EXHIBIT A
(Legal Description)

Lots 83 and 84 and part of Lots 85 and 86 in Square 615 in the subdivision made by Kate E. Lauritzen and others, as per plat recorded in Liber W.B.M. at folio 83 of the Records of the Office of the Surveyor for the District of Columbia and being bounded and described as follows:

BEGINNING for the same at the northeast corner of Lot 83, being also the southwest intersection of the south line of Bates Street and the west line of North Capitol Street and running thence along the west line of North Capitol Street:

Due South, 40.13 feet to a point; thence departing said street the following four courses and distances

Due West 74.00 feet to a point; thence

Due South 26.54 feet to a point; thence

Due West 5.00 feet to a point; thence

Due South 13.33 feet to the southerly line of Lot 86; thence

Due West along the south line of Lot 86, 21.00 feet to the southwest corner of Lot 86 and the east line of a public alley; thence along said line

Due North along the west line of Lots 83 through 86, 80.00 feet to the northwest corner of Lot 83 and the south line of Bates Street; thence

Due East along the south line of Bates Street, 100.00 feet to the point of beginning

NOTE: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 842 in Square 615.

EXHIBIT B

Affordable Housing Covenant

AFFORDABLE HOUSING COVENANT

Truxton Circle Parcel

1520-1522 North Capitol Street, NW

THIS AFFORDABLE HOUSING COVENANT (the "**Covenant**") is made as of this 26 day of November, 2019 ("**Effective Date**"), by Cycle House, LLC, a District of Columbia limited liability company and its successors and assigns (the "**Developer**") having an address of 6174 Commadore Court, Columbia, MD, 21045, for the benefit of the District of Columbia, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the "**District**").

RECITALS

R-1. District is the fee simple owner of certain real property located in the District of Columbia as further described in **Exhibit A** (the "**Property**").

R-2. District has determined to further its public policy of increasing the affordable housing stock in the District of Columbia and, in particular, on the Property.

R-3. District and Developer entered into that certain Land Disposition Agreement dated as of even date hereof, as the same may be amended ("**Development Agreement**") whereby District and Developer agreed upon the terms under which District agreed to ground lease the Property to Developer and for Developer to develop and construct the Project (defined below) and to sell and/or manage and lease the Affordable Units to be constructed in the Project.

R-4. In accordance with the Development Agreement and contemporaneously with the execution of this Covenant, District has conveyed or will convey the Property to Developer.

R-5. District and Developer desire to set forth herein the terms, restrictions, and conditions upon which Developer will construct, maintain, sell and/or lease the Affordable Units in the Project.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the District and Developer hereby declare, covenant and agree as follows:

ARTICLE I
DEFINITIONS

For the purposes of this Covenant, the capitalized terms used herein shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

Acknowledgment of Covenant: is that certain Acknowledgment of Covenant executed by a Qualified Purchaser, in such form as the Agency requires.

Affirmative Fair Housing Marketing Plan: means Developer's plan for marketing the rental or initial sale of the Affordable Units, as approved by the Agency pursuant to Section 2.3.

Affordability Period: is defined in Article X.

Affordability Requirement: is the requirement that all of the Residential Units to be contained in the Project are to be Affordable Units and allocated as follows: (i) two (2) of the Affordable Units shall be reserved for Households with an Annual Household Income at or below 30% MFI; (ii) three (3) of the Affordable Units shall be reserved for Households with an Annual Household Income at or below 50% MFI; and (iii) eleven (11) of the Affordable Units shall be reserved for Households with an Annual Household income at or below 60% of MFI.

Affordable Unit: means each Residential Unit that will be used to satisfy the Affordability Requirement, all of which shall be identified in the Affordable Unit Index.

Affordable Unit Index: is an index of the Affordable Units contained in the Project that identifies: (i) unit number (or similar identifier) and floor for each Affordable Unit and whether each Affordable Unit is a Rental Affordable Unit or For Sale Affordable Unit; (ii) the Designated Affordability Level of each Affordable Unit; (iii) the approximate square footage and number of bedrooms of each Affordable Unit and a schematic drawing showing the layout of each Affordable Unit; (iv) a listing or schedule of the standard and upgrade options of finishes, fixtures, equipment, and appliances for all Residential Units; (v) a listing or schedule of the amenities, services, upgrades, parking, and other facilities that will be offered as an option at an additional upfront or recurring cost or fee to the Residential Units; and (vi) residential floor plans showing the location of each Residential Unit.

Affordable Unit Owner: means a Qualified Purchaser who own(s) a For Sale Affordable Unit.

Affordable Unit Tenant: means a Qualified Tenant who lease(s) a Rental Affordable Unit.

Agency: means, as of the Effective Date, the D.C. Department of Housing and Community Development, pursuant to Mayor's Order 2009-112 (effective June 18, 2009), or such other agency of the District of Columbia government that may subsequently be delegated the authority of the Mayor to monitor, enforce, or otherwise administer the affordable housing requirements of the District of Columbia government.

Annual Household Income: means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR § 5.609, as may be amended, or as otherwise set forth by the Agency.

Annual Report: has the meaning given in Section 4.10.

Business Day: means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government.

Certification of Income, Affordability and Housing Size: means a certification made

by a Certifying Entity that verifies that (a) the Annual Household Income of a Household meets the Designated Affordability Level for an applicable Affordable Unit, and (b) the Household meets the requirements of Section 4.5 or Section 5.2.1, as applicable, in such form as the Agency approves.

Certification of Inspection: means a certification by Developer that it has performed or caused to be performed an inspection of a Rental Affordable Unit and that, to the best of Developer's knowledge, such Rental Affordable Unit is in compliance with all applicable statutory and regulatory requirements, in such form as the Agency approves.

Certification of Residency: means a certification made by an Affordable Unit Owner that states that the Affordable Unit Owner occupies the Affordable Unit as its principal residence, in such form as the Agency approves.

Certifying Entity: means an entity or entities approved by the Agency pursuant to Section 2.4.

Conflict: is defined in Section 12.11.

Construction and Use Covenant: means that certain Construction and Use Covenant, dated as of even date hereof, and recorded in the Land Records against the Property.

Declaration of Eligibility: means a declaration executed by a Household prior to its purchase, initial rental or subsequent rent renewal, as applicable, of an Affordable Unit, in a form approved by the Agency, that shall be given to the Agency, Owner, and the Certifying Entity representing and warranting the following: (a) the Household is a Qualified Purchaser or Qualified Tenant and has disclosed all of its Annual Household Income to the Certifying Entity and has provided reasonably satisfactory documentation evidencing such Annual Household Income, (b) the Household's Annual Household Income is at or below the Maximum Annual Household Income for the applicable Affordable Unit, (c) the Household has been informed of its rights and obligations under this Covenant, (d) the Household intends to occupy the Affordable Unit as its principal residence, (e) the Household size meets the Occupancy Standard for the Affordable Unit, (f) neither the Household, nor any person within the Household, has an ownership interest in any other residential real property or residential cooperative or, if they do, they will divest such interest and will provide satisfactory proof of the same to the Agency before closing on the purchase of or signing lease for the Affordable Unit and (g) any other reasonable and customary representations requested by the Agency.

Designated Affordability Level: means the percentage of MFI assigned to each Affordable Unit and used to determine the Maximum Annual Household Income for prospective Qualified Purchasers or Qualified Tenants, as applicable.

Developer: is identified in the preamble of this Covenant.

Federal Affordability Restrictions: is defined in Section 12.11.

For Sale Affordable Unit: means an Affordable Unit that shall be sold solely to a Qualified Purchaser.

Household(s): means all persons who will occupy the Affordable Unit, including the purchaser's or tenant's, as applicable, spouse or domestic partner, all children under eighteen (18) years of age, and all other persons over eighteen (18) years of age who will be occupying the Affordable Unit. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements as allowable by this Covenant.

Household Selection Plan: means Developer's plan for selecting Qualified Tenants or Qualified Purchasers for the rental or initial sale of the Affordable Units, as approved by the Agency pursuant to Section 2.3.

Housing Cost: means (a) for Rental Affordable Units, the total monthly payments for rent and Utilities, less any rental subsidies paid on behalf of that Household, and (b) for For Sale Affordable Units, the total monthly mortgage payments, property tax, hazard insurance, if applicable, Utilities and condominium or homeowner fees required for purchase and occupancy.

Housing Locator Website: means a website established or designated by the Agency pursuant to the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; D.C. Official Code § 42-2131, *et seq*.).

HUD: means the United States Department of Housing and Urban Development.

Land Records: means the real property records for the District of Columbia located in the Recorder of Deeds.

Market-Rate Unit: is each Residential Unit that is not an Affordable Unit.

Maximum Allowable Rent: as defined in Section 4.4.2.

Maximum Annual Household Income: is the maximum Annual Household Income of a Household occupying an Affordable Unit as indicated on the then-current Rent and Price Schedule.

Maximum Resale Price: is the maximum resale price of a For-Sale Affordable Unit as determined pursuant to the procedures contained in **Schedule 1** attached hereto.

Maximum Sales Price: as defined in Section 5.1.1.

Median Family Income or **MFI**: means the median family income for a household of four persons in the "Washington Metropolitan Statistical Area" as periodically published by HUD, and adjusted for Household size without regard to any adjustments made by HUD for the purposes of the programs it administers. MFI is also known as Area Median Income or AMI.

Minimum Annual Household Income: is the minimum Annual Household Income of a Household occupying a Rental Affordable Unit as indicated on the then-current Rent and Price Schedule.

Mortgage: means a mortgage, deed of trust, mortgage deed, or such other classes of instruments as are commonly given to secure a debt under the laws of the District of Columbia.

Mortgagee: means the holder of a Mortgage.

OAG: means the Office of the Attorney General for the District of Columbia.

Occupancy Standard: means the minimum number of individuals in a Household permitted to occupy any given Affordable Unit, as identified in the following chart:

Affordable Unit Size (Number of Bedrooms)	Minimum Number of Individuals in a Household
Studio/Efficiency	1
1	1
2	2
3	3
4	4
5	5
6	6

Over-Income Tenant: means a tenant of a Rental Affordable Unit who, at the time of execution of the lease qualified as an Affordable Unit Tenant, but, at the time of lease renewal, has an Annual Household Income greater than one hundred forty percent (140%) of the applicable Maximum Annual Household Income for the applicable Rental Affordable Unit.

Owner: means, in the context of Rental Affordable Units, Developer, and in the context of For Sale Affordable Units, Developer for so long as Developer owns the applicable For Sale Affordable Unit, and then thereafter, the Affordable Unit Owner that owns such For Sale Affordable Unit.

Person: means any individual, corporation, limited liability company, trust, partnership, association, or other legal entity.

Project: means the structures, landscaping, hardscape, and site improvements to be constructed or placed on the Property pursuant to the Development Agreement.

Property: is defined in the Recitals.

Qualified Purchaser: means a Household that (i) at the time of purchase, has an Annual Household Income, as certified by the Certifying Entity, less than or equal to the Maximum Annual Household Income for the applicable Affordable Unit, (ii) shall occupy the Affordable Unit as its principal residence during its ownership of such Affordable Unit, (iii) shall not permit occupancy of the Affordable Unit by any other Person, except with the prior written consent of the Agency, (iv) shall use, occupy, hold, and sell the Affordable Unit as an Affordable Unit subject to the Affordability Requirement (including the requirement to sell the Affordable Unit to a Qualified Purchaser) and this Covenant, and (v) at the time of purchase, meets the Occupancy Standard for the applicable Affordable Unit.

Qualified Tenant: means a Household that (i) at the time of leasing, has an Annual Household Income, as certified by the Certifying Entity, less than or equal to the Maximum Annual Household Income for the applicable Affordable Unit and at subsequent lease renewals, is not an Over-Income Tenant, (ii) shall occupy the Affordable Unit as its principal residence during its lease of such Affordable Unit, (iii) shall not permit occupancy of the Affordable Unit by any other Person, except with the prior written consent of the Agency, (iv) shall use and occupy the Affordable Unit as an Affordable Unit subject to the Affordability Requirement and this Covenant, and (v) shall occupy the Affordable Unit within the Occupancy Standard.

Rent and Price Schedule: means the Rent and Price Schedule published in the D.C. Register in accordance with the Inclusionary Zoning Implementation Amendment Act of 2006 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 et seq.), as amended, which schedule sets forth, among other things, the Maximum Sales Prices and Maximum Allowable Rent for inclusionary zoning units and Affordable Units.

Rental Affordable Unit: means an Affordable Unit that shall be leased to a Qualified Tenant.

Rental Affordable Unit Lease Rider: is that certain lease rider, which is attached to this Covenant as **Exhibit B** and incorporated herein, as the same may be amended from time to time with the written approval of the Agency.

Residential Unit: means an individual residential unit constructed as part of the Project.

Sale: is defined in Section 5.1.

Transferee: is defined in Section 5.7.

Utilities: means water, sewer, electricity, natural gas, trash, and any other fees required by the Developer, property manager, or condominium or homeowners' association in order to occupy the Affordable Unit, including, but not limited to, mandatory amenity or administrative fees, which amounts are included in the Rent and Price Schedule.

ARTICLE II
AFFORDABILITY REQUIREMENT

2.1 **Requirement of Affordability**. Developer shall construct, reserve, and either maintain and lease as Rental Affordable Units, or sell as For Sale Affordable Units that number of Affordable Units that are required by the Affordability Requirement.

2.2 **Affordable Unit Standards and Location**.

2.2.1 *Affordable Unit Index.* Developer shall submit, and District shall approve, the Affordable Unit Index in accordance with the Construction and Use Covenant. Once approved by District, the parties shall amend this Covenant to attach the Affordable Unit Index as Exhibit C. Developer shall not amend or modify the Affordable Unit Index, except to the extent permitted under Section 4.6.6, without the Agency's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. Any such approved amendment or modification as a result of

re-designations of Residential Units under Section 4.6.6 shall be recorded in the Land Records as an amendment to this Covenant, at such time as determined by the Agency.

2.2.2 *Unit Mix*. The distribution of Affordable Units shall be proportional to that of the Market-Rate Units (e.g., if the Market-Rate Units have a mix of 30% studios, 40% one-bedrooms, and 30% two-bedrooms, the Affordable Units shall have a similar mix).

2.2.3 *Size.* The Affordable Units shall be of a size substantially similar to the Market-Rate Units, provided that Affordable Units may be the smallest size of each market-rate type (studio, 1-bedroom and 2-bedroom units) and have no luxury-scaled unit counterpart.

2.2.4 *Exterior Finishes*. Exterior finishes of Affordable Units will be substantially similar to the appearance, finish, and durability of the exterior finishes of the Market-Rate Units.

2.2.5 *Interior Finishes*. Developer agrees that the interior base finishes, appliances, and equipment in the Affordable Units shall be substantially similar to the Market-Rate Units.

2.2.6 *Affordable Unit Location*. Affordable Units shall be dispersed throughout the Project and shall not be concentrated on any one floor or within a tier or section of the Project.

2.3 **Marketing Affordable Units**.

2.3.1 *Marketing Plan.* Developer shall submit to Agency an Affirmative Fair Housing Marketing Plan and Household Selection Plan that set forth its plan for marketing the Affordable Units and for selecting Households who may be Qualified Tenants or Qualified Purchasers, as applicable. The Affirmative Fair Housing Marketing Plan and Household Selection Plan shall be subject to the Agency's prior written approval and shall be submitted to and approved by the Agency prior to marketing any Affordable Units for sale or rent. Developer may contract with the Certifying Entity to implement the Affirmative Fair Housing Marketing Plan and Household Selection Plan.

2.3.2 *Housing Locator.* When an Affordable Unit becomes available for rent or for sale, Owner shall register the Affordable Unit on the Housing Locator Website and indicate the availability of such Affordable Unit and the application process for the Affordable Unit.

2.4 **Certifying Entity.** Each Owner shall select a Certifying Entity, which shall be subject to the Agency's prior written approval, not to be unreasonably withheld, conditioned, or delayed. Owner may contact the Agency with questions and information about the selection of a Certifying Entity. The Certifying Entity shall review documentation and verify a Household's Annual Household Income and Household's size in order to determine whether that Household is a Qualified Tenant or Qualified Purchaser, as applicable, for the subject Affordable Unit. If a Household is determined to be a Qualified Tenant or Qualified Purchaser, as applicable, the Certifying Entity shall issue a Certification of Income, Affordability and Housing Size for the subject Household.

ARTICLE III
USE

3.1 **Use.** Except as provided herein**,** all Affordable Unit Owners and Affordable Unit Tenants shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property as the owners or tenants of the comparable Market-Rate Units. No restrictions, requirements, or rules shall be imposed on Affordable Unit Owners or Affordable Unit Tenants that are not imposed equally on the owners or tenants of the comparable Market-Rate Units. If amenities, services, upgrades, or ownership or rental of parking and other facilities are offered as an option at an additional upfront and/or recurring cost or fee to the comparable Market-Rate Units, such amenities, services, upgrades, or ownership or rental of parking and other facilities shall be offered to the Affordable Unit Owners and Affordable Unit Tenants of comparable Affordable Units at the same upfront and/or recurring cost or fee charged to the Market-Rate Units. If there is no cost or fee charged to the owners or tenants of the comparable Market-Rate Units for such amenities, services, upgrades, or ownership or rental of parking and other facilities, there shall not be a cost or fee charged to Affordable Unit Owners or Affordable Unit Tenants of comparable Affordable Units.

3.2 **Demolition/Alteration.** Owner shall maintain, upkeep, repair, and replace interior components (including fixtures, appliances, flooring, and cabinetry) of the Affordable Unit with interior components of equal or better quality than those interior components being replaced. Owner shall not demolish or otherwise structurally alter an Affordable Unit or remove fixtures or appliances installed in an Affordable Unit other than for maintenance and repair without the prior written approval of the Agency, which approval shall be in the sole discretion of the Agency.

ARTICLE IV
RENTAL OF AFFORDABLE UNITS

4.1 **Lease of Rental Affordable Units**. In the event the Project contains Rental Affordable Units, Developer shall reserve, maintain, and lease the Rental Affordable Units to Qualified Tenants (a) in accordance with this Covenant and (b) at a rental rate at or below the Maximum Allowable Rent.

4.2 **Rental Affordable Unit Lease Requirements**.

4.2.1 *Form of Lease.* To lease a Rental Affordable Unit to a Qualified Tenant, Developer shall use a lease agreement to which is attached and incorporated a Rental Affordable Unit Lease Rider. The Rental Affordable Unit Lease Rider shall be executed by Developer and each Qualified Tenant prior to the Qualified Tenant's occupancy of the Rental Affordable Unit. Any occupant of the Rental Affordable Unit who is eighteen (18) years or older shall be a party to the lease agreement and shall execute the Rental Affordable Unit Lease Rider.

4.2.2 *Effectiveness of Lease.* The lease of a Rental Affordable Unit shall only be effective if a Rental Affordable Unit Lease Rider, a Certification of Income, Affordability and Housing Size and a Declaration of Eligibility are attached as exhibits to the lease agreement. Failure to attach the foregoing shall be deemed a default by Developer under this Covenant.

4.2.3 *Developer to Maintain Copies.* Developer shall maintain or cause to be maintained copies of all initial and renewal leases executed with Qualified Tenants for a period of no less than five (5) years from the expiration or termination of such lease.

4.3 **Rental Affordable Unit Admissions Process**.

4.3.1 *Referrals.* Developer may obtain referrals of prospective tenants of Rental Affordable Units from federal and District of Columbia agencies, provided such referrals comply with the requirements of this Covenant. In all events, before a prospective tenant leases a Rental Affordable Unit, a Certifying Entity shall certify the prospective tenant's Annual Household Income, Household size and Housing Costs for the applicable Rental Affordable Unit.

4.3.2 *Consideration of Applicants*. For the initial occupancy of the Rental Affordable Units, Developer shall select Qualified Tenants through a lottery system or other system as otherwise approved by the Agency as shall be further provided in the Affirmative Fair Housing Marketing Plan. Following the initial occupancy of the Affordable Units, Developer shall consider each applicant in the order in which received by Developer, whether received pursuant to the Affirmative Fair Housing Marketing Plan or referred pursuant to Section 4.3.1.

4.3.3 *Rejection of Applicants.* In connection with the leasing of a Rental Affordable Unit, Developer may reject any applicant if, after diligent review of such applicant's application, Developer determines in good faith that such applicant does not meet Developer's criteria to lease or occupy a Rental Affordable Unit, provided such criteria do not violate applicable District of Columbia and federal laws and is the same criteria used by Developer to lease or occupy the Market-Rate Units. In the event any rejected applicant raises an objection or challenges Developer's rejection of such applicant, Developer shall be solely responsible for ensuring that its rejection of such applicant is not in violation of federal law and/or the D.C. Human Rights Act, D.C. Official Code § 2-1400 *et seq*. Developer shall provide the Agency with all documents evidencing Developer's review and rejection of an applicant, upon the request of the Agency.

4.3.4 *Determination of Eligibility.* Each tenant seeking to occupy a Rental Affordable Unit shall have its Annual Household Income and Household eligibility verified by, and shall obtain a Certification of Income, Affordability and Housing Size from, the Certifying Entity prior to leasing such unit.

4.4 **Initial Rental Affordable Unit Lease Terms.**

4.4.1 *Term*. The term of any Rental Affordable Unit lease agreement shall be for a period of one (1) year.

4.4.2 *Establishment of Maximum Rent*. The maximum allowable monthly rent (**"Maximum Allowable Rent"**) for each Rental Affordable Unit shall be determined by the then-current Rent and Price Schedule.

4.5 **Determination of Income and Household Size.** The Annual Household Income for a prospective tenant of a Rental Affordable Unit shall be determined as of the date of the lease and any lease renewals for such Rental Affordable Unit. The Certifying Entity shall verify that (a) the Household's Annual Household Income is less than the Maximum Annual Household Income for the applicable Rental Affordable Unit; (b) the Household will not expend more than fifty percent (50%) of its monthly Annual Household Income on Housing Cost for the applicable Rental Affordable Unit; and (c) the Household meets the Occupancy Standard for the applicable Rental Affordable Unit.

4.6 **Subsequent Lease Years**

4.6.1 *Establishment of Maximum Allowable Rent*. The Maximum Allowable Rent for lease years after the first lease year shall be determined by the then-current Rent and Price Schedule.

4.6.2 *Renewal by Affordable Unit Tenant*. For each Affordable Unit Tenant who intends to renew its residential lease, Developer shall obtain the following: (i) a Declaration of Eligibility from each such Affordable Unit Tenant and (ii) a Certification of Income, Affordability and Housing Size completed by the Certifying Entity, each dated no earlier than ninety (90) days prior to the anniversary of the first day of the applicable residential lease. Developer shall not permit a renewal of an Affordable Unit Tenant's lease unless the Affordable Unit Tenant has provided Developer with these documents as required herein and the tenant is determined to be a Qualified Tenant. If the Affordable Unit Tenant fails to provide such documents, Developer shall treat such tenant as an Over-Income Tenant and may charge market-rate rent, and Developer shall designate another Residential Unit as a Rental Affordable Unit in accordance with Section 4.6.6.

4.6.3 *Annual Recertification of Tenants*. Within fifteen (15) days after receipt of an Affordable Unit Tenant's renewal documents at annual recertification, the Certifying Entity shall determine the Affordable Unit Tenant's eligibility pursuant to Section 4.5 for the subject Rental Affordable Unit and notify Affordable Unit Tenant of the same. Any Affordable Unit Tenant who meets the income and Household size requirements for the Affordable Unit at recertification will be eligible to remain in the Rental Affordable Unit and to renew his/her lease at the then-current lease rate for the particular Rental Affordable Unit.

4.6.4 *Annual Recertification of Under Income Tenants.* Upon annual recertification, any Affordable Unit Tenant whose Annual Household Income is less than the Minimum Annual Household Income for the subject Rental Affordable Unit, may elect either to (i) remain in the Rental Affordable Unit paying rent, as established by the Owner, up to the then-current Maximum Allowable Rent for the subject Rental Affordable Unit or (ii) vacate the Rental Affordable Unit at the end of the tenant's lease term.

4.6.5 *Annual Recertification of Over-Income Tenants.* Upon annual recertification, if an Affordable Unit Tenant is an Over-Income Tenant, then the Over-Income Tenant may elect to remain in the Rental Affordable Unit and pay the rent applicable to (a) a higher Designated Affordability Level, if a higher Designated Affordability Level exists for the Property, for which the Over-Income Tenant's Annual Household Income qualifies, whereupon Developer shall change the Designated Affordability Level of the Rental Affordable Unit to the higher Designated

Affordability Level pursuant to Section 4.6.6, or (b) a like-sized Market-Rate Unit, if the Over-Income Tenant's Annual Household Income does not qualify for a higher Designated Affordability Level or if a higher Designated Affordability Level does not exist at the Property, but qualifies for a like-sized Market-Rate Unit, whereupon Developer shall designate a Market-Rate Unit as a Rental Affordable Unit pursuant to Section 4.6.6.

4.6.6 *Changes to Unit Location.* Developer may only change the designation of a Rental Affordable Unit to a new Designated Affordability Level or to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit. Following any change in designation of a Rental Affordable Unit to a higher Designated Affordability Level or to a Market-Rate Unit, as applicable, Developer shall designate, as expeditiously as possible, the next available Rental Affordable Unit at that same higher Designated Affordability Level or Market-Rate Unit of similar size and location in the Property to the lower Designated Affordability Level from which the original Rental Affordable Unit had been changed in order to bring the Property in conformity with the Affordability Requirement. Developer shall notify the Agency of any such redesignation as expeditiously as possible.

4.6.7 *Rent from Subsidies*. Nothing herein shall be construed to prevent Developer from collecting rental subsidy or rental-related payments from any federal or District of Columbia agency paid to Developer and/or an Affordable Unit Tenant, or on behalf of an Affordable Unit Tenant, to the extent receipt of such payment is otherwise in compliance with the requirements of this Covenant. So long as Developer is in compliance with the requirement that a Qualified Tenant is paying no more than fifty percent (50%) of its Annual Household Income toward Maximum Allowable Rent, any rental operating subsidy or rental-related payments received by Developer, together with the Qualified Tenant's payment, may exceed the Maximum Allowable Rent for the applicable Affordable Unit.

4.7 **No Subleasing of Rental Affordable Units.** An Affordable Unit Tenant may not sublease any portion of its Rental Affordable Unit or assign its lease to any other Household and Developer shall not knowingly allow such Rental Affordable Unit to be subleased, except with the Agency's prior written consent, in the Agency's sole and absolute discretion. This prohibition includes short-term renting to, or permitting occupancy by, Persons who are not included in an Affordable Unit Tenant's Household, of all or a portion of the Affordable Unit, either directly or through services such as AirBnb or other rental agency providers.

4.8 **Representations of Affordable Unit Tenant.** By execution of a lease for a Rental Affordable Unit, each Affordable Unit Tenant shall be deemed to represent and warrant to the Agency and Developer, each of whom may rely thereon, that the Affordable Unit Tenant meets, and will continue to meet, all eligibility requirements contained in this Covenant for the rental of a Rental Affordable Unit.

4.9 **Representations of Developer.** By execution of a lease for a Rental Affordable Unit, Developer shall be deemed to represent and warrant to the Agency, which may rely on the following, that: (i) the Household is determined to be a Qualified Tenant by the Certifying Entity, and (ii) Developer is not collecting more than the Maximum Allowable Rent (except in accordance with Section 4.6.7).

4.10 **Annual Reporting Requirements.** Beginning with the first occupancy of any Affordable Unit, Developer shall provide an annual report (**"Annual Report"**) to the Agency regarding the Rental Affordable Units, which shall be submitted on each anniversary date of the Effective Date of this Covenant. The Annual Report shall include the following:

(a) the number and identification of the Rental Affordable Units, including identifying any Rental Affordable Units that had been redesignated during the previous year in accordance with Section 4.6.6, by bedroom count, that are occupied;

(b) the number and identification of the Rental Affordable Units, including identifying any Rental Affordable Units that had been redesignated during the previous year in accordance with Section 4.6.6, by bedroom count, that are vacant;

(c) for each Rental Affordable Unit that is vacant or that was vacant for a portion of the previous year, the manner in which the Rental Affordable Unit became vacant (e.g. eviction or voluntary departure) and the progress in re-leasing that unit;

(d) for each occupied Rental Affordable Unit, the names and ages of all persons in the Household, the Household size, date of initial occupancy, and total Annual Household Income as of the date of the most recent Certification of Income, Affordability and Housing Size;

(e) a sworn statement that, to the best of Developer's information and knowledge, the Household occupying each Rental Affordable Unit meets the eligibility criteria of this Covenant;

(f) a copy of each Certification of Income, Affordability and Housing Size received by Developer during the previous year for each Household renting a Rental Affordable Unit;

(g) a copy of each Declaration of Eligibility received by Developer during the previous year for each Household renting a Rental Affordable Unit;

(h) a copy of each inspection report and Certification of Inspection for each Rental Affordable Unit; and

(i) a copy of all forms, policies, procedures, and other documents reasonably requested by the Agency related to the Rental Affordable Units.

The Annual Reports shall be retained by Developer for a minimum of five (5) years after submission and shall be available, upon reasonable notice, for inspection by the Agency or its designee. Notwithstanding anything contained herein to the contrary, in the event that Developer provides a report to an agency within the District government with content substantially similar to the content of the Annual Reports described in this section, subject to the Agency's prior written approval, then the reporting requirements under this section shall be satisfied upon Developer's delivery of such report to the Agency. The Agency may request Developer to provide additional information in support of its Annual Report.

4.11 **Confidentiality.** Except as may be required by applicable law, including, without limitation to, the *District of Columbia Freedom of Information Act of 1976,* D.C. Code § 2-531 *et seq*., Developer, the Certifying Entity and the Agency shall not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report.

4.12 **Inspection Rights.** The Agency or its designee shall have the right to inspect the Rental Affordable Units, upon reasonable advance notice to Developer. If Developer receives such notice, Developer shall, in turn, give reasonable advance notice of the inspection to the tenant(s) occupying the specific Rental Affordable Unit(s). The Agency or its designee shall have the right to inspect a random sampling of the Rental Affordable Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Covenant. The Agency or its designee shall have the right to conduct audits of a random sampling of the Rental Affordable Units and associated files and documentation to confirm compliance with the requirements of this Covenant.

ARTICLE V
SALE OF AFFORDABLE UNITS

5.1 **Sale of For Sale Affordable Units**. In the event the Project contains For Sale Affordable Units, the Owner shall comply with the provisions of this Article V for the sale of such Affordable Units. Owner shall not convey all or any part of its fee interest ("**Sale**"), whether or not for consideration, in a For Sale Affordable Unit to any Person other than a Qualified Purchaser. Developer and each Affordable Unit Owner of such For Sale Affordable Unit shall only sell to a buyer who has obtained a Certification of Income, Affordability and Housing Size from a Certifying Entity and who is a Qualified Purchaser.

5.1.1 *Maximum Sales Price.* The sale price of each For Sale Affordable Unit upon an initial Sale shall not exceed the amount (the "**Maximum Sales Price**") in the then-current Rent and Price Schedule. The Developer shall submit to the Agency the proposed sales price for each For Sale Affordable Unit for approval prior to the marketing and sale of such For Sale Affordable Unit.

5.1.2 *Maximum Resale Price*. The Maximum Resale Price for each Sale subsequent to the initial Sale shall be calculated in accordance with Schedule 1 attached hereto and incorporated herein. The Agency shall approve the Maximum Resale Prices for each For Sale Affordable Unit prior to the marketing and resale of such For Sale Affordable Unit.

5.1.3 *Housing Purchase Assistance Program and other subsidized funding.* The Maximum Sales Price and Maximum Resale Price of a For Sale Affordable Unit shall be determined as described in Sections 5.1.1 and 5.1.2, regardless of the prospective buyer's use of Housing Purchase Assistance Program and/or other subsidized funding for the purchase of the For Sale Affordable Unit.

5.2 **Procedures for Sales**. The following procedures shall apply to (i) Developer with respect to the initial Sale of a For Sale Affordable Unit, and (ii) an Affordable Unit Owner of a For Sale Affordable Unit desiring to sell his or her For Sale Affordable Unit.

5.2.1 *Income Eligibility.* For any Qualified Purchaser, the Annual Household Income shall be determined within thirty (30) days of the date of the sales contract for such For Sale Affordable Unit. Each Qualified Purchaser shall have its Annual Household Income verified by and obtain a Certification of Income, Affordability and Housing Size from the Certifying Entity prior to entering into the contract. To the extent closing on the sale of a For Sale Affordable Unit will not occur within one hundred twenty (120) days after the date of the sales contract, the Annual Household Income of the prospective Qualified Purchaser shall be determined again, so that the Certification of Income, Affordability and Housing Size is dated no more than one hundred twenty (120) days prior to the closing. The Certifying Entity shall determine a Household's eligibility to purchase a For Sale Affordable Unit by verifying that (a) the Household's Annual Household Income is less than the Maximum Annual Household Income for the applicable For Sale Affordable Unit; (b) the Household will not expend more than fifty percent (50%) of its monthly Annual Household Income on Housing Cost for the applicable For Sale Affordable Unit; and (c) the Household meets the Occupancy Standard for the applicable For Sale Affordable Unit.

5.2.2 *Sale*. A Sale of a For Sale Affordable Unit shall only be effective if (a) a Declaration of Eligibility submitted by a Household to Owner and dated no more than one hundred twenty (120) days prior to the closing of such Sale is recorded prior to or contemporaneous with the deed conveying the Affordable Unit and (b) a Certification of Income, Affordability and Housing Size is completed by a Certifying Entity within one hundred twenty (120) days before closing of such Sale. Owner, Mortgagee(s), District and any title insurer shall each be a third party beneficiary of each such Declaration of Eligibility and Certification of Income, Affordability and Housing Size.

5.2.3 *Resale*. Prior to a Sale of a For Sale Affordable Unit by an Affordable Unit Owner, the Affordable Unit Owner intending to sell such unit shall (i) contact the Agency to obtain the Maximum Resale Price and (ii) refer the prospective purchaser to the Agency to initiate the process of determining their Household's eligibility to purchase the For Sale Affordable Unit.

5.3 **Closing Procedures and Form of Deed**.

5.3.1 *Owner to Provide Copy of Covenant*. Owner shall provide the Qualified Purchaser with a copy of this Covenant at least thirty (30) days prior to the closing on the Sale of the For Sale Affordable Unit. Qualified Purchasers shall execute an Acknowledgment of Covenant on or before the date of closing on such Sale.

5.3.2 *Form of Deed*. All deeds used to convey a For Sale Affordable Unit must have a fully executed Declaration of Eligibility attached and shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF _____, 20_ RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER _____, ON _____ 20___, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

5.3.3 *Deed for For Sale Affordable Unit*. A deed for a For Sale Affordable Unit shall not be combined with any other property, including parking spaces or storage facilities, unless the price of such other property is included in the Maximum Sales Price (for initial Sales) or Maximum Resale Price (for subsequent Sales).

5.3.4 *Post-Closing Obligations*. The purchaser of a For Sale Affordable Unit shall submit to the Agency within thirty (30) days after the closing a copy of the final executed Closing Disclosure, a copy of the deed recorded in the Land Records, the executed Declaration of Eligibility, the executed Certification of Income, Affordability and Housing Size, and the executed Acknowledgment of Covenant.

5.4 **Representations of Owner**. By execution of a deed for a For Sale Affordable Unit, Developer (for initial Sales) and the Affordable Unit Owner (for subsequent Sales) shall be deemed to represent and warrant to, and agree with, the Agency and, if applicable, the title company, each of whom may rely on the following: that (i) the Household has been determined to be a Qualified Purchaser of the applicable For Sale Affordable Unit by the Certifying Entity, and (ii) the sale price satisfies the terms of this Covenant.

5.5 **Annual Certification of Residency**. During the Affordability Period, the Affordable Unit Owner shall submit to the Agency annually on the anniversary of the closing date for a For Sale Affordable Unit, a Certification of Residency. The Certification of Residency shall be submitted on or with such form as may be prescribed by Agency.

5.6 **Leasing For Sale Affordable Units**. An Affordable Unit Owner shall not lease, or permit a sublease of, a For Sale Affordable Unit, or any portion thereof, without the Agency's prior written approval, in the Agency's sole and absolute discretion. If the Agency approves the lease of a For Sale Affordable Unit, then that Affordable Unit shall be leased in compliance with District (e.g. rental unit registration) and federal laws, and any applicable corporate governing documents (e.g. condominium, cooperative or home owners' association bylaws or rules) and any Mortgage or other loan documents applicable to the Affordable Unit. This prohibition includes short-term renting to, or permitting occupancy by, Persons who are not included in an Affordable Unit Owner's Household, of all or a portion of the Affordable Unit, either directly or through services such as AirBnb or other rental agency providers.

5.7 **Transfers**.

5.7.1 Except as provided in Article VIII, in the event an Affordable Unit Owner voluntarily or involuntarily transfers all or part of the For Sale Affordable Unit pursuant to operation of law, court order, divorce or death to a transferee, heir, devisee, or other personal representative of such owner of a For Sale Affordable Unit (each a "**Transferee**"), such Transferee shall be automatically bound by all of the terms, obligations, and provisions of this Covenant; and shall either: (i) occupy the For Sale Affordable Unit if he or she is a Qualified Purchaser or (ii) if the Transferee is not a Qualified Purchaser, or does not wish to, or is unable to, occupy the For Sale Affordable Unit, he or she shall promptly sell it in accordance with this Covenant.

5.7.2 In no event shall a Transferee who is not a Qualified Purchaser reside in a For Sale Affordable Unit for longer than ninety (90) days.

5.8 **Progress Reports**. Until all initial Sales of For Sale Affordable Units are completed, Developer shall provide Agency with annual progress reports, or more frequently upon request, on the status of its sale of Affordable Units.

ARTICLE VI
DEFAULT; ENFORCEMENT AND REMEDIES

6.1 **Default; Remedies.** In the event Owner, Affordable Unit Tenant, a Person or a Household defaults under any term of this Covenant and does not cure such default within thirty (30) days following written notice of such default from the Agency, the District shall have the right to seek specific performance, injunctive relief and/or other equitable remedies, including compelling the re-sale or re-leasing of an Affordable Unit and the disgorgement of rents and sale proceeds in excess of the rental rates and sale prices permitted hereunder plus ten percent (10%) of such excess amount, for defaults under this Covenant.

6.2 **No Waiver.** Any delay by the Agency in instituting or prosecuting any actions or proceedings with respect to a default hereunder, in asserting its rights or pursuing its remedies hereunder shall not operate as a waiver of such rights.

6.3 **Right to Attorney's Fees**. If the District shall prevail in any such legal action to enforce this Covenant, then Owner, Affordable Unit Tenant, Person or Household against whom the District prevails, shall pay District all of its costs and expenses, including reasonable attorney fees, incurred in connection with District efforts to enforce this Covenant. If OAG is counsel for the District in such legal action, the reasonable attorney fees shall be calculated based on the then applicable hourly rates established in the most current adjusted Laffey matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of OAG prepared for or participated in any such action.

ARTICLE VII
COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

This Covenant is and shall be binding upon the Property and each Affordable Unit and shall run with the land as of the Effective Date through the Affordability Period. The rights and obligations of District, Developer, Affordable Unit Owner, and their respective successors, heirs, and assigns shall be binding upon and inure to the benefit of the foregoing parties and their respective successors, heirs, and assigns; provided however that all rights of District pertaining to the monitoring and/or enforcement of the obligations of Developer or Affordable Unit Owner hereunder shall be retained by District, or such designee of the District as the District may so determine. No Sale, transfer, or foreclosure shall affect the validity of this Covenant, except as provided in Article VIII.

ARTICLE VIII
MORTGAGES

8.1 **Subordination of Mortgages**. All Mortgages placed against the Property, or any portion thereof, shall be subject and subordinate to this Covenant, except as provided in Section 8.3.3.

8.2 **Amount of Mortgage**. In no event shall the aggregate amount of all Mortgages placed against a For Sale Affordable Unit exceed an amount equal to one hundred five percent (105%) of the Maximum Resale Price for such unit. Prior to obtaining any Mortgage or refinancing thereof, the Affordable Unit Owner shall request from the Agency the then-current Maximum Resale Price for its For Sale Affordable Unit.

8.3 **Default of Mortgage and Foreclosure**.

8.3.1 *Notice of Default*. The Mortgagee shall provide the Agency written notice of any notice of default and notice of intent to foreclose under the Mortgage on the For Sale Affordable Unit. Notwithstanding the foregoing, in no event shall failure to provide such notices preclude the Mortgagee's right to proceed with its remedies for default under the Mortgage.

8.3.2 *Right of Purchase by the District*. The Agency shall have the right to purchase a For Sale Affordable Unit in the event a notice of default or notice of intent to foreclose for a Mortgage in first position was recorded in the Land Records. The purchase price shall be an amount that is the greater of (a) the amount of the debt secured by all Mortgages recorded against the subject For Sale Affordable Unit, including commercially reasonable costs and expenses, if any, incurred by Mortgagee as a result of a default and due and payable by the Affordable Unit Owner under the terms of the Mortgage or (b) the Maximum Resale Price. The Agency shall have thirty (30) days from the date a notice of default or a notice of foreclosure sale was recorded in the Land Records to exercise its option and to purchase the For Sale Affordable Unit. The Agency's right to purchase shall automatically expire upon the transfer of the For Sale Affordable Unit by foreclosure or deed in lieu thereof. The Agency may designate another District of Columbia agency or third party to take title to the For Sale Affordable Unit.

8.3.3 *Termination Upon Foreclosure and Assignment*. In the event title to a For Sale Affordable Unit is transferred following foreclosure by, or deed in lieu of foreclosure to a Mortgagee in first position, or a Mortgage in first position is assigned to the Secretary of HUD, the terms of this Covenant applicable to such unit shall automatically terminate subject to Sections 8.3.4 and 8.4.

8.3.4 *Apportionment of Proceeds.* In the event title to a For Sale Affordable Unit is transferred according to the provisions of Section 8.3.3, the proceeds from such foreclosure or transfer shall be apportioned and paid as follows: first, to the Mortgagee, in the amount of debt secured under the Mortgage, including commercially reasonable costs and expenses, if any, incurred by Mortgagee and due and payable by the Affordable Unit Owner under the terms of the Mortgage; second, to any junior Mortgagees, in the amount of the debt secured under such Mortgages; third, to the For Sale Affordable Unit Owner, up to the amount of the Maximum Resale Price as of the date of such sale or transfer; and fourth, to the District.

8.3.5 *Effect of Foreclosure on this Covenant*. Except as provided in Section 8.3.3, in the event of foreclosure or deed in lieu thereof, this Covenant shall not be released or terminated and

the Mortgagee or any Person who takes title to an Affordable Unit through a foreclosure sale shall become a Transferee in accordance with Section 5.7.

8.4 **Assignment of Mortgage to the Secretary of HUD.** In the event a Mortgage recorded in the first position against a For Sale Affordable Unit is assigned to the Secretary of HUD, the following shall occur upon the date of assignment: (a) the District's right to purchase, whether or not such right has been triggered, shall automatically expire and (b) the terms of this Covenant applicable to such unit shall automatically terminate pursuant to Section 8.3.3, except that upon sale of such unit by the For Sale Affordable Owner or foreclosure or deed in lieu thereof, the proceeds of such sale shall be apportioned as provided in Section 8.3.4.

ARTICLE IX
AMENDMENT OF COVENANT

Except as otherwise provided herein, neither this Covenant, nor any part hereof, can be amended, modified or released other than as provided herein by an instrument in writing executed by a duly authorized official of the Agency on behalf of the District, and by a duly authorized representative of Owner of such Affordable Unit affected by such amendment. Any amendment to this Covenant that alters the terms and conditions set forth herein shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE X
AFFORDABILITY PERIOD

All Affordable Units in the Project shall be sold or leased in accordance with the terms of this Covenant for the "Affordability Period." The "Affordability Period" for each Affordable Unit shall run for ninety-nine (99) years from the Effective Date. Notwithstanding the foregoing, this Covenant may be released and extinguished upon the approval of the Agency, in its sole and absolute discretion.

ARTICLE XI
NOTICES

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service to the applicable Person at the addresses specified in this Article, or to such other persons or locations as may be designated by the Agency or the Developer from time to time. All notices to be sent to the Agency shall be sent to the following address:

Director
Department of Housing and Community Development
1800 Martin Luther King Jr. Avenue, SE
Washington, DC 20020
Re: Housing Regulation Administration, Affordable Dwelling Unit Monitoring

All notices to be sent to Developer shall be sent to the address given in the preamble. All notices to be sent to the Affordable Unit Owner shall be sent to the address on record with the District of Columbia Office of Tax and Revenue. All notices to be sent to any Affordable Unit Tenant shall be sent to the unit number referenced in its lease. It shall be the responsibility of the applicable Person and any successor to the applicable Person to provide the Agency with a current address. The failure of the applicable Person to provide a current address shall be a default under this Covenant.

Notices shall be deemed delivered as follows: (i) if hand delivered, then on the date of delivery or refusal thereof; (ii) if by overnight courier service, then on the next business day after deposit with the overnight courier service; and (iii) if by certified mail (return receipt requested, postage pre-paid), then on the date of actual delivery or refusal thereof.

ARTICLE XII
MISCELLANEOUS

12.1 **Applicable Law: Forum for Disputes**. This Covenant shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. Owner, Affordable Unit Tenants and the District irrevocably submit to the jurisdiction of the courts of the District of Columbia (including the Superior Court of the District of Columbia) for the purposes of any suit, action, or other proceeding arising out of this Covenant or any transaction contemplated hereby. Owner, Affordable Unit Tenants, and the District irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Covenant or the transactions contemplated hereby in the courts of the District of Columbia (including the Superior Court of the District of Columbia), and hereby further waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

12.2 **Counterparts**. This Covenant may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

12.3 **Time of Performance**. All dates for performance (including cure) shall expire at 5:00 p.m. (Eastern Time) on the performance or cure date. A performance date which falls on a Saturday, Sunday or District holiday is automatically extended to the next Business Day.

12.4 **Waiver of Jury Trial**. TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS COVENANT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.5 **Further Assurances**. Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Covenant; provided that such additional documents and instruments do not materially increase the obligations or burdens upon the second party.

12.6 **Severability**. If any provision of this Covenant is held to be unenforceable or illegal for any reason, said provision shall be severed from all other provisions. Said other provisions shall

remain in effect without reference to the unenforceable or illegal provision, unless this construction would constitute a substantial deviation from the general intent of the parties as reflected in this Covenant.

12.7 **Limitation on Liability**. Provided that Owner has exercised reasonable due diligence in the performance of its obligations and duties herein, no Owner shall be liable in the event a Household submits falsified documentation, commits fraud, or breaches any representation or warranty contained in this Covenant. Notwithstanding the foregoing, Owner shall be liable if Owner has knowledge, or should have knowledge, that a Household submitted falsified documentation, committed fraud, or breached any representation or warranty contained in this Covenant.

12.8 **Agency Limitation on Liability**. Any review or approval by the District or the Agency shall not be deemed to be an approval, warranty, or other certification by the District or the Agency as to compliance of such submissions, the Project, any Affordable Unit, or the Property with any building codes, regulations, standards, laws, or any requirements contained in this Covenant or any other covenant granted in favor of the District that is filed among the Land Records; or otherwise contractually required. The District shall incur no liability in connection with the Agency's review of any submissions required under this Covenant as its review is solely for the purpose of protecting the District's interest under this Covenant.

12.9 **No Third Party Beneficiary**. Except as expressly set forth in this Covenant, there are no intended third party beneficiaries of this Covenant, and no Person other than District shall have standing to bring an action for breach of or to enforce the provisions of this Covenant.

12.10 **Representations of Developer**. As of the date hereof, Developer hereby represents and warrants to District as follows:

(a) This Covenant has been duly executed and delivered by Developer, and constitutes the legal, valid, and binding obligation of Developer, enforceable against Developer, and its successors and assigns, in accordance with its terms;

(b) Neither the entering into of this Covenant nor performance hereunder will constitute or result in a violation or breach by Developer of any agreement or order which is binding on Developer; and

(c) Developer (i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is qualified to do business and is in good standing under the laws of the District of Columbia; (ii) is authorized to perform under this Covenant; and (iii) has all necessary power to execute and deliver this Covenant.

12.11 **Federal Affordability Restrictions**. In the event the Property is encumbered by other affordability restrictions ("**Federal Affordability Restrictions**") as a result of federal funding or the issuance of Low-Income Housing Tax Credits for the Project, it is expressly understood and agreed that in the event the requirements in this Covenant would cause a default of or finding of non-compliance ("**Conflict**") with the Federal Affordability Restrictions during the compliance period for the Federal Affordability Restrictions, then the requirements of the Federal Affordability

Restrictions shall control to the extent of the Conflict. In all other instances, the requirements of this Covenant shall control.

[*Signatures on Following Pages*]

IN TESTIMONY WHEREOF, the undersigned has caused this Covenant to be executed, acknowledged and delivered for the purposes therein contained.

DEVELOPER

Cycle House, LLC
A District of Columbia limited liability company

By: Urban Green, LLC,
A Maryland limited liability company,
Its managing member

By: _____
Name: Mark E. James
Title: Sole Member

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this 25 day of November, 2019, by Mark E. James the Sole Member of Urban Green, LLC, the managing member of Cycle House, LLC, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, and who has executed the foregoing and annexed document as his free act and deed, for the purposes therein contained.

_____
Notary Public

[Notarial Seal]

Donna F. Shuler
NOTARY PUBLIC
District of Columbia
My Commission Expires 10/14/2024

My commission expires: My Commission Expires 10/14/2024

APPROVED AND ACCEPTED THIS 26th DAY OF NOVEMBER, 2019:

DISTRICT OF COLUMBIA, by and through the Office of the Deputy Mayor for Planning and Economic Development

By: _____
Name: John Falcicchio
Title: Interim Deputy Mayor

LEGAL REVIEW

By: _____
Office of the General Counsel

District of Columbia, ss:

I, NAKIA E NEWTON a Notary Public in and for the District of Columbia, do hereby certify that John Falcicchio, the Interim Deputy Mayor for Planning and Economic Development, on behalf of the District of Columbia, personally appeared before me in said jurisdiction, and, being personally known to me (or satisfactorily proven) to the person whose name is subscribed to the foregoing Affordable Housing Covenant, and that he/she, in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained, and acknowledged the same to be the act and deed of the District of Columbia.

Given under my hand and seal this 25 day of November, 2019.

_____
Notary Public, D.C.

NAKIA E. NEWTON
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2022

My commission expires: _____

NAKIA E. NEWTON NOTARY PUBLIC EXP. 7-14-22 DISTRICT OF COLUMBIA

EXHIBIT A
Legal Description of Property

Lots 83 and 84 and part of Lots 85 and 86 in Square 615 in the subdivision made by Kate E. Lauritzen and others, as per plat recorded in Liber W.B.M. at folio 83 of the Records of the Office of the Surveyor for the District of Columbia and being bounded and described as follows:

BEGINNING for the same at the northeast corner of Lot 83, being also the southwest intersection of the south line of Bates Street and the west line of North Capitol Street and running thence along the west line of North Capitol Street:

Due South, 40.13 feet to a point; thence departing said street the following four courses and distances

Due West 74.00 feet to a point; thence

Due South 26.54 feet to a point; thence

Due West 5.00 feet to a point; thence

Due South 13.33 feet to the southerly line of Lot 86; thence

Due West along the south line of Lot 86, 21.00 feet to the southwest corner of Lot 86 and the east line of a public alley; thence along said line

Due North along the west line of Lots 83 through 86, 80.00 feet to the northwest corner of Lot 83 and the south line of Bates Street; thence

Due East along the south line of Bates Street, 100.00 feet to the point of beginning

NOTE: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 842 in Square 615.

EXHIBIT B

Rental Affordable Unit Lease Rider

This Rental Affordable Unit Lease Rider ("Rider") is attached to and incorporated into the lease dated ("Lease") between ("Resident" or "You") and , as Management Agent ("Manager") for ("Owner") for Affordable Unit number ("Premises"), located at , Washington DC .

In consideration of the mutual covenants set forth in the Lease and below, you agree that your use and possession of the Premises is subject to the terms and conditions set forth in the Lease and the following terms and conditions, which are in addition to and supplement the Lease:

AFFORDABLE UNIT: Resident acknowledges that the Premises is subject to that certain Affordable Housing Covenant between Owner and the District of Columbia dated _____, 20__, as may be subsequently amended, (the "Affordable Housing Covenant"). The Premises is currently designated as an Affordable Unit, which requires the Resident's household income to be less than or equal to [____] of the median family income (MFI) or area median income (AMI).

DEFINED TERMS: Those terms not specifically defined herein shall be assigned the definition provided in the Affordable Housing Covenant.

ELIGIBILITY: In order for you, as Resident, to be eligible to rent an Affordable Unit, you must be and remain an "Affordable Unit Tenant" as defined in the Affordable Housing Covenant.

INCOME RECERTIFICATION: No more than ninety (90) days and no less than forty-five (45) days before each anniversary of the first day of the lease, the Manager shall request that the Resident provide the Certifying Entity with the following:

(i) an executed Declaration of Eligibility that states that Resident is not an Over-Income Tenant and is and will continue to occupy the Premises as his/her/their principal residence,

(ii) all information pertaining to the Resident's household composition and documentation of income for all household members,

(iii) a release authorizing third party sources to provide relevant information regarding the Resident's eligibility for the Affordable Unit, as well as how to contact such sources, and

(iv) any other reasonable and customary representations, information or documents requested by the Certifying Entity.

Resident shall submit the foregoing listed documentation to the Certifying Entity within fifteen (15) days of Manager's request. Within ten (10) days of Certifying Entity's receipt of the foregoing documentation and based on the results of the annual income recertification review, Certifying Entity will determine whether the Resident remains income eligible for the Premises and notify the Resident of his or her household's MFI percentage, and (a) if the Resident is no longer income eligible for the Premises, the income category for which the Resident is income eligible to lease a unit in the apartment community, or (b) if the Resident is income eligible for the Premises, provide a Certification of Income, Affordability and Housing Size completed by the Certifying Entity, verifying that the income of the Resident meets income eligibility for the Premises.

Upon annual recertification, if the Resident remains income eligible for the Premises, the Resident will be eligible to remain in the Premises at the time of lease renewal and to renew his/her lease at the then-current lease rate for the Premises. If the Resident's Annual Household Income is determined to exceed 140% of the Maximum Annual Household Income applicable to the Premises, then the Resident shall be deemed an "Over-Income Tenant" as provided in the Covenant and may either (a) remain in the Premises and pay the rent applicable to an Affordable Unit at a higher Designated Affordability Level for which the Resident's Annual Household Income qualifies, if available at the Property, or (b) if an Affordable Unit at a higher Designated Affordability Level is not available at the Property, remain in the Premises and pay the rent applicable to a market-rate unit of like size and location.

Manager will notify Resident of all options (i.e., an Affordable Unit at a different Designated Affordability Level or a market rate unit) for which Resident is income eligible at least __ days prior to the expiration of the Resident's lease term. Prior to the expiration of the Resident's lease term, the Resident shall notify Manager in writing of the Resident's election to either (i) remain in the Premises and pay the rental rate applicable to the Resident's then current Designated Affordability Level if the Resident is not an Over-Income Tenant, (ii) remain in the Premises paying the market rate rent for that unit if the Resident is an Over-Income Tenant, or (iii) vacate the Premises at the end of the Resident's Lease term. Resident's failure to notify Manager of Resident's election prior to the expiration of the lease term will be deemed by Manager as Resident's election to vacate the Premises.

In the event that Resident fails to pay the applicable rental rate or vacate the Premises upon expiration of the lease term, Manager may pursue an action for eviction of Resident. Resident's agreement to pay the applicable rental rate or vacate was a condition precedent to Manager's initial acceptance of Resident's eligibility and Manager has relied on Resident's agreement. Resident acknowledges and agrees that the criteria to be income eligible to occupy the Premises is and serves as a District policy and objective, and that failure to vacate the Premises or pay the applicable rental rate is both a default under the Lease and in violation of the Affordable Housing Covenant.

PROHIBITION ON SUBLETS AND ASSIGNMENTS: Resident may not sublease all or any portion of the Premises or assign its lease to any other person, except with the prior written consent of the D.C. Department of Housing and Community Development, in its sole and absolute discretion. This prohibition includes short-term renting to, or permitting occupancy by, persons who are not members of Tenant's household, of all or a portion of the Premises, either directly or through services such as "AirBnb" or other rental agency providers.

LEASE EFFECTIVE: The Lease of the Premises shall only be effective if this executed Rider, a Certification of Income, Affordability and Housing Size, a Declaration of Eligibility are attached as exhibits to the lease agreement.

_____ _____
Resident Signature Date

_____ _____
Resident Signature Date

_____ _____
Resident Signature Date

EXHIBIT C

Affordable Unit Index

SCHEDULE 1

Provisions Governing Calculation of Maximum Resale Price

1. The Maximum Resale Price ("MRP") for a subsequent sale of a For Sale Affordable Unit shall be determined through use of the formula MRP = P x (F) + V ("Formula"), where:

(a) P = the price Owner paid for the Affordable Unit;

(b) V = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Agency pursuant to this section; and

(c) F = the average of the Ten Year Compound Annual Growth Rates of the Median Family Income ("MFI") from the first year of ownership of the For Sale Affordable Unit to the year of the sale of the For Sale Affordable Unit by the Affordable Unit Owner. This average may be expressed:

(1) As the result of the formula F = (1 + [((MFI Year m /MFI Year m-10) ^ (1/10) -1) +…((MFI Year k /MFI year k-10) ^ (1/10) -1) / n]) ^ n, where m = the year after the Affordable Unit was purchased by Owner, k = the year in which the Affordable Unit is sold by Owner, and n = the number of years the Affordable Unit is owned by Owner; or

(2) As published by the Agency.

2. For the purposes of determining the value of "V" in the Formula, the following improvements made to a For Sale Affordable Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:

(a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the Agency; and

(b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the Agency.

3. Ineligible costs shall not be included in the determining the value of "V" in the Formula.

4. The value of improvements may be determined by the Agency based upon documentation provided by the Affordable Unit Owner or, if not provided, upon a standard value established by the Agency.

5. The Agency may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the Agency finds that the improvement diminished or did not increase the fair market value of the For Sale Affordable Unit or if the improvements make the Affordable Unit unaffordable to all Qualified Purchasers at the Designated Affordability Level .

6. The Agency may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.

7. Owner shall permit a representative of the Agency to inspect the For Sale Affordable Unit upon request to verify the existence and value of any capital improvements that are claimed by Owner.

8. No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the For Sale Affordable Unit.

9. The value of personal property transferred to a purchaser in connection with the resale of a For Sale Affordable Unit shall not be considered part of the sales price of the For Sale Affordable Unit for the purposes of determining whether the sales price of the For Sale Affordable Unit exceeds the MRP.

10. Any capitalized terms used in this Schedule that are not defined herein shall have the meanings set forth in the Covenant. As used in this Schedule, the following capitalized terms shall have the meanings indicated below:

Eligible Capital Improvement: major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Affordable Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods. Improvements that meet these criteria will be given 100% credit by the Agency.

Eligible Replacement and Repair Cost: in-kind replacement of existing amenities and repairs and general maintenance that keep an Affordable Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system. Costs that meet these criteria will be given 50% credit for repairs as determined by the Agency.

Ineligible Costs: means costs of cosmetic enhancements, installations with limited useful life spans and non-permanent fixtures not eligible for capital improvement credit as determined by the Agency. These improvements generally include: (i) cosmetic enhancements such as fireplace tile and mantel, decorative wall coverings or hangings, window treatments (blinds, shutters, curtains, etc.), installed mirrors, shelving, refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, portable appliances (refrigerator, microwave,

stove/ oven, etc.); and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, window glass and light bulbs.

EXHIBIT C

AFFORDABLE HOUSING PLAN

Truxton Circle Parcel

Developer plans to build one residential building consisting of approximately 16 Residential Units. The Development Plan includes all 16 Residential Units as Affordable Dwelling Units ("ADUs"). Approximately 75% of the Residential Units will be one bedroom ADUs, 20% of the Residential Units will be studio ADUs and 5% of the Residential Units will be three bedroom ADUs. All the ADUs will be reserved for Qualified Tenants at the Area Median Income levels described herein.

Unit type	Affordability (% of AMI)	Number of Units	Avg. Unit Size (sf)
Jnr Studio	At or below 30%	1	281
Jnr Studio	At or below 50%	2	281
1 BR/Flats	At or below 30%	1	570
1 BR/Flats	At or below 50%	1	570
1 BR/Flats	At or below 60%	10	570
3 BR/Flats	At or below 60%	1	1050

The mix described above is based on the Development Plan as of the execution of the LDDA and is subject to changed based on the Approved Construction Drawings, DHCD funding requirements, and District law; provided that the affordability levels of the Residential Units shall not exceed 60% of AMI.

EXHIBIT D

CBE Agreement

CERTIFIED BUSINESS ENTERPRISE
UTILIZATION AND PARTICIPATION AGREEMENT

THIS CERTIFIED BUSINESS ENTERPRISE UTILIZATION AND PARTICIPATION AGREEMENT (this "Agreement") is made by and between the DISTRICT OF COLUMBIA (the "District"), a municipal corporation acting by and through the **DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT** ("DSLBD") and Cycle House, LLC, a District of Columbia limited liability company, or its designees, successors or assigns (the "Developer").

RECITALS

A. Pursuant to a Land Disposition and Development Agreement to be entered on _____, between the Developer and the District, by and through the Deputy Mayor for Planning and Economic Development, Developer intends to provide for the development of a 15-unit, affordable, multi-family building with first floor commercial space located at 1520-1522 North Capitol Street, NW, Washington, DC 20002 (the "Project").

B. Pursuant to the Land Disposition and Development Agreement, the Developer covenants that it has executed and will comply in all respects with this Agreement.

C. Capitalized terms not defined herein shall have the meaning assigned to them in the Land Disposition and Development Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged by both parties hereto, DSLBD and the Developer agree, as follows:

ARTICLE I
UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES

Section 1.1 CBE Utilization. Developer, on its behalf and/or on behalf of its successors and assigns (if any), shall hire and contract with Small Business Enterprises ("SBE") certified pursuant to the Small and Certified Business Enterprise Development and Assistance Act of 2014, as amended, (D.C. Law 20-108; D.C. Official Code § 2-218.01 et seq.) (the "Act"), in connection with the predevelopment and development phases of the Project, including but not limited to, design, professional and technical services, construction management and trade work, development, renovation and suppliers. Developer shall expend funds contracting and procuring goods and services from SBEs in an amount equivalent to no less than thirty-five percent (35%) of the adjusted development budget ("Adjusted Development Budget" or "Adjusted Budget") detailed in Attachment 1 (the "CBE Minimum Expenditure"). If there are insufficient qualified SBEs to fulfill the 35% requirement, the requirement may be satisfied by subcontracting 35% to qualified Certified Business Enterprises certified pursuant to the Act. SBE and Certified Business Enterprises collectively referred to herein as ("CBE"). [redacted]

Section 1.2 Time Period. Developer shall achieve its CBE Minimum Expenditure no later than thirty (30) days after the issuance of a final Certificate of Occupancy by the District ("Expenditure Period"). If within three (3) years of the execution of this Agreement the Developer has not achieved the CBE Minimum Expenditure and has not obtained a final Certificate of Occupancy, the Developer shall meet with DSLBD to provide a status of the Project as related to this Agreement.

Section 1.3 Adjustments to the Total Development Budget or CBE Minimum Expenditure. If the Total Development Budget or the CBE Minimum Expenditure increases or decreases by an amount greater than 5%, within ten (10) business days Developer shall submit to DSLBD to review and determine if there is a greater than 5% adjustment to the Adjusted Development Budget or the CBE Minimum Expenditure ("Adjustment"). The CBE Minimum Expenditure shall be automatically increased in the case of an increase, or decreased in the case of a decrease, by an identical percentage of the Adjustment. A modified Attachment 1, approved by DSLBD, shall become a part of this Agreement and be provided to the Developer and ODCA.

ARTICLE II
CBE OUTREACH

Section 2.1 Outreach Efforts. Developer shall utilize the resources of DSLBD, including DSLBD's website (http://dslbd.dc.gov). In particular, Developer shall submit all contracting opportunities for this Project to DSLBD for publication. Developer may identify individuals or businesses that could qualify as CBEs and is encouraged to refer any such firms to DSLBD's Certification unit to apply for certification. In the event that Developer develops a website for the Project, such website shall (i) advertise upcoming bid packages, (ii) present instructions on how to bid, and (iii) directly link to DSLBD's website.

ARTICLE III
QUARTERLY REPORTING

Section 3.1 Quarterly Report.

(a) Throughout the Expenditure Period, regardless of whether the CBE Minimum Expenditure is achieved before the end of the Expenditure Period, Developer will submit quarterly contracting and subcontracting expenditure reports ("Quarterly Report") for the Project.

(b) The Quarterly Report shall be submitted to DSLBD and ODCA no later than thirty (30) days after the end of each quarter. The Quarterly Report shall be submitted on a form provided by DSLBD (a prototype of this form is included as Attachment 4). However, DSLBD reserves the right to amend this form.

(c) If the Developer fails to submit a Quarterly Report by the date required in sub-section (b) of this section, the Developer shall pay a penalty to DSLBD.

(i) The penalty the Developer shall pay to DSLBD for each Quarterly Report that the Developer fails to submit by the date required in sub-section (b) of this section shall be

[redacted]

(d) Companies that may be eligible for certification, but are not yet certified, or whose certification is pending before DSLBD **shall not be included in the Quarterly Report unless and until the company is certified by DSLBD as a CBE**.

(i) In order to obtain credit towards the CBE Minimum Expenditure requirement, a contractor/ subcontractor that is utilized by the Developer must have an active CBE certification **at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor.** ***CREDIT WILL ONLY BE GIVEN FOR THE PORTION OF THE CONTRACT/ SUBCONTRACT PERFORMED BY A CBE USING THEIR OWN ORGANIZATION AND RESOURCES.***

(ii) The Developer will **not** receive credit towards the CBE Minimum Expenditure if the Developer's utilized contractor/ subcontractor:

(1) is not certified by DSLBD as a CBE at the time the goods or services are provided (contract/ subcontract performed) and at the time payment is made to the contractor/ subcontractor;

(2) has a pending application before DSLBD seeking CBE certification;

(3) has an expired CBE certification;

(4) has a CBE certification application that DSLBD denied; or

(5) has a CBE certification that has been revoked by DSLBD.

(iii) CBE certification must be valid to receive credit towards the CBE Minimum Expenditure . If not renewed, the CBE certification will expire. To determine whether a contractor/ subcontractor has a valid and/or current CBE certification, before goods/ services are provided and payment made, Developer must check the DSLBD website: http://lsdbe.dslbd.dc.gov/public/certification/search.aspx

(e) Developer must require every CBE that it contracts or subcontracts with to maintain its CBE certification through the term of and final payment of the contract/ subcontract. If Developer pays a contractor/ subcontractor that is not certified as a CBE for goods/ services provided when the contractor/ subcontractor was not a CBE, those payments will **not** be applied towards the CBE Minimum Expenditure requirement and the expenditures shall **not** be included on the Quarterly Report.

(f) Concurrently with the submission of the Quarterly Report, Developer shall also submit vendor verification forms (each, a "Vendor Verification Form") substantially in the form of Attachment 5 for each expenditure listed in the Quarterly Report. However, DSLBD reserves the right to amend this form. If a completed Vendor Verification Form is not submitted for each

contract/subcontract performed by a CBE, or portion thereof, the Developer will not receive credit towards the CBE Minimum Expenditure for that contract/subcontract.

(g) Concurrently with the submission of the Quarterly Report, Developer shall also submit a copy of each fully executed contract/subcontract with each CBE contractor/subcontractor identified in the Quarterly Report. **If a fully executed contract/subcontract is not submitted, the Developer will not receive credit towards the CBE Minimum Expenditure for that contract/subcontract.**

(h) Once the CBE Minimum Expenditure has been achieved, the subsequent Quarterly Report shall contain the caption "CBE MINIMUM EXPENDITURE ACHIEVED." Additionally, the final Quarterly Report shall contain the caption "FINAL QUARTERLY REPORT" and be accompanied by a copy of the final Certificate of Occupancy issued by the District.

Section 3.2 Mandatory Meeting with DSLBD and ODCA. Within ten (10) business days of executing this Agreement, the Developer shall meet with DSLBD and ODCA to discuss the reporting requirements during the Expenditure Period. In the event that DSLBD and/or ODCA is unavailable to meet within 10 business days, Developer shall schedule the meeting on the earliest mutually agreeable day. The individuals identified below respectively are the reporting point of contacts for the Developer, DSLBD and ODCA.

Mark E. James
Managing Member
Cycle House, LLC
1717 Pennsylvania Ave. NW, Suite 1025
Washington, DC 20002
(202) 559-9068
mjames@urbangreenllc.com

Ronnie Edwards
Deputy Director
Department of Small and Local Business Development
441 4th street NW, Suite 850N
Washington, DC 20001
202- 727- 3900
Ronnie.Edwards2@dc.gov

Sophie Kamal
Financial Auditor
Office of the District of Columbia Auditor
717 14th ST NW, Suite 900
Washington, DC 20005
202- 727- 8998
Sophie.Kamal@dc.gov

ARTICLE IV
PROJECT MANAGERS AND GENERAL CONTRACTORS/CONSTRUCTION MANAGERS

Section 4.1 Adherence to CBE Minimum Expenditure. For each component of the Project, Developer shall require in its contractual agreements with the Project Manager ("PM"), or with the general contractor and/or construction manager for the Project (the "General Contractor" or "GC"), as applicable, that the PM or GC comply with the relevant obligations and responsibilities of Developer contained in this Agreement with respect to achieving the applicable CBE Minimum Expenditure. In the event that the Developer and PM or GC have already entered a contractual agreement prior to the execution of this Agreement, the Developer shall work with the PM or GC to assure that the PM or GC will assist the Developer in achieving the applicable CBE Minimum Expenditure. Developer further agrees to inform the PM or GC and subcontractors of the other obligations and requirements applicable to the Developer under this Agreement. Developer shall inform the PM or GC that non-compliance with this Agreement may negatively impact future opportunities with the District for the Developer and the PM or GC respectively. Specifically, Developer will require in its contractual agreement with its PM or GC, or if the Developer and PM or GC have already entered a contractual agreement prior to the execution of this Agreement, work with its PM or GC, to achieve the following actions in contracting efforts, in connection with the Project, undertaken after the effective date of this Agreement:

(i) When soliciting bids for products or services for this Project, the PM or GC shall allow a reasonable time (*e.g.*, no less than 20 business days) for all bidders to respond to the invitations or requests for bids.

(ii) The PM or GC will make full use of DSLBD's website, found at http://dslbd.dc.gov, for subcontracting opportunities and for compliance monitoring.

(iii) The PM or GC will provide a CBE bidder, who is not the low bidder, an opportunity to provide its final best offer before contract award, provided the CBE bid price is among the top 3 bidders.

(iv) The PM or GC will not require that CBEs provide bonding on contracts with a dollar value less than $100,000, provided that in lieu of bonding the PM or GC may accept a job specific certificate of insurance.

(v) The PM or GC will include in all contracts and subcontracts with CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for CBEs to submit documentation of work performed and invoices regarding requests for payments. Included in the subcontract/contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association.

(vi) The PM or GC and subcontractors shall strictly adhere to their contractual

obligations to pay all CBE contractors and subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the PM or GC, the PM or GC is to immediately notify the CBE contractor/subcontractor and advise as to the date on which payment can be expected.

(vii) The PM or GC commits to pay all CBEs within fifteen (15) days following the PM's or GC's receipt of a payment, which includes funds for such contractors/subcontractors, from the Developer. Developer also agrees to establish a procedure for giving notice to the CBE contractors/subcontractors of the Developer's payment to the PM or GC.

(viii) The PM or GC commits to verify a contractor/ subcontractor's CBE certification status prior to entering a contract/ subcontract with, accepting goods or services from, and making payment to a CBE contractor/ subcontractor, in accordance with Article III of this Agreement.

ARTICLE V
EQUITY PARTICIPATION AND DEVELOPMENT PARTICIPATION

Section 5.1 CBE Equity Participation and Development Participation Requirements:

(i) **Minimum CBE Equity Participation and Development Participation Requirements.** Developer acknowledges and agrees that Certified Business Enterprises as defined in Section 2302 of the Act, D.C. Official Code § 2-218.02, ("CBEs") shall receive no less than twenty percent (20%) in sponsor Developer equity participation ("Equity Participation") and no less than twenty percent (20%) in development participation ("Development Participation") in the Project, in accordance with D.C. Official Code § 2-218.49a;

(ii) **Pari Passu Returns for CBE Equity Participant(s).** Developer agrees that the CBE Equity Participant(s) shall receive a return on investment in the Project that is pari passu with all other sources of sponsor Developer equity. In addition, if CBE Equity Participant(s) elect to contribute additional capital to the Project, they will receive the same returns as Developer with respect to such additional capital. However, a CBE Equity Participant's equity interests shall not be diluted over the course of the Project, including for failure to contribute additional capital;

(iii) **CBE Equity Participation maintained for duration of Project.** Developer agrees that the CBE Equity Participation shall be maintained for the duration of the Project. Culmination of the Project shall be measured by the issuance of a certificate of occupancy in accordance with the Expenditure Period as defined in Section 1.2 herein;

(iv) **CBE Equity Participant's Risk Commensurate with Equity Position.** The CBE Equity Participant(s) shall not bear financial or execution requirements that are disproportionate with its equity position in the Project;

(v) **Management Control and Approval Rights.** Equity Participant(s) and Development Participant(s) shall have management control and approval rights in line with their equity positions; and

(vi) **Representing the entity to the public.** Equity Participant(s) and Development Participant(s) shall be consistently included in representing the entity to the public (e.g., through joint naming, advertising, branding, etc.).

Section 5.2 Sweat Equity Contribution. No more than 25% of the total 20% equity participation requirement ("equal to 5%") set forth in Section 5.1 of this Section may be met by a CBE providing development services in lieu of a cash equity investment that will be compensated by the Developer in the future at a date certain ("sweat equity contribution"). The Developer and the CBE shall sign, and provide to the DSLBD, a service agreement describing the following:

(i) A detailed description of the scope of work that the CBE will perform;

(ii) The dollar amount that the CBE will be compensated for its services and the amount the CBE is forgoing as an investment in the Project;

(iii) The date or time period when the CBE will receive compensation;

(iv) The return, if any, the CBE will receive on its sweat equity contribution; and

(v) An explanation of when the CBE will receive its return as compared to other team members or investors.

Section 5.3 CBE Inclusion, Recognition, Access and Involvement. Developer acknowledges that a priority of the District is to ensure that CBE partners on development projects are granted and encouraged to maintain active involvement in all phases of the development effort, from initial-pre-development activities through development completion and ongoing asset management. To assist CBE partners in gaining the skills necessary to participate in larger development efforts, Developer agrees to provide all CBE partners full and open access to information utilized in project execution, including, for example, market studies, financial analyses, project plans and schedules, third-party consultant reports, etc. Developer agrees to consistently represent and include CBE partners of Developer as team members through such actions as joint naming (if applicable), advertising, and branding opportunities that incorporate CBE partners. CBE partners of Developer shall not be precluded from selling services back to Developer. The CBE partners shall participate in budget, schedule, and strategy meetings. CBE partners may also participate in the negotiation of development agreements, creating a site plan, managing design development, hiring and managing consultants, seeking and securing zoning and entitlements, developing and monitoring budgets, apply for and securing financing,

performing due diligence, marketing and sales of all units, and any other tasks necessary to the development and construction of the Project.

Section 5.4 No Changes in CBE Equity Participation and Development Participation.

(i) Once the selection of Equity Participant(s) and Development Participant(s) in the Project have been approved by DSLBD, there can be no change in the Equity Participation and Development Participation and no dilution of the participants' Equity Participation and Development Participation without the express written consent of the Director; and

(ii) Once DSLBD has approved the determination of returns for Equity Participant(s) in the Project, the determination of returns for Equity Participant(s) shall not be materially altered or adjusted from that previously presented to DSLBD without the Director's express written consent.

Section 5.5 Closing Requirements for CBE Equity Participation and Development Participation.

(i) The closing documents executed in connection with the Project shall contain provisions indicating there can be no change of the CBE Equity Participation and Development Participation, no dilution of a participants' Equity Participation and Development Participation, and no material alteration of the determination of returns for the CBE Equity Participant(s) without the Director's express written consent;

(ii) The closing documents shall expressly covenant and agree that DSLBD shall have third-party beneficiary rights to enforce the provisions, for and in its own right;

(iii) The agreements and covenants in the closing documents shall run in favor of DSLBD for the entire period during which the agreements and covenants shall be in force and effect, without regard to whether the District was or is an owner of any land or interest therein or in favor of which the agreements and covenants relate; and

(iv) DSLBD shall have the right, in the event of a breach of the agreement or covenant in the closing documents, to exercise all the rights and remedies, and to maintain any actions or suits, at law or in equity, or other proceedings to enforce the curing of the breach of agreement or covenant to which it may be entitled.

Section 5.6 CBE Equity Participation and Development Participation Restrictive Covenant.

(i) If there is a transfer of title to any District-owned land that will become part of

the Project, DSLBD may require a restrictive covenant be filed on the land requiring compliance with the Equity Participation and Development Participation requirements of the Act; and

(ii) A restrictive covenant requiring compliance with the Equity Participation and Development Participation shall run with the land and otherwise remain in effect until released by DSLBD following the completion of construction and of the issuance of certificates of occupancy for the Project. A release of the restrictive covenant shall be executed by DSLBD only after either the Developer and the Equity Participant(s) and Development Participant(s) submit a sworn certification together with documentation demonstrating to the satisfaction of DSLBD that, or DSLBD otherwise determines that:

(a) The CBE Development Participant(s) received at least 20% of the development fees for the Project based on the final development expenditures for such Project; and

(b) The CBE Equity Participant(s) maintained at least a 20% ownership interest in the sponsor Developer equity in the Project throughout its development.

Section 5.7 CBE Equity Participation and Development Participation Reports. Developers must submit quarterly reports to DSLBD and ODCA regarding the fulfillment of the Equity Participation and Development Participation Program requirements on such forms that may be determined, and amended, by DSLBD. The reports shall be submitted in accordance with Section 3.1 of this Agreement and shall include information regarding:

(i) Changes in ownership interest of the owners/partners;

(ii) Additions or deletions of an owner/partner;

(iii) Changes in the legal status of an existing owner/partner;

(iv) Changes in the percentage of revenue distribution to an owner/partner;

(v) A description of team member activities; and

(vi) The amount of development fees paid to each team member, participant, partner, or owner.

Section 5.8 Article V of this Agreement Controls.

(i) Article V of this Agreement is incorporated by reference and made a part of the Operating Agreement or any other similar agreement between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s).

(ii) To the extent that Article V of this Agreement shall be deemed to be inconsistent with any terms or conditions of the Operating Agreement or any other similar agreement or any exhibits or attachments thereto between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), the terms of Article V of this Agreement shall govern.

As it relates to or affects the CBE Equity Participant(s) and Development Participant(s), neither the Operating Agreement or any other similar agreement between the Developer and the undersigned CBE Equity Participant(s) and Development Participant(s), nor this Agreement shall be amended to decreased the participation percentage to less than 20% as mandated by D.C. Official Code § 2-218.49a.

Section 5.9 Equity Participation Unmet. If the Developer is unable to meet the 20% Equity Participation requirement, including sweat equity contribution and cash equity investment, the Developer shall pay to the District the outstanding cash equity amount as a fee in lieu of the unmet Equity Participation requirement.

ARTICLE VI
PENALTIES

Section 6.1 Penalties for Failure to Meet CBE Minimum Expenditure. At the end of the Expenditure Period as defined herein, DSLBD shall measure the difference between the CBE Minimum Expenditure and Developer's actual CBE expenditures. If Developer fails to meet its CBE Minimum Expenditure as provided in Section 1.1 herein (a "Shortfall"), the Developer shall pay a penalty equal to 10% of the Adjusted Development Budget (**$305,030**), which shall be paid to the District of Columbia in the time and in a manner to be determined by DSLBD.

(i) If the Developer's Shortfall is less than 10% of the Adjusted Development Budget, and Developer has taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, the Developer may not be required to pay a penalty. The Developer may meet its burden to demonstrate it has taken all actions reasonably necessary to achieve its CBE Minimum Expenditure by (1) fulfilling all CBE outreach and recruitment efforts identified in Article II of this Agreement; (2) complying with Article IV of this Agreement; (3) providing evidence of the General Contractors' compliance with the commitments set forth in Article IV of this Agreement, and (4) by taking the following actions, among other things[1]:

a. In connection with the preparation of future bid packages, if any, develop a list of media outlets that target CBEs and *potential* CBEs hereafter referred to as "Target Audience" based on D.C. certification criteria;

[1] See Attachment 6 for a list of additional suggested outreach activities.

b. During the initial construction of the Project, place advertisements in media outlets that address the Target Audience on a regular basis (i.e., each time a new bid package is sent out) and advertise the programmatic activities established pursuant to the Agreement on an as needed basis;

c. Mail and/or email new procurement opportunity alerts to targeted CBEs according to trade category;

d. In connection with the preparation of future bid packages, if any, develop a list of academic institutions, business and community organizations that represent the Target Audience so that they may provide updated information on available opportunities to their constituents;

e. Make presentations and conduct pre-bid conferences advising of contracting opportunities for the Target Audience either one-on-one or through targeted business organizations;

f. Provide up to ten (10) sets, in the aggregate, of free plans and specifications related to the particular bid for business organizations representing Target Audiences upon request; and

g. Commit to promoting opportunities for joint ventures between non-CBE and CBE firms to further grow CBEs and increase contract participation.

(ii) If the Developer's Shortfall is less than 10% of the Adjusted Development Budget, but Developer has *not* taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, Developer shall pay a penalty that is equal to the Shortfall.

In the event a CBE hired as part of the Project goes out of business, loses its certification during the Project, or otherwise cannot perform in accordance with customary and acceptable standards for the relevant industry, the Developer may identify and hire a substitute CBE capable of performing in accordance with customary and acceptable standards for the relevant industry. If the Developer cannot identify and hire a substitute CBE, the Developer may request in writing that the Director identify a list of substitute CBEs capable of performing in accordance with customary and acceptable standards for the relevant industry ("Request"). Only if, within ten (10) business days after receiving the Request, the Director fails to send written notice to the Developer identifying a list of substitute CBEs to perform the work (and the Developer determines for an amount no greater than 5% above the remaining balance of the original CBE contracted amount) may the Developer contract with a non-CBE to perform the work, provided that the non-CBE contracted amount shall not exceed the balance of the original CBE contracted amount by greater than 5% ("Approved Deduction"), and the Approved Deduction shall be deducted from the CBE Minimum Expenditure.

Section 6.2 Failure to Meet Equity and Development Participation Requirements. Failure to comply with the equity and development participation requirements of Article V of this

Agreement shall constitute a material breach of this Agreement and of the Land Disposition and Development Agreement.

Section 6.3 Other Remedies. Failure to pay any required penalties in the time and manner specified by DSLBD shall be a material breach of this Agreement. In the event that the Developer breaches any of its obligations under this Agreement, in addition to the remedies stated herein, DSLBD does not waive its right to seek any other remedy against the Developer, the general contractor of the Project and any manager of the Project that might otherwise be available at law or in equity, including specific performance.

Section 6.4 Waiver of Penalties. Any Penalties required under this Section may be rescinded or modified by the Director upon consideration of the totality of the circumstances affecting such noncompliance.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Primary Contact. The Director's designee shall be the primary point of contact for Developer for the purposes of collecting or providing information, or carrying out any of the activities under this Agreement.

Section 7.2 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered, mailed or emailed (with email confirmation), addressed as follows:

To DSLBD:
Department of Small and Local Business Development
441 4th Street, N.W., Suite 850 North
Washington, DC 20001
Attention: Director
Tel: (202) 727-3900
Fax: (202) 724-3786

and
Office of the Deputy Mayor for Planning and Economic Development Government of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attention: Deputy Mayor for Planning and Economic Development
Tel: (202) 727-6365
Fax: (202) 727-6703

With a copy to: Office of the Attorney General
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 407
Washington, DC 20004
Attention: Attorney General
Tel: (202) 724-3400
Fax: (202) 347-8922

To ODCA: Office of the District of Columbia Auditor
717 14th ST NW, Suite 900
Washington, DC 20005
Attention: District of Columbia Auditor
202-727-3600

To Developer: Cycle House, LLC
c/o Urban Green, LLC
1717 Pennsylvania Ave NW, Suite 1025
Washington, D.C. 20006_____
Attention: Mark E. James, Managing Member
Tel: (202) 559-9068
Fax: (202) 559-9150

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party.

Section 7.3 Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 7.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns of the parties hereto. This Agreement shall not be assigned by the Developer without the prior written consent of the DSLBD, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of DSLBD, DSLBD may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Developer hereunder or upon any other reasonable factor which DSLBD deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the DSLBD. DSLBD shall have no right to assign this Agreement except to another District agency.

Section 7.5 Amendment; Waiver. This Agreement may be amended from time to time by written supplement hereto and executed by DSLBD and Developer. Any obligations hereunder may not be waived, except by written instrument signed by the party to be bound by such waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified

herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

Section 7.6 Governing Law. This Agreement shall be governed by the laws of the District of Columbia.

Section 7.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 7.8 Entire Agreement. All previous negotiations and understandings between the parties hereto or their respective agents and employees with respect to the transactions set forth herein are merged into this Agreement, and this Agreement alone fully and completely expresses the parties' rights, duties and obligations with respect to its subject matter.

Section 7.9 Captions, Gender, Number and Language of Inclusion. The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including but not limited to".

Section 7.10 Attachments. The following exhibits shall be deemed incorporated into this Agreement in their entirety (THERE ARE NO ATTACHMENTS 2 AND 3 FOR THIS PROJECT):

Attachment 1:	*CBE Minimum Expenditure*
Attachment 4:	*Quarterly Report*
Attachment 5:	*Vendor Verification Forms*
Attachment 6:	*Suggested Outreach Activities*

Equity Participation and Development Participation Quarterly Report Attachment

DSLBD reserves the right to amend the templates for all Attachments.

Section 7.11 Collected Penalty/Fines. Any and all fines imposed and collected by DSLBD pursuant to this Agreement will be deposited into the fund established by D.C. Official Code § 2-218.75.

Section 7.12 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

Section 7.13 Recitals. The Recitals set forth on the first page are incorporated by reference and made a part of this Agreement.

Signatures to follow

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

By: _____
Malik K. Edwards
General Counsel, DSLBD

AGREED TO AND EXECUTED THIS 28th DAY OF September 2017

DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: _____
Tene Dolphin
Interim Director

DEVELOPER, Cycle House, LLC

By: _____
Mark E. James
Managing Member

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

By: _____
Malik K. Edwards
General Counsel, DSLBD

AGREED TO AND EXECUTED THIS _____ DAY OF _____ 2017

DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

By: _____
Tene Dolphin
Interim Director

DEVELOPER, Cycle House, LLC

By: _____
Mark E. James
Managing Member

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE DEVELOPMENT PARTICIPANT(S):

By: _____
Jessica Lawrence, Managing Member
Flywheel Development Principal
50% of Development Participation in the Project
CBE Number: LSZR48295082018

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE EQUITY PARTICIPANT(S):

By: _____
Jessica Lawrence, Managing Member
Flywheel Development Principal
50% of Development Participation in the Project
CBE Number: LSZR48295082018

EXHIBIT E

Construction and Use Covenant

CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (this "**Covenant**") is made as of the 26th day of November, 2019 (the "**Effective Date**"), between (i) DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development ("**District**") and (ii) Cycle House, LLC, a District of Columbia limited liability company, and its successors and assigns ("**Developer**").

RECITALS

R-1. District and Developer entered into a Land Disposition and Development Agreement, effective as of even date herewith (the "**Agreement**") regarding the disposition and redevelopment of the real property located at 1520-22 North Capitol Street, NW, in the District of Columbia and known for taxation and assessment purposes as Lot 0842 in Square 0615 (the "**Property**"), which Property is more fully described in Exhibit A.

R-2. As of the Effective Date, District has transferred to Developer the leasehold estate in the Property pursuant to that certain Ground Lease dated of even date hereof between the Parties (the "**Ground Lease**").

R-3. As required by the Agreement, Developer, for the benefit of District, agrees to construct and use the Property in accordance with the Approved Plans and Specifications (defined below) and the covenants contained herein.

NOW, THEREFORE, the Parties hereto agree that the Property shall be ground leased to and held by Developer, subject to the following covenants, conditions, and restrictions:

ARTICLE I
DEFINITIONS

For the purposes of this Covenant, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular.

"**Acceptable Letter of Credit**" means a standby letter of credit from an Institutional Lender in such form as may be reasonably approved by District, which letter of credit shall be: (i) issued by a commercial bank with an office located in the Washington, D.C. metropolitan area; (ii) made payable to District; (iii) payable at sight upon presentment to a Washington, D.C. metropolitan area office of the issuer (or such other office of the issuer as may be reasonably acceptable to District) of a simple sight draft stating only that District is permitted to make such draw on the letter of credit under the terms of this Covenant and setting forth the amount that District is drawing; and (iv) of a term not less than one (1) year and shall on its face state that same shall be renewed automatically, without the need for any further notice or amendment, for successive minimum one-year periods, unless the issuer notifies District in writing, at least thirty

(30) days prior to the expiration date thereof, that such issuer has elected not to renew the letter of credit.

"**Affiliate**" means with respect to any Person ("first Person") (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such first Person, (ii) any officer, director, partner, shareholder, manager, member, or trustee of such first Person, or (iii) any officer, director, general partner, manager, member, or trustee of any Person described in clauses (i) or (ii) of this sentence.

"**Affordable Housing Covenant**" is that certain Affordable Housing Covenant by and between District and Developer dated as of the Effective Date and recorded in the Land Records against the Property.

"**Affordable Unit**" means an affordable dwelling unit constructed as part of the Improvements.

"**Agreement**" is defined in the Recitals.

"**Applicable Law**" means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historical preservation, laws relating to accessibility for persons with disabilities, and, if applicable, the Davis-Bacon Act.

"**Approvals**" means all applicable governmental approvals that are required under Applicable Law to construct the Improvements, including those that pertain to any subdivision, tax lot designations, street closing(s), and other regulatory approvals, including, without limitation, approval by the District of Columbia Board of Zoning Adjustment, Zoning Commission or Historic Preservation Review Board, but expressly excluding the Permits.

"**Approved Plans and Specifications**" means the construction plans, drawings, and specifications for the Improvements that were approved by District pursuant to the terms of the Agreement, as the same may be modified pursuant to Section 2.4 of this Covenant.

"**Architect**" means Emotive Architecture or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District, which approval shall not be unreasonably withheld, conditioned, or delayed.

"**Architect's Certificate**" means a certificate (AIA form G704 or equivalent form approved by District) from the Architect stating that, upon such date, and in such Architect's professional judgment made in accordance with the applicable standard of care, the applicable Improvements have been substantially completed in accordance with the applicable Approved Plans and Specifications and Applicable Law.

"**Bonds**" shall mean the payment and performance bonds obtained by Developer or its Contractor and delivered to District prior to the Financing/Construction Closing Date in accordance with the terms of the Agreement.

"**Business Day**" means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government, or days on which the District of Columbia government is officially closed.

"**CBE Agreement**" is that certain Certified Business Enterprise Utilization and Participation Agreement by and between Developer and DSLBD on September 28, 2017, governing certain obligations of Developer under the Small and Certified Business Enterprise Development and Assistance Act of 2005, as amended (D.C. Law 16-33; D.C. Official Code §§2-218.01, et seq.), with respect to the Project.

"**Certificate of Occupancy**" means (i) for residential uses: a certificate of occupancy obtained from the appropriate Governmental Authority as a condition to the lawful occupancy of the Improvements; and (ii) for nonresidential uses: a core and shell certificate of occupancy obtained from the appropriate Governmental Authority that evidences the substantial and material completion of the core and shell of the Improvements in accordance with Applicable Law.

"**Commencement of Construction**" or "**Commence Construction**" means the time at which Developer has (i) executed a Construction Contract with its Contractor; (ii) given the Contractor a notice to proceed under said Construction Contract; (iii) caused the Contractor to mobilize on the Property equipment necessary for demolition, if any, and/or excavation; (iv) obtained the required Permits for demolition, excavation, and sheeting and shoring and the building permit for construction of the Improvements; and (v) commenced demolition, if any, and/or excavation upon the Property pursuant to the Approved Plans and Specifications. For purposes of this Covenant, the term "Commencement of Construction" does not mean site exploration, borings to determine foundation conditions, asbestos remediation or movement of non-structural interior walls, or other pre-construction monitoring or testing to conduct due diligence activities or to establish background information related to the suitability of the Property for the Project or the investigations of environmental conditions.

"**Community Participation Program**" is that certain program for public involvement, education, and outreach with respect to the Project, which program was approved by District prior to the Financing/Construction Closing Date.

"**Construction Consultant**" is defined in Section 2.1.2.

"**Construction Covenants**" shall mean those covenants contained in Article II.

"**Construction Contract**" means a contract with the Contractor for the construction of the Improvements in accordance with the Approved Plans and Specifications, this Covenant, the CBE Agreement, and the First Source Agreement.

"**Contractor**" means the general contractor for the Project.

"**Contaminant Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment

(including the abandonment or discharge of barrels, containers, and other receptacles containing any Hazardous Materials) of any Hazardous Materials.

"**Control**" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of, as applicable, the directors, managers, managing partners, or Persons exercising similar authority with respect to the subject Person. The terms "Control," "Controlling," "Controlled by" or "under common Control with" shall have meanings correlative thereto.

"**Debt Financing**" shall mean the financing or aggregate financings to be obtained by Developer from one or more Institutional Lenders to fund the costs set forth in the Final Project Budget, other than any Equity Investment.

"**Developer**" is defined in the Preamble.

"**Developer Certificate of Completion**" is that certificate to be executed by Developer in the form set forth in Exhibit B and delivered to District upon Final Completion.

"**Developer Certificate of Substantial Completion**" is that certificate to be executed by Developer in the form set forth in Exhibit C and delivered to District upon Substantial Completion.

"**Developer's Agents**" means Developer's agents, officers, directors, employees, consultants, contractors, subcontractors, and representatives.

"**Development Plan**" means Developer's plan to construct (a) a building containing sixteen (16) Residential Units, all of which will be Affordable Units; and (b) approximately 3,000-5,000 square feet of commercial and/or retail space.

"**Disapproval Notice**" is defined in Section 2.4.2.

"**District**" is defined in the Preamble.

"**District Certificate of Final Completion**" is that certificate to be executed by District in the form set forth in Exhibit E.

"**DOES**" is the District of Columbia Department of Employment Services.

"**DOL**" is the United States Department of Labor.

"**DSLBD**" is the District of Columbia Department of Small and Local Business Development.

"**Effective Date**" is defined in the Preamble.

"**Environmental Claims**" is defined in Section 3.3.1.

"**Environmental Laws**" means any present and future federal, state or local law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of Governmental Authorities and relating to (a) the protection of health, safety, and the indoor or outdoor environment; (b) the conservation, management, or use of natural resources and wildlife; (c) the protection or use of surface water and groundwater; (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of or exposure to Hazardous Materials; or (e) pollution (including any release to air, land, surface water, and groundwater); including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and subsequently amended, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 32701 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136-136y, the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.; and any similar, implementing, or successor law, and any amendment, rule, regulatory order, or directive issued thereunder.

"**Equity Investment**" shall mean all funding for the Project that is provided by any Person with a direct or indirect ownership interest in Developer, which funding shall cover the difference between the proceeds of all Debt Financing and the costs set forth in the Final Project Budget.

"**Event of Default**" is defined in Section 5.1.

"**Final Completion**" means following Substantial Completion: (i) the completion of all Punch List Items except for such Improvements to be occupied by commercial and/or retail tenants; (ii) the close-out of all construction contracts for the Improvements except for such Improvements to be occupied by commercial and/or retail tenants; (iii) the payment of all costs of constructing the Improvements except for such Improvements to be occupied by commercial and/or retail tenants and receipt by Developer of fully executed and notarized valid releases of liens from the Contractor and all subcontractors involved in the Project; (iv) Developer has provided District with certifications from the Contractor and the Construction Consultant certifying that the Improvements have been constructed in accordance with the Approved Plans and Specifications and the Permits; (v) Developer has provided District an executed Developer Certificate of Completion; and (vi) Developer has provided District with a set of as-built drawings for the Improvements.

"**Final Project Budget**" means Developer's budget for the Project that was approved by District prior to the Financing/Construction Closing in accordance with the Agreement and this Covenant.

"**Final Project Funding Plan**" means Developer's funding plan for the Project that was approved by District prior to the Financing/Construction Closing in accordance with the Agreement and this Covenant.

"**Financing/Construction Closing**" shall mean Developer's closing on the Debt Financing and Equity Investment required to fund the construction of the Improvements as contemplated by the Agreement and this Covenant.

"**Financing/Construction Closing Date**" shall mean the date upon which Developer and District shall consummate Financing/Construction Closing upon satisfaction (or waiver by the Party entitled to waive the same) of all conditions to the Financing/Construction Closing, but no later than the outside date for the Financing/Construction Closing shown on the Schedule of Performance.

"**First Source Agreement**" is that agreement between Developer and DOES governing certain obligations of Developer regarding job creation and employment generated as a result of the Project.

"**Force Majeure**" is an act or event, including, as applicable, an act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, sabotage, terrorism, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure or unavailability of transportation, strike, lockout, actions of labor unions, a taking by eminent domain, requisition, and laws or orders of government or of civil, military, or naval authorities enacted or adopted after the Effective Date, so long as such act or event: (i) is not within the reasonable control of Developer, Developer's Agents, or its Members, or by District in the event District's claim is based on a Force Majeure event; (ii) is not due to the fault or negligence of Developer, Developer's Agents, or its Members, or District in the event District's claim is based on a Force Majeure event; (iii) is not reasonably avoidable by Developer, Developer's Agents, or its Members or by District in the event District's claim is based on a Force Majeure event; and (iv) directly results in a delay in performance by Developer or District, as applicable; but specifically excluding: (A) shortage or unavailability of funds or Developer's financial condition; (B) changes in market conditions such that the Project is no longer practicable under the circumstances; or (C) the acts or omissions of a general contractor, its subcontractors, or any of Developer's Agents or Members, except to the extent such acts or omissions are covered by sub-paragraphs (i)-(iii), above.

"**Governmental Authority**" means the United States of America, the District of Columbia, and any agency, department, commission, court, board, bureau, instrumentality or political subdivision of the foregoing, now existing or hereafter created, having jurisdiction over Developer or the Project or portion thereof, or any street, road, avenue or sidewalk comprising a part of, or in front of, the Property, or any vault in or under the Property, or airspace within or over the Property.

"**Green Building Act**" means the Green Building Act of 2006, D.C. Official Code §§ 6-1451.01, et seq., as amended, and the regulations promulgated therewith.

"**Ground Lease**" is defined in Recital R-2.

"**Guarantor**" shall mean the Person(s), who has executed the Guaranty as of the Effective Date, and any replacement guarantor(s) approved by District pursuant to Section 2.9.1.

"**Guarantor Submissions**" shall mean the current audited financial statements and audited balance sheets (or certified public accountant reviewed if audits are not performed in the regular course of Guarantor's business), profit and loss statements, cash flow statements and other financial reports and other financial information of a proposed guarantor as District may reasonably request, together with a summary of such proposed guarantor's other guaranty obligations and the other contingent obligations of such proposed guarantor (in each case, certified by such proposed guarantor or an officer of such proposed guarantor as being true, correct, and complete). Additionally, for any proposed guarantor that is not a natural person, the following documents evidencing the due organization and authority of such guarantor to enter into, join and consummate the actions required under the Guaranty: (i) the organizational documents and a current certificate of good standing issued by its state of formation and the District of Columbia for the proposed guarantor; (ii) authorizing resolutions, in form and content satisfactory to District, demonstrating the authority of the proposed guarantor and of the Person executing the Guaranty on behalf of such proposed guarantor; and (iii) a customary opinion of counsel that such proposed guarantor is validly organized, existing and in good standing in its state of formation, and is authorized to do business in the District of Columbia, that such proposed guarantor has the full authority and legal right to carry out the terms of the Guaranty, that such proposed guarantor has taken all actions to authorize the execution, delivery, and performance of the Guaranty, that none of the aforesaid actions, undertakings, or agreements violate any restriction, term, condition, or provision of the organizational documents of such proposed guarantor, or, to counsel's actual knowledge, any contract or agreement to which such proposed guarantor is a party or by which it is bound.

"**Guaranty**" is that certain Development and Completion Guaranty dated as of the Effective Date executed by the Guarantor(s), or a replacement of the same executed pursuant to Section 2.9.1 hereof, which binds the Guarantor(s) to develop and otherwise construct the Improvements in the manner and within the time frames required under this Covenant.

"**Hazardous Materials**" means (a) asbestos and any asbestos containing material; (b) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," or "toxic pollutant" or any other formulation intended to define, list or classify substances by reason of deleterious properties, such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity; (c) any petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; and (d) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special

nuclear or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product, and any other substance the presence of which could be detrimental to the Property or hazardous to health or the environment.

"**Improvements**" means landscaping, hardscape, and improvements to be constructed or placed on the Property in accordance with the Development Plan and Approved Plans and Specifications; provided, however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory, or other personal property used in connection with the conduct of any business within the Improvements be deemed included in the term "Improvements" as used in this Covenant.

"**Indemnified Parties**" is defined in Section 3.3.1.

"**Institutional Lender**" shall mean a Person that is not an Affiliate of Developer or a Prohibited Person and is, at the time it first makes a loan to Developer, or acquires an interest in any such loan, (i) a commercial bank, investment bank, investment company, savings and loan association, trust company or national banking association, acting for its own accord; (ii) a finance company principally engaged in the origination of commercial mortgage loans or any financing related subsidiary of a Fortune 500 company; (iii) an insurance company acting for its own account or for special accounts maintained by it or as agent or manager or advisor for other entities covered by any of clauses (i) – (x) hereof; (iv) a public employees' pension or retirement system; (v) a pension, retirement, or profit sharing, or commingled trust or fund for which any bank, trust company, national banking association or investment adviser registered under the Investment Advisors Act of 1940, as amended is acting as trustee or agent; (vi) a real estate investment trust (or umbrella partnership or other entity of which a real estate investment trust is the majority owner), a real estate mortgage investment conduit, hedge fund, private equity fund or securitization trust or similar investment entity; (vii) any federal, state, or District of Columbia government agency regularly making, purchasing, or guaranteeing mortgage loans, or any governmental agency supervising the investment of public funds; (viii) a profit-sharing or commingled trust or fund, the majority of equity investors in which are pension funds having in the aggregate no less than $1 billion in assets; (ix) any entity of any kind actively engaged in commercial real estate financing and having total assets in the aggregate of no less than $1 billion; or (x) such other lender, subject to approval by District, in its sole and absolute discretion, provided that such other lender is at the time of making the loan of a type which is then customarily used as a lender on projects like the Project.

"**Land Records**" means the property records maintained by the Recorder of Deeds for the District of Columbia.

"**Material Change**" means (i) any change in size or design from the Approved Plans and Specifications that substantially affects the general appearance of the Improvements, or changes the building bulk or the number of floors of the Improvements or any change or series of changes that result in a diminution or increase of square footage of the Improvements in excess of five percent (5%); (ii) any change to the structural integrity of exterior walls or elevations; (iii) any changes in exterior finishing materials that substantially affect the architectural appearance from those shown and specified in the Approved Plans and Specifications; (iv) any change in the functional use and operation of the Improvements from those shown and specified in the Approved

Plans and Specifications; (v) any changes in design and construction of the Improvements requiring approval of, or any changes required by, any District of Columbia agency, body, commission, or officer (other than District); (vi) any change in number of parking spaces in the Improvements by five percent (5%) or more from the Approved Plans and Specifications; (vii) any significant change that affects the appearance of landscape design or plantings from the Approved Plans and Specifications; (viii) any significant change that affects the general appearance or structural integrity of exterior pavement, exterior lighting and other exterior site features from the Approved Plans and Specifications; (ix) any change in the number of Affordable Units from the Approved Plans and Specifications; or (x) any change or series of changes that reduces the total residential square footage of the Improvements by more than five percent (5%) from the Approved Plans and Specifications.

"**Member**" means any Person with an ownership interest in Developer.

"**Mortgage**" shall mean a mortgage, deed of trust, mortgage deed, or such other classes of legal documents that are recorded against the Property and secure a loan that provides financing to acquire the Property and/or for the Project, and any refinancing of such a loan.

"**Mortgagee**" means the holder of a Mortgage securing Debt Financing.

"**Net Zero Energy Building**" means a building that utilizes as much energy over the course of a year as the building produces over the same duration.

"**Party(ies)**" when used in the singular, shall mean either District or Developer; when used in the plural, shall mean both District and Developer.

"**Performance Letter of Credit**" is defined in Section 2.9.3.

"**Permits**" means all site, building, construction, environmental, excavation, remediation, and other permits, approvals, licenses, and rights required to be obtained from the District of Columbia government or other authority having jurisdiction over the Property necessary to Commence Construction and achieve Final Completion of the Improvements in accordance with the Approved Plans and Specifications and this Covenant.

"**Person**" means any individual, corporation, limited liability company, trust, partnership, association, or other entity.

"**Prohibited Person**" shall mean any of the following Persons: (A) any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of, has pleaded guilty in a criminal proceeding for, or is an on-going target of a grand jury investigation concerning, a felony for one or more of the following: (i) fraud, (ii) intentional misappropriation of funds, (iii) bribery, (iv) conspiracy to commit a crime, (v) making false statements to a governmental agency, (vi) improperly influencing a governmental official, and (vii) extortion; or (B) any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of

1917, 50 U.S.C. § 4301 et seq., as amended; (y) the International Emergency Economic Powers Act of 1977, 50 U.S.C. § 1701 et seq., as amended; and (z) the Antiterrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. § 4605, as amended; or (C) any Person who has engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or (D) any Person who appears on or conducts any business or engages in any transaction with any person appearing on the list maintained by the U.S. Treasury Department's Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A or is a person described in Section 1 of the Anti-Terrorism Order described above; or (E) any Person who could be debarred if the standards applied in Title 27, Section 2213 of the D.C. Municipal Regulations were applied to such Person's failure to satisfy a contractual obligation to the District of Columbia; or (F) any Person who is on the District of Columbia's list of debarred, suspended or ineligible Persons; or (G) any Affiliate of any of the Persons described in any one or more of clauses (A) through (F) above.

"**Prohibited Uses**" shall have the meaning set forth in Section 3.1.2.

"**Project**" means the design, development, and construction of the Improvements on the Property in accordance with the Approvals, Development Plan, this Covenant, the Affordable Housing Covenant, and the Approved Plans and Specifications.

"**Project Budget**" shall have the meaning set forth in Section 2.8.1.

"**Project Deposit and Acquisition Letter of Credit**" shall have the meaning set forth in Section 2.9.3.

"**Project Funding Plan**" shall have the meaning set forth in Section 2.8.1.

"**Property**" is defined in the Recitals.

"**Punch List Items**" means the minor items of work to be completed or corrected prior to final payment to Developer's general contractor pursuant to its construction contract in order to achieve Final Completion of the Project in accordance with the Approved Plans and Specifications**.**

"**Residential Units**" means the residential dwelling units to be constructed on the Property in accordance with the Approved Plans and Specifications and this Covenant, including the Affordable Units.

"**Retail Plan**" means the retail strategy and marketing plan that was submitted by Developer and approved by District prior to the Financing/Construction Closing pursuant to the Agreement, and any modifications thereto approved by District

"**Retail Portion**" means the portion of the Improvements identified as commercial and/or retail space in the Approved Plans and Specifications.

"**Review Period**" is defined in Section 2.4.1.

"**Schedule of Performance**" means that schedule of performance setting forth the timelines for milestones in the development, construction, and completion of the Project, attached as Exhibit E hereto.

"**Second Notice**" means that notice given by Developer to District in accordance with Section 2.4.1 herein. Any Second Notice shall (a) be labeled, in bold, 18 point font, as a "SECOND AND FINAL NOTICE"; (b) shall contain the following statement: "A FAILURE TO RESPOND TO THIS NOTICE WITHIN FIFTEEN (15) BUSINESS DAYS SHALL CONSTITUTE APPROVAL OF THE [NAME OF SUBMISSION] ORIGINALLY SUBMITTED ON [DATE OF DELIVERY OF SUCH PROJECT DRAWINGS OR OTHER ITEM]"; and (c) be delivered in the manner prescribed in Article X, in an envelope conspicuously labeled "SECOND AND FINAL NOTICE".

"**Space Lease**" shall mean a sublease, license, permit, or concession agreement for the occupancy of a portion of the Improvements for the Permitted Uses, excluding leases to individual tenants for Residential Units.

"**Subdivision**" has the meaning set forth in Section 2.2.3.

"**Subdivision Documents**" has the meaning set forth in Section 2.2.3.

"**Substantial Completion**" shall occur when: (a) Developer has substantially completed construction of the Improvements in accordance with the Approved Plans and Specifications and this Covenant, subject to the completion of any Punch List Items; (b) Developer has obtained a Certificate of Occupancy and other necessary approvals for the use and occupancy of the Project; (c) the Architect shall have executed the Architect's Certificate; (d) the Contractor is entitled to final payment under the Construction Contract for the Improvements, exclusive only of any retainage held on account of Punch List Items and any amounts in dispute between Developer and the Contractor; and (e) all streetscapes, sidewalks, lighting, public spaces, and similar improvements have been completed pursuant to the Approved Plans and Specifications, subject to the completion of any Punch List items.

"**Transfer**" means (i) any sale, assignment, conveyance, lease, sublease (except Space Leases and leases of Residential Units to individual households), trust, power, encumbrance, or other transfer of the Property or the Improvements or of any portion of the Property or the Improvements, or of any interest in the Property or the Improvements, or any contract or agreement to do any of the same or (ii) any sale, assignment, or other transfer, or the issuance, of any direct or indirect interest in Developer or in any Member of Developer.

"**Use Covenants**" means those covenants contained in Article III.

"**Zoning Commission**" means the District of Columbia Zoning Commission.

ARTICLE II
CONSTRUCTION COVENANTS

2.1 OBLIGATION TO CONSTRUCT PROJECT.

2.1.1 **Covenant to Develop and Construct**. Developer hereby agrees to develop and construct the Project in accordance with the Development Plan, Approved Plans and Specifications, the Schedule of Performance, the Community Participation Program, the Affordable Housing Covenant, and this Covenant. The Project shall be constructed in compliance with all Permits, Approvals, and Applicable Law, and in a first-class and diligent manner in accordance with industry standards. The cost of development and construction of Project thereon shall be borne solely by Developer and all Project milestones shall be achieved by the outside dates therefor indicated in the Schedule of Performance, subject only to Force Majeure.

2.1.2 **Construction Consultant**. Prior to the Financing/Construction Closing, Developer shall appoint a construction consultant ("**Construction Consultant**"), approved by District under the Agreement, who shall review and report to the Parties on a monthly basis on the following matters: (a) the construction of the Project and the conformity of such construction to the Approved Plans and Specifications and (b) the progress of construction and the conformity of such progress with the Schedule of Performance. If the Construction Consultant determines there is a non-conformity with the Approved Plans and Specifications or a deviation from the Schedule of Performance, District may request Developer to propose and adopt a recovery and modification plan that is reasonably satisfactory to the Construction Consultant and District. In addition, the Construction Consultant shall provide such certifications as are provided in this Covenant. The Construction Consultant's time, expenses, reports, and certification shall be at Developer's sole cost and expense. Any construction consultant engaged by the primary lender for supervision of construction of the Project shall be considered the "Construction Consultant" hereunder, provided that such construction consultant is reasonably acceptable to District, and provided further that such construction consultant agrees in writing with District to undertake the duties of Construction Consultant set forth in this Section 2.1.2.

2.2 PRE-CONSTRUCTION ITEMS.

2.2.1 **Issuance of Permits**.

(a) Developer shall have the sole responsibility for obtaining all Permits and shall make application therefor directly to the applicable Governmental Authority. Prior to the Financing/Construction Closing, Developer must obtain all Permits for demolition, excavation, sheeting and shoring, and the building permit for construction of the Improvements, except for those Permits which are normally obtained during the course of construction of the Improvements, such as Permits for elevators and landscaping, in accordance with the Approved Plans and Specifications. Developer shall submit to District copies of documents evidencing each and every Permit obtained by Developer.

(b) Developer shall obtain and maintain, at its sole cost and expense, any Permits or other Approvals required under applicable Environmental Laws for its development and operation

of the Project. District will not co-sign or otherwise be identified as a responsible party for any Permits or activities that Developer conducts on or about the Property. Developer shall provide notice to District at least thirty (30) days prior to the submission of an application of any such Permits or other Approvals to the applicable environmental Governmental Authorit(ies), which notice shall include a copy of the application. District shall have the right to review and comment on such application prior to submission and shall provide such comments to Developer within ten (10) Business Days after receipt of the same from Developer. Where practicable, Developer shall provide District with advance notice of an opportunity to jointly participate in meetings with environmental Governmental Authorities relating to the Project.

2.2.2 **Site Preparation**. Developer, at its sole cost and expense, shall be responsible for all preparation of the Property for development and construction in accordance with the Development Plan and Approved Plans and Specifications, including, excavation, remediation of Hazardous Materials, utility relocation and abandonment, relocation and rearrangement of water and sewer lines and hook-ups, the construction or repair of alley ways on the Property and abutting public property, improvements to adjacent rights of way, to the extent required by the Approvals, and any other action required by Applicable Law, necessary for the Project. All such work, including but not limited to, excavation, backfill, and upgrading of the lighting and drainage, shall be performed under all required Permits and Approvals and in accordance with Applicable Law.

2.2.3 **Subdivision**. District acknowledges and agrees that, prior to Financing/Construction Closing, Developer may elect to subdivide the Property into separate air rights assessment and taxation lots so as to facilitate the development, financing, and construction of the Improvements by separate entities with differing sources of debt and equity financing; provided, however, that Transfer of any portion of Developer's leasehold interest in the Property to such separate entities (by sublease, partial assignment of Ground Lease, or otherwise) shall require the prior written consent of the District in accordance with Section 2.10, not to be unreasonably, withheld conditioned, or delayed so long as there is no change in Control of the lessees. In the event Developer elects at any time during the term of this Covenant, to establish separate air rights assessment and taxation lots for the Improvements to be developed on the Property (a "**Subdivision**" and the instruments and documents that effectuate the Subdivision may be hereinafter collectively referred to as the "**Subdivision Documents**"), District agrees that it will not unreasonably withhold, condition or delay its consent to any Subdivision and/or to the recordation of one or more Subdivision Documents, and will execute such amendments to this Covenant, the Ground Lease, and other Project documents as may be necessary to facilitate the development, financing, and construction of the Improvements by separate entities with differing sources of debt and equity financing.

2.2.4 **Financing Covenants**. Developer covenants that it will use best efforts to achieve Financing/Construction Closing for the Project by no later than the outside date for the Financing/Construction Closing shown on the Schedule of Performance. Up until such time that the Financing/Construction Closing is fully and conclusively achieved, Developer covenants not to impose or suffer to have created any lien on the Property to secure any loan or other financial obligation without the express consent of the District in its sole and absolute discretion.

2.3 CONSTRUCTION RESTRICTIONS AND OBLIGATIONS.

2.3.1 **Commencement of Construction; Schedule of Performance**. Developer agrees that it shall achieve Commencement of Construction within thirty (30) days after the Financing/Construction Closing Date and diligently prosecute the development and construction of the Project thereafter in accordance with the Approved Plans and Specifications and the Schedule of Performance, subject to Force Majeure. Developer shall deliver to District copies of all Permits required for Commencement of Construction at least ten (10) Business Days prior to Commencement of Construction.

2.3.2 **Easements for Public Utilities**. Developer shall not construct any portion of the Project on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in the Approved Plans and Specifications in connection with the issuance of a Permit.

2.3.3 **Substantial Completion**. Developer shall achieve Substantial Completion and deliver to District a Developer Certificate of Substantial Completion on or before the outside date indicated therefor on the Schedule of Performance, subject to Force Majeure.

2.3.4 **Final Completion**. Developer shall achieve Final Completion and deliver to District a Developer Certificate of Completion on or before the outside date indicated therefor on the Schedule of Performance, subject to Force Majeure. Following District's inspection of the Project, review of the Developer Certificate of Completion, and confirmation of Final Completion, District shall deliver to Developer a District Certificate of Final Completion in recordable form confirming Developer's Final Completion of the Project. If the District believes that Final Completion has not been achieved, it shall deliver to Developer written notice of such determination and a description of any components of Final Completion remaining to be satisfied.

2.3.5 **Affordable Units**.

(a) Prior to the Financing/Construction Closing, Developer shall submit, and District shall approve, the Affordable Unit Index (as such term is defined in the Affordable Housing Covenant) for District's review and approval, which shall be in District's sole and absolute discretion.

(b) From and after the Financing/Construction Closing, Developer shall satisfy the requirements set forth in the Affordable Housing Covenant as to the development and construction of Affordable Units in the Project.

2.3.6 **Net Zero Energy Building**. Prior to the issuance of the District Certificate of Final Completion, Developer shall obtain LEED Gold Certification, and shall demonstrate a Net Zero Energy Building for the residential elements of the Project Improvements by (i) obtaining a Home Energy Rating System (HERS) Index Score of 20 or below from a qualified third-party consultant (a certified RESNET HERS Rater) at the time of construction permit issuance and (ii) obtaining a certification from a third-party consultant at the time of completion of construction confirming the building was constructed to the design specifications certified in section (i) above. Additionally, within 16 months after a final certificate of occupancy is obtained for the Project Improvements (but not as a condition to the issuance of the District Certificate of Final Completion), Developer shall submit all necessary data and documentation to obtain a Net Zero Energy Building certification under either the International Living Future Institute's Zero Energy Building

certification program or the US Green Building Council's LEED Zero, and will provide the District with a copy of the final approved certification upon receipt.

2.4 CHANGES TO APPROVED PLANS AND SPECIFICATIONS.

2.4.1 **Material Change**. Developer may make changes to the Approved Plans and Specifications without the prior approval of, but with notice to, District, provided such changes are (a) consistent with Applicable Law and (b) not Material Changes. Such notice shall specifically identify the changes made and shall include any modifications to the Final Project Budget as a result of such changes. Developer shall not make any Material Changes to the Approved Plans and Specifications without District's prior written approval, except those changes required by a Governmental Authority pursuant to Section 2.4.3. If Developer desires to make any Material Changes to the Approved Plans and Specifications, Developer shall submit in writing the proposed changes to District for approval, including a written description of the Material Change and the modified Construction Plans and Specifications with notations highlighting such Material Change. District shall complete its review of any Material Change submission and provide a written response thereto within fifteen (15) Business Days after its receipt of the same (the fifteen (15) Business Day review period may be referred to herein as the "**Review Period**"). If District fails to respond with its written response to a submission of any Material Change within the Review Period, Developer shall notify District, in writing, of District's failure to respond by delivering to District a Second Notice. Failure of District to respond within ten (10) Business Days after its receipt of the Second Notice shall constitute and shall be deemed to be District approval of the applicable Material Change. In the event Developer makes a Material Change to the Approved Plans and Specifications, but does not comply with the procedures in this Section 2.4.1, such Material Change shall be deemed disapproved.

2.4.2 **Disapproval Notices**. If District issues a notice of disapproval to proposed Material Changes to Approved Plans and Specifications ("**Disapproval Notice**"), such Disapproval Notice shall state in reasonable detail the basis for such disapproval. If District issues a Disapproval Notice, both District and Developer shall work together to resolve the issues in a commercially reasonable and prompt manner. Developer shall revise the Material Change to address the objections of District and may resubmit the revised Material Change for approval. District's review of any submission that is responsive to a Disapproval Notice shall be limited to the matters disapproved by District as set forth in the Disapproval Notice, but shall not be so limited with regard to any new matters shown on such submission that were not included or indicated on any prior submission. District shall respond to any submission that is responsive to a Disapproval Notice within the time period set forth in Section 2.4.1.

2.4.3 **Government Required Changes**. Notwithstanding any other provision of this Covenant to the contrary, District acknowledges and agrees that District shall not withhold its approval (if otherwise required by the terms of this Covenant) of any proposed changes to Approved Plans and Specifications that are required by any Governmental Authority; provided however, that (i) District shall have been afforded a reasonable opportunity to discuss such change in the submission with the Governmental Authority requiring such change and with the Architect, (ii) the Architect shall have reasonably cooperated with District and such Governmental Authority in seeking such reasonable modifications of the required change as District shall deem reasonably

necessary, and (iii) such change is consistent with Applicable Law. Developer and District each agree to use diligent, good faith efforts to resolve District's approval of such changes, and District's request for reasonable modifications to such changes required by a Governmental Authority, as soon as reasonably possible and in no event later than ten (10) Business Days after the submission of the applicable change. Developer shall promptly notify District of any changes required by a Governmental Authority whether before or during construction.

2.4.4 **No Representation or Liability**. District's review and approval of any Material Change is not and shall not be construed as a representation or other assurance that it complies with any building codes, regulations, or standards, including, without limitation, building, engineering, and structural design, or any other Applicable Law. District shall incur no liability in connection with its review of any Material Changes under this Covenant and shall review such Material Changes solely for the purpose of protecting its own interests.

2.5 COMPLIANCE. During the term of this Covenant, Developer agrees to: (i) comply with all Applicable Law, (ii) comply with and maintain the CBE Agreement, and (iii) comply with and maintain the First Source Agreement.

2.6 INSPECTION AND MONITORING RIGHTS. In addition to and notwithstanding any monitoring and inspecting requirements of Developer's construction lender and any applicable District of Columbia building and health code requirements, District shall have the following rights:

(a) **Inspection of Site**. Upon reasonable advance written notice to Developer, District shall have the right to enter the Property from time to time, accompanied by a representative of Developer, and at no cost or expense to District, for the purpose of (i) performing routine inspections in connection with the development and construction of the Project, (ii) curing any Events of Default that can be cured by District, and (iii) in the case of an emergency. Developer waives any claim that it may have against District, its officers, directors, employees, agents, consultants, or representatives, arising out of District representatives' entry upon the Property unless resulting from the gross negligence or willful misconduct of said District representatives. Any inspection of the Project or access of the Property by District hereunder shall not be deemed an approval, warranty, or other certification as to the compliance of the Project or Property with any building codes, regulations, standards, or other Applicable Law or any Approvals.

(b) **Progress Meetings and Reports**. From and after the Effective Date and until the Financing/Construction Closing, District's staff and Developer shall hold monthly progress reports and meetings, during which meetings Developer and designated representatives of District and other District staff shall coordinate the preparation, submission and review of the construction plans, drawings, and specifications for the improvements, in accordance with the Agreement, Developer's progress towards achieving the Financing/Construction Closing, and any other pending matters involving the Project. From and after the Financing/Construction Closing Date until the issuance of the District Certificate of Final Completion, Developer shall make written monthly reports to District as to the progress of the construction of the Project, in such form and detail as may reasonably be requested by District, and shall include, among other things, a reasonable number of construction photographs taken since the last progress report, detailed

statement of adherence to or deviation from the Schedule of Performance, any experienced or anticipated delays or other material construction issues that have arisen since the last progress report, and updates on the Final Project Budget. From and after the Financing/Construction Closing Date, the progress report shall also include the Construction Consultant's report of matters pursuant to Section 2.1.2 and a statement by Developer affirming the matters contained in such report as true and correct. Such progress reports shall be delivered to District by Developer by the tenth day of every month.

(c) **Audit Rights**. Upon reasonable prior notice at any time prior to until the issuance of the District Certificate of Final Completion, District shall have the right (at the cost of District unless Developer is found to be in violation of any obligation imposed hereunder, in which event such expense shall be borne by Developer) to inspect the books, records, and corporate documents of Developer for the purpose of ensuring compliance with this Covenant and to have an independent audit of the construction documents and records. Developer shall cooperate with District in providing District reasonable access to its books and records during normal business hours at Developer's offices for these purposes. Developer shall maintain its books and records in accordance with generally accepted accounting principles, consistently applied. Developer and District may, but shall not be obligated to, jointly agree to use a common accounting firm for the purpose of conducting any such audits; provided, however, that in such event, the accounting firm shall have a valid contract with District in compliance with the Procurement Practices Reform Act of 2010, D.C. Official Code §§ 2-351.01, et seq., as amended, and shall execute a separate engagement letter with District for calculation of the return.

2.7 MILESTONE NOTICES. Upon achievement of each construction milestone in the Schedule of Performance, Developer shall notify District, and District shall have the right, but not the obligation, to inspect the Property within ten (10) Business Days to confirm Developer's completion of such milestone.

2.8 FINAL PROJECT FUNDING PLAN; FINAL PROJECT BUDGET; DEBT FINANCING.

2.8.1 **Project Budget and Project Funding Plan**. Prior to the Effective Date, Developer has provided to the District (i) its initial funding plan describing the sources and uses of funds for the Project and the methods for obtaining such funds (including lending sources), which plan is attached to the Agreement as Exhibit N thereto ("**Project Funding Plan**"), and (ii) its initial project budget describing the expenditure of direct and indirect costs for the Project, including a cost itemization prepared by Developer specifying all "hard" and "soft" costs (direct and indirect) by item, which project budget is attached to the Agreement as Exhibit O thereto ("**Project Budget**"). Prior to the Financing/Construction Closing, Developer shall deliver to District an updated Project Budget and Project Funding Plan (i) upon receipt of the commitment letters for the Equity Investment and Debt Financing and (ii) within sixty (60) days but no later than thirty (30) days prior to Financing/Construction Closing. Upon District's approval of the modified Project Budget and Project Funding Plan submitted pursuant to clause (ii), such modified Project Budget and Project Funding Plan shall be the "**Final Project Budget**" and "**Final Project Funding Plan**," respectively.

2.8.2 **Final Project Funding Plan**. Developer shall not (a) modify the Final Project Funding Plan, (b) obtain funds for the Project from any sources not identified in the Final Project

Funding Plan, or (c) use funds for the Project for any uses not identified in the Final Project Funding Plan, without the prior approval of District, such approval not to be unreasonably withheld, conditioned, or delayed. Notwithstanding any other provisions of this Covenant, any modification to the amount, timing of disbursal, or any other element related to the contribution of Project funds for which District is a source shall not be made without the prior approval of District in its sole and absolute discretion.

2.8.3 **Final Project Budget**. Developer shall not modify the Final Project Budget without the prior approval of District, such approval not to be unreasonably withheld, conditioned, or delayed. Notwithstanding the requirement for District approval of modifications to the Final Project Budget, Developer shall be permitted to, without District approval: (a) reallocate budgeted funds amongst and between Final Project Budget cost line items, as needed, in an amount not to exceed five percent (5%) of the total Final Project Budget; (b) reallocate budgeted funds as a result of non-Material Changes to the Approved Plans and Specifications; and (c) reallocate budgeted funds between hard and soft costs (exclusive of any fees payable to Developer).

2.8.4 **Debt Financing**. From the Effective Date until the issuance of the District Certificate of Final Completion, Developer shall not obtain any Debt Financing or engage in any other transaction that shall create a Mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written approval of District, such approval not to be unreasonably withheld, conditioned, or delayed, provided such Debt Financing or Mortgage shall: (i) secure a bona fide indebtedness to an Institutional Lender, the proceeds of which shall be applied only to the costs identified in the Final Project Budget; notwithstanding the foregoing, the proceeds of such Debt Financing or Mortgage shall not be used to fund distributions to equity holders or acquisition, development, construction, operation, or any other costs relating to any other real property, personal property, or business operations and (ii) the amount thereof, together with all other funds available to Developer be sufficient to complete construction of the Project. For the purpose of obtaining District's approval of any such Debt Financing or Mortgage, Developer shall, at least ten (10) Business Days prior to closing on such financing, submit to District such documents as District may reasonably request, including, but not limited, copies of:

(a) The commitment or agreement between Developer and the holder of such Debt Financing or Mortgage, certified by Developer to be a true and correct copy thereof;

(b) A statement detailing the disbursement of the proceeds of the proposed Debt Financing or Mortgage, certified by Developer to be true and accurate; and

(c) A copy of the proposed deed of trust or such other instrument to be used to secure the Debt Financing or Mortgage.

2.9 DISTRICT SECURITY FOR PERFORMANCE.

2.9.1 **Development and Completion Guaranty**.

(a) On or before the Effective Date, Developer has delivered the Guaranty to District to secure Developer's performance of the provisions of this Covenant. In the event

Developer fails to perform any of its obligations contained in this Covenant, District may require the Guarantor, in accordance with the terms of the Guaranty, to perform Developer's obligations.

(b) In the event District reasonably determines that a material adverse change in the financial condition of the Guarantor(s) has occurred, Developer shall, within five (5) Business Days after notice from District, identify a proposed substitute guarantor and request District's approval of the same, which request shall include delivery of the Guarantor Submissions for such proposed replacement guarantor. District's approval of any replacement guarantor shall be in District's sole and absolute discretion, which approval shall include District's determination as to whether such Person has sufficient net worth and liquidity to satisfy its obligations under the Guaranty, taking into account all relevant factors, including, without limitation, such Person's obligations under other guaranties and the other contingent obligations of such Person. In no event shall a Guarantor be a Prohibited Person. Once approved, such replacement Guarantor(s) shall execute and deliver to District a Guaranty in the same form as such Guaranty delivered to District as of the Effective Date.

2.9.2 **Obligation to Maintain Bonds**. Developer or its Contractor, as applicable, shall maintain the Bonds required by the Agreement at all times until the issuance of the District Certificate of Final Completion.

2.9.3 **Performance Letter of Credit**.

(a) As of the Effective Date, Developer delivered to District one or more Acceptable Letters of Credit in the amount of Seventy-Five Thousand Dollars ($75,000) (the "**Project Deposit and Acquisition Letter of Credit**") to secure Developer's performance of its obligations contained in this Covenant until the Financing/Construction Closing. At the Financing/Construction Closing, Developer shall deliver to District one or more Acceptable Letters of Credit in the amount of One Hundred Thousand Dollars ($100,000)(the "**Performance Letter of Credit**") to secure Developer's performance of its obligations contained in this Covenant, whereupon the Project Deposit and Acquisition Letter of Credit may be returned to Developer. The Parties acknowledge and agree that Developer may renew/extend the Project Deposit and Acquisition Letter of Credit at the Financing/Construction Closing to serve as a portion of the Performance Letter of Credit and thereafter the Project Deposit and Acquisition Letter of Credit and any additional Acceptable Letters of Credit delivered at the Financing/Acquisition Closing shall, collectively, be the Performance Letter of Credit.

(b) Developer shall ensure that the Acceptable Letters of Credit shall be renewed (or automatically or unconditionally extended) from time to time, until (x) with respect to the Project Deposit and Acquisition Letter of Credit, delivery of the Performance Letter of Credit (except as provided for in Section 2.9.3(a)), and (y) with respect to the Performance Letter of Credit, the ninetieth (90^{th}) day after the issuance of the District Certificate of Final Completion. Developer shall deliver to District a replacement Acceptable Letter of Credit in the same amount as the Acceptable Letters of Credit in the event either (i) the Project Deposit and Acquisition Letter of Credit will expire prior to the Financing/Construction Closing Date, (ii) the Performance Letter of Credit will expire prior to Final Completion, or (iii) if the issuer of any Project Deposit and Acquisition Letter of Credit or Performance Letter of Credit notifies District in writing that it will not renew the same. Any such replacement Acceptable Letter(s) of Credit shall be delivered to

District at least ten (10) days prior to the expiration date of the expiring Acceptable Letter of Credit.

(c) In the event the issuer of any Project Deposit and Acquisition Letter of Credit or Performance Letter of Credit is insolvent or is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, or any successor or similar entity, or if a trustee, receiver, or liquidator is appointed for the insurer, then, effective as of the date of such occurrence, said letter of credit shall no longer meet the requirements of an Acceptable Letter of Credit, and, within ten (10) days thereof, Developer shall deliver to District a replacement Acceptable Letter of Credit.

(d) If District draws any part of any Project Deposit and Acquisition Letter of Credit or Performance Letter of Credit, Developer shall replenish such Project Deposit and Acquisition Letter of Credit or Performance Letter of Credit to its full amount within ten (10) days following District's draw.

(e) In the event Developer fails to deliver a replacement Acceptable Letter of Credit pursuant to Section 2.9.3(b) or Section 2.9.3(c) or fails to replenish any Project Deposit and Acquisition Letter of Credit or Performance Letter of Credit pursuant to Section 2.9.3(d), the same shall be an Event of Default hereunder.

2.10 TRANSFERS.

2.10.1 **Restrictions on Transfer**. Developer represents, warrants, covenants, and agrees, for itself, its successors and assigns, and its Members that, prior to the issuance of a District Certificate of Final Completion, neither Developer nor its Members shall make or create, or suffer to be made or created, any Transfer, without the prior approval of District in its sole and absolute discretion. Developer shall submit its written request for approval of a proposed Transfer to District with all relevant written documents and information pertaining to such proposed Transfer and such additional documents and information as District may reasonably request.

2.10.2 **No Unreasonable Restraint**. Developer hereby acknowledges and agrees that the restrictions on Transfers set forth in Section 2.10.1 do not constitute an unreasonable restraint on Developer's right to Transfer or otherwise alienate the Property. Developer hereby waives any and all claims, challenges, and objections that may exist with respect to the enforceability of such restrictions, including any claim that such restrictions constitute an unreasonable restraint on alienation.

2.10.3 **Estoppel**. In the event of a Transfer prior to the issuance of the District Certificate of Final Completion, at the reasonable request of Developer, District shall provide to Developer, within twenty (20) Business Days after request (which may be made only in connection with a Transfer), an estoppel statement stating whether any default by Developer exists under this Covenant.

2.11 INSURANCE. Beginning on the Financing/Construction Closing Date, and until issuance of the District Certificate of Final Completion, Developer shall maintain, and cause its Contractor to maintain, as applicable, the insurance required under Exhibit F.

ARTICLE III
USE COVENANTS

3.1 USE RESTRICTIONS.

3.1.1 **Retail Plan**. The Retail Portion shall be leased by Developer to the initial retail tenants in conformance with the Retail Plan approved by District pursuant to the Agreement.

3.1.2 **Prohibited Uses**. The Property shall not be used, in whole or in part, for any of the following uses ("**Prohibited Uses**"): gambling, laundromat open to the public, check cashing establishment, sexually-oriented business, liquor store, drive-thru services, or any other unlawful or illegal business use or purpose.

3.1.3 **Documentation**. At any time prior to Final Completion, within ten (10) Business Days of District's request thereof, Developer shall deliver to District a schedule of leases executed with respect to the Retail Portion and a status update regarding Developer's activities in connection with the leasing of the Retail Portion.

3.2 NONDISCRIMINATION COVENANTS.

3.2.1 **Covenant not to Discriminate in Sales or Rentals**. Developer shall not discriminate upon the basis of race, color, religion, sex, national origin, ethnicity, sexual orientation, or any other factor that would constitute a violation of the D.C. Human Rights Act or any other Applicable Law, regulation, or court order, in the sale, lease, or rental or in the use or occupancy of the Project.

3.2.2 **Covenant not to Discriminate in Employment**. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other factor that would constitute a violation of the D.C. Human Rights Act or other Applicable Law, regulation, or court order. Developer agrees to comply with all applicable labor and employment standards, Applicable Law, and orders in the construction and operation of the Project, including the D.C. Human Rights Act and its prohibitions on sexual harassment consistent with 4 DCMR 1000, et seq.

3.2.3 **Affirmative Action**. Developer will take affirmative action to ensure that employees are treated in accordance with Applicable Law during employment, without regard to their race, color, religion, sex, or national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap as and to the extent provided by Applicable Law. Such affirmative action shall include, but not be limited to, the following: (i) employment, upgrading, or transfer; (ii) recruitment or recruitment advertising; (iii) demotion, layoff, or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training and apprenticeship. Developer agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by DOES or District setting forth the provisions of this non-discrimination clause.

3.2.4 **Solicitations for Employment**. In all solicitations or advertisements for employees placed by or on behalf of Developer, Developer will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or any other factor that would constitute a violation of the D.C. Human Rights Act or other Applicable Law.

3.2.5 **Enforcement**. In the event of Developer's non-compliance with the nondiscrimination covenants of this Section 3.2 or with any Applicable Law, regulation, or order, District, a District of Columbia agency, or DOL may take such enforcement against Developer as may be provided by Applicable Law.

3.3 ENVIRONMENTAL CLAIMS AND INDEMNIFICATION.

3.3.1 **Compliance with Environmental Laws; Indemnity**. Developer hereby covenants that, at its sole cost and expense (as between District and Developer, provided that the foregoing shall not prohibit Developer from the pursuit of any third party responsible for non-compliance with Environmental Laws), it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements, and appurtenances of and to the Property, and shall perform all investigations, removal, remedial actions, cleanup, and abatement, corrective action, or other remediation that may be required pursuant to any Environmental Law, and shall hold District and its officers, directors, agents, and employees (individually, an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (i) Developer's violation of any Environmental Law, (ii) any Contaminant Release or threatened Contaminant Release of a Hazardous Material from the Property, or (iii) any condition of pollution, contamination, or Hazardous Material-related nuisance on, under, or from the Property ("**Environmental Claims**"); provided, however, that Developer shall not be required to indemnify an Indemnified Party for an Environmental Claim if and to the extent that such Environmental Claim arises in connection with the gross negligence or willful misconduct of any Indemnified Party.

3.3.2 **Release**. Developer, for itself, its former and future officers, directors, agents, and employees, and each of their respective heirs, personal representatives, successors, and assigns, hereby forever releases and discharges the Indemnified Parties and all of their present, former, and future parent, subsidiary, and related entities and all of its and their respective present, former, and future officers, directors, agents, and employees, and each of its and their heirs, personal representatives, successors and assigns, of and from any and all rights, claims, liabilities, causes of action, obligations, and all other debts and demands whatsoever, at law or in equity, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, in connection with any Environmental Claims, except if and to the extent any such rights, claims, liabilities, causes of action, obligations, debts, demands, or Environmental Claims arise in connection with the gross negligence or willful misconduct of any Indemnified Party.

3.3.3 **Notice**. Developer shall provide District with written notice of violations, or allegations of violations, of Environmental Laws or enforcement actions by Governmental Authorities that Developer has received or of which it is relating to the Project promptly after Developer receives or becomes aware of such violation, or allegation of a violation, or enforcement action.

ARTICLE IV
TERM; RELEASE; SUBORDINATION OF LIENS AND MORTGAGES

4.1 TERM OF CONSTRUCTION COVENANTS. The Construction Covenants, and any obligations hereunder that relate solely to the development and construction of the Project, shall run with the land and otherwise remain in effect until District delivers to Developer the District Certificate of Final Completion, at which time the Construction Covenants shall be deemed to be released and of no further force and effect.

4.2 TERM OF USE RESTRICTIONS AND OTHER COVENANTS. All other obligations, liabilities, terms, and conditions set forth in Article III and Article VII herein shall run with the land, binding Developer and its successors and assigns in perpetuity, unless otherwise provided herein or otherwise agreed to by District in writing.

4.3 RELEASE. In the event District exercises its right to terminate the Ground Lease in accordance with Section 5.2(f), District shall be entitled to unilaterally execute and record a release of this Covenant, whereupon both Parties shall be released from the obligations and liabilities contained hereunder, except for the Developer's obligations contained in Section 3.3 (to the extent of claims arising from Developer's or Developer's Agents' actions or inactions), Section 5.4, and Article VII, which shall survive such termination.

4.4 SUBORDINATION OF LIENS AND MORTGAGES. All Mortgages and other liens affecting all or any portion of the Project shall be subordinate to this Covenant.

ARTICLE V
DEFAULT AND REMEDIES

5.1 EVENTS OF DEFAULT. Each of the following shall constitute an "**Event of Default**" on the part of Developer:

(a) Developer fails to perform a milestone by the applicable outside date set forth in the Schedule of Performance, subject to Force Majeure;

(b) Developer fails to fully and conclusively achieve Financing/Construction Closing by the outside date for the Financing/Construction Closing shown on the Schedule of Performance, subject to Force Majeure;

(b) Developer shall fail to obtain or maintain in effect any insurance required of it under Section 2.11 or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain, and provide evidence to District of the

insurance required to be obtained or maintained by Developer or Contractor, or its contractors or subcontractors, under this Covenant, and such failure shall continue for a period of ten (10) days after the date of termination of any such policy or the date premiums have become due and payable, as applicable;

(c) Developer shall file any petition or action under any bankruptcy or insolvency law, or any other law or laws for relief of, or relating to debtors; or if there shall be filed any insolvency petition under any bankruptcy or insolvency statute against Developer or there shall be appointed any receiver or trustee to take possession of any property of Developer and such petition or appointment is not set aside or withdrawn or does not cease within sixty (60) days from the date of such filing of appointment;

(d) Developer shall effect a Transfer in violation of Section 2.10 and shall not remedy the same within thirty (30) days;

(e) Developer fails to deliver a replacement Acceptable Letter of Credit pursuant to Section 2.9.3(b) or Section 2.9.3(c) or fails to replenish the Performance Letter of Credit pursuant to Section 2.9.3(d); or

(f) Developer defaults in the performance of any obligation, term, or provision under this Covenant not specified in the foregoing clauses (a) – (e), and such default shall continue uncured for thirty (30) days after notice of such default from District, or if such a default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period, then Developer shall have such additional time as is reasonably necessary, not to exceed an additional sixty (60) days, to cure such default; provided, however, Developer must commence the cure within the initial thirty (30) day period and diligently pursue completion of such cure thereafter.

5.2 REMEDIES. In the event an Event of Default occurs hereunder, District may elect to pursue any of the following remedies, all of which are cumulative:

(a) District may cure Developer's Event of Default at the reasonable cost and expense of Developer, after ten (10) Business Days' notice to Developer. Developer shall pay to District an amount equal to its reasonable actual out-of-pocket costs for such cure within thirty (30) days after demand therefor accompanied by invoices substantiating such costs. Any such sums not paid by Developer within thirty (30) days after demand shall bear interest at the rate of fifteen percent (15%) per annum or the highest rate permitted by Applicable Law, if less, and shall constitute a lien against the Property until paid;

(b) District may pursue specific performance of Developer's obligations hereunder;

(c) District may pursue any and all other remedies available at law and in equity, including without limitation, injunctive relief;

(d) Following the Financing/Construction Closing, District may require the Guarantor, in accordance with the terms of the Guaranty, to perform Developer's obligations under this Covenant;

(e) District may draw on any Project Deposit and Acquisition Letter of Credit or Performance Letter of Credit, as applicable, in such amount as District determines in its sole and absolute discretion; and

(f) District may terminate the Ground Lease in accordance with the terms of the Ground Lease.

5.3 WAIVER. Notwithstanding anything to the contrary contained herein, any delay by District in instituting or prosecuting any actions or proceedings with respect to an Event of Default or otherwise asserting its rights or pursuing its remedies under this Article, shall not operate as a waiver of such rights or to deprive District of or limit such rights in any way (it being the intent of this provision that District shall not be constrained by waiver, laches, or otherwise in the exercise of such remedies). Any waiver by District must be made in writing. Any waiver in fact made with respect to any specific default under this Section shall not be considered or treated as a waiver with respect to any other defaults or with respect to the particular default except to the extent specifically waived in writing.

5.4 ASSIGNMENT OF WORK PRODUCT. Upon the exercise by District of its right to terminate the Ground Lease pursuant to Section 5.1(f), Developer hereby consents to the assignment to District all of Developer's assignable right, title and interest in and to all plans, drawings, specifications, engineering studies, investigations, reports, Approvals and Permits in connection with the Project (collectively, the "**Development Work Product**") at Developer's sole cost and expense. Developer shall cause all professional contracts for Development Work Product to expressly provide that Developer shall have the right to so assign (or failing that, to license) the Development Work Product to District and that, from and after the effective date of such assignment (or license), District shall have the right to use such Development Work Product and rely thereon to the same extent as Developer. If requested by District, Developer shall execute such assignments as District may request to perfect such assignment. Developer hereby indemnifies, defends and holds harmless District from and against any and all third-party costs, claims or liabilities, caused by the failure of Developer to pay when due third parties for any Development Work Product. Developer's obligations pursuant to this Section 5.4 shall survive termination of this Covenant.

5.5 ATTORNEYS' FEES. In the event District prevails in any legal action or proceeding to enforce the terms of this Covenant, District shall be entitled to recover from Developer the reasonable attorneys' fees and costs incurred by District in such action or proceeding. In the event District is represented by the Office of the Attorney General for the District, reasonable attorneys' fees shall be calculated based on the then-applicable hourly rates established in the most-current Adjusted Laffey Matrix prepared by the Civil Division of the United States Attorney's Office for the District of Columbia and the number of hours employees of the Office of the Attorney General for the District of Columbia prepared for or participated in any such litigation.

5.6 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, ALL PARTIES HERETO WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING IN RESPECT OF THIS COVENANT.

ARTICLE VI
CASUALTY

In the event of damage or destruction to the Project following the Financing/Construction Closing, but prior to the issuance of the District Certificate of Final Completion, Developer shall be obligated to promptly repair or restore the Project in conformity with the Approved Plans and Specifications, subject to changes necessary to comply with then-current building code requirements, as approved by District in its sole discretion. Notwithstanding anything in this Covenant to the contrary, District shall not issue the District Certificate of Final Completion nor shall District release Developer from its development obligations hereunder until Developer has completed its restoration obligations.

ARTICLE VII
INDEMNIFICATION

Developer shall indemnify, defend, and hold District, its officers, employees, and agents harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action (including reasonable attorneys' fees and court costs) arising out of death of or injury to any person or damage to any property occurring on or adjacent to the Property and directly or indirectly by any acts or omissions of Developer or Developer's Agents; provided however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities, and causes of action due solely to the gross negligence or willful misconduct of District or its officers, employees, and agents.

ARTICLE VIII
COVENANTS BINDING ON SUCCESSORS AND ASSIGNS

8.1 RUNNING WITH THE LAND. This Covenant is and shall be binding upon the Property and shall run with the land for the period of time stated herein. The rights and obligations of District, Developer, and their respective successors and assigns shall be binding upon and inure to the benefit of the foregoing Parties and their respective successors and assigns; provided, however, that all rights of District pertaining to the monitoring or enforcement of the obligations of Developer hereunder shall not convey with the transfer of title or any lesser interest or leasehold estate in the Property, but shall be retained by District, or such other designee of District as District may so determine.

8.2 PARTY NO LONGER IN INTEREST. The obligations and liabilities imposed on a Person under this Covenant shall apply only with respect to the period that such Person owns the Property. Upon the transfer by a Person of its interests in the Property (other than to a lender as security for a loan), such Person shall no longer be considered "Developer" hereunder and shall be relieved of all obligations and liabilities under this Covenant arising after the date of the

assignment or transfer; provided, however, such Person shall remain liable for all obligations and liabilities which accrued during the period of ownership. Upon the assignment or transfer, the successor, transferee, or assignee in ownership or interest of such Person shall automatically become "Developer" hereunder and liable for all obligations arising after the date of the conveyance.

ARTICLE IX
AMENDMENT OF COVENANT

This Covenant shall not be amended, modified, or released other than by an instrument in writing executed by a duly authorized official of District on behalf of District and by Developer. Any amendment to this Covenant shall be recorded among the Land Records before it shall be deemed effective.

ARTICLE X
NOTICES

10.1 Any notices given under this Covenant shall be in writing and delivered by certified mail, return receipt requested, postage pre-paid, by hand or by reputable private overnight commercial courier service to the Parties at the following addresses:

TO DISTRICT:

Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attention: Deputy Mayor for Planning and Economic Development
re: Truxton Circle

With a copy to:

Office of the General Counsel
for the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attn: General Counsel [Truxton Circle]

Any notices given under this Covenant shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, to Developer at the following addresses:

TO DEVELOPER:

Cycle House, LLC
c/o Urban Green, LLC

6174 Commadore Court
Columbia, MD 21045

With a copy to:

Klein Hornig LLP
1325 G Street, NW, Suite 770
Washington, DC 20005
Attn: Eric Herrmann

10.2 Notices served upon Developer or District in the manner aforesaid shall be deemed to have been received for all purposes hereunder at the time such notice shall have been: (i) if hand delivered to a Party against receipted copy, when the copy of the notice is receipted; (ii) if given by overnight courier service, on the next Business Day after the notice is deposited with the overnight courier service; (iii) if given by certified mail, return receipt requested, postage pre-paid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Covenant and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Covenant.

ARTICLE XI
MISCELLANEOUS PROVISIONS

11.1 GOVERNING LAW; FORUM. This Covenant shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the District of Columbia, without reference to the conflicts of laws provisions thereof. District and Developer irrevocably submit to the jurisdiction of (a) the courts of the District of Columbia and (b) the United States District Court for the District of Columbia for the purposes of any suit, action, or other proceeding arising out of this Covenant or any transaction contemplated hereby. District and Developer irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Covenant or the transactions contemplated hereby in the courts named in (a) and (b) above, and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

11.2 CAPTIONS, NUMBERINGS, AND HEADINGS. Captions, numberings, and headings of Articles, Sections, Schedules, and Exhibits in this Covenant are for convenience of reference only and shall not be considered in the interpretation of this Covenant.

11.3 RULES OF CONSTRUCTION. Unless the context clearly indicates to the contrary, for all purposes of this Covenant, (a) words importing the singular number include the plural number and words importing the plural number include the singular number; (b) words of the masculine gender include correlative words of the feminine and neuter genders; (c) words importing persons include any Person; (d) any reference to a particular Section shall be to such Section of this Covenant unless otherwise stated; and (e) any reference to a particular Exhibit shall be to such

Exhibit to this Covenant; and to all sub-exhibits related thereto (e.g., references to Exhibit A shall include Exhibit A-1, Exhibit A-2, etc.).

11.4 BUSINESS DAY. In the event that the date for performance of any obligation under this Covenant falls on a day that is not a Business Day, then such obligation shall be performed on the next succeeding Business Day.

11.5 COUNTERPARTS. This Covenant may be executed in multiple counterparts, each of which shall constitute an original but all of which shall constitute one and the same instrument.

11.6 SEVERABILITY. In the event that one or more of the provisions of this Covenant shall be held to be illegal, invalid, or unenforceable, each such provision shall be deemed severable and the remaining provisions of this Covenant shall continue in full force and effect, unless this construction would operate as an undue hardship on District or Developer or would constitute a substantial deviation from the general intent of the Parties as reflected in this Covenant.

11.7 SCHEDULES AND EXHIBITS. All Schedules and Exhibits referenced in this Covenant are incorporated by this reference as if fully set forth in this Covenant.

11.8 INCLUDING. The word "including," and variations thereof, shall mean "including without limitation."

11.9 NO CONSTRUCTION AGAINST DRAFTER. This Covenant has been negotiated and prepared by District and Developer and their respective attorneys and, should any provision of this Covenant require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

11.10 FORCE MAJEURE. Neither District nor Developer, as the case may be, nor any successor-in-interest, shall be considered in default of its obligations under this Covenant, in the event such Party's performance is materially and adversely affected by a Force Majeure event. In the event of occurrence of any such Force Majeure event, the time or times for performance of the obligations of District or of Developer shall be extended day-for-day for the period of the Force Majeure; provided, however, that (a) the Party seeking the benefit of this Section 11.10 shall notify the other Party in writing within ten (10) days after it becomes aware of the beginning of any such Force Majeure event, of the cause or causes thereof, with supporting documentation, and such Party's estimate of the length of the delay that will be caused by such Force Majeure event and (b) the Party seeking the delay must take commercially reasonable actions to minimize the delay. If either Party requests any extension on the date of completion of any obligation hereunder due to Force Majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by such Force Majeure event.

11.11 ENTIRE AGREEMENT. This Covenant (together with the Ground Lease and the documents referenced herein) constitutes the entire agreement and understanding between the parties concerning the Project and supersede all prior agreements and understandings related to the subject matter hereof.

11.12 THIRD PARTY BENEFICIARY. No Person shall be a third-party beneficiary of this Covenant.

11.13 TIME OF THE ESSENCE. Time is of the essence with respect to all matters set forth in this Covenant. For all deadlines set forth in this Covenant, the standard of performance of the Party required to meet such deadlines shall be strict adherence and not reasonable adherence.

11.14 NO PARTNERSHIP. Nothing contained herein shall be deemed or construed by the Parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Developer and District.

11.15 JOINT PREPARATION. District and Developer each acknowledge that it has thoroughly read and reviewed this Covenant, including all Exhibits and attachments thereto, and has sought and received whatever competent advice and counsel as was necessary for it to form a full and complete understanding of all rights and obligations herein. The language of this Covenant has been agreed to by the Parties to express their mutual intent and no rule of strict construction shall be applied against any Party hereto.

11.16 CONFLICT OF INTERESTS; REPRESENTATIVES NOT INDIVIDUALLY LIABLE. No official or employee of District shall participate in any decision relating to this Covenant which affects his personal interests or the interests of any District of Columbia agency, partnership, or association in which he is, directly or indirectly, interested. No official or employee of District shall be personally liable to Developer or any successor-in-interest in the event of any default or breach by District or for any amount which may become due to Developer or such successor-in-interest or on any obligations hereunder.

[Signatures on following pages]

IN WITNESS WHEREOF, the undersigned have caused this Covenant to be executed, acknowledged and delivered for the purposes therein contained.

DISTRICT:

DISTRICT OF COLUMBIA, acting by and through the Office of the Deputy Mayor for Planning and Economic Development

By: _____

Name: John Falcicchio
Title: Interim Deputy Mayor for Planning and Economic Development

Reviewed:

By: _____
Office of the General Counsel
ODMPED

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this 25 day of November, 2019 by John Falcicchio, the Interim Deputy Mayor for Planning and Economic Development, whose name is subscribed to the within instrument, being authorized to do so on behalf of the District of Columbia, acting by and through the District of Columbia Office of the Deputy Mayor for Planning and Economic Development, and who has executed the foregoing and annexed document as his/her free act and deed.

[Notarial Seal]

_____
Notary Public

My commission expires:

NAKIA E. NEWTON
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 14, 2022

DEVELOPER:

Cycle House, LLC
A District of Columbia limited liability company

By: Urban Green, LLC,
A Maryland limited liability company,
Its managing member

By: _____
Name: Mark E. James
Title: Sole Member

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me on this 25 day of November, 2019, by Mark E. James, the Sole Member of Urban Green, LLC, the managing member of Cycle House, LLC, whose name is subscribed to the within instrument, being authorized to do so on behalf of said Developer, and who has executed the foregoing and annexed document as his free act and deed, for the purposes therein contained.

_____
Notary Public

[Notarial Seal]

My commission expires: _____

Donna F. Shuler
NOTARY PUBLIC
District of Columbia
My Commission Expires 10/14/2024

EXHIBIT A

Legal Description

Lots 83 and 84 and part of Lots 85 and 86 in Square 615 in the subdivision made by Kate E. Lauritzen and others, as per plat recorded in Liber W.B.M. at folio 83 of the Records of the Office of the Surveyor for the District of Columbia and being bounded and described as follows:

BEGINNING for the same at the northeast corner of Lot 83, being also the southwest intersection of the south line of Bates Street and the west line of North Capitol Street and running thence along the west line of North Capitol Street:

Due South, 40.13 feet to a point; thence departing said street the following four courses and distances

Due West 74.00 feet to a point; thence

Due South 26.54 feet to a point; thence

Due West 5.00 feet to a point; thence

Due South 13.33 feet to the southerly line of Lot 86; thence

Due West along the south line of Lot 86, 21.00 feet to the southwest corner of Lot 86 and the east line of a public alley; thence along said line

Due North along the west line of Lots 83 through 86, 80.00 feet to the northwest corner of Lot 83 and the south line of Bates Street; thence

Due East along the south line of Bates Street, 100.00 feet to the point of beginning

NOTE: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 842 in Square 615.

EXHIBIT B

Developer Certificate of Completion

THIS DEVELOPER CERTIFICATE OF COMPLETION ("**Certificate**") is executed this _____ day of _____, 202___ by Cycle House, LLC (the "**Developer**"). This Certificate is executed and delivered by Developer pursuant to that certain Construction Covenant ("**Construction Covenant**") made as of November __, 2019_by and between the DISTRICT OF COLUMBIA, a municipal corporation, ("**District**") and Developer, which was recorded in the Land Records on November __, 2019_as Instrument No. _____ against the real property described in Exhibit A attached hereto. Any capitalized terms used in this Certificate, which are not herein defined, shall have the meaning given in the Construction Covenant.

Developer hereby delivers this Certificate and certifies and confirms it has: (i) completed all Punch List Items, except for such Improvements to be occupied by commercial and/or retail tenants; (ii) closed-out all construction contracts for the Improvements, except for such Improvements to be occupied by commercial and/or retail tenants; (iii) paid all costs of constructing the Improvements, except for such Improvements to be occupied by commercial and/or retail tenants, and received fully executed and notarized valid releases of liens from the Contractor and all subcontractors involved in the Project; (iv) has complied with the terms of the Affordable Housing Covenant; (v) has complied with the requirements of the CBE Agreement and First Source Agreement, as evidenced by Exhibit B, attached hereto; (vi) has obtained a LEED Gold Certification, as evidenced by Exhibit C, attached hereto; and (vii) has obtained a Home Energy Rating System (HERS) Index Score of 20 or below from a qualified third-party consultant (a certified RESNET HERS Rater) at the time of substantial completion of construction confirming the building was constructed to the aforementioned design specifications, as evidenced by Exhibit D, attached hereto. Developer hereby provides District with the certifications from the Contractor and the Construction Consultant, attached hereto as Exhibit E and Exhibit F, respectively, each of which certify that the Improvements have been constructed in accordance with the construction plans and specifications, including the Approved Plans and Specifications, and the Permits.

Developer certifies that the person executing this Certificate on its behalf is duly authorized to execute and deliver the same, and to make the statements contained herein.

Developer acknowledges that District will rely on the certifications contained in this Certificate and the Exhibits attached hereto.

[signatures on following page]

IN WITNESS WHEREOF, _____has caused this Developer Certificate of Completion to be executed, acknowledged, and delivered as of the date first written above.

CYCLE HOUSE, LLC,
a District of Columbia limited liability company

By:_____
Name: _____
Title: _____

EXHIBIT A
[Description of Property]

EXHIBIT B
CBE AND FIRST SOURCE CERTIFICATIONS

EXHIBIT C
LEED GOLD CERTIFICATION

EXHIBIT D
HERS INDEX SCORE

EXHIBIT E
CONTRACTOR'S CERTIFICATE

EXHIBIT F
CONSTRUCTION CONSULTANT'S CERTIFICATE

EXHIBIT C

Developer Certificate of Substantial Completion

THIS DEVELOPER CERTIFICATE OF SUBSTANTIAL COMPLETION ("**Certificate**") is executed this _____ day of _____, 202___ by Cycle House, LLC (the "**Developer**"). This Certificate is executed and delivered by Developer pursuant to that certain Construction Covenant ("**Construction Covenant**") made as of November __, 2019 by and between the DISTRICT OF COLUMBIA, a municipal corporation, ("**District**") and Developer, which was recorded in the Land Records on November __, 2019 as Instrument No. _____ against the real property described in Exhibit A attached hereto. Any capitalized terms used in this Certificate, which are not herein defined, shall have the meaning given in the Construction Covenant.

Developer hereby delivers this Certificate with respect to the Improvements described on Exhibit B and certifies and confirms that: (a) it has substantially completed construction of the applicable Improvements in accordance with the construction plans and specifications, including the Approved Plans and Specifications, and the Construction Covenant, subject to the completion of any Punch List Items; (b) it has obtained a Certificate of Occupancy and other necessary approvals for the use and occupancy of the applicable Improvements; (c) the Architect has delivered an Architect's Certificate for the applicable Improvements, which is attached as Exhibit C; (d) the Contractor is entitled to final payment under the Construction Contract for the applicable Improvements, exclusive only of any retainage held on account of Punch List Items and any amounts in dispute between Developer and the Contractor; and (e) all streetscapes, sidewalks, lighting, public spaces, and similar improvements relating to the applicable Improvements, have been completed pursuant to the construction plans and specifications, including the Approved Plans and Specifications.

Developer certifies that the person executing this Certificate on its behalf is duly authorized to execute and deliver the same, and to make the statements contained herein.

Developer acknowledges that District will rely on the certifications contained in this Certificate and the Exhibits attached hereto.

[signatures on following page]

IN WITNESS WHEREOF, _____ has caused this Developer Certificate of Substantial Completion to be executed, acknowledged, and delivered as of the date first written above.

CYCLE HOUSE, LLC,
a District of Columbia limited liability company

By:_____
Name: _____
Title: _____

EXHIBIT A
[Description of Property]

EXHIBIT B
DESCRIPTION OF IMPROVEMENTS SUBJECT TO THIS CERTIFICATE

EXHIBIT C
ARCHITECT'S CERTIFICATE

EXHIBIT D

District Certificate of Final Completion

THIS DISTRICT CERTIFICATE OF FINAL COMPLETION ("**Final Certificate**") is executed this _____ day of _____, 202___ by the DISTRICT OF COLUMBIA, a municipal corporation, by and through the Office of the Deputy Mayor for Planning and Economic Development ("**District**"). This Final Certificate is executed and delivered by District pursuant to that certain Construction Covenant ("**Construction Covenant**") made as of November __, 2019 by and between District and Cycle House, LLC, ("**Developer**"), which was recorded in the Land Records on November __, 2019 as Instrument No. _____ against the real property described in Exhibit A attached hereto. Any capitalized terms used in this Final Certificate, which are not herein defined, shall have the meaning given in the Construction Covenant.

District, having (a) received from Developer the Developer Certificate(s) of Substantial Completion and the Developer Certificate of Completion and relied on the certifications contained therein, (b) had the opportunity to inspect the Project, (c) if required under Section 2.3.5 of the Construction Covenant, reviewed and approved Developer's amended Affordable Unit Index, (d) confirmed Developer's compliance with the terms of the Affordable Housing Covenant, hereby delivers this Final Certificate to confirm Final Completion of the Project in accordance with Section 2.3.4 of the Construction Covenant.

As of the date of this Final Certificate, the Construction Covenant is hereby released and of no further force and effect, except for those provisions that expressly survive this release.

The issuance of this Final Certificate does not relieve Developer or any other Person from complying with all Applicable Law, Permits, and requirements of Governmental Authorities. The issuance of this Final Certificate shall not be deemed an approval, warranty, or other certification as to the compliance of the Improvements, or any portion thereof, or the Property with any Applicable Law, Permits, and requirements of Governmental Authorities, or that certain Affordable Housing Covenant dated as of November __, 2019 (as amended) and recorded in the Land Records on November __, 2019 as Instrument No. _____.

[signatures on following page]

IN WITNESS WHEREOF, the District of Columbia has caused this Final Certificate to be executed, acknowledged, and delivered by _____, the Deputy Mayor for Planning and Economic Development as of the date first written above.

DISTRICT OF COLUMBIA,
a municipal corporation, acting by and through
the Office of the Deputy Mayor for Planning and Economic Development

By:_____
Name: _____
Title: Deputy Mayor for Planning and Economic Development

Reviewed:

By:_____
Office of the General Counsel

DISTRICT OF COLUMBIA) ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that on this day _____, the Deputy Mayor for Planning and Economic Development, who is personally well known to me or satisfactorily proven to me to be the person who executed the foregoing District Certificate of Final Completion, executed the same with proper authority, for and in the name of the District of Columbia.

Given under my hand and seal this ____ day of _____, 20___.

_____
Notary Public
[Notarial Seal]

My commission expires: _____

EXHIBIT A
[Description of Property]

EXHIBIT E

Schedule of Performance

[See attached]

SCHEDULE OF PERFORMANCE

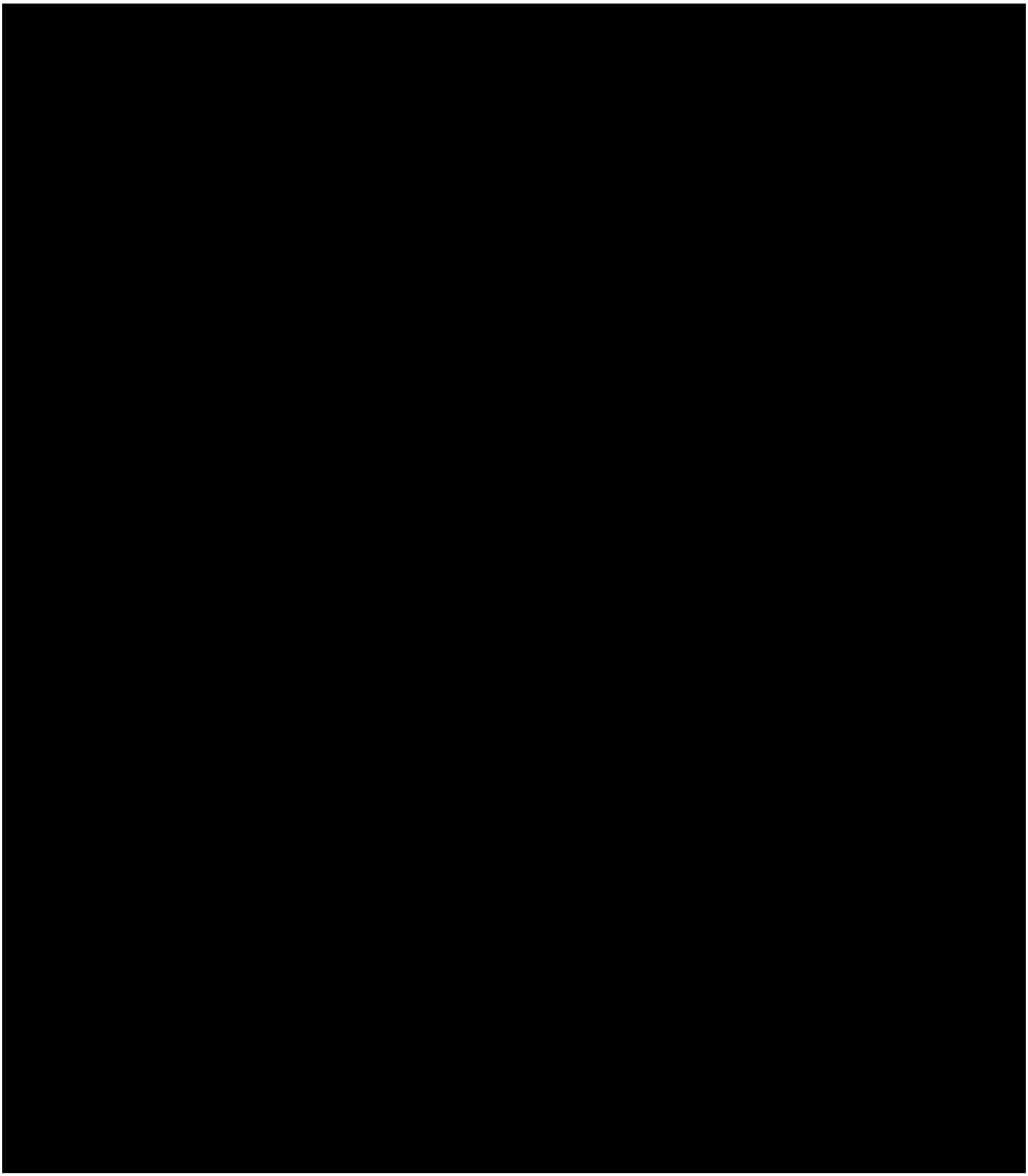


EXHIBIT F

Insurance Provisions

A. GENERAL REQUIREMENTS. The Developer at its sole expense shall procure and maintain, from Financing/Construction Closing until the issuance of the District Certificate of Final Completion, the types of insurance specified below. The Developer shall have its insurance broker or insurance company submit a Certificate of Insurance to District giving evidence of the required coverage prior to the Financing/Construction Closing Date. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, District. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor/Sub contractor/Developer/Leasee (as applicable, except for workers' compensation and professional liability insurance as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor/Sub contractor/Developer/Leasee (as applicable, including without limitation the liability to pay premiums shall be the sole obligation of the Developer, and not the additional insured. The additional insured status under the Developer's Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by District in writing. All of the Developer's liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of this Covenant by the Developer or anyone for whom the Developer may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Developer maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee.

1. Commercial General Liability Insurance ("CGL") - The Developer shall provide evidence satisfactory to District with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by District in writing), covering liability for

all ongoing and completed operations of the Developer, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than $1,000,000 each occurrence, a $2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a $1,000,000 personal and advertising injury limit, and a $2,000,000 products-completed operations aggregate limit.

2. Automobile Liability Insurance - The Developer shall provide evidence satisfactory to District of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by District in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Developer, with minimum per accident limits equal to the greater of (i) the limits set forth in the Developer's commercial automobile liability policy or (ii) $1,000,000 per occurrence combined single limit for bodily injury and property damage.

3. Workers' Compensation Insurance - The Developer shall provide evidence satisfactory to District of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

   Employer's Liability Insurance - The Developer shall provide evidence satisfactory to District of employer's liability insurance as follows: $500,000 per accident for injury; $500,000 per employee for disease; and $500,000 for policy disease limit.

   All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

4. Crime Insurance (3rd Party Indemnity) - The Developer shall provide a 3rd Party Crime policy to cover the dishonest acts of Developer's employees which result in a loss to the District. The policy shall provide a limit of $50,000 per occurrence.

5. Cyber Liability Insurance - The Developer shall provide evidence satisfactory to District of Cyber Liability Insurance, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Developer in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic

information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

6. Environmental Liability Insurance/Contractors Pollution Liability - The Developer shall provide evidence satisfactory to District of pollution legal liability insurance covering losses caused by pollution conditions that arise from the ongoing or completed operations of the Developer. Completed operations coverage shall remain in effect for at least ten (10) years after completion of the work. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), cleanup costs, liability and cleanup costs while in transit, and defense (including costs and expenses incurred in the investigation, defense and settlement of claims). There shall be neither an exclusion nor a sublimit for mold-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Developer's pollution legal liability policy or (ii) $2,000,000 per occurrence and $2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Developer warrants that any retroactive date applicable to coverages under the policy precedes the Developer's performance of any work under this Covenant and that continuous coverage will be maintained or an extended reporting period will be exercised for at least ten (10) years after completion. The Developer also must furnish to the Owner certificates of insurance evidencing pollution legal liability insurance maintained by the transportation and disposal site operators(s) used by the Developer for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Developer's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

7. Professional Liability Insurance (Errors & Omissions) - The Developer shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of $1,000,000 per claim or per occurrence for each wrongful act and $2,000,000 annual aggregate. The Developer warrants that any applicable retroactive date precedes the date the Developer first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.

8. Commercial Umbrella or Excess Liability - The Developer shall provide evidence satisfactory to District of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Developer's umbrella or excess liability policy or (ii) $10,000,000 per occurrence and $10,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The

insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

9. Builders Risk – At all times from and after the Financing/Construction Closing, until delivery of the District Certificate of Final Completion, Developer shall maintain builders risk insurance at 100% replacement cost upon the entire Project Improvements at the site and portions of the Project Improvements stored off the site with the District's approval, and contingent transit coverage for portions of the Project Improvements in transit. This insurance shall include the interests of the District, the Developer in the Work and shall insure against all risk of physical damage including flood if located in a flood zone, subject to standard exclusions.

B. PRIMARY AND NONCONTRIBUTORY INSURANCE
The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

C. DURATION. The Developer shall carry all required insurance until all contract work is accepted by the District of Columbia, and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

D. LIABILITY. These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE DEVELOPER'S LIABILITY UNDER THIS CONTRACT.**

E. DEVELOPER'S PROPERTY. Developer and their sub contractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

F. MEASURE OF PAYMENT. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Developer shall be responsible for all of the costs of insurance and bonds.

G. NOTIFICATION. The Developer shall ensure that all policies provide that District shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Developer shall provide District with ten (10) days prior written notice in the event of non-payment of premium. The Developer will also provide District with an updated Certificate

of Insurance should its insurance coverages renew during the construction of the Project Improvements.

H. CERTIFICATES OF INSURANCE. The Developer shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to Financing/Construction Closing. Certificates of insurance must reference the Leased Premises. Evidence of insurance shall be submitted to:

The Government of the District of Columbia

Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, Suite 317
Washington, DC 20004
Attn: Project Manager [Truxton Circle Project]
(202) 727.6365

District may request and the Developer shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Developer expires prior to completion of the Project Improvements, renewal certificates of insurance and additional insured and other endorsements shall be furnished to District prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after issuance of the District Certificate of Final Completion, an additional certificate of insurance evidencing such coverage shall be submitted to District on an annual basis as the coverage is renewed (or replaced).

I. DISCLOSURE OF INFORMATION. The Developer agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Developer, its agents, employees, or servants (as applicable) in the performance of this contract.

J. CARRIER RATINGS. All Developer's insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

EXHIBIT F

Guaranty

DEVELOPMENT AND COMPLETION GUARANTY

THIS DEVELOPMENT AND COMPLETION GUARANTY (this "**Guaranty**") is made as of November 26, 2019 ("**Effective Date**"), by Chris VanArsdale, Mark E. James, John Miller, and Jessica Pitts (each, a "**Guarantor**" and collectively, the "**Guarantors**"), for the benefit of the District of Columbia, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the "**District**").

RECITALS:

WHEREAS, District and Cycle House, LLC ("**Developer**") have entered into a certain Land Disposition and Development Agreement, dated as of even date herewith (the "**Development Agreement**"), pursuant to which, among other things, District has agreed to lease the Property to Developer at Closing (as defined in the Development Agreement), and Developer has agreed to develop the Project on the Property.

WHEREAS, the continuing obligations of Developer to develop and construct the Project as contemplated by the Development Agreement are set forth in a certain Construction and Use Covenant of even date herewith between District and Developer (as may be amended from time to time, the "**Construction Covenant**") being recorded on or about the date hereof among the land records of the District of Columbia as an encumbrance on the Property.

WHEREAS, to induce District to proceed to Closing and lease the Property to Developer, Guarantors have agreed to guaranty the Guaranteed Obligations (as defined herein).

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged, each of the Guarantors hereby agrees as follows:

1. **Recitals; Definitions**.

1.1 The foregoing recitals are true and correct and are incorporated into this Guaranty by this reference and made a material part of this Guaranty.

1.2 Capitalized terms used and not defined in this Guaranty shall have the meanings attributed to them in the Construction Covenant.

2. **Representations and Warranties**.

2.1 Solely with respect to itself, each Guarantor represents and warrants to District as follows:

(a) the making and performance of this Guaranty by such Guarantor will not result in any breach of any term, condition, or provision of, or constitute a default under, any contract, agreement, or other instrument to which such Guarantor is a party or by which it is bound, or result in a breach of any regulation, order, writ, injunction, or decree of any court or any

commission, board, or other administrative agency entered in any proceeding to which such Guarantor is a party or by which it is bound;

(b) such Guarantor has reviewed, with the advice and benefit of its legal counsel, the terms and provisions of the Development Agreement, this Guaranty, the Construction Covenant, the Schedule of Performance, the Approved Plans and Specifications, and the documents referenced in each of the foregoing;

(c) such Guarantor (if Guarantor is not a natural person) is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization and is duly qualified to do business, and is in good standing, in the District of Columbia;

(d) such Guarantor has been duly authorized to carry on its business, and to hold title to and own the property it owns, to execute, deliver, and perform this Guaranty, and to consummate the transactions contemplated hereby and thereby;

(e) this Guaranty has been duly authorized, executed and delivered by such Guarantor, and this Guaranty, and each term and provision hereof is the legal, valid and binding obligation of such Guarantor enforceable against such Guarantor in accordance with its terms;

(f) no actions, suits, or proceedings are pending or, to such Guarantor's knowledge, threatened against or affecting such Guarantor before any governmental authority which could, if adversely decided, result in a material adverse change in the financial condition of such Guarantor (in comparison to any state of affairs existing before the Effective Date) or of the ability of such Guarantor to perform, or of District to enforce, any provision of this Guaranty;

(g) no consent, approval, or authorization of, or registration, declaration, or filing with, any governmental authority or any other Person is required that has not been obtained in writing by Guarantor, in connection with the execution, delivery, and performance by such Guarantor of this Guaranty and the transactions contemplated by this Guaranty;

(h) such Guarantor is not insolvent (as such term is defined or determined for purposes of Bankruptcy Reform Act of 1978 (11 U.S.C. § 101-1330), as amended or recodified or any other bankruptcy law (collectively, the "**Bankruptcy Code**")), and the execution and delivery of this Guaranty will not make such Guarantor insolvent;

(i) neither this Guaranty nor any financial information, certificate, or statement furnished to District by or on behalf of such Guarantor contains any untrue statement of a material fact or intentionally or knowingly omits to state a material fact necessary to make the statements herein and therein, in the light of the circumstances under which they are made, not misleading;

(j) to the knowledge of each Guarantor no conditions exist which would prevent such Guarantor from complying with the provisions of this Guaranty within the time limits set forth herein and/or in the Construction Covenant, as may be extended or deemed extended pursuant to the terms thereof;

(k) such Guarantor has filed all tax returns and reports required by law to have been filed by it, and has paid all taxes, assessments, and governmental charges levied upon it or any of its assets which are due and payable, except any such taxes or charges which are being contested in good faith by appropriate proceedings and for which adequate reserves have been set aside;

(l) there are no conditions precedent to the effectiveness of this Guaranty;

(m) such Guarantor is not a Prohibited Person; and

(n) all financial statements delivered to District at any time by or on behalf of such Guarantor (i) are true and correct in all material respects, (ii) fairly present in a manner consistent with prior statements submitted to District the respective financial conditions of the subjects thereof and for the periods referenced therein, and (iii) have been prepared in accordance with generally accepted accounting principles (or other accounting principles as District may agree) consistently applied, and there has been no material adverse change in the financial position of such Guarantor since the respective dates of (or periods covered by) such statements, and without limiting the foregoing, all assets shown on such financial statements, unless clearly designated to the contrary on such financial statements, (A) are free and clear of any exemption or any claim of exemption of such Guarantor or any other Person, (B) accurately reflect all debt and prior pledges or encumbrances (direct or indirect) of or on any of such Guarantor's assets at the date of the financial statements and at all times thereafter, and (C) are owned individually by Guarantor and not jointly with any spouse or other Person.

2.2 Guarantors agree that all of the representations and warranties of Guarantors in this Guaranty are made and shall be true as of the Effective Date and shall survive the execution and delivery of this Guaranty. A Guarantor shall inform District in writing within five (5) Business Days upon its discovering any breach of such representations or warranties.

2.3 Each Guarantor acknowledges that District is consummating the Closing in reliance upon the representations, warranties, and agreements contained in this Guaranty. District shall be entitled to such reliance notwithstanding any investigation which has been made, has not been made, or may be conducted by District or on District's behalf.

3. **Guaranteed Obligations**. Commencing at Financing/Construction Closing, each Guarantor hereby absolutely and unconditionally, and jointly and severally, guarantees to District and its successors and assigns: (i) the Commencement of Construction and prosecution of construction through Final Completion of the Project pursuant to the terms and conditions of the Construction Covenant and within the time period allotted therefor in the Schedule of Performance; (ii) the Property and the Improvements shall be kept free and clear of all liens (other than liens in favor of an Approved Mortgagee), claims of lien and other claims connected with or arising out of the construction or completion of the Project; (iii) the payment in full of all amounts due to any contractor, subcontractor, materialman, laborer, any employee or other Person who is engaged at any time in work or supplying materials in connection with the Project if and to the extent not paid by Developer; (iv) any obligation of the Developer under the Construction Covenant to indemnify, defend, and hold harmless District; and (v) the enforcement of this

Guaranty by District (including, without limitation, reasonable attorneys' fees), which obligations shall survive the release of this Guaranty (collectively, the "**Guaranteed Obligations**").

4. **Liens.** If any mechanic's or materialmen's liens should be filed, or should attach, against the Property with respect to the Project and if such mechanic's or materialmen's liens have not been removed by Developer or released or waived by the party filing same as required by the terms of the Construction Covenant, within forty-five (45) days after any Guarantor is advised by District of the filing of such liens, Guarantor shall take, or cause to be taken, action to cause the removal, release or waiver of such liens, including, if necessary, the posting of a bond or other security against the consequences of their possible judicial enforcement. So long as Guarantor timely complies with the immediately preceding sentence, Guarantor shall have the right to contest in good faith any claim, lien, or encumbrance, provided that Guarantor does so diligently and without prejudice to District.

5. **Financial Statements**.

5.1 If any Guarantor is not a natural person, within ninety (90) days after the end of Guarantor's fiscal year, each such Guarantor shall deliver to District a copy of such Guarantor's balance sheet, income statement, and statement of changes in financial position for such fiscal year (collectively, the "**Guarantor Financial Statements**"). The Guarantor Financial Statements shall (a) include a schedule of all material contingent liabilities and all other notes and schedules relating thereto, (b) be in a form reasonably satisfactory to District, (c) be prepared in accordance with generally accepted accounting principles (or other accounting principles as District may agree) consistently applied, (d) if audits are done in the regular course of Guarantor's business, be audited by an independent, certified public accountant who is a member of the American Institute of Certified Public Accountants and otherwise acceptable to District, and (e) be accompanied by a certification of Guarantor to District (made by the chief financial officer in the case of any corporate Guarantor) that such Guarantor Financial Statements (i) have been prepared in accordance with generally accepted accounting principles (or other accounting principles as District may agree) consistently applied, (ii) accurately presents the financial condition of such Guarantor as of the respective dates thereof, and (iii) show all direct and contingent material liabilities of Guarantor as of such dates.

5.2 If any Guarantor is a natural person, within ninety (90) days after the end of each calendar year, each such Guarantor shall deliver to District a copy of Guarantor's financial statement as of the end of such calendar year. Each such financial statement shall (a) include a statement of assets and liabilities, including a schedule of all material contingent liabilities and all other notes and schedules relating thereto, (b) be in a form reasonably satisfactory to District, (c) be accompanied by a certification of Guarantor to District that such financial statement accurately presents the financial condition of Guarantor as of the respective dates thereof, and (d) show all direct and contingent material liabilities of Guarantor as of such dates.

5.3 From time to time promptly after District's request, Guarantor shall deliver to District such additional information, reports and statements regarding its business operations reasonably related to the Project or the financial condition of such Guarantor as District may reasonably request.

6. **Nature of Guaranty; Independent Obligation**. This is a direct, absolute, unconditional, joint and several guaranty of completion, and is a guaranty of payment and performance, not of collection. The obligations of each Guarantor under this Guaranty are independent and primary, and District shall not be required to take any action against Developer, any Approved Mortgagee, all of the Guarantors collectively, or any other Person or resort to any other collateral or security given for the performance of Developer as a precondition to the obligations of each Guarantor under this Guaranty. Guarantor hereby waives any rights it may have to compel District to proceed against Developer, or any security, or to participate in any security for Guarantor's obligations hereunder, even though any rights which such Guarantor may have against Developer or others may be destroyed, diminished or otherwise affected by such action or lack thereof. The exercise of any remedies by District against Developer shall in no way affect any Guarantor's responsibility for the obligations guaranteed hereunder, even though any rights which each Guarantor may have against Developer or others may be destroyed, diminished or otherwise affected by such action. To the fullest extent permitted by law, this Guaranty shall be construed as a continuing, absolute, and unconditional guaranty of performance without regard to: (a) the legality, validity, or enforceability of any of the Construction Covenant, or any of the obligations of Developer evidenced thereby; (b) any defense, setoff, or counterclaim that may be available at any time to Developer or any other Person against and any right of setoff at any time held by District (including, without limitation, any defense, setoff, or counterclaim by any Guarantor under this Guaranty); or (c) any other circumstances whatsoever (with or without notice to or knowledge of any Guarantor), whether or not similar to any of the foregoing, that constitutes or might be construed to constitute an equitable or legal discharge of Developer or any other Person in bankruptcy or in any other instance.

7. **No Release or Waiver of Obligations; Consents**.

7.1 No action which Developer or District may take or omit to take in connection with the Project, nor any course of dealing with Developer or any other Person, shall release Guarantors' obligations hereunder or affect this Guaranty in any way, even if any such action may otherwise be deemed a legal or equitable discharge of a guarantor or surety. By way of example, but not in limitation of the foregoing, each Guarantor hereby expressly agrees that District may, from time to time, and without notice to Guarantors, but with the written prior agreement of Developer, which shall not, in any case discharge or impair Guarantors' obligations or any rights against any Guarantor:

(a) amend, change, or modify, in whole or in part, the Construction Covenant;

(b) waive any terms, conditions, or covenants of the Construction Covenant, or grant any extension of time or forbearance for performance of the same;

(c) compromise or settle any amount or any matter in dispute under the Construction Covenant or other document;

(d) surrender, release, or subordinate any or all security for the Construction Covenant, or accept additional or substituted security therefor;

(e) extend, accelerate, or otherwise change the time of payment or performance of any obligations under the Construction Covenant or any other document;

(f) exercise its rights and remedies under the Construction Covenant or any other document;

(g) approve, disapprove, inspect, review, or fail to inspect or review, the progress, status, or quality of construction or any costs, expenses, financing, contracts, or other matters relating thereto;

(h) release, substitute, or add guarantors to guaranty performance of the obligations under the Construction Covenant or any other document; and

(i) accept new or additional instruments, documents, or agreements in exchange for, or relative to, the Construction Covenant, or any part thereof or performance pursuant thereto.

7.2 Each Guarantor consents and agrees that District may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) supplement, modify, amend, waive, or enter into or give any agreement, approval, or consent with respect to the Project (except, with respect to any supplement, modification, or amendment to the Construction Covenant, the provisions of Section 7.1 shall apply), or accept any additional security or guaranties, or waive any condition, covenant, default, remedy, right, representation, or term with respect thereto; (b) accept partial payments on, or performance of, the obligations owed to District and apply any and all payments and/or recoveries from Developer or any other Person to such of the obligations owed to District as District may elect in its sole discretion; (c) receive and hold additional security or guaranties for the obligations owed to District or any part thereof; (d) release, reconvey, terminate, waive, abandon, fail to perfect, subordinate, exchange, substitute, transfer, or enforce any security or guaranties, and apply any security and direct the order or manner of sale thereof as District may elect in its sole and absolute discretion may determine; (e) release any Person from any personal liability with respect to the obligations owed to District or any party thereof; (f) settle, release on terms satisfactory to District, as the case may be, or by operation of applicable law or otherwise, liquidate or enforce any obligations owed to District and any security or guaranty in any manner, consent to the transfer of any security and bid and purchase at any sale (other than by reason of the timely and full payment and performance of all obligations owed to District); (g) consent to the merger, change of any other restructuring or termination of the corporate existence of Developer or any other Person and correspondingly restructure the obligations owed to District, and any such merger, change, restructuring, or termination shall not affect the liability of such Guarantor or the continuing effectiveness hereof, or the enforceability thereof with respect to all or any part of the obligations owed to District; (h) assign the rights to this Guaranty to another Person; or (i) otherwise deal with Developer or any other Person as District may elect in its sole discretion.

8. **Bankruptcy; Relief from Automatic Stay**.

8.1 The release or discharge of Developer, any Guarantor, or any other Person from any obligation in any receivership, bankruptcy, winding-up or other creditor proceeding shall not affect the validity of this Guarantor or of any of the Guarantor's obligations hereunder.

8.2 If (i) a Developer Default has occurred under the Construction Covenant and (ii) the automatic stay imposed by the applicable provisions of the Bankruptcy Code, or under any other applicable law, against the exercise of the rights and remedies otherwise available to creditors of Developer is deemed by the court having jurisdiction to apply to Guarantor who is not in bankruptcy so that Guarantor is not permitted to perform its obligations under this Guaranty and/or District may not immediately enforce the terms of this Guaranty or exercise such other rights and remedies against any Guarantor as would otherwise be provided by law, District shall immediately be entitled, and Guarantor hereby consents, to relief from such stay, and each Guarantor hereby authorizes and directs District to present this Guaranty to the applicable court to evidence such agreement and consent.

9. **Waivers**.

9.1 To the fullest extent each Guarantor may do so under applicable law, each Guarantor expressly waives notice of acceptance of this Guaranty or the right to enforce any of the terms of the Construction Covenant, or any liability under this Guaranty. Except for notices expressly provided for in this Guaranty, District shall not be required to give any notice to any Guarantor hereunder in order to preserve or enforce District's rights hereunder (including, without limitation, notice of any Developer Default under the Construction Covenant or other documents evidencing and securing the obligations of Developer thereunder), any such notice being expressly waived by each Guarantor.

9.2 Each Guarantor agrees that District shall have no duty to disclose to Guarantors any information it receives or have reasonably available to it regarding the financial status of Developer, or any contractor, subcontractor or materialmen involved in the construction of the Project, or any information relating to the Project, whether or not such information indicates that the risk that each Guarantor may be required to perform hereunder has been or may be increased. Each Guarantor assumes full responsibility for being and keeping informed of all such matters.

9.3 In addition to the foregoing, each Guarantor expressly waives the following defenses:

(a) lack of validity, genuineness, or enforceability of any provision of any of the Development Agreement, the Construction Covenant, or any other agreement between District, Developer, Guarantor or any other Person;

(b) the incapacity, lack of authority, death, or disability of any Person or the failure of District to file or enforce a claim against the estate of any Person in any administrative, bankruptcy, or other proceeding;

(c) the election of remedies by District, whether or not such election may affect in any way the recourse, subrogation, or other rights of Guarantor against Developer or any other Person in connection with the Guaranteed Obligations;

(d) the negligence of District in administering or overseeing the Project or any part thereof, or taking or failing to take any action in connection therewith;

(e) any change to the Approved Plans and Specifications, the Development Agreement, the Schedule of Performance, the Construction Covenant, or any of the documents referenced in any of the foregoing made without the consent or knowledge of Guarantor;

(f) the unenforceability or invalidity of any security or guaranty for the Guaranteed Obligations or the lack of perfection or continuing perfection or failure of priority of any security for the Guaranteed Obligations;

(g) the failure of District to marshal assets in favor of Developer or any other Person;

(h) the failure of District to give notice or sale or other disposition of any collateral (now or hereafter securing the obligations of any Person) to Developer or any other Person, as applicable, or any defect in any notice that may be given in connection with any sale or disposition of collateral or to comply with applicable law or other requirements in connection with the sale or other disposition of any collateral or other security for any obligation owed to District;

(i) any act or omission of District, or others, that directly or indirectly results in or aids the discharge or release of Developer or any other Person, or the Guaranteed Obligations or any security or guaranty therefor by operation of law or otherwise (other than by reason of the timely performance of all Guaranteed Obligations);

(j) any applicable law or other laws or requirements of the District of Columbia or other states which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation, including, without limitation, all rights and benefits under the laws of the District of Columbia purporting to reduce Guarantor's obligation in proportion to the obligation of the principal;

(k) the avoidance of any lien in favor of District for any reason;

(l) all rights or defenses each Guarantor may have by reason of protection afforded to a principal with respect to the Guaranteed Obligations pursuant to applicable law or other laws of the District of Columbia or other states limiting or discharging the principal's obligations; and

(m) any defense based on any other circumstances whatsoever (with or without notice to or knowledge of each Guarantor), whether or not similar to any of the foregoing, that constitutes or might be construed to constitute an equitable or legal discharge of Developer or any other Person in bankruptcy or in any other instance.

10. **Rights Upon Default**.

10.1 Upon the occurrence and during the continuance of (a) any failure by any Guarantor in the performance of the Guaranteed Obligations, (b) the dissolution or insolvency of any

Guarantor, (c) the inability of any Guarantor to pay its debts as they mature, (d) a general assignment by any Guarantor for the benefit of creditors, (e) the institution of any proceeding by or against any Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee, or custodian for any Guarantor or its properties that is not dismissed or stayed within one hundred twenty (120) days after such Guarantor's receipt of notice of filing, (f) the falsity in any material respect of or any material omission in any representation made to District by any Guarantor, or (g) any other default by any Guarantor of any other obligations owed to District by Guarantor under this Guaranty (a "**Guarantor Default**"), District shall have such rights and remedies available to it as permitted by law and in equity and may enforce this Guaranty in accordance with the terms hereof, independently of any other remedy or security District at any time may have or hold in connection with the Guaranteed Obligations as to Developer, and it shall not be necessary for District to marshal assets in favor of Developer, any Guarantor, or any other Person or to proceed upon or against and/or exhaust any security or remedy before proceeding to enforce this Guaranty in accordance with the terms hereof. Additionally, each Guarantor agrees that during the continuance of any Guarantor Default, District may, without the consent of or notice to any Guarantor, take or refrain from taking such other action to enforce the provisions of this Guaranty against each Guarantor as it may from time to time determine in its sole discretion as to any obligations then unperformed.

10.2 Each Guarantor absolutely, irrevocably and unconditionally agrees to the fullest extent permitted by law, to indemnify, defend, and hold harmless District from any and all loss, cost, liability, and expense arising out of or in connection with (a) any Guarantor Default and (b) the enforcement of this Guaranty by District (including, without limitation, reasonable attorneys' fees).

10.3 Each Guarantor shall immediately, upon demand therefor, reimburse District for any and all expenditures incurred by District under this Section 10, plus interest thereon at the rate of ten percent (10%) per annum until all sums are paid to District.

10.4 Each Guarantor agrees that District and Developer or any other Person may deal with each other in connection with the Guaranteed Obligations or otherwise, or alter any contracts or agreements now or hereafter existing between them, in any manner whatsoever, all without in any way altering or affecting the security of this Guaranty. District's rights hereunder shall be reinstated and revived and the enforceability of this Guaranty shall continue with respect to any amount at any time paid on account of the Guaranteed Obligations, which thereafter shall be required to be restored or returned by District upon the bankruptcy, insolvency, or reorganization of Developer of any other Person, or for any other reason, all as though such amount had not been paid. The rights of District created or granted herein and the enforceability of this Guaranty at all times shall remain effective even though the Guaranteed Obligations, including any part thereof or any other security or guaranty therefor, may be or hereafter may become invalid or otherwise unenforceable as against Developer.

11. **Cumulative Rights**. The exercise by District of any right or remedy hereunder, under the Construction Covenant, any other documents executed by District and Developer, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. District shall have all rights, remedies, and recourses afforded to District by reason of this Guaranty, the Construction Covenant, any other documents executed between District and

Developer, or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively, or concurrently against any Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, at the sole and absolute discretion of District; (c) may be exercised as often as occasion therefor shall arise, it being agreed by each Guarantor that the exercise of, discontinuance of the exercise of, or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; and (d) are intended to be and shall be nonexclusive. No waiver of any default on the part of any Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval, or waiver by District shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on any Guarantor in any case shall of itself entitle such Guarantor to any other or further notice or demand in similar or other circumstances.

12. **Statute of Limitations and Other Laws**. Until the Guaranteed Obligations have been irrevocably paid and/or performed in full, all of the rights, privileges, powers, and remedies granted to District hereunder shall continue to exist and may be exercised by District at any time and from time to time, irrespective of the fact that any of the Guaranteed Obligations may have become barred by any statutes of limitations. Each Guarantor expressly waives the benefit of any and all statutes of limitations, and any and all laws providing for exemption of property from execution or for valuation and appraisal upon foreclosure, and any and all rights and benefits, if any, arising under the laws of the District of Columbia. Furthermore, each Guarantor acknowledges that any claims brought by District that arise under or as a result of this Guaranty are not subject to the statute of limitations contained in D.C. Official Code § 12-301, as amended.

13. **Indemnification**. Each Guarantor agrees to indemnify and hold harmless District for all reasonable, direct, and out-of-pocket costs and expenses, including, without limitation, all court costs, reasonable attorneys' fees and expenses, and costs of collection incurred or paid by District arising out of or in connection with (a) the Guaranteed Obligations and (b) the enforcement of this Guaranty by District. Notwithstanding the foregoing, no Guarantor shall not have any obligation to indemnify District for any costs and expenses, including, without limitation, all court costs, reasonable attorneys' fees and expenses, if such Guarantor should prevail in an enforcement action; provided, further, the immediately preceding proviso clause shall not be deemed to release any Guarantor from its indemnification obligations under this Guaranty if District prevails against any Guarantor in any enforcement action notwithstanding the fact that District may not have prevailed against such Guarantor in a previous enforcement action.

14. **No Limitation of Obligations**. To the fullest extent each Guarantor may do so under applicable law, each Guarantor agrees that it shall make no claim or setoff, defense, recoupment, or counterclaim of any sort whatsoever, nor shall Guarantor seek to impair, limit, or defeat in any way its obligations hereunder. To the fullest extent each Guarantor may do so under applicable

law, each Guarantor hereby waives any right to such a claim in limitation of its obligations hereunder.

15. **No Right of Subrogation**. Until all of the Guaranteed Obligations are fully paid, performed and/or fulfilled, each Guarantor agrees solely with respect to itself that it: (i) shall have no right of subrogation against Developer by reason of any payments or acts of performance by such Guarantor in compliance with the obligations of such Guarantor under this Guaranty; (ii) waives any right to enforce any remedy which such Guarantor now or hereafter shall have against Developer by reason of any payment or act of performance in compliance with the obligations of such Guarantor hereunder; and (iii) subordinates any present or future, liquidated or unliquidated, liability, indebtedness, or obligation of Developer to such Guarantor, irrespective of the respective dates of the incurrence, accrual, or maturity thereof, to the indebtedness and obligations of Developer to District under the Construction Covenant.

16. **No Assignment or Delegation; Merger**. Except in connection with an assignment of the Construction Covenant permitted pursuant to the terms thereof or otherwise approved by District, no Guarantor shall assign or delegate its obligations under this Guaranty. If any Guarantor is not a natural person and is merged into or with any other company, firm or corporation, the resulting merged company, firm or corporation shall become liable as a Guarantor under this Guaranty to the same extent as the original named Guarantor hereunder.

17. **Choice of Law and Consent to Jurisdiction**. This Guaranty shall, in all respects, be governed by and construed in accordance with the laws of the District of Columbia, without reference to its conflicts of law principles. Each Guarantor hereby consents to jurisdiction of the federal or local jurisdiction courts within the District of Columbia for purposes of such litigation and waives any right it may have to seek a change of venue of such proceedings. Each Guarantor further agrees not to assert in any action, suit or proceeding arising out of or relating to the Construction Covenant that such Guarantor is not personally subject to the jurisdiction of such courts, that the action, suit, or other proceeding is brought in an inconvenient forum, or that the venue of the action, suit, or other proceeding is improper. Each Guarantor agrees that service of process may be made, and personal jurisdiction over such Guarantor obtained, by serving a copy of the summons and complaint upon Guarantor at the notice address set forth below in accordance with the applicable laws of the District of Columbia. Nothing herein contained, however, shall prevent District from bringing any action or exercising any right against any Guarantor within any other jurisdiction or state. Initiating such proceeding or taking such action in any other jurisdiction or state shall not, however, constitute a waiver of the agreement herein contained that the laws of the District of Columbia shall govern the rights and obligations of the parties hereunder. Each Guarantor agrees that District may, and each Guarantor agrees not to oppose District's attempts to, consolidate any litigation arising out of or relating to this Guaranty with any action(s), suit(s), or proceeding(s) against Developer or any other individual or entity and/or the property of any of the foregoing arising out of or relating to the Construction Covenant.

18. **Notices**. Any notice, demand, statement, or request required under this Guaranty shall be in writing and delivered by certified mail (return receipt requested, postage pre-paid), by hand, or by reputable private overnight commercial courier service, at the following respective addresses:

IF TO DISTRICT:

Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attention: Deputy Mayor for Planning and Economic Development

With a copy to:

Office of the General Counsel
for the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attention: General Counsel

IF TO GUARANTORS:

Jessica Pitts
751 Hobart Street, N.W.
Washington, D.C. 20001

John Miller
751 Hobart Street, N.W.
Washington, D.C. 20001

Mark James
6174 Commodore Court
Columbia, Maryland 21045

Chris VanArsdale
2308 19th Street NW
Washington, DC 20009
With a copy to:
Klein Hornig LLP
1325 G Street, NW, Suite 770
Washington, DC 20005
Attn: Eric Herrmann

Notices served upon District or any Guarantor in the manner aforesaid shall be deemed to have been received for all purposes under this Guaranty as follows: (i) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (ii) if given by nationally recognized overnight delivery service, on the next Business Day after the notice is deposited with the overnight delivery service; or (iii) if given by certified mail, return receipt requested, postage prepaid, on the date of actual delivery or refusal thereof. If notice is tendered under the terms of

this Guaranty and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Guaranty.

19. **Severability**. In the event that any provision of this Guaranty is held to be void or unenforceable, all other provisions shall remain unaffected and be enforceable, unless this construction would constitute a substantial deviation from the general intent of the Parties as reflected in this Guaranty.

20. **Waiver of Jury Trial**. TO THE EXTENT PERMITTED BY LAW, EACH PARTY HEREBY: (I) COVENANTS AND AGREES NOT TO ELECT TRIAL BY JURY OF ANY ISSUE HEREUNDER TRIABLE OF RIGHT BY A JURY AND (II) WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ISSUE FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY, BY EACH GUARANTOR, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE OTHER PARTY TO PROVIDE OR ACCEPT THIS GUARANTY, AS APPLICABLE. FOR THE PURPOSES OF THIS SECTION 20, THE TERM "PARTY" IS DEEMED TO MEAN DISTRICT, AS WELL AS EACH OF THE GUARANTOR.

21. **Time is of the Essence**. Time is of the essence with respect to all matters set forth in this Guaranty.

22. **No Amendment**. Neither this Guaranty nor any provision hereof may be modified, amended, waived, terminated, or changed orally, but only by an agreement in writing signed by the District and Guarantors.

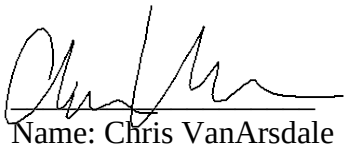
23. **Irrevocable Survival.** This Guaranty shall be irrevocable by any of the Guarantors and shall terminate upon District's issuance of a District Certificate of Final Completion unless this Guaranty is earlier released by the District.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO
DEVELOPMENT AND COMPLETION GUARANTY

IN WITNESS WHEREOF, each Guarantor has executed this Guaranty as of the Effective Date.

GUARANTORS:



Name: Chris VanArsdale

_____
Name: Mark E. James

_____
Name: John Miller

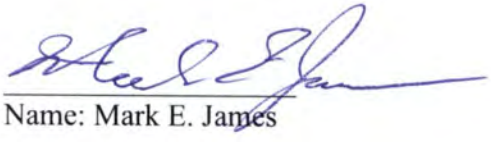
_____
Name: Jessica Pitts

SIGNATURE PAGE TO
DEVELOPMENT AND COMPLETION GUARANTY

IN WITNESS WHEREOF, each Guarantor has executed this Guaranty as of the Effective Date.

GUARANTORS:

_____
Name: Chris VanArsdale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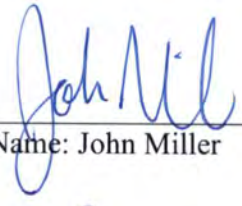
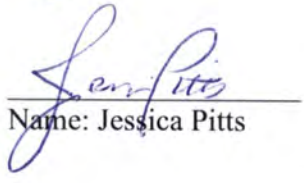
Name: Mark E. James


_____
Name: John Miller


_____
Name: Jessica Pitts