

OPERATION, MAINTENANCE, USE, AND LICENSE AGREEMENT

THIS OPERATION, MAINTENANCE, USE, AND LICENSE AGREEMENT (this "Agreement") is made as of this 20th day of June 2017, by and among: (i) **THE BETHESDA URBAN PARTNERSHIP, INC.**, having an address of 7700 Old Georgetown Road, Bethesda, Maryland 20814 ("BUP"); (ii) **DUBALL FAIRMONT, LLC**, a Delaware limited liability company, having a principal address of 11710 Plaza America Drive, Suite 1100, Reston, Virginia 20190 (and its successors and assigns, collectively "Fairmont"); and (iii) **MONTGOMERY COUNTY, MARYLAND**, a body politic and subdivision of the State of Maryland, having a principal address of 101 Monroe Street, Second Floor, Rockville, Maryland 20850 (the "County").

RECITALS

A. Fairmont will be establishing the Cheval Master Condominium (the "**Master Condominium**") and the residential sub-condominium contained within the Master Condominium to be known as the Cheval Condominium (the "**Residential Condominium**" and together with the Master Condominium the "**Condominium**"), pursuant to Title 11 of the Real Property Article of the Annotated Code of Maryland (2016), as amended (the "**Act**"), by recording in the Office of the Clerk of the Circuit Court for Montgomery County, Maryland (the "**Recording Office**") a certain Declaration of Master Condominium and a certain Declaration of Condominium for the Residential Condominium (collectively referred to herein as the "**Declaration**") and Bylaws for the Master Condominium and the Residential Condominium (collectively the "**Bylaws**"), and by the filing for record in the Recording Office a certain condominium plat for the Master Condominium and the Residential Condominium (collectively the "**Condominium Plat**"). The Declaration, Bylaws, and Condominium Plat shall be hereinafter referred to as the "**Condominium Instruments**." This Agreement may be recorded in the Recording Office as part of the Condominium Instruments but it shall also be recorded as a document separate and apart from the Condominium Instruments at the County's expense.

B. The Montgomery County Planning Board (the "**Planning Board**") of the Maryland-National Capital Park and Planning Commission ("**M-NCPPC**") approved Project Plan No. 920130070 (Planning Board Resolution No. 13-107, dated July 26, 2013), Preliminary Plan No. 120130230 (Planning Board Resolution No. 13-108, dated July 26, 2013), and Site Plan No. 82014006A (Planning Board Resolution No. 15-132, dated October 15, 2015) (collectively, the "**Project Approvals**"). The Project Approvals require Fairmont to provide a minimum of 2,000 gross square feet for artist incubator space within the Condominium. The artist incubator space is to be operated by BUP in accordance with this Agreement and is referred to herein as the "**Artist Space**".

C. The Artist Space is shown on Exhibit "A" attached hereto and made a part hereof, and shall be designated in the Condominium Instruments as a Unit (hereinafter defined) reserved for the exclusive use provided for herein and subject to the terms and conditions of this Agreement. As used herein, the Condominium, excluding the Artist Space, is hereinafter referred to as the "**Private Condominium**".

D. Except as otherwise provided in Section 2, below, the Condominium Instruments shall provide for the exclusive use of the Artist Space by BUP as set forth in this Agreement for the use provided for herein for so long as this Agreement is in effect, which exclusive use cannot, without the prior written consent of the County and the Planning Board, be amended.

E. The parties desire to enter into this Agreement to set forth their understanding as to terms and conditions pursuant to which Fairmont shall grant a license to the County for the funding, use, occupancy, rights, and responsibilities of the parties with respect to the Artist Space, Exterior Public Use Space (hereinafter defined), and Outdoor Activities (hereinafter defined) and the County, except as otherwise provided in Section 2, below, assigns its interests in this Agreement to BUP.

NOW, THEREFORE, in consideration of the foregoing recitals, each of which is hereby incorporated, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Funding.

Fairmont shall make a lump sum payment to BUP in the amount of Twenty Thousand Dollars (\$20,000.00) (the "Operating Reserve") to cover any shortfall in the anticipated cost of operating and maintaining the Artist Space. The Operating Reserve is being established to pay for the direct costs of operating and maintaining the Artist Space in accordance with the terms of this Agreement, by way of example but not in limitation, payment of utility costs, real estate taxes if not waived by the governing authority, and the repair and maintenance of the interior of the Artist Space. The Operating Reserve shall not be used for promotional, public relations, artist supplies, marketing, leasing commissions, or any other use not directly associated with the operation and maintenance of the Artist Space in accordance with the terms of this Agreement. This initial lump sum amount required by this Section shall be paid within seven (7) days of the Commencement Date (as defined in Section 4). Fairmont shall on July 1st of each year for three (3) years following the first July 1st after the Commencement Date make such additional payments as may be required to maintain an operating reserve of \$20,000. For example, if the Commencement Date is September 1, 2016, and on June 30, 2017 \$10,000 of the Operating Reserve has been used in the operation and maintenance of the Artist Space, Fairmont will contribute an additional \$10,000 to the Operating Reserve. Notwithstanding anything to the contrary set forth in this Agreement, the maximum aggregate liability for the funding of the Operating Reserve by Fairmont during the term of this Agreement shall be in the sum of Sixty Thousand Dollars (\$60,000.00). To assure payment, Fairmont shall contemporaneously with the initial lump sum payment provide a payment bond or other security in the amount of \$40,000 (which bond or other security may be reduced in amount at the time of each subsequent payment by the amount of that payment) in form and substance reasonably satisfactory to BUP or, at Fairmont's option, provide another form of security for the payment of \$40,000 in form and substance reasonably satisfactory to BUP. Except for these lump sum payments and the provision of the payment bond or other form of security, Fairmont shall have no further obligation for the cost of operating and maintaining the Artist Space, except as provided in Sections 9(b)(iv) and (v), and except for the cost of insurance required to be obtained and maintained by Fairmont under either the Condominium Instruments or Section 11 hereof, and for any additional insurance Fairmont elects to purchase from time to time.

2. Grant.

(a) Subject to the terms and conditions of this Agreement, Fairmont hereby grants to the County, at no cost to the County, the exclusive license to use the Artist Space solely for the "Permitted Use" (hereinafter defined) and the parties agree that, subject to the provisions of this Section 2, the County, by this Agreement, assigns its interests to BUP.

(b) BUP shall continue to have the rights and responsibilities provided under this Agreement until such time as (i) its legal status is either not extended or is terminated under Chapter 68A of the Montgomery County Code or (ii) BUP either no longer desires to operate and maintain the Artist Space or is no longer financially capable of fulfilling its responsibilities under this Agreement ("**BUP Termination**"). If there is a BUP Termination, the County shall automatically assume the rights and responsibilities under this Agreement unless the County elects to terminate this Agreement under Section 2(c), below.

(c) If there is a BUP Termination, the County reserves the right at any time upon sixty (60) days' written notice signed by the Chief Administrative Officer to Fairmont to terminate this Agreement with or without cause and without liability or cost therefor. Upon such occurrence this Agreement shall immediately terminate and none of the parties shall have any liability to the other parties (except for BUP's or the County's obligations under Section 15, as applicable, but only for the one (1) year provided for therein) and the Artist Space shall, subject to the conditions set forth in the Project Approvals, as may be amended, revert to Fairmont free and clear of any claim to the same by the County.

(d) Although the Artist Space is located within the Condominium, the Declaration shall provide and the parties have agreed that the obligations of the County and BUP, the Artists (hereinafter defined) and Fairmont as to the Artist Space and the funding, use, operation, rights, responsibilities, and obligations associated with the same, shall be governed exclusively by the terms of this Agreement and not by the terms of the Condominium Instruments. For so long as BUP or the County is using and operating the Artist Space pursuant to this Agreement, the Condominium Instruments shall have no force or effect with respect to BUP or the County or any other matters addressed herein relating to the Artist Space, which shall be solely and exclusively governed and controlled by the terms of this Agreement. Moreover, if there is any conflict or inconsistency between the terms and conditions of any of the Condominium Instruments (including the Rules and Regulations) and this Agreement, the terms and conditions of this Agreement shall control with respect to BUP, the County, the Artists (hereinafter defined), the Artist Space, and BUP's or the County's use of the Exterior Public Space, including the BUP Access Areas (hereinafter defined).

(e) The Council of Unit Owners for the Master Condominium (the "**Master Association**") is the association to be formed that will be comprised of all of the owners of master condominium units in the Master Condominium (the "**Master Unit Owners**") and the Council of Unit Owners for the Residential Condominium (the "**Residential Association**") is the association to be formed that will be comprised of all of the owners of residential condominium units in the Residential Condominium (the "**Residential Unit Owners**"). The rights, benefits, and obligations of Fairmont under this Agreement shall automatically be assigned to any successor in interest to the Artist Space, which may include, but is not limited to, the Master

Association or the Residential Association, and upon such assignment shall be the rights, benefits, and obligations of such successor on the date of such assignment, whereupon Fairmont shall be released of all further liability or obligation hereunder. The Master Association and Residential Association may each act by and through its Board of Directors or a managing agent pursuant to the applicable provisions of the Condominium Instruments. As used in this Agreement, the term "**Association**" shall mean the Master Association and the Residential Association, as applicable. Also as used herein reference to Fairmont shall refer to any assignee or successor as may be applicable pursuant to this provision.

3. Permitted Use.

(a) Subject to the terms and conditions of this Agreement, use of the Artist Space is granted for the following use (the "**Permitted Use**"): To be used and operated as studio workspace and exhibit space for Artists selected by BUP. Such artists and their staff (the "**Artists**") shall be permitted to work and exhibit in the Artist Space pursuant to an "Artist Agreement" (hereinafter defined). In no event shall the Artist Space be used for any residential occupancy or for any of the prohibited uses set forth in the proposed Rules and Regulations a draft of which are attached hereto as Exhibit "F". If the County terminates its interests in the Artist Space under Section 2(c) or the County is deemed to have abandoned its interest as described below, Fairmont shall have the right to consult with the Planning Board or other appropriate body to determine other uses consistent with the Project Approvals and acceptable to the Planning Board and Fairmont for the Artist Space. The Artist Space shall not be deemed to have been abandoned unless for a period of sixty (60) consecutive days during any six-month period there fails to be at least one Artist using the Artist Space and the County fails to cure after Fairmont provides the County with a sixty (60) day notice to cure. The grant herein of the use of the Artist Space shall otherwise be exclusive and perpetual and as part of the required public amenity for the Project Approvals, and such use cannot be terminated without the prior written approval of the County and the Planning Board or as provided in Sections 2(b), 3(a) or 12.

(b) The use of the Artist Space shall be in compliance with the terms of this Agreement and consistent with the Permitted Use.

(c) BUP, the Artists, and the Permittees (defined below) shall be permitted to have outdoor displays of art and related outdoor activities which are intended to be in connection with festivals and fairs organized and supervised by BUP on the "**Exterior Public Space**", the location of which is shown on Exhibit "A" attached hereto (as the context requires, the "**Outdoor Activity**" or "**Outdoor Activities**"). All reasonable efforts shall be made to submit the following information to Fairmont and the Association in writing at least thirty (30) days in advance of the date of the Outdoor Activities: (i) the dates and hours for each Outdoor Activity and (ii) a description of each Outdoor Activity. During the Term (hereinafter defined) of this Agreement, Fairmont grants to BUP, the Artists, and the Permittees (defined below) ingress and egress onto the Exterior Public Space for any Outdoor Activities pursuant to the provisions of this Section. As used herein, "**Permittees**" shall mean any employees, agents, customers, contractors, or invitees of BUP (other than Artists), and the general public when visiting the Artist Space. BUP and the Artists shall comply with the applicable Rules and Regulations attached hereto as Exhibit "F", as well as all applicable County laws and regulations while

engaging in the Outdoor Activities. No Outdoor Activities be permitted prior to the Commencement Date (hereinafter defined).

(d) The Artists occupying the Artist Space shall be determined by BUP. BUP shall complete a written revocable agreement with each Artist in substantially the form attached hereto and made a part hereof as **Exhibit "E"** (the "**Artist Agreement**"), with any material changes thereto to be approved by Fairmont, which approval shall not be unreasonably withheld, delayed or conditioned. Consideration paid by Artists under the Artist Agreement shall be paid to BUP and shall be used to help defray the expenses of operating and maintaining the Artist Space.

(e) Any obligations contained in this Agreement relative to the expenditure of, or commitment for expenditure of, funds or any other monetary obligation arising hereunder required of the County or BUP are strictly limited and subject to (i) the amount of funds provided by Fairmont pursuant to Section 1, and (ii) funds, if any, appropriated for the County's (if any) and BUP's obligations under this Agreement by the Montgomery County Council (the "**County Council**") annually as part of BUP's or the County's annual budget, as the case may be. The County and BUP shall not otherwise be liable hereunder to commit to, to expend or to incur liability for any expenditure of funds or payment of money in excess of the sums payable by Fairmont or the amounts appropriated annually by the County Council. If there are insufficient funds available from the sources identified above for the operation and maintenance of the Artist Space, the County or BUP shall cause the Artist Space to be immediately and temporarily vacated by the Artists, and all utilities servicing the Artist Space shall be turned off (except that Fairmont or the Association may be authorized to retain requisite heat, air conditioning or ventilation as may be applicable to avoid damage to the Artist Space or any other portion of the Condominium), until funds are again available for its operation and maintenance. In such event, and until additional funds are available to cover expenses, there shall be no recourse by Fairmont, the Association or the Unit Owners against the County or BUP or any of their directors, officers, agents or employees for any such expenditure, commitment to expend funds or payment thereof. A temporary closure of the Artist Space under this Section 3(f) shall not be deemed to be an abandonment of the Artist Space or a termination of the County's or BUP's rights under this Agreement or give cause for termination of this Agreement by Fairmont, except as provided in Section 3(a) above.

(f) BUP and the Artists rights under this Agreement are limited to the Artist Space, the Exterior Public Use Space and the BUP Access Areas and neither BUP nor the Artists shall be permitted to use any other portion of the Condominium, including its parking garage.

4. Term. The Term shall commence on the date the County, BUP, or Fairmont receives a certificate of occupancy for the Artist Space (the "**Commencement Date**"), and shall expire upon termination as set forth in Sections 2(b), 3(a) or Section 12. The parties shall sign an amendment to this Agreement evidencing the Commencement Date once it is established. Notwithstanding the foregoing to the contrary, Fairmont shall have the right to terminate this Agreement if, for whatever reason, the Condominium is not constructed.

5. Cost and Expenses. Because the Artist Space is a public amenity in partial satisfaction of the public use space requirement for the Project Approvals, neither the County nor BUP shall be required to pay (nor shall the Artist Space be encumbered or burdened by) any

assessments, capital contributions, reserves, or other monies otherwise payable to Fairmont for the Artist Space, the use of the Exterior Public Space or the "BUP Access Areas" as defined in Section 9(a)(ii) below. The County or BUP shall, however, subject to the limitations of Section 3(f), be responsible for any costs and expenses that the County or BUP may incur pursuant to Sections 7(b), 9(a), 11(a), 15 and any fees or charges arising out of a breach of the Rules and Regulations, as defined in Section 16 of this Agreement.

6. Condition of the Artist Space. Fairmont shall, at its own cost and expense, build-out the Artist Space (the "Improvements") in accordance with the "Artist Space Buildout Plan" attached hereto and made a part hereof as Exhibit "B", the set of "Artist Space Technical Drawings" for the Artist Space attached hereto and made a part hereof as Exhibit "C", and the requirements of this Section 6, which include four artist studios. The build out of the Artist Space shall include appropriate, permanent signage to identify the Artist Space, the size, materials and location of which shall be mutually agreed to by Fairmont and BUP. The Improvements shall be turned over to BUP in "turnkey" condition ready for use. Each artist studio in the Artist Space shall have an independent door directly into the studio from the Exterior Public Space which will be accessible by means of an access card that will change each time a new Artist occupies an artist studio. The "Interior Finishes and Furnishings" known or anticipated as of the date of this Agreement are set forth on Exhibit "D" attached hereto and made a part hereof. As part of the build-out, Fairmont shall provide quality track lighting fixtures in each of the artist studios to highlight the work areas and to display the works of art. Each artist studio in the Artist Space shall have an individual temperature control for the HVAC system and its own bathroom. In addition, each individual artist studio shall have a sink with hot and cold running water. The electricity to the Artist Space shall be separately metered from the Private Condominium. Both the Improvements and the Interior Finishes and Furnishings specified in Exhibit "D" shall be provided by Fairmont at its cost as part of the build-out of the Artist Space. Fairmont shall provide to BUP, or require its contractor to provide to BUP, a one-year warranty, as of the Commencement Date, for the Artist Space against all defects in material and workmanship and shall require the contractor to complete all punch-list work within sixty (60) days' of the Commencement Date. Fairmont shall further obtain a three-year warranty as of the Commencement Date as to the entire HVAC system, or a longer warranty if one is required by law or is otherwise available from the manufacturer. Fairmont shall, to the extent assignable or feasible, assign to BUP such warranty together with any and all other assignable warranties applicable to the Improvements and, to the extent not assignable, shall require that its contractor enforce those warranties on behalf of BUP at the request of BUP. Except as provided in this Section 6, BUP may not erect any signs in, on, or about the Artist Space, other than temporary ones appearing from time to time in the windows of the Artist Space regarding an Artist's work and signs relating to special events, without the prior written approval of Fairmont, such approval not to be unreasonably withheld, conditioned, or delayed as long as such signage includes the BUP logo and is otherwise consistent with applicable laws, including the County sign ordinance.

7. Access; Security; Business Hours.

(a) BUP and the Artists shall have access to the Artist Space 24 hours per day, 7 days per week, 365(6) days per year unless access is restricted or prohibited due to an emergency or by applicable governmental authorities. Access to the Artist Space shall be

provided only from the Exterior Public Space that is shown on Exhibit "A", with no direct internal access or connection between the Artist Space and the Private Condominium. Except as provided with respect to any Outdoor Activities, and notwithstanding anything else contained in this Agreement to the contrary, the hours for which the Artist Space shall be open and accessible to the general public shall be determined by BUP and posted for the information of the general public (the "**General Public Hours**") on BUP's website. BUP will make reasonable efforts to have at least one or more Artists performing work during the General Public Hours; provided, however, the absence of any Artist during the General Public Hours shall not constitute a basis for default under this Agreement or for termination of the County's or BUP's rights hereunder, or constitute an abandonment of the Artist Space, except as provided in Section 3(a).

(b) BUP shall be responsible for the security of the Artist Space during the General Public Hours. Fairmont, however, shall be responsible for installing appropriate access control of the Condominium of which the Artist Space is a part. Fairmont is not responsible, however, for the efficiency or effectiveness of such access control system. If BUP desires, it shall be responsible to see that a separate alarm is installed for each of the artist studios and that such alarms, and any permits therefor, shall be in the names of the occupying Artist rather than in the name of the County or BUP. Neither Fairmont nor the Association shall be responsible for any losses (financial or otherwise), which the County, BUP or the Artists may suffer, including, but not limited to, thefts, robberies, destruction of property, harm to persons, or other crimes. Personal property kept or stored in the Artist Space, including, without limitation, any art supplies, artworks (completed or in progress) or exhibits, shall be at the sole risk of the County, BUP or the Artists, as the case may be.

(c) Unless specifically otherwise authorized by Fairmont or the Association to access the Private Condominium, neither the County, BUP, their agents, employees, or contractors, the Artists, nor any Permittees shall be permitted within the Private Condominium, and Fairmont or the Association shall have the right to remove or to cause the removal of any person not authorized to be present in the Private Condominium.

8. Deliveries. All deliveries to the Artist Space shall be made during "**Business Hours**", namely Monday through Friday 10 a.m. to 4 p.m. and Saturday 9 a.m. to 1 p.m. (except as otherwise provided and approved by Fairmont) and accepted only from the following locations: (a) along the curb of Fairmont Avenue; and (b) via the Old Georgetown Road sidewalk. It is understood and agreed that no such deliveries shall be brought or transported through the Private Condominium.

9. Maintenance and Operation.

(a) The Parties agree that:

(i) BUP shall, or shall cause, the Artist Space to be cleaned, maintained and repaired on a regular basis, which will include the interior (but not the exterior) of the windows and those interior areas of the Artist Space outside of the interior of the individual studios, but inside the Artist Space. BUP shall require in the Artist Agreement that the Artists maintain their individual studios consistent with their use as working art studios and the concomitant art materials and works in progress associated therewith. BUP shall further

require in the Artist Agreement that the Artists store all trash and refuse, including paint and liquid paint accessories, in an adequate container within the Artist Space to be provided by the Fairmont at its expense as part of the Improvements. BUP shall require the Artists to remove trash on a daily basis to the designated location in the BUP Access Areas (defined below). Use by BUP and the Artists of the BUP Access Area shall comply with the provisions in the next subsection.

(ii) BUP agrees, at its expense, to clean the Exterior Public Space of any trash or debris resulting from any Outdoor Activities. BUP and the Artists are hereby granted the non-exclusive right to access designated Common Elements of the Condominium for the purpose of placing trash and refuse in the Condominium's common trash area (such Exterior Public Space and other Common Elements being hereinafter referred to as the "BUP Access Areas");

(iii) BUP shall maintain, repair and replace the "HVAC" (hereinafter defined) and any and all mechanical, electrical and plumbing systems serving only the Artist Space which shall be separately metered;

(iv) BUP shall use commercially reasonable efforts to ensure that the Artists do not overload the HVAC, damage or deface the Artist Space, permit any use of the Artist Space (excepting the Permitted Use) that would increase the insurance rate or make voidable any insurance policy on the Artist Space or on the Condominium, create a fire hazard, or be unlawful, create a nuisance, or otherwise constitute an unlawful disturbance of the peace, violate any governmental law or regulation or applicable insurance rating association requirement or commit waste or other injurious acts upon person or property;

(v) BUP, (and the County, if applicable), shall quit and surrender the Artist Space upon termination of this Agreement free of all displays and other personal property not belonging to Fairmont and otherwise broom clean in the same condition as on the Commencement Date, excepting ordinary wear and tear, damage by fire or casualty or taking for which the County and BUP, as applicable, are not responsible;

(vi) Fairmont and BUP shall obey any laws, rules and regulations adopted by any local, state, or federal authority that may be applicable to the Artist Space and the Permitted Use;

(vii) BUP shall refrain from bringing "Hazardous Materials" (hereinafter defined) into the Artist Space or any other part of the Private Condominium at any time (subject, however, to and as provided in Section 15 below, the right to use the Artist Space for the Permitted Use); and

(viii) BUP agrees to pay, or cause the Artists to pay directly to the utility companies any and all costs for telephone, electricity, and other utility services used by BUP and the Artists in the Artist Space. As provided in Section 6 above and subsections (b)(ii) and (iii) below, Fairmont or BUP shall arrange for the service accounts for all utilities to the Artist Space to be established initially in the name of BUP.

(b) Fairmont agrees to:

(i) install a heating, ventilation and air conditioning system ("HVAC") for each of the artist studios within the Artist Space separate and apart from the Private Condominium;

(ii) provide water and sewer services to each of the artist studios within the Artist Space, install one meter for such services to the Artist Space, and establish, or have BUP establish, the accounts therefor with the providers of such services initially in the name of BUP;

(iii) provide electricity to each of the artist studios for the HVAC and other purposes within the Artist Space, install one electric meter for the Artist Space, and establish, or have BUP establish, the account therefor with the electrical provider initially in the name of BUP;

(iv) provide internet access to each of the artist studios, and establish, or have BUP establish, the accounts therefor with the providers of such services initially in the name of BUP;

(v) repair, maintain, and clean the exterior of the Artist Space, including the exterior of the windows; and

(vi) clean, maintain, and repair the Exterior Public Space and to require the future maintenance of such areas by the Association in the Condominium Instruments.

Other than the foregoing, neither Fairmont nor the Association shall have any obligations hereunder with respect to the maintenance, repair, or provision of utilities to the Artist Space. Fairmont or the Association, as applicable, or any of their agents may, but shall have no obligation to, at reasonable times and upon reasonable prior written notice to BUP, enter the Artist Space in order to satisfy the foregoing obligations (i)-(v) of this Section 9(b). Although Fairmont shall use reasonable efforts to ensure that such access does not interfere with the activities of BUP and the Artists within the Artist Space, neither Fairmont nor the Association shall be liable to the BUP or the Artists by reason of any inconvenience, noise, or other adverse effect as a result of any interruption of any service or utility serving the Artist Space; provided that Fairmont at all times uses commercially reasonable efforts to prevent or minimize the any disruption of utility services to the Artist Space.

(c) The County hereby grants a right of access to the Artist Space to Fairmont and the Association, as applicable, for the purpose of making inspections and for the purpose of performing installations, alterations, or repairs to the mechanical and electrical services and other portions of the Artist Space required to be performed by Fairmont pursuant to Section 9(b) above or in connection with the warranties provided or described in Section 6 above, and to correct any condition which violates the provisions of the Condominium Instruments, provided that requests for entry are made in writing in advance to BUP and the Artists and that such entry is at a time reasonably convenient to BUP and the Artists. In case of a bona fide emergency, such right of entry shall be immediate, whether BUP or any Artists are present at the time or not.

Although Fairmont and the Association, as applicable, shall use reasonable efforts to ensure that such access does not interfere with the activities of the Artists within the Artist Space, Fairmont and the Association shall not be liable to the County, BUP, or the Artists for entering the Artist Space for any such authorized purpose; provided that Fairmont and the Association at all times use commercially reusable efforts to prevent and/or minimize the occurrence of the same and/or their adverse impact on the Permitted Use of the Artist Space.

10. Alterations and Additions. Neither the County nor BUP may make (i) any structural alterations to the Artist Space or (ii) any non-structural alterations to the Artist Space that would adversely affect the safety or structural integrity of the Condominium, whether or not consistent with the Permitted Use, without the prior written consent of the Fairmont.

11. Insurance.

(a) On or before the Commencement Date and continuing throughout the Term, BUP will carry and maintain the insurance amounts and types set forth on Exhibit "G" through the County's Self Insurance Fund, which may be subject to change from time to time as a consequence of any changes in the Maryland Local Government Tort Claims Act or other legislative changes affecting the insurance normally maintained as part of the Montgomery County Self Insurance Program. BUP further agrees that, to the extent any insurance appearing on Exhibit "G" is obtained through a commercial policy and not through the Self Insurance Fund, and provided that it does not subject BUP to any additional cost, liability or decrease of coverage provided to BUP, BUP shall name Fairmont and the Association, as applicable, upon written request by Fairmont or Association, as additional insureds on such commercial policies. Any other insurance which Fairmont or the Association may deem appropriate shall be acquired, maintained, and paid for at the cost of Fairmont or Association, as applicable.

(b) Fairmont and, upon creation of the Condominium, the Association, shall insure the Condominium property (including the Artist Space and the Private Condominium) as required pursuant to the terms of the Act and the Condominium Instruments including any leasehold improvements to the Artist Space made by Fairmont, in an amount not less than the full replacement cost. BUP shall not be required to contribute towards the costs of the maintenance of said insurance. However, BUP is hereby deemed to appoint Fairmont, the Association or any "Insurance Trustee" or substitute Insurance Trustee designated by Fairmont or the Association, as applicable (as such terms are defined in the Condominium Instruments), as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (i) the collection and appropriate disposition of the proceeds thereof; (ii) the negotiation of losses and execution of releases of liability; and (iii) the execution of all documents and the performance of all other acts necessary to accomplish such purposes.

12. Casualty; Condemnation.

(a) Damage to Artist Space. In the event that any part of the Artist Space or BUP Access Areas are damaged by fire or other casualty, this Agreement shall not terminate unless pursuant to the Condominium Instruments, the Private Condominium is not rebuilt pursuant to the provisions of the Condominium Instruments, the Condominium is terminated, or repair or replacement would be illegal under any state or local health or safety statute or

ordinance. If the Artist Space is not rebuilt or repaired to its original condition following such casualty, and as a consequence this Agreement is terminated, such termination shall not relieve Fairmont or the Association, as applicable, of its obligation to provide a public amenity as a condition of the Project Approvals.

(b) No Responsibility to Repair. In the event of any casualty, Fairmont shall not be required to make any repairs or replacements to the Artist Space following occupancy by BUP, or to any fixtures, furniture, equipment, or other personal property of BUP, unless required to do so pursuant to the terms of the Condominium Instruments and, in such event, subject to Section 12(a) above, only to the condition existing as of the date of the casualty. However, if the Artist Space is not rebuilt or repaired to its original condition following such casualty, and as a consequence this Agreement is terminated, such termination shall not relieve Fairmont or the Association, as applicable, of its obligation to provide a public amenity as a condition of the Project Approvals.

(c) Condemnation. If a portion but not all of the Artist Space is taken by eminent domain, BUP shall determine whether it wishes to continue to utilize the remaining Artist Space or, subject to the County's approval, terminate this Agreement. If BUP elects to continue to use the Artist Space, this Agreement shall continue. Alternatively, if this Agreement is terminated, none of the parties shall have any further liability to the other (except the County's and BUP's obligation under Section 15, but only for the one (1) year provided for therein) and the Artist Space shall, subject to the conditions set forth in the Project Approvals, revert to Fairmont free and clear of any claim to the same by the County or BUP. All awards made by reason of condemnation of the Artist Space shall be made to Fairmont. BUP, as directed by the County, shall have the right (at BUP's sole cost and expense) to appear and file a separate claim for damages in such condemnation proceedings, and to direct any and all hearings, trials, and appeals thereon. BUP's claims for damages in any such proceedings shall be limited to (i) the value of any property within the Artist Space belonging to BUP, (ii) the fair market value of any alterations paid for solely by and not removable by BUP at the termination of this Agreement, (iii) the right to any relocation benefits and monies if the relocation claims does not reduce any claim made by Fairmont, the Association, or the Unit Owners and (iv) any other claim permitted to be made by BUP pursuant to applicable law, including a claim for the value of the unexpired term of this Agreement.

13. Assignment; Subletting.

(a) Except as provided herein, the County shall not be permitted to assign this Agreement or sublease the Artist Space or otherwise transfer its rights hereunder, either voluntarily or by operation of law, without the prior written consent of Fairmont, such consent to be withheld, conditioned or delayed in the sole discretion of Fairmont. Provided, however, that the County may assign or sublease or otherwise transfer its rights hereunder, without any consent of Fairmont, to any successor governmental entity to the County, to any affiliate governmental entity to the County, to M-NCPPC or to any instrumentality of the County or of M-NCPPC, provided the County obtains written approval from the Planning Board stating that such assignment does not violate the Project Approvals.

(b) Notwithstanding Section 13(a) to the contrary, any sublicensing of premises within the Artist Space to Artists shall be permitted, provided that all of the conditions set forth in Section 3(e) above are satisfied. Notwithstanding any sublicensing of the Artist Space to Artists, BUP, subject to the limitations of Section 3(f), shall remain fully liable for all of their obligations and liabilities under this Agreement, and no Artist Agreement shall be deemed to release BUP from liability hereunder.

14. Default; Removal of Art Exhibits. Fairmont, or the Association, as applicable, acknowledges and agrees that, except as otherwise set forth in Section 3(a) of this Agreement, if BUP fails to cure any default hereunder within sixty (60) days of written notice from Fairmont, Fairmont's sole and exclusive remedies are to: (a) enter the Artist Space and curtain off from the exterior or interior visibility of the Artist Space and secure it and its contents, and, after thirty (30) additional days' written notice to BUP and the Artists (whose work is in the Artist Space), remove and store such art exhibits and other contents at BUP's or the Artist's expense, as the case may be; (b) seek an injunction against BUP concerning the default and request specific performance or other equitable relief; and (c) notify the Planning Board in writing of the default and request that the Planning Board allow Fairmont to terminate this Agreement without jeopardizing the Project Approvals, provided that Fairmont shall first give notice to the County, BUP, and any Artist currently occupying any of the Artist Space of its request to the Planning Board and (unless the Planning Board does so) shall keep the County, BUP, and such Artist apprised by written notice thereof of any scheduled submission deadlines or hearing dates with respect thereto; provided further that nothing herein shall be construed to prohibit the County, BUP, any Artist, any Permittee or any member of the public from appearing before or petitioning in other form the Planning Board in opposition to a requested finding of default or request to terminate this Agreement, or to terminate the rights herein provided for the use of the Artist Space, Exterior Public Space, or the conduct of Outdoor Activities. In the event that the remedy specified in this Section is exercised, then to the extent that any of the art exhibits or other contents have been installed or made a part of the Artist Space in such a way that removing such art exhibits and other contents from the Artist Space will cause the destruction, mutilation, or other modification of the work, BUP acknowledges and agrees that, after consulting with the Artist, BUP will remove of any the art exhibits or installations. If BUP fails to remove the art exhibits or installations referenced in the preceding sentence, Fairmont shall give BUP a sixty (60) day notice to remove the art exhibits or installations ("cure period"); and thereafter, if BUP fails to remove the art exhibits or installations within the cure period, Fairmont may exercise self-help and remove them.

15. Hazardous Materials. BUP shall not bring or allow any Artists to bring into the Artist Space or within the Condominium any asbestos, petroleum or petroleum products, used oil, explosives, toxic materials or substances defined as hazardous wastes, hazardous materials, or hazardous substances ("**Hazardous Materials**") under any Environmental Law (hereinafter defined). In the event of any release of Hazardous Materials on, from, under, or about the Artist Space or the Condominium as the result of the use and occupancy of the Artist Space by BUP and the Artists, or the Fairmont or the Association, as applicable, as a result of Fairmont's or the Association's access to the Artist Space granted to Fairmont hereunder, or Fairmont's or Association's occupancy of the Private Condominium, the party or parties responsible for such release of Hazardous Materials shall clean up the same and shall be required to remove, remediate, and repair any soil or groundwater contamination or other damage or contamination

but, as and only to the extent of any order issued by any enforcement agency charged with the enforcement of an environmental law as to which the release constitutes a violation, and only to the extent of the governmental mandated remediation, provided, however, that BUP's liability hereunder shall in all events not exceed the amount recoverable under the Maryland Local Government Tort Claims Act for a tort action, and the amount of any commercial insurance, if applicable, carried by any Artist using the Artist Space. Each Party shall give written notice to the other Parties of any suspected breach of this Section (i) upon learning of the presence or any release of any Hazardous Materials or (ii) upon receiving any notices from governmental agencies or other parties pertaining to Hazardous Materials which may affect the Artist Space, the Private Condominium, or any adjacent properties. Fairmont or the Association, as applicable shall have the right from time to time, but not the obligation, to enter upon the Artist Space after providing written notice to BUP and the Artists, to conduct such inspections and undertake such sampling and testing activities as the Fairmont deems necessary or desirable to determine whether the BUP and the Artists are in compliance with this provision. The obligations of the Parties hereunder shall survive the expiration or earlier termination, for any reason, of this Agreement for a period of one (1) year from the date of expiration or earlier termination of this Agreement. Notwithstanding the foregoing to the contrary, Fairmont hereby acknowledges and agrees that BUP and the Artists may utilize and store such Hazardous Materials in the Artist Space as are customary in the conduct of the Permitted Use, provided that the quantities of such Hazardous Materials or the types of materials do not violate Environmental Laws or affect any construction or occupancy class contained within any applicable building code. BUP hereby agrees to comply with all Environmental Laws regarding the use, storage, and disposal of any and all Hazardous Materials used, stored, or generated within the Artist Space. The Artist Agreement shall require the Artists to comply with all Environmental Laws regarding the use, storage, and disposal of any and all Hazardous Materials including, for purposes of this Section, paint and all liquid paint accessories. As used herein, "Environmental Laws" shall mean (i) the Comprehensive Environmental Response, Compensation, and Liability Act, (42 U.S.C. Section 6901 et seq.), as amended; (ii) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq., as amended; (iii) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 et seq.), as amended; (iv) the Clean Air Act (42 U.S.C. Section 7401 et seq.), as amended; (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.), as amended; (vi) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), as amended; (vii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), as amended; (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.), as amended; (ix) the Safe Drinking Water Act (42 U.S.C. Section 300F et seq.), as amended; (x) any state, municipal or local statutes, laws or ordinances similar or analogous to the federal statutes listed in parts (i)-(ix) of this provision; (xi) any amendments to the statutes, laws, or ordinances listed in part's (i)-(x) of this provision, regardless of whether in existence on the date hereof; (xii) any rules, regulations, guidelines, directive, orders, or the like adopted pursuant to or implementing the statutes, laws, ordinances and amendments listed in parts (i)-(xi) of this provision; and (xiii) any other law, statute, ordinance, amendment, rule, regulation, guideline, directive, order, or the like in effect now or in the future, whether more or less restrictive, relating to environmental, health, or safety matters.

16. Rules and Regulations. BUP and the Artists shall at all times abide by and observe the Rules and Regulations set forth in Exhibit "F" attached hereto and made a part hereof and any amendments thereto that may reasonably be promulgated from time to time by

the Fairmont for the use, operation, and maintenance of the Artist Space (the “**Rules and Regulations**”). If there is any inconsistency between this Agreement (other than Exhibit “F”) and the then current Rules and Regulations, this Agreement shall govern. Provided further that any subsequently adopted rules and regulations shall be of no force and effect as to the County, BUP or the Artists to the extent that they either increase the obligations, or decrease the rights, of the County, BUP or the Artists under this Agreement.

17. Miscellaneous.

(a) Notice. Except as otherwise provided herein, any notices or other communications given under this Agreement shall be in writing and shall be delivered by hand (against a signed receipt) or sent by registered or certified mail (return receipt requested) or overnight courier addressed to the receiving party at the address set forth in the introductory paragraph of this Agreement or such other address a such party shall provide by notice to the other parties in compliance with this Section 17(a). All notices or other communications so delivered or sent shall be effective upon receipt or refusal.

(b) Waiver. The failure of any party to seek redress for a breach of this Agreement or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a breach, from having all the force and effect of an original violation. No provision of this Agreement shall be deemed to have been waived by any party unless such waiver is in writing and signed by the party to be bound thereby.

(c) Non-Recourse Liability/Fairmont’s Sole Remedies. Except as otherwise provided in Section 3(a) of this Agreement, Fairmont acknowledges and agrees that its sole remedies for a breach of this Agreement are those set forth in Section 14, except that Fairmont shall have the right to recover to the extent of any insurance maintained by any Artist using the Artist Space, if applicable. Fairmont otherwise acknowledges and hereby waives any and all other rights and remedies it might otherwise have against the County or BUP for any breach of this Agreement, excepting only as to a breach of Section 15, but only for the (1) one-year period provided therein. Fairmont shall otherwise have no right or remedy against the County, or BUP, or against their respective officials, directors, agents, or employees, or the assets of any of them for any breach of this Agreement.

(d) Broker. The County, BUP, and Fairmont represent and warrant to the other that they have not dealt with any broker in connection with this Agreement.

(e) Consents and Approvals. Unless otherwise provided herein, any consent, approval, or other permission required of any party shall not be unreasonably withheld, delayed, or conditioned.

(f) Authority. The County, BUP, and Fairmont hereby covenant that each has the right, power and authority to enter into this Agreement upon the terms and conditions herein set forth. The persons executing this Agreement on behalf of the County and BUP respectively hereby covenant and warrant that the County and BUP are duly formed and validly existing entities under the laws of Maryland, and that the persons binding the County and BUP are their

legally authorized representatives and that they have the authority to enter into this Agreement. The person executing this Agreement on behalf of the Fairmont does hereby covenant and warrant that Fairmont is a duly formed and validly existing limited liability company under the laws of Maryland, that the limited liability company has the authority to enter into this Agreement, and that such person executing this Agreement on behalf of the limited liability company is authorized to do so. Each party agrees that, upon request, it shall provide the other parties with corporate, membership, or partnership resolutions, as the case may be, certifying as to the above.

(g) Amendments. This Agreement may only be amended or modified by an instrument in writing signed by all parties hereto. It is understood and agreed that the Condominium Instruments shall not be amended or modified in any manner whatsoever that would adversely affect the rights of the County, BUP or the Artists under this Agreement or increase their respective obligations under this Agreement.

(h) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the County, BUP, and their successors and permitted assigns. This Agreement shall be binding upon and inure to the benefit of Fairmont and its successors and permitted assigns, which shall include the Association (acting by and through its Board of Directors or managing agent pursuant to the Condominium Instruments) upon transfer of control of the Association from the Fairmont to the Unit Owners, as set forth in the Condominium Instruments.

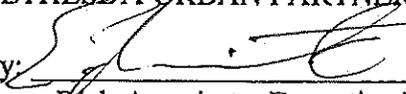
(i) County Not Liable for BUP. Pursuant to Section 68A-11(e)(1) of the Montgomery County Code, the County is not and shall not be liable in contract or tort for any obligation, act, or omission of BUP or its agents or employees.

(j) Attorney's Fees. Each party shall bear its own attorney's fees with respect to the negotiation and drafting of this Agreement and with respect to the enforcement of any remedy under this Agreement.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative under seal as of the last day and year written below.

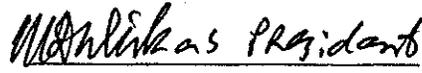
BETHESDA-URBAN PARTNERSHIP, INC.

By: 
Rick Ammirato, Executive Director

Date: 3/29/17

DUBALL FAIRMONT, LLC,
a Delaware limited liability company

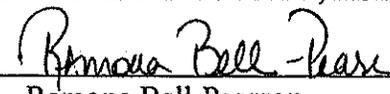
By: Duball Investment VII, LLC, a Maryland limited liability company, its Managing Member

By:  (SEAL)

Name: Marc A. Dubick

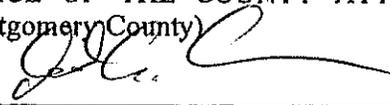
Title: President

MONTGOMERY COUNTY, MARYLAND

By: 
Ramona Bell-Pearson
Assistant Chief Administrative Officer

Date: June 20, 2017

APPROVED AS TO FORM AND LEGALITY BY THE OFFICE OF THE COUNTY ATTORNEY (on behalf of Montgomery County)

By: 
Neil Anker, Associate County Attorney

6-19-17
Date

APPROVED AS TO FORM AND LEGALITY BY THE OFFICE OF THE COUNTY ATTORNEY (on behalf of Bethesda Urban Partnership)

By: 
Vickie L. Gaul, Associate County Attorney

6-19-17
Date

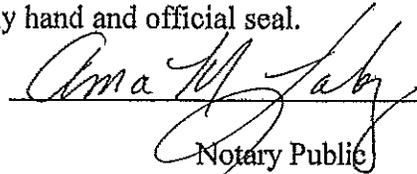
STATE OF MARYLAND
COUNTY OF MONTGOMERY

* * *
*
* to wit:
*

On this 29 day of March, 2017 before me, the subscriber, personally appeared Rick Ammirato, and acknowledged himself to be the Executive Director of BETHESDA URBAN PARTNERSHIP, INC., the corporation named in and which made the foregoing instrument, and that as such Executive Director, being authorized to do so, executed the foregoing instrument for the purposes stated therein by signing on behalf of BETHESDA URBAN PARTNERSHIP as its authorized representative.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Anna M. Laboy
NOTARY PUBLIC
Montgomery County, Maryland
My Commission Expires 6/10/2018
My Commission Expires: _____



Notary Public

[NOTARIAL SEAL]

STATE OF MARYLAND

*

* to wit:

*

COUNTY OF MONTGOMERY

On this 20th day of July, 2017 before me, the subscriber, personally appeared Ramona Bell-Pearson and acknowledged herself to be the Assistant Chief Administrative Officer of MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland named in and which made the foregoing instrument, and that as such Chief Administrative Officer, being authorized to do so, executed the foregoing instrument for the purposes stated therein by signing on behalf of MONTGOMERY COUNTY, MARYLAND as its authorized representative.

IN WITNESS WHEREOF, I hereunto set my hand and official seal

Julie R. White

Notary Public

My Commission Expires: 4/30/2021

[NOTARIAL SEAL]

STATE OF MARYLAND *Virginia* *
COUNTY OF MONTGOMERY *Fairfax* * to wit:

On this *24th* day of *June*, 2017 before me, the subscriber, personally appeared Mark A. Dubick, and acknowledged himself to be the *President* of DUBALL FAIRMONT, LLC, a State of Maryland limited liability company named in and which made the foregoing instrument, and that as such *President*, being authorized to do so, executed the foregoing instrument for the purposes stated therein by signing on behalf of DUBALL FAIRMONT, LLC as its authorized representative.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Marla DeGriscio

Notary Public

My Commission Expires: *May 31, 2018*

[NOTARIAL SEAL]

