



II. PUBLIC COMMENTS

- A. Members of the public may express their views to the Board on matters that affect the Districts. Comments will be limited to three (3) minutes.
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III. CAPITAL/CONSTRUCTION MATTERS

- A. Review and consider approval of Engineer's Report and Verification of Costs Associated with Public Improvements Report No. 13, dated \_\_\_\_\_, 2023, prepared by Schedio Group LLC, for the amount of \$\_\_\_\_\_ ("Report No. 13") (to be distributed).
- 

- B. Consider acceptance of verified public improvement costs pursuant to Report No. 13 (**LHMD 1-4**).
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- C. Consider approval of reimbursement by Loretto Heights Metropolitan District No. 1 to ACM Loretto VI LLC under the Facilities Funding and Acquisition Agreement between Loretto Heights Metropolitan District No. 1 and ACM Loretto VI LLC, pursuant to Report No. 13 (**LHMD 1**).
- 

- D. Acknowledge and approve Letter of Direction for reimbursement to be made to THB Loretto Land LLC (**LHMD 1** – to be distributed).
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- E. Consider approval of Special Construction Proposal with CenturyLink Inc (**LHMD 1** – to be distributed).
- 

IV. LEGAL MATTERS

- A. Consider approval/ratification of Amended and Restated Facilities Acquisition Agreement by and among Loretto Heights Metropolitan District No. 1, ACM Loretto VI LLC, and THB Loretto Land LLC (**LHMD 1** – to be distributed).
-

- B. Consider approval of First Amendment to Facilities Funding and Acquisition Agreement by and between Loretto Heights Metropolitan District No. 1 and ACM Loretto VI LLC (**LHMD 1** – enclosed).
- 

- C. Consider approval of Purchase and Sale Agreement by among City and County of Denver, ACM Loretto VI LLC, Loretto Heights Community Authority, and Loretto Heights Metropolitan District Nos. 1, 2, 3, and 4 (**LHMD 1-4** – to be distributed).
- 

- D. Consider ratification of approval of Facilities Acquisition Agreement by and between Loretto Heights Metropolitan District No. 1 and MCMP 20 Loretto LLLP, effective March 16, 2023 (*Seller: THB Loretto Land LLC* - **LHMD 1** -enclosed).
- 

- E. Consider ratification of approval of Facilities Acquisition Agreement by and between Loretto Heights Metropolitan District No. 1 and MCMP 20 Loretto LLLP, effective March 16, 2023 (*Seller: ACM Loretto VI LLC* - **LHMD 1** - enclosed).
- 

- F. Acknowledge Assignment Agreement by and between MHMP 20 Loretto LLLP and ACM Loretto VI LLC, effective March 16, 2023 (**LHMD 1** - enclosed).
- 

- G. Acknowledge Agreement and Assignment Regarding Metropolitan District Payment by and between MHMP 20 Loretto LLLP and ACM Loretto VI LLC, effective March 16, 2023 (**LHMD 1** - enclosed).
- 

V. OTHER BUSINESS

- A. \_\_\_\_\_

VI. ADJOURNMENT **THE NEXT REGULAR MEETING IS SCHEDULED FOR APRIL 24, 2023.**

# FIRST AMENDMENT TO FACILITIES FUNDING AND ACQUISITION AGREEMENT

This **FIRST AMENDMENT TO FACILITIES AND ACQUISITION AGREEMENT** (this “**Amendment**”) is made and entered into this \_\_\_ day of April 2023, by and between **LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and **ACM LORETTO VI LLC**, a Delaware limited liability company (the “**Developer**”) (each, a “**Party**” and, collectively, the “**Parties**”).

## RECITALS

A. The District and the Developer are parties to that certain Facilities Funding and Acquisition Agreement (the “**Agreement**”), effective February 14, 2020.

B. The Parties desire to amend the Agreement to clarify that the District may make direct payment to contractors for the Verified Costs of Construction Related Expenses when funds are available for capital improvements projects.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein and in the Agreement, the Parties agree as follows:

## COVENANTS AND AGREEMENTS

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated herein and made a material part hereof as though set forth in full.

2. Defined Terms. All terms not expressly defined herein shall have the same meaning as set forth in the Agreement.

3. Amendment to Section 4.1. Section 4.1 of the Agreement shall be replaced in its entirety to read as follows:

“4.1 Reimbursement and Developer and Payment of Verified Costs. Subject to the receipt of funding pursuant to Section 4.3 herein and all other applicable provisions hereof, the District agrees to reimburse the Developer and/or make direct payment of Verified Costs up to the Shortfall Amount, together with interest thereon, unless otherwise agreed to in writing by the Parties.”

4. Ratification. Except as expressly set forth herein, the terms, covenants, and conditions of the Agreement are hereby ratified and reaffirmed in their entirety.

[Signature Page Follows]

[Signature Page to First Amendment to Facilities Funding and Acquisition Agreement]

**LORETTO HEIGHTS METROPOLITAN  
DISTRICT NO. 1**, a quasi-municipal corporation  
and political subdivision of the State of Colorado

By: \_\_\_\_\_  
Mark J. Witkiewicz, President

Attest:

By: \_\_\_\_\_  
Secretary / Asst. Sec.

**ACM LORETTO VI LLC**, a Delaware limited  
liability company

By: \_\_\_\_\_  
Andrew R. Klein, Authorized Signatory

## FACILITIES ACQUISITION AGREEMENT

This **FACILITIES ACQUISITION AGREEMENT** (“**Agreement**”) is made and entered into this 14<sup>th</sup> day of March, 2023 (“**Effective Date**”), by and between **LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”) and **MHMP 20 LORETTO LLLP**, a Colorado limited liability limited partnership (the “**Buyer**”) (individually, each a “**Party**” and collectively the “**Parties**”).

### RECITALS

A. Buyer, as assigned from Mercy Housing Mountain Plains, a Colorado nonprofit corporation, entered into that certain Contract to Buy and Sell Real Estate (Land) and related Addendum to Contract to Buy and Sell Real Estate (Vacant Land) dated December 16, 2022 (as amended from time to time, the “**PSA**”), with **ACM LORETTO VI LLC**, a Delaware limited liability company (the “**Seller**”), pursuant to which the Buyer is the owner of property within a project located in the City and County of Denver (the “**City**”), Colorado, known as Loretto Heights (the “**Property**”).

B. The Property is within the boundaries and/or service area of the District.

C. Pursuant to the authority granted to the District by its Service Plan, as approved by the City on August 26, 2019, as it may be amended from time to time (the “**Service Plan**”), the District is authorized to construct, acquire and install public improvements, including water, sanitation (including storm drainage), street, safety protection, park and recreation, transportation, television relay and translation, and mosquito control and other facilities and services (“**District Improvements**”), which benefit property within the District’s boundaries and/or service area.

D. The District Improvements are necessary for the development of the Property.

E. The District has determined that for reasons of economic efficiency and timeliness it is in the best interests of the District for the Seller and/or Buyer to construct or cause construction of certain of the District Improvements.

F. The District and Loretto Heights Community Authority (the “**Authority**”) entered into a Project Management Intergovernmental Agreement dated May 25, 2021 (as amended from time to time, the “**Master IGA**”) whereby the District acts as the “**Managing District**” for the Authority and Loretto Heights Metropolitan District Nos. 2-4 (together with the District, the “**Loretto Heights Districts**”), and is responsible for coordinating the financing, construction and operation and maintenance of the District Improvements for the Authority and the Loretto Heights Districts.

G. The District and Seller previously entered into that certain Facilities Funding and Acquisition Agreement effective February 14, 2021 (as it has been and may be amended from time to time, the “**FFAA**”), pursuant to which the District and Seller have agreed to provide for the construction or acquisition of certain District Improvements, including, but not limited to the

design, testing, engineering, and construction of the District Improvements, together with the related consultant and management fees associated with the construction of the District Improvements (“**Construction Related Expenses**”), and to the extent the Seller advances monies to the District for such Construction Related Expenses or expends monies on Construction Related Expenses for District Improvements to be acquired by the Loretto Heights Districts or the Authority, the City or other local government entity, the District agreed to reimburse the Seller for such Construction Related Expenses, as provided therein.

H. Pursuant to the PSA, Buyer and Seller have agreed that, to the extent Buyer constructs any District Improvements, Seller shall retain any and all right in and to reimbursements from the District arising from the Construction Related Expenses incurred by Buyer in association with the District Improvements (the “**District Reimbursement Rights**”).

I. The District and Buyer desire to set forth their respective rights, obligations and the procedures by which Construction Related Expenses incurred by the Buyer will be verified for eligibility for reimbursement to Seller as District Reimbursement Rights and by which any District Improvements that are not otherwise dedicated to the City or other government entity will be conveyed to the District.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

### COVENANTS AND AGREEMENTS

1. Construction of District Improvements. The Buyer agrees to design, construct, and complete the District Improvements in full conformance with the design standards and specifications as established by the District and communicated to Buyer prior to commencement of the work, if applicable, and substantially in accordance with (and only to the extent set forth in) the City-approved plans (the “**Plans**”). If the District so requests, the Buyer shall provide periodic reports on the status of completion and costs of the District Improvements.

2. Compliance with District Requirements. Buyer further agrees to comply with all applicable District requirements for bidding, verification of costs and submittal of documentation required for evidencing and confirming costs associated with installation and construction of the District Improvements, which may include, but are not limited to, construction plans and drawings, construction contracts, invoices, lien waivers and other evidence of payment from contractors, as-built drawings and acceptance letters from Authorities (as such term is defined in the PSA) with respect to any such District Improvements.

3. Transfer of Completed District Improvements. Upon completion of District Improvements by Buyer or a third party contracted by Buyer, Buyer shall, subject to the City’s rights to the District Improvements, transfer the completed District Improvements by special warranty bill of sale to the District or the Authority as directed by the District (such recipient, the “**Acquiring District**” hereunder), substantially in a form attached hereto as Exhibit A and incorporated herein by this reference (“**Bill of Sale**”).

4. Seller Reimbursement Rights. With acknowledgment of consideration previously and otherwise paid, Buyer acknowledges that: (i) the construction and conveyance of the District Improvements shall be without compensation from the District to Buyer; and (ii) District Reimbursement Rights shall remain the property of the Seller and shall not be conveyed to Buyer.

5. Construction Warranty and Assignment; Limitation of Buyer's Liability.

a. Buyer shall require, in each construction contract for all or any portion of the District Improvements, that the contractor under such construction contract provide a warranty for the period of time between initial acceptance and final acceptance of the District Improvements by the appropriate accepting jurisdiction. Upon Buyer's substantial completion of any District Improvements to be perpetually owned, operated and maintained by an Acquiring District, if any, and after initial acceptance by the City, if required, Buyer shall give the Acquiring District a non-exclusive assignment of all warranties from third-party contractors and subcontractors in connection with all District Improvements caused to be constructed by Buyer and eligible to be financed by the District pursuant to their respective service plans.

b. Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that Buyer's agreement to construct or cause the construction of the District Improvements as set forth in this Agreement is done as an accommodation to the District and that, except as expressly set forth in this subsection 4(b), Buyer shall have no responsibility, liability or obligation with respect to (and the District hereby covenants not to sue Buyer for, and hereby releases the Buyer from, all liability and claims relating to or arising from) the design, engineering, construction or completion of the District Improvements, any damage, loss or injury to the District or otherwise related to any action or inaction of Buyer in connection with this Agreement, or any defect in the materials or workmanship pertaining to the District Improvements, except for any "Buyer Covered Liability," as hereinafter defined. "**Buyer Covered Liability**" means the following matters for which Buyer shall be liable to the District in connection with its performance under this Agreement: (i) any damage, loss or injury arising from the willful misconduct, bad faith, recklessness or illegal acts of the Buyer in performing or failing to perform hereunder, or (ii) damage, loss or injury arising from the fraudulent conduct of Buyer; provided, however, that any damages to which the District shall be entitled to recover for any Buyer Covered Liability shall be limited to out-of-pocket losses, costs, damages or expenses, and the District shall not be entitled to recover from Buyer any punitive or consequential losses, costs, damages or expenses or lost profits as a result of, or in connection with, any Buyer Covered Liability. Buyer makes no representation or warranty with respect to the District Improvements and shall have no liability for any defect in the materials or workmanship pertaining thereto. Upon initial acceptance of completion of any District Improvements by the District or applicable Authorities, Buyer shall provide the Acquiring District with non-exclusive assignments of warranty from all contractors that have completed the District Improvements. Upon receipt of such assignments, the acquiring District hereby agrees to look solely to the contractors engaged to construct and complete the District Improvements for any contractual violation, indemnity, warranty or guarantee relating to the District Improvements. This Subsection 4(b) shall survive expiration or termination of this Agreement.

6. Deliverables. Buyer shall deliver the following to the acquiring District at the time of or prior to the transfer of the District Improvements to the City or District(s), and at such other times upon request of the District:

(a) As-built drawings for the District Improvements to be transferred to the acquiring District;

(b) Lien waivers from each contractor in a commercially reasonable form verifying that all amounts due to contractors, subcontractors, material providers or suppliers have been paid in full except for any retainage that is held by Buyer until final acceptance of the District Improvements;

(c) Copies of all contracts, pay requests, change orders, invoices, the final AIA payment form (or similar form), canceled checks, and any other reasonably requested documentation, to verify the expenses incurred by Buyer relative to the construction and installation of District Improvements by Buyer;

(d) For any District Improvements to be perpetually owned, operated and maintained by an acquiring District, an executed Bill of Sale conveying the District Improvements to the acquiring District; and

(e) To the extent necessary, any licenses or easements held by Buyer and related to the installation, operation or maintenance of the District Improvements.

7. Verification of Costs. Upon Buyer's completion of any District Improvements, Buyer shall cooperate with Seller and the District, at no out-of-pocket cost to Buyer, to enable the District's engineer or other independent engineer licensed in the State of Colorado to prepare a cost verification of the District Improvements so that expenses can be verified as qualified Construction Related expenses that may be eligible for reimbursement to Seller as District Reimbursement Rights. Such cost verification shall include, but not necessarily be limited to, a certification by the engineer generally stating that: (i) the Improvement(s) are fit for the intended purpose; (ii) the District Improvements (including individual components) were constructed in substantial accordance with their design; and (iii) the costs for the design, construction and completion of said District Improvements are reasonable.

8. Representations. Buyer hereby represents and warrants to and for the benefit of the District as follows:

(a) The Buyer is a Colorado corporation and is qualified to do business in the State of Colorado.

(b) Buyer has the full power and legal authority to enter into this Agreement. Neither the execution and delivery of this Agreement nor the compliance by the Buyer with any of its terms, covenants or conditions is or shall become a default under any other agreement or contract to which Buyer is a party or by which Buyer is or may be bound. Buyer has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

(c) Buyer represents that it has sufficient available funds to fulfill its obligations under this Agreement.

The foregoing representations and warranties are made as of the date hereof and shall be deemed continually made by Buyer to the District for the entire term of this Agreement.

9. Term: Repose. This Agreement shall become effective on the Effective Date and shall remain in effect until all applicable District Improvements have been constructed by the Buyer, all documentation and information reasonably required for verification of Construction Related Expenses has been provided and any District Improvements constructed by Buyer have been conveyed to the City, District, or other governing local government entity.

10. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally-recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: c/o McGeady Becher PC  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203  
Phone: 303-592-4380  
Email: [legalnotices@specialdistrictlaw.com](mailto:legalnotices@specialdistrictlaw.com)

To Buyer: MHMP 20 LORETTO LLLP  
c/o Mercy Housing Mountain Plains  
1600 Broadway, Ste 2000  
Denver, CO 80202

With A Copy To: Mercy Housing, Inc.  
Attn: Joe Rosenblum, General Counsel  
1600 Broadway, Suite 2000  
Denver CO 80202  
Telephone: 303-830-3409  
Email: [jrosenblum@mercyhousing.org](mailto:jrosenblum@mercyhousing.org)

All notices, demands, requests or other communications shall be effective upon such personal delivery, one (1) business day after being deposited with United Parcel Service or other nationally-recognized overnight air courier service, on the date of transmission if sent by electronically-confirmed or email transmission, or three (3) business days after deposit in the

United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address or contact information. Any notice of default to Buyer may not be delivered via e-mail and must be delivered by one of the other delivery methods set forth above.

11. Assignment. The Buyer shall not assign any of its rights or delegate any of its duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

12. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the Buyer any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the Buyer shall be for the sole and exclusive benefit of the District and the Buyer.

13. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, arbitration, or other proceeding to enforce the terms, covenants, or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

14. Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the District Court in and for the City and County of Denver, Colorado.

15. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

16. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

17. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

19. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

20. Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto, provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the District or the Buyer unless the same is in writing and duly executed by the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

**DISTRICT:**

**LORETTO HEIGHTS METROPOLITAN DISTRICT  
NO. 1**, a quasi-municipal corporation and political  
subdivision of the State of Colorado

By:

  
\_\_\_\_\_  
Mark Witkiewicz, President

ATTEST:

  
\_\_\_\_\_  
Andrew R. Klein, Assistant Secretary

**[Buyer's Signature Page Follows]**

**BUYER:**

MHMP 20 LORETTO LLLP,  
a Colorado limited liability limited partnership

By: MHMP 20 Loretto GP LLC,  
a Colorado limited liability company,  
its general partner

By: Mercy Housing Mountain Plains,  
a Colorado nonprofit corporation,  
its sole member and manager

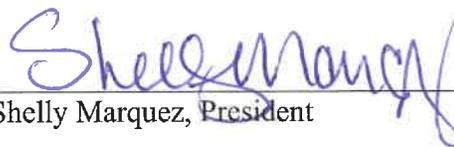
By:   
Shelly Marquez, President



Exhibit I  
(District Improvements)

Project Description

Estimated/Actual Cost

## FACILITIES ACQUISITION AGREEMENT

This **FACILITIES ACQUISITION AGREEMENT** (“**Agreement**”) is made and entered into this 16th day of March, 2023 (“**Effective Date**”), by and between **LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”) and **MHMP 20 LORETTO LLLP**, a Colorado limited liability limited partnership (the “**Buyer**”) (individually, each a “**Party**” and collectively the “**Parties**”).

### RECITALS

A. The Buyer entered into that certain Contract to Buy and Sell Real Estate (Land) and related Addendum to Contract to Buy and Sell Real Estate (Vacant Land) dated December 14, 2022 (as amended from time to time, the “**PSA**”), with **THB Loretto Land LLC**, a Colorado limited liability company (the “**Seller**”), pursuant to which the Buyer is the owner of property within a project located in the City and County of Denver (the “**City**”), Colorado, known as Loretto Heights (the “**Property**”).

B. The Property is within the boundaries and/or service area of the District.

C. Pursuant to the authority granted to the District by its Service Plan, as approved by the City on August 26, 2019, as it may be amended from time to time (the “**Service Plan**”), the District is authorized to construct, acquire and install public improvements, including water, sanitation (including storm drainage), street, safety protection, park and recreation, transportation, television relay and translation, and mosquito control and other facilities and services (“**District Improvements**”), which benefit property within the District’s boundaries and/or service area.

D. The District Improvements are necessary for the development of the Property.

E. The District has determined that for reasons of economic efficiency and timeliness it is in the best interests of the District for the ACM and/or Buyer to construct or cause construction of certain of the District Improvements.

F. The District and Loretto Heights Community Authority (the “**Authority**”) entered into a Project Management Intergovernmental Agreement dated May 25, 2021 (as amended from time to time, the “**Master IGA**”) whereby the District acts as the “**Managing District**” for the Authority and Loretto Heights Metropolitan District Nos. 2-4 (together with the District, the “**Loretto Heights Districts**”), and is responsible for coordinating the financing, construction and operation and maintenance of the District Improvements for the Authority and the Loretto Heights Districts.

G. The District and ACM previously entered into that certain Facilities Funding and Acquisition Agreement effective February 14, 2021 (as it has been and may be amended from time to time, the “**FFAA**”), pursuant to which the District and ACM have agreed to provide for the construction or acquisition of certain District Improvements, including, but not limited to the design, testing, engineering, and construction of the District Improvements, together with the

related consultant and management fees associated with the construction of the District Improvements (“**Construction Related Expenses**”), and to the extent the ACM advances monies to the District for such Construction Related Expenses or expends monies on Construction Related Expenses for District Improvements to be acquired by the Loretto Heights Districts or the Authority, the City or other local government entity, the District agreed to reimburse the ACM for such Construction Related Expenses, as provided therein.

H. Pursuant to the PSA, Buyer and Seller have agreed that, to the extent Buyer constructs any District Improvements, ACM shall retain any and all right in and to reimbursements from the District arising from the Construction Related Expenses incurred by Buyer in association with the District Improvements (the “**District Reimbursement Rights**”).

I. The District and Buyer desire to set forth their respective rights, obligations and the procedures by which Construction Related Expenses incurred by the Buyer will be verified for eligibility for reimbursement to ACM as District Reimbursement Rights and by which any District Improvements that are not otherwise dedicated to the City or other government entity will be conveyed to the District.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

### COVENANTS AND AGREEMENTS

1. Construction of District Improvements. The Buyer agrees to design, construct, and complete the District Improvements in full conformance with the design standards and specifications as established by the District and communicated to Buyer prior to commencement of the work, if applicable, and substantially in accordance with (and only to the extent set forth in) the City-approved plans (the “**Plans**”). If the District so requests, the Buyer shall provide periodic reports on the status of completion and costs of the District Improvements.

2. Compliance with District Requirements. Buyer further agrees to comply with all applicable District requirements for bidding, verification of costs and submittal of documentation required for evidencing and confirming costs associated with installation and construction of the District Improvements, which may include, but are not limited to, construction plans and drawings, construction contracts, invoices, lien waivers and other evidence of payment from contractors, as-built drawings and acceptance letters from Authorities (as such term is defined in the PSA) with respect to any such District Improvements.

3. Transfer of Completed District Improvements. Upon completion of District Improvements by Buyer or a third party contracted by Buyer, Buyer shall, subject to the City’s rights to the District Improvements, transfer the completed District Improvements by special warranty bill of sale to the District or the Authority as directed by the District (such recipient, the “**Acquiring District**” hereunder), substantially in a form attached hereto as Exhibit A and incorporated herein by this reference (“**Bill of Sale**”).

4. ACM Reimbursement Rights. With acknowledgment of consideration previously and otherwise paid, Buyer acknowledges that: (i) the construction and conveyance of the District

Improvements shall be without compensation from the District to Buyer; and (ii) District Reimbursement Rights shall remain the property of ACM and shall not be conveyed to Buyer.

5. Construction Warranty and Assignment; Limitation of Buyer's Liability.

a. Buyer shall require, in each construction contract for all or any portion of the District Improvements, that the contractor under such construction contract provide a warranty for the period of time between initial acceptance and final acceptance of the District Improvements by the appropriate accepting jurisdiction. Upon Buyer's substantial completion of any District Improvements to be perpetually owned, operated and maintained by an Acquiring District, if any, and after initial acceptance by the City, if required, Buyer shall give the Acquiring District a non-exclusive assignment of all warranties from third-party contractors and subcontractors in connection with all District Improvements caused to be constructed by Buyer and eligible to be financed by the District pursuant to their respective service plans.

b. Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that Buyer's agreement to construct or cause the construction of the District Improvements as set forth in this Agreement is done as an accommodation to the District and that, except as expressly set forth in this subsection 4(b), Buyer shall have no responsibility, liability or obligation with respect to (and the District hereby covenants not to sue Buyer for, and hereby releases the Buyer from, all liability and claims relating to or arising from) the design, engineering, construction or completion of the District Improvements, any damage, loss or injury to the District or otherwise related to any action or inaction of Buyer in connection with this Agreement, or any defect in the materials or workmanship pertaining to the District Improvements, except for any "Buyer Covered Liability," as hereinafter defined. "**Buyer Covered Liability**" means the following matters for which Buyer shall be liable to the District in connection with its performance under this Agreement: (i) any damage, loss or injury arising from the willful misconduct, bad faith, recklessness or illegal acts of the Buyer in performing or failing to perform hereunder, or (ii) damage, loss or injury arising from the fraudulent conduct of Buyer; provided, however, that any damages to which the District shall be entitled to recover for any Buyer Covered Liability shall be limited to out-of-pocket losses, costs, damages or expenses, and the District shall not be entitled to recover from Buyer any punitive or consequential losses, costs, damages or expenses or lost profits as a result of, or in connection with, any Buyer Covered Liability. Buyer makes no representation or warranty with respect to the District Improvements and shall have no liability for any defect in the materials or workmanship pertaining thereto. Upon initial acceptance of completion of any District Improvements by the District or applicable Authorities, Buyer shall provide the Acquiring District with non-exclusive assignments of warranty from all contractors that have completed the District Improvements. Upon receipt of such assignments, the acquiring District hereby agrees to look solely to the contractors engaged to construct and complete the District Improvements for any contractual violation, indemnity, warranty or guarantee relating to the District Improvements. This Subsection 4(b) shall survive expiration or termination of this Agreement.

6. Deliverables. Buyer shall deliver the following to the acquiring District at the time of or prior to the transfer of the District Improvements to the City or District(s), and at such other times upon request of the District:

(a) As-built drawings for the District Improvements to be transferred to the acquiring District;

(b) Lien waivers from each contractor in a commercially reasonable form verifying that all amounts due to contractors, subcontractors, material providers or suppliers have been paid in full except for any retainage that is held by Buyer until final acceptance of the District Improvements;

(c) Copies of all contracts, pay requests, change orders, invoices, the final AIA payment form (or similar form), canceled checks, and any other reasonably requested documentation, to verify the expenses incurred by Buyer relative to the construction and installation of District Improvements by Buyer;

(d) For any District Improvements to be perpetually owned, operated and maintained by an acquiring District, an executed Bill of Sale conveying the District Improvements to the acquiring District; and

(e) To the extent necessary, any licenses or easements held by Buyer and related to the installation, operation or maintenance of the District Improvements.

7. Verification of Costs. Upon Buyer's completion of any District Improvements, Buyer shall cooperate with ACM and the District, at no out-of-pocket cost to Buyer, to enable the District's engineer or other independent engineer licensed in the State of Colorado to prepare a cost verification of the District Improvements so that expenses can be verified as qualified Construction Related expenses that may be eligible for reimbursement to ACM as District Reimbursement Rights. Such cost verification shall include, but not necessarily be limited to, a certification by the engineer generally stating that: (i) the Improvement(s) are fit for the intended purpose; (ii) the District Improvements (including individual components) were constructed in substantial accordance with their design; and (iii) the costs for the design, construction and completion of said District Improvements are reasonable.

8. Representations. Buyer hereby represents and warrants to and for the benefit of the District as follows:

(a) The Buyer is a Colorado corporation and is qualified to do business in the State of Colorado.

(b) Buyer has the full power and legal authority to enter into this Agreement. Neither the execution and delivery of this Agreement nor the compliance by the Buyer with any of its terms, covenants or conditions is or shall become a default under any other agreement or contract to which Buyer is a party or by which Buyer is or may be bound. Buyer has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

(c) Buyer represents that it has sufficient available funds to fulfill its obligations under this Agreement.

The foregoing representations and warranties are made as of the date hereof and shall be deemed continually made by Buyer to the District for the entire term of this Agreement.

9. Term: Repose. This Agreement shall become effective on the Effective Date and shall remain in effect until all applicable District Improvements have been constructed by the Buyer, all documentation and information reasonably required for verification of Construction Related Expenses has been provided and any District Improvements constructed by Buyer have been conveyed to the City, District, or other governing local government entity.

10. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally-recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: c/o McGeady Becher PC  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203  
Phone: 303-592-4380  
Email: [legalnotices@specialdistrictlaw.com](mailto:legalnotices@specialdistrictlaw.com)

To Buyer: c/o Mercy Housing Mountain Plains  
Attn: Shelly Marquez, President  
1600 Broadway, Suite 2000  
Denver CO 80202  
Telephone: 303-830-3323  
Email: [shelly.marquez@mercyhousing.org](mailto:shelly.marquez@mercyhousing.org)

With A Copy To: Mercy Housing, Inc.  
Attn: Joe Rosenblum, General Counsel  
1600 Broadway, Suite 2000  
Denver CO 80202  
Telephone: 303-830-3409  
Email: [jrosenblum@mercyhousing.org](mailto:jrosenblum@mercyhousing.org)

All notices, demands, requests or other communications shall be effective upon such personal delivery, one (1) business day after being deposited with United Parcel Service or other nationally-recognized overnight air courier service, on the date of transmission if sent by electronically-confirmed or email transmission, or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address or contact information. Any notice of default to Buyer may not be delivered via e-mail and must be delivered by one of the other delivery methods set forth above.

11. Assignment. The Buyer shall not assign any of its rights or delegate any of its duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

12. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the Buyer any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the Buyer shall be for the sole and exclusive benefit of the District and the Buyer.

13. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, arbitration, or other proceeding to enforce the terms, covenants, or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

14. Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the District Court in and for the City and County of Denver, Colorado.

15. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

16. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

17. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

19. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

20. Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto, provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the District or the Buyer unless the same is in writing and duly executed by the Parties hereto.

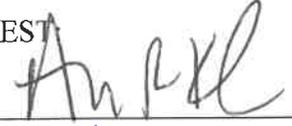
[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

**DISTRICT:**

**LORETTO HEIGHTS METROPOLITAN DISTRICT  
NO. 1**, a quasi-municipal corporation and political  
subdivision of the State of Colorado

By:  \_\_\_\_\_  
Mark Witkiewicz President

ATTEST  
  
\_\_\_\_\_  
Andrew K Klein, Secretary

**BUYER:**

**MHMP 20 LORETTO LLLP**,  
a Colorado limited liability limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

**DISTRICT:**

**LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado

By: \_\_\_\_\_, President

**ATTEST:**

\_\_\_\_\_, Secretary

**BUYER:**

**MHMP 20 LORETTO LLLP**,  
a Colorado limited liability limited partnership

By: Shelly Marez  
Name: Shelly Marez  
Title: President



Exhibit I  
(District Improvements)

Project Description

Estimated/Actual Cost

**AGREEMENT AND ASSIGNMENT REGARDING  
METROPOLITAN DISTRICT PAYMENT**

THIS AGREEMENT AND ASSIGNMENT REGARDING METROPOLITAN DISTRICT PAYMENTS (“**Agreement**”) is made and entered into as of March 11<sup>th</sup>, 2023, by and between MHMP 20 LORETTO LLLP, a Colorado limited liability limited partnership (“**Buyer**”), and ACM LORETTO VI LLC, a Delaware limited liability company (“**Seller**”). Individually, Buyer and Seller may be referred to herein as a “**Party**” and collectively as the “**Parties**”.

**RECITALS:**

A. Seller and Buyer, as assigned from Mercy Housing Mountain Plains, a Colorado nonprofit corporation, previously executed that certain Contract to Buy and Sell Real Estate (Land) and related Addendum to Contract to Buy and Sell Real Estate (Vacant Land) dated December 16, 2022 (as amended from time to time, the “**Purchase Contract**”), pursuant to which Buyer has acquired from Seller record title to certain real property located in the City and County of Denver (“**City**”), Colorado, as more particularly described on Exhibit A hereto and incorporated herein by this reference (the “**Property**”).

B. Pursuant to the Purchase Contract, the Parties desire to enter into this Agreement to assign from Buyer to Seller any and all interests in any reimbursements, credits, payments or other amounts payable by the District on account of the construction of the public improvements, which may include but is not limited to, certain water, sanitary sewer (including storm drainage), street, safety protection, park and recreation, transportation, fire protection, television relay and translation, and mosquito control improvements and facilities (collectively, the “**District Improvements**”) that are eligible for acquisition and reimbursement by Loretto Heights Metropolitan District No. 1 (the “**District**”) in accordance with authority granted under the District’s Service Plan as approved by the City.

C. In addition to this Agreement, the Parties have each entered into separate agreements with the District to address their respective rights and obligations relative to construction of and provision of information and documentation for the reimbursement of the expenses associated with provision of the District Improvements as such matters relate directly to the relationship between the District and the Parties, including that certain Facilities Acquisition Agreement between the District and Buyer dated of even date herewith (as it may be amended from time to time, the “**Buyer Agreement**”) and that certain Facilities Funding and Acquisition Agreement between the District and Seller dated February 14, 2020 (as it has been and may be amended from time to time, the “**Seller Agreement**” and, collectively with the Buyer Agreement, the “**District Agreements**”).

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

1. Definitions. Capitalized words used in this Agreement shall have the meaning ascribed to them in the Purchase Contract, unless the context clearly requires otherwise.

2. Transfer of Completed District Improvements. All District Improvements constructed or caused to be constructed by Buyer shall be constructed substantially in accordance with the City-approved plans (the “**Plans**”) and the Buyer Agreement.

3. Seller Reimbursement Rights. Buyer acknowledges that: (i) the construction and conveyance of the District Improvements shall be without compensation to Buyer; and (ii) any reimbursements, credits, payments, or other amounts payable by the District on account of the District Improvements or any other matters related thereto (“**Metro District Payments**”) shall remain the property of the Seller and shall not be conveyed to Buyer. Buyer hereby assigns to Seller all of Buyer’s right, title and interest, if any, in and to reimbursements, credits, payments, or other amounts payable by the District on account of the District Improvements or any other matters related thereto. Upon request of Seller or the District, Buyer will execute any and all additional documents that may be reasonably required to confirm Buyer’s waiver of any right to Metro District Payments; provided, that such documents shall be subject to Buyer’s approval, which shall not be unreasonably withheld, delayed or conditioned and shall be without warranty or representation and at no cost or liability to Buyer.

4. Verification of Costs. For each development phase of the Property, Buyer shall deliver to the District the documentation and information reasonably required pursuant to the Buyer Agreement, including copies of all of the following documentation that has been entered into or generated by Buyer in connection with Buyer’s construction of the District Improvements (to the extent reasonably required by the District): contracts, change orders, checks, invoices from third-party contractors and subcontractors, receipts, lien waivers and as-built drawings. Upon Buyer’s completion of any District Improvements, Buyer shall cooperate with Seller and the District, at no out-of-pocket cost to Buyer, to enable the District’s engineer or other independent engineer licensed in the State of Colorado to prepare a cost verification of the District Improvements so that the District Improvements can be transferred to the District upon completion thereof. Such cost verification shall include, but not necessarily be limited to, a certification by the District’s engineer generally stating that: (i) the District Improvement(s) are fit for the intended purpose; (ii) the District Improvements (including individual components) were constructed in substantial accordance with their design; and (iii) the costs for the design, construction and completion of said District Improvements are reasonable. Notwithstanding anything to the contrary contained in this Agreement, and for the avoidance of doubt, the Parties acknowledge and agree that the cost of compliance with any City requirements for approval of the District, including but not limited to any requirement for interim maintenance and for warranty work, shall be the sole responsibility of Seller, Buyer shall have no financial obligations or other obligations related thereto, and Seller shall be entitled to reimbursement therefor as a part of the Metro District Payments.

5. Release.

a. Buyer hereby waives and releases any present or future claims it might have against the District or the District’s elected or appointed officers, employees, agents, or contractors (the “**Released Persons**”) in any manner related to or connected with the Metro

District Payments (excepting any claims arising from the negligence or intentional acts of the District, the District's Released Persons, or the District's contractors).

b. Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that Buyer's agreement to construct or cause the construction of the District Improvements as set forth in this Agreement is done as an accommodation to the Seller and that, except as expressly set forth in this subsection 5(b), Buyer shall have no responsibility, liability or obligation with respect to (and the Seller hereby covenants not to sue Buyer for, indemnifies Buyer against claims by third parties, and hereby releases the Buyer from, all liability and claims relating to or arising from) the design, engineering, construction or completion of the District Improvements, any damage, loss or injury to the Seller or otherwise related to any action or inaction of Buyer in connection with this Agreement, or any defect in the materials or workmanship pertaining to the District Improvements, except for any "Buyer Covered Liability," as hereinafter defined. "**Buyer Covered Liability**" means the following matters for which Buyer shall be liable to the Seller in connection with its performance under this Agreement: (i) any damage, loss or injury arising from the willful misconduct, bad faith, recklessness or illegal acts of the Buyer in performing or failing to perform hereunder, or (ii) damage, loss or injury arising from the fraudulent conduct of Buyer; provided, however, that any damages to which the Seller shall be entitled to recover for any Buyer Covered Liability shall be limited to out-of-pocket losses, costs, damages or expenses, and the Seller shall not be entitled to recover from Buyer any punitive or consequential losses, any costs, any damages or any expenses or any lost profits as a result of, or in connection with, any Buyer Covered Liability. Buyer makes no representation or warranty with respect to the District Improvements and shall have no liability for any defect in the materials or workmanship pertaining thereto. Upon initial acceptance of completion of any District Improvements by the District or applicable "Governmental Authorities" (as such term is defined in the Contract), Buyer shall provide Seller and the District with non-exclusive assignments of warranty from all contractors that have completed the District Improvements. Upon receipt of such assignments, the Seller hereby agrees to look solely to the contractors engaged to construct and complete the District Improvements for any contractual violation, indemnity, warranty or guarantee relating to the District Improvements. This subsection 5(b) shall survive expiration or termination of this Agreement.

6. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via FedEx or other nationally recognized overnight air courier service, via email with a hard copy immediately following thereafter by United States mail, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To Seller:

ACM LORETTO VI LLC  
4100 East Mississippi Avenue, Suite 500  
Glendale, CO 80246  
Attn: Andrew R. Klein  
Telephone: (303) 984-9800

Email: [aklein@westsideinv.com](mailto:aklein@westsideinv.com)

With Copy to: Westside Property Investment Company, Inc.  
4100 East Mississippi Avenue, Suite 500  
Glendale, CO 80246  
Telephone: (303) 984-9800  
Attn: Michael J. Schroeder, Esq.  
Email: [mschroeder@westsideinv.com](mailto:m Schroeder@westsideinv.com)

To Buyer: MHMP 20 LORETTO LLLP  
Mercy Housing Mountain Plains  
Attn: Shelly Marquez, President  
1600 Broadway, Suite 2000  
Denver CO 80202  
Telephone: 303-830-3323  
Email: [shelly.marquez@mercyhousing.org](mailto:shelly.marquez@mercyhousing.org)

With A Copy To: Mercy Housing, Inc.  
Attn: Joe Rosenblum, General Counsel  
1600 Broadway, Suite 2000  
Denver CO 80202  
Telephone: 303-830-3409  
Email: [jrosenblum@mercyhousing.org](mailto:jrosenblum@mercyhousing.org)

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with FedEx or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the parties shall have the right from time to time to change its address. Any notice of default to Buyer may not be delivered via e-mail and must be delivered by one of the other delivery methods set forth above.

7. Default/Remedies. In the event of a breach or default of this Agreement by either party, the non-defaulting party shall give the defaulting party notice of such breach or default (“**Default Notice**”) identifying the nature of the breach or default. If the defaulting party fails to cure any such breach or default within ten (10) business days after receipt of the Default Notice, then the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or actual monetary damages (but excluding incidental, consequential and punitive damages). In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such proceeding shall be awarded its reasonable attorneys’ fees.

8. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado without regard to conflicts of law principles that would result in the application of any law other than Colorado law. Exclusive venue for all actions arising out of this Agreement shall be in the district court in and for City and County of Denver, Colorado.

9. Inurement; Transfer of the Property. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns and shall survive closing, and shall not merge with the conveyances of the Property as between Buyer and Seller,

10. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the Buyer and Seller any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Buyer and Seller shall be for the sole and exclusive benefit of the Buyer and Seller.

11. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

13. Time. Time is of the essence with respect to the rights and obligations set forth in this Agreement.

14. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

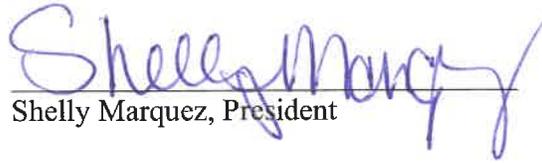
**BUYER:**

MHMP 20 LORETTO LLLP,  
a Colorado limited liability limited partnership

By: MHMP 20 Loretto GP LLC,  
a Colorado limited liability company,  
its general partner

By: Mercy Housing Mountain Plains,  
a Colorado nonprofit corporation,  
its sole member and manager

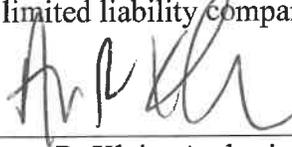
By:

  
Shelly Marquez, President

[Seller's signature page follows]

**SELLER:**

**ACM LORETTO VI LLC,**  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Andrew R. Klein, Authorized Signatory

**EXHIBIT A**  
**(Legal Description)**

LOT 7, BLOCK 3,  
LORETTO HEIGHTS FILING NO. 1,  
CITY AND COUNTY OF DENVER,  
STATE OF COLORADO.

## ASSIGNMENT AGREEMENT

**THIS AGREEMENT AND ASSIGNMENT REGARDING METROPOLITAN DISTRICT PAYMENTS (“Agreement”)** is made and entered into as of March 16, 2023, by and between **MHMP 20 LORETTO LLLP**, a Colorado limited liability limited partnership (“**Buyer**”), and **ACM LORETTO VI LLC**, a Delaware limited liability company (“**ACM**”). Individually, Buyer and ACM may be referred to herein as a “**Party**” and collectively as the “**Parties**”.

### RECITALS:

A. THB Loretto Land LLC, a Colorado limited liability company (“**Seller**”), and Buyer, previously executed that certain Contract to Buy and Sell Real Estate (Land) and related Addendum to Contract to Buy and Sell Real Estate (Vacant Land) dated December 14, 2022 (as amended from time to time, the “**Purchase Contract**”), pursuant to which Buyer has acquired from Seller record title to certain real property located in the City and County of Denver (“**City**”), Colorado, as more particularly described on **Exhibit A** hereto and incorporated herein by this reference (the “**Property**”).

B. Pursuant to the Purchase Contract, the Parties desire to enter into this Agreement to assign from Buyer to ACM any and all interests in any reimbursements, credits, payments or other amounts payable by the District on account of the construction of the public improvements, which may include but is not limited to, certain water, sanitary sewer (including storm drainage), street, safety protection, park and recreation, transportation, fire protection, television relay and translation, and mosquito control improvements and facilities (collectively, the “**District Improvements**”) that are eligible for acquisition and reimbursement by Loretto Heights Metropolitan District No. 1 (the “**District**”) in accordance with authority granted under the District’s Service Plan as approved by the City.

C. In addition to this Agreement, the Parties have each entered into separate agreements with the District to address their respective rights and obligations relative to construction of and provision of information and documentation for the reimbursement of the expenses associated with provision of the District Improvements as such matters relate directly to the relationship between the District and the Parties, including that certain Facilities Acquisition Agreement between the District and Buyer dated as of March 16, 2023 (as it may be amended from time to time, the “**Buyer Agreement**”) and that certain Facilities Funding and Acquisition Agreement between the District and ACM dated February 14, 2020 (as it has been and may be amended from time to time, the “**ACM Agreement**” and, collectively with the Buyer Agreement, the “**District Agreements**”).

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

1. Definitions. Capitalized words used in this Agreement shall have the meaning ascribed to them in the Purchase Contract, unless the context clearly requires otherwise.

2. Transfer of Completed District Improvements. All District Improvements constructed or caused to be constructed by Buyer shall be constructed substantially in accordance with the City-approved plans (the “**Plans**”) and the Buyer Agreement.

3. ACM Reimbursement Rights. Buyer acknowledges that: (i) the construction and conveyance of the District Improvements shall be without compensation to Buyer; and (ii) any reimbursements, credits, payments, or other amounts payable by the District on account of the District Improvements or any other matters related thereto (“**Metro District Payments**”) shall remain the property of the ACM and shall not be conveyed to Buyer. Buyer hereby assigns to ACM all of Buyer’s right, title and interest, if any, in and to reimbursements, credits, payments, or other amounts payable by the District on account of the District Improvements or any other matters related thereto. Upon request of ACM or the District, Buyer will execute any and all additional documents that may be reasonably required to confirm Buyer’s waiver of any right to Metro District Payments; provided, that such documents shall be subject to Buyer’s approval, which shall not be unreasonably withheld, delayed or conditioned and shall be without warranty or representation and at no cost or liability to Buyer.

4. Verification of Costs. For each development phase of the Property, Buyer shall deliver to the District the documentation and information reasonably required pursuant to the Buyer Agreement, including copies of all of the following documentation that has been entered into or generated by Buyer in connection with Buyer’s construction of the District Improvements (to the extent reasonably required by the District): contracts, change orders, checks, invoices from third-party contractors and subcontractors, receipts, lien waivers and as-built drawings. Upon Buyer’s completion of any District Improvements, Buyer shall cooperate with ACM and the District, at no out-of-pocket cost to Buyer, to enable the District’s engineer or other independent engineer licensed in the State of Colorado to prepare a cost verification of the District Improvements so that the District Improvements can be transferred to the District upon completion thereof. Such cost verification shall include, but not necessarily be limited to, a certification by the District’s engineer generally stating that: (i) the District Improvement(s) are fit for the intended purpose; (ii) the District Improvements (including individual components) were constructed in substantial accordance with their design; and (iii) the costs for the design, construction and completion of said District Improvements are reasonable. Notwithstanding anything to the contrary contained in this Agreement, and for the avoidance of doubt, the Parties acknowledge and agree that the cost of compliance with any City requirements for approval of the District, including but not limited to any requirement for interim maintenance and for warranty work, shall be the sole responsibility of ACM, Buyer shall have no financial obligations or other obligations related thereto, and ACM shall be entitled to reimbursement therefor as a part of the Metro District Payments.

5. Release.

a. Buyer hereby waives and releases any present or future claims it might have against the District or the District’s elected or appointed officers, employees, agents, or contractors (the “**Released Persons**”) in any manner related to or connected with the Metro District Payments (excepting any claims arising from the negligence or intentional acts of the District, the District’s Released Persons, or the District’s contractors).

b. Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that Buyer's agreement to construct or cause the construction of the District Improvements as set forth in this Agreement is done as an accommodation to the ACM and that, except as expressly set forth in this subsection 5(b), Buyer shall have no responsibility, liability or obligation with respect to (and the ACM hereby covenants not to sue Buyer for, indemnifies Buyer against claims by third parties, and hereby releases the Buyer from, all liability and claims relating to or arising from) the design, engineering, construction or completion of the District Improvements, any damage, loss or injury to the ACM or otherwise related to any action or inaction of Buyer in connection with this Agreement, or any defect in the materials or workmanship pertaining to the District Improvements, except for any "Buyer Covered Liability," as hereinafter defined. "**Buyer Covered Liability**" means the following matters for which Buyer shall be liable to the ACM in connection with its performance under this Agreement: (i) any damage, loss or injury arising from the willful misconduct, bad faith, recklessness or illegal acts of the Buyer in performing or failing to perform hereunder, or (ii) damage, loss or injury arising from the fraudulent conduct of Buyer; provided, however, that any damages to which the ACM shall be entitled to recover for any Buyer Covered Liability shall be limited to out-of-pocket losses, costs, damages or expenses, and the ACM shall not be entitled to recover from Buyer any punitive or consequential losses, any costs, any damages or any expenses or any lost profits as a result of, or in connection with, any Buyer Covered Liability. Buyer makes no representation or warranty with respect to the District Improvements and shall have no liability for any defect in the materials or workmanship pertaining thereto. Upon initial acceptance of completion of any District Improvements by the District or applicable "Governmental Authorities" (as such term is defined in the Contract), Buyer shall provide ACM and the District with non-exclusive assignments of warranty from all contractors that have completed the District Improvements. Upon receipt of such assignments, the ACM hereby agrees to look solely to the contractors engaged to construct and complete the District Improvements for any contractual violation, indemnity, warranty or guarantee relating to the District Improvements. This subsection 5(b) shall survive expiration or termination of this Agreement

6. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via FedEx or other nationally recognized overnight air courier service, via email with a hard copy immediately following thereafter by United States mail, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To ACM:

ACM LORETTO VI LLC  
4100 East Mississippi Avenue, Suite 500  
Glendale, CO 80246  
Attn: Andrew R. Klein  
Telephone: (303) 984-9800  
Email: [aklein@westsideinv.com](mailto:aklein@westsideinv.com)

With Copy to: Westside Property Investment Company, Inc.  
4100 East Mississippi Avenue, Suite 500  
Glendale, CO 80246  
Telephone: (303) 984-9800  
Attn: Michael J. Schroeder, Esq.  
Email: [mschroeder@westsideinv.com](mailto:mschroeder@westsideinv.com)

To Buyer: c/o Mercy Housing Mountain Plains  
Attn: Shelly Marquez, President  
1600 Broadway, Suite 2000  
Denver CO 80202  
Telephone: 303-830-3323  
Email: [shelly.marquez@mercyhousing.org](mailto:shelly.marquez@mercyhousing.org)

With A Copy To: Mercy Housing, Inc.  
Attn: Joe Rosenblum, General Counsel  
1600 Broadway, Suite 2000  
Denver CO 80202  
Telephone: 303-830-3409  
Email: [jrosenblum@mercyhousing.org](mailto:jrosenblum@mercyhousing.org)

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with FedEx or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the parties shall have the right from time to time to change its address. Any notice of default to Buyer may not be delivered via e-mail and must be delivered by one of the other delivery methods set forth above.

7. Default/Remedies. In the event of a breach or default of this Agreement by either party, the non-defaulting party shall give the defaulting party notice of such breach or default (“**Default Notice**”) identifying the nature of the breach or default. If the defaulting party fails to cure any such breach or default within ten (10) business days after receipt of the Default Notice, then the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or actual monetary damages (but excluding incidental, consequential and punitive damages). In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such proceeding shall be awarded its reasonable attorneys’ fees.

8. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado without regard to conflicts of law principles that would result in the application of any law other than Colorado law. Exclusive venue for all actions arising out of this Agreement shall be in the district court in and for City and County of Denver, Colorado.

9. Inurement; Transfer of the Property. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns and shall survive closing, and shall not merge with the conveyances of the Property as between Buyer and Seller,
10. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the Buyer and ACM any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Buyer and ACM shall be for the sole and exclusive benefit of the Buyer and ACM.
11. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.
12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.
13. Time. Time is of the essence with respect to the rights and obligations set forth in this Agreement.
14. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**BUYER:**

**MHMP 20 LORETTO LLLP,**  
a Colorado limited liability limited partnership

By: Shelly Moroney  
Name: Shelly Moroney  
Its: President  
Date: 3/16/2023

**ACM:**

**ACM LORETTO VI LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

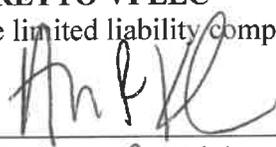
· **BUYER:**

**MHMP 20 LORETTO LLLP,**  
a Colorado limited liability limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**ACM:**

**ACM LORETTO VI LLC**  
a Delaware limited liability company

By:  \_\_\_\_\_  
Name: Andrew R. K. G.  
Its: Authorized Signatory  
Date: 3/14/2023

**EXHIBIT A**

**PROPERTY**

LOT 1, BLOCK 6,  
LORETTO HEIGHTS FILING NO. 1,  
CITY AND COUNTY OF DENVER,  
STATE OF COLORADO.