

REQUESTED COMMISSION ACTION:

X	Consent	Ordinance	X	Resolution	Consideration/ Discussion	Presentation
_____	_____	_____	_____	_____	_____	_____

SHORT TITLE A Resolution of the City Commission of the City of Pompano Beach, Florida, approving and authorizing the proper City officials to execute a first amendment to the Security Agreement between the City of Pompano Beach and the Secretary of Housing and Urban Development regarding Section 108 Guaranty Loan; Providing an effective date.

Summary of Purpose and Why:

The City Commission has previously approved loan documents related to a Section 108 loan from the U.S. Dept. of Housing and Urban Development (to be repaid with a portion of the City's future CDBG allocations).

The City requested approval for a maximum commitment of \$4,308,000 for funds to be expended to maximize existing right-of-ways to add sidewalks where they may be missing or widen existing sidewalks wherever possible to provide a better pedestrian experience; improve and upgrade existing water, sewer and drainage facilities that promote opportunities for future growth and encourage private investment; add lush landscaping features and pedestrian-friendly light fixtures; and, implement traffic calming features to inspire a safer environment. The project will expand on recent improvements carried out by the Pompano Beach Community Redevelopment Agency (CRA) in Downtown Pompano and will span the following areas:

- NE 1st Street
- Flagler Ave
- NE 3rd Street
- NE 4th Street
- NE 2nd Ave
- NE 3rd Ave

This Resolution amends the Security Agreement (one of the loan documents previously approved) between the City of Pompano Beach and the Secretary of Housing & Urban Development regarding the Section 108 Guarantee Loan. The Security Agreement that the City signed includes provisions 5.5 and 6.1 which require the City to provide HUD with a first priority lien/perfected interest in the deposit account (required to be maintained for the section 108 loan proceeds and debt service reserve) through filing a UCC-1. The Section 108 contract doesn't require a perfected or first priority interest only a security interest), and under the UCC, a security interest in a deposit account cannot be perfected through filing a UCC-1.

HUD is simply requesting deleting or amending the relevant sections in the Security Agreement to correct this oversight, in favor of the City. A few other changes of inconsequential nature are also being proposed.

(1) Origin of request for this action: Finance Department

(2) Primary staff contact: Suzette Sibble, Finance Director Ext. 4680

(3) Expiration of contract, if applicable: 8/1/35

(4) Fiscal impact and source of funding: NA

DEPARTMENTAL

DEPARTMENTAL

DEPARTMENTAL HEAD SIGNATURE

COORDINATION	DATE	RECOMMENDATION	
Finance	12/21/15	approval	S. Libble
City Attorney	12/21/15	✓	
Budget	1-7-16	Approval	

City Manager *[Signature]* Ann W. Seal

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	
<u>Workshop</u>			
1 st Reading _____	1 st Reading _____	Results: _____	Results: _____
2 nd Reading _____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



City Attorney's Communication #2016-296
December 18, 2015

TO: Suzette Sibble, Finance Director

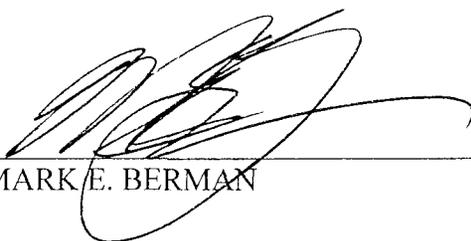
FROM: Mark E. Berman, City Attorney

RE: Resolution – First Amendment to the Security Agreement / Section 108
Guarantee Loan

As requested in your memorandum of December 15, 2015, Finance Department Memo 16-32, the above-referenced First Amendment has been prepared and is attached at this time along with the appropriate Resolution captioned as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A FIRST AMENDMENT TO THE SECURITY AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT REGARDING SECTION 108 GUARANTY LOAN; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.



MARK E. BERMAN

MEB/jrm
l:cor/finance/2016-296

Attachment

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A FIRST AMENDMENT TO THE SECURITY AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT REGARDING SECTION 108 GUARANTY LOAN; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That A First Amendment to the Security Agreement between the City of Pompano Beach and the Secretary of Housing and Urban Development regarding Section 108 Guaranty Loan, a copy of which Amendment is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Amendment between the City of Pompano Beach and the Secretary of Housing and Urban Development.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

FIRST AMENDMENT

THIS IS A FIRST AMENDMENT TO THE AGREEMENT dated the _____ day
of _____, 2016, between:

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as "Debtor,"

and

SECRETARY OF HOUSING AND URBAN DEVELOPMENT, whose address is Financial Management Division, 451 7th Street SW, Room 7180, Washington, DC 20410, hereinafter referred to as "Secured Party."

WHEREAS, the parties entered into a Security Agreement ("Original Agreement") concurrently with a Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974 as Amended, 42 USC Section 5308, a copy of the Original Agreement is attached hereto and made a part hereof, and approved by City Resolution No. 2015-362; and

WHEREAS, the parties now desire to amend certain terms and conditions to the Original Agreement; and

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, the parties agree as follows:

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.
2. The Original Agreement shall remain in full force and effect except as specifically amended hereinbelow.

3. Paragraph 1. of the Original Agreement is hereby amended as follows:

1. Background and Purpose.

1.1 Secured Party has agreed to make a guarantee of a loan to Debtor in the amount of Four Million Three Hundred and Eight Million ~~Thousand~~ Dollars (\$4,308,000) for Project No. B-13-MC-12-0026, (the "Loan").

...

4. Paragraph 3. of the Original Agreement is hereby amended as follows:

3. Obligations. For purposes of this Agreement, "Obligations" means any and all debts, obligations and liabilities of Debtor to Secured Party arising out of, or relating in any way to the ~~obligations and liabilities of Debtor to Secured Party arising out of, or relating in any way to the~~ Contract, the variable fixed rate note executed by Debtor (the "Note"), and any obligations of Debtor to Secured Party pursuant to this Agreement, whether or not existing or hereafter arising, voluntary or involuntary, jointly owned with others, direct or indirect, or absolute or contingent, and whether or not from time to time increased, decreased, extinguished, created or incurred.

5. Paragraph 4. of the Original Agreement is hereby amended as follows:

4. Collateral. For purposes of this Agreement, "Collateral" means:

4.1 The account within ~~the Treasury of the City of Pompano Beach~~ Wells Fargo Bank, N.A., known as the "Fund Balance/Reserved for Debt Service/Reserve-Section 108 Loan" Account," number 4636816803, in the amount of \$387,500 (the "D/S Reserve Account").

...

6. Paragraph 5. of the Original Agreement is hereby amended as follows:

5. Representations and Warranties. As a material inducement to Secured Party hereunder, Debtor represents and warrants that the following are and shall remain true and correct:

...

~~5.5 First Priority Lien. The liens granted to Secured Party under this Agreement are a valid and binding pledge of Collateral by the Debtor pursuant to, without limitation, Government Code section~~

~~5451, and will constitute a first priority lien on the Collateral upon the filing of a Uniform Commercial Code (UCC-1) Financing Statement and entry into the Deposit Account Agreement more fully described in Section 6.1. Debtor's grant of such lien to Secured Party does not constitute a fraudulent conveyance under any applicable law.~~

7. Paragraph 6. of the Original Agreement is hereby amended as follows:

6. Covenants of Debtor.

6.1 Protection of Security Interest. ~~Contemporaneously with the execution of this Agreement, Debtor shall properly execute and deliver to Secured Party a UCC-1 Financing Statement and a deposit Account Agreement by and between the Debtor and Secured Party, in a form approved by the Secured Party, each to enable Secured Party to perfect its security interest in the Collateral. Debtor agrees also to execute, file and record such other statements, notices and agreements, take such action and obtain such certificates and documents, in accordance with all applicable laws, statutes and regulations as may be necessary or advisable to perfect, evidence and continue Secured Party's security interest in the Collateral.~~

...

8. Paragraph 8. of the Original Agreement is hereby amended as follows:

8. Defaults and Remedies.

8.1 Event of Default. Any of the following events or conditions shall constitute an Event of Default under this Agreement.

(a) Default in payment of the Obligation in accordance with the terms of the ~~Loan Agreement~~ Contract and Note;

(b) Default in the performance of any Obligations or breach of any agreement, representation or warranty contained in this Agreement, the Loan Note, the ~~Loan Agreement~~ Contract or the Deposit Account Agreement.

8.2 Remedies. Upon the occurrence of an Event of Default, and at any time thereafter, Secured Party:

(a) Shall have and may exercise all rights and remedies accorded to Secured Party by the ~~California~~ Florida Uniform Commercial Code, or by law;

...

9. All other terms and conditions of the said agreement shall remain in full force and effect as provided by the original agreement and any previous amendments and renewals thereto, unless earlier terminated pursuant to the provisions of the agreement.

10. That no other amendment to the terms of the said agreement shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

IN WITNESS WHEREOF, the parties have caused this Amendment to Agreement to be duly executed on the day and year first above written.

“DEBTOR”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
Lamar Fisher, Mayor

By: _____
Dennis W. Beach, City Manager

Attest:

Asceleta Hammond, City Clerk

(SEAL)

Approved by:

Mark E. Berman, City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

“SECURED PARTY”:

Witnesses:

**SECRETARY OF HOUSING AND URBAN
DEVELOPMENT**

By: _____

Print Name

Typed or Printed Name

Title: _____

Print Name

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____ as _____ of SECRETARY OF HOUSING AND URBAN DEVELOPMENT. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

/jrm
12/18/15
l:agr/finance/2016-294

SECURITY AGREEMENT

The CITY OF POMPANO BEACH, a municipal corporation ("Debtor"), and the SECRETARY OF HOUSING AND URBAN DEVELOPMENT ("Secured Party"), agree, effective _____, as follows:

1. Background and Purpose.

1.1 Secured Party has agreed to make a guarantee of a loan to Debtor in the amount of Four Million Three Hundred and Eight Thousand Dollars (\$4,308,000) for Project No. B-13-MC-12-0026, (the "Loan").

1.2 Concurrently with entering into this Agreement, the Debtor and Secured Party have entered into a Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974 as Amended, 42 USC Section 5308 (the "Contract").

1.3 As a condition to entering into the Contract for, and guaranteeing the Loan, Secured Party has required that Debtor provide security for the Loan pursuant to the Contract and this Agreement. Debtor has agreed to pledge collateral to secure repayment of the Loan.

1.4 The parties desire to set forth more fully the terms of their agreement.

2. Grant of Security Interest. To secure Debtor's Obligations defined in paragraph 3 below, Debtor grants to Secured Party a security interest in the Collateral, defined in paragraph 4 below.

3. Obligations. For purposes of this Agreement, "Obligations" means any and all debts, obligations and liabilities of Debtor to Secured Party arising out of, or relating in any way to the Contract, the variable fixed rate note executed by Debtor (the "Note"), and any obligations of Debtor to Secured Party pursuant to this Agreement, whether or not existing or hereafter arising, voluntary or involuntary, jointly owned with others, direct or indirect, or absolute or contingent, and whether or not from time to time increased, decreased, extinguished, created or incurred.

4. Collateral. For purposes of this Agreement, "Collateral" means:

4.1 The account within Wells Fargo Bank, N.A., known as the "Fund Balance/Reserved for Debt Service/Reserve-Section 108 Loan Account," number 4636816803, in the amount of \$387,500 (the "D/S Reserve Account").

The parties shall cooperate in obtaining the greatest interest rate on funds in the D/S Reserve Account. Upon payment in full of all payments due and owing under the Contract and Note, all funds in the D/S Reserve Account shall be released from the lien of this Agreement.

5. Representations and Warranties. As a material inducement to Secured Party hereunder, Debtor represents and warrants that the following are and shall remain true and correct:

5.1 Title. Debtor is the owner of or controls all right, title and interest in the Collateral free and clear of all liens, encumbrances and security interests, except the security interest created by this Agreement.

5.2 Truth: All information that Debtor has provided to Secured Party concerning the Collateral is true and correct.

5.3 No Defenses. No defenses, offsets, claims or counterclaims exist against Debtor which may be asserted against Secured Party in any proceeding to enforce Secured Party's rights in the Collateral.

5.4 No Conflict. The execution, delivery and performance of this Agreement by Debtor is not in violation of any applicable law or regulation or contractual obligation of Debtor.

6. Covenants of Debtor.

6.1 Protection of Security Interest. Debtor agrees to execute, file and record such other statements, notices and agreements, take such action and obtain such certificates and documents, in accordance with all applicable laws, statutes and regulations as may be necessary or advisable to evidence and continue Secured Party's security interest in the Collateral.

6.2 Transactions Involving Collateral. Debtor shall not, without the prior written consent of Secured party and except as required by law, (i) sell, offer to sell, or otherwise transfer the Collateral except in the ordinary course of business, or (ii) pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest or charge, other than the security interest created by this Agreement.

6.3 Compliance with Laws. Debtor shall comply with all laws, statutes and regulations pertaining to the Collateral.

6.4 Taxes, Assessments and Liens. Debtor shall pay when due all taxes, assessments and liens with regard to the Collateral. Debtor may withhold any such payment or may elect to contest any lien if Debtor is conducting appropriate proceedings in good faith to contest the obligation to pay and so long as Secured Party's interest is not jeopardized.

7. Authorized Action by Secured Party. Debtor irrevocably appoints Secured Party as its attorney in fact to do any act which Debtor is obligated to do pursuant to this Agreement to preserve or protect the Collateral and to preserve, protect or establish Secured Party's lien on the Collateral. Debtor further irrevocably appoints Secured Party to exercise such rights and powers as Debtor might exercise with respect to the Collateral following an Event of Default, as defined below. These powers shall include without limitation the right to (i) collect by legal proceedings or otherwise and endorse, receive and receipt all dividends, interest, payments, proceeds, and other sums and property now or hereafter payable on account of the Collateral, (ii) transfer the Collateral to its own or its nominee's name and (iii) make any compromise or settlement and take any action Secured Party deems advisable with respect to the Collateral. Debtor agrees to

reimburse Secured Party upon demand for any costs and expenses, including without limitation attorneys' fees, which Secured Party may incur while acting as Debtor's attorney in fact hereunder, all of which costs and expenses are included in the Obligations secured hereby. Secured Party shall have no obligation to act pursuant to this paragraph and shall not be required to make any presentment, demand or protest, or give any notice or take any action to preserve any rights against any other person in connection with the Collateral.

8. Defaults and Remedies.

8.1 Event of Default. Any of the following events or conditions shall constitute an Event of Default under this Agreement.

- (a) Default in payment of the Obligations in accordance with the terms of the Contract and Note;
- (b) Default in the performance of any Obligations or breach of any agreement, representation or warranty contained in this Agreement, the Note, the Contract or the Deposit Account Agreement;
- (c) Any levy or proceeding against the collateral or Debtor's interest therein, except if Debtor is conducting appropriate proceedings in good faith to contest the levy or proceeding; or
- (d) The filing of a petition by or against Debtor under the provisions of the Bankruptcy Code.

8.2 Remedies. Upon the occurrence of an Event of Default, and at any time thereafter, Secured Party:

- (a) Shall have and may exercise all rights and remedies accorded to Secured Party by the Florida Uniform Commercial Code, or by law;
- (b) May declare all unperformed Obligations, in whole or in part, of Debtor immediately due and payable without demand or notice;
- (c) May require Debtor to take any and all action necessary to make the Collateral available to Secured Party, and;
- (d) May immediately satisfy any default in whole or in part by withdrawing funds from the D/S Reserve Account.

8.3 Remedies Cumulative. All of Secured Party's rights and remedies, whether evidenced hereby or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Secured Party to pursue any remedy shall not exclude pursuit of any other remedy.

9. Waiver of Hearing. Debtor expressly waives any constitutional or other right to a judicial hearing prior to the time Secured Party takes possession or disposes of the Collateral upon an Event of Default as provided in paragraph 8 above.

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

11. Additional Documentation; Cooperation. Each party shall, upon the request of the other, execute, acknowledge and deliver to the other any instrument that may be required to accomplish the intent of this Agreement. Each party agrees to cooperate to effectuate the intent of this Agreement and shall take all appropriate action necessary or useful in doing so.

12. Miscellaneous.

12.1 Successors and Assigns. Subject to the provisions otherwise contained in this Agreement, this Agreement shall inure to the benefit of and be binding on the successors and assigns of the respective parties.

12.2 Notices. Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given (i) on the date of personal service on the addressee (ii) on the third business day after mailing, if the document is mailed by certified mail, (iii) one day after being sent by overnight courier or messenger service guaranteeing one-day delivery, with receipt confirmed by the courier, or (iv) on the date of transmission if sent by telecopy or other means of electronic transmission resulting in written copies, with receipt confirmed. Any such notice shall be delivered or addressed to the applicable party at the applicable address set forth below or at the most recent address specified by the addressee through written notice under this provision. Failure to conform to the requirement that mailings be done by the means set forth herein shall not defeat the effectiveness of notice actually received by the addressee.

12.3 Amendment. The provisions of this Agreement may be modified at any time by written agreement of the parties. Any such agreement hereafter made shall be ineffective to modify this Agreement in any respect unless in writing and signed by Debtor and Secured Party.

12.4 Attorneys' Fees; Prejudgment Interest. If the services of an attorney are required by Secured Party to secure the performance of this Agreement or otherwise upon the breach or default of this Agreement, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Agreement or the rights and duties of any person in relation thereto, Secured Party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

12.5 Captions. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

12.6 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement which can be given effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated.

12.7 Governing Law. The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the laws of Florida, excluding its conflict of laws rules.

12.8 Entire Agreement. This document, the Contract, Note and any exhibits, and the Deposit Account Agreement constitute the entire agreement between the parties regarding the Collateral, all oral agreements being merged herein, and supersede all prior representations. There are no representations, agreements, arrangements, or understandings, oral or written, between or among the parties relating to the subject matter of this Agreement that are not fully expressed herein or therein.

[Remainder of Page Intentionally Left Blank - Signature Page Follows]

DEBTOR

City of Pompano Beach, a municipal Corporation

By: _____
Lamar Fisher

Its: Mayor

Address:

City of Pompano Beach
100 W. Atlantic Blvd.
Pompano Beach, FL 33060

APPROVED AS TO FORM:

CITY ATTORNEY

By _____
Assistant City Attorney

SECURED PARTY

Secretary of Housing and Urban Development

By: _____

Its:

Address:

U.S. Dept. of Housing and Urban Development
Attention: Paul Webster, Director
Financial Management Division
451 7th Street SW, Room 7180
Washington, DC 20410

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number