu of foreclosure by a Purchase Money First Lien Holder or assignment to HUD of a purchase money first priority deed of trust encumbering such IRU. In the event of foreclosure or the acceptance of a deed in lieu of foreclosure by any other Purchase Money First Lien Holder on an IRU, the mortgagee may request the release of this Covenant with respect to that particular IRU and the Director is authorized to execute such a release if warranted by the circumstances.

(d) In a cash funded purchase following foreclosure, any and all liens or deeds filed against the property in exchange for the cash portion of the purchase shall be subordinate to the covenant placed on the unit pursuant to the requirements of these rules and regulations. Such liens or deeds will not qualify the holder as a holder of a first deed of trust, nor a purchase money first lien holder, nor under the covenant, nor under the City's Housing Funds Ordinance Administrative Rules and Regulations.

11. Limitation on Equity Mortgages. During the Covenant Period, Owner shall not cause or allow any second mortgage, refinance mortgage, or equity mortgage greater than the then-current Maximum Sale Price to be placed on or recorded against the IRU. Any action in contravention of this provision shall be void and may subject the Owner to criminal and civil fraud penalties.

12. Covenant Running with Land; Duration of Covenant. The terms of this Covenant and the provisions of the AHDF Rules shall apply to the IRUs and run with the land as a burden thereof until Final Sale, and shall be specifically enforceable by the City and its successors and assigns, as applicable, by any appropriate legal action including but not limited to specific performance, injunction, reversion or eviction of non-complying Owners and/or occupants.

13. Final IRU Sale.

(a) Assuming no previous termination due to foreclosure, this Covenant shall terminate, expire and be of no further force and effect with respect to an IRU on the date of Final

Sale.

(b) If an Owner desires to sell their IRU within ten (10) years after the end of the Covenant Period, such proposed sale shall be subject to the following requirements:

(i) Right of HOST to Purchase. No less than thirty (30) days before offering the IRU for Final Sale, the Owner shall notify HOST of the proposed offering and the date on which the Owner will be ready to offer the property for sale. The notice shall affirm that the property will be offered at fair market value with no extraordinary terms of sale and that it is being offered as a single property for sale. The notice shall set forth the proposed sale price, number of bedrooms, unit size by square feet, and a description of the amenities offered in the IRU.

Within thirty (30) days of HOST's receipt of the notice described above, HOST shall provide written notice to the Owner of the City's or its designee's intent to purchase the IRU. If the City opts to purchase the IRU, it shall complete such purchase within sixty (60) days after the date on which the notice of intent to purchase was received by the Owner. If the City does not so notify the Owner or if the purchase of the property does not close within such sixty (60) day period, the Owner may proceed to sell the IRU to any third party purchaser.

(c) Upon a finding that any and all amounts due to the City and all other provisions of this Covenant have been satisfied, the Director shall release this Covenant.

14. Notices. Any notice, consent or approval which is required or permitted to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with posting fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Covenant.

Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant: _____
 [Development Entity]

 [Street Address]

 [City, State and Zip Code]

To the City: Department of Housing Stability
City and County of Denver
201 W. Colfax Avenue, Dept. 615
Denver, Colorado 80202

Copy to: City Attorney's Office
City and County of Denver
201 W. Colfax Avenue, Dept. 1207
Denver, Colorado 80202

To Owner: To be determined pursuant to the Memorandum of Acceptance (as shown on Exhibit B) recorded with respect to each Transfer of an IRU.

15. Exhibits. All exhibits attached hereto are incorporated herein and by this reference made a part hereof.

16. Severability. Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of such documents.

17. Conflict or Inconsistency. In the event of any conflict or inconsistency between the terms of this Covenant and the terms and provisions of the AHDF Rules, as such are in effect on the date of this Covenant, the AHDF Rules shall prevail.

18. Choice of Law. This Covenant and each and every related document are to be governed and construed in accordance with the law of the State of Colorado.

19. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

20. Section Headings. Paragraph or section headings within this Covenant are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

21. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Covenant. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

22. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

23. Personal Liability. Owner shall be personally liable for any of the transactions contemplated herein.

24. Further Actions. The parties to this Covenant agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any restriction or document relating hereto or entered into in connection herewith.

25. Modifications. The parties to this Covenant agree that any modifications of this Covenant shall be effective only when made by writings signed by both parties and recorded with the Clerk and Recorder of the City and County of Denver, Colorado.

26. Owner and Successors. It is understood that a person or persons shall be deemed an Owner hereunder only during the period of his, her or their ownership interest in the IRU and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

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EXHIBIT A
Legal Description

UNIT _____, _____ [INSERT NAME OF PROJECT], County of _____, State of Colorado, according to the Map thereof recorded on _____, 20____, at Reception No. _____, and the Declaration recorded on _____, 20____, at Reception No. _____, in the records of the Clerk and Recorder of the County of _____, Colorado,

also known by street and number as: _____

EXHIBIT B

MEMORANDUM OF ACCEPTANCE
OF
NOTICE OF VOIDABLE TITLE TRANSFER AND MASTER COVENANT
FOR THE OCCUPANCY AND RESALE OF UNITS FOR

[Project Name]

WHEREAS, _____, the Buyer, purchased

[Buyer Name]
_____, on the date of _____ from

[Property Address]
_____. The maximum resale price [is

[Seller Name]
/is deemed to be] \$ _____ as of _____, 201__.

[purchase price amount]

WHEREAS, the Seller of the IRU is requiring as a prerequisite to the sale transactions, that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitled "Notice of Voidable Title Transfer and Master Covenant for The Occupancy and Resale of Units _____", recorded on _____, 20____, under Reception No. _____, in the real property records of the City and County of Denver, Colorado (the "Master Covenant").

[Project Name]

NOW, THEREFORE, as an inducement to the Seller to sell the Unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Affordable Housing Covenant ("Covenant"), that applies to the property and has had the opportunity to consult with legal and financial counsel concerning the Covenant and fully understands the terms, conditions, provisions, and restrictions contained in the Covenant.
2. Acknowledges the Covenant **voids title passage** if a transfer is attempted which is non-compliant with the affordability restrictions in the Covenant. The failure to transfer for a restricted price and to an eligible household under the Covenant means title is not transferred (void) and the buyer has no title or ownership of the property.
3. Acknowledges that, before selling this affordable home in the future, it is mandatory that approval is obtained **in writing** from the City and County of Denver, Office of Economic Development, 201 West Colfax Ave., Dept. 204, Denver, Colorado 80202.
4. Acknowledges that the terms of the Covenant restrict the resale price and profits may be required to be shared after the termination of this Covenant. Maximum resale price and profit share information are available only from the City and County of Denver.

5. Acknowledges that the terms of the Covenant restrict purchasers to households earning no more than 80% of Area Median Income ("AMI"). Allowable income maximums are available only from the City and County of Denver.

6. Acknowledges that the City and County of Denver may recover as financial penalty all amounts overpaid to the seller and require the purchaser to sell the property for the affordable price to an eligible household. The City's recovery of a penalty does not limit any action a buyer or other injured party may have to recover their damages from the seller.

7. Acknowledges that the terms of the Covenant prohibit rentals except in limited circumstances. Exceptions to rental require the written approval of the City and County of Denver.

8. Acknowledges that the City and County of Denver may recover as financial penalty all rents paid for and require the purchaser to sell the property for the affordable price to an eligible household. The City's recovery of a penalty does not limit any action a tenant or other injured party may have to recover their damages from the landlord.

9. Notice to Buyer, pursuant to Subsection _____ of the [Master] Covenant, should be sent to:

10. In addition to the above, the City and County of Denver may seek any remedy allowed to it for violations of Article V, Chapter 27, Denver Revised Municipal Code (including any adopted rules and regulations) or the Covenant.

11. Directs that this memorandum be placed of record in the real estate records of the City and County of Denver, Colorado and a copy provided to Denver Community Planning and Development Agency.

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IN WITNESS WHEREOF, the parties hereto have executed this instrument of the day and year first above written.

BUYER(S):

By: _____
Name: _____

STATE OF)
) ss.
COUNTY OF)

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

Witness my hand and official seal.

Notary Public

My commission expires: _____

Please return **originally signed** document to HOST for recordation.
Office of Economic Development
201 W. Colfax Ave., Dept. 204
Denver, CO 80202

EXHIBIT C

FORM OF EASEMENT FOR PUBLIC USE OF REQUIRED PUBLIC OPEN SPACE

Form of Open Space Easement

After Recording Return to:

Denver City Attorney's Office
201 W. Colfax Avenue, Dept. 1207
Denver, CO 80202

PERMANENT EASEMENT FOR LORETTO HEIGHTS PRIVATELY OWNED OPEN SPACE

This Permanent Easement for Loretto Heights Privately Owned Open Space (this "Easement") is made this ____ day of _____, _____, between ACM LORETTO VI LLC, a Delaware limited liability company ("Grantor") and the CITY AND COUNTY OF DENVER, a Colorado municipal corporation and a home rule city ("Grantee" or "City");

WITNESSETH:

That for and in consideration of the Private Open Spaces and the OS Requirement as set forth in the Loretto Heights Development Agreement recorded within the Denver County real property records on _____ at Reception No. _____ (the "Development Agreement") and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby agrees to the following:

Grantor hereby grants and conveys unto the Grantee for the benefit of the City and the general public a permanent non-exclusive easement upon, across and over the parcel(s) described below (collectively, the "Easement Area(s)") for the purpose of using such Easement Area(s) for publicly accessible and usable open space ("Open Space Easement") as required by the Development Agreement.

Nothing herein shall require the City to construct, reconstruct, maintain, service or repair such any improvements in the Easement Area(s).

The permanent easement granted herein is located in the City and County of Denver, State of Colorado, and is upon, across, and over the land described as follows:

SEE SCHEDULE A
ATTACHED HERETO AND INCORPORATED HEREIN

The Grantor does hereby covenant with the Grantee that it is lawfully seized and possessed of the Property, and that it has a good and lawful right to grant this permanent Open Space Easement in the Property.

Grantor further covenants and agrees that, unless otherwise authorized by a Site Development Plan approved by the City, no building, structure, or other above or below ground obstruction that may interfere with the purposes for which this Easement is granted may be placed, erected, installed or permitted upon the Easement Area(s). Grantor further agrees that in the event the terms of this Easement are violated, such violation shall immediately be corrected by the Grantor upon receipt of written notice from the City, or the City may itself elect to correct or eliminate such violation at the Grantor's expense. The Grantor shall promptly reimburse the City for any costs or expenses incurred by the City in enforcing the terms of this paragraph.

Notwithstanding the foregoing and the grant of the Open Space Easement to Grantee pursuant to this Easement, Grantee hereby grants to and for the benefit of Grantor, and Grantor's employees, agents, contractors, subcontractors, successors, assigns, lessees, and licensees, a temporary, non-exclusive license (the "Temporary Construction License") on, over, across and under the Easement Area(s) for the purpose of performing construction activities related to the development of the Easement Area(s) and adjacent parcels of Grantor's property, including, but not limited to, accessing the Easement Area(s) during construction, installing an access road and sidewalks within the Easement Area(s), installing fencing, barriers, and otherwise controlling or limiting entry to the Easement Area(s) by the public or Grantee, performing staging and other pre-construction activities in the Easement Area(s), and all uses reasonably associated with such construction activities; installing and relocating underground utility lines and related facilities within the Easement Area(s); installing storm sewer drains and related facilities within the Easement Area(s); and installing open space improvements within the Easement Area(s). The Temporary Construction License automatically terminates without further action by Grantor or Grantee upon the issuance of a Certificate of Occupancy from the City for the vertical development contained in the Site Development Plan triggering the granting of this Open Space Easement by Grantor to Grantee pursuant to the Development Agreement.

Grantor further understands and agrees that with respect to the Property, all laws, ordinances, and regulations pertaining to streets, sidewalks, and public places shall apply so that the public use of the Easement Area(s) is consistent with the use and enjoyment of any dedicated public right-of-way.

The Grantor further grants to the Grantee the right of ingress to and egress over and across adjacent lands owned by Grantor by such route or routes as shall occasion the least practical damage and inconvenience to the Grantor, for the purpose of constructing, repairing, maintaining and operating the Easement Area(s) if deemed necessary by Grantee.

Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable State or federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Such applicable law, together with the Charter, Revised Municipal Code and regulations of the City and County of Denver, as the same may be amended from time to time, is hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver District Court in the City and County of Denver, Colorado.

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me on the _____ day of _____, 20____, by _____, as _____ of the City and County of Denver, a Colorado municipal corporation and home rule city.

WITNESS my hand and official seal.

Notary Public

EXHIBIT D
EXISTING BUILDINGS

Exhibit D: Existing Buildings

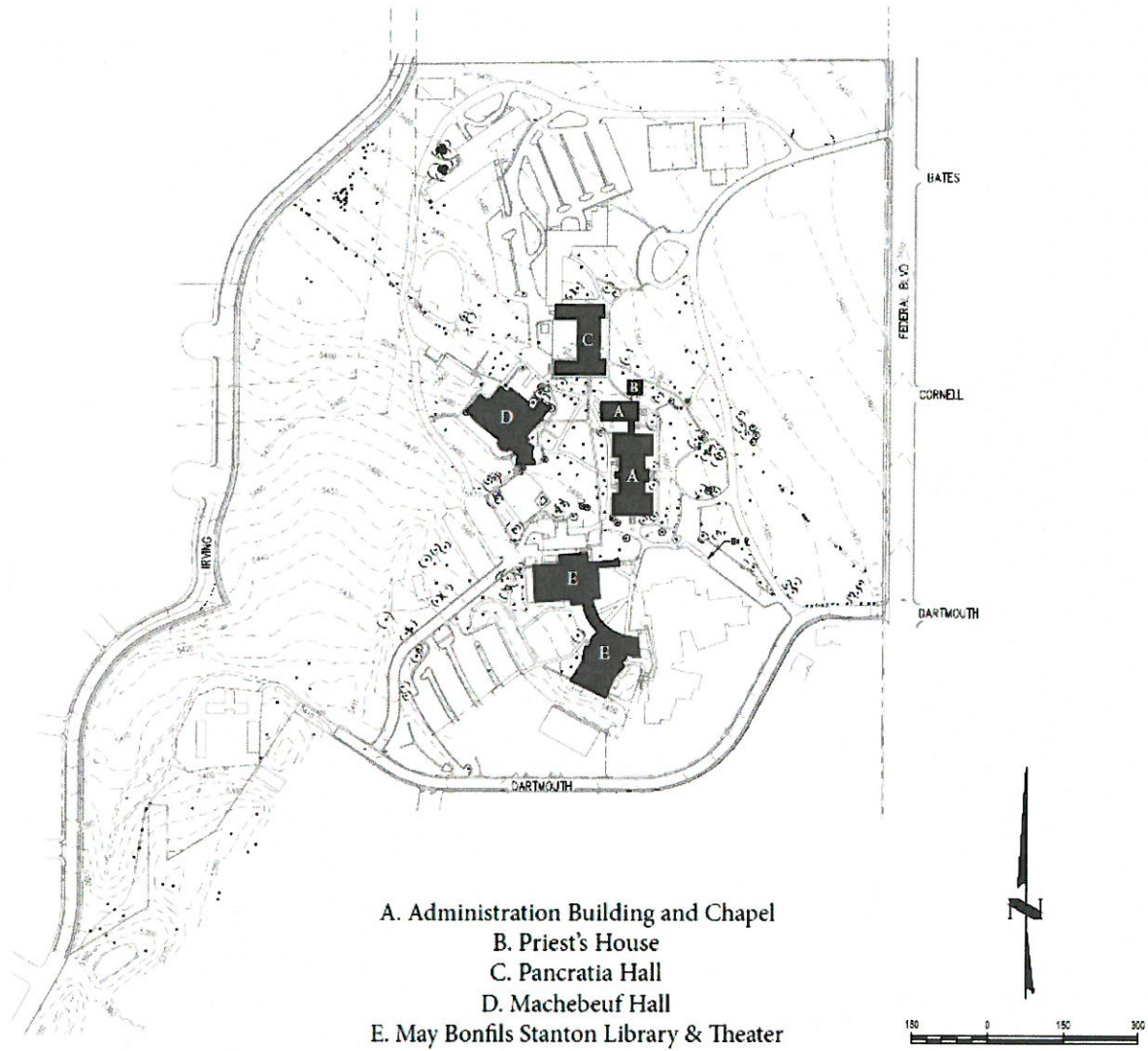


EXHIBIT E
VESTED RIGHTS PROVISIONS
U-MX-3 HEIGHT WAIVERS

Waiver for the properties located at 3001 S Federal Blvd.

Per Denver Zoning Code Section 12.4.10.6, Waivers of Rights and Obligations and Approval of Reasonable Conditions, I, the undersigned applicant for the property under application for the rezoning referenced herein, request that the U-MX-3 zoning classification of the land described herein include the following waiver:

1. Waive the right to use or erect any primary structure with a maximum permitted building height of 3 stories pursuant to Sections 5.3.3.4.E (Town House building form), 5.3.3.4.I (General building form) and 5.3.3.4.J (Shopfront building form), DZC and instead comply with the following:

No primary structure erected on the subject property according to the Town House, General or Shopfront primary building form standards shall exceed 5 stories in building height. Height exceptions shall be allowed in accordance with Section 5.3.7.1 (Height Exceptions) as applicable to the U-MS-5 zone district.

2. Waive the right to use or erect any primary structure with a maximum permitted building height of 38 feet pursuant to Section 5.3.3.4.E (Town House building form) or a maximum permitted height of 45 feet pursuant to sections 5.3.3.4.I (General building form) and 5.3.3.4.J (Shopfront building form), DZC and instead comply with the following:

No primary structure erected on the subject property according to the Town House, General or Shopfront primary building form standards shall exceed 70 feet in building height. Height exceptions shall be allowed in accordance with Section 5.3.7.1 (Height Exceptions) as applicable to the U-MS-5 zone district.


Mark Witkiewicz, Authorized Representative