Project Name: UPLIFT

Project Number:

# PLEDGE OF DEVELOPMENT FEE PROCEEDS

 THIS PLEDGE OF DEVELOPMENT FEE PROCEEDS (the “**Pledge**”), made on this day of \_\_\_\_\_\_\_\_\_\_\_­, 20\_\_, by and among \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Maryland \_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Pledgor**”), and the Department of Housing and community development, a principal department of the State of Maryland (“**DHCD**”).

RECITALS:

 A. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Borrower**”) and DHCD have entered into a Building Loan Agreement of even date herewith (the “**Loan Agreement**”) in connection with a loan of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ from DHCD to the Borrower (the “**Loan**”) to assist in the financing of for-sale housing pursuant to Sections 4-2801 through 4-2806 of the Housing and Community Development Article of the Annotated Code of Maryland, as amended, and the regulations promulgated thereunder, located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Maryland, to be known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Project**”). The Loan is evidenced by a deed of trust note of even date herewith (the “**Note**”), secured by a deed of trust on the Project of even date herewith in which DHCD is the beneficiary (the “**Deed of Trust**”) and such other documents as required by DHCD (the “**Loan Documents**”);

 B. Capitalized terms used but not defined shall have the meanings given in the Loan Documents; and

 C. In connection with the Development of the Project, the Pledgor as developer is entitled to receive certain fees identified in the Project’s Approved Budget (collectively, the “**Development Fee Proceeds**”). The Project’s Approved Development Fee Proceeds are calculated as a per-unit-sold-amount adjusted upward if and as certified construction costs are below the Project’s Approved Budget and/or if and as actual approved sales prices exceed the Project’s Approved Budget for sales. The Development Fee construction cost savings will be calculated to exclude any approved change order betterments paid from construction contingency funds.

 D. It is a condition of the Loan that DHCD shall have a valid security interest in the Development Fee Proceeds to the extent set forth below.

 NOW, THEREFORE, in consideration of the Loan and for other good and valuable consideration, DHCD and the Pledgor agree as follows:

 1. As security for all obligations of the Borrower during the Construction Loan Period as defined in the Note, Pledgor hereby grants, sells, assigns, pledges and conveys to DHCD and grants to DHCD a security interest in (a) all of Pledgor's rights to receive all payments of money whether the same be accounts, contract rights, general intangibles or instruments, whether now existing or hereafter arising, paid to Pledgor as Development Fee and (b) all products and proceeds of the above described assets, (all such rights, and the assets being sometimes hereinafter collectively referred to as the “**Collateral**”). Pledgor agrees that DHCD shall have, in and with respect to the Collateral, all the rights and remedies of an assignee and a secured party under the Uniform Commercial Code, together with all other rights and remedies as may be hereinafter set forth.

 2. In addition to any other covenants and warranties herein set forth, Pledgor covenants and warrants that, unless compliance is waived by DHCD in writing:

 (a) Pledgor has properly maintained the Collateral.

 (b) Pledgor has not executed and, without the prior written consent of DHCD, will not hereafter execute any assignment or security agreement or financing statement covering any of the Collateral except to DHCD. Pledgor has all rights necessary to grant this pledge with respect to the Collateral unencumbered by any claim or rights of other parties.

 (c) Unless the prior written consent of DHCD is obtained, Pledgor alone or in concert with others, will not sell, assign, encumber, contract for sale or otherwise dispose of any of the Collateral.

 (d) Pledgor will promptly notify DHCD in writing of any event which affects the value of the Collateral, the ability of Pledgor or DHCD to dispose of the Collateral, or the rights and remedies of DHCD in relation thereto, including, but not limited to, the levy of any legal process against the Collateral and the adoption of any order, arrangement or procedure affecting the Collateral, whether governmental or otherwise.

 (e) If there are Project cost overruns, Pledgor agrees that the Collateral shall be applied first to reimburse DHCD for any funds advanced by DHCD for development costs of the Project from sources other than Loan proceeds and second, the balance, if any, to Pledgor.

 (f) All information given by Pledgor to DHCD with respect to the Collateral are true, correct and complete in all material respects.

 (g) For more information on developer fee calculations, please refer to the UPLIFT program policy on the DHCD website: dhcd.maryland.gov, subsection: Developers & Contractors/ UPLIFT / Program Documents/ UPLIFT Program Guide

 3. Pledgor agrees that DHCD may at any time and at its option, whether or not Pledgor is in default:

 (a) Require Pledgor to periodically deliver to DHCD records and schedules which show the status and condition of the Collateral, where it is located, and such contracts or other matters which affect the Collateral.

 (b) Require Pledgor to notify DHCD of a default under any instrument or obligation included in the Collateral.

 (c) Verify the Collateral and inspect the books and records of Pledgor and make copies thereof or extracts therefrom.

 (d) Notify any obligors or account debtors, or any other persons of DHCD's interest in the Collateral and the proceeds thereof.

 4. Any one or more of the following shall be a default hereunder:

 (a) There shall be a breach of any covenant, term or condition of, or an event of default under, any of the Loan Documents, which shall have continued after the giving of all required notice and the expiration of all applicable cure periods therein set forth.

 (b) Any covenant, warranty or representation made herein by Pledgor shall be untrue in any material respect or shall be breached or Pledgor shall breach any other term or provision of this Pledge.

 (c) Any levies of attachment, executions, tax assessments or similar processes shall be issued against the Collateral and shall not be released within ten days thereof.

 5. In the event of any default described in Section 4 hereof, DHCD may do any one or more of the following:

 (a) Enforce the security interest given hereunder pursuant to the Uniform Commercial Code or any other law.

 (b) Require Pledgor to assemble the Collateral and the records pertaining thereto and make them available to DHCD at a place designated by DHCD.

 (c) Enter the premises of the Pledgor and take possession of the Collateral and of the records pertaining to the Collateral.

 (d) Grant extensions, compromise claims and settle claims against the Collateral for less than face value.

 (e) Demand and collect the Collateral or any proceeds of the Collateral and otherwise deal with the Collateral in all respects as necessary to permit DHCD to realize upon the security hereby granted. DHCD shall have the continuing right to receive from Pledgor, or from any other person or legal entity, and to hold in its possession, all payments of Collateral or proceeds thereof. Upon request by DHCD, Pledgor shall notify the partners or obligors of the Pledgor or any other person or legal entity who or which owes any payment, performance or obligation with respect to the Collateral that the Collateral has been assigned to DHCD and that all payments, checks, drafts, cash and other remittances for or on account of the Collateral shall be paid directly to DHCD, and all securities or instruments evidencing the Collateral or proceeds of the Collateral shall be delivered to DHCD.

 DHCD will give to Pledgor reasonable notice of the time and place of any public sale of Collateral or the time at which any private sale or other intended disposition thereof is to be made, and such requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Pledgor as set forth in this Pledge at least five days before the time of the proposed sale or disposition.

 6. Miscellaneous:

 (a) Any waiver, express or implied, of any provisions hereunder and any delay or failure by DHCD to enforce any provision shall not preclude DHCD from enforcing any such provision thereafter.

 (b) Pledgor shall, at the request of DHCD, execute such other agreements, documents or instruments in connection with this Pledge as DHCD may deem necessary.

 (c) All notes, security agreements, subordination agreements and other documents executed by Pledgor or furnished to DHCD in connection with this Pledge must be in form and substance satisfactory to DHCD.

 (d) This Pledge shall be governed by and construed according to the laws of the State of Maryland.

 (e) All rights and remedies herein provided are cumulative and not exclusive of any rights or remedies otherwise provided by law. Any single or partial exercise of any right or remedy shall not preclude the further exercise thereof or the exercise of any other right or remedy.

 (f) Pledgor hereby appoints and constitutes each person from time to time serving as an officer of DHCD as its true and lawful attorney in fact with power to endorse his name upon any notes, checks, drafts, money orders or other instruments evidencing the Collateral or proceeds of the Collateral that may come into DHCD's possession. The power of attorney hereby granted by Pledgor shall be irrevocable coupled with an interest until such time as the obligations under the Loan Documents have been paid and performed in full.

 (g) In the event of any action by DHCD to enforce this Pledge after a default hereunder or under any of the other documents given to evidence or secure the Loan, which default continues after the giving of all required notice and expiration of all applicable cure periods therein set forth, or to protect or perfect the security interest of DHCD in the Collateral, Pledgor agrees to pay the costs thereof, reasonable attorneys' fees, and all other related expenses.

 (h) Notwithstanding anything to the contrary contained herein, this Agreement shall terminate and be of no further force or effect, without further action by any of the parties hereto, upon the earlier to occur of (i) payment in full of the Loan, or (ii) final closing of the Loan.

 (i) This Pledge benefits DHCD, its representatives, successors and assigns, and binds Pledgor, their successors and assigns.

 (j) 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:

 Pledgor’s Address:

 With Copy To:

 DHCD’s Address: Community Development Administration

 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.

[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 PLEDGOR]

 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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Brien O’Toole

 Chief of Housing Production

**[FINANCING STATEMENT SHOULD BE FILED AGAINST PLEDGOR TO PERFECT THE SECURITY INTEREST CREATED]**