

DEVELOPER

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

HousePAD Development

DEVELOPER COVENANTS, CONDITIONS AND RESTRICTIONS

These Developer Covenants, Conditions and Restrictions (the “Developer Covenants”) are made as of this _____ day of _____, 2024 (the “Effective Date”), by CITY OF LONGMONT, a Colorado municipal corporation (“Declarant”), and VERTIKAL, LLC, a Colorado limited liability company whose address is 19 Woodstone Plaza, Hattiesburg, Mississippi, 39402 (“Buyer”).

1. General.

1.1 Property. Declarant is the owner of a certain parcel of land located in the City of Longmont, Colorado (“City”), which is more particularly described on **Exhibit 1** attached hereto and incorporated by reference herein (the “Property”). As used herein, the term “Property” shall also mean any portion of or interest in the Property.

1.2 Improvements. The Property will be conveyed by Declarant to Buyer pursuant to a quitclaim deed (the “Deed”) of even date herewith, to be recorded in the real property records of Boulder County, Colorado. Declarant and Buyer intend that Buyer will construct on the Property a residential project consisting of approximately 185 homes, mixing both townhomes and single-family detached residences, 55 of which homes will be deed restricted to homeowners earning under 80% of area median income (“AMI”) and the remaining homes will be deed restricted to homeowners earning up to 120% of AMI, together with related infrastructure (the “Improvements”). As used herein, “AMI” means the area median income by household size for the Boulder-Longmont area based on U.S. Department of Housing and Urban Development (HUD) median income updates, as updated annually by the Housing & Community Investment Director and as made available to the public by the Housing & Community Investment Division. All affordable and attainable units will be sold under applicable maximum sale prices, as published by the City of Longmont and will follow more defined specifications defined in **Exhibit 2**. Declarant and Buyer intend that the Improvements will be constructed in accordance with the entitlements that have been approved for the Property and these Developer Covenants. To facilitate development of the Improvements, the City has agreed to (1) contribute funds to directly pay Developer the City Payment, as defined in that certain Purchase and Sale and Development Agreement between Declarant and Buyer dated _____, 2024 (the “Development Agreement”), to assist in paying for Developer’s site work, infrastructure and construction for the Project, and (2) provide certain fee reductions and subsidies to Developer in accordance with the City Code as more specifically set forth in the Development Agreement.

1.3 Purpose. These Developer Covenants are being executed in furtherance of a common and general plan for the Property to construct permanent affordable and attainable for-sale housing on the Property. These Developer Covenants are made for the benefit of Declarant, its successors and assigns, and are intended to impose a burden on Buyer, its successors and assigns and on the Property. The provisions of these Developer Covenants are intended to and shall run with the land, and until their expiration in accordance with the terms hereof, shall inure to the benefit of Declarant, its successors and assigns. Buyer acknowledges that these Developer Covenants require recording of either an “Affordable Purchase Covenant” or an “Attainable Purchase Covenant”), each as defined in Section 1.4 below (together, the “Affordability Covenants”).

1.4 Declaration. Declarant hereby declares that the Property is subject to these Developer Covenants. From the date the Property becomes subject to these Developer Covenants, it shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, and other provisions set forth herein, for the term hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Property.

2. Improvements

2.1 Construction of Improvements. Buyer shall be responsible for the construction, maintenance through each phase of construction, and sale of the Improvements, as more fully described and detailed in **Exhibit 2** attached hereto and made a part hereof. The Improvements are to be constructed in phases (each a “Phase”), as set forth in **Exhibit 2**. As used herein, “Improvement” shall mean those items listed on **Exhibit 2**, as well as any and all structures and appurtenances of every type or kind that are part of the “Permitted Uses” (as defined in Section 3.3 below), including, but not limited to, buildings, outbuildings, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, bicycle trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, exterior air conditioning and water softener fixtures.

2.2 Affordable Purchasable Units. As part of the Improvements, Buyer shall be fully responsible for the construction, maintenance through each phase of construction, and sale to qualified third-party homeowners of no fewer than 55 for-sale “Affordable Purchasable Units” on the Property, which shall be developed on the Property at no cost to Declarant. As used herein, “Affordable Purchasable Unit” shall mean a for-sale residential unit restricted to households earning at or below eighty percent (80%) of the AMI and sold at a purchase price under the applicable maximum sale price as published by the City of Longmont annually. To provide for the recordation of the long-term restrictions that apply against the Property for the Affordable Purchasable Units, Buyer shall comply with **Exhibit 2** prior to the conveyance of each Affordable Purchasable Unit, and shall record a covenant in form prepared by the City prior to the issuance of a certificate of occupancy for each Affordable Purchasable Unit in the Property (the “Affordable Purchase Covenant”).

2.3 Attainable Purchasable Units. Buyer shall be fully responsible for the construction, maintenance through each phase of construction, and sales to qualified third-party homeowners of approximately 130 for-sale “Attainable Purchasable Units” on the Property, which shall be developed on the Property at no cost to Owner or Declarant. As used herein, “Attainable Purchasable Unit” shall mean for-sale residential unit to be restricted to households earning at or below one hundred twenty percent (120%) of AMI and sold at a purchase price under the applicable maximum sale price as published by the City of Longmont annually. To provide for the recordation of the long-term restrictions that apply against the Property for the Attainable Purchasable Units, Buyer shall comply with **Exhibit 2** prior to the conveyance of each Attainable Purchasable Unit, and shall record a covenant in form prepared by the City prior to the issuance of a certificate of occupancy for each Attainable Purchasable Unit in the Property (the “Attainable Purchase Covenant”).

2.4 Commencement and Completion of Improvements. Buyer shall:

- a. commence construction of each phase of the Improvements on or before the dates set forth in **Exhibit 2** (each, a “Commencement Deadline”), and proceed therewith diligently and in a good and workmanlike manner until completed;
- b. complete each such phase of the Improvements in accordance with all governmental requirements and with the plans approved by the City of Longmont Department of Planning and Development Services (the “Department”) on or before the dates set forth in **Exhibit 2** (each, a “Completion Deadline”); and
- c. prior to obtaining a certificate for use and occupancy of each residential unit of the Improvements (each, a “Unit”), obtain approval of the Department and record the Affordable Purchase Covenant or the Attainable Purchase Covenant, as applicable, in the real property records of Boulder County, Colorado.
- d. obtain a certificate for use and occupancy (a “Certificate”) for each of the Units.

2.5 Requirements for Declarant’s Acceptance. Buyer shall not install or construct, or cause to be installed or constructed, any Improvement on the Property or make any additions to any Improvements, except as required by and in accordance with plans submitted to and approved in writing by the Department. Buyer shall not amend or make any material changes to any exterior designs, dimensions, color schemes or exterior materials of any Improvement at the Property, the plans for which have been required and approved by the Department.

2.6 Construction of the Improvements. Construction of an Improvement shall be deemed to “commence” or be “commenced” at such time as the site work and underground utility work has begun in accordance with the plans approved by the Declarant, as applicable. An Improvement shall be deemed “complete” or “completed” at such time as the Improvement has achieved substantial completion in accordance with the plans approved by the Declarant, and a Certificate has been issued in accordance with applicable rules, regulations and requirements of all governmental authorities, including the City having jurisdiction.

2.7 Buyer’s Options. Buyer shall have the following options with regard to the construction and development of the Improvements:

- a. Buyer may continue to develop the Attainable Purchasable Units in subsequent phases while the Affordable Purchasable Units are sold or absorbed in any prior phases. In this instance, the total mix of units shall not change.
- b. Upon 60 days from issuance of Certificate of Occupancy, and if after a good faith effort to market the units, the Affordable Purchasable Units or the Attainable Purchasable Units have not sold to a qualified homebuyer, buyer shall have the option to offer a lease/purchase program that must be approved by Declarant in its sole discretion, which shall not be unreasonably withheld, to any buyer qualifying within the Affordable Purchasable or Attainable Purchasable income restrictions.

2.8 Homeowner's Resale Options.

a. The Affordable Purchasable Units will be permanently deed restricted as affordable to homeowners earning 80% of the AMI or below. The deed restriction will convey with any subsequent sale of the property.

b. The Attainable Purchasable Units will be deed restricted as affordable to homeowners earning 120% of the AMI or below for a period of no less than 10 years. Options for release of the deed restriction include the following:

- i) Maintain ownership of the property for 10 years, at which point the deed restriction expires and the homeowner can sell the property on the open market and retain all earnings.
- ii) Maintain ownership of the property for less than 10 years and sell the property within the maximum sales prices set by the City for the level of affordability as a percentage of AMI originally sold to the existing homeowner. The homeowner may retain all earnings of the sale. The deed restriction will roll to the next owner. The deed restriction will remain in place for a period of no less than 10 years and no more than 30 years or 3 sales events, whichever is shorter.
- iii) Exercise the buyout option, which allows a homeowner to "buy out" of the deed restriction and sell at market price. The buyout option is available to any homeowner who maintains ownership for a period of 7 years. After 7 years from the date of the initial closing, the homeowner shall have the option to pay a fee to City at closing with the following scale:
 - (1) During 8th year of ownership: 6% of market sales price
 - (2) During 9th year of ownership: 5% of market sales price
 - (3) During 10th year of ownership: 4% of market sales price

3. Covenants, Conditions and Restrictions

3.0 Developer Covenants Terminate Upon Reacquisition by Declarant. In the event that Declarant reacquires title to the Property or any portion thereof at any time, these Developer Covenants shall be null and void and of no further force or effect as to the portion of the Property acquired by Declarant from and after the date the title to any such portion of the Property vests in Declarant.

3.1 Developer Covenants Terminate Upon Completion of Project. Except as hereinafter provided in this Section, these Developer Covenants shall terminate and be null and void and of no further force and effect as to the portion of the Property for which all of the Improvements contemplated at the Property have been completed, an Affordable Purchase Covenant or an

Attainable Purchase Covenant, as applicable, has been recorded against such portion, and a certificate of occupancy has been issued for such Improvements. Notwithstanding the foregoing, if any violation of these Developer Covenants exists with respect to any portion of the Property at the time of closing of the sale thereof by Buyer to a bona fide buyer that is unaffiliated with Buyer, then as to such violation, these Developer Covenants shall continue in full force and effect until the earlier of (i) the date upon which such violation shall be cured, or (ii) one (1) year after the date upon which the deed from Buyer to such bona fide buyer is recorded in the real property records of Boulder County, Colorado, if legal proceedings have not been commenced within said one (1) year period. Upon request, Declarant shall provide a notice for recordation affirming termination of these Developer Covenants at such time as they terminate in accordance with the terms hereof.

3.2 Limitations on Use of Property. Until termination of these Developer Covenants as set forth herein, the Property shall be developed and used solely for the Permitted Uses. “Permitted Uses” as used herein shall mean (a) any improvement on the Property that is in furtherance of the construction of the Project and is in compliance with the requirements specified on **Exhibit 2**, attached hereto, subject to Declarant’s approval of each such Improvement; (b) streets, roads and landscaped areas in or adjacent thereto; (c) temporary contractor storage; and (d) off-street parking; and subject to Declarant’s approval.

3.3 Duration. Except as otherwise set forth herein, these Developer Covenants shall operate and be effective until these Developer Covenants have been terminated in writing by Declarant. However, if not earlier terminated, these Developer Covenants shall terminate on the earlier of (a) the date that Buyer has successfully completed all of the items set forth in Section 2 above; or (b) the date that is fifteen (15) years after the Effective Date. Upon termination of these Developer Covenants, the Property and the Improvements thereon may be used for any purpose permitted under the applicable Affordability Covenant and applicable zoning.

3.4 Repurchase Option. Subject to the expiration of any applicable cure periods, in the event that any one or more Repurchase Events occurs, Declarant shall have the right to repurchase the Repurchase Property from Buyer upon the terms and conditions hereinafter set forth (the “Repurchase Option”).

3.5 Repurchase Event. A “Repurchase Event” as used herein shall mean: that Buyer has not satisfied an obligation under Section 2 above in a manner reasonably satisfactory to Declarant.

3.6 Exercise of Repurchase Option. Declarant shall have the right to exercise the Repurchase Option by giving Buyer and the Lender (defined below) written notice (the “Exercise Notice”) at any time during the period of time commencing on the date that a Repurchase Event occurs and expiring 90 days thereafter; provided, however, that if Declarant gives such notice within the applicable period, then Buyer or the Lender shall have 60 days from its receipt of such notice to satisfy the obligation under Section 2, as applicable, in which case Declarant's right to exercise the Repurchase Option due to the occurrence of the Repurchase Event shall thereupon cease and terminate. If the Exercise Notice shall not be given by Declarant on or before the expiration of the period as aforesaid, then Declarant's right to exercise the Repurchase Option due to the occurrence of the Repurchase Event shall thereupon cease and terminate. As used herein,

“Lender” means the holder of a Mortgage on the Improvements. The term “Mortgage” shall mean a mortgage or deed of trust on the Improvements.

3.7 Repurchase Option Price. The “Repurchase Option Price” as used herein shall mean the cost or actual obligations incurred by Buyer (not including any profit for Buyer) for any Improvements, less any City Payments actually paid by Declarant, and any amounts realized through the sale of any unit made to the Property by Buyer, together with the cost of any sewer and water taps and building permits purchased by Buyer that may be used for the Improvement of the Repurchase Property. The Repurchase Option Price shall include no consideration for the Property other than as provided in this Section, as the Buyer acquired the Property from Declarant at no cost.

3.8 Closing upon Repurchase. Unless Buyer cures any default raised in the Exercise Notice, Buyer shall deliver to Declarant within ninety (90) days after Declarant gives Exercise Notice, Buyer’s quitclaim deed for the Repurchase Property and an assignment of any unused sewer and water taps and building permits purchased by Buyer in exchange for payment from Declarant of the Repurchase Option Price in wire transfer or other immediately available funds. Declarant shall tender the Repurchase Option Price at the closing as a condition precedent to Buyer providing Declarant with a quitclaim deed. Buyer shall deliver title to the Repurchase Property to Declarant in the same condition as when delivered by Declarant to Buyer, except as to matters theretofore approved by Declarant, nondelinquent property taxes and assessments for the year of said closing, which taxes and assessments shall be prorated between Declarant and Buyer to the date of closing, so that Buyer bears such taxes and assessments for the period of its ownership of the Repurchase Property. Buyer shall assign title to the unused sewer and water taps and building permits free and clear of all liens and encumbrances. At closing, Buyer shall assign and deliver all of its plans and specifications, studies, tests and investigations prepared by or on behalf of Buyer in connection with Buyer’s development of the Property and construction of the Improvements thereon, including all of the foregoing that are stamped and approved by the City, and including without limitation, all site plans, landscaping plans, plans and specifications for all planned building improvements, utility plans showing the location of connections with main lines, water and sewer plans, and storm drainage system plans along with all rights under any contracts entered into by Buyer regarding work performed to create such plans; provided, however, that any such assignment and delivery shall be subject to any limitations imposed by third-parties that provided any such plans, reports, and specifications. Declarant shall only use the plans and specifications for the limited purpose of completing construction or causing completion of construction of the Project on the Repurchase Property and subject to any limitations imposed by third-parties that provided any such plans, reports, and specifications.

3.9 Evidencing Expiration of Repurchase Option. In the event that (a) Buyer meets all of the requirements of Section 2 on or before their applicable Deadlines, (b) Buyer fails to timely meet the requirements of Section 2 on or before their applicable Deadlines, but thereafter either construction of the Improvements is commenced or is completed, and Buyer notifies Declarant in writing prior to the time Declarant exercises the Repurchase Option, or (c) Declarant fails to exercise the Repurchase Option within the time and in the manner set forth above, Declarant shall, upon Buyer’s written request, deliver within ten (10) business days to Buyer a duly executed and acknowledged release of Declarant’s right to exercise the Repurchase Option.

3.10 Force Majeure. In the event that Buyer is unable to meet a Deadline because of delays from causes beyond the reasonable control of the Buyer, such as, but not limited to, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials outside of Buyer's reasonable control, defaults by contractors or subcontractors or any tier for the Improvements, unusually severe weather conditions, fire or other casualty, failure of power, riots, insurrection, war, epidemic, pandemic, or declared public health emergency, not including delays caused by Buyer's lack of capital, then the date by which Buyer shall be required to meet any Deadline, and the date by which Declarant shall be required to exercise the Repurchase Option due to Buyer's failure to meet the Deadline, shall be extended for a period of time equal to the length of said delay.

3.11 Anti-Speculation Provision - Early Transfer. Any sale, conveyance, exchange or lease of all or any portion of the Property before the completion of the project as contemplated by Section 3.1, shall be deemed to be an "Early Transfer;" provided, however, an Early Transfer shall not be deemed to have occurred by reason of the fact that such portion of the Property (the "Early Transfer Property") is (a) encumbered by, foreclosed upon by, or transferred in lieu of foreclosure to a Lender, (b) a transfer to a developer affiliate (Developer's Affiliate means Developer or another any entity, individual, firm, or corporation, that is duly organized, validly existing, and in good standing in the state in which it is incorporated, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Developer), or (c) the sale of an Affordable Purchasable Unit or an Attainable Purchasable Unit to a homebuyer as contemplated by this Covenant.

Buyer shall not make an Early Transfer of a portion of the Property to any party except in accordance with the terms hereof. At least ten (10) business days prior to an Early Transfer, Buyer shall give notice to Declarant ("Buyer's Notice") of the Early Transfer and deliver to Declarant any information reasonably requested by Declarant with respect to the terms of the proposed transfer and the proposed transferee. Declarant shall review such information and approve or disapprove the Early Transfer within fifteen (15) business days after notice thereof from Buyer. If Declarant disapproves, for five (5) business days thereafter, it shall have the exclusive and irrevocable option, but not the obligation, to elect to repurchase the Early Transfer Property as provided in this Section. Declarant may exercise the option to repurchase the Early Transfer Property on a date selected by Declarant upon written notice to Buyer; provided, however, the closing of such purchase and sale transaction must occur no later than ninety (90) days after the date of the Buyer's Notice. If Declarant exercises such option, the repurchase price shall be equal to the price paid by Buyer for the Early Transfer Property. Buyer shall be obligated to obtain the release, prior to or concurrently with the conveyance of the Early Transfer Property to Declarant, of any deeds of trust, mortgages, judgment liens, mechanics' liens or other liens securing the payment of money that affect title to the Early Transfer Property, and Buyer shall otherwise comply with the obligations regarding closing upon repurchase set forth in Section 3.0 above. If Declarant fails to exercise the option to repurchase granted hereunder, it shall be deemed terminated. However, if Buyer fails to convey the Early Transfer Property to the proposed transferee on substantially the same terms as set forth in Buyer's Notice within ninety (90) days after the date of Buyer's Notice, or if any successor to Buyer's interests should make an Early Transfer, Declarant's option to repurchase hereunder shall revive and be reinstated.

3.12 Signs. Buyer shall have the right to maintain on the Property, until the Improvements, including each Unit, are completed. Declarant shall not install any signs upon the Property without the prior written consent of Buyer and in all instances unless such signage complies with sign requirements and regulations of the City and Buyer.

3.13 Obtaining Governmental Approval. Buyer shall obtain, prior to commencement of construction of any Improvements, all permits, licenses, certificates, consents and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of the City and any other governmental authority having jurisdiction (a "Governmental Approval") in order for Buyer to construct, operate and maintain the Improvements to be constructed on the Property.

3.19 Construction Traffic and Use of Certain Roads for Construction Purposes. After the date hereof, and during the period of construction of the Improvements, Buyer, its contractors, subcontractors, employees, and agents shall utilize public roads to be designated by the Department to access the Property for construction purposes, and Buyer shall be responsible for keeping such designated roads and other property in the vicinity of the Property reasonably free of dirt, mud, and debris which results from construction related activities on the Property. Buyer shall pay the costs of repairing any damage to such designated roads and other property in the vicinity of the Property, other than damage resulting from ordinary wear and tear and latent defects therein, to the extent such damage results from construction related activities on the Property. Buyer shall hold harmless and indemnify Declarant and its agents and contractors from any loss, cost, claim, or damage, including reasonable attorney fees, arising from such damage.

3.20 No Resubdivision of Property. Buyer shall not attempt to subdivide or resubdivide the Property or any portion thereof or obtain subdivision approval without the prior written approval of Declarant.

3.21 Rezoning. Buyer shall not obtain or seek to attempt to obtain, rezoning approval of the Property without obtaining the prior written approval of Declarant.

3.22 Construction Trailer. During such periods of time when Buyer is engaged in construction of the Improvements on the Property, Buyer shall have the right to install, operate and maintain a construction trailer on the Property. Such construction trailers shall be subject to Declarant's acceptance with respect to the exterior appearance, size and location.

3.23 Compliance with Laws; Environmental Hazard. In developing and improving any portion of the Property, Buyer shall comply with all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction, including, without limitation, the subdivision laws of the State of Colorado, the subdivision regulations of the City, the subdivider registration laws of the State of Colorado, applicable Environmental Laws, ordinances, rules and regulations and applicable laws, ordinances, rules and regulations relating to stormwater runoff, sediment or erosion control, or any other water or sediment discharge relating to the Property. Buyer shall indemnify and hold Declarant harmless of and from any and all loss, cost, damage, injury, liability, claim, demand, suit or judgment of any kind or nature, including court costs and reasonable attorneys' fees, sought by a third party arising out of or related to violation of matters set forth in the preceding sentence and the release, discharge or use of any Hazardous Materials

on the Property that was directly caused by Buyer or Buyer's contractors, agents or employees. Notwithstanding anything contained herein to the contrary, the foregoing indemnity shall survive the termination of these Developer Covenants. As soon as reasonably practicable after Buyer learns of any Hazardous Material release, use or discharge by Buyer, Buyer's contractors, agents or employees, Buyer shall disclose the same to Declarant. As used in this Section 3.23, the following terms shall have the following meanings:

(a) "Hazardous Materials" shall mean, collectively, any chemical, material, substance or waste which is or hereafter becomes defined or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutant" or "contaminant," or words of similar import, under any Environmental Law, and any other chemical, material, substance, or waste, exposure to, disposal of, or the release of which is now or hereafter prohibited, limited or regulated by any governmental or regulatory authority or otherwise poses an unacceptable risk to human health or the environment.

(b) "Environmental Laws" shall mean any applicable local, state and federal environmental rules, regulations, statutes, laws and orders, as amended from time to time, including, but not limited to, all such rules, regulations, statutes, laws and orders regarding the storage, use and disposal of or human or environmental exposure to, Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment.

3.24 Insurance. At all times during construction, Buyer shall obtain and maintain in full force and effect, or shall cause its general contractor and all subcontractors to obtain and maintain in full force and effect, the following valid and enforceable policies issued by insurance companies having a Best's Insurance Guide Rating of at least A:X or better and licensed to do business in the State of Colorado, with no deductible in excess of Ten Thousand and 00/100 Dollars (\$10,000.00) and naming Declarant as additional insured:

(1) Workers' Compensation, statutory limits (the insurance certificate shall not be required to name Declarant as an additional insured for this policy);

(2) Employer's Liability: \$1,000,000;

(3) Comprehensive General and Comprehensive Auto Liability covering the following matters:

(a) Bodily Injury: \$1,000,000 per occurrence;

(b) Property Damage: \$1,000,000 per occurrence;

(c) Independent Contractors Contingent Liability or Owner's Protective Liability \$1,000,000 per occurrence;

(d) Completed Operations Coverage; kept in effect for two (2) years after completion of such work;

(e) "XCU" Hazard Endorsement, if applicable;

- (f) “Broad Form” Property Damage Endorsement;
- (g) “Personal Injury” Endorsement; and
- (h) Contractual Liability Insurance.

Prior to commencement of construction, and at any time thereafter at the request of Declarant, Buyer shall provide Declarant a duplicate original or certificate of insurance evidencing compliance with the provisions of this Section. The insurance certificate shall state that the insurance evidenced will not be canceled or reduced without thirty (30) days prior written notice to Declarant. All insurance provided by the contractor shall be primary, and insurance carried by additional insureds shall be non-contributing.

3.25 Default and Enforcement.

(a) Default by Buyer. A “Default by Buyer” hereunder shall occur if Buyer breaches or fails to comply with any of material terms contained herein applicable to Buyer, and (a) such breach or failure to comply shall continue for a period of ten (10) days after written notice thereof by Declarant to Buyer, or, (b) if such breach or failure to comply cannot be cured within such 10-day period, if Buyer shall not in good faith commence to cure such breach or failure to comply within said 10-day period or shall not diligently proceed therewith to completion.

(b) Default by Declarant. A “Default by Declarant” hereunder shall occur if Declarant breaches or fails to comply with any of material terms contained herein or in the Development Agreement applicable to Declarant, and (a) such breach or failure to comply shall continue for a period of ten (10) days after written notice thereof by Buyer to Declarant, or, (b) if such breach or failure to comply cannot be cured within such 10-day period, if Declarant shall not in good faith commence to cure such breach or failure to comply within said 10-day period or shall not diligently proceed therewith to completion.

(c) Remedies

In the event of a Default by Buyer or a Default by Declarant, in addition to any rights that it may have hereunder, the non-defaulting party shall have the right to prosecute a proceeding at law or in equity against any person who has violated or is attempting to violate any of the provisions contained herein (a) to enjoin or prevent him from doing so, (b) to cause said violation to be remedied, (c) to recover damages for said violation, or (d) obtain any or all of the foregoing. The results of every action or omission whereby any of the terms of these Developer Covenants are violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed at law or in equity against a landowner for public or private nuisance shall be applicable.

3.26 Inspection by Declarant. Upon prior notice to Buyer of the time and date of a proposed inspection and of the identities of the inspecting parties, Declarant may, from time to time, at any reasonable hour and in compliance with Buyer’s contractor’s safety and security requirements/policies, enter upon and inspect the Property (other than the interior of any buildings located on the Property) to ascertain compliance by Buyer with the terms and conditions contained herein. Buyer shall have no liability to Declarant or its agents or employees for any failure by

Declarant or its agents to comply with any safety and security requirements of Buyer's contractor, subcontractors, agents or employees that have been reasonably communicated to Declarant.

4. Disposition of Excess Proceeds. The Parties acknowledge the Project pro forma attached as **Exhibit 3** is an estimate of total revenues, costs and profit at the time of execution of these Developer Covenants (the "Project Pro Forma"). The Buyer shall provide the Declarant a final accounting sufficient to determine the net profit no later than 90 days from the sale of the last unit in Phase 4. If the net profit of the Project be in excess of the Project Pro Forma, then the excess proceeds shall be dispersed as follows: 1) shall be dispersed 75% to Declarant and 25% to Buyer.

5. General.

5.1 Indemnity. Buyer shall defend, release, indemnify, save, and hold harmless and shall cause its contractors to defend, release, indemnify, save, and hold harmless Declarant, its board members, officers, agents, and employees from and against (i) any and all damages, including, but not limited to, injuries to or death of any person or persons, including property and officers, directors, agents and employees of the Declarant; and (ii) any and all claims, demands, suits, actions, liabilities, costs, expenses (including, but not limited to, environmental liabilities, reasonable attorneys' fees, expert witness fees and all associated defense fees), causes of action, or other legal, equitable or administrative proceedings of any kind or nature whatsoever, of or by any third-party, regardless of the legal theory(ies) upon which premised, including, but not limited to, contract, tort, express and/or implied warranty, strict liability, and Workers' Compensation, in any way resulting from, connected with, or arising out of any act or omission of Buyer or its contractor, its agents, servants, consultants or employees in connection with its performance hereunder, but not to the extent such claims are caused by any negligent or willful act or omission of, or breach of contract by Declarant, their employees, agents, contractors or assigns.

5.2 No Implied Waiver. No failure by Declarant to insist upon the strict performance of any of the terms contained herein, no failure by Declarant to exercise any right or remedy contained herein, and no acceptance of full or partial payment during the continuance of any Default by Buyer, shall constitute a waiver of any obligation, restriction, right or remedy hereunder.

5.3 Notices. All notices required or permitted hereunder shall be in writing and shall be delivered in person or by email, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to such Party at its address shown below, or to any other place designated in writing by such Party:

To Declarant:

City of Longmont
350 Kimbark Street
Longmont, CO 80501
Attn: Chief Financial Officer

Joni Marsh
Assistant City Manager
350 Kimbark Street
Longmont, CO 80501
Joni.Marsh@longmontcolorado.gov

With a copy to:

City of Longmont
350 Kimbark Street
Longmont, CO 80501
Attn: Chief Financial Officer
Jim.Golden@longmontcolorado.gov

In addition, a copy of any notice to Declarant also shall be provided to:

Eugene Mei
City Attorney
City Attorney's Office
City of Longmont
350 Kimbark Street
Longmont, CO 80501
Eugene.Mei@longmontcolorado.gov

To Buyer:

Vertikal, LLC
Attn: Walker Thrash
19 Woodstone Plaza
Hattiesburg, MS 39402
walker@vertikalco.com

with a copy to:

Adams and Reese LLP
Attn: Scott Jones
1018 Highland Colony Parkway, Suite 800
Ridgeland, MS 39157
scott.jones@aralw.com

5.4 No Oral Amendment or Modifications. No amendments, waivers or modifications of the terms and provisions contained herein, and no approvals, consents or waivers by Declarant under the terms of these Developer Covenants, shall be valid or binding unless in writing and executed by the party to be bound thereby. Any covenant, condition or restriction contained herein may be terminated, extended, modified or amended, as to the whole of the Property or any portion thereof, only by the written consent of Declarant and the then owners of the Property subject to these Developer Covenants. No such termination, extension, modification or amendment shall be

effective unless and until a proper instrument in writing has been executed and recorded in the records of the Boulder County, Colorado.

5.5 Severability. If any provision contained herein shall be held invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision contained herein, and there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

5.6 Binding Effect. These Developer Covenants shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The covenants, conditions and restrictions contained herein shall be construed as covenants running with the Property, and every person who now or hereafter owns or acquires any right, title, estate or interest in or to the Property is and shall be conclusively deemed to have consented and to have agreed to every covenant, condition and restriction contained in these Developer Covenants, whether or not any reference to these Developer Covenants is contained in the instrument by which such person acquires an interest in the Property.

5.7 Successors and Assigns of Declarant. A party shall be deemed a “successor” or an “assign” of Declarant only if specifically designated in a duly recorded instrument, as a successor or assign of Declarant under these Developer Covenants. However, a successor to Declarant by consolidation or merger shall automatically be deemed a successor and assign of Declarant.

5.8 Captions for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of these Developer Covenants.

5.9 Applicable Law. These Developer Covenants shall be interpreted and enforced according to the laws of the State of Colorado.

5.10 Exhibits Incorporated. All exhibits are incorporated herein and made a part hereof as if fully set forth herein including, without limitation, Buyer’s Improvement Obligations on **Exhibit 2**.

5.11 Time of the Essence. Time is of the essence with respect to performance required herein.

5.12 Costs of Legal Proceedings. In the event legal proceedings are commenced with respect to these Developer Covenants or the Property, the prevailing party shall be entitled to recover, in addition to any of the relief to which it is entitled, its costs and expenses incurred in connection with such legal proceedings including, without limitation, reasonable attorneys’ fees.

5.13 Number and Gender. When necessary for proper construction hereof, the singular of any word used herein shall include the plural, the plural shall include the singular and the use of any gender shall be applicable to all genders.

5.14 No Third-Party Beneficiaries. None of the terms, conditions or covenants contained herein shall be deemed to be for the benefit of any person other than Declarant, its successors and assigns, and no other person shall be entitled to rely thereon in any manner.

5.15 Counterparts. These Developer Covenants may be executed by two (2) counterparts, each of which, when executed, shall be deemed an original and both of which together shall be deemed one and the same instrument.

[signature pages follow]

IN WITNESS WHEREOF, the parties have executed these DEVELOPER COVENANTS, CONDITIONS AND RESTRICTIONS as of the Effective Date.

CITY OF LONGMONT:

MAYOR

ATTEST:

CITY CLERK

DATE

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO INSURANCE PROVISIONS:

RISK MANAGER

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

CA File: 22-001924

DEVELOPER:

VERTIKAL, LLC, a Colorado limited liability company

By: _____

Print Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____ 202_, by as
_____.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT 1
to
Developer Covenants, Conditions and Restrictions

Legal Description

EXHIBIT 2
to
Developer Covenants, Conditions and Restrictions
The Improvements

Buyer shall design, construct and pay for all on-site improvements. All improvements are subject, but not limited to the following. All improvement plans shall be first approved by Declarant and the Department.

1. Development and Phasing Requirements

a. Buyer's Phasing Plan shall adhere to the following schedule of commencement:

1. Phase 1 shall commence within 90 days of Buyer receiving the Building and Land Disturbance permit for phase 1.
 2. Phase 2 shall commence no later than twelve (12) months following the certificate of occupancy being issued for the last residence in Phase 1.
 3. Phase 3 shall commence no later than twelve (12) months following the certificate of occupancy being issued for the last residence in Phase 2.
 4. Phase 4 shall commence no later than twelve (12) months following the certificate of occupancy being issued for the last residence in Phase 3.
- b. Each individual phase of construction shall reach substantial completion within 30 months of its aforementioned commencement deadline.**

2. All Unit Specifications:

- a. All homes must meet minimum square footage threshold of 750 sq ft.
- b. No less than 10 units will be constructed to meet accessibility requirements of the Americans with Disabilities Act for household members with mobility impairments.
- c. No less than 4 units, separate and distinct from the accessible units, will be constructed for household members with hearing or vision impairments.
- d. Seller will ensure that first sale of 24 units are offered to City employees, proportional to total value of City investment into the anticipated total project cost. The Declarant has the option to accept fewer units designated for City-employment at its discretion. Phasing schedule and type of unit (Affordable Purchasable or Attainable Purchasable) for City-employment units will be mutually agreed to between the Parties.

- e. In the event that other employers invest in the project, then first sale of a number of units will be offered to their employees in proportion to the investment made. If said investment reduces the City investment, the number of units dedicated for City employees may reduce.
- f. For all non-City employment units, first sale should have a preference for households who work or are moving to work in the City of Longmont, subject to fair housing compliance.
- g. Buyer shall create a homeowners association and record appropriate homeowners association documents against the Property prior to sale of first home at the Property. Such documents shall be subject to City of Longmont approval. The HOA will require all homes to be owner occupied during the term of the deed restriction.

3. Affordable Unit Specifications:

- a. At least 55 units must be permanently deed restricted to households under 80% of Boulder County AMI in accordance with Section 2.8.
- b. All affordable units are subject to applicable City of Longmont maximum sale price at 80% AMI and other requirements of the Longmont Fee Waiver program to be detailed in an Affordable Housing Agreement to be entered into between the Declarant and the Buyer prior to issuance of building permits.
- c. Form of Affordable Housing Agreement and other requirements will follow City of Longmont Inclusionary Housing code and will be in a form acceptable to Declarant.
- d. Buyer and City agree that a 3rd party lending institution will be used to qualify prospective homeowners prior to submitting qualified potential homeowner application to Declarant. Declarant shall have thirty (30) days from receipt of completed application to approve or deny a potential homeowner's application. If no response is given within 30 days, it shall be assumed homeowner is qualified to purchase the residence.

4. Attainable Unit Specifications:

- a. The remaining units must by deed restricted to households under 120% of Boulder County AMI in accordance with the provisions of Section 2.8 and other requirements of the Longmont Fee Waiver program to be detailed in an Attainable Housing Agreement to be entered into between the Declarant and the Buyer prior to issuance of building permits.

- b. Of those units__5__ attainable units are subject to applicable City of Longmont initial maximum sale price at 100% AMI in accordance with the provisions of Section 2.8 and other requirements of Longmont Fee Waiver program to be detailed in an Attainable Housing Agreement to be entered into between the Declarant and the Buyer prior to issuance of building permits.
- c. Of those units__15__ attainable units are subject to applicable City of Longmont initial maximum sale price at 110% AMI in accordance with the provisions of Section 2.8 and other requirements of Longmont Fee Waiver program to be detailed in an Attainable Housing Agreement to be entered into between the Declarant and the Buyer prior to issuance of building permits.
- d. Form of Attainable Housing Agreement and other requirements will be in a form acceptable to the Declarant.
- e. Buyer and City agree that a 3rd party lending institution will be used to qualify prospective homeowners prior to submitting qualified potential homeowner application to Declarant. Declarant shall have thirty (30) days from receipt of completed application to approve or deny a potential homeowner's application. If no response is given within 30 days, it shall be assumed homeowner is qualified to purchase the residence.

5. Developer's Option to Lease/Purchase Unsold Units

- a. Buyer shall have the option to offer a lease/purchase program as set forth in Paragraph 2.7 of this Covenant.

6. Reporting Requirements

- a. Buyer must provide household AMI data upon completion of each phase to the Declarant. If Phase 2 AMI data fails to produce __22__ households under 110% AMI (not including the affordable deed restricted units) the number of units defined in 3(b), less what has been provided in Phase 1, will be required to be deed restricted to under 110% AMI in Phase 3 or a future phase to be mutually agreed to by Declarant and Buyer.

7. Other Improvements

Together with the vertical improvements, Buyer shall provide the following improvements and construction materials for the Property:

- * Fine grading and installation of streetscape (sod, irrigation, and trees as required by City) and sidewalks.

- * Temporary electric service, construction water, and refuse management relating to Buyer's construction.
- * Extension of all utility services from the Property line as necessary to service Buyer's development.
- * Development shall be 100% electric, with no gas service provided.
- * Foundation excavation, finished lot (fine) grading and the disposal of excess soil. Also this will require active erosion control including the use of siltation fence, hay bales, or other management techniques specified by City.
- * Buyer shall be responsible for extending temporary construction power from available public lines within the right-of-way.

8. Construction and Maintenance

- a. Buyer will protect development work under construction in addition to existing landscape facilities (walls, berms, and streetscape) adjacent to site boundaries by the installation of a temporary chain link fence at the property line or other protective device approved by the City. Any damages to existing improvements caused by Buyer or Buyer's contractors will be repaired or replaced at the direction of the City at the expense of Buyer.
- b. At all times during which Buyer is engaged in the performance of construction activities ("Construction Activities"), Buyer shall bear the exclusive responsibility and expense of maintaining all land and improvements (the "Properties") owned or maintained by the owners of adjacent land, governmental entities, utility companies, special districts, which are impacted by the Construction Activities. The Properties shall include, but shall not be limited to, streets, curbs, gutters, sidewalks, streetlights, underground utilities, walls, landscaping and irrigation improvements, irrigation ditches, all entry, parking and paving facilities, as well as any other property not owned by Buyer. Buyer shall repair and restore the Properties to their original condition as of the date of commencement of Buyer's work or as subsequently improved prior to termination of the Construction Activities. Buyer shall bear the exclusive responsibility and expense of maintaining erosion control, storm water drainage, weed abatement and street cleaning programs as required by the City. Buyer shall keep the Property clean and free of equipment, building materials, dirt, trash, weeds and debris, other than building materials needed immediately for construction of Improvements. Buyer shall save and protect landscaping located in the medians of any streets within the development from damage caused by Buyer, its employees, agents, contractors and subcontractors.
- c. Buyer shall maintain all improvements in a clean and saleable condition which shall include, without limitation, keeping all Improvements painted, all weeds cut, and all sidewalks and driveways free and clear from all trash, debris, snow and ice.

Buyer shall maintain at least one (1) trash receptacle on the Property at all times when construction activities are taking place thereon, and shall empty such trash receptacle before it overflows, but not less frequently than once per week.

EXHIBIT 3
to
Developer Covenants, Conditions and Restrictions

Project Pro Forma
(to be inserted prior to execution)