# UPLIFT GUARANTY OF COMPLETION

THIS UPLIFT GUARANTY OF COMPLETION (this “**Guaranty**”) is made on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, for the benefit of the DEPARTMENT OF HOUSING AND Community DevelopmenT (“**DHCD**”), a principal department of the State of Maryland, having its address at 7800 Harkins Road, Lanham, Maryland 20706, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Maryland [corporation][partnership][limited liability company] having its address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Maryland [corporation][partnership] [limited liability company] having its address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] ([jointly and severally,] the “**Guarantor**”).

RECITALS:

A. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”) has applied to DHCD for an UPLIFT loan in the amount of [LOAN AMOUNT and No/100 Dollars ($\_\_\_\_\_\_\_\_\_\_\_) (the “**Loan**”) to be used to finance the development costs of a for-sale housing project within the meaning of Section 4-2801 through 4-2806of the Housing and Community Development Article of the Annotated Code of Maryland, as amended, and the regulations issued pursuant thereto (the “**Act**”). The project is known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and will consist of \_\_\_\_\_ units located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Maryland (the “**Project**”).

[B. The Loan will be subordinate to a first lien position loan from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to Borrower in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**First Mortgage Loan**”).]

C. The Project is to be constructed in accordance with plans and specifications heretofore submitted by the Borrower and approved by DHCD (the “**Plans**”) and according to the terms of a Building Loan Agreement between the Borrower and DHCD of even date herewith (the “**Loan Agreement**”).

D. The Loan is evidenced by a Note in the principal amount of the Loan (the “**Note**”), a Deed of Trust, Security Agreement and Assignment of Rents (the “**Deed of Trust**”), the Loan Agreement, and such other documents and certificates evidencing or securing the Loan executed and delivered by Borrower, all of even date herewith and all of which are hereinafter collectively called the “**Loan Documents**”; and

E.In order to induce DHCD to make the Loan and to accept the Loan Documents, and as additional security for the moneys to be advanced under the Loan Documents, the Guarantor has agreed to execute and deliver this Guaranty.

NOW THEREFORE, to induce DHCD to make the Loan to the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees as follows:

1. Guarantor absolutely and unconditionally guarantees to DHCD, that:

(a) the Borrower shall construct, equip and complete the Project free and clear of liens in accordance with the Plans and within the periods required by and according to the terms and conditions of the Loan Documents;

(b) the Borrower shall keep the Project free and clear of all liens arising from constructing, equipping, or completing the Project.

2. If the Borrower fails to do the matters specified in Paragraph 1(a), (b), and (c) on or before the time such matters are to be done by the Borrower, Guarantor shall:

(a) construct, equip and complete the Project free and clear of liens, in accordance with the Plans, within the periods required by and according to the Loan Documents and in conformance with all applicable laws, rules, regulations and requirements of all governmental authorities having jurisdiction;

(b) remove any lien arising from constructing, equipping, or completing the Project, and make payment in full to all laborers, subcontractors and materialmen on or before the date of completion for the costs of the Project and related costs;

(c) pay all costs and expenses incurred in doing (a) or (b) of this paragraph 2, and pay to or reimburse DHCD for all expenses incurred by DHCD pursuant to the Loan Documents.

3. The Guarantor expressly agrees that DHCD may, in its sole and absolute discretion, without notice to or further assent of the Guarantor and without in any way releasing, affecting or impairing the obligations and liabilities of the Guarantor hereunder: (i) waive compliance with, or any defaults under, or grant any other indulgences with respect to, the Loan Documents; (ii) modify, amend, or change any provisions of the Loan Documents; (iii) grant extensions or renewals of or with respect to the Loan Documents or effect any release, compromise or settlement in connection with the Loan Documents; (iv) agree to the substitution, exchange, release of other property covered by the Deed of Trust, or any instrument delivered pursuant thereto; (v) make advances for the purpose of performing any term or covenant contained in the Loan Documents with respect to which Borrower or the then owner of the premises shall be in default; (vi) assign or otherwise transfer the Loan Documents or this Guaranty or any interest therein or herein; and (vii) deal in all respect with Borrower or the then owner of the premises as if this Guaranty were not in effect. The obligations of the Guarantor under this Guaranty shall be unconditional.

4. The liability of the Guarantor under this Guaranty shall be primary, direct and immediate and not conditional or contingent upon pursuit by DHCD of any remedies it may have against Borrower, its successors and assigns, with respect to the Loan Documents whether pursuant to the terms thereof or by law. Without limiting the generality of the foregoing, DHCD shall not be required to make any demand on Borrower or the then owner of the premises, or to sell at foreclosure or otherwise pursue or exhaust its remedies against the premises or any part thereof or against Borrower or the then owner of the premises, before, simultaneously with or after enforcing its rights and remedies hereunder against the Guarantor. Any one or more successive or concurrent actions may be brought hereon against the Guarantor either in the same action, if any, brought against Borrower or the then owner of the premises or in separate actions, as often as DHCD may deem advisable. [**If there is more than one Guarantors:** Each Guarantor agrees that it is jointly and severally liable for the prompt performance of the obligations under this Guaranty.  Each Guarantor agrees that its obligations hereunder are absolute and unconditional, irrespective of the existence of any claim or other rights which DHCD may have at any time against the Borrower or any other Guarantor.]

5. The Guarantor hereby expressly waives (i) presentment and demand for payment and protest of non-payment; (ii) notice of acceptance of this Guaranty and of presentment, demand and protest; (iii) notice of any default hereunder or under the Loan Documents and of all indulgences; (iv) demand for observance or performance of, or enforcement of, any terms or provisions of this Guaranty or the Loan Documents; (v) all other notices and demands otherwise required by law which the Guarantor may lawfully waive; and (vi) any defense to any action brought against Guarantor, including, without limitation, any defense based on any statute of limitations and on any legal disability of Borrower and any discharge and limitation of liability of the Borrower to DHCD whether consensual or arising by operation of law or any bankruptcy, insolvency or debtor-relief proceeding, or from any other cause. The Guarantor also waives trial by jury in any action brought on or with respect to this Guaranty and agrees that in the event this Guaranty shall be enforced by suit or otherwise, the Guarantor will reimburse DHCD, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

6. Anything herein or in the Note, or the Deed of Trust to the contrary notwithstanding, DHCD at its option, may accelerate the indebtedness evidenced by the Note in the event of the occurrence of any of the following prior to the termination of this Guaranty: (a) the making by the Guarantor of any assignment for the benefit of creditors; (b) the appointment of a custodian, trustee or receiver for the Guarantor, or for any property of the Guarantor; or (c) the commencement of any proceeding by or against the Guarantor under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or like law or statute, which, in the case of any involuntary proceeding brought against the Guarantor, is not stayed or dismissed within 60 days after the date of filing.

7. If the Guarantor shall advance any sums to Borrower or its successors or assigns or if Borrower or its successors or assigns shall hereafter become indebted to the Guarantor, such sums and indebtedness shall be subordinate in all respects to the amounts then or thereafter due and owing to DHCD under the Loan Documents. Nothing herein contained shall be construed to give the Guarantor any right of subrogation in and to the Loan Documents or all or any part of DHCD's interest therein, until all amounts owing to DHCD have been paid in full.

8. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by depositing same in United States mail, postage prepaid, registered or certified mail, return receipt requested, or by overnight courier services, addressed as follows:

Guarantor’s Address:

Borrower’s Address:

With Copy To:

With Copy To: [Investor]

With Copy To: [Investor’s Counsel]

DHCD’s Address: Department of Housing and Community Development

7800 Harkins Road

Lanham, Maryland 20706

Attn: Director, Division of Credit Assurance

With Copy To: Office of the Attorney General

7800 Harkins Road

Lanham, Maryland 20706

Attn: Counsel

All notices, demands and requests shall be effective upon such personal delivery or upon being deposited in the United States mail as required above. However, with respect to notices, demands or requests so deposited in the United States mail, the time period in which a response to any such notice, demand or request must be given shall commence to run from the date on the return receipt of the notice, demand or request reflecting the date of delivery or rejection of the same by the addressee thereof. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party at least 15 days written notice thereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

9. All rights and remedies afforded to DHCD, by reason of this Guaranty, the Note, and the Deed of Trust, or any other Loan Document, or by law, are separate and cumulative and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or remedies. No delay or omission by DHCD in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any rights and remedies hereunder, and no modification or amendment hereof, shall be deemed made by DHCD unless in writing and duly signed by DHCD. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of DHCD and no single or partial exercise of any right or remedy hereunder shall preclude other or further exercise thereof or any other right or remedy.

10. The Guarantor represents and warrants that it has a financial interest in the Borrower, that it has examined or has had an opportunity to examine documents referred to herein, that it has full power, authority and legal right to execute and deliver this Guaranty, and that this Guaranty is a binding legal obligation of the Guarantor. The Guarantor represents and warrants that neither execution and delivery of this Guaranty nor compliance with the terms hereof will conflict with, or constitute a breach of or default under any agreement or instrument to which the Guarantor may be a party.

11. During the term of this Guaranty, the Guarantor shall provide to DHCD on each anniversary date hereof its financial statements in such form and detail as may be reasonably requested by DHCD. The Guarantor also agrees to provide DHCD with financial statements at such other times as may be reasonably requested by DHCD.

12. If any of the amounts required to be paid hereunder by the Guarantor, including, without limitation, the amount necessary to complete the Project and discharge all liens, is not paid within ten days after the date written notice of such required payment is sent to the Guarantor by DHCD, the Guarantor hereby authorizes any attorney at law to appear for it before any court having jurisdiction and to confess judgment against it for the amounts then due together with interest, court costs, and a reasonable attorney's fee.

13. If any provision or part of any provision contained in this Guaranty shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, or the remaining part of the affected provision of this Guaranty, but this Guaranty shall be construed as if such invalid, illegal or unenforceable provision or part hereof had never been contained herein, but only to the extent it is invalid, illegal or unenforceable.

14. This Guaranty shall inure to the benefit of, and be enforceable by, DHCD, its successors and assigns, and shall be binding upon, and enforceable against, the Guarantor and its heirs, personal representatives, successors and assigns.

15. This Guaranty shall not create any rights in any surety under payment and performance bonds, among the surety, if any, the Borrower, the general contractor, and DHCD, with respect to the Project, either as a third party beneficiary, or in any other manner, it being understood and agreed that this Guaranty is intended for the sole benefit of DHCD, or such other person or entity as DHCD may designate in its sole discretion.

16. This Guaranty shall be construed under the laws of the State of Maryland.

17. Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

18. Notwithstanding anything to the contrary herein contained, including any reference to the contrary set forth in paragraphs 1 and 2 hereto, this Guaranty shall terminate and be of no further force and effect, without further act by DHCD, upon the earlier to occur of (i) payment in full of all sums evidenced by the Note and the Loan Documents; or (ii)(a) payment of all sums due under the Construction Contract between the Borrower and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], and any other contract or agreement relating to the construction or rehabilitation of the Project; (b) submission to DHCD of all final lien waivers and releases; (c) completion of the Project clear of any liens and encumbrances other than the Permitted Encumbrances under the Deed of Trust; and (d) Final Closing of the Loan, as defined in the Loan Agreement.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the signature and seal of the party hereto is subscribed to the foregoing instrument the day and year first written above with the specific intention of creating a document under seal.

ATTEST OR WITNESS: [NAME OF GUARANTOR]

By: [name], its [general partner/ managing

member]

By: [name], its [general partner/ managing

member]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

[IN WITNESS WHEREOF, the signature and seal of the party hereto is subscribed to the foregoing instrument the day and year first written above with the specific intention of creating a document under seal.

ATTEST OR WITNESS: [NAME OF GUARANTOR]

By: [name], its [general partner/ managing

member]

By: [name], its [general partner/ managing

member]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]]

The Borrower hereby executes this Guaranty for the sole purpose of acknowledging and accepting the acceleration of indebtedness provisions of Section 6.

ATTEST OR WITNESS: [NAME OF BORROWER]

By: [name], its [general partner/ managing

member]

By: [name], its [general partner/ managing

member]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_