

LOAN AGREEMENT

Borrower: Tyson Bates and Regina Church-Bates

Lender: Charlotte Mecklenburg Historic Landmarks Commission

This Loan Agreement, (“Agreement”), dated March _____, 2019, is made and executed between Tyson Bates and Regina Church-Bates, (“Bates”) and Charlotte Mecklenburg Historic Landmarks Commission, (“HLC”) on the following terms and conditions. Bates has agreed to purchase from HLC a parcel of real property known as “Torrence-Lytle School”, (“Property”), and more particularly described on Exhibit A attached hereto and made a part of this Agreement. As a condition of Purchase, HLC has agreed to loan to Bates the purchase money, (“Loan”), for this transaction under the terms and conditions set forth hereafter.

1. Term. This Agreement shall be effective as of **March**, 2019, and shall continue in full force and effect until such time as the Loan in favor of HLC has been paid in full, as provided in the Promissory Note, (“Note”), executed by Bates contemporaneously with this Agreement.

2. Loan and Loan Related Documents, (“Related Documents”). Bates shall provide to HLC the following documents for the Loan: (1) the Note; (2) Security in the form of a Purchase Money Deed of Trust, (“Deed of Trust”), granting to HLC a first priority perfected security interest in the Property, to be recorded contemporaneously, (same minute), with the deed; (3) guaranties, if necessary; (4) Preservation Covenants to be recorded contemporaneously, (same minute), with the deed and deed of trust; (5) Reconveyance Deed to HLC to be held by HLC; (6) this Loan Agreement and such other documents as HLC may require for the Loan; all in form and substance satisfactory to HLC and HLC’s counsel.

3. Loan Contingencies. This Loan is contingent upon the following events:

a. Bates **obtaining a written non-contingent permanent financing commitment** from a lender by 12 noon on the 90th day following the recording of the deed from HLC to Bates transferring the Property. Bates may elect to extend this date an additional 30 days by written notice to be received by HLC prior to the expiration of the 90 days referred to above; and,

b. Bates closing on their permanent financing by 12 noon on _____ and paying off the Note to the HLC.

Time is of the essence for each of these contingencies. If these contingencies are not met by the stated time, then the Bates do constitute, appoint, authorize and consent to the HLC immediately filing the Reconveyance Deed in the Register of Deeds Office for Mecklenburg County, and the Loan shall be null and void. In the event the HLC records the Reconveyance Deed and the Loan becomes null and void, both parties understand and consent each shall no other claims, actions or suits against the other. Notwithstanding the preceding paragraph, if, at the time of reconveyance, Bates has taken

any actions which has resulted in an encumbrance on the Property or a cloud on title, the HLC preserves any and all actions, both legal and equitable against Bates.

4. Payment of Fees and Expenses. Bates shall have paid to HLC all fees, charges, and other expenses which are then due and payable as specified in this Agreement or other documents as HLC may require.

5. Representations and Warranties. Bates represents and warrants to HLC, as of the date of this Agreement and as of the date of the disbursement of loan proceeds:

a. Financial Information. Each of Bates' financial statements supplied to HLC truly and completely disclosed Bates' financial condition as of the date of the statement, and there have been no material adverse changes in Bates' financial condition subsequent to the date of the most recent financial statement supplied to HLC. Bates has no material contingent or non-contingent obligations except as disclosed in such financial statements.

b. Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Bates is pending or threatened, and no other event has occurred which may materially adversely affect Bates' financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by HLC in writing.

c. Lien Priority. Bates has not and shall not entered into or grant any security agreement, or permit the filing or attachment of any security interest on or affecting the Property, directly or indirectly, securing repayment of Bates' Loan and Note, that would be prior or that may in any way be superior to HLC's deed of trust in the Property.

6. Affirmative Covenants. Bates covenants and agrees with HLC that, so long as this Agreement remains in effect, Bates will:

a. Notices of Claims and Litigation. Promptly inform HLC in writing of (1) all material adverse changes in Bates' financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Bates or any Guarantor which could materially affect the financial condition of Bates or the financial condition of any Guarantor.

b. Financial Records. Maintain their books and records in accordance with accounting principles acceptable to HLC, applied on a consistent basis, and permit HLC to examine and audit Bates' books and records at all reasonable times.

c. Additional Requirements. Bates shall supply such other financial statements and related information in such form and detail as may be satisfactory to HLC within thirty (30) days of HLC's request. All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Bates as being true and correct.

d. Insurance. Maintain fire and other risk insurance, public liability insurance, and such other insurance as HLC may require with respect to the Property, in form, amounts, coverages and with insurance companies acceptable to HLC but not less than \$2,000,000.00 per occurrence. **Bates shall also have named as an additional insured, the HLC.** Bates, upon request of HLC, will deliver to HLC from time to time the policies or certificates of insurance in form satisfactory to HLC, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to HLC. Each insurance policy also shall include an endorsement providing that coverage in favor of HLC will not be impaired in any way by any act, omission or default of Bates or any other person.

e. Guaranties. If necessary, Bates shall, prior to disbursement of any Loan proceeds, furnish executed guaranties of the Loans in favor of HLC, executed by the guarantors named below, if any, on HLC's forms, and in the amounts and under the conditions set forth in those guaranties.

f. Loan Proceeds. Use all Loan proceeds solely for the purchase of the Property.

g. Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Bates, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon the Property.

h. Performance. Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in any other documents as HLC may require for the Loan. Bates shall notify HLC immediately in writing of any default in connection with any agreement.

i. Compliance with Governmental Requirements. Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Bates' on the Property.

j. Inspection. Permit employees or agents of HLC at any reasonable time to inspect the Property to examine or audit Bates' books, accounts, and records and to make copies and memoranda of Bates' books, accounts, and records. If Bates now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Bates, upon request of HLC, shall notify such party to permit HLC free access to such records at all reasonable times and to provide HLC with copies of any records it may request, all at Bates' expense.

k. Additional Assurances. Make, execute and deliver to HLC such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as HLC or its attorneys may reasonably request to evidence and secure the Loan.

l. Insurance Requirements. For the avoidance of doubt regarding the requirement in this Agreement that Bates maintain such insurance as HLC shall require, and except to the extent specific insurance types, coverages or insurers are specified in this Agreement or other agreements as HLC or its attorneys may require, HLC requires and Bates agrees to maintain at all times with financially sound and reputable insurance companies such public liability insurance, property damage insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets and businesses of Bates as may customarily be carried or maintained under similar circumstances by businesses engaged in the same or similar enterprises, in each case in such amounts, with such deductibles, covering such risks and otherwise on terms and conditions as shall be customary for such businesses. Further, Bates shall have HLC named as an insured.

7. Negative Covenants. Bates covenants and agrees with HLC that while this Agreement is in effect, Bates shall not:

a. Indebtedness and Liens. Sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber the Property. Bates shall not allow any work to be done on the Property or material supplied to the Property during the term of this loan unless Bates provides to HLC, in a form satisfactory to HLC, a lien waiver of any and all claims against the Property and a positive affirmation that there will be no labor or material liens placed on the Property.

b. Agreements. Enter into any agreement containing any provisions which would be violated or breached by the performance of Bates' obligations under this Agreement or in connection herewith.

c. Title. Take any actions which would create any type of cloud on title as determined in the absolute discretion of HLC.

- 8. Default.** Each of the following shall constitute an Event of Default under this Agreement:
- a. Payment Default.** Bates fails to make any payment when due under the Loan.
 - b. Other Defaults.** Bates fails to comply with or to perform any other term, obligation, covenant, contingency or condition contained in this Agreement or in the Note, the Deed of Trust, (“Deed of Trust”), any guaranties if necessary, Preservation Covenants, Reconveyance Deed or any such other documents as HLC may require.
 - c. False Statements.** Any warranty, representation or statement made or furnished to HLC by Bates or on Bates’ behalf under this Agreement or any such other documents as HLC has required is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.
 - d. Insolvency.** The insolvency of Bates, the appointment of a receiver for any part of Bates’ property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Bates. In the event of any of the conditions listed in this sub-paragraph (d), Bates authorizes and consents to HLC immediately recorded the Reconveyance Deed.
 - e. Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Bates or by any governmental agency against the Property.
 - f. Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.
 - g. Change in Ownership.** Any change in ownership of Fifty percent (50%) or more of the interest or stock of _____.
 - h. Adverse Change.** A material adverse change occurs in Bates’ financial condition, and there is a HLC concern that payment or performance of the Loan is impaired.
 - i. Insecurity.** HLC in good faith believes itself insecure. In the event of any of the conditions listed in this sub-paragraph (i), Bates authorizes and consents to HLC immediately recorded the Reconveyance Deed.

9. Effect of an Event of Default. If any Event of Default shall occur, all commitments and obligations of HLC under this Agreement or the Related Documents or any other agreement immediately will terminate and Bates do constitute, appoint, authorize and consent to the HLC immediately filing the Reconveyance Deed and any other remedies provided in the Related Documents or available at law, in equity, or otherwise. Bates, without limitation, authorizes and consents to such reconveyance recording. Except as may be prohibited by applicable law, all of HLC’s rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by HLC to pursue any remedy shall not exclude pursuit of any other remedy.

10. MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

a. Amendments. This Agreement, together with any Related Documents, constitutes the total and entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

b. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration rules of the American Arbitration Association and under the Revised North Carolina Uniform Arbitration Act and the judgment upon the award shall be final, binding and conclusive upon the parties, and may be entered in any court having jurisdiction thereof. Any such arbitration shall be conducted in Mecklenburg County, North Carolina, unless otherwise agreed to by the parties.

11. Governing Law. This Agreement will be governed by the laws of the State of North Carolina without regard to its conflicts of law provisions.

12. Choice of Venue. If there is a lawsuit, Bates agrees to submit to the jurisdiction of the courts of Mecklenburg County, State of North Carolina.

13. No Waiver by HLC. HLC shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by HLC. No delay or omission on the part of HLC in exercising any right shall operate as a waiver of such right or any other right.

Whenever the consent of HLC is required under this Agreement, the granting of such consent by HLC in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of HLC.

14. Successors and Assigns. All covenants and agreements by or on behalf of Bates contained in this Agreement or any Related Documents shall bind Bates' successors and assigns and shall inure to the benefit of HLC and its successors and assigns. Bates shall not, however, have the right to assign Bates' rights under this Agreement or any interest therein.

BATES HAVE HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL OF THEIR CHOICE. BATES ACKNOWLEDGE HAVING READ AND UNDERSTAND ALL THE TERMS AND PROVISIONS OF THIS LOAN AGREEMENT AND BATES AGREE AND CONSENT TO ITS TERMS AND PROVISIONS.

This the ____ day of March, 2019

_____(Seal)
Tyson Bates

_____(Seal)
Regina Church-Bates

State of North Carolina - County _____

I, the undersigned Notary Public of the County of _____ and State aforesaid, certify that Tyson Bates and Regina Church-Bates personally appeared before me this day and

acknowledged the due execution of the foregoing instrument for the purposes therein expressed.
Witness my hand and Notarial stamp or seal this _____ day of March, 2019.

My Commission Expires: _____
Notary Public

(Affix Seal)
Notary's Printed or Typed Name