

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: **October 22, 2024**       Consent Ordinance       Regular Public Hearing

Department: **Housing and Economic Development**

**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to:**

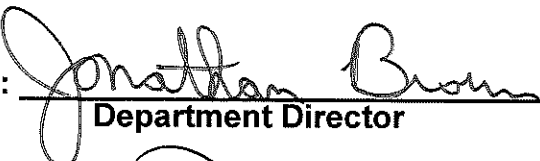
- A) consent** to the conveyance of ownership of the Quiet Waters Project (Project) from McCurdy Center, Ltd. to Quiet Waters Preservation, LP; and
- B) authorize** the County Administrator, or designee, to execute the documents necessary to effectuate the conveyance and any future documents, including amendments thereto which do not substantially change the terms or conditions of the loan agreement.


**Summary:** On July 13, 2009, the Palm Beach County Board of County Commissioners (BCC) entered into a Loan Agreement (R2009-0100) with McCurdy Center, Ltd. to provide \$600,000 in State Housing Initiatives Partnership (SHIP) funding for the construction of the Quiet Waters project located at 306 SW 10<sup>th</sup> Street in Belle Glade. The conveyance of the Project will require that the County process an amendment to the loan agreement along with other documentation to accommodate the change in ownership and primary funding. The new senior financing requires that all subordinate liens mature no earlier than the senior loan which will require that the maturity date on the County loan be extended about five (5) years to coincide with the maturity of the new primary mortgage, which is anticipated to close at the end of December 2024 or early January of 2025. As a condition to this consent by the County, McCurdy Center, Ltd. will pay the County \$125,000 towards the balance of their loan. Staff is also requesting approval to amend the Special Provisions section of the agreement to add language prohibiting any rental increases at any time other than at lease renewal. All other terms and conditions agreed to by McCurdy Center, Ltd. will be assumed by Quiet Waters Preservation, LP. **These are State SHIP funds which require no local match. District 6 (HJF)**

**Background and Justification:** The U.S. Department of Housing and Urban Development provides an annual allocation of Community Development Block Grant, Home Investment Partnership Program and SHIP grant funding to Palm Beach County. SHIP works to provide affordable rental housing and homeownership opportunities for persons with incomes no greater than 80% of Area Median Income.

**Attachment(s):**

- 1. Letter requesting conveyance
- 2. Loan Agreement with McCurdy Center, Ltd.

Recommended By:       9/30/2024  
 Department Director      Date

Approved By:       10/11/24  
 Assistant County Administrator      Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2025	2026	2027	2028	2029
Grant Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT					

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget?      Yes \_\_\_\_\_ No \_\_\_\_\_  
 Does this Item include the use of Federal funds?      Yes \_\_\_\_\_ No \_\_\_\_\_  
 Does this Item include the use of State funds?      Yes \_\_\_\_\_ No \_\_\_\_\_

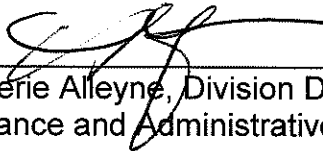
Budget Account No.:

Fund \_\_\_\_\_ Dept. \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_ Program Code/Period \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

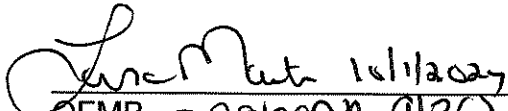
No additional fiscal impact.

**C. Departmental Fiscal Review:**

  
 \_\_\_\_\_  
 Valerie Alleyne, Division Director II  
 Finance and Administrative Services, DHED

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

  
 \_\_\_\_\_  
 Loree Muth 10/1/2024  
 OFMB DA91309A 9130

  
 \_\_\_\_\_  
 Amanda Maddox 10/3/24  
 Contract Development and Control

**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney 10/8/24

**C. Other Department Review:**

\_\_\_\_\_ Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)



July 3, 2024

Board of County Commissioners  
c/o Palm Beach County Attorney's Office, Suite 601  
301 N Olive Avenue  
West Palm Beach, FL 33401

**RE: Quiet Waters, 306 SW 10th Street, Belle Glade, Florida 33430 (the "Property")**

Dear Sir/Madam:

McCurdy Center, Ltd., a Florida limited partnership ("Current Owner"), owns and operates the Property as an affordable housing development. Current Owner intends to sell and convey the Property in fee simple to Quiet Waters Preservation, LP, a Florida limited partnership ("Buyer"), which transfer (the "Transaction") is currently scheduled to close on or about January 15, 2025, as such closing date may be extended. Buyer intends to finance its acquisition of the Property with 4% LIHTCs and tax exempt bonds issued by Palm Beach County Housing Finance Authority (the "New Financing"). Seltzer is the assigned underwriter and Buyer is well underway with underwriting with them.

Current Owner obtained a loan from Palm Beach County, Florida (the "County"), in the original principal amount of \$600,000.00 (the "County Loan"), which loan is evidenced by that certain Amended and Restated Promissory Note dated February 5, 2009 (the "Note") and secured by that certain Mortgage and Security Agreement (the "Mortgage"), dated February 5, 2009 and recorded on February 6, 2009, in Official Records Book 23068, Page 1053, of the Public Records of Palm Beach County (the "Public Records").

In connection with the closing of the Transaction, Buyer respectfully requests the following from the County:

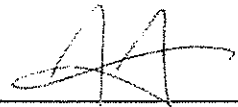
- a. The County's confirmation of receipt of this letter as written notice of the Transaction and the transfer of the Property by Current Owner to Buyer;
- b. The County's approval of the assignment of the County Loan to Buyer; and
- c. The County's approval of the subordination of the County Loan to the New Financing.

It is our understanding that these requests will require the approval of the Board of County Commissioners, and we ask for County staff and counsel to be assigned as soon as practicable in connection with this request. We are happy to engage with underwriting and provide any necessary information in connect with these requests.

Thank you for your assistance and please let us or our counsel, Brooke R. Perlyn, Esq., at Stearns Weaver Miller, P.A. ([bperlyn@stearnsweaver.com](mailto:bperlyn@stearnsweaver.com)), know if you have any questions or need additional information in connection with these requests.

Sincerely yours,

**Wingate Capital Associates, LLC**, a  
Massachusetts limited liability company

By:   
Name: John Tatum  
Title: Vice President

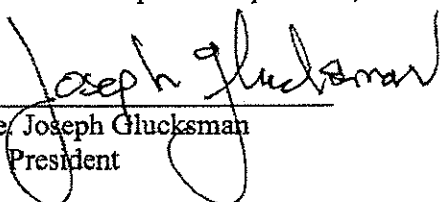
cc. Brooke R. Perlyn, Esq.

**Agreed and Confirmed by:**

MCCURDY CENTER, LTD.,  
a Florida limited partnership

By: McCurdy Senior Housing, LLC,  
a Florida limited liability Company, it's general partner

By: McCurdy Senior Housing Corporation,  
a Florida not for profit corporation, it's Managing Member

By:   
Name: Joseph Glucksman  
Title: President

LOAN AGREEMENT

THIS LOAN AGREEMENT ("Loan Agreement"), dated as of ~~January 3, 2009~~ <sup>January 3, 2009</sup> of \_\_\_\_\_, 2009, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter referred to as the "County" and the "Lender") and McCurdy Center Ltd., a Florida limited partnership, whose Federal I.D. number is 20-2332064 (the "Borrower").

1. RECITALS.

(a) Borrower is the owner of certain real property located in Belle Glade, Palm Beach County, Florida, as more particularly described in Exhibit "A", attached hereto and made a part hereof, (the "Premises").

(b) Borrower has applied to the County for a loan in the principal amount of \$600,000.00 (the "Loan") to be used by Borrower to construct apartments on the Premises. Borrower intends to construct a 93-unit apartment complex to serve extremely low and low income households on the Premises (the "Improvements"). The Premises and the Improvements shall herein collectively be known as Quiet Waters or the "Development."

(c) Borrower and the County have negotiated the terms and conditions of, and wish to enter into, this Agreement in order to set forth the terms and conditions for the disbursement of the Loan.

(d) The Florida Housing Finance Corporation (the "First Mortgagee"), through the SAIL Program, financed the construction and permanent financing of the Improvements pursuant to a separate construction loan to Borrower in the original principal amount of \$1,750,000.00, secured by a Mortgage and Security Agreement made by Borrower in favor of First Mortgagee and recorded June 16, 2008 in Official Records Book 22702, Page 1504 of the Public Records of Palm Beach County, Florida, encumbering the Development (the "First Mortgage").

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants and agreements set forth below the receipt and sufficiency of which is hereby acknowledged, Borrower and the County agree as follows:

2. THE LOAN. The County shall make the Loan to Borrower in an amount not to exceed the principal amount of \$600,000.00 upon the terms and conditions set forth herein, and at the rates and terms set forth in its Note and Mortgage attached hereto as Exhibit "B" and "C" respectively, and Borrower shall take the Loan and expressly agrees to comply with and to perform all of the terms and conditions of this Loan Agreement, the Note, the Mortgage and any other documents evidencing and securing this Loan (collectively hereinafter referred to as the "Loan Documents"). The closing of the Loan, including the execution of the Note and Mortgage, shall occur at the offices of the County Attorney or such other mutually agreed upon site no later than March 31, 2009.

3. RIGHT TO AUDIT. The Borrower shall maintain adequate records to justify all charges, expenses and costs incurred for completion of the Improvements for at least three (3) years after completion. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Borrower's place of business. As a result of this assistance being in the form of a "cash-flow dependent loan," Annual Audited Financial Statements are due to the County (i.e., to the Palm Beach County Commission on Affordable Housing) no later than thirty (30) days following the end of each State Housing Initiative Partnership (SHIP) Program fiscal year (by July 30<sup>th</sup>).

4. ANNUAL/SEMI-ANNUAL REPORTS. The Grantee shall provide the County (i.e., to the Palm Beach County Commission on Affordable Housing) with a detailed Progress Report for all construction projects that are not fully completed and occupied by income eligible applicants. This Progress Report is due semi-annually (by December 31<sup>st</sup> and June 30<sup>th</sup> of each year). The Progress Report shall include an

updated timeline for the completion of construction and occupancy of the SHIP assisted units. Once the construction phase is completed and the SHIP assisted units have been occupied, the Grantee shall provide an Annual Report to the Commission on Affordable Housing no later than thirty (30) days following the end of each State Housing Initiative Partnership (SHIP) Program fiscal year (by July 30<sup>th</sup>). The Annual Report format and spreadsheet is listed as Exhibit "D." An Annual Report will be required for the entire project affordability timeframe.

5. CONDITIONS PRECEDENT TO CLOSING. The conditions listed below are a condition precedent to the County's acceptance of the Mortgage documents and disbursement of funds and shall be complied with in form and substance satisfactory to the County prior to the closing:

(a) Title Insurance:

(i) Within thirty (30) days of the effective date hereof, Borrower shall deliver to County a title commitment issued by a title insurance company qualified to do business in the State of Florida and acceptable to County, agreeing to issue to County upon recording of the Mortgage a Lender's Title Insurance Policy in the amount of said Mortgage, subject only to the Permitted Exceptions listed on Exhibit "E" attached hereto and made a part hereof. Said commitment shall have attached to it copies of all exceptions referred to in the title commitment. The cost of said title commitment and policy and any premium therefor shall be borne by Borrower.

(ii) County shall have fifteen (15) days after receipt of the title insurance commitment in which to review the same. In the event the title insurance commitment shall show as an exception any matter other than the Permitted Exceptions, County shall notify Borrower of its objections there to and Borrower shall act to remove such exceptions, which exception shall be deemed to constitute title defects. The Borrower shall be entitled to thirty (30) days from the day of notification within which to cure such defects or make arrangements with the title insurer for the removal of any such objections from the commitment. If the defect shall not have been so cured or removed from the commitment by endorsement thereto with the termination of said thirty (30) day period, the County shall have the option of accepting title as it then exists or terminating this Loan Agreement, by giving written notice thereof to Borrower, in which event the parties shall be relieved of all further obligations hereunder. Notwithstanding the foregoing, County shall not object to any exception necessary for the construction and development of the Improvements.

(iii) The title insurance commitment shall be endorsed at closing to remove any and all requirements of pre-conditions to the issuance of a Lenders Title Insurance Policy, and to delete any exceptions for: (a) any rights or claims or parties in possession not shown by the public records; (b) encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the Premises; (c) unrecorded easements and claims of liens; (d) taxes for the year 2008 and all prior years; (e) matters arising or attaching subsequent to the effective date of the commitment but before the Mortgage becomes recorded in the Public Records, except those matters necessary for the construction and development of the Improvements.

(b) Survey: Borrower shall deliver to the County a certified survey prepared by a surveyor acceptable to the County of the Premises showing the following:

(i) the location of the perimeter of the Premises by courses and distances and perimeter footings in place, and by reference to Township, Range, Section:

(ii) the location of and the identification by reference to recording data of all easements, rights-of-way, conditions and restrictions on or appurtenant to the Premises:

(iii) the location of all building setback lines:

- (iv) the lines of the streets abutting the Premises and the width thereof;
- (v) all encroachments, and the extent thereof in feet and inches upon the Premises;
- (vi) if the Premises are described as being on a filed map, a legend relating the plat of survey to such map;

(vii) flood zone certification; and

(viii) any other notations required for the deletion of the survey exception from the Title Insurance Policy to be issued in accordance with paragraph 4(a) above and any other requirements requested by the County.

(c) **Note:** The Note, in a form acceptable to the County Attorney, shall be duly authorized, executed and delivered to the County;

(d) **Mortgage:** The Mortgage, in a form acceptable to the County Attorney, shall be duly authorized, executed, acknowledged, delivered to the County, and when recorded, shall be a valid mortgage lien on the Premises and on all fixtures and personal property owned by Borrower to be used in connection with the Improvements.

(e) **Mortgagor's Affidavit:** An affidavit of Borrower shall be executed and delivered to the County as required by the Title Insurer as noted in paragraph 4 (a) above, certifying to all such facts as are required to delete the Standard Exceptions from the Lenders Title Insurance Policy and certifying that no liens exist on the Premises for taxes not yet due and payable and that no other parties are entitled to possession except as otherwise provided herein.

(f) **Public Requirements:** Borrower shall deliver to the County:

(i) letters from local utility companies or municipal authorities stating that electricity, telephone, sewer and water facilities will be available to the Premises upon the completion of the intended Improvements,

(ii) a letter from the appropriate Zoning Department certifying as to compliance with all zoning and land use regulations including but not limited to compliance with parking requirements, a copy of the applicable zoning ordinances certified by an appropriate official to be a complete and accurate statement thereof, and an up-to-date zoning map similarly certified,

(iii) evidence satisfactory to the County that all roads necessary for the full utilization of the intended Improvements for their intended purposes have either been acquired by the appropriate governmental authorities or have been dedicated to public use and accepted by such governmental authorities and that all necessary steps have been taken by Borrower and such governmental authorities to assure the complete construction and installation thereof,

(iv) copies of subdivision plats, restrictive covenants, plans of developments, and all other documents required by the local zoning and subdivision ordinances, and such other documents required by and satisfactory to the County; and evidence satisfactory to the County and its counsel that the Final Plans conform to all federal, state, and local laws, ordinances, rules and regulations, including, but not limited to, laws of the State of Florida regulating air and water pollution and land use,

(v) copies of all necessary approvals from appropriate environmental protection agencies, and

(vi) satisfactory soil test report;

(g) **Partnership Documents:** Borrower shall deliver to the County the following documents:

(i) The Certificate of Limited Partnership of the Borrower and all amendments thereof, certified by the appropriate official of the State of Florida, together with certificates of such official to the effect that Borrower is in good standing therein;

(ii) certified resolutions of the Borrower authorizing the execution and delivery of this Agreement, the Mortgage, Note and all other documents necessary or desirable, for the consummation of the transactions contemplated by this Agreement;

(h) Flood Insurance: Borrower shall deliver to the County evidence satisfactory to the County either that the Premises are not within a hazardous flood area as designated by the Department of Housing and Urban Development and any other governmental authority, or if the Premises are within such a hazardous area, that the Premises are covered by flood insurance supplied by the federal Insurance Administration to the maximum amount available, all as provided in the Flood Disaster Protection Act of 1973, as amended, together with appropriate endorsements thereto providing for the County's interests in the same manner as the Builder's Risk Insurance, including without limitation that such insurance will not be canceled without 30 days notice to the County. Borrower agrees that the County shall have the right to take any action necessary to continue said insurance in full force and effect including, but not limited to, paying premiums. Any funds disbursed to continue said policies in full force and effect shall be considered as Disbursements hereunder and shall bear interest from the date of disbursement at the same rate as other Disbursements and payment of said funds and interest shall be secured by the Mortgage. Satisfactory evidence of flood area designation shall be a certification from the Surveyor appearing on the survey drawing;

(i) Opinion of Borrower's Counsel: Borrower shall deliver to the County an opinion of counsel for Borrower and addressed to the County, such counsel to be reasonably satisfactory to the County, to the effect that:

(i) This Loan Agreement and all Loan Documents and any other documents required to be delivered hereunder have been duly authorized, executed and delivered and are valid, binding and enforceable in accordance with their terms.

(ii) that Borrower is a Florida limited partnership in good standing under the laws of the State of Florida and has all the necessary power and authority to undertake its obligations hereunder,

(iii) to the best of counsel's knowledge, that Borrower is in compliance with all laws, regulations, ordinances and orders of all governmental authorities, including, but not limited to, if applicable, the Interstate Land Sales Full Disclosure Act, all applicable federal and state securities laws, and all laws of the State of Florida, applicable to the type of development contemplated hereunder,

(iv) to the best of counsel's knowledge and based upon the representations of the developer's engineer or architect, that the proposed construction of the Improvements and proposed use of the Premises comply with all applicable zoning and building laws and regulations, and all other applicable federal, state and local laws, ordinance and regulations, and that all permits and approvals required by all governmental agencies regulating air and water pollution have been obtained, and Florida Statute Chapter 380 pertaining to Development of Regional Impact (including the Aggregation Rule) as it relates to the Premises is not applicable,

(v) that there is no charter or bylaw of Borrower and no provision of any existing mortgage, indenture, contract or agreement known to such counsel binding on Borrower or affecting its property which could conflict with or in any way prevent the execution, delivery and carrying out of the terms of this Agreement,

(vi) that to counsel's knowledge there are no proceedings pending or threatened before any court or administrative agency which will materially adversely affect the financial condition or operation of Borrower or the Premises, including but not limited to bankruptcy, reorganization or insolvency proceeding or any other debtor-



creditor proceedings under the Bankruptcy Code or any similar statute, nor to counsel's knowledge are there any finance circumstances which could lead to such proceedings,

(vii) that the lien of the Mortgage is a valid lien on the Premises and the security interest described in the mortgage is good and valid security interests:

(viii) such other matters as the County may reasonable require.

(j) Expenses: Borrower shall have paid all those fees and charges due and payable or ordered paid by the County as provided herein under Paragraph 7 of this Loan Agreement entitled Expenses;

(k) Other Documents: Borrower shall deliver to the County such other documents and information as the County may reasonably require; and

(l) Representations and Warranties: The representations and warranties of Borrower as set forth in this Agreement and the Loan Documents are true and correct in all material respects.

6. DISBURSEMENT OF LOAN FUNDS: Upon receipt of documentation evidencing payment of construction costs associated with the construction of the Improvements on the Premises by Borrower, the County shall disburse the Loan funds to Borrower in an amount not to exceed \$600,000.00. Payment will not be made hereunder for any other purpose or purposes except with prior written approval of the Board of County Commissioners of Palm Beach County.

7. EXPENSES: Borrower shall pay fees and charges incurred in the procuring and making of this Loan, if applicable, and other expenses incurred by the County during the term of the Loan, including the Title Insurance Company's fees and premiums, charges for examination of title to the Premises, expenses of surveys, recording expenses, any and all insurance premiums, taxes, assessments, water rates, sewer rates and other charges, liens and encumbrances upon the Premises, and any other amounts necessary for the payment of the costs of Improvements.

8. SPECIAL PROVISIONS: Borrower expressly agrees to the following terms and conditions:

(a) Borrower agrees that the Improvements will consist of a 93-unit apartment complex, and that all of the apartment units to be constructed on the Premises shall be reserved for households who have extremely low or low income pursuant to U.S. Government HUD guidelines for a period of thirty (30) years. Specifically, twenty-three (23) units shall be reserved for extremely low income households and seventy (70) units shall be reserved for low income households. At least 50% of these units shall be reserved for homeless households, as defined in Chapter 67-48.001 of the Florida Administrative Code and First Mortgagee's rules and regulations.

(b) The Borrower shall not discriminate on the basis of race, age, creed, religion, color, sex, marital status, sexual orientation, gender identity or expression, national origin, familial status, or disability in the use, or occupancy of any housing constructed on the Premises.

(c) The Mortgage shall not be subject to any prepayment penalty.

(d) The Mortgage shall become immediately due and payable upon sale, transfer, or refinancing of the Premises.

(e) The Mortgage shall be non-assumable.

(f) Borrower agrees that the project will:

(i) provide energy efficient heating and cooling;

(ii) provide awnings, blinds, sun screening or similar window treatment;

- (iii) provide high efficiency appliances over 8 SEER;
- (iv) provide safe pedestrian and bicycle paths;
- (v) maximize open space (25% or more of site);
- (vi) conduct background checks on adult members of household prior to occupancy;

Conditions (a) (b) and (f) above shall, upon closing become covenants running with the land for a period of thirty (30) years and shall survive the closing, and the payment or other termination of the Mortgage and Note. These conditions and covenants will be recorded in the land records of Palm Beach County, Florida by inclusion in the Mortgage and/or by separate document satisfactory to the County's Attorney citing the granting of this loan and mortgage as consideration.

Notwithstanding anything to the contrary herein, in the event of a foreclosure and sale of the Development (or a portion thereof) or receipt of a deed in lieu of foreclosure pursuant to a default under the First Mortgage, subsections (a), (b) and (f) of this Section 8 shall be null and void and of no further force and effect. If a "Related Party" to the Borrower as defined in the Internal Revenue Code, should purchase the Development (or any portion thereof) following a foreclosure or a deed in lieu of foreclosure, the conditions set forth in subsections (a), (b) and (f) of this Section 8 shall be reinstated as of the date of transfer to the Related Party.

9. REPRESENTATIONS AND WARRANTIES OF BORROWER. Borrower represents and warrants (which representations and warranties shall be deemed continuing) as follows:

(a) Organization Status. Borrower is a Florida limited partnership duly organized and validly existing in good standing under the laws of the State of Florida with full power and authority to consummate the transactions contemplated herein. Borrower is duly authorized to borrow from County the principal sum of \$600,000.00 and execute all the Loan documents pertaining thereto.

(b) Financial Statements. The Financial statements of Borrower heretofore reviewed with the County are true and correct in all material respects, have been prepared in accordance with generally accepted accounting principles, and fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by Borrower since the date thereof;

(c) Authority to Enter into Loan Documents. The Borrower has full power and authority to enter into the Loan Documents and consummate the transactions contemplated hereby, and the facts and matters expressed or implied in the opinions of its legal counsel are true and correct;

(d) Validity of Loan Documents. The Loan Documents have been approved by those persons having proper authority, and to the best of Borrower's knowledge are in all respects legal, valid and binding according to their terms;

(e) Conflicting Transactions of Borrower. The consummation of the transaction hereby contemplated and the performance of the obligations of Borrower under and by virtue of the Loan Documents will not result in any breach of, or constitute a default under, any other Agreement to which Borrower is a party or by which it may be bound or affected;

(f) Pending Litigation. To Borrower's knowledge there are no actions, suits or proceedings pending before any court of law or equity, or any Administrative Board, or, to the knowledge of the Borrower, threatened against or affecting it or the Premises, or, involving the validity or enforceability of the Mortgage, or of any of the Loan Documents.

(g) Availability of Utilities. All utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are or will be available at the boundaries of the Premises, including water supply, storm and sanitary sewer facilities, and electric and telephone facilities, and Borrower has obtained or will obtain all necessary permits and permissions required from governmental authorities for unrestricted access to and use of such services in connection with the construction and use of the intended Improvements;

(h) Condition of Premises. The Premises are not now damaged or injured as a result of any fire, explosion, accident, flood or other casualty, and to Borrower's knowledge there are no soil conditions which would materially interfere with the construction of the Improvements;

(i) Availability of Roads. All roads necessary for the full utilization of the intended Improvements for their intended purposes have either been completed or the necessary rights of way therefor have either been acquired by the appropriate local authorities or have been dedicated to public use and accepted by such local authorities and all necessary steps have been taken by Borrower and such local authorities to assure the complete construction and installation thereof;

(j) No Default. There is no default on the part of the Borrower under this Loan Agreement, the Note or the Mortgage, and no event has occurred and is continuing which with notice, or the passage of time, or either, would constitute a default under any provision thereof; and

(k) Advertising. During the period of the construction of the Improvements, the County shall have the right to install and maintain on the Premises one or more signs identifying the County, or to be identified on such signs installed by others, as one of the institutions financing the Premises. Sign or signs will be provided by the County and erected at Borrower's expense.

(l) Hazardous Waste. To Borrower's knowledge, Borrower is in compliance with all provisions of the federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("Superfund") Act of 1980 and Solid Waste Disposal Act, Florida Statutes, Chapter 376, and other similar federal, state and local statutory schemes imposing liability on Borrower relating to the generation, storage, impoundment, disposal, discharge, treatment, release, seepage, emission, transportation or destruction of any sewage, garbage, effluent, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), toxic, hazardous or radioactive materials, petroleum products, pesticides, smoke, dust, or any other form of pollution as such laws are in effect as of the date of this Agreement and with any rules, regulations and order issued by any federal, state or local governmental body, agency or authority thereunder and with any orders or judgments of any courts of competent jurisdiction with respect thereto, and no assessment, notice of (primary or secondary) liability or notice of financial responsibility, or the amount thereof, or to impose civil penalties has been received by the Borrower. Borrower has paid any environmental excise taxes imposed pursuant to Sections 4611, 4661 or 4681 of the Internal Revenue Code of 1986, as from time to time amended.

(m) The Borrower has filed all Federal, State and local tax reports and returns required by any law or regulation to be filed by them, and have either duly paid all taxes, duties and charges indicated due on the basis of such returns and reports, or made adequate provisions for the payment thereof, and the assessment of any material amount of additional taxes in excess of those paid and reported is not reasonably expected.

10. ADDITIONAL COVENANTS OF BORROWER. Borrower covenants and agrees with the County as follows:

(a) Mechanics' Liens. Borrower (i) will cause the Mechanics' Lien exception to be deleted from the Lender's Title Insurance Policy to be issued to the County, (ii) has caused a certified copy of the Notice of Commencement to be posted as required by Chapter 713, Florida Statutes, , (iii) shall notify the County of any and all Notices to

Borrower which are received after the Closing of the loan contemplated herein as Owner as that term is defined in Chapter 713, Florida Statutes, within five (5) days of receipt thereof, and (iv) will comply with all provisions of the Florida Mechanics' Lien Law, including but not limited to, payment and notice provisions contained therein. Borrower shall indemnify and hold the County harmless from the claims of any mechanics' lien or equitable lien and pay promptly upon demand any loss or losses which the County may incur as a result of the filing of any such lien, including the reasonable cost of defending same and the County's reasonable attorneys' fees in connection therewith.

In addition, Borrower agrees, at its sole cost and expense, to have any mechanics' lien or equitable lien which may be filed against the Premises or undisbursed funds of this Loan released, bonded or insured over within sixty (60) days of the date of filing same, time being of the essence. The County shall be under no obligation to make further disbursements while any such lien remains outstanding against the Premises. If Borrower fails, after demand, to cause said lien or liens to be released, bonded or insured over as aforesaid the County may take such steps as it deems necessary and any funds expended shall be charged to Borrower's Loan Account and shall bear interest as provided by the Loan Documents.

Borrower hereby authorizes the County to demand, on Borrower's behalf, the statement of account referred to in Section 713.16(2) of the Florida Statutes, of any potential lienor filing a Notice to Owner. It is specifically understood and agreed, however, that the County's right to request such statements of account will in no way impose any obligation on the County to use such authority, and the exercise of such authority on one or more occasions shall not create or imply any obligation on such party to exercise such authority on subsequent occasions.

(b) No Transfer of Premises. Except as specifically set forth in the Mortgage or herein, including in the Permitted Exceptions, the Premises or any part thereof shall not be sold, leased (except for tenant lease), conveyed, mortgaged or encumbered in any way without the prior written consent of the County which consent shall not be unreasonably withheld, or delayed except as provided elsewhere herein or in the Mortgage; it being understood and agreed that part of the consideration for the Loan is the obligation of Borrower. Notwithstanding the foregoing, Borrower may enter into utility easements or licenses or leases for tenant services, such as laundry or concessions.

(c) Compliance with Laws. Borrower will comply promptly with all federal, state and local laws, ordinances and regulations relating to the construction, use, and leasing of the Premises, and will obtain and keep in good standing all necessary licenses, permits and approvals required or desirable for construction and use of the Improvements.

(d) Brokerage Commissions. Borrower will not knowingly engage in any activity or enter into any relationship which will give rise to any loan or brokerage commission with regard to the Loan, and Borrower will indemnify and hold County harmless from the claims of any broker(s) arising by reason of the execution hereof or the consummation of the transactions contemplated hereby.

(e) Financial Statements to be Furnished. Borrower shall furnish to the County:

(i) Upon the County's request, a complete and current financial statement of all assets and liabilities, contingent or otherwise, prepared in accordance with generally accepted accounting principles and verified by affidavit of Borrower and, at the request of the County, certified (in form satisfactory to the County) by an independent certified public accountant acceptable to the County;

(ii) within ninety (90) days after the end of each fiscal year of Borrower, a balance sheet and statements of income, surplus, and cash flow, together with schedules, all compiled and presented by an independent accounting firm in accordance with standard and uniform accounting practices showing the financial

condition of Borrower at the close of each year and the results of operations of Borrower during each year;

(iii) with the statements submitted under (ii) above, a certificate signed by the principal financial officer of Borrower to the effect that no Event of Default specified herein, nor any event which upon notice or lapse of time or both, would constitute such an Event of Default, has occurred which has not been cured or otherwise waived in writing by the Lender; and

(iv) promptly, from time to time, such other information regarding the operations, business, affairs and financial condition of Borrower as the County may reasonably request.

(f) Borrower to Maintain Bookkeeping System. Borrower shall, if required by the County, maintain a bookkeeping system to the construction project in form and content sufficient for the County and Inspector to conduct reviews, inspections, certifications and reports required by this Agreement. The County shall have full (but confidential) access, as allowed under the Public Records Law, at any reasonable time to the books, records and contracts pertaining to the Premises and Borrower.

(g) Insurance Proceeds. The Borrower shall keep the Premises continually insured in an amount not less than full insurable value of the Premises, which coverage shall insure the Premises against loss or damage by fire and by the perils covered by extended coverage and against such other hazards as the County, in its sole discretion, shall from time to time require, for the benefit of the County. All such insurance at all times will be in an insurance company or companies in such amounts and with terms acceptable to the County, with loss in excess of \$200,000.00, if any, payable to the County, as its interest may appear, pursuant to a non-contributory mortgagee clause which shall be reasonably satisfactory to the County; and forthwith upon the issuance of such policies they will deliver to the County copies of receipts for the premiums paid thereon and certificates of insurance and certified copies of such policies. Any policies furnished the County shall become its property in the event the County becomes the owner of the Premises by foreclosure or otherwise. Subject to the provisions of the First Mortgage, should a loss be incurred, equal to or in excess of fifty percent (50%) of the full insurable value of the Premises, then in such event, County and Borrower may jointly elect to use the proceeds for the reconstruction and repair of the Premises or, in the alternative, to apply the net proceeds to the payment of the indebtedness hereby secured, whether then due or not.

(h) Indebtedness. With respect to the Premises encumbered by the Borrower of even date herewith, Borrower will not incur, create, assume or permit to exist any indebtedness, except in the ordinary course of business constituting the deferred purchase price of any property or assets, or any indebtedness or liability evidenced by notes, bonds, debentures or similar obligations without the written approval of the County, which approval shall not be unreasonably withheld or delayed, except indebtedness owed the County and the aforementioned First Mortgage; provided however, that the First Mortgage shall not exceed the amounts set forth in Section 5.1 thereof.

(i) Further Assurances and Preservation of Security. Borrower will do all acts and execute all documents for the better and more effective carrying out of the intent and purposes of this Loan Agreement, as the County shall reasonably require from time to time, and will do such other acts necessary or desirable to preserve and protect the collateral at any time securing or intending to secure the Note, as the County may reasonably require.

(j) No Assignment. Borrower shall not assign this Loan Agreement or any interest therein and any such assignment is void and of no effect.

11. INSPECTIONS. Borrower will permit County, or its representatives to enter upon the Premises during normal business hours, inspecting Improvements and all materials to be used in the construction thereof, and to examine all details, plans and shop drawings which are kept at the construction site, and will cooperate, and cause

Borrower's general contractor and subcontractors to cooperate with the County's representative.

12. **DEFAULT.** The following events shall be deemed Events of Default:

(a) **Bankruptcy.** If there is filed by or against Borrower a petition in bankruptcy or a petition for the appointment of a receiver or trustee of the property of Borrower and any such petition not filed by Borrower is not dismissed within sixty (60) days of the date of filing, or if Borrower files a petition for reorganization under any of the provisions of the Bankruptcy Code or of any assignment for the benefit of creditors or makes any insolvency assignment or is adjusted insolvent by any court of competent jurisdiction; or

(b) **Breach of Covenants, Warranties and Representations.** If any warranty or representation made by Borrower in this Loan Agreement or in any other Loan Document shall at any time be false or misleading in any material respect, or if Borrower shall fail to keep, observe or perform any of the material terms, covenants, representations or warranties contained in this Loan Agreement, the Note, the Mortgage, the Loan Documents, and any other document given in connection with the Loan or development of the Improvement (provided, that with respect to non-monetary defaults, the County shall give written notice to Borrower, who shall have thirty (30) days to cure), or is unwilling to meet its obligations thereunder; or

(c) **Material Adverse Change of Borrower.** If any material adverse change shall occur in the financial condition of Borrower at any time during the term of the Loan from the financial condition revealed in statements already presented to and accepted by the County; or

(d) Borrower shall fail to use all funds under this loan agreement for costs associated with the construction of the Premises by December 31, 2009. In the event Borrower fails to use all funds by December 31, 2009, all remaining funds shall revert to the County and the County may reallocate for other projects or needs, unless written agreement to the contrary has been executed by the Parties.

(e) Borrower shall fail to complete construction of the Improvements and secure a Certificate of Occupancy for the Improvements by December 31, 2009, unless written agreement to the contrary has been executed by the Parties.

(f) Borrower shall default under the First Mortgage which is not cured within applicable cure periods.

13. **REMEDIES OF LENDER.** Upon the happening of an Event of Default, which default is not cured within any applicable cure or grace period, then the County may, subject to the terms of the Subordination Agreement (as defined herein), at its option, upon written notice to Borrower:

(a) Cancel this Loan Agreement;

(b) Commence an appropriate legal or equitable action to enforce performance of this Loan Agreement;

(c) Accelerate the payment of the Note and any other sums secured by the Mortgage, and commence appropriate legal and equitable action to foreclose the Mortgage and collect all such amounts due the County;

(d) Exercise any other rights or remedies the County may have under the Mortgage or other Loan Documents executed in connection with the Loan or which may be available under applicable law.

14. **GENERAL TERMS.** The following shall be applicable throughout the period of this Agreement or thereafter as provided herein:

(a) **Rights of Third Parties.** All conditions of the County hereunder are imposed solely and exclusively for the benefit of the County and its successors and assigns, and no other person shall have standing to require satisfaction of such

conditions or be entitled to assume that the County will make Disbursements in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of this Loan Agreement or the Loan Documents, any provisions of which may be freely waived in whole or in part by the County at any time if, in its sole discretion, it deems it desirable to do so. In particular, the County makes no representations and assumes no duties or obligations as to third parties concerning the quality of the construction by Borrower of the Improvements or the absence thereof of defects.

(b) Borrower is not the County's Agent. Nothing in this Agreement, the Note, the Mortgage or any other Loan Document shall be construed to make the Borrower the County's agent for any purpose whatsoever, or the Borrower and the County partners, or joint or co-venturers, and the relationship of the parties shall, at all times, be that of debtor and creditor.

(c) The County Not Liable for Damage or Loss. All inspections and other services rendered by or on behalf of the County pursuant to this Loan Agreement shall be rendered solely for the protection and benefit of the County. Neither Borrower nor other third persons shall be entitled to claim any loss or damage against the County or against its agents or employees for failure to properly conduct inspections and other such services contemplated by this Loan Agreement.

(d) The County Not Obligated to Insure Proper Disbursement of Funds to Third Parties. Nothing contained in this Agreement, or any Loan documents, shall impose upon the County any obligation to oversee the proper use or application of any disbursements and disbursements of funds made hereunder so long as disbursements are made to Borrower.

(e) Indemnification from Third Party Claims. Borrower shall indemnify and hold County harmless from any liability, claims or losses resulting from the disbursement of the Loan proceeds to Borrower or from the condition of the Premises, whether related to the quality of construction or otherwise, and whether arising during or after the term of the Loan, except any liability due to the gross negligence or willful misconduct of County. This provision shall survive the repayment of the Loan and shall continue in a full force and effect so long as the possibility of such liability, claims, or losses exists.

(f) Rights of Subcontractors, Laborers and Materialmen. In no event shall this Agreement be construed to make the County, Title Company or agent of the County liable to Borrower's Contractor or any subcontractors, laborers, materialmen, craftsmen, or others for labor, materials, or services delivered to the Premises or goods specially fabricated for incorporation therein, or for debts or liens accruing or arising to such persons or parties against Borrower or Borrower's Contractor. It is distinctly understood and agreed that there is no relation of any type whatsoever, contractual or otherwise, whether express or implied, between the County and Borrower's Contractor, any materialman, subcontractor, craftsman, laborer or any other person or entity supplying any labor, materials or services to the Premises or specially fabricating goods to be incorporated therein. Except as otherwise specifically provided herein, no such person or entities are intended to be third party beneficiaries of this Agreement or any document or instrument related to the Loan or to have any claim or claims in or to any undisbursed or retained Loan proceeds.

(g) Evidence of Satisfaction of Conditions. The County shall, at all time, be free independently to establish to its good faith and satisfaction, and in its absolute discretion, the existence or nonexistence of a fact or facts which are disclosed in documents or other evidence required by the terms of this Agreement.

(h) Headings. The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, and shall not limit or otherwise affect any of the terms hereof.

(i) Invalid Provisions to Affect No Others. If performance of any provision hereof or any transaction related hereto is limited by law, then the obligation to be

performed shall be reduced accordingly; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in part, then the invalid part of said clause or provision only shall be held for naught, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

(j) Application of Interest to Reduce Principal Sums Due. In the event that any charge, interest or late charge is above the maximum rate provided by law, then any excess amount over the lawful rate shall be applied by the County to reduce the principal sum of the Loan or any other amounts due the County hereunder.

(k) Governing Law. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement and the venue shall be in Palm Beach County.

(l) Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the others and shall apply jointly and severally.

(m) Agreement. This Loan Agreement constitutes the entire understanding and agreement between the parties with respect the subject matter hereof and may not be modified or amended, except in writing and signed by all parties hereto.

(n) Waiver. If the County shall waive any provisions of the Loan Documents, or shall fail to enforce any of the conditions or provisions of this Loan Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and the County shall thereafter have the right to insist upon the enforcement of such conditions or provisions. Furthermore, no provision of this Agreement shall be amended, waived, modified, discharged or terminated, except by instrument in writing signed by the parties hereto.

(o) Notices. All notice from the Borrower to the County and the County to Borrower required or permitted by any provision of this agreement shall be in writing and sent by registered or certified mail and addressed as follows:

TO LENDER: Board of County Commissioners  
c/o Palm Beach County Attorney's Office  
301 N. Olive Avenue, Suite 601  
West Palm Beach, FL 33401

TO BORROWER: McCurdy Center, Ltd.  
534 Datura Street  
West Palm Beach, FL 33401  
Attn: Joseph Glucksman, President of General Partner

Such addresses may be changed by written notice to the other party.

(p) Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their heirs, legal representatives, successors and assigns; but nothing herein shall authorize the assignment hereof by the Borrower.

(q) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute collectively but one and the same instrument.

(r) Waiver of Jury Trial. BORROWER AND COUNTY WAIVES THEIR RIGHT TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS LOAN OR GRANT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COUNTY'S EXTENDING CREDIT TO BORROWER AND NO WAIVER OR LIMITATION OF THE COUNTY'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON THE COUNTY'S BEHALF.

15. SUBORDINATION. Lender hereby approves the First Mortgage provided that it does not exceed the amounts set forth in Section 5.1 thereof and further agrees



to subordinate this Loan Agreement, the Mortgage, the Note, and all other Loan Documents to such First Mortgage, pursuant to the terms of that certain Subordination Agreement by and among Borrower, the County and First Mortgagee (the "Subordination Agreement"). The Chairperson of the Board of County Commissioners of Palm Beach County and the Clerk of the Court for Palm Beach County, are hereby authorized to execute subordination agreements required herein without further approval of the Board of County Commissioners of Palm Beach County, Florida, provided such documents are in a form acceptable to the County Attorney. Nothing contained herein shall, however, relieve the Borrower from its obligation to make payments under the Note in accordance with its terms.

16. NONRECOURSE. ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, IN THE EVENT OF ANY DEFAULT BY THE BORROWER UNDER THE LOAN REFERENCED HEREIN, THE SOLE REMEDY OF THE LENDER SHALL BE TO FORECLOSE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THIS LOAN, AND IN NO EVENT SHALL THE BORROWER OR ANY OF ITS PARTNERS HAVE ANY LIABILITY FOR THE PAYMENT OF THE LOAN OR ANY OTHER OBLIGATIONS REFERENCED HEREIN, OR FOR THE PAYMENT OF ANY DEFICIENCY FOLLOWING THE FORECLOSURE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THE LOAN.

17. EFFECTIVE DATE OF AGREEMENT. This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners. The Effective Date shall be the date on which this Loan Agreement is executed by the Board of County Commissioners.

(Remainder of page was left blank intentionally)

IN WITNESS WHEREOF, Borrower and the County have caused this Agreement to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

[Signature]  
[Signature]

MCCURDY CENTER, LTD.,  
a Florida limited partnership

By: MCCURDY CENTER, GP, INC.,  
a Florida corporation,  
Its sole General Partner

By: [Signature]  
Joseph Glucksman, President

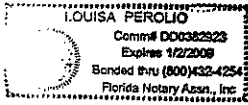
STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 9th day of December, 2008 by Joseph Glucksman, President of McCurdy Center GP, Inc., a Florida corporation, the sole general partner of McCurdy Center Ltd., a Florida limited partnership, on behalf of the corporation and the limited partnership. Said person is personally known to me or who has produced FLD # as identification and who did/did not take an oath. 6425497523800

[Signature]  
(Signature of Notary)

LOUISA PEROLIO  
(Typed, Printed, or Stamped Name of Notary)

My Commission Expires: 1/2/2009



R 2009 0100 JAN 13 2009

ATTEST:

PALM BEACH COUNTY, FLORIDA,  
a political subdivision of the State of  
Florida,  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

SHARON R. BOCK  
CLERK & COMPTROLLER

BY: [Signature]  
Deputy Clerk



BY: [Signature]  
John F. Koons, Chairman

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

BY: [Signature]  
County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS

BY: [Signature]

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Tracks A, B, C, G and H of the Plat of Belle Glade ALF, recorded in Plat Book III, at Page 47 of the Public Records of Palm Beach County, Florida.