

Introduced 01.07.2025
Public Hearing 01.21.2025
Council Action 02.03.2025
Executive Action 02.04.2025
Effective Date 02.04.2025

County Council of Howard County, Maryland

2025 Legislative Session

Legislative Day No. 1

Bill No. 3-2025

Introduced by: The Chairperson at the request of the County Executive

Short Title: Multi-year Contract and related loan documents – U.S. Department of Housing and Urban Development – Section 108 Loan Guarantee Assistance funding

Title: AN ACT pursuant to Section 612 of the Howard County Charter, approving a multi-year Contract and related loan documents between Howard County, Maryland and U.S. Department of Housing and Urban Development for Section 108 Loan Guarantee Assistance funding to support the creation and preservation of affordable housing units in two redevelopment projects with Enterprise Community Development, Inc. in Columbia, Maryland; authorizing the Executive to accept the terms of the Contract, under certain conditions; identifying the collateral for the Loan; authorizing the County Executive to execute the Contract; and generally relating to the Contract.


Introduced and read first time Jan 7, 2025. Ordered posted and hearing scheduled.

By order


Michelle Harrod, Administrator

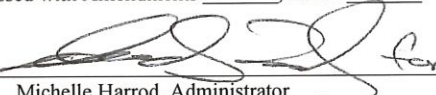
Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on Jan 21, 2025.

By order


Michelle Harrod, Administrator

This Bill was read the third time on Feb. 3, 2025 and Passed Passed with Amendments _____, Failed _____.

By order


Michelle Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 4th day of Feb, 2025 at ___ a.m./p.m.

By order

Michelle Harrod, Administrator

Approved/Vetoed by the County Executive Feb. 4, 2025


Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by Amendment; Underlining indicates material added by Amendment.

1 **WHEREAS**, the U.S. Department of Housing and Urban Development (HUD) approved
2 the County’s application for loan guarantee assistance under Section 108 of the Housing and
3 Community Development Act of 1974, as amended, on September 24, 2024. Such assistance
4 will consist of the guarantee of notes or other obligations in the principal amount of \$5,848,000
5 plus interest, which shall be used to finance activities described in the County’s application for
6 the Waverly Winds and Ranleigh Court redevelopment projects; and

7
8 **WHEREAS**, the County is seeking to enter into a multi-year loan agreement (the
9 “Contract”) with HUD to receive funding under the Section 108 Loan Guarantee Assistance
10 program to support Enterprise Community Development, Inc. and their efforts to redevelop two
11 (2) affordable rental communities in Columbia, Maryland; and

12
13 **WHEREAS**, the County Council approved the County’s Annual Action Plan to HUD,
14 which specifically detailed the Section 108 Loan Guarantee Assistance program to support the
15 redevelopment projects at Ranleigh Court and Waverly Winds, by Council Resolution 39-2024
16 on May 6, 2024; and

17
18 **WHEREAS**, the County wishes to enter into a multi-year loan agreement with HUD as
19 detailed in the Contract, substantially in the form attached as Exhibit A; and

20
21 **WHEREAS**, the Subrecipients of the multi-year loan agreement will be Waverly Winds
22 Four, LLC, Ranleigh Court, LLC, and Waverly Winds LLC. The Subrecipient Collateral will
23 consist of liens on the property of each project established through a mortgage or deed of trust
24 signed by each Subrecipient as mortgagor; and

25
26 **WHEREAS**, the Subrecipients will make annual payments on the Section 108 Guarantee
27 Assistance Loan from project cash flow over the loan term; and

28
29 **WHEREAS**, the County anticipates using future allocations of its federal Community
30 Development Block Grant (CDBG) funds to make annual payments on the Section 108 Loan for
31 the 20-year loan term; and

1
2 **WHEREAS**, As security for repayment of the Note, and such other charges as may be
3 authorized in the Agreement, the County pledges to establish a debt service reserve account in
4 its General Fund in the amount of \$550,000; such debt service reserve account would be
5 established at a third party location if any of the County's bond ratings fall below the Minimum
6 Bond Rating as stated in the Agreement; and

7
8 **WHEREAS**, the Contract requires the payment by the County of funds from an
9 appropriation in a later fiscal year; and therefore, requires County Council approval as a multi-
10 year agreement pursuant to Section 612 of the Howard County Charter.

11
12 **NOW, THEREFORE,**

13
14 ***Section 1. Be It Enacted** by the County Council of Howard County, Maryland that in
15 accordance with Section 612 of the Howard County Charter, it approves the multi-year Contract
16 between Howard County, Maryland and the U.S. Department of Housing and Urban
17 Development which shall be in substantially the same form as Exhibit A attached to this Act.*

18
19 ***Section 2. And Be It Further Enacted** by the County Council of Howard County, Maryland that
20 the County Executive is hereby authorized to execute the Contract for such term in the name of
21 and on behalf of the County.*

22
23 ***Section 3. And Be It Further Enacted** by the County Council of Howard County, Maryland that
24 the County Executive, prior to execution and delivery of the Contract, may make such changes or
25 modifications to the Contract as he deems appropriate in order to accomplish the purpose of the
26 transactions authorized by this Act, provided that such changes or modifications shall be within
27 the scope of the transactions authorized by this Act; and the execution of the Contract by the
28 County Executive shall be conclusive evidence of the approval by the County Executive of all
29 changes or modifications to the Contract, and the Contract shall thereupon become binding
30 upon the County in accordance with its terms.*

- 1 ***Section 4. And Be It Further Enacted*** by the County Council of Howard County, Maryland that
- 2 *this Act shall be effective immediately upon its enactment.*

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on _____, 2025.

Michelle R. Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2025.

Michelle R. Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2025.

Michelle R. Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2025.

Michelle R. Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2025.

Michelle R. Harrod, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2025.

Michelle R. Harrod, Administrator to the County Council



Howard County

Internal Memorandum

Subject: Testimony on Council Bill No. 3-2025, an ACT authorizing the County to sign a multi-year agreement, contract and related loan documents for Section 108 Loan Guarantee Assistance funding.

To: Brandee Ganz, Chief Administrative Officer

From: Kelly Cimino, Director of Department of Housing and Community Development
K. Cimino

Date: December 13, 2024

Summary

Bill 3-2025 provides authorization to the County Executive to sign a multi-year agreement, contract and related loan documents, and establish a debt service reserve account, to secure a loan of \$5,848,000 from the U.S. Department of Housing and Urban Development for the Ranleigh Court and Waverly Winds redevelopment projects in Columbia, Maryland. This authorization is required under Section 612 of the County Charter.

Background

The County Council approved the County's Annual Action Plan to HUD, which specifically detailed the Section 108 Loan Guarantee Assistance program to support the redevelopment projects at Ranleigh Court and Waverly Winds, by Council Resolution 39-2024 on May 6, 2024. Section 108 funds will be used to support project costs associated with relocation, demolition, remediation, and site preparation. Both redevelopment projects are aligned with Howard County's FFY2020 – 2024 HUD Consolidated Plan and meet the CDBG national objective of activities benefitting low- and moderate-income individuals.

Fiscal Impact

Howard County has been a HUD entitlement jurisdiction since 1996 and receives a federal funding allocation each year. Howard County's Fiscal Year 2024 allocation of federal Community Development Block Grant (CDBG) and Home Investment Partnership Program (HOME) funds totaled \$1,823,419.65. These grant funds provide the financial tools to support low-to-moderate income individuals, families, and communities to address homelessness, affordable housing challenges, aging infrastructure, and economic hardships.

Since Section 108 loans are federally guaranteed, the County can borrow up to five times of its current CDBG allocation to access loan capital for larger projects at a low interest rate. Based on the County's current CDBG allocation and outstanding Section 108 balance as of May 14, 2024,



Howard County

Internal Memorandum

the County's maximum borrowing authority is \$6,633,650. HUD encourages jurisdictions to consider using this CDBG multiplier for high priority housing projects, such as housing rehabilitation and mixed-use development.

Conclusion

This bill authorizes the County Executive to sign a multi-year Agreement, contract and other loan documents, to receive the Section 108 Loan Guarantee Assistance funds to support the creation and preservation of affordable housing units in Howard County.

Please contact my office with any questions. Thank you for your consideration.

Cc: Elizabeth Walsh, Council Chair
Opel Jones, Council Vice Chair
Christiana Rigby, Councilperson
Deb Jung, Councilperson
David Yungmann, Councilperson
Michelle Harrod, Administrator
Lisa Geerman, Acting County Auditor
Kristen Perry, Deputy County Solicitor
Constance Tucker, Principal Counsel

**CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER
SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT
OF 1974, AS AMENDED, 42 U.S.C. §5308**

BY AND BETWEEN

**THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
("Secretary")**

AND

**Howard County, Maryland
("Borrower")**

Dated _____

**Waverly Winds and Ranleigh Court Project
NOTE NUMBER B-23-UC-24-0012**

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**CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER
SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT
OF 1974, AS AMENDED, 42 U.S.C. §5308**

Date of Contract _____

**ARTICLE I
INTRODUCTION**

1.1 Background.

This Contract is entered into between Howard County, Maryland, a body corporate and politic the maker of the Notes, and Secretary, the Guarantor for the Guarantee of the Notes. This Contract is under the Loan Guarantee Commitment. The Guarantee is made pursuant to Section 108 and 24 CFR part 570, subpart M. Unless amended or superseded, or as otherwise provided in Section 1.2(a), this Contract covers every promissory note numbered B-23-UC-24-0012 issued by Borrower and guaranteed by Secretary.

1.2 Other Binding Documents.

- (a) **Grant Agreement.** The Contract and the Notes are hereby incorporated in and made a part of the Grant Agreement and all subsequent Grant Agreements authorized by the Secretary under subsequent funding approvals for future grants authorized under the Act until final repayment and discharge in accordance with Section 7.6.
- (b) **Note, Fiscal Agency Agreement, and Trust Agreement.** The Notes, the Fiscal Agency Agreement, and the Trust Agreement, as may be amended, supplemented, or otherwise modified from time to time, are hereby incorporated into the Contract. Borrower hereby agrees to the covenants and obligations (including all applicable fees and charges) of the “Borrower” or “Borrowers” in the Notes, Fiscal Agency Agreement, and Trust Agreement, as amended, supplemented, or otherwise modified, as if they were contained in this Contract.
- (c) **Other Contracts.** This is the first Contract under the Loan Guarantee Commitment, which was approved by the Secretary on September 24, 2024, in the amount of \$5,848,000.

1.3 Guarantee Fee.

The Borrower shall pay to the Secretary a fee equal to the Guarantee Fee of each Advance to offset the credit subsidy cost to the Federal Government associated with guaranteeing the Notes. The Guarantee Fee is due to the Secretary no later than the time of the disbursement of each Advance to the Borrower. The fee is payable from allocations or grants which have been made to Borrower under Section 106 of the Act (including Program Income) or from other sources. The Guarantee Fee is only payable from Guaranteed Loan Funds if the fee is deducted from the Advance.

1.4 Use of Funds.

(a) [Reserved]

(b) [Reserved]

(c) **Subrecipient Use of Funds.** The Borrower shall only use Guaranteed Loan Funds to:

- (1) Provide a loan to Subrecipient for the Project in accordance with this Section. The Borrower shall require Subrecipient to carry out the following activities with the Guaranteed Loan Funds in compliance with the Act and 24 CFR Part 570, subpart M:
 - A. Relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations in accordance with 570.703(d) pursuant to 570.606.
 - B. Construction of a public facilities in accordance with 24 CFR 570.703(l), to the extent eligible under 24 CFR 570.201(e), and remediation of known or suspected environmental contamination in connection with these activities. Due to the activity needing to be carried out by a for-profit entity, a waiver of the first paragraph of 24 CFR 570.703 and 24 CFR 570.703(l) was needed in order for the for-profit special purpose entity to carry out the activity.
 - C. Payment of fees charged by HUD pursuant to 24 CFR 570.712, pursuant to 24 CFR 570.703(n).
 - D. The CDBG national objective to be met by the eligible activity is benefit to low- and moderate-income persons by providing permanent residential structures, of which at least 51 percent of the units will be occupied by low- and moderate-income households, in accordance with 24 CFR 570.208(a)(3).

1.5 Terminology.

Terms used in this Contract with initial capital letters are defined in Article II of this Contract.

ARTICLE II DEFINITIONS

2.1 General Definitions.

The following terms used in this Contract are defined as follows:

- (1) **1940 Act** is the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).
- (2) **Act** means the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq., as amended.
- (3) **Advance** is the amount advanced to or on behalf of the Borrower under the Notes by the Holder of such Notes pursuant to the terms of this Contract, Notes, and Fiscal Agency Agreement. Advances may only be made prior to or on the Conversion Date.
- (4) **Aggregate Principal Amount** shall have the meaning given to it in the Notes.
- (5) **Authorized Investments** mean the investments authorized by the Secretary in accordance with Section 5.2(b).
- (6) **Authorization Order** is the written order of the Secretary delivered to the Fiscal Agent pursuant to Section 2.03 and Section 2.04(a) or (c) of the Fiscal Agency Agreement, in substantially the same form as set forth in the Fiscal Agency Agreement.
- (7) **BEDI** means Brownfields Development Initiative pursuant to section 108(q) of the Act.
- (8) **Borrower Security Agreement** means, a security agreement that describes the Collateral being pledged by Borrower in a manner that provides the Secretary with a valid security interest under the laws of the Borrower's State or Commonwealth.
- (9) **Business Day** is a day on which banking institutions in New York City are not required or authorized to remain closed and on which the Federal Reserve Bank of New York and the New York Stock Exchange are not closed.
- (10) **CDBG** means Community Development Block Grants available to Borrower under Section 106 of the Act (including Program Income derived therefrom).
- (11) **Collateral** means the collateral listed in Article XII.
- (12) **Commitment Schedule** means the Commitment Schedule that is a part of the Notes, which may be amended as provided in the Notes.
- (13) **Contract** is this Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974, as Amended, 42 U.S.C. §5308 entered into by Borrower and Secretary on the Effective Date.
- (14) **Conversion Date** means the date (if any) upon which the Notes are delivered by the Holder to the Fiscal Agent against payment therefore by the purchasers selected by the Secretary to make such payment and assigned to Bank of New York Mellon (or any successor thereto) acting in its capacity as Trustee pursuant

to a Trust Agreement between the Secretary and the Trustee, dated as of January 1, 1995, as such agreement may be amended or supplemented.

- (15) **Conversion Date Advance** is an Advance made on the Conversion Date. A Conversion Date Advance may be an initial Advance or may be a subsequent Advance pursuant to the terms of this Contract, Notes, and Fiscal Agency Agreement.
- (16) **Custodial Agreement** is an agreement that sets forth the terms of the Custodian's maintenance of physical copies of the Security Documents.
- (17) **Custodian** is the financial institution or other firm or institution, acceptable to the Secretary, that shall act as custodian for the documents specified in Article XIV of this Contract.
- (18) **Default** means one or more of the events described in Section 9.1 of this Contract.
- (19) **Deposit Account(s)** means one or more separate, identifiable accounts with a financial institution whose deposits or accounts are Federally insured and which hold Guaranteed Loan Funds and/or Loan Repayment Funds. Where possible and permitted by the financial institution and the Secretary, the Guaranteed Loan Funds Cash Account and Loan Repayment Funds Cash Account may be separate, identifiable general ledger cash accounts in the accounting record for a single Deposit Account.
- (20) **EDI** means Economic Development Initiative pursuant to section 108(q) of the Act.
- (21) **Effective Date** is the date the last Party signed the Contract
- (22) **FIRREA** is the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73.
- (23) **Fiscal Agency Agreement** is the Amended and Restated Master Fiscal Agency Agreement among the Secretary of Housing and Urban Development and The Chase Manhattan Bank (formerly known as Chemical Bank) as Fiscal Agent, Dated as of May 17, 2000.
- (24) **Fiscal Agency/Trust Agreements** means both the Fiscal Agency Agreement and Trust Agreement.
- (25) **Fiscal Agent means Bank of New York Mellon.**
- (26) **Funding Date** is the date of an Advance under such Notes, which shall be the Wednesday of any week as requested by the Borrower pursuant to Section 2.04 of the Fiscal Agency Agreement, unless otherwise agreed upon by the Holder of such Notes and the Secretary. If Wednesday is not a Business Day, then the Funding Date shall be the next succeeding Business Day.
- (27) **Government Money Market Fund** is defined in or interpreted under Rule 2a-7 under the Investment Company Act of 1940, as amended.
- (28) **Government Obligation** means a direct obligation of, or any obligation for which the full and timely payment of principal and interest is guaranteed by, the

United States of America, including but not limited to, United States Treasury Certificates of Indebtedness, Notes and Bonds - State and Local Government Series or certificates of ownership of the principal of or interest on direct obligations of, or obligations unconditionally guaranteed by, the United States of America, which obligations are held in trust by a commercial bank which is a member of the Federal Reserve System and has capital and surplus (exclusive of undivided profits) in excess of \$100,000,000.

- (29) **Guarantee** means the Guarantee issued by the Secretary pursuant to section 108 of the Act.
- (30) **Guaranteed Loan Funds** are the funds paid or credited to the account of the Borrower pursuant to the Notes.
- (31) **Guaranteed Loan Funds Cash Account** is the Deposit Account containing Guaranteed Loan Funds drawn down by the Borrower to pay for eligible Project costs.
- (32) **Guaranteed Loan Funds Investment Account** is the Investment Account containing investments purchased with Guaranteed Loan Funds.
- (33) **Guarantor** means the Secretary.
- (34) **IDIS** is the Integrated Disbursement and Information Online System or any successor HUD reporting system, as required by 24 CFR 570.507.
- (35) **Intercreditor Agreement** means an intercreditor agreement, subordination agreement, or similar agreement that affects the Borrower's rights under the Security Documents or the rights assigned to HUD under the Security Documents pledged to secure the Notes.
- (36) **Interest Due Date** is the day interest payments are due, as provided in the Notes.
- (37) **Investment Account(s)** means one or more separate, identifiable accounts with a financial institution whose deposits or accounts are Federally insured and which hold investments purchased with Guaranteed Loan Funds and/or Loan Repayment Funds. Where possible and permitted by the financial institution and the Secretary, the Guaranteed Loan Funds Investment Account and Loan Repayment Funds Investment Account may be separate, identifiable investment accounts in the accounting record for a single Investment Account.
- (38) **Letter Agreement for Section 108 Loan Guarantee Program Deposit Account** is Attachment I.
- (39) **Letter Agreement for Section 108 Loan Guarantee Program Investment Account** is Attachment II.
- (40) **Lien Release** is a release of a lien for Collateral in accordance with state law as reflected in Attachment IV.
- (41) **Loan** is the Section 108 loan guaranteed by the Secretary and evidenced by this Contract and the Notes.

- (42) **Loan Repayment Funds** are the funds defined in Section 12.1(2) and Section 12.1(3) of this Contract, Guaranteed Loan Funds required to be deposited into the Loan Repayment Funds Cash Account in accordance with Section 5.1(g) of this Contract, or proceeds from any of the Specific Collateral defined in Section 12.2
- (43) **Loan Repayment Funds Cash Account** is the Deposit Account containing Loan Repayment Funds.
- (44) **Loan Repayment Funds Investment Account** is the Investment Account containing investments purchased with Loan Repayment Funds.
- (45) **M&E** is machinery and equipment.
- (46) **New Market Tax Credits** mean the credits issued pursuant to Section 45(D) of the Internal Revenue Code (26 U.S.C. 45D).
- (47) **Note Payment Date** is 3:00 P.M. (New York City time) on the seventh Business Day preceding the relevant Interest Due Date or Principal Due Date (each as defined in the Notes).
- (48) **Notice of Impaired Security** means the notice issued to Borrower by the Secretary (in the Secretary's sole discretion) when the Secretary has determined that Pledged Grants are unlikely to be available to pay when due the payments to become due on the Notes, or defease (or, if permitted, prepay) the full amount outstanding under this Contract and the Notes.
- (49) **Optional Redemption** means, consistent with the Notes, when the Borrower may pay, in whole or in part, as of the Interest Due Date on or after the date specified in in the Schedule P&I, Principal Amounts that are indicated as being eligible for "Optional Redemption" on the Schedule P&I.
- (50) **Parties** are the Borrower and the Secretary.
- (51) **Pledged Grants** means
- A. All allocations or grants which have been made or for which the Borrower may become eligible under Section 106 of the Act, as well as any grants which are or may become available to the Borrower pursuant to Section 108(q), including EDI and/or BEDI funds.
 - B. Program Income
 - C. All proceeds (including insurance and condemnation proceeds) from any of the foregoing.
- (52) **Pledged Funds(s)** means:
- A. All allocations or grants which have been made or for which the Borrower may become eligible under Section 106 of the Act, as well as any grants which are or may become available to the Borrower pursuant to Section 108(q), including EDI and/or BEDI funds.
 - B. All funds in the Guaranteed Loan Funds Cash Account and the Loan Repayment Funds Cash Account
 - C. Program Income

- D. All investments in the Guaranteed Loan Funds Investment Account and Loan Repayment Investment Account
 - E. All proceeds (including insurance and condemnation proceeds) from any of the foregoing.
 - F. All Specific Security listed in Section 12.2 of this Contract.
- (53) **Principal Amount**, consistent with each Note, means:
- A. before the Conversion Date for this Note, the aggregate amount of Advances made for each Principal Due Date specified in the Commitment Schedule attached to the Note, less the amount of any redemptions pursuant to Section I.D. of the Note, and any principal repayment; and
 - B. on or after the Conversion Date, the principal amount (if any) stated for each Principal Due Date in Schedule P&I attached hereto, less the amount of any principal repayment and any Optional Redemptions made pursuant to Section III of the Note and the Trust Agreement.
- (54) **Principal Due Date** is the day principal payments are due, as provided in the Notes.
- (55) **Program Income** has the meaning contained in 24 CFR 570.500(a).
- (56) **Project** is for each of Notes 1 through 3, the provision of a loan to a Subrecipient to construct a public facility in accordance with 24 CFR 570.703(l), to the extent eligible under 24 CFR 570.201(c); remediate known or suspected environmental contamination; provide relocation assistance, in accordance with 570.703(d) pursuant to 570.606; and provide permanent residential structures, of which at least 51 percent of the units will be occupied by low- and moderate-income households, in accordance with 24 CFR 570.208(a)(3).
- (57) **Remedial Actions** have the meaning in Section 10.1.
- (58) **Rule 2a-7** is Rule 2a-7 under the Investment Company Act of 1940.
- (59) **Schedule P&I** is the schedule of principal and interest payments due under the Notes after the Notes have been converted to a fixed rate on the Conversion Date in accordance with Article IV.
- (60) **Secretary or HUD** means the Secretary of the United States Department of Housing and Urban Development or a person with the delegated authority to act on behalf of the Secretary of the United States Department of Housing and Urban Development.
- (61) **Section 104(d)** means Section 104(d) of the Act (42 USC 5304(d)).
- (62) **Section 108 Loan Guarantee Program** means the loan guarantee program authorized by Section 108 of the Act, as described in the Act and 24 CFR part 570.
- (63) **Section 108 Payment Obligations** are the Borrower's obligations to pay when due and payable
- (64) **Section 108 Loan Guarantee Status Report** is the status report required in Section 6.3 and attached to this Contract as Attachment VI.

- (65) **Security Documents** are the documents listed in Section 14.2 of this Contract.
- (66) **Special Conditions** are any conditions described in Article XVII of this Contract.
- (67) **Specific Security** shall mean the specific forms of security listed in Section 12.2.
- (68) **Trust Agreement** is the Trust Agreement by and between the Secretary of the United States Department of Housing and Urban Development, as sponsor of a Trust and Chemical Bank, as Trustee, dated as of January 1, 1995, as amended by Amendment No. 1 to Trust Agreement by and between the Secretary of the United States Department of Housing and Urban Development, as sponsor of a Trust and JPMorgan Chase Bank (Formerly Known as the Chase Manhattan Bank, Formerly Known as Chemical Bank), as Trustee, effective June 30, 2004.
- (69) **Trustee** means Bank of New York Mellon.
- (70) **UCC Financing Statements** means any financing statements required to be filed to secure an interest in collateral under the commercial code in the State or Commonwealth of the Borrower.
- (71) **Underwriters** means the underwriters of a public offering of section 108 notes in accordance with the Underwriting Agreement.
- (72) **Underwriting Agreement** means the agreement entered into between Secretary and the Underwriters.
- (73) **Uniform Commercial Code or UCC** means the commercial code in the State or Commonwealth of the Borrower.
- (74) **URA or Uniform Relocation Assistance and Real Property Acquisition Policies Act** is 42 USC 5601 et seq.
- (75) **Urban County** has the meaning in 24 CFR 570.3.

2.2 Borrower-Specific Definitions.

The following terms used in this Contract are defined as follows:

- (1) **Application** means the Borrower's HUD-approved application to the Section 108 Loan Guarantee Program (B-23-UC-24-0012).
- (2) **Borrower** is the Howard County, State of Maryland.
- (3) **Borrower Authorization and Pledge** means the ordinance(s) or resolution(s) numbered 39-2024 issued on May 6, 2024 by the Borrower which authorizes issuance of the Notes and the execution of the Contract, a certified copy of which is attached as Attachment VII to this Contract.
- (4) **Grant Agreement(s)** is the grant agreement entered into between Borrower and the Secretary dated July 31, 2023, and numbered B-23-UC-24-0012 and all future grant agreements entered into between Secretary and Borrower.
- (5) **Guarantee Fee** is 1.64% of each Advance. This fee, which was announced on October 26, 2023, 88 FR 73532 for Section 108 loan guarantee disbursements under loan guarantee commitments awarded in FY 2024.

- (6) **Loan Guarantee Commitment** is the funding approval (form HUD-7082) numbered B-23-UC-24-0012, which was approved by the Secretary on September 24, 2024, in the amount of \$5,848,000.
- (7) **Maximum Commitment Amount** is \$5,848,000.
- (8) **Note** means each of the three promissory notes made by Borrower, identified as Note #1 - Ranleigh Court, Note #2 – Waverly Winds 4%, and Note #3 – Waverly Winds 9% respectively. “Notes” means all of the Notes collectively. Collectively, the three Notes are in the Maximum Commitment Amount.

2.3 Security Definitions.

(a) Debt Service Reserve Account and Debt Service Reserve Investment Account

- (1) **Debt Service Reserve Account** is the account described in Section 12.2 and Section 14.2 of this Contract, and is the account that is the subject of the Deposit Account Control Agreement.
- (2) **Debt Service Reserve Investment Account** is the account described in Section 12.2 and Section 14.2 of this Contract, and is an account that is the subject to the Letter Agreement for Section 108 Loan Guarantee Program Investment Account.
- (3) **Deposit Account Control Agreement** is the agreement entered into by the Borrower, [financial institution], and the Secretary that is incorporated in its entirety into this Contract and included as Attachment X to the Contract.
- (4) **Debt Service Reserve Pledge, Assignment, and Security Agreement** means the pledge, assignment, and security agreement issued by Borrower to provide the Secretary a security interest in the Debt Service Reserve Account.
- (5) **Necessary Account Balance** is an account balance not less than \$550,000 or the aggregate of the highest annualized payment of principal and interest due under the Notes when such amount is lower.

Paragraphs (b) through (g) reserved.

(h) Internal Reserve

- (1) **Minimum Bond Rating** means a General Obligation (or General Obligation-related) bond rating in the AA category or higher from either Rating Agency.
- (2) **Necessary Reserve Fund Balance** is a balance of not less than \$550,000 or the aggregate of the highest annualized payment of principal and interest due under the Notes when such amount is lower.
- (3) **Pledged Reserve Fund Revenues** means all the revenues pledged by the Borrower, as described in the Reserve Fund Authorization and Pledge, which may consist of tax revenues, revenues generated by fees, miscellaneous non-ad valorem revenues, and/or such other non-Federal revenues.

- (4) **Rating Agency** means Fitch or Standard and Poor's
- (5) **Reserve Fund** is the fund, held entirely by the Borrower in a manner described in the Reserve Fund Authorization and Pledge in an amount not less than \$550,000 or the aggregate of the highest annualized payment of principal and interest due under the Notes when such amount is lower.
- (6) **Reserve Fund Authorization and Pledge** means the ordinance(s) or resolution(s) numbered _____ issued on _____ by the Borrower which authorizes the creation of the Reserve Fund, pledges and authorizes the setting aside of sufficient Governmental Funds Revenues to meet to Necessary Reserve Fund Balance requirements contained in this Contract, and covenants not to incur liens on Pledged Reserve Fund Revenues, a certified copy of which is attached as Attachment IX of the Contract.

2.4 Additional Entity Definitions.

The following terms used in this Contract are defined as follows:

(a) **[Reserved]**.

(b) Subrecipients

(1) **Subrecipient** means the following entity for each associated Note:

- A. For Note 1, Ranleagh Court, LLC, a limited liability company organized under the laws of Maryland and doing business in good standing under the laws of Maryland;
- B. For Note 2, Waverly Winds Four, LLC, a limited liability company organized under the laws of Maryland and doing business in good standing under the laws of Maryland;
- C. For Note 3, Waverly Winds, LLC, a limited liability company organized under the laws of Maryland and doing business in good standing under the laws of Maryland;

(2) **[Reserved]**

2.5 Additional Obligor Security Definitions. [Reserved]

2.6 Additional Subrecipient Security Definitions.

The following definitions shall apply to the pledge of Subrecipient Collateral under this Contract:

(a) Subrecipient Agreements

(1) **Collateral Assignment of Subrecipient Interests** is the collateral assignment executed by Borrower and delivered to the Secretary to provide the Secretary with

assignment of Borrower's rights in the Subrecipient Agreement and a security interest in the Subrecipient Collateral.

- (2) **Subrecipient Collateral** means the Subrecipient's collateral described in Section 12.4 and collaterally assigned to the Secretary through the Collateral Assignment of Subrecipient Interests.
- (3) **Subrecipient Agreement** means each Section 108 Loan Agreement entered into between Borrower and each Subrecipient, which contains all provisions required to require that Subrecipient complete the Project and all activities described in Section 1.4(c)(1) in accordance with all applicable requirements, including but not limited to those requirements contained in 24 CFR 570.503 and this Contract. The Subrecipient Agreement shall be collaterally assigned by the Borrower to the Secretary through the Collateral Assignment of Subrecipient Interests.
- (4) **[Reserved]**
- (5) **Subrecipient Loan** means the loans of Guaranteed Loan Funds made by Borrower to each Subrecipient for its portion of the Project.
- (6) **Subrecipient Loan Agreement** means each Section 108 Loan Agreement between Borrower and each Subrecipient _____ (Ranleagh Court), _____ (Waverly Winds 9%, and _____ (Waverly Winds 4%), which is subject to the Collateral Assignment of Subrecipient Interests. The Subrecipient Agreement and the Subrecipient Loan Agreement may be the same or different legal instruments
- (7) **Subrecipient Note** means each note issued by each Subrecipient to Borrower in accordance with Section 12.4, all of which are collectively subject to the Collateral Assignment of Subrecipient Interests.
- (8) **Subrecipient Security Documents** means the security documents listed in Section 14.4 of the Contract.

(b) **[Reserved]**

(c) Subrecipient Real Property

- (1) **Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing** means the following liens and security interests described in Section 12.4 of this Contract for each Subrecipient Note, which secure Borrower and which are collaterally assigned by the Borrower to the Secretary through the Collateral Assignment of Subrecipient Interests:
 - A. mortgage or deed of trust covering the Subrecipient Property;
 - B. assignment of any rights, titles, and interests in and to any leases covering the Subrecipient Property and any rents derived from the Property; and
 - C. assignment of any and all rights titles, and interests in and to any permits, licenses, agreements, and other intangible personal property rights covering the Subrecipient Property.
- (2) **Subrecipient Property** means the Subrecipient Real Property including all water rights, air rights, and other real property interests, together with any fixtures

located on and any personal property affixed to, installed in, or attached to the real property, whether now owned or here-after acquired.

- (3) **Subrecipient Real Property** means the real property described in Attachment VIII to this Contract.
- (4) **Subrecipient Real Property Required Appraised Value** means an estimate of the “as completed” fair market value of not less than \$ 7,310,000.

Paragraphs (d) through (f) are Reserved

ARTICLE III LOAN ADVANCES

3.1 Initial Advance Procedures for Initial Advance.

If the Borrower is not requesting its first Advance on the Conversion Date, the Borrower shall submit the following signed documents to the Secretary in order for HUD to process the Borrower's first Advance under this Contract and each Note:

- (1) this executed Contract;
- (2) each Note;
- (3) an opinion in accordance with Article XV;
- (4) a request for Advance in accordance with Section 3.4;
- (5) documents related to the Collateral as required in Sections 14.2;
- (6) a SF-1194 signature card; and
- (7) information demonstrating compliance with program reporting requirements pursuant to Article VI.

The Borrower shall submit the documents listed above to be received by the Secretary at least ten Business Days prior to the Borrower's proposed Funding Date. The Borrower may not request an initial Advance more than 30 calendar days prior to the Borrower's proposed Funding Date. At least two Business Days prior to the next available Funding Date, the Secretary shall, except as otherwise provided in Sections 9.5 and Section 10.1(3), deliver a corresponding Authorization Order to the Fiscal Agent in accordance with Section 2.03 or 2.04 of the Fiscal Agency Agreement for the applicable Funding Date

3.2 Loan Advance Procedures for Subsequent Non-Conversion Date Advances.

No advances of any kind may be made on the Notes after its Conversion Date. In order for the Secretary to process a subsequent Advance after the initial Advance, the Borrower must submit a request for Advance. The Borrower shall submit such requests for Advances to be received by the Secretary not less than five Business Days prior to the proposed Funding Date. At least two Business Days prior to the next available Funding Date, the Secretary shall, except as otherwise provided in Sections 9.5 and Section 10.1(3), deliver a corresponding Advance Order to the Fiscal Agent in accordance with Section 2.03 or 2.04 of the Fiscal Agency Agreement for the applicable Funding Date.

3.3 Loan Advance Procedures for Conversion Date Advances.

The Borrower may request a Conversion Date Advance under each Note. If the Conversion Date Advance is the first Advance Borrower is requesting under each Note and Contract, Borrower shall submit the documents required in Section 3.1 together with the completed Schedule P&I approved by the Secretary. If the Conversion Date Advance is a subsequent Advance under the Note and Contract, the Borrower shall submit a request for Conversion

Date Advance to the Secretary with the completed Schedule P&I approved by the Secretary. All requests for Conversion Date Advances must be made at least ten Business Days prior to the Conversion Date. All requests for Conversion Date Advances must include the name of the Borrower, each Principal Due Date for which a Conversion Date Advance is requested, and the amount of each Conversion Date Advance. At least two Business Days prior to the next available Funding Date, the Secretary shall deliver to the Fiscal Agent an Authorization Order for each Note in which the Conversion Date Advance is made in accordance with Section 2.03 or 2.04 of the Fiscal Agency Agreement for the applicable Funding Date.

3.4 Format for Request for Advances.

All requests for Advances or Conversion Date Advances by the Borrower under each Note shall:

- (1) be in writing;
- (2) specify the amount of the Advance requested;
- (3) identify the Note by –
 - A. Borrower,
 - B. Note number,
 - C. Maximum Commitment Amount, and
 - D. Project name or other information, if necessary to distinguish the Note from other Notes in the same Loan Guarantee Commitment;
 - E. be addressed to the Secretary at the address for notices specified in Section 11.1 of this Contract;
 - F. be signed by two authorized officials of the Borrower; and
 - G. be in the form prescribed by the Secretary.

The Borrower shall request Advances in increments of \$1,000 for any Principal Due Date and shall specify in its request the amount of the Advance to be allocated to each Commitment Amount or Principal Amount per Principal Due Date under each Note.

3.5 The Note: Advances and Records.

Advances under each Note shall be made upon the written request of the Borrower and the approval of the Secretary, pursuant to this Contract and the Fiscal Agency Agreement. Before the Conversion Date, the Commitment Schedule attached to each Note represents the principal repayment schedule for the Maximum Commitment Amount of the Note. After the Conversion Date, the Schedule P&I attached to each Note represented the principal repayment schedule for the Maximum Commitment Amount of the Note. At all times, the total amount of all Advances and Conversion Date Advances under each Note for all Principal Due Dates shall not exceed the Maximum Commitment Amount of the Note.

Prior to the Conversion Date, the total amount of Advances made by the Holder for each Principal Due Date under each Note shall not exceed the applicable Commitment Amount for such Principal Due Date set forth in the Commitment Schedule of the Note. Prior to the Conversion Date, the Borrower agrees that the Fiscal Agent pursuant to the Fiscal Agency Agreement shall record the date and amount of each payment and Advance under each Note and shall maintain the books and records of all Advances for each Principal Due Date, interest rates on Advances, payments, and Principal Amounts outstanding for each Principal Due Date. On and after the Conversion Date, the Borrower agrees that the Trustee pursuant to the Trust Agreement will maintain the books and records of all payments on each Note and all Principal Amounts and interest rates on such Principal Amounts (each as to be set forth on Schedule P&I to the Note).

ARTICLE IV PUBLIC OFFERING

4.1 Conversion; Public Offering.

On the Conversion Date (if any), trust certificates backed by each Note (and similar notes issued by other Section 108 borrowers) will be purchased for a purchase price of the full principal amount thereof by the Underwriters pursuant to an Underwriting Agreement between the Underwriters and the Secretary, at a closing on such Conversion Date as determined by the Secretary and the Underwriters. The Borrower agrees that the interest rate at which the trust certificate of a specified maturity is sold to the Underwriters shall govern the interest rate inserted on the Conversion Date in Schedule P&I of each Note for the Principal Amount of corresponding maturity.

4.2 Consents.

By executing this Contract, the Borrower consents to the Secretary's selection of the Underwriters and authorizes the Secretary to negotiate with the Underwriters the terms of the Underwriting Agreement and of the public offering of interests in the trust certificates to investors (including the applicable interest rates). If Advances have been made in the Commitment Amount of a Note prior to or on the Conversion Date, the Borrower authorizes the Secretary to deliver a Schedule P&I to the Note on the Conversion Date in accordance with the Fiscal Agency/Trust Agreements. Concurrent with delivery of the Schedule P&I and the Secretary's Guarantee of the trust certificates at the closing on the Conversion Date, each Note shall be enforceable in accordance with its terms including Schedule P&I. In addition, the Secretary reserves the right to notify the Borrower not less than one calendar month in advance of a specified Conversion Date that the Notes will be sold to the Underwriters on such date, if the Secretary in his/her sole discretion determines that market conditions or program needs require the participation of the Borrower in the proposed public offering.

In addition, the Borrower ratifies and consents to the Secretary's selection of the Fiscal Agent/Trustee and agrees to the respective terms of the Fiscal Agency/Trust Agreements as may be amended, supplemented, or otherwise modified from time to time. The Secretary shall select a new Fiscal Agent or Trustee if the Fiscal Agent or Trustee resigns or is removed by the Secretary. The Borrower hereby consents in advance to any such selection and to any changes in the Fiscal Agency/Trust Agreements agreed to by any Fiscal Agent or Trustee and the Secretary, subject to the requirement that the Fiscal Agency/Trust Agreements shall in no event require payment of fees or charges, reimbursement of expenses, or any indemnification by the Borrower from any source other than funds pledged pursuant to Article XII of this Contract.

**ARTICLE V
LOAN ACCOUNTS**

5.1 Deposit Account(s).

(a) **Opening the Deposit Account.** The Borrower shall open and continuously maintain one or more separate, identifiable accounts with a financial institution whose deposits or accounts are Federally insured for:

- (1) Guaranteed Loan Funds; and,
- (2) (if necessary) Loan Repayment Funds

A Letter Agreement for Section 108 Loan Guarantee Program Deposit Account must be executed for the Deposit Account(s) when each Deposit Account is established, and a signed Attachment I shall be submitted to the Secretary with Borrower's request for Borrower's initial Advance (or a Conversion Date Advance if such Advance is the first Advance requested by Borrower under the Notes and this Contract).

(b) **Depositing Guaranteed Loan Funds in the Deposit Account.** Except for funds deducted on the Conversion Date pursuant to Section 8.3 and fees and charges deducted by the Fiscal Agent/Trustee pursuant to Section 8.1 and Section 8.2, the Guaranteed Loan Funds shall be electronically transferred in accordance with the Borrower's instructions for deposit in the Guaranteed Loan Funds Cash Account.

(c) **Establishing the Loan Repayment Funds Cash Account.** If the Borrower receives Loan Repayment Funds, the Borrower must establish a Loan Repayment Funds Cash Account. If permitted by the Borrower's financial institution and the Secretary, Borrower may establish and maintain separate, identifiable general ledger cash accounts in the accounting records for the Deposit Account that correspond to the Guaranteed Loan Funds Cash Account and the Loan Repayment Funds Cash Account. If this occurs, receipts and disbursements of funds in the Deposit Account shall be recorded in the corresponding general ledger for the applicable cash account, and the cash balance in the Deposit Account shall at all times reconcile to the sum of the cash balances in the Guaranteed Loan Funds Cash Account and the Loan Repayment Funds Cash Account.

If separate, identifiable general ledger cash accounts cannot be established for the Guaranteed Loan Funds and the Loan Repayment Funds within a single Deposit Account and the Borrower must establish a Loan Repayment Funds Cash

Account, then Borrower shall open two separate Deposit Accounts, one for the Guaranteed Loan Funds Cash Account and one for the Loan Repayment Funds Cash Account.

(d) **Withdrawals of Guaranteed Loan Funds.** The Borrower shall make withdrawals of Guaranteed Loan Funds from the Deposit Account only for:

- (1) payment of the costs of the approved Section 108 activities pursuant to Section 1.4,
- (2) for deposit in the Loan Repayment Funds Cash Account pursuant to Section 5.1(c) or Loan Repayment Investment Account pursuant to Section 5.1(f), or
- (3) for the temporary investment of funds pursuant to this Section 5.1(d).

The Borrower shall withdraw funds from the Guaranteed Loan Funds Cash Account for temporary investment within three Business Days after the balance of deposited funds in the Deposit Account exceeds the amount of the Federal deposit insurance on the Deposit Account. At that time, any balance of funds in the Guaranteed Loan Funds Cash Account(s) exceeding such insurance coverage shall be fully (100%) and continuously invested as described in Section 5.2(b), and held in the Investment Account(s) established pursuant to Section 5.1.

(e) **Depositing Loan Repayment Funds in the Deposit Account.** All amounts pledged pursuant to Section 12.1(2) and (3) and Section 12.2 of this Contract shall be deposited immediately upon receipt in the Loan Repayment Funds Cash Account. The Loan Repayment Cash Account need only be established if and when the Borrower receives amounts pledged pursuant to Section 12.1(2) and (3) and Section 12.2. If one Deposit Account holds separately identifiable cash accounts for the Guaranteed Loan Funds Cash Account and the Loan Repayment Funds Cash Account, then all such deposits of amounts pledged pursuant to Section 12.1(2) and (3) and Section 12.2 shall be recorded in the Loan Repayment Funds Cash Account.

(f) **Withdrawals of Loan Repayment Funds.** Unless otherwise expressly authorized by the Secretary in writing and until final payment and discharge of the indebtedness evidenced by the Notes, the Borrower shall make withdrawals of Loan Repayment Funds from the Loan Repayment Funds Cash Account only for the purpose of:

- (1) paying interest and principal due on the Notes,

- (2) for payment of any other obligation of the Borrower under this Contract or the Fiscal
- (3) Agency/Trust Agreements, or
- (4) for the temporary investment of funds pursuant to this Section 5.1(f).

The Borrower shall withdraw funds from the Loan Repayment Funds Cash Account for temporary investment within three Business Days after the balance of deposited funds in the Deposit Account exceeds the amount of the Federal deposit insurance. At that time, any balance of funds in the Loan Repayment Cash Funds Account exceeding such insurance coverage shall be fully (100%) and continuously invested as permitted in Section 5.2(b), and held in the Investment Account established pursuant to Section 5.2(a).

- (g) **Disbursement Deadline.** All Guaranteed Loan Funds in the Guaranteed Loan Funds Cash Account must be withdrawn and disbursed by the Borrower for approved activities no later than one year from the date of the initial Advance of funds. The Guaranteed Loan Funds remaining in the Deposit Account after this date shall be immediately transferred to the Loan Repayment Funds Cash Account and (if applicable) the Loan Repayment Funds Investment Account. Following such transfer, the Guaranteed Loan Funds Cash Account and Guaranteed Loan Funds Investment Account may be closed.
- (h) **Account Vesting.** Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Notes, all right, title, and interest of the Borrower in and to the Deposit Account and Investment Account shall immediately vest in the Secretary. The Secretary may use all amounts contained in the Deposit and (if applicable) Investment Account to make payment under the Notes and this Contract or for the purchase of Government Obligations.
- (i) **Reimbursements.** Notwithstanding anything to the contrary in this Contract, Guaranteed Loan Funds advanced to the Borrower that will be used to reimburse Borrower for costs incurred for authorized activities (as described in Section 1.4 and Borrower's Application) and paid with non-Federal funds, shall not be subject to the requirements of this Section 5.1. Such Guaranteed Loan Funds paid or credited to the account of the Borrower under the Notes as reimbursements are not required to be deposited in the Deposit Account. In addition to the other requirements in this Contract, if Borrower is requesting Advances under the Notes as reimbursements, rather than to make direct payments for costs related to

authorized activities, Borrower must indicate in its requests for Advances that the requested Guaranteed Loan Funds will be used for reimbursements.

5.2 Investment Account(s)

- (a) **Opening and Depositing to the Investment Account.** All temporary investments required under Section 5.1(d) and Section 5.1(f) shall be held in trust for the benefit of the Secretary in one or more Investment Accounts established and designated as prescribed in the Letter Agreement for Section 108 Loan Guarantee Program Investment Account. The Investment Account need only be established if and when the Borrower is required to invest, or is otherwise authorized by the Secretary in writing to invest either the Guaranteed Loan Funds or Loan Repayment Funds, as described in Section 5.1(d) and Section 5.1(f).

A Letter Agreement for Section 108 Loan Guarantee Program Investment Account must be executed for the Investment Account when the Investment Account is established, and a signed copy shall be submitted to the Secretary within thirty days of its execution. All proceeds and income derived from such investments shall be returned to the Deposit Account. All temporary investments, whether or not required as above, shall be limited to investments described in Sections 5.2(b) below.

If applicable and permitted by the Borrower's financial institution and the Secretary, Borrower may establish and maintain separate, identifiable general ledger investment accounts in the accounting records for the Investment Account that correspond to the investments held in Guaranteed Loan Funds Investment Account and Loan Repayment Funds Investment Account. If this occurs, receipts and disbursements of funds in the Investment Account shall be recorded in the corresponding Section 108 general ledger for the applicable investment account, and the balance in the Investment Account shall at all times reconcile to the sum of the balances of the Guaranteed Loan Funds Investment Account and the Loan Repayment Funds Investment Account.

If separate, identifiable general ledger investment accounts cannot be established for the Guaranteed Loan Funds and the Loan Repayment Funds within a single Investment Account and Borrower must maintain both investment accounts, then the Borrower shall establish two separate Investment Accounts, one for the Guaranteed Loan Funds Investment Account and one for the Loan Repayment Funds Investment Account.

(b) **Authorized Investments.** Borrower may only invest funds in the Investment Account(s) in the following Authorized Investments:

(1) **Government Obligations.** All Government Obligations shall have maturities that are consistent with the cash requirements of the approved activities. In no event shall:

A. the Government Obligations in the Guaranteed Loan Funds Investment Account mature on or after one year from the date of the first Advance under this Contract.

B. the Government Obligations in the Loan Repayment Funds Investment Account have maturities which exceed one year.

(2) **Shares of a Government Money Market Fund.** The Government Money Market Fund must comply with Rule 2a-7 and operate as a “government money market fund,” as such term is defined in or interpreted under Rule 2a-7 under the 1940 Act. The fund must hold an AAAm, Aaa-mf, or AAAmmf rating from Standard & Poor’s, Moody’s and Fitch, respectively.

(3) **Other Investments.** Any other investments as authorized in writing by the Secretary.

ARTICLE VI REPORTING REQUIREMENTS

6.1 Monthly Account Balance Reports.

Borrower shall by the fifteenth day of each month provide the Secretary an electronic copy of a statement showing the balance of funds in the Guaranteed Loan Funds Cash Account and the withdrawals from the account during the preceding calendar month, and a statement identifying any obligations and their assignments in the Guaranteed Loan Funds Investment Account.

If Borrower establishes a Loan Repayment Funds Cash Account pursuant to Section 5.1(c) or Loan Repayment Funds Investment Account pursuant to Section 5.1(f), Borrower shall by the fifteenth day of each month provide the Secretary an electronic statement showing the balance of funds in the Loan Repayment Funds Cash Account and the withdrawals from the account during the preceding calendar month, and a statement identifying any obligations and their assignments in the Loan Repayment Funds Investment Account.

If the Borrower is permitted to maintain one Deposit Account with separate, identifiable general ledger cash accounts in the accounting records that correspond to the Guaranteed Loan Funds Cash Account and the Loan Repayment Funds Cash Account, then Borrower shall report balances for each such cash account. Similarly, if the Borrower is permitted to maintain one Investment Account with separate, identifiable general ledger investment accounts in the accounting records that correspond to the investments held in Guaranteed Loan Funds Investment Account and Loan Repayment Funds Investment Account, then Borrower shall report balances for each such investment account.

In all cases, Borrower shall e-mail the electronic copies required under this Section to 108reports@hud.gov.

6.2 IDIS Reporting.

The Borrower shall enter and update applicable information related to the use of Guaranteed Loan Funds and related program accomplishments in IDIS, as required by 24 CFR 570.507. Guidance can be obtained through published HUD resources.

6.3 Status Reports.

Borrower shall provide the Secretary with an electronic copy of the Section 108 Loan Guarantee Status Report. The Borrower must submit the Section 108 Loan Guarantee Status

Report no later than 120 calendar days after the date of the last and final disbursement of Guaranteed Loan Funds.

ARTICLE VII PAYMENT OF NOTES

7.1 Payments Due on Notes.

The Borrower shall pay to the Fiscal Agent/Trustee, as collection agent for the Notes, all amounts due pursuant to the terms of the Note. In accordance with each Note and the Fiscal Agency/Trust Agreements, payment shall be made by the Note Payment Date preceding the relevant Interest Due Date or Principal Due Date. If any Note Payment Date falls on a day that is not a Business Day, then the required payment shall be made on the next Business Day. Payment may be made as instructed by the Fiscal Agent/Trustee.

7.2 Use of CDBG, EDI, or BEDI Funds for Repayment.

Any funds available to the Borrower under Section 106 of the Act (including program income derived therefrom) are authorized to be used by the Borrower for payments due under each Note, this Contract, Optional Redemption, or the purchase of Government Obligations in accordance with Section 5.2(b).

Any funds specifically available to the Borrower pursuant to Section 108(q) for payments due on each Note or as a debt service reserve under an EDI or BEDI Grant Agreement which supports the Project and activities financed by each Note may also be used therefor; any other use of EDI or BEDI funds for such purposes shall require the prior written approval of the Secretary. Unless otherwise specifically provided in this Contract or expressly authorized by the Secretary in writing, the Borrower shall substantially disburse funds available in the Loan Repayment Funds Cash Account or the Loan Repayment Funds Investment Account before Pledged Grants are withdrawn for such purposes.

7.3 Secretary's Right to Restrict Use of Pledged Grants to Repayment.

If the Secretary determines that payments required under the Notes and this Contract are unlikely to be made as specified, the Secretary may give the Borrower notice that the Secretary may restrict the use of Pledged Grants for repayment in accordance with Section 7.4 for payment in satisfaction of the pledge. This restriction shall be in an amount estimated by the Secretary to be sufficient to ensure that all payments required under each Note and this Contract are made when due. This restriction may be given effect by conditioning the restricted amounts of the Pledged Grants to prohibit disbursement for purposes other than satisfaction of the pledge at the time such Pledged Grants are approved as grants, by limiting the Borrower's ability to draw down or expend the Pledged Grants for other purposes, or by disapproving payment requests submitted with respect to Pledged Grants for purposes other than satisfaction of the pledge.

7.4 Secretary's Right to Use Pledged Grants for Repayment.

The Secretary may use Pledged Grants to make any payment required of the Borrower under the Notes and this Contract, if such payment has not been timely made by the Borrower.

7.5 Defeasance.

After the Conversion Date, each Note shall be considered to have been paid through defeasance if the Borrower deposits with the Trustee either moneys or Government Obligations, which in the sole determination of the Secretary, mature and bear interest at times and in amounts sufficient (together with any other moneys on deposit with the Trustee for such purpose) to pay when due each payment under each Note and this Contract as each payment becomes due. The Aggregate Principal Amount of each Note or any unpaid Principal Amount may be defeased, in whole or in part, as of any Interest Due Date, or any other Business Day acceptable to both HUD and the Borrower. In accordance with each Note and the Trust Agreement, the Borrower shall give timely notice and written instructions to the Secretary and the Trustee concerning any principal amounts proposed to be defeased, including any Optional Redemptions proposed, which instructions shall be approved by the Secretary. If the unpaid Aggregate Principal Amount of a Note shall be defeased and considered to have been paid in full under the terms of this Section, then the Borrower shall be released from all agreements, covenants, and further obligations under that Note.

7.6 Final Payment and Discharge.

Upon final payment of all amounts due to Holders under each Note, including any payment made by the Secretary pursuant to the Guarantee, the Fiscal Agent/Trustee is required by the Fiscal Agency/Trust Agreements to return the Note to the Secretary. Upon final payment to the Secretary of any amounts due under this Contract, including any payments due because Secretary paid all or a portion of the Guarantee, the Secretary will cancel and return the Notes to the Borrower in discharge of the Borrower's obligations under the Notes.

ARTICLE VIII
SERVICING, TRUST ADMINISTRATION, AND PUBLIC OFFERING PAYMENTS

8.1 Payments Due Fiscal Agent.

The Borrower agrees to pay the fees of the Fiscal Agent as required by Exhibit G to the Fiscal Agency Agreement, and any additional amounts that may be due pursuant to Section 6.01 of the Fiscal Agency Agreement. If not paid by the Borrower by any other means prior thereto, the Borrower agrees that any such fees or additional amounts that have been incurred prior to an Advance may be deducted by the Fiscal Agent/Trustee from the proceeds of the Advance.

8.2 Payments Due Trustee.

The Borrower agrees to pay the Borrower's share, as determined by the Secretary, of the issuance, underwriting, and other costs related to the public offering and future administration of the Notes and the trust certificates, as approved by the Secretary, including the cost of reimbursement and/or compensation of the Trustee pursuant to the Trust Agreement, including Sections 3.11 and 7.01 thereof. In connection with the public offering on the Conversion Date, such payment shall either be made by wire transfer to the Trustee on the day prior to the Conversion Date or shall be deducted from any applicable Conversion Date Advance requested by Borrower.

8.3 Payments Due Underwriters.

The Borrower agrees to reimburse the Underwriters upon demand by the Secretary for the Borrower's share, as determined by the Secretary, of all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel) incurred in connection with a proposed public offering. This obligation to reimburse Underwriters includes if the Underwriters incur such additional costs for the public offering because of any refusal, inability, or failure on the part of the Borrower to timely submit in an acceptable form any document required by this Contract (including Section 6.1), or because of any withdrawal by the Borrower from the public offering after the Borrower has submitted a request for a Conversion Date Advance. By execution and delivery of this Contract to the Secretary, the Borrower expressly authorizes the Secretary to pay amounts due under this Section from Pledged Grants.

ARTICLE IX DEFAULT

9.1 Defaults.

At the Secretary's sole discretion, HUD may consider any one or more of the following events to constitute a Default under the Notes and this Contract:

- (1) failure by the Borrower to pay when due an installment of principal or interest on any Note;
- (2) failure by the Borrower to punctually and properly perform, observe, or comply with any covenant, agreement, or condition contained in:
 - A. this Contract,
 - B. any Security Documents, including any security agreement, deed of trust, mortgage, assignment, guarantee, or other contract securing payment of indebtedness evidenced by any Note, or
 - C. any future amendments, modifications, restatements, renewals or extensions of any such documents; and
- (3) failure by Borrower to provide, preserve, and maintain the applicable security interests in any of the Collateral described in Article XII.

9.2 Waiver of Notice of Default and Opportunity for Hearing.

The Borrower waives notice of Default and opportunity for hearing with respect to a Default under Section 9.1.

9.3 Failure to Comply with Title I of the Act.

If the Secretary makes a final decision in accordance with the provisions of section 111 of the Act and 24 CFR 570.913 (or any successor provisions), including requirements for reasonable notice and opportunity for hearing, that the Borrower has failed to comply substantially with Title I of the Act, this shall be a default under this Contract. Borrower agrees that such reasonable notice and opportunity for hearing as may be required in accordance with the provisions of section 111 of the Act and 24 CFR 570.913 (or any successor provisions) shall constitute the sole notice of Default and opportunity for hearing and Borrower expressly waives any further notice of Default and opportunity for hearing.

9.4 Additional Grounds for Default.

The Borrower acknowledges and agrees that the Secretary's guarantee of the Notes is made in reliance upon the availability of Pledged Funds to:

- (1) pay when due the payments to become due on the Notes,

- (2) defease the full amount outstanding on the Notes in accordance with Section 7.5;
or
- (3) if permitted in accordance with the terms of the Note, prepay the full amount outstanding on the Notes.

The Borrower further acknowledges and agrees that if the Secretary (in the Secretary's sole discretion) determines that Pledged Funds are unlikely to be available to pay amounts when due and payable under the Notes and this Contract, such determination shall be a permissible basis for any of the actions specified in Section 9.5 and Article X (without notice or hearing, which the Borrower expressly waives).

9.5 Notice of Impaired Security, Restriction of Pledged Funds.

Upon Notice of Impaired Security, the Secretary may limit the availability of Pledged Funds by withholding amounts at the time a Pledged Grant is approved or by disapproving payment requests (drawdowns) submitted with respect to Pledged Funds, including Pledged Grants.

If after 60 days from the Notice of Impaired Security, the Secretary (in the Secretary's sole discretion) determines that sufficient Pledged Funds are still unlikely to be available to pay amounts when due and payable under the Notes and this Contract, the Secretary may declare the Notes in Default and exercise any and all remedies available under Article X. This Section 9.5 shall not affect the right of the Secretary to declare the Notes and/or this Contract in Default pursuant to this Section 9.1, Section 9.3, and Section 9.4 of this Article IX and to exercise in connection therewith any and all remedies available under Article X.

9.6 Limited Liability.

Notwithstanding any other provision of this Contract, the Fiscal Agency/Trust Agreements, or the Notes, any recovery against the Borrower for any liability for amounts due pursuant to the Notes, the Fiscal Agency/Trust Agreements, or this Contract shall be limited to the sources of security pledged in Article XII. Unless otherwise specified in Section 13.2(d), neither the general credit nor the taxing power of the Borrower, or of the State in which the Borrower is located, is pledged for any payment due under the Notes, the Contract, or the Fiscal Agency/Trust Agreements.

9.7 Other Defaults.

At the Secretary's sole discretion, HUD may consider any one or more of the following events to constitute a Default under each Note and this Contract:

- (a) **[Reserved]**

- (b) **Subrecipient Defaults.** Failure by Borrower to enforce requirements that a Subrecipient punctually and properly perform, observe, or comply with any covenant, agreement, or condition contained in:
- (1) this Contract;
 - (2) any Subrecipient Security Documents, including the Subrecipient Agreement and any loan agreement, security agreement, deed of trust, mortgage, assignment, guarantee, or other contract securing payment of indebtedness evidenced by the Subrecipient Note; or
 - (3) any future amendments, modifications, restatements, renewals or extensions of the Contract or any Subrecipient Security Documents.

ARTICLE X REMEDIES

10.1 Remedial Actions.

Upon a Default under this Contract, the Secretary may, in the Secretary's sole discretion, take any or all of the following remedial actions:

- (1) with any funds or security pledged under this Contract, the Secretary may:
 - A. continue to make payments due on each Note;
 - B. make a prepayment under Section I.D. of each Note, or make an acceleration payment with respect to the principal amount of that Note subject to Optional Redemption as provided in Section III of that Note;
 - C. purchase Authorized Investments in accordance with Section 5.2(b) and Government Obligations in accordance with Section 7.5 of this Contract,
 - D. pay any interest due for late payment as provided in each Note; this Contract, or the Fiscal Agency/Trust Agreements;
 - E. pay any other obligation of the Borrower under this Contract (including any obligation under the Fiscal Agency/Trust Agreements, which are incorporated herein by reference); and/or
 - F. pay any reasonable expenses incurred by the Secretary or the Fiscal Agent/Trustee as result of the Borrower's Default;
- (2) the Secretary may withhold the guarantee of any or all obligations not yet guaranteed under outstanding Loan Guarantee Commitments
- (3) the Secretary may withhold the disbursement of any or all grants not yet disbursed in full or withhold grant approvals for the Borrower under Sections 106 and/or 108 of the Act;
- (4) the Secretary may withhold approval of any or all further Advances or Conversion Date Advances under each Note (if applicable);
- (5) the Secretary may direct the Borrower's financial institution to
 - A. refuse to honor any instruments drawn upon, or withdrawals from, the Deposit Account(s) by the Borrower,
 - B. release obligations and assignments by the Borrower from the Investment Account(s),
 - C. to direct the Borrower and/or the Borrower's financial institution to transfer remaining balances from the Deposit Account, and/or

D. to direct the Borrower and/or the Borrower's financial institution to transfer or assign the remaining investments from the Investment Account until the Conversion Date, or with respect to amounts subject to Optional Redemption, the Secretary may accelerate each Note;

- (6) the Secretary may take any other appropriate remedies or sanctions available by law or regulation applicable to the assistance provided under this Contract;
- (7) the Secretary may take any other action available under law to:
- A. recover Guaranteed Loan Funds,
 - B. reimburse the Secretary for any payment under the Secretary's Guarantee; or
 - C. reimburse any reasonable expenses incurred by the Secretary because of the Default; and
- (8) the Secretary may take any other action available under law to enforce any and all other rights or remedies (including any and all rights and remedies available to a secured party under the Uniform Commercial Code) available by law or agreement (including any of the Security Documents, as defined in Section 14.2) against the Collateral, the Borrower, a Third Party Guarantor, or against any other person or property, as applicable.
- (9) notwithstanding anything to the contrary herein, a default under any individual Note does not constitute a default under any other Note. If the Borrower fails to correct a default under any individual Subrecipient Loan Agreement, Subrecipient Agreement, Subrecipient Note, or Subrecipient Security Documents, as required under Section 9.7(b), then such failure to correct the default shall only be considered a default under that Note and not under any other Note issued by the Borrower. Borrower and HUD agree that aside from the joint Collateral provided in Section 13.2(a), (b), and (g), the Collateral for each Note is the Collateral described in 13.4 for each individual Subrecipient Loan. Therefore, when the Secretary elects remedies pursuant to this section, the Secretary is limited to the joint Collateral described in Section 13.2(a), (b), and (g), and the Collateral described in Section 13.4 for the specific Note in question.

ARTICLE XI
NOTICES

11.1 Delivery of Notice.

All notices and submissions required or permitted to be given under this Contract shall be in writing (including by electronic mail) and mailed, sent, or delivered to each party at their addresses set forth below, or to any other address designated by a party in a written notice to the other party:

The Secretary:

U.S. Department of Housing and Urban Development
Attention: Paul Webster, Director or Successor
Financial Management Division
451 7th Street SW, Room 7282
Washington, DC 20410
Section108@hud.gov

The Borrower:

Howard County Housing & Community Development Attention: Kelly Cimino, Director or Successor
9820 Patuxent Woods Drive Suite 224
Columbia, MD 21046

11.2 Receipt of Notice.

If a Party sends a Notice, then the other Party must reply to evidence receipt of the Notice. All such notices and other communications shall be effective when received as follows:

- (1) if sent by hand delivery, upon delivery;
- (2) if sent by mail, upon the earlier of the date of receipt or five Business Days after deposit in the mail, postage prepaid; or
- (3) if sent by electronic mail, upon the earlier of Borrower's reply or five Business Days after the electronic mail has been sent.

ARTICLE XII SECURITY

12.1 General Security Provisions.

The Borrower hereby pledges as security for repayment of the Note, and such other charges as may be authorized in this Contract, the following:

- (1) All allocations or grants which have been made or for which the Borrower may become eligible under Section 106 of the Act, as well as any grants which are or may become available to the Borrower pursuant to Section 108(q).
- (2) Program Income either directly generated from the use of the Guaranteed Loan Funds or in the Borrower's line of credit.
- (3) All proceeds (including insurance and condemnation proceeds) from any of the foregoing.
- (4) All funds or investments in the accounts established pursuant to Article IV of this Contract.

12.2 Specific Security Provisions.

To secure the payment and performance under this Contract and the Note, the Borrower shall obtain and provide to HUD the Collateral provided in Section 12.2(i) unless the Borrower falls below the Minimum Bond Rating by both Rating Agencies, at which point, the Borrower must furnish the Collateral listed in Section 12.2(a) within 30 calendar days, or such other amount of time, in the Secretary's sole discretion, as provided by the Secretary in writing..

All documents evidencing a pledge of Collateral or providing the Secretary with a security interest in the Collateral (and any amendments to such documents) shall be in the form and manner required by and acceptable to the Secretary. The Borrower shall provide, maintain, and preserve the Collateral listed in this Section consistent with the security requirements listed in Section 13.2:

- (a) **Debt Service Reserve Account (Borrower).** Any and all rights, titles, and interests of the Borrower in and to the Debt Service Reserve Account, together with all amounts on deposit therein. The Debt Service Reserve Account is further described in the Deposit Account Control Agreement, which is incorporated in its entirety into this Contract and included as Attachment X to the Contract.
- (b) **Debt Service Reserve Investment Account (Borrower).** If a Debt Service Reserve Investment Account is established by the Borrower and only for so long

as such account must be maintained, the following security is pledged by Borrower as security for repayment of the Note, and such other charges a may be authorized in this Contract:

Any and all rights, titles, and interests of the Borrower in and to the Debt Service Reserve Investment Account, together with all amounts on deposit therein and investments held thereby.

Paragraphs (c) through (h) Reserved.

- (i) **Reserve Fund (Borrower).** Any and all rights, titles, and interests of the Borrower in and to the Reserve Fund, together with the Pledged Reserve Fund Revenues and all amounts held therein and. The Reserve Fund is further described in the Reserve Fund Authorization and Pledge, which is incorporated in its entirety into this Contract and included as Attachment X to the Contract.

12.3 Obligor Security Provisions. [Reserved]

12.4 Subrecipient Security Provisions.

- (a) **Subrecipient Agreement.** To secure performance under this Contract and the Note, the Borrower shall enter into a Subrecipient Agreement with each Subrecipient. Each Subrecipient Agreement shall contain all the terms required in 24 CFR 570.503 and all terms required to bind Subrecipient to:
 - (1) Carry out its portion of the Project and all activities required in Section 1.4(c)(1); and
 - (2) Comply with all covenants contained in this Contract with respect to each Subrecipient's property.

- (b) **Subrecipient Loan Agreement and Subrecipient Note.** To secure performance under this Contract and the Note and repayment of each Subrecipient Loan, the Borrower shall enter into a Subrecipient Loan Agreement and Subrecipient Note with each Subrecipient. The Subrecipient Loan Agreement shall contain all the terms required in 24 CFR 570.503 and all terms required to bind Subrecipient to:
 - (1) Carry out its portion of the Project and all activities required in Section 1.4(c)(1),
 - (2) Comply with all covenants contained in this Contract, including the provision of the Subrecipient Collateral to Borrower, with respect to each Subrecipient's property.

(c) **Subrecipient Collateral.** Borrower shall obtain the Subrecipient Collateral to secure payment on each Subrecipient Note and Subrecipient Loan Agreement. The Borrower shall provide to HUD a Collateral Assignment of Subrecipient Interests for each Subrecipient Collateral. All agreements evidencing a pledge of Subrecipient Collateral or providing the Borrower with a security interest in the Subrecipient Collateral (and any amendments to such documents) shall be in the form and manner required by and acceptable to the Secretary. The Subrecipient shall provide, maintain, and preserve the Subrecipient Collateral listed in this Section consistent with the security requirements listed in Section 13.4:

(1) **Subrecipient Debt Service Reserve Account.** [Reserved]

(2) **Subrecipient Debt Service Reserve Investment Account.** [Reserved]

(3) **Lien on Subrecipient Real Property.** The Subrecipient Collateral consists of a fifth positioned lien on the property of each of Waverly Winds Four, LLC and Ranleagh Court, LLC, and a 4th position lien on the property of Waverly Winds, LLC, established through a mortgage or deed of trust signed by each Subrecipient as mortgagor, including:

(A) a lien and security interest in any and all rights, titles, and interests in and to any leases covering the Subrecipient Property and any rents derived from the Subrecipient Property. Such rights, titles, and interests shall be the subject of a collateral assignment of leases and rents to Borrower that is assignable by the Borrower to the Secretary.

(B) A lien and security interest in any and all rights titles, and interests in and to any permits, licenses, agreements, and other intangible personal property rights covering the Subrecipient Property, including but not limited to utility connection rights, or insurance policies held by the Borrower with respect to the Subrecipient Property, whether now owned or hereafter acquired, and which are used in connection with the maintenance, use, occupancy, or enjoyment of the Subrecipient Property. Such rights, titles, and interests shall be the subject of a collateral assignment of interest in licenses, permits, and other agreements to Borrower that is assignable by the Borrower to the Secretary.

The liens in this Section 12.4(b)(3) and security agreements, security documents, and financing statements required by Section 13.4 for each property may be made

in the instruments identified therein, or in a single instrument (individually or collectively, the “Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing”), which shall be signed by each Subrecipient and shall contain any provisions the Secretary deems necessary.

(4) **Subrecipient Full Faith and Credit.** [Reserved]

(5) **Subrecipient Third Party Guarantee.** [Reserved]

(6) **Personal Property (Borrower).** [Reserved]

(7) **Tax Increment Financing.** [Reserved]

(8) **Alternative Collateral.** Such other alternative collateral or security arrangements as may be requested by the Borrower and incorporated into this Article XII of this Contract through Attachment XVI.

ARTICLE XIII
SECURITY REQUIREMENTS

13.1 General Security Requirements.

- (a) **Creating, Perfecting, and Maintaining a Valid Security Interest in the Collateral.** For purposes of the applicable UCC, this Contract serves as a security agreement regarding all Collateral and all amounts contained on deposit in any accounts listed herein. If necessary and applicable to provide the Secretary with a valid security interest in the Collateral described in this Contract, the Borrower shall execute one or more Borrower Security Agreement(s). The Borrower Security Agreement(s) shall be referenced in appropriate UCC Financing Statements filed in accordance with applicable law and the UCC. Any necessary Borrower Security Agreements and UCC Financing Statements shall contain such provisions as the Secretary determines necessary, and UCC Financing Statements shall be refiled as necessary to remain current and effective.
- (b) **Lien Priority.** If the Collateral provided by the Borrower obtains a higher lien priority, Borrower shall retain that lien priority unless the Secretary provides written approval of the subordination of the Borrower's interests in the Collateral.
- (c) **Form and Manner of Security Documents; Amendments.** The Borrower shall provide this Collateral in a form and manner that is approved by the Secretary. All Security Documents, including the Borrower Security Agreements, shall contain terms that the Secretary determines reasonable and necessary. Once HUD has executed this Contract, revisions may only be made to the Security Documents required under this section of the Contract with the express written approval by the Secretary.
- (d) **Release of Collateral, Substitution of Collateral, Pledging of Alternative Collateral.** If Borrower can demonstrate to the Secretary's satisfaction that all or a portion of the Collateral is not necessary to secure repayment of for all amounts outstanding under each Note and this Contract, the Borrower may request that such security interests be released by the Secretary. Borrower shall prepare a Lien Release in a form approved by the Secretary. Upon its execution by the Secretary, the Lien Release shall represent the agreement of the parties and shall be incorporated into this Contract as an Attachment IV to this Contract.

Alternative collateral or security arrangements may be requested by the Borrower and approved by the Secretary in writing. The alternative collateral shall be described in Attachment XVI to this Contract, which may be updated from time to time to include all alternative collateral approved by the Secretary as security for all amounts outstanding under each Note and this Contract. The last dated Attachment XVI that is agreed to and acknowledged by the signature of the Parties, their successors, or other authorized agents of the Parties, is incorporated into this Contract and shall represent the agreement of the Parties.

(e) **Obligor Collateral.** [RESERVED]

(f) **Subrecipient Collateral.** If Borrower is collaterally assigning Subrecipient Collateral described in Section 13.3 to the Secretary to meet the requirements of this Contract, the Secretary shall submit a Collateral Assignment of Subrecipient's Interests in the form and containing the provisions that the Secretary determines necessary.

The Borrower shall provide the Subrecipient Collateral in a form and manner that is approved by the Secretary. All Subrecipient Security Documents shall contain terms that the Secretary determines reasonable and necessary. Once HUD has executed this Contract, revisions may only be made to the Subrecipient Security Documents required under the Contract with the express written approval by the Secretary.

13.2 Specific Security Requirements.

(a) **Debt Service Reserve Account.** If required to fund a debt service in accordance with the terms of Section 13.2(g) of this Contract, the Borrower agrees to provide, maintain, and preserve the Collateral listed in Section 12.2(a) in the accordance with the following requirements:

The Borrower shall deposit and maintain, collectively, within the Debt Service Reserve Account and the Debt Service Reserve Investment Account (if applicable), funds sufficient to establish the Necessary Account Balance. In addition, the Necessary Account Balance may be amended in the Secretary's sole discretion upon:

- (1) The Conversion of the Notes in accordance with Article IV and the terms of the Notes; or
- (2) The Secretary's approval of a request from Borrower to amend one or more Notes' Commitment Schedules.

Subject to appropriations, Borrower shall deposit amounts sufficient to satisfy the Necessary Account Balance within 30 days of the date in which the Borrower's bond rating falls below the Minimum Bond Rating and maintain the Necessary Account Balance until all Notes are fully paid and satisfied.

Borrower shall only make withdrawals from the Debt Service Reserve Account for the purpose of paying Section 108 Payment Obligations or for the investment of funds into the Debt Service Reserve Investment Account.

If Borrower makes any withdrawals from the Debt Service Reserve Account to pay Section 108 Payment Obligations, then subject to appropriations, Borrower shall replenish the Debt Service Reserve Account to the Necessary Account Balance within 30 calendar days.

Borrower shall not incur, create, assume, or permit to exist, any lien or encumbrance on the Debt Service Reserve Account other than as provided in this Contract.

Borrower shall by the fifteenth day of each month provide the Secretary an electronic copy of a statement showing the balance of funds in the Debt Service Reserve Account and the withdrawals from the Debt Service Reserve Account during the preceding calendar month. Borrower shall e-mail the electronic copies to 108reports@hud.gov.

Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Notes, all right, title, and interest of the Borrower in and to the Debt Service Reserve shall immediately vest in the Secretary for use in paying Section 108 Payment Obligations or in the purchase of Authorized Investments or Government Obligations in accordance with Section 10.1(1)(C).

- (b) **Debt Service Reserve Investment Account.** The Debt Service Reserve Investment Account must only be established if and when the Borrower is required or otherwise permitted to invest the Debt Service Reserve Account Funds as described in this Section 13.2(b)(1). The Borrower agrees to provide,

maintain, and preserve the Collateral listed in Section 12.2(b) in the accordance with the following requirements:

- (1) The Borrower shall withdraw funds from the Debt Service Reserve Account for temporary investment within 5 Business Days after the balance of deposited funds in the Debt Service Reserve Account exceeds the amount of the Federal deposit insurance on the Debt Service Reserve Account. At that time, the balance of funds in the Debt Service Reserve Account that exceeds such insurance coverage shall be fully (100%) and continuously invested in Government Obligations.
- (2) The Borrower must enter into the Letter Agreement for Section 108 Loan Guarantee Program Investment Account when the Debt Service Reserve Investment Account is established.
- (3) Borrower shall not incur, create, assume, or permit to exist, any lien or encumbrance on the Debt Service Reserve Investment Account, other than as provided in this Contract.
- (4) Borrower shall by the fifteenth day of each month provide the Secretary with an electronic copy of a statement identifying the investments and government obligations and their assignments in the Debt Service Reserve Investment Account. Borrower shall e-mail the electronic copies to 108reports@hud.gov.
- (5) In no event shall the investments have maturities which exceed one year. All such investments shall be held in trust for the benefit of the Secretary by the above financial institution in the Debt Service Reserve Investment Account.
- (6) All proceeds and income derived from investments in the Det Service Reserve Investment Account shall be returned to the Debt Service Reserve Account or invested in the Debt Service Reserve Investment Account. Borrower shall only make withdrawals from the Debt Service Reserve Investment Account for the purpose of depositing into the Debt Service Reserve Account or paying Section 108 Payment Obligations.

As permitted by the Secretary in writing, the Borrower may withdraw Debt Service Reserve Account funds and invest the funds into the Debt Service Reserve Investment Account even if the amount of funds in the Debt Service Reserve Account does not exceed the amount of the Federal deposit insurance on the Debt Service Reserve Account.

The Borrower shall not be required to establish a Debt Service Reserve Investment Account if the Secretary determines that the Debt Service Reserve Account is already fully collateralized in Government Obligations or the Secretary approves another mechanism for securing funds within the Debt Service Reserve Account in writing.

Paragraphs (c) through (f) reserved

(g) Reserve Fund (Borrower). As additional security for the Notes, the Borrower covenants that it will budget, appropriate, and set aside in the Reserve Fund the Pledged Reserve Fund Revenues in an amount equal to or exceeding the Necessary Reserve Fund Balance, subject to appropriations. Borrower shall not incur, create, assume, or permit to exist, any lien or encumbrance on the Reserve Fund other than as provided in this Contract. The Borrower agrees to provide, maintain, and preserve the Collateral listed in Section 12.2(i) in the accordance with the following requirements:

- (1) Funds in the Reserve Fund shall be used solely for payment of amounts due on the Notes, and only in any year that the Borrower has no other legally available funds from which it can budget and appropriate for the payment of any deficiency, or to make final payment on the Notes.
- (2) If amounts in the Reserve Fund are used for payments on any of the Notes, the Borrower covenants and agrees to appropriate in its annual budget, by amendment, Pledged Reserve Fund Revenues in amounts sufficient to pay principal of and interest on the Note when due and to replenish the Reserve Fund to the Necessary Reserve Fund Balance, subject to appropriations. Such covenant and agreement on the part of the Borrower to budget and appropriate such amounts Pledged Reserve Fund Revenues shall be cumulative to the extent not paid and shall continue until such Pledged Reserve Fund Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Borrower, the Borrower does not covenant to maintain any services or programs, now provided or maintained by the Borrower, which generate Pledged Reserve Fund Revenues.
- (3) Such covenant to budget and appropriate does not:
 - A. Create any lien upon or pledge of such Pledged Reserve Fund Revenues;
 - B. Preclude the Borrower from pledging in the future its Pledged Reserve Fund Revenues;
 - C. Require the Borrower to levy and collect any particular Pledged Reserve Fund Revenues, nor does it give the Secretary a prior claim on the Pledged Reserve Fund Revenues as opposed to claims of general creditors of the Borrower.
 - D. Require the Borrower to hold the Reserve Fund in a specific location or account.

- (4) Such covenant to budget and appropriate Pledged Reserve Fund Revenues is subject in all respects to the payment of obligations secured by a pledge of such Pledged Reserve Fund Revenues heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate for the purposes and in the manner stated herein shall have the effect of making available for the payment of the Notes, in the manner described herein, Pledged Reserve Fund Revenues and placing on the Borrower a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the restrictions of applicable Maryland law.
- (5) Borrower shall, by the fifteenth day of each month, provide the Secretary with a written statement showing the balance of the Reserve Fund, and the deposits and withdrawals of all funds in such account during the preceding calendar month, together with a beginning and ending balance.
- (6) Borrower agrees that the covenants and obligations in this Contract, including the obligation to budget, appropriate, and set aside the Fund Balance in the Reserve Fund in support of obligations under the Notes, to the extent legally available, shall be enforceable in mandamus against the Borrower and its officials that must act to carry out such covenants and obligations.
- (7) Subject to appropriations, if the Borrower's bond rating drops below the Minimum Bond Rating by both of the Rating Agencies, then the Borrower shall be required to create a Debt Service Reserve Account in accordance with 12.2(a). If the Borrower is not able, due to appropriations, to provide a Debt Service Reserve Account in a timely manner, as solely determined by the Secretary, then the Borrower must provide the Secretary with collateral that the Secretary determines is sufficient to secure the applicable Note.

13.3 Obligor Security Requirements. [Reserved]

13.4 Subrecipient Security Requirements.

- (a) **Subrecipient Agreement.** Before the Borrower may grant or loan Guaranteed Loan Funds to any Subrecipient, the Secretary must approve of the form and contents of the Subrecipient Agreement and any Subrecipient Security Documents. Each Subrecipient Agreement shall address the receipt of Program Income in compliance with 24 CFR part 570 and shall not terminate until the Subrecipient has returned the Program Income to the Borrower. The Borrower's

rights under each Subrecipient Agreement are collaterally assigned to the Secretary through the Collateral Assignment of Subrecipient Interests.

- (b) **Subrecipient Loan Agreement and Subrecipient Notes.** Before the Borrower may loan Guaranteed Loan Funds to the Subrecipient through the Subrecipient Loan Agreement and Subrecipient Notes, the Secretary must approve of the form and contents of the Subrecipient Loan Agreement and Subrecipient Notes. The Subrecipient Loan Agreement must require that each Subrecipient perform its respective portion of the Project and all activities required in Section 1.4(b)(1) in accordance with this Contract and the applicable regulations at 24 CFR part 570.

The Subrecipient Agreement required in Section 12.4(a) and the Subrecipient Loan Agreement in this Section may be the same or different legal instruments. The Subrecipient Note shall not be subject to redemption or prepayment earlier than the earliest possible redemption date under the terms of the Notes.

The Borrower's rights under the Subrecipient Loan Agreement and Subrecipient Note are collaterally assigned to the Secretary through the Collateral Assignment of Subrecipient Interests.

- (c) **Subrecipient Debt Service Reserve Account. [Reserved]**

- (d) **Subrecipient Debt Service Reserve Investment Account. [Reserved]**

- (e) **Lien on Subrecipient Real Property.**

The Subrecipient shall take all steps necessary to attach, perfect, and maintain the perfection and priority of the security interests granted to the Borrower in the Collateral described in Section 12.4, including proper recordation and filing and re-filing UCC financing statements, unless otherwise required by Attachment XVI. UCC Financing Statements shall be refiled by the Subrecipient as necessary to remain current and effective.

The liens in this Section 13.4 and security agreements, security documents, and financing statements required by this Section 13.4 may be made in the instruments identified therein, or in a single instrument (individually or collectively, the "Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing," which is defined in Section 2.6), which shall be signed by the

respective Subrecipient and shall contain any provisions the Secretary deems necessary.

After granting the liens described in Section 12.4, the Subrecipient shall not sell, convey, transfer or further encumber the Subrecipient Property or any part thereof or any interest therein (whether legal, equitable, or beneficial), whether voluntarily, by gift, bequest, operation of law, merger, or in any other manner, without the Secretary's prior written approval. After obtaining the liens described in Section 12.4, the Borrower shall not sell, convey, transfer or further encumber the Subrecipient Property or any part thereof or any interest therein (whether legal, equitable, or beneficial), whether voluntarily, by gift, bequest, operation of law, merger, or in any other manner, without the Secretary's prior written approval. The Secretary consents to those liens set forth on the Chicago Title Insurance Company title policy for each Subrecipient Property.

Borrower shall include a provision in the Subrecipient Security Documents that the Subrecipients will keep their respective portions of the Property in first class order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of their portions of the Property to be misused, abused or wasted or to deteriorate. The Borrower will not make any structural alteration to the Property or any other alteration which impairs its value.

- (f) **Subrecipient Full Fath and Credit. [Reserved]**
- (g) **Subrecipient Third Party Guarantee. [Reserved]**
- (h) **Subrecipient Personal Property. [Reserved]**

ARTICLE XIV
DOCUMENT DELIVERY OR CUSTODIAL REQUIREMENTS

14.1 Custodial Agreement.

Unless otherwise agreed to by the Secretary, the Borrower shall select a Custodian for the Security Documents. The Borrower and the Custodian shall execute a written agreement containing such provisions as the Secretary determines necessary. A fully executed copy of the Custodial Agreement, with original signatures, together with electronic copies of the Security Documents, shall be forwarded to the Secretary contemporaneously with the delivery of Security Documents pursuant to Section 14.2.

14.2 Borrower Documents to be Delivered to the Custodian and/or to HUD.

The following Borrower Security Documents shall be delivered as set forth in the provisions below:

(a) Delivery of Documents to Secretary and Custodian – Legal Opinions and Letter Agreements

- (1) Contemporaneously with the delivery of this Contract and the Notes, the Borrower shall deliver to the Secretary and the Custodian the legal opinions described in Article XV of this Contract.
- (2) Contemporaneously with the delivery of this Contract and the Notes, the Borrower shall deliver to the Secretary and the Custodian the Letter Agreement for Section 108 Loan Guarantee Program Deposit Account defined in Section 2.1 and described in Section 5.1 of this Contract.
- (3) Within 30 days of execution, the Borrower shall deliver to the Secretary an original fully executed copy of the Letter Agreement for Section 108 Loan Guarantee Program Investment Account.

(b) Delivery of Documents to HUD (Debt Service Reserve and Debt Service Reserve Investment Account).

- (1) If a Debt Service Reserve is required pursuant to the terms of this Contract, then the Borrower shall deliver to the Secretary and the Custodian within 5 days of the establishment of the Debt Service Reserve the following:
 - A. An original Deposit Account Control Agreement included as Attachment X signed by all parties, perfecting the Secretary's security interest in the Borrower's Debt Service Reserve Account that is maintained with a financial institution whose deposits or accounts are Federally insured.
 - B. [Reserved]

(2) Within 30 days of its execution, the Borrower shall deliver to the Secretary:

A. An original fully executed copy of the Letter Agreement for Section 108 Loan Guarantee Program Investment Account.

Paragraphs (c) through (g) Reserved.

(h) **Delivery of Documents to HUD (Reserve Fund).** Contemporaneously with the delivery of this Contract and the Note, the Borrower shall deliver to the Secretary a certified copy of the Reserve Fund Authorization and Pledge.

14.3 Reserved

14.4 Subrecipient Documents to be Delivered to the Custodian and/or to HUD.

The following Obligor Security Documents shall be delivered as set forth in the provisions below:

(a) **Delivery of Documents to Custodian (Subrecipient Agreement).** Not later than five business days after the execution of this Contract or at such other time as may be required by the Secretary, the Borrower shall deliver to the Custodian the Subrecipient Agreement.

(b) **Delivery of Documents to HUD (Collateral Assignment of Subrecipient Interests).** Contemporaneously with the delivery of this Contract and the Note, the Borrower shall deliver to the Secretary the Collateral Assignment of Subrecipient Interests.

(c) **Delivery of Documents to Custodian (Subrecipient Notes, Subrecipient Loan Agreement).** Not later than five business days after the execution of this Contract or at such other time as may be required by the Secretary, the Borrower shall deliver to the Custodian the following:

- (1) The Subrecipient Notes; and
- (2) The Subrecipient Loan Agreement.

(d) **Delivery of Documents to HUD (Subrecipient Debt Service Reserve and Subrecipient Debt Service Reserve Investment Account).** [Reserved]

- (e) **Documents to be Delivered to Custodian (Subrecipient Real Property).** Not later than five business days after the execution of this Contract or at such other time as may be required by the Secretary, the Borrower shall deliver to the Custodian the following:
- (1) Each original recorded Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing (which may consist of one or more instruments that contain the mortgage and assignments from the Subrecipient to Borrower required by Section 12.4).
 - (2) All UCC Financing Statements made by the Subrecipient pursuant to Section 13.1.
 - (3) A mortgagee title policy for each Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing, issued by a company and in a form acceptable to the Secretary, naming the Borrower and Secretary as the insured parties. The policy shall indicate that the Borrower has the security interest indicated in Section 12.4.
 - (4) A certified survey with a legal description conforming to the title policy for each Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing.
 - (5) An appraisal of the Subrecipient's ownership interest in the Subrecipient Property that is equal to or greater than Subrecipient Real Property Required Appraised Value. The appraisal shall be completed by an appraiser who is certified by the state and has a professional designation, such as a Senior Residential Appraiser "SRA" or an "MAI" as designated by the Appraisal Institute, and it shall conform to the standards of the FIRREA, unless otherwise approved by the Secretary.
 - (6) All recorded financing statement filings covering fixtures and personal property located in or on or attached to the Subrecipient Property.

If an original Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing has not been returned from the appropriate office(s) in which they must be recorded within five (5) business days of receipt by the Borrower of the Guaranteed Loan Funds, or at such other time as may be required by the Secretary, the Borrower shall deliver an electronic copy of the relevant instrument together with a recordation receipt or other evidence of recordation to the Custodian within the timeframe required in this Section instead, and shall subsequently deliver the original Subrecipient Mortgage, Assignment, Security Agreement, and Fixture

Filing to the Custodian within five (5) business days after receipt from local recordation office, but not later than 45 calendar days after the initial Advance of Guaranteed Loan Funds.

- (f) **Delivery of Documents to HUD (Subrecipient Full Faith and Credit).**
[Reserved]
- (g) **Delivery of Documents to Custodian (Subrecipient Third Party Guarantee)**
[Reserved]
- (h) **Delivery of Documents to Custodian (Subrecipient Personal Property).**
[Reserved]
- (i) **Delivery of Documents to Custodian (Subrecipient TIF).** [Reserved]
- (j) **Delivery of Documents to Custodian and/or HUD (Alternative Obligor Collateral).** [Reserved]

**ARTICLE XV
LEGAL OPINION**

15.1 Borrower's General Legal Opinion for Advances.

The Borrower shall submit to the Secretary an opinion acceptable to the Secretary that substantially conforms to the model opinion provided by HUD and that opines on the following:

- (1) the governing body of the Borrower has issued the Borrower Authorization and Pledge in accordance with applicable State and local law, and authorized the issuance of the Note and the execution of this Contract;
- (2) the governing body of the Borrower has authorized the execution of all documents referenced in Article XIV;
- (3) the Note and this Contract are valid, binding, and enforceable obligations of the Borrower;
- (4) the pledge of all allocations or grants which have been made or for which the Borrower may become eligible under Section 106 of the Act, as well as any grants which are or may become available to the Borrower pursuant to Section 108(q) is valid and binding; and
- (5) there is no outstanding litigation that will affect the validity of the Note or this Contract.
- (6) any litigation related to the Project has been disclosed to the Secretary and is listed in an attachment to the opinion.

15.2 Borrower's Specific Legal Opinion.

The Borrower shall deliver to the Secretary, contemporaneously with the delivery of this Contract and the Note (and subsequently deliver a copy to the Custodian and/or HUD, as required by Section 14.2), an opinion of the Borrower's counsel on its letterhead, addressed and satisfactory to the Secretary that:

Paragraphs (c) through (h) Reserved.

- (i) **Tax-Exempt Bond Financing (Use When a 4% Private Activity Bond).** The Tax-Exempt Financing used in connection with the Waverly Winds 4% Project and Ranleagh Court Project meets the exclusion in 26 U.S.C. § 149(b)(3)(C)(i)(I) as a “private activity bond” within the meaning of 26 U.S.C. § 141, issued to finance a “qualified residential rental project” as defined in 26 U.S.C. § 142(d).
- (j) **Internal Reserve.** The Reserve Fund Authorization and Pledge is valid, binding, and enforceable in accordance with its terms. In accordance with the Reserve Fund Authorization and Pledge, the Pledged Reserve Fund Revenues may be used by the Borrower to repay principal and interest on the Notes when due and payable.

15.3 Borrower’s Specific Legal Opinion - Obligor. [Reserved]

15.4 Borrower’s Specific Legal Opinion - Subrecipient.

The Borrower shall deliver to the Secretary, contemporaneously with the delivery of this Contract and the Note (and subsequently deliver a copy to the Custodian and/or HUD, as required by Section 14.2), an opinion of the Borrower’s counsel on its letterhead, addressed and satisfactory to the Secretary that contains the provisions required in this Section 15.4. The Borrower may rely upon an opinion submitted by Subrecipient’s counsel and addressed to the Borrower and the Secretary if the opinions in this Section 15.4 address matters within the expertise of Subrecipient’s counsel:

(a) General Subrecipient Opinions.

- (1) The governing body of the Subrecipient authorized the issuance of the Subrecipient Agreement;
- (2) The governing body of the Subrecipient has authorized the execution of all documents referenced in Section 14.3;
- (3) Any litigation related to the Project has been disclosed to the Borrower and Secretary and is listed in an attachment to the opinion.
- (4) The Collateral Assignment of Subrecipient Interests is valid, binding, and enforceable in accordance with its terms.

(b) Subrecipient Note and Subrecipient Loan Agreement Opinions.

- (1) The governing body of the Subrecipient authorized the issuance of each Subrecipient Note and the execution of each Subrecipient Loan Agreement;
- (2) Each Subrecipient Note and Subrecipient Loan Agreement is valid, binding, and enforceable obligations of the Subrecipient;
- (3) There is no outstanding litigation that will affect the validity of each Subrecipient Note or each Subrecipient Loan Agreement.

(c) **Lien on Subrecipient Debt Service Reserve Account.** [Reserved]

(d) **Subrecipient Debt Service Reserve Investment Account.** [Reserved]

(e) **Lien on Subrecipient Real Property (Subrecipient Mortgage).** The instruments specified in Section 12.4 and Section 14.4 (the Subrecipient Mortgage, Assignment, Security Agreement, and Fixture Filing and any financing statements covering fixtures and personal property, including UCC Financing Statements) are properly executed, valid and legally binding obligations, enforceable in accordance with their respective terms, and together secure all obligations under each Subrecipient Note and all other charges authorized in each Subrecipient Loan Agreement and in all related future contracts or amendments between Subrecipient and the Borrower pertaining to each Subrecipient Note and Subrecipient Loan Agreement.

(f) **Subrecipient Full Faith and Credit.** [Reserved]

(g) **Subrecipient Third Party Guarantee.** [Reserved]

(a) **Subrecipient Personal Property.** [Reserved].

(h) **TIF.** [Reserved]

15.5 Borrower's Future Specific Legal Opinion. If required pursuant to this Contract, Borrower shall deliver to the Secretary, within 5 calendar days of the establishment of a Debt Service Reserve (and if applicable, a Debt Service Reserve Investment Account), an opinion of the Borrower's counsel on its letterhead, addressed and satisfactory to the Secretary that contains the provisions required in this Section 15.5.

- (a) **Lien on Debt Service Reserve Account.** The provisions of this Contract together with the Deposit Account Control Agreement in Attachment X shall upon execution by the Secretary create in the Secretary's favor, a valid, binding, and perfected security interest in all rights, titles, and interests of the Borrower in and to the Debt Service Reserve Account and all amounts on deposit therein, in accordance with any applicable state and local laws.
- (b) **Debt Service Reserve Investment Account.** If established, the provisions of this Contract, together with the Letter Agreement for Section 108 Loan Guarantee Program Investment Account in Attachment II, shall upon the signing of the Investment Account Letter Agreement, create a valid and binding trust whereby Borrower shall hold all obligations and assignments of those obligations in trust for the benefit of the Secretary in accordance with any applicable state and local laws.

The issuance of a Notice of Exclusive Control pursuant to the Investment Account Letter Agreement shall validly shift all control of the obligations and assignments of those obligations that are held in trust for the Secretary into the Secretary's exclusive control.

**ARTICLE XVI
OTHER PROVISIONS**

16.1 Severability.

If any one or more of the covenants, agreements, provisions, or terms of this Contract, the Note, the Fiscal Agency/Trust Agreements, or the Grant Agreements shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions, or terms shall be deemed severable from the remaining covenants, agreements, provisions, or terms of each such loan document and shall in no way affect the validity or enforceability of the other provisions of each such document, the rights of the Secretary under each such document, or the Holder of the Notes.

16.2 Intercreditor and Other Agreements.

- (a) **Borrower Intercreditor Requirements.** If HUD requirements made applicable by this Contract conflict with any other agreement governing the use of the Guaranteed Loan Funds, HUD's requirements on the use of Guaranteed Loan Funds contained in this Contract shall control. Without written approval by the Secretary, the Borrower shall not enter into or amend an Intercreditor Agreement. Intercreditor Agreements approved by the Secretary, including amendments, must be in a form acceptable to the Secretary.
- (b) **Obligor Intercreditor Requirements.** [Reserved]
- (c) **Subrecipient Intercreditor Requirements.** HUD must be notified before the Borrower enters any Intercreditor Agreement or similar agreement affecting Borrower's rights under the Subrecipient Note or Subrecipient Loan Agreement or HUD's ability to enforce its rights under the Subrecipient Security Documents. Any Intercreditor Agreement, including amendments, must be in a form acceptable to the Secretary.

16.3 Counterparts.

This Contract may be executed and delivered (including by facsimile or email) in one or more counterparts, all of which will be considered one and the same agreement, and will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

16.4 Grantee.

The Borrower shall continue to perform all actions necessary to continue to remain a grantee under Section 106 and (if applicable) Section 108 of the Act and shall preserve Secretary's

rights to the Pledged Grants. Borrower shall not take any action within Borrower's power that will diminish or reduce its grant allocation under Sections 106 or 108 of the Act, including failing to submit, when due, any such document or authorization required to obtain, maintain, or preserve the Pledged Grants.

16.5 Urban Counties.

If the Borrower is an Urban County, then the Borrower must take all actions to remain an Urban County throughout the term of the repayment of the Notes.

16.6 Amendments, Change in Use of Funds.

If the Borrower wishes to carry out or assist an activity not previously described in the Application, or to substantially change the purpose, scope, location, or beneficiaries of an activity described in its Application, the Application amendment must be submitted in accordance with 24 CFR 570.704(c), approved by HUD in writing, and reflected in an amendment to this Contract.

16.7 Prohibition on use of Guaranteed Loan Funds in connection with Eminent Domain.

The Borrower shall not use Guaranteed Loan Funds to acquire properties through the Borrower's powers of eminent domain unless eminent domain is employed only for a "public use." Public use shall not be construed to include economic development that primarily benefits private entities. Any use of Guaranteed Loan Funds for public facilities projects as described in 24 CFR 570.201(c), or other structures designated for use by the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107-118) shall be considered a public use for purposes of this paragraph.

16.8 Limitation on Tax-Exempt Financing.

Without prior written approval by HUD, the Borrower shall not use or allow Guaranteed Loan Funds to be used for an activity or project that is financed in whole or in part with Tax-Exempt Financing. HUD will not unreasonably withhold approval if the use of Guaranteed Loan Funds shall not void the tax-exempt status of the Tax-Exempt Financing under the requirements of 26 U.S.C. 149 and otherwise complies with Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables, published by the White House Office of Management and Budget.

For purposes of demonstrating that the Loan is not directly or indirectly providing a guarantee of the Tax-Exempt Financing within the meaning of 26 USC 149(b), HUD shall rely upon an opinion of Borrower's counsel that the Tax-Exempt Financing meet an

exception under 26 U.S.C. § 149(b)(3) or are not considered “Federally Guaranteed,” as defined in 26 U.S.C. 149(b)(2).

16.9 Alternative Collateral and Security Arrangements.

The Borrower shall not incur any obligations to be paid with Guaranteed Loan Funds which will be subject to the alternative collateral or security arrangements described in Section 12.2(h) prior to the approval and memorialization of the alternative collateral or security arrangements in Attachment XVI.

16.10 Conflicts of Interest.

Without obtaining an exception from the Secretary to the conflict of interest provisions of 24 CFR 570.611 and/or 2 CFR 200.318, the Borrower shall not permit any conflicts of interest in the use of Guaranteed Loan Funds for an activity or project.

16.11 Additional Documents; Legal Opinions.

The Borrower shall submit any additional documents or legal opinions specifically required by this Contract (e.g., documents required under Section 12.2(h)) in the form required by the Secretary when required.

16.12 Compliance with the URA and Section 104(d)

The Borrower and Subrecipient shall comply with:

- (1) the URA and its implementing regulations at 49 CFR part 24.
- (2) Section 104(d) and its implementing regulations at 24 CFR Part 42, and
- (3) CDBG acquisition and relocation requirements contained in 24 CFR 570.606.

Guaranteed Loan Funds constitute Federal financial assistance for purposes of URA compliance and a grant under Section 106 of the Act for purposes of Section 104(d) compliance. For purposes of URA compliance in the Section 108 Loan Guarantee Program, the initiation of negotiations date is the date of the Secretary’s issuance of the Loan Guarantee Commitment. In the event where the acquisition or displacement activity is for an activity approved in an amendment to the Application, the initiation of negotiations date is the date of the Secretary’s written approval of the Amendment.

16.13 Prohibited Use

- (a) **Borrower Prohibited Use.** The Borrower shall not permit Guaranteed Loan Funds to be used for any cost or activity that is not permitted under 24 CFR Part 570 (unless waived by the Secretary), the Note, or this Contract. When the Project is conducted in conjunction with costs or activities that are not eligible under 24 CFR Part 570, the Note, or this Contract, the Borrower shall allocate Guaranteed Loan Funds to only pay costs and perform activities that are permitted under 24 CFR Part 570, the Note, or this Contract.

- (b) **Obligor Prohibited Use.** When a Borrower is providing the Obligor Loan to complete a Project, the Borrower shall require that the Obligor only use the Guaranteed Loan Funds for eligible costs and activities under 24 CFR Part 570, the Note, and this Contract. When the Project is conducted in conjunction with costs or activities that are not eligible under 24 CFR Part 570, the Note, or this Contract, the Borrower shall require the Obligor to allocate Guaranteed Loan Funds to only pay costs and perform activities that are permitted under 24 CFR Part 570, the Note, or this Contract. The Borrower shall include the terms of this Section 16.13(b) in the Obligor Security Documents and shall require that Obligor provide any documentation or cost allocation plans necessary to document that only eligible costs were paid and only eligible activities were performed with Guaranteed Loan Funds.
- (c) **Subrecipient Prohibited Use.** When a Borrower is providing a Subrecipient Loan or Subrecipient Grant to complete a Project, the Borrower shall require that the Subrecipient only use the Guaranteed Loan Funds for eligible costs and activities under 24 CFR Part 570 (unless waived by the Secretary), the Note, and this Contract. When the Project is conducted in conjunction with costs or activities that are not eligible under 24 CFR Part 570 (unless waived by the Secretary), the Note, or this Contract, the Borrower shall require the Subrecipient to allocate Guaranteed Loan Funds to only pay costs and perform activities that are permitted under 24 CFR Part 570, the Note, or this Contract. The Borrower shall include the terms of this Section 16.13(c) in the Subrecipient Security Documents and shall require that Subrecipient provide any documentation or cost allocation plans necessary to document that only eligible costs were paid and only eligible activities were performed with Guaranteed Loan Funds.

16.14 Use License

In addition to all works covered by and described in 2 CFR 200.315, Borrower grants Secretary a license to use all intellectual property and any copyrighted or trademarked material related to the Project, including but not limited to photographic images, artistic renderings, the Application, Project descriptions, and Project accomplishments. Secretary may use any and all such intellectual property and copyrighted or trademarked materials in publicly promoting the Section 108 Loan Guarantee Program and reporting on Section 108 Loan Guarantee Program accomplishments.

To the extent that Borrower is granting Secretary a license to use property that is not directly owned by Borrower, Borrower shall obtain any necessary licenses necessary to provide the Secretary with the license under this Section 16.14.

16.15 Exclusion for Private Activity Bonds in a Qualified Residential Rental Project.

For Tax-Exempt Financing associated with Low Income Housing Credits, the Tax-Exempt Financing used in connection with the Project may also meet the exclusion in 26 U.S.C. § 149(b)(3)(C)(i)(I) as “private activity bonds” within the meaning of 26 U.S.C. § 141, issued to finance a “qualified residential rental project” as defined in 26 U.S.C. § 142(d).

ATTACHMENT I
Letter Agreement For Section 108 Loan Guarantee Program Deposit Account

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**LETTER AGREEMENT FOR
SECTION 108 LOAN GUARANTEE PROGRAM
DEPOSIT ACCOUNT**

Name of Institution (and Branch)

Street

City, State, Zip Code

This account is established for funds received by the Borrower under Note(s) guaranteed by the United States Department of Housing and Urban Development (HUD) under the Section 108 Loan Guarantee Program (**Guaranteed Loan Funds Account**).

This account is established for repayment of the Note(s) guaranteed by HUD under the Section 108 Loan Guarantee Program (**Loan Repayment Account**).

This account is established as a debt service reserve under the Section 108 Loan Guarantee Program (**Debt Service Reserve Account**).

You are hereby authorized and requested to establish a deposit account to be specifically designated:

"Howard County, Maryland, as Trustee of United States Department of Housing and Urban Development." All deposits made into such account shall be subject to withdrawal therefrom by the Borrower named below, unless and until HUD provides you with a notice that it is assuming control over the account. Thereafter withdrawals may not be made by the Borrower. Within a reasonable period of time, not to exceed two business days, after your receipt of such notice from HUD, you shall so prevent such Borrower withdrawals and, if requested by HUD in writing, shall thereafter forward monthly to HUD, to an account it specifies in its notice, the collected and available balance in such account.

You are further authorized, after receipt of the notice from HUD, to refuse to honor any instrument drawn upon or withdrawals from such account by parties other than HUD. In no instance shall the funds in the deposit account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by you. You are permitted, however, to debit from

the account your customary fees and charges for maintaining the account and the amount of any deposits that are made to the account and returned unpaid for any reason.

Such account shall also be subject to your standard agreement and documents relating to the opening and maintenance of bank accounts with you. In the event of any conflict between this Letter Agreement and such agreements and documents, this Letter Agreement shall control.

This letter is submitted to you in duplicate. Please execute the duplicate copy of the certificate below, acknowledging the existence of such account, so that we may present the copy signed by you to HUD.

Name of Borrower: Howard County, Maryland

By: _____ Date: _____
[Signature]

Name and Title: _____

The undersigned institution certifies to the United States Department of Housing and Urban Development (HUD) that the account identified is in existence in this institution under account number: _____, and agrees with the Borrower named above and HUD to promptly comply with HUD's notice in the manner provided in the above letter, but in no event to exceed two business days. The undersigned institution further agrees, after receipt of the HUD notice as set forth above, to refuse to honor any instruments drawn upon or withdrawals from such account by parties other than HUD. In no instance shall the funds in the deposit account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by the institution, except as set forth above. Deposits in this institution are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration up to statutory limits.

Name of Institution: _____

By: _____ Date: _____
(Signature)

Name and Title: _____

ATTACHMENT II
Letter Agreement For Section 108 Loan Guarantee Program Investment Account

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**LETTER AGREEMENT FOR
SECTION 108 LOAN GUARANTEE PROGRAM
INVESTMENT ACCOUNT**

Name of Institution (and Branch)

Street

City, State, Zip Code

This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Guaranteed Loan Funds Account (**Guaranteed Loan Funds Investment Account**).

This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Loan Repayment Account (**Loan Repayment Investment Account**).

This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Debt Service Reserve Account (**Debt Service Reserve Investment Account**).

You are hereby authorized and requested to hold obligations and assignments of those obligations in trust for the United States Department of Housing and Urban Development (HUD) in an account specifically designated:

" Howard County, Maryland, as Trustee of United States Department of Housing and Urban Development." All obligations and assignments shall be subject to release to the Borrower named below, unless and until HUD provides you with a notice that it is assuming control over the account. Thereafter, releases may not be made by the Borrower. Within a reasonable period of time, not to exceed two business days, after your receipt of such notice from HUD, you shall so prevent such Borrower releases and, if requested by HUD in writing, shall thereafter forward monthly to HUD, to an account it specifies in its notice, the collected and available balance in such account.

You are further authorized, after receipt of the notice from HUD, to refuse to honor any request for release of the obligations and assignments from such account by parties other than HUD. In no instance shall the obligations in this account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by you. You are permitted, however, to debit from the account your customary fees and charges for maintaining the account and the amount of any deposits that are made to the account and returned unpaid for any reason.

Such account shall also be subject to your standard agreement and documents relating to the opening and maintenance of bank accounts with you. In the event of any conflict between this Letter Agreement and such agreements and documents, this Letter Agreement shall control.

This letter is submitted to you in duplicate. Please execute the duplicate copy of the certificate below, acknowledging the existence of such account, so that we may present the copy signed by you to HUD.

Name of Borrower: Howard County, Maryland

By: _____ Date: _____
[Signature]

Name and Title: _____

The undersigned institution certifies to the United States Department of Housing and Urban Development (HUD) that the account identified is in existence in this institution under account number: _____, and agrees with the Borrower named above and HUD to promptly comply with HUD's notice in the manner provided in the above letter, but in no event to exceed two business days. The undersigned institution further agrees, after receipt of the HUD notice as set forth above, to refuse to honor any request for release of the obligations and assignments from such account by parties other than HUD. In no instance shall the obligations in the account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by the financial institution, except as set forth above. Deposits in this institution are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration up to the statutory limits.

Name of Institution: _____

By: _____ Date: _____
(Signature)

Name and Title: _____

ATTACHMENT III
[Reserved]

ATTACHMENT IV
Lien Release

ATTACHMENT V
[Reserved]

ATTACHMENT VI
SECTION 108 LOAN GUARANTEE STATUS REPORT

ATTACHMENT VII
BORROWER AUTHORIZATION AND PLEDGE (Resolution/Ordinance)

**ATTACHMENT VIII
REAL PROPERTY DESCRIPTION**

Ranleigh Court Legal Description

BEING KNOWN AND DESIGNATED as **Lot No. 18** (2.012 acres of land, more or less), shown and set forth on, “Plat of Revision, Columbia, Village of Harper’s Choice, Section 3, Area 3, Lot 18,” dated April, 2023, and recorded June 29, 2023 among the Land Records of Howard County, Maryland as **WAR Plat No. 26354**.

Waverly Winds 9% Legal Description

BEING KNOWN AND DESIGNATED as Land Unit A, together with the undivided interests in common elements and other appurtenant rights and easements, established pursuant to that certain Declaration for Waverly Winds Condominium dated November 19, 2024, made by Enterprise Community Homes Housing, LLC, and recorded among the Land Records of Howard County, Maryland in Book No. 22568, page 287, as set out and shown on Condominium Plat entitled, “Waverly Winds Condominium,” made by GLW, dated November, 2024, and recorded among the Land Records of Howard County, Maryland as Plat No. 26718.

TOGETHER WITH those easements appurtenant to the above-described Unit more particularly set forth in Declaration of Easements, Covenants, and Shared Use Agreements made by Enterprise Community Homes Housing, LLC, entered into as of December 1, 2024, and intended to be recorded among the Land Records of Howard County, Maryland.

Waverly Winds 4% Legal Description

BEING KNOWN AND DESIGNATED as Land Unit B, together with the undivided interests in common elements and other appurtenant rights and easements, established pursuant to that certain Declaration for Waverly Winds Condominium dated November 19, 2024, made by Enterprise Community Homes Housing, LLC, and recorded among the Land Records of Howard County, Maryland in Book No. 22568, page 287, as set out and shown on Condominium Plat entitled, “Waverly Winds Condominium,” made by GLW, dated November, 2024, and recorded among the Land Records of Howard County, Maryland as Plat No. 26718.

TOGETHER WITH those easements appurtenant to the above-described Unit more particularly set forth in Declaration of Easements, Covenants, and Shared Use Agreements made by Enterprise Community Homes Housing, LLC, entered into as of December 1, 2024, and intended to be recorded among the Land Records of Howard County, Maryland.

**ATTACHMENT IX
RESERVE FUND AUTHORIZATION AND PLEDGE**

ATTACHMENT X
DEPOSIT ACCOUNT CONTROL AGREEMENT

[Sample Format for Deposit Account Control Agreement (DACA)]

This document is not a required form, but merely a suggested format for presenting the required provisions of an agreement between a Section 108 Borrower, the secured party (HUD), and a bank as to the disposition of funds in a deposit account. It is permissible to use the depository bank's form, or another third party's form, of DACA, so long as such form complies with HUD Section 108 Program Obligations.

DEPOSIT ACCOUNT CONTROL AGREEMENT

THIS DEPOSIT ACCOUNT CONTROL AGREEMENT ("Agreement") is made and entered into as of _____, by the _____, a municipal corporation (the "Debtor"), and the SECRETARY OF HOUSING AND URBAN DEVELOPMENT (the "Secured Party"), and _____ (the "Bank"), collectively the Parties (the "Parties").

The Parties agree, effective the dated date set forth above, as follows:

A. Pursuant to that certain CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, 42 U.S.C. § 5308 of even date herewith, between the Debtor and Secured Party, as amended, supplemented or otherwise modified from time to time (the "Contract"), Secured Party has agreed to approve the Debtor's Section 108 loan guarantee, and Debtor has granted Secured Party a security interest in a deposit account maintained by Bank for Debtor [if security interest is provided in a separate agreement outside of the Contract, revise this paragraph accordingly].

B. Debtor has established the following deposit account with Bank (whether one *or more*, individually and collectively, the "Deposit Account"):

Name in Which Account is Maintained	Branch in which Account is Maintained / Routing Number	Account Number
<p>_____</p> <p>_____</p>	<p>_____</p> <p align="center">Branch</p>	<p>_____</p>

C. The parties hereto desire to enter into this Agreement in order to set forth their respective rights and obligations with respect to the Deposit Account and all funds on deposit therein from time to time and to perfect Secured Party's security interest in the Deposit Account.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth and included in the Contract and Section 108

Note ("Section 108 Loan Documents), the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Effectiveness. This Agreement shall take effect immediately upon its execution by all parties hereto and shall supersede any deposit account control agreement or similar agreement in effect with respect to any Deposit Account.

Control of Deposit Account by Secured Party.

(a) Bank will comply with all instructions it receives originated by Secured Party directing disposition of the funds in the Deposit Account without further consent by Debtor. Bank will not permit the withdrawal or other disposition of any funds in the Deposit Account except as expressly provided in this Agreement.

(b) Until such time as Secured Party delivers a Notice of Exclusive Control (in form substantially the same as attached hereto as Exhibit A and incorporated herein by this reference) to Bank, Bank shall comply with instructions directing the withdrawal, payment, transfer or other disposition of funds in the Deposit Account ("Disposition Instructions") originated by Debtor which Debtor is entitled to give concerning the Deposit Account. Nothing in the foregoing shall, or shall be construed to, limit, impair, or otherwise adversely affect any of Secured Party's rights or remedies under the Contract. A "Notice of Exclusive Control" is a written notice from Secured Party to Bank that Secured Party is thereby exercising exclusive control over the Deposit Account and the funds therein; for an example, see Sample Exhibit A. Secured Party may, at any time at which there exists a "Default" (as defined in the Contract) under the Contract, deliver to Bank a Notice of Exclusive Control.

(c) Within a reasonable time after Bank receives a Notice of Exclusive Control, but in all events no later than three (3) business days after such receipt, and until the Secured Party has rescinded or withdrawn such Notice of Exclusive Control: (i) Bank will comply solely with instructions originated by Secured Party with respect to the Deposit Account and any and all funds therein, including, without limitation, any withdrawals from the Deposit Account or any other disposition thereof, without further consent by Debtor and (ii) Bank will cease, without further consent of Debtor, complying with Disposition Instructions concerning the Deposit Account or funds on deposit therein originated by Debtor or the representatives of Debtor. Without in any way limiting the foregoing, in the event of any dispute between Secured Party and Debtor (including, but not limited to, as to whether a Default exists), Bank shall, in all circumstances after a Notice of Exclusive Control has been given, follow the directions of the Secured Party and shall not follow the directions of the Debtor.

(d) If Secured Party believes a Default exists, Secured Party is entitled to give a Notice of Exclusive Control and Bank is obligated to follow the directions of Secured Party in respect of the Deposit Account, without any right or duty to inquire as to whether a Default in fact exists under the Contract. If it is later concluded that no Default existed at the time the Notice of Exclusive Control was given, Debtor will have as its sole remedy against Secured Party a claim only for any actual damages caused by the giving of such Notice of Exclusive Control, subject to the limitations set forth in the Contract.

(e) Debtor shall notify Secured Party of any money judgments against Debtor that could result in a garnishment action.

(f) Bank shall give Secured Party notice of the receipt of any garnishments and give Secured Party sufficient time (minimum of 30 days) to seek an injunction or otherwise take steps to stop the payment being made to the garnishing creditor.

Fees. Debtor shall be responsible only for those usual and customary service charges, transfer fees, and account maintenance fees (collectively, "Fees") of Bank in connection with the Deposit Account that would otherwise exist in the absence of this Agreement. Secured Party shall not have any responsibility or liability for the payment of any Fees.

Representations and Warranties. The Bank represents and warrants to the Secured Party that the Bank (i) is an organization engaged in the business of banking, (ii) maintains the Deposit Account as a demand deposit account(s) in the ordinary course of the Bank's business and (iii) has not entered into any currently effective agreement with any person under which the Bank may be obligated to comply with Disposition Instructions originated by a person other than the Debtor or the Secured Party. The Bank will not enter into any agreement with any person under which the Bank may be obligated to comply with Disposition Instructions originated by a person other than the Debtor or the Secured Party.

Priority of Secured Party's security interest. Bank subordinates in favor of Secured Party any security interest, lien, or right of setoff Bank may have, now or in the future, against the Deposit Account or funds in the Deposit Account, except that Bank will retain its prior lien on funds in the Deposit Account for Fees pursuant to Section 3.

Setoff. Except for Fees of Bank payable pursuant to Section 3 hereof, Bank hereby agrees that Bank will not exercise or claim any right of setoff or security interest or banker's lien against the Deposit Account or any deposit therein, and Bank hereby further waives any such right or lien that it may have against any funds deposited in the Deposit Account.

Limits of Bank's Liability.

(a) Bank will not be liable to Debtor for any expense, claim, loss, damage or cost ("Damages") arising out of or relating to its performance under this Agreement other than those Damages which result directly from Bank's acts or omissions constituting gross negligence or willful misconduct.

(b) Notwithstanding any of the other provisions in this Agreement, in the event of the commencement of a case under then applicable federal or state law providing for the relief of debtors or the protection of creditors by or against Debtor, Bank may act as Bank deems necessary to comply with all applicable provisions of governing statutes and shall not be in violation of this Agreement as a result.

(c) Bank shall be permitted to comply with any writ, levy order or other similar judicial or regulatory order or process concerning the Deposit Account and shall not be in

violation of this Agreement for so doing.

Indemnity.

(a) Debtor will indemnify Bank, its officers, directors, employees, and agents against claims, liabilities, damages, and expenses arising out of this Agreement or the Deposit Account (including reasonable attorneys' fees and disbursements and the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff), except to the extent such claims, liabilities, or expenses are caused by Bank's gross negligence or willful misconduct.

(b) Notwithstanding anything set forth in this Agreement to the contrary, Secured Party shall not be subject to or obligated in any manner under any indemnification obligations in this Agreement in the event Secured Party takes control of the Deposit Account.

Termination. This Agreement may be terminated by Debtor only upon delivery to Bank of a written notification jointly executed by Debtor and Secured Party. This Agreement may be terminated by Secured Party at any time, upon its delivery of written notice to Debtor and Bank. This Agreement may be terminated by Bank at any time on not less than 30 days' prior written notice delivered to Debtor and Secured Party. Upon delivery or receipt of such notice of termination by Bank, Bank will immediately transmit to such deposit account as Secured Party may direct all funds, if any, then on deposit in the Deposit Account. If Secured Party notifies Bank that Secured Party's security interest in the Deposit Account has terminated, this agreement will immediately terminate.

Notices. Any notice or document required or permitted to be delivered hereunder shall be in writing and shall be effective upon (i) delivery, if personally delivered or sent by overnight courier, or (ii) three business days after mailing, if mailed. All notices shall be personally delivered, delivered by overnight courier or sent by United States Mail, postage prepaid, Certified or Registered Mail, addressed to the parties hereto at the respective addresses set forth on the signature pages, or at such other address as they have theretofore specified by written notice delivered in accordance herewith. Any party hereto, at any time, by written notice given to the others in accordance with this Section, may designate a different address to which such communications shall thereafter be directed.

Deposit Account Information. If the Secured Party so requests, the Bank will provide to the Secured Party, whether by Internet access, to the extent that the Bank has the operational ability to do so, or otherwise, a copy of each periodic account statement relating to the Deposit Account ordinarily furnished by the Bank to the Debtor. The Bank's liability for failing to provide the account statement will not exceed the Bank's cost of providing the statement. The Debtor authorizes the Bank to provide to the Secured Party, whether by internet access or otherwise, any other information concerning the Deposit Account that the Bank may agree to provide to the Secured Party at the Secured Party's request.

Successor Accounts. The Deposit Account will include the deposit accounts described in Section B, any substitute or replacement deposit accounts, and any deposit accounts maintained by Bank into which funds from the Deposit Account are transferred, unless Secured Party

expressly agrees in writing prior to the transfer that the account into which such funds are transferred will not be subject to this agreement.

Miscellaneous.

(a) This Agreement shall be binding on and shall insure to the benefit of the parties and their respective successors and assigns, but neither Debtor nor Bank shall be entitled to assign or delegate any of its rights and/or duties under this Agreement without mutual agreement of all of the parties.

(b) Secured Party may assign its rights and/or duties under this Agreement by written notice to Bank and Debtor and such assignment shall be effective as to Debtor and Bank upon written notice to same.

(c) This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A signature delivered by facsimile transmission or other electronic means shall be deemed the equivalent of an original signature for all purposes.

(d) This Agreement shall be governed by the laws of the State of _____.

(e) This Agreement may be amended only by a written instrument executed by Secured Party, Bank, and Debtor acting by their respective duly authorized representatives.

(f) Debtor acknowledges that the agreements made by it and the authorizations granted by it in this Agreement are irrevocable and that the authorizations granted in this Agreement are powers coupled with an interest.

[SIGNATURES ON FOLLOWING PAGES]

In Witness Whereof, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

("Debtor")

By: _____

Address for notices:

Name: _____

Title: _____

("Secured Party")

By: _____

Address for notices:

Name: _____

Title: _____

("Bank")

By: _____

Address for notices:

Name: _____

Title: _____

Sample Exhibit A

NOTICE OF EXCLUSIVE CONTROL

[Letterhead of Secured Party]

[Date]

Depository Bank
Title/Office
Address

Re: Deposit Account Number(s): _____
Notice of Exclusive Control

Ladies and Gentlemen:

Reference is made to the Deposit Account Control Agreement dated as of _____, 20__ (the “**Agreement**”) by and among _____ (the “**Debtor**”), _____ (as “**Secured Party**”) and _____ (“**Bank**”) regarding the above-described deposit account(s) (whether one or more, individually and collectively, the “**Deposit Account(s)**”). A copy of the Agreement is attached hereto.

In accordance with this Agreement, we hereby give you notice of our exercise of exclusive control over the Deposit Account, and we hereby instruct you to transfer collected and available funds to our account as follows:

Bank Name: _____
Address: _____
ABA Routing: _____
Account No.: _____
Reference: _____

Very truly yours,

Name of Secured Party
as Secured Party

By: _____
Name: _____
Title: _____

ATTACHMENT XI
Reserved

ATTACHMENT XII
Reserved

ATTACHMENT XIII
Reserved

ATTACHMENT XIV
Reserved

ATTACHMENT XV
Reserved

ATTACHMENT XVI
Alternative Collateral and Security