Project Name:

Project Number:

# **BUILDING LOAN AGREEMENT**

 THIS UPLIFT LOAN AGREEMENT (this “**Agreement**”) is made on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Maryland [limited partnership][limited liability company], having its principal address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Borrower**”), and the Department of Housing and Community Development, a principal department of the State of Maryland (“**DHCD**”), having its principal address at 7800 Harkins Road, Lanham, Maryland 20706.

RECITALS:

 A. Borrower has applied to DHCD for an UPLIFT loan, as more particularly described on Exhibit A attached hereto, in the original principal amount of {Loan Amount} (collectively, the "**Loan**") to be used to finance development costs of an for-sale housing project known as {Project Name} (the "**Project**") consisting of {Unit Count} residential units located in {Location}, Maryland (the “**County/City**").

 B. A principal purpose of the UPLIFT program is to elevate property values in historically disinvested neighborhoods. Accordingly, timely and complete fulfillment of the obligations undertaken by the Borrower is material to the interests of DHCD and forms the basis for making the Loan under the expectation it will be deemed satisfied or forgiven upon the Project’s satisfactory completion.

 C. The Loan is intended to fund the Gap between the cost to produce the Project and Total Sources, including Sales Proceeds, available to finance it. It is further intended that if terms and conditions of the Project and these Loan Documents are met by the Borrower, the Loan will be deemed satisfied and repayment will not be required.

 D. The principal amount of the Loan is up to {Loan Amount}.

 [E. The Loan will be subordinate to a first lien position loan from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to Borrower in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]

 NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the parties agree as follows:

 1. Definitions

 For purposes of this Agreement, each of the following terms shall have the meaning specified for such term:

“**Act**” means the Utilizing Progressive Lending Investments to Finance Transformation Program (UPLIFT) pursuant to Sections 4-2801 to 4-2806 of the Housing and Community Development Article of the Annotated Code of Maryland, as amended, and the regulations promulgated thereunder.

“**Agreement**” means this Building Loan Agreement, together with the exhibits attached hereto and made a part hereof, as the same may from time to time be amended or supplemented.

“**Architect**” means the architect named in *Exhibit A*, who is Borrower's design architect, or such other architect or architects as shall be employed by Borrower and approved by DHCD.

“**Architect's Agreement**” means the agreement between Borrower and Architect, described in *Exhibit A*, providing for architectural services to Borrower relating to the rehabilitation or construction of the Project.

“**Budget**” means the budget attached hereto as *Exhibit C*.

“**Change Order**” means any amendment or modification of the Contract Documents approved by DHCD and occurring after the Initial Closing.

“**City**” or “**County**” has the meaning set forth in the Recitals.

“**Commitment Letter**” means the agreement between DHCD and Borrower, described in *Exhibit A*, providing the terms and conditions upon which DHCD agreed to make the Loan.

“**Completion Date**” means the Completion Date set forth in *Exhibit A*, subject to extension as provided in Section 4 of this Agreement.

“**Construction**” or “**construct**” or any variation thereof shall also mean “**rehabilitation**” or “**rehabilitate**” or any variation thereof.

“**Construction Contract**” means the agreement between Borrower and General Contractor, described in *Exhibit A*, setting forth the terms for the construction of the Project.

“**Contract Documents**” means the Construction Contract, together with the general and special conditions attached thereto, the Drawings and any Change Order.

[“**County**” has the meaning set forth in the Recitals.]

“**Deed of Trust**” means the Deed of Trust, Security Agreement and Assignment of Rents of even date from Borrower for the benefit of DHCD securing repayment of the Note and recorded or intended to be recorded among the Land Records of the [County][City].

 “**Documented Environmental Risks**” has the meaning set forth in *Section 3.4(a)* hereof.

“**Drawings**” means the final plans and specifications for the construction of the Project, as approved by DHCD, including any amendments or modifications thereto as may be made by Borrower from time to time and approved by DHCD according to the terms of this Agreement and all work write-ups.

“**Draw Request**” means a request for disbursement of the Loan proceeds and any other funds held by DHCD for Project Construction prepared by Borrower and delivered to DHCD.

“**Draw Schedule**” means a schedule prepared by Borrower and delivered to DHCD showing the amount Borrower anticipates drawing and the anticipated date of each draw during the Construction of the Project, attached hereto as *Exhibit B.*

“**Event of Default**” means any occurrence described in Section 8 of this Agreement.

“**Field Progress Meeting**” means the monthly meetings among DHCD, Borrower, General Contractor, Architect and such other parties as provided in Section 5.2(a) hereof.

“**Final Closing**” means the date on which the final principal amount of the Loan is finally accepted and approved by DHCD.

 “**Gap**” means the monetary difference between the cost to produce the Project, Total Project Uses, and Total Sources, including Sales Proceeds. The Loan Amount determined for the construction financing closing and disbursed will be reduced if actual Total Project Uses and Total Project Sources reduce the Gap.

“**General Contractor**” means the general contractor named in *Exhibit A.*

“**Hazardous Materials**” shall mean: (a) any “**hazardous waste**” as defined by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq., as amended, and regulations promulgated thereunder; (b) any “**hazardous substance**” as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., as amended, and regulations promulgated thereunder; (c) any substance the presence of which on the Mortgaged Premises (as defined in the Deed of Trust) is prohibited by any law similar to those set forth in this Section; (d) any “**Oil**” as defined by Section 4-­401 of the Environment Article of the Annotated Code of Maryland, as amended, and regulations promulgated thereunder (the “**Environment Article**”); (e) any “**hazardous substance**” as defined by Section 7-201 of the Environment Article, as amended and regulations promulgated thereunder; (f) any “**hazardous material**” as defined by Section 7-101 of the Environment Article, as amended and the regulations promulgated thereunder; and (g) any substances which, under any Federal, State, or local law, statute, ordinance, rule, or regulation, any court or administrative order or decree, or any procedural guidelines, permits or private agreement relating to the protection of health or the environment as may be issued or promulgated from time to time (hereinafter referred to collectively as “**Environmental Requirements**”) require special handling in collection, storage, treatment or disposal.  The term “**Hazardous Materials**” does not include *de minimus* amounts of such household cleaning supplies, office supplies and petroleum based products used in the ordinary course of operating the Project or by tenants and which are stored and disposed of in accordance with applicable law.

“**Initial Closing**” means the date of the initial closing of the Loan.

“**Inspecting Consultant**” means an architectural, engineering or construction management firm hired by Borrower and approved by DHCD, which will inspect and monitor construction of the Project.

“**Insurance Requirements**” means DHCD's requirements for the policies of insurance described in the Deed of Trust and the Commitment Letter.

 “**Interim True Up**” means a determination by DHCD during Construction when actual project costs and actual project sources, including home sales, reduce the estimated Gap. Interim True Up determinations may be made at any point during Construction but will be tentatively scheduled in the Draw Schedule.

“**Land**” means all that parcel of ground as more particularly described in the Deed of Trust, upon which the Project is to be constructed.

“**Latent Defect Coverage**” has the meaning set forth in Section 4.10(c).

“**Legal Authorities**” means any federal, state or local governmental or quasi-governmental body, office, department, agency, board, court or other instrumentality thereof exercising jurisdiction over the rehabilitation or construction of the Project, the operation and occupancy of the Project, the Borrower, the performance by Borrower of any act or obligation, or the observance by Borrower of any agreement, provision or condition of any nature whatsoever contained in this Agreement.

“**Legal Requirements**” means any law, ordinance, order, code, rule, regulation or standard of any Legal Authority.

“**Loan**” has the meaning set forth in the Recitals.

“**Loan Documents**” means this Agreement, the Note, the Deed of Trust, the Regulatory Agreement and any other instrument or agreement evidencing or securing the Loan, including any certificate or other document executed and delivered in connection with the Loan.

“**Note**” means the Deed of Trust Note to DHCD of even date in the original principal amount of the Loan, secured by the Deed of Trust, evidencing Borrower's obligation to repay the Loan and specifying the terms of repayment

“**Phase I Report**” has the meaning set forth in Section 3.4(a) hereof.

“**Project**” has the meaning set forth in the Recitals.

“**Retention**” has the meaning set forth in Section 4.11(c) hereof.

 “**Sales Proceeds**” means the consideration provided by the homebuyer including down payment, any down payment or other assistance provided on behalf of the homebuyer, and the proceeds of the homebuyer’s mortgage loan(s).

“**Substantial Completion**” means the date when (a) the rehabilitation or construction and equipping of the Project shall have been fully completed in a good and workmanlike manner and according to the Contract Documents, in full compliance with all applicable Legal Requirements of any Legal Authority, except for punch list items approved by DHCD; (b) all certificates of use and occupancy have been issued by all appropriate Legal Authorities for every unit in the Project; and (c) the Inspecting Consultant or Architect has issued an AIA Form G-704 (Architect's Certificate of Substantial Completion).

“**Total Project Sources**” means all resources, financial or in-kind, which DHCD recognizes, in its sole and absolute discretion and judgment, as contributing to the completion of the Project according to the Loan Documents.

“**Total Project Uses**” means the total of all costs which DHCD recognizes, in its sole and absolute discretion and judgment, as necessary to the completion of the Project according to the Loan Documents.

 2. *Lending Clause*. Subject to the provisions of this Agreement and the Loan Documents, DHCD agrees to make the Loan to Borrower and Borrower agrees to accept the Loan from DHCD.

 3. *Representations and Warranties of the Borrower*. To induce DHCD to extend the Loan to Borrower and to enter into this Agreement, Borrower hereby affirms all representations and warranties made in the Deed of Trust and further represents and warrants to DHCD as follows:

 3.1 *Due Organization*. The Borrower and any [general partners][managing members] of the Borrower are duly organized and validly existing under the laws of the State of Maryland, are qualified to do business, are in good standing, and may hold title to real property in the State of Maryland, and Borrower and any [general partners][managing members] of the Borrower have filed with DHCD a true and complete copy of their articles of incorporation and bylaws, articles of organization and operating agreement, or certificate of limited partnership and partnership agreement, as the case may be, with all amendments thereto.

 3.2 *Due Authorization*. Borrower and any officer, partner or member executing the Loan Documents has full power, authority, and legal right to enter into the Loan Documents, to borrow money as contemplated hereby, to pledge Borrower's assets and revenues, and to carry out the provisions of the Loan Documents according to the terms thereof. Borrower and all required partners, officers or members have duly authorized the execution and delivery of the Loan Documents, and no other action of Borrower or any partner, officer or member of Borrower is requisite to the valid and binding execution and delivery of the Loan Documents. No consents or approvals are required to be obtained from any Legal Authorities for the execution and delivery of the Loan Documents.

 3.3 *Drawings*.

 (a) The Drawings are satisfactory to the Borrower, have been approved by DHCD and, to the extent required by Legal Requirements or any effective restrictive covenant, have been approved by all Legal Authorities and the beneficiary of any such restrictive covenant, respectively;

 (b) The Drawings so approved have been identified and initialed by Borrower, the Architect, the General Contractor and all sureties;

 (c) The Project site is satisfactory in all respects for the Project;

 (d) All construction, if any, performed on the Project before the date of this Agreement:

 (1) has been performed according to the Drawings and according to any restrictive covenants applicable to the Project, and there are no structural defects in the Project, or violations of any Legal Requirements with respect thereto; and

 (2) was performed only after DHCD approved such construction in writing; and

 (e) The Architect shall have agreed that, if DHCD shall exercise any rights to complete construction of the Project, DHCD shall become entitled to use the Drawings and, at its option, shall succeed to the benefits and obligations of all agreements and contracts for services between Borrower and the Architect. All Drawings delivered to DHCD shall not be modified without the prior written approval of DHCD.

 3.4 *Environmental Condition*.

 (a) Borrower has obtained and delivered to DHCD a Phase I environmental survey (the “**Phase I Report**”) for the presence of Hazardous Materials. Based on the Phase I Report, the Project and the Land show no signs of Hazardous Materials, except as set forth in the Phase I Report, which conditions shall be remedied in accordance with the Contract Documents;

 (b) The Project and the Land are not in violation of any Environmental Requirement; and

 (c) Borrower shall indemnify and hold DHCD harmless from all loss, liability, damage, cost and expenses, including reasonable attorneys' fees and costs of investigation, enforcement and collection, for failure of the Project or the Land to comply at all times and in all respects with the Environmental Requirement, except for claims arising solely from DHCD’s gross negligence or willful misconduct.

 3.5 *Litigation*. There are no actions, suits or proceedings pending, or to the Borrower's knowledge threatened, at law or in equity, against or affecting it or the Project, or involving the validity or enforceability of the Loan Documents or the priority of the lien of the Deed of Trust, or before or by any Legal Authority. The Borrower is not in default under any order, writ, injunction, decree or demand of any court or any Legal Authority.

 3.6 *No Breach*. The consummation of the transactions hereby contemplated and performance of this Agreement and the other Loan Documents will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, by-laws, operating or partnership agreement or other instrument to which Borrower is a party or by which it may be bound or affected.

 3.7 *Liens*. Except as expressly permitted herein, Borrower has made no contract or arrangement of any kind, the performance of which by any other party thereto would give rise to a lien on the Project. No materials or equipment required by the Drawings will be purchased under a conditional sales contract or with the use of any security agreement or other vendor's title or purchase money security interest. At the time of the execution and delivery of the Loan Documents no work or storage of materials has commenced upon the Land except as otherwise identified on *Exhibit A* and except as authorized in writing by DHCD, and such work or storage of materials will not have commenced at the time the Deed of Trust is recorded, except as otherwise approved in writing by DHCD.

 3.8 *No Default*. Borrower is not in default under this Agreement or the other Loan Documents, and no event has occurred and is continuing which with notice or the passage of time or both would constitute a default under this Agreement or the other Loan Documents.

 3.9 *Previous Statements and Information*. All financial statements and other information previously furnished by the Borrower to DHCD in connection with the Loan were true, complete and correct at the time provided, and fairly represent the financial condition of the Borrower at the time provided, to the extent the financial condition is stated, and no material adverse change has occurred since the furnishing of such statements and information.

 3.10 *No Violation of Law*. Neither the Borrower nor the Project is, or will be upon completion of the Project, in violation of any law, ordinance, code, rule or regulation of any governmental authority having jurisdiction over the Borrower or the Project.

 4. *Construction Requirements.*

 4.1 *Construction of Project*.

 (a) Borrower shall cause the construction of the Project to be performed diligently and continuously and according to the Contract Documents. Borrower shall cause construction to commence within 30 days from the date hereof. The Project shall be substantially completed according to the Drawings on or before the Completion Date; provided that the date for Substantial Completion of the Project may be extended with the prior written consent of DHCD, and subject to such conditions as DHCD may impose, which conditions may include the payment of fees.

 (b) Borrower shall strictly enforce the Contract Documents and shall not permit any work pursuant to a Change Order unless Borrower first shall have received the written approval of DHCD.

 (c) Borrower shall construct the Project free and clear of all liens and encumbrances other than the lien of the Loan Documents or any other encumbrances permitted by the Deed of Trust.

 (d) The Project shall be constructed and equipped according to all Legal Requirements. The Project shall be constructed entirely on the Land, and shall not encroach upon any easement or right-of-way without the written approval of DHCD. The anticipated construction and use of the Project will comply with all Legal Requirements and restrictive covenants affecting the Project.

 4.2 *Substitution of Construction Oversight*. If the Borrower, or an affiliate or related party of the Borrower, is acting as General Contractor or Inspecting Consultant, DHCD shall have the right, with or without cause and upon 30 days' notice to the General Contractor or Inspecting Consultant, to terminate the agreement between such parties and Borrower. In such event, DHCD may substitute, at Borrower's expense, a person or entity acceptable to DHCD to provide appropriate oversight of the construction and submission of all reports required herein of the General Contractor or the Inspecting Consultant. Furthermore, in the event that Borrower terminates either the Architect's Agreement or the Construction Contract, DHCD shall have the right to approve any substitute Architect, Inspecting Consultant or General Contractor, as the case may be.

 4.3 *Development Costs*. The total development costs for the Project and the sources of financing are itemized in the Budget.

 4.4 *Development Costs Not Included in Construction Contract*. DHCD shall disburse to the Borrower out of the Loan the costs not included in the Construction Contract set forth in the Budget, but only to the extent that such charges are due and owing or have been authorized by DHCD and paid by the Borrower for labor or services; provided however, DHCD may limit the amount of such costs that can be advanced at Initial Closing.

 4.5 *Change Orders*.

 (a) It is anticipated that over the course of this project, circumstances will

make it advisable to alter certain approved project terms and conditions including those which

affect construction. Certain of these changes may require construction contract change orders as

provided below. Other changes may involve departures from the design, specifications, or

materials submitted to the Department by the Borrower/Builder during the application and

underwriting process which have contributed to the Department’s decision to make this loan.

All such material changes should be brought to the attention of the Department for formal

approval. A failure to secure the Department’s approval may result in their exclusion from the

Project Budget and payment by the Department. Any changes in the terms and conditions

embodied in the Project’s Loan Documents may be changed only in accord with those

documents.

 (b) DHCD reserves the right to approve a Change Order for construction purposes only and not to approve it for disbursement of funds from the Loan. If the Change Order is approved by DHCD and if DHCD determines Loan funds or other sources available to Borrower are insufficient to cover the costs to complete the Project, a sum of money equal to the cost of the Change Order increasing the cost of the Project must be escrowed with DHCD from funds other than the proceeds of the Loan. DHCD will disburse any funds escrowed by Borrower for the cost of a Change Order as the work is completed in the same manner as disbursements are made from the Loan.

 4.6 *Construction Contingency Funds*.

 (a) If, at any time prior to Final Closing, the cost of work completed in accordance with the Contract Documents exceeds the amount of the Construction Contract because of Change Orders approved by DHCD, then Borrower may request in writing, that such costs be covered out of the construction contingency funds (identified in the Budget), if any. It shall be at DHCD's discretion whether or not moneys from the construction contingency funds should be disbursed prior to Final Closing to cover such increased costs.

 (b) At Final Closing, DHCD may use any moneys remaining in the construction contingency funds, to pay or reimburse Borrower for some or all of the increased construction costs due to previously approved Change Orders approved for construction purposes only.

 (c) If the construction contingency funds are not used to reimburse Borrower under 4.6 (a) or (b), then, the funds shall be applied at DHCD's discretion for the following:

1. To pay any portion of the deferred developer’s fee; or

 (2) To reduce the outstanding principal balance of the Loan; or

 (3) To fund Project betterments; or

 (4) To other costs as approved by DHCD.

 4.7 *Substantial Completion.* Upon Substantial Completion of any unit,

Borrower shall promptly furnish to DHCD satisfactory evidence that (a) all work requiring

inspection by any Legal Authority, or community associations having jurisdiction or authority,

has been duly inspected and approved by such authorities and by the rating or inspecting

organization, bureau, association, or office having jurisdiction or authority; and (b) all requisite

certificates of occupancy have been issued and all other Legal Requirements have been satisfied.

 4.8 *Cost Certification*.

 (a) Except as provided in paragraph (b) below, within 60 days of Substantial Completion, Borrower, the General Contractor and all subcontractors with an identity of interest with the Borrower or the General Contractor shall submit to DHCD, at their sole cost and expense, a cost certification of the actual costs for construction and development of the Project, and Project income and expenses. The cost certification shall be performed by an independent Certified Public Accountant approved by DHCD and shall be on a line-by-line basis corresponding to the items of total development cost listed in the Budget hereto. DHCD may, at its option, audit and inspect Borrower's and General Contractor's books and records for the purpose of verifying Borrower's certification of costs.

 4.9 *Cost Savings*. Any cost savings identified in a cost certification approved by DHCD, excluding undisbursed construction contingency funds, may be used at DHCD's discretion for one or more of the following:

 (a) Payment of Change Orders which have been approved by DHCD for construction purposes only pursuant to Section 4.5(b) hereof;

 (b) “Soft” cost overruns;

 (c) Project betterments approved by DHCD. Such approved costs will be excluded from the calculation determining the Developer Fee.;

 (d) Reduction of the Loan amount;

 (e) Escrow, reserve or other accounts established in the manner required by DHCD to be used for the benefit of the Project; or

 (f) To pay any portion of the deferred developer’s fee.

 4.10 Final Closing.

 (a) For each unit, DHCD shall require a Unit Sale Submission (Exhibit F) upon:

1. Substantial Completion;

 (2) Receipt by DHCD of a final waiver of liens from the

Borrower/Builder and all subcontractors, suppliers and materialmen;

 (3) Submission by the Borrower and review and approval

by DHCD of the substantiation of costs;

 (4) Receipt and approval by DHCD of all required

engineer and architect certifications; and

 (5) Receipt and approval by DHCD of as-built drawings

which indicate all changes to the Drawings; and

 (b) DHCD shall establish a date for Final Project Closing upon:

 (1) Substantial Completion of the last unit to be sold;

 (2) Submission by the Borrower of the required materials

above in 4.10 (a);

 (3) Receipt and approval of a final cost accounting for the

project:

 (4) Payment of the remaining developer fee as stipulated by

the Project’s Terms and Conditions.

 (c) The Loan Documents shall be amended, if necessary, to reflect the

final principal amount of the Loan at Final Closing.

 (d) Latent Defect Coverage.

 (1) Prior to Final Closing, Borrower shall provide DHCD with assurances against certain defects or damage in construction of the Project by confirming the provisions of a homebuyer warranty in form and amount satisfactory to DHCD. The warranty will provide coverage for one year from the sale to guarantee against defects in workmanship and materials; two years coverage for mechanical systems; and, 10 years coverage for major structural defects.

 (2) DHCD may apply any Project funds under DHCD’s

control, regardless of the purpose of such funds, to remedy exigent Latent or other defects in the

event the borrower fails to respond timely to conditions which are both exigent and pose

a significant burden of occupants or which may worsen materially with the passage of time if not

remedied.

 (e) Upon the establishment of a Final Closing date under Section 4.10(a),

DHCD shall send the Borrower written notice stating that all necessary items have been received

and approved and setting forth the Final Closing date.

 4.11 *Loan Disbursements*.

 (a) Upon satisfaction of the conditions before disbursement hereunder, DHCD shall make disbursements of the Loan, in the times and in the manner herein provided, directly to Borrower or, at DHCD's discretion, directly to the General Contractor or jointly to the Borrower and the General Contractor, or to such persons as have actually supplied labor, material, or services for, or incidental to, the construction of the Project, or for the payment of the cost of any of Borrower's undertakings hereunder, under the Note, or under other Loan Documents.

 (b) Disbursements shall be in an amount equal to DHCD’s share (based on the Draw Schedule and approved draw request for each disbursement) of:

1. 100% of the hard cost of the work, as set forth in the Construction Contract and modified by Change Orders, acceptably completed, computed according to the amounts assigned to classes of work set forth in the Budget, the CDA form 212/215, attached hereto as *Exhibit D, and as agreed to at the Field Progress Meeting, plus the actual cost of materials and equipment not incorporated into the work, but delivered to and suitably stored at the site or in bonded warehouses;*
2. 100% of all “soft” costs;
3. Notwithstanding the foregoing, DHCD will adjust disbursement based upon the results of an Interim True Up determination.

 4.12 *Security For Site*. Borrower shall provide for the security and protection of the Project site, the materials furnished to and stored at the site, and the improvements on the site, in each instance in a manner as may be appropriate under the circumstances and acceptable to DHCD. Borrower shall bear the risk of loss from theft, vandalism, or otherwise.

 5. *Conditions Precedent to Disbursement.*

 5.1 *First Disbursement*. DHCD shall not be obligated to advance Loan proceeds under this Agreement unless the following conditions shall have been satisfied:

 (a) The representations and warranties of Borrower contained herein and otherwise made by or on behalf of Borrower in writing for the Loan shall be true and correct on and as of the date of Initial Closing and the first disbursement.

 (b) Borrower shall have satisfied each condition precedent to the Initial Closing of the Loan contained in the Commitment Letter and shall have provided DHCD with such other items as may be required by the Loan Documents or as may be required by DHCD or its counsel.

 (c) All Loan Documents required to be recorded shall have been duly recorded and filed at no cost to DHCD according to all applicable Legal Requirements.

 (d) DHCD shall have received:

 (1) Copies of the original policies of insurance or binders, certificates or endorsements satisfactory to DHCD satisfying the Insurance Requirements;

 (2) Copies of all approvals, authorizations, or permits if any, required from any Legal Authority which are prerequisites to the construction of the Project, together with evidence acceptable to DHCD from the Legal Authority issuing the building permits that the Project will conform to existing zoning laws and specified variances, if any;

 (3) Assurances satisfactory to DHCD of the availability of any and all funds required for completion of the Project in excess of the proceeds of the Loan, including payment to DHCD of such sums as may be required by DHCD. Such assurances shall include without limitation, evidence that all other loans and grants have been closed or will be simultaneously closed with the Loan;

 (4) An opinion of Borrower's counsel to the effect that Borrower is duly organized and validly existing and in good standing under the laws of the state of its organization, authorized to do business in the State of Maryland, with full power to own the Land and execute, deliver and perform its obligations under this Agreement; that the Loan Documents executed and delivered for the Loan are valid and legally binding obligations of the Borrower; and opining as to such other matters as may be required by DHCD;

 (5) Evidence of the Architect's and, if applicable Inspecting Consultant's, Errors and Omissions Insurance policies in an amount acceptable to DHCD, and endorsed so that the policies will not be terminated, expired or canceled without 30 days advance written notice to DHCD;

 (6) A paid title policy or a marked binder, at DHCD's discretion, on an American Land Title Association (ALTA) standard loan policy form issued by a company or companies and in a form acceptable to DHCD in the amount of the Note, insuring the Deed of Trust to be a valid [first][second] lien on Borrower's [fee simple][leasehold] title to the Land, subject only to taxes not yet due and payable and such other exceptions satisfactory to DHCD. Such policy shall contain such covenants of affirmative insurance as DHCD may require;

 (7) A boundary survey prepared by a registered surveyor acceptable to DHCD;

 (8) Evidence that the Land is one or more separate subdivided lots and one or more separate tax lots;

 (9) All Contract Documents with any modifications thereto, together with evidence of written approval thereof by DHCD;

 (10) Intentionally Omitted;

 (11) Acceptable evidence indicating either that (i) the Project is located in an area which has been identified as a “Special Flood Hazard Area” (as such term is used in the Flood Disaster Protection Act of 1973, as amended) and a flood insurance policy acceptable to DHCD has been obtained and paid for, covering a period of at least one year, the original of which policy shall be deposited with DHCD and shall be maintained until the Loan has been repaid in full, or (ii) the Project does not lie within a “Special Flood Hazard Area”; and

 (12) All other items required by the Closing Checklist attached to the Commitment Letter.

 (e) Borrower and the General Contractor shall advise DHCD in writing of the individual(s) within their organizations who are authorized to sign draw requests, Change Orders, forms relating to completion and cost certification, or any other forms required by DHCD during construction, or to certify completion of construction. It shall be the responsibility of Borrower and General Contractor to notify DHCD in advance and in writing of any changes in the designated authorized signatories.

 (f) Borrower shall deliver to DHCD the Project Draw Schedule and the trade payment breakdown attached hereto as *Exhibit D*. Borrower may revise the Project Draw Schedule, with DHCD's approval, by submitting the revision to DHCD before the 15th day of any month. If approved by DHCD, the revised Project Draw Schedule will take effect on the first day of the second calendar month following its submission.

 (g) Borrower shall deliver to DHCD a copy of any superior mortgage or deed of trust on the Land, certified by the mortgagee, if any, as to its authenticity, together with the Superior Mortgagee's Agreement required by the Commitment Letter and, if required by DHCD, an intercreditor agreement, satisfactory to DHCD, between the superior mortgagee, DHCD and the holder of any subordinate loan.

 (h) Borrower shall deliver to DHCD the initial Project Draw Request together with all supporting documentation.

 (i) Borrower shall post any required building permits on the Project site.

 5.2 *Subsequent Disbursements*. DHCD's obligation to make any advance after the initial advance shall be subject to satisfaction of the following conditions:

 (a) A Field Progress Meeting shall be held on a regularly scheduled monthly basis. Borrower, General Contractor, Architect, Inspecting Consultant, if necessary, and DHCD's inspector and all necessary subcontractors shall meet and agree on the percentage of work completed and in place, and the amount of stored and insured materials on-site and off-site. Borrower shall be responsible for notifying all of the parties above of the time and date of the meeting in advance; no meeting may be held unless DHCD's representative is in attendance. No variation of percentage of work completed will be allowed from that agreed to at each Field Progress Meeting. The parties acknowledge and agree that all meetings may be held by telephone, video and/or email.

 (b) The General Contractor shall submit a Project Draw Request for payment in quadruplicate on notarized AIA forms G702 and G703 and DHCD's certificates, for work completed during the previous month. Each request for payment shall be filed at least 30 calendar days before the date payment is desired. DHCD may request executed subcontracts, or any other documents deemed necessary to help verify payment requests.

 (c) No Event of Default under the terms and provisions of this Agreement, or any of the Loan Documents shall exist, nor shall there exist an occurrence which with the passage of time or notice and the passage of time would constitute an Event of Default.

 (d) If required by DHCD, Borrower shall have furnished waivers of liens and receipted invoices indicating that payment has been made to each subcontractor and supplier for all prior requisitions, and, if required by DHCD, Borrower shall have provided an endorsement to the title insurance policy updating the policy to insure that the status of the title to the Land has not changed to the detriment of DHCD.

 (e) If any mechanic's liens have been filed, Borrower shall have given notice and copies of such liens to DHCD and if required by DHCD, Borrower shall have discharged, bonded or obtained title insurance against such liens pursuant to Section 10.6 hereof.

 (f) Certifications by the General Contractor, the Inspecting Consultant and the Architect in the form prescribed by DHCD shall have been delivered to DHCD.

 (g) If requested, copies of the original policies of insurance shall be delivered to DHCD.

 (h) If a marked binder was delivered by the title company at Initial Closing, then a final title policy in a form satisfactory to DHCD shall be delivered to DHCD.

 (i) Each of the representations and warranties of Borrower contained in Section 3 hereof shall continue to be true and correct in all material respects on and as of the date of each such advance.

 (j) At DHCD's request, the Borrower shall obtain soil or water tests, environmental audits or such other certifications and tests as DHCD deems necessary to confirm that there are no Hazardous Materials in the Project or on the Land at any time during the Loan.

 5.3 *Manner of Disbursements*.

 (a) All construction draws after Initial Closing shall be disbursed by DHCD in accordance with the Project Draw Schedule and Budget and this Agreement.

 (b) The Borrower shall submit a Project Draw Request, together with any and all supporting invoices and other documentation, to DHCD in accordance with the terms of this Agreement. Each Project Draw Request shall be on the form or forms attached hereto as *Exhibit E* and made a part hereof and shall be accompanied by supporting invoices and vouchers and such other information as may be reasonably requested by DHCD, and shall be signed by the Borrower. In particular, if the Borrower is required to deliver a title-bring-to-date or endorsement with the Project Draw Request, a copy of the title-bring-to-date or endorsement shall also be provided with the Project Draw Request. A Project Draw Request shall not be submitted unless and until it has been executed by the Borrower and reviewed, approved and executed by the Architect, and DHCD shall not accept a Project Draw Request unless it has been so executed by the Borrower and the Architect. A copy of the most recent construction inspection report and the architect's report shall accompany the fully executed Project Draw Request.

 (c) The obligations of DHCD to fund a Project Draw Request shall be generally as shown on the Project Draw Schedule and Budget. DHCD shall not have any obligation to fund a Project Draw Request if any other required source of funds as shown on the Project Draw Schedule and Budget is not funded or if any other required source of funds as shown on any prior Project Draw Request was not funded.

 (d) DHCD agrees to fund each approved Project Draw Request if and only to the extent approved by DHCD, in a timely manner, and within 30 calendar days of its receipt of such Project Draw Request.

 5.4 *Strict Compliance by Borrower*. The failure of DHCD to insist upon strict performance of the requirements for the first advance or for any subsequent advance shall not be deemed a waiver of its rights to later insist upon strict compliance with the conditions established for any such advance, notwithstanding that the advance may already have been made.

 6. *Retention*.

 6.1 *Release of Retention*. Intentionally omitted.

 6.2 *Funds in Trust*. Borrower covenants that it will hold in trust each advance hereunder for application to the items for which such advance was requested and approved, and will apply the funds to and in the amount of only those items set forth on each Project Draw Request.

 7. *Sufficiency of Loan to Complete Construction*.

 7.1 *Loan in Balance*.

 (a) Borrower agrees that the Loan shall at all times remain in balance. The Loan shall be deemed to be in balance if the cost of completing construction of the Project according to the Contract Documents (based on DHCD's estimate of the cost of completing construction), including provision for reserves, fees, expenses, and other deposits required by DHCD, does not exceed the total of the undistributed proceeds of the Loan and the undistributed proceeds of any superior or subordinate loan and any Borrower's equity or other sources of funds as provided in the Budget.

 (b) Borrower hereby covenants and agrees that if the Loan is not in balance, it will deliver to DHCD, from sources other than the Loan, either cash or an unconditional, irrevocable letter of credit equal to the excess cost of the Project, which funds shall be free of all liens, except the lien of the Deed of Trust. Borrower's funds so required shall be advanced before any further advance of the Loan.

 8. *Events of Default*.

 8.1 *Defaults*. The occurrence of any one or more of the following shall be considered an Event of Default:

 (a) Failure by the Borrower to observe or perform any term, condition or covenant in this Agreement and to rectify the same within 30 days after written notice to Borrower, or, if, in DHCD's determination, such failure cannot be rectified within 30 days, to begin to rectify such matter within said 30 days, in DHCD's determination, and thereafter diligently and continuously pursue the remedy, in DHCD's determination; or

 (b) A default under any other Loan Document which default is not cured within the applicable grace period provided therein;

 (c) At any time any representation or warranty made by Borrower or on behalf of Borrower in connection with the Loan is or becomes materially incorrect or incomplete;

 (d) Failure by the Borrower to commence construction of the Project within the period specified in *Section 4.1(a);*

 (e) The Project is damaged or destroyed by fire or otherwise and DHCD has determined that it cannot be restored so that the Project can be completed on or before the Completion Date and within the other terms and conditions hereof;

 (f) Failure by the Borrower to construct the Project according to the Contract Documents and according to all applicable Legal Requirements now existing or hereafter enacted, adopted or promulgated;

 (g) For any cause whatsoever, except for strikes, acts of God and other causes which in the determination of DHCD are beyond the control of Borrower:

 (1) the construction of the Project is at any time discontinued for a period of 20 consecutive calendar days, or

 (2) construction is not carried on so as to permit completion of the work on or before the Completion Date, as determined by DHCD, or

 (3) such construction, as determined by DHCD, has not been completed or is not progressing in accordance with the Contract Documents (unless DHCD shall determine that such discontinuance shall not jeopardize the security for the Loan);

 (h) Failure by the Borrower to pay any sums due and owing to the General Contractor, or any subcontractor, mechanic, materialman or supplier, upon the demand of such party or upon the demand of DHCD, for work done on or in connection with the Project, except for good faith disputes or delays approved by DHCD subject to such conditions as DHCD may impose;

 (i) Except as otherwise provided in subsection (j) below, if the Land, Project, or any part thereof, including any equipment, building materials or any personalty relating thereto, is subject to a lien or security agreement other than the Deed of Trust and any liens permitted thereunder;

 (j) Failure by the Borrower to discharge, bond or obtain title insurance against any mechanics' lien pursuant to *Section 10.6* hereof; or

 (k) If the General Contractor or Borrower shall become insolvent or be adjudicated bankrupt or shall make an assignment for the benefit of a creditor or file or have filed against it a petition for bankruptcy or reorganization or arrangement and, in the case of such involuntary petition filed against the General Contractor or Borrower, such petition is not discharged or dismissed within 60 days of its filing.

 8.2 *Effect of Cure*. Any cure of an Event of Default hereunder or under any of the other Loan Documents, including any Event of Default relating to a payment obligation, made according to the provisions of this Agreement by any subsequent owner of the Project, by any other person whose interest in the Project might be prejudiced in the event of a failure to make such cure, or by any stockholder, partner, member, officer or director of an entity which at any time owns or has an interest in the Project or the Borrower, shall be deemed, as between DHCD and all persons who at any time may be liable as aforesaid or may own the Project or the Borrower, to have been made on behalf of all such persons.

 9. *Remedies*.

 9.1 *Termination; Possession*. Upon an Event of Default, DHCD may, at its option, in addition to all other rights and remedies available to it hereunder or under the other Loan Documents, terminate this Agreement, and use and apply any funds deposited with it by Borrower, regardless of the purpose for which such funds were deposited, in such manner and for such purposes as DHCD may determine. If DHCD elects not to terminate this Agreement, it may enter into possession of the Project and cause the performance of any and all work and labor necessary to complete the improvements substantially according to the Contract Documents and employ watchmen to protect the Project site from injury. DHCD may advance any proceeds of the Loan remaining unadvanced, together with any additional sums required to complete and protect the Project, and these sums shall be secured by the Deed of Trust.

 9.2 *Additional Remedies*. Upon an Event of Default or the sending of a notice of an Event of Default hereunder, Borrower hereby irrevocably constitutes and appoints DHCD as Borrower's attorney-in-fact (which appointment shall be deemed coupled with an interest) for and in its name or the name of Borrower to perform all the obligations of Borrower under the terms of this Agreement and the Deed of Trust, with such amendments as DHCD shall deem appropriate, and Borrower further empowers, but does not obligate, DHCD to do the following:

 (a) Exercise all rights and powers of Borrower under the Contract Documents, the contracts with the Architect and Inspecting Consultant, and such other agreements as Borrower has executed or should have executed or intends to execute in connection with completion of the Project;

 (b) Use any funds of Borrower, including any balance which may be held in escrow or on deposit, letters of credit, and any funds which may remain unadvanced hereunder for the purpose of completing the Project in the manner called for by the Contract Documents or for any other purpose;

 (c) Make such additions, changes and corrections in the Contract Documents as shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Contract Documents;

 (d) Employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes;

 (e) Pay, settle or compromise all existing bills and claims which are or may become liens against the Project or as may be necessary or desirable for the completion of the Project, or for quieting title;

 (f) Execute all applications and certificates in the name of Borrower which may be required by any of the Contract Documents;

 (g) Prosecute and defend all actions or proceedings involving the Project or the rehabilitation or construction of the Project and to take such action and require such performance as it deems necessary;

 (h) Make changes in the Project to conform to the Contract Documents and applicable Legal Requirements; and

 (i) Perform each and every act and thing whatsoever authorized, permitted, requisite or necessary to be done by Borrower to complete the Project and pay all costs, in connection therewith, including but not limited to the payment of interest and principal on the Note.

 9.3 *Additional Conditions*.

 (a) No action by DHCD shall relieve Borrower of its responsibility to furnish any additional funds needed to complete the Project.

 (b) Borrower hereby assigns and quit claims to DHCD all sums unadvanced under this Agreement and all sums due in escrow unconditioned upon the use of said sums for the completion of the Project, such assignment to become effective only in case of an Event of Default.

 (c) Borrower shall have no right at any time to receive in hand any interest on undrawn advances, but DHCD reserves the right to advance interest under this Agreement to pay all interest then due and owing on the Note.

 (d) Each and every right, remedy and benefit provided to DHCD herein shall be cumulative and shall not be exclusive of any other right, remedy or benefit provided herein or allowed by law or equity.

 10. *General Covenants*.

 10.1 *Assignment and Successors or Assigns*. The Borrower may not assign its rights under this Agreement without the prior written consent of DHCD. Any such unconsented assignment shall be null and void hereunder. DHCD may assign its rights under this Agreement at any time. This Agreement shall be binding on the parties hereto and their respective successors and DHCD's assigns.

 10.2 *Approvals*. Except as otherwise provided herein, whenever any approval or notice by DHCD is required or permitted, only the Secretary of Housing and Community Development, or any other person to whom specific authority has been delegated in writing, shall have the power and right to approve, give notice or act on behalf of DHCD.

 10.3 *Minority Business Enterprise Goals*. Borrower agrees that, in making or awarding contracts for professional and technical services, and for labor and materials connected with the Project, it will make good faith efforts to award to minority contractors at least 29% of the costs of construction of the Project, as provided in the Minority Business Enterprise Plan presented by Borrower on DHCD's approved form and accepted by DHCD. Borrower further agrees to be responsible for monitoring the compliance of its General Contractor and subcontractors with this requirement. If Borrower is unable to meet the 29% goal, Borrower will provide evidence that it made a good faith effort to reach that goal.

 10.4 *Inspections*. At all times during the construction of the Project, DHCD and its agents shall have the right to enter and to inspect all work done, and all materials, equipment and other matters relating to the Project. DHCD shall also have the right to examine and copy all Contract Documents, books, subcontracts, and records of Borrower relating to the Project, including all detailed plans, shop drawings and specifications.

 10.5 *Records*. Borrower shall furnish such records, papers and documents relating to the Project as DHCD may require from time to time and shall retain such Project records for three years after completion, subject to inspection and audit by the State of Maryland.

 10.6 *Mechanic's Liens*. If any mechanic's liens relating to the Project are filed, Borrower shall give notice and copies of such liens to DHCD and, if required by DHCD, Borrower shall discharge, bond or obtain title insurance against such liens within 20 days of DHCD's requirement.

 10.7 *No Waiver*. No failure by DHCD to exercise and no delay in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

 10.8 *Liability*. No claim shall be made by Borrower upon DHCD for, or on account of, any matter or thing arising pursuant to this Agreement except for obligations of DHCD under this Agreement. In connection with its obligations under this Agreement DHCD and its agents and employees shall not be liable for any act or omission by it or them in the absence of gross negligence or willful misconduct. In connection with its obligations under this Agreement, DHCD may consult with counsel of its own selection, and anything which DHCD may do or refrain from doing, in good faith, in reliance upon the opinion of such counsel shall be full justification and protection to DHCD.

 10.9 *Indemnification*. Borrower further agrees to indemnify and hold DHCD harmless against any and all claims of bodily injury and property damage arising during construction, and any other costs, expenses or claims, except for claims arising solely from DHCD's gross negligence or willful misconduct, and to include DHCD as an additional insured in all liability insurance.

 10.10 *No Warranty By DHCD*. Neither the approval by DHCD of any Drawings, nor any subsequent inspections or approvals of the construction of the Project shall constitute a warranty or representation by DHCD or any of its agents, representatives, counsel, or designees, as to the technical sufficiency, or adequacy or safety of the structures or any of their component parts, including without limitation, their fixtures, equipment or furnishings, the subsoil conditions involved in the Project or the Land, or any other physical condition or feature pertaining to the Project. All acts, including any failure to act, relating to this Project by any agent, counsel, representative or designee of DHCD are performed solely for the benefit of DHCD to assure repayment of the Loan and are not for the benefit of the Borrower or for the benefit of any other person.

 10.11 *Estoppel Certificate*. Within five business days after demand, Borrower will furnish to DHCD a written statement, duly acknowledged, of the amounts advanced to it under this Agreement and the amounts due under the Note and the indebtedness secured by the Deed of Trust, and whether any offsets or defenses exist thereunder or against said indebtedness secured by the Deed of Trust.

 10.12 *Notices*. 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:

 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: Chief of Housing Production

 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.

 10.13 *Time of Essence*. Time is of the essence in this Agreement.

 10.14 *Amendments*. This Agreement may not be changed, waived, modified, amended, discharged or terminated except by an instrument in writing executed by the Borrower and DHCD.

 10.15 *Counterparts*. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original and all of which shall constitute one and the same instrument.

 10.16 *Governing Law*. This Agreement is made, executed and delivered in the State of Maryland and Maryland law shall govern its interpretation, performance and enforcement.

 10.17 *Obligation of DHCD*. All obligations of DHCD to make advances of the Loan proceeds or of any other funds held by DHCD hereunder are imposed exclusively for the benefit of DHCD and its successors and assigns and the Borrower and its successors. No other person shall have any right or claim against DHCD under this Agreement or the administration thereof nor shall any other person be deemed to be a beneficiary of this Agreement or of any of its terms and conditions. No other person shall have standing to require satisfaction of such terms or conditions, nor shall any person be entitled to rely on DHCD's enforcement or non-enforcement of such terms and conditions. Any term or condition in this Agreement may be waived by DHCD at any time in its sole discretion.

 10.18 *Confirmation of Facts*. Before funding or undertaking any obligation hereof, DHCD shall have the right but not the obligation, to independently confirm, the existence or non-existence, as the case may be, of any facts, information, reports or other matters related to, or provided in connection with, this Agreement.

 10.19 *WAIVER OF JURY TRIAL*. BORROWER AND DHCD HEREBY (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY AND (B) WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY, BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. DHCD IS HEREBY AUTHORIZED AND REQUESTED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES HERETO, SO AS TO SERVE AS EVIDENCE OF THIS WAIVER BY BORROWER OF ITS RIGHT TO JURY TRIAL. FURTHER, BORROWER CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF DHCD (INCLUDING, BUT NOT LIMITED TO, DHCD'S COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO BORROWER OR DHCD THAT DHCD OR BORROWER WILL NOT SEEK TO ENFORCE THIS WAIVER OF JURY TRIAL.

 10.20 *Relationship of the Parties*.

 (a) This Agreement provides for the making of the Loan by DHCD in its capacity as lender, to Borrower, in its capacity as borrower, and for the payment of interest and repayment of principal by Borrower to DHCD. The relationship between DHCD and Borrower is limited to that of creditor/secured party and debtor, respectively. The provisions in this Agreement for compliance with financial covenants, delivery of financial statements and reserve accounts, as applicable, are intended solely for the benefit of DHCD to protect its interests as lender in assuring payments of interest and repayment of principal.

 (b) Nothing contained in this Agreement shall be construed as (1) permitting or obligating DHCD to act as a financial or business advisor or consultant to Borrower, (2) permitting or obligating DHCD to control Borrower or to conduct Borrower's operations, (3) creating any fiduciary obligation on the part of DHCD to Borrower, (4) creating any joint venture, agency, or other relationship between the parties other than as explicitly and specifically stated in this Agreement or (5) creating any liability or responsibility on the part of DHCD to pay any indebtedness or perform any obligation of the Borrower.

 (c) Borrower acknowledges that it has had the opportunity to obtain the advice of experienced counsel of its own choosing in connection with the negotiation and execution of this Agreement and to obtain the advice of such counsel with respect to all matters contained herein, including, without limitation, the provision for waiver of trial by jury. Borrower further acknowledges that it is experienced with respect to financial and credit matters and has made its own independent decision to apply to DHCD for credit and to execute and deliver this Agreement.

 10.21 *Continuance of Agreement; Survival of Representations and Warranties*. This Agreement shall continue in full force and effect until the Note shall have been paid in full. All representations and warranties contained herein or made in writing by or on behalf of Borrower involving the Loan shall survive the execution and delivery of this Agreement or any other Loan Documents, and any investigation at any time made by, through or on behalf of DHCD. All statements contained in any certificate, opinion or Loan Document delivered to DHCD on behalf of Borrower shall constitute representations and warranties hereunder. Borrower’s obligations under Section 10.9 of this Agreement shall survive repayment of the Note and the termination of this Agreement.

 10.22 *Discretionary Decisions and Actions*. Any power of DHCD granted by this Agreement to make any decision or determination, grant its approval, consent or authorization, or take or fail to take any action, shall be in DHCD's sole and absolute discretion.

 10.23 *Special Conditions*. The special conditions to this Agreement, if any, are contained in *Exhibit A*.

 10.24 *Captions*.  The captions and headings of various Sections of this Agreement and exhibits attached hereto are for convenience only and are not to be considered as defining or limiting in any way the scope or intent of the provisions hereof.

 10.25 *Welfare-To-Work*. The Borrower understands that as part of Maryland's continuing efforts to provide successful Welfare-to-Work opportunities, DHCD encourages loan and grant applicants to make jobs available to Temporary Cash Assistance recipients and that information on these resources is available from the Department of Human Resources, Office of Work Opportunities at (410) 767-7976, the Department of Labor, Licensing and Regulation, Office of Employment Training at (410) 767-2800 or the Maryland Job Service at (410) 767-3416. The Borrower also understands that the State of Maryland maintains a job bank on the internet at http://www.careernet.state.md.us.

 10.26 *Exhibits*. The following documents are attached as exhibits hereto and are incorporated by reference herein:

 Exhibit A: Schedule of Loan Information

 Exhibit B: Draw Schedule

 Exhibit C: Project Budget (CDA Form XXX)

 Exhibit D: Project Specific Terms for Construction

 Exhibit E: Form of Draw Request

 Exhibit F: UPLIFT Sales Approval Submission Form

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

 IN WITNESS WHEREOF, the signatures and seals of the parties hereto are 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 BORROWER]

 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 signatures and seals of the parties hereto are 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: DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, a principal department of the State of Maryland

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

 Brien O’Toole

 Chief of Housing Production

 EXHIBIT A

Schedule of Loan Information

A. Borrower: {BorrowerName}

B. Project: {ProjectName}

C. UPLIFT Loan Amount: {LoanAmount}

D. Commitment Letter: {ComLetterDate}.

E. Completion Date: {Completion Date} (including three months for cost certification)

F. General Contractor: {GC}

G. Construction Contract Date: {GDHCDte}

H. Architect: {Architect}

I. Architect Agreement Date: {ArchAgreementDate}

J. Environmental Hazards, if any to be remedied in accordance with Contract Documents:

K. All conditions set forth in the environmental report on the Project dated XXX by XXX as amended or updated through the date hereof.

L. Disbursement conditions with superior or subordinate financing, if any: Intercreditor Agreement by and among DHCD, the Borrower, the First Lender.

M. Authority: UPLIFT Appraisal Gap

N. Additional Requirements: None

EXHIBIT B

 Project Draw Schedule

EXHIBIT C

Project Budget

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EXHIBIT D

 Trade Payment Breakdown

EXHIBIT E

Form of Draw Request

EXHIBIT F

Unit Sale Submission Form

UPLIFT Unit Sales Approval Request

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| Project: |  |  | Date of Purchase: |  |
| Unit Designation: |  |  | Purchase Price: |  |
| Unit Address: |  |  | Down Payment: |  |
| BR Count: |  |  | DP/CC Assistance: |  |
| BA Count: |  |  | Mortgage Amount: |  |
| Census Tract: |  |  | Other Subsidy: |  |
| SF: |  |  | Promissory Note Amount: |  |
| UPLIFT Sales Restriction: |  |  | 1st Lien Mortgage: |  |
|  |  |  | HB Preparation Assistance: |  |
|  |  |  | Provider: |  |
|  |  |  | Level: |  |
|  |  |  | Broker: |  |
|  |  |  | Medium of Initial Connection: |  |
|  |  |  | DHCD MMP Status: |  |
|  |  |  |  |  |
| Buyer Name 1: |  |  |  |  |
| Buyer Name 2: |  |  |  |  |
| Previous Zip Code: |  |  |  |  |
|  |  |  |  |  |
| Household Size: |  |  | Household Income: |  |
| # of Adults: |  |  | Source 1: |  |
| # of Children |  |  | Source 2: |  |
|  |  |  | Source 3: |  |
|  |  |  |  |  |
|  |  |  | HH New Worth: |  |
|  |  |  | AMI Band: |  |
| Submitted By: |  |  | HH Racial/Ethnic Category: |  |
| Submission Date: |  |  | Previous Tenure: |  |
| Approved By: |  |  | Disabled HH Member?: |  |
| Approval Date: |  |  | If Yes, Disability or Special Need: |  |
|  |  |  |  |  |