

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: March 11, 2008 [X] Consent [ ] Regular  
[ ] Public Hearing

Department: Housing and Community Development

Submitted By: Housing and Community Development

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I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: an Agreement with the McCurdy Senior Housing Corporation for the purchase and delivery of an emergency generator and roof mounted HVAC units for an assisted living facility to be constructed in the City of Belle Glade, in the amount of \$250,000 in Community Development Block Grant (CDBG) funds, for the period of March 11, 2008, through September 30, 2009.

**Summary:** The equipment to be purchased and delivered under this Agreement will be permanently affixed to the assisted living facility building which will be located at 1101 Dr. Martin Luther King, Jr., Blvd. West in the City of Belle Glade. Funding is being made available under this Agreement to McCurdy Senior Housing Corporation, who has a controlling interest in McCurdy Center GP, Inc., who in turn will be the general partner in McCurdy Center, Ltd. (the owner of the land, and the developer for the assisted living facility). The facility will provide services to residents who are at or below 60% of the median income for the area. **This agreement will provide \$250,000 in Federal CDBG funds which do not require local matching funds.** (District 6) (TKF)

**Background and Justification:** This project has been determined by Housing and Community Development (HCD) to be an eligible activity under the CDBG program. Allocation of these funds to McCurdy Senior Housing Corporation, was approved by the Board of County Commissioners on July 13, 2004, through its approval of Palm Beach County's Action Plan for Fiscal Year 2004-05 (R2004-1612).

**Attachments:**

1. Agreement with McCurdy Senior Housing Corporation with Exhibits A to E (3)
2. Insurance Certificate

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Recommended by: Edward W. Brown 2/27/08  
Department Director Date

Approved By: Sharon G. Brown 3-6-08  
Assistant County Administrator Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures					
Operating Costs	\$250,000				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	\$250,000				

  

# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				
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Is Item Included In Current Budget? Yes XX No \_\_\_\_  
 Budget Account No.:

Fund 1101 Unit 143 Org 1431 Object 8201 Program Code/Period BG126-GY03: \$185,000  
 Fund 1101 Unit 143 Org 1431 Object 8201 Program Code/Period BG126-GY04: \$65,000

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

**Source: CDBG**

**Approval of this agenda item will allocate \$250,000 to the McCurdy Senior Housing Corporation for the purchase and delivery of an emergency generator and roof mounted HVAC units for an assisted living facility to be constructed in the City of Belle Glade.**

C. Departmental Fiscal Review: SNJM 2-26-08  
 Shairette Major, Fiscal Manager I

## III. REVIEW COMMENTS

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

Atwillhite 2-29-08  
 OFMB 2/29/08 CN 2/28/08

Jim J. Howard 3/4/08  
 Contract Development and Control 3/4/08

B. Legal Sufficiency:  
See CDCs comments

[Signature] 3/4/08  
 Assistant County Attorney

This Contract complies with our contract review requirements.

*At the time of our review the contract was not approved and proof of insurance was not available.*

C. Other Department Review:

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

This summary is not to be used as a basis for payment.

**AGREEMENT BETWEEN PALM BEACH COUNTY**

**AND**

**McCURDY SENIOR HOUSING CORPORATION**

**THIS AGREEMENT**, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida, for the use and benefit of its Community Development Block Grant Program, and McCurdy Senior Housing Corporation, a non-profit corporation duly organized and existing by virtue of the laws of the State of Florida, having its principal office at 534 Datura Street, Suite 420, West Palm Beach, FL 33401, and its Federal Tax Identification number as 56-242359.

**WHEREAS**, Palm Beach County has entered into an agreement with the United States Department of Housing and Urban Development for a grant for the execution and implementation of a Community Development Block Grant Program in certain areas of Palm Beach County, pursuant to Title I of the Housing and Community Development Act of 1974 (as amended); and

**WHEREAS**, Palm Beach County, in accord with the annual Action Plan, and McCurdy Senior Housing Corporation, desire to provide the activities specified in Part II of this Agreement; and

**WHEREAS**, Palm Beach County desires to engage McCurdy Senior Housing Corporation to implement such undertakings of the Community Development Block Grant Program.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, it is agreed as follows:

**PART I**

**DEFINITION AND PURPOSE**

**1. DEFINITIONS**

- (1) "County" means Palm Beach County.
- (2) "CDBG" means the Community Development Block Grant Program of Palm Beach County.
- (3) "HCD" means Palm Beach County Housing and Community Development.
- (4) "Agency" means McCurdy Senior Housing Corporation.
- (5) "HCD Approval" means the written approval of the HCD Director or his designee.
- (6) "U.S. HUD" means the Secretary of Housing and Urban Development or a person authorized to act on its behalf.
- (7) "Low and moderate income persons" means the definition set by U.S. HUD.

**2. PURPOSE**

The purpose of this Agreement is to state the covenants and conditions under which the Agency will implement the Scope of Services set forth in Part II of this Agreement. At least fifty-one percent (51%) of the beneficiaries of a project funded under this Agreement must be low-and moderate-income persons.

**PART II**

**SCOPE OF SERVICES**

The Agency shall, in a satisfactory and proper manner as determined by HCD, perform the tasks necessary to conduct the program outlined in Exhibit "A" as attached hereto and made a part hereof.

# McCURDY SENIOR HOUSING CORPORATION

## PART III

### COMPENSATION, TIME OF PERFORMANCE, METHOD, AND CONDITIONS OF PAYMENT

#### 1. MAXIMUM COMPENSATION

The Agency agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and HCD Director or designee-approved expenditures and encumbrances made by the Agency under this Agreement. Said services shall be performed in a manner satisfactory to HCD. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of \$250,000 for the period of March 11, 2008, through and including September 30, 2009. Any funds not obligated by the expiration date of this Agreement shall automatically revert to the County.

The Agency agrees to comply with the requirements of 24 CFR Part 58. The provision of funds under this Agreement is conditioned on the satisfactory completion of the environmental review process, and the County's determination to proceed, modify, or cancel this project/activity based on the results of this environmental review. If this project involves unspecified sites, the Agency agrees to provide a request to HCD for the preparation of an environmental review as the sites are identified.

#### 2. TIME OF PERFORMANCE

The effective date of this Agreement and all rights and duties designated hereunder are contingent upon the timely release of funds for this project by U. S. HUD under grant No. B-03-UC-12-0004 and No. B-04-UC-12-0004. The effective date shall be the date of execution of this Agreement, and the services of the Agency shall be undertaken and completed in light of the purposes of this Agreement. In any event, all services required hereunder shall be completed by the Agency prior to September 30, 2009.

#### 3. METHOD OF PAYMENT

The County agrees to make payments and to reimburse the Agency for all budgeted costs permitted by Federal, State, and County guidelines. The Agency shall not request reimbursement for payments made by the Agency before the effective date of this Agreement, nor shall it request reimbursement for payments made after the expiration date of this Agreement, and in no event shall the County provide advance funding to the Agency or any subcontractors hereunder. The Agency shall request payments or reimbursements from the County by submitting to HCD proper documentation of expenditures consisting of originals of invoices, receipts, or other evidence of indebtedness, and when original documents cannot be presented, the Agency may furnish copies if deemed acceptable by HCD. Each request for payment or reimbursement submitted by the Agency shall be accompanied by a letter from the Agency, provided on the Agency's letterhead, referencing the name of the project funded herein, the date of this Agreement and/or its document number, and containing a statement requesting the payment or reimbursement and its amount, as well as the name and signature of the person making the request. Payment shall be made by the Palm Beach County Finance Department upon presentation of the aforesaid proper documentation of expenditures as approved by HCD. The Agency may at any time after the expiration of this agreement request from the County reimbursement for payments made by the Agency during the term of this Agreement by submitting to HCD the aforesaid proper documentation of expenditures, and the Palm Beach County Finance Department shall make payment as stated above, provided that HCD has determined that the funds allocated to the Agency through this agreement are still available for payment, and provided that HCD approves such payment.

#### 4. CONDITIONS ON WHICH PAYMENT IS CONTINGENT

##### (1) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES

The Agency shall implement this Agreement in accordance with applicable Federal, State, County, and local laws, ordinances and codes and with the procedures outlined in HCD Policies and Procedures memoranda. The Federal, State, and County laws, ordinances and codes are minimal regulations supplemented by more restrictive guidelines set forth by HCD. No payments for projects funded by more than one funding source will be made until a cost allocation plan has been approved by the HCD Director or designee. Should a project receive additional funding after the commencement of this Agreement, the Agency shall notify HCD in writing within thirty (30) days of receiving notification from the funding source and submit a cost allocation plan for approval by the HCD Director or designee within forty-five (45) days of said official notification.

## McCURDY SENIOR HOUSING CORPORATION

(2) FINANCIAL ACCOUNTABILITY

The County may have a financial systems analysis and/or an audit of the Agency, or of any of its subcontractors, by an independent auditing firm employed by the County or by the County Internal Audit Department at any time the County deems necessary to determine if the project is being managed in accordance with Federal, State, and County requirements.

(3) SUBCONTRACTS

Any work or services subcontracted hereunder shall be specifically by written contract, written agreement, or purchase order. All subcontracts shall be submitted by the Agency to HCD and approved by HCD prior to execution of any subcontract hereunder. All subcontracts shall be subject to Federal, State and County laws and regulations. This includes ensuring that all consultant contracts and fee schedules meet the minimum standards as established by the Palm Beach County Engineering Department and U.S. HUD. Contracts for architecture, engineering, survey, and planning shall be fixed fee contracts. All additional services shall have prior written approval with support documentation detailing categories of persons performing work plus hourly rates including benefits, number of drawings required, and all items that justify the "Fixed Fee Contract." Reimbursables will be at cost.

None of the work or services covered by this Agreement, including, but not limited to, consultant work or services, shall be subcontracted or reimbursed without prior written approval of the HCD Director or his designee.

(4) PURCHASING

All purchasing for services and goods, including capital equipment, shall be made by purchase order or by a written contract and in conformity with the procedures prescribed by the Palm Beach County Purchasing Code, as well as Federal Management Circulars A-110, A-122, and 24CFR Part 84, which are incorporated herein by reference.

(5) REPORTS, AUDITS, AND EVALUATIONS

Payment will be contingent on the timely receipt of complete and accurate reports required by this Agreement, and on the resolution of monitoring or audit findings identified pursuant to this Agreement.

(6) ADDITIONAL HCD, COUNTY, AND U.S. HUD REQUIREMENTS

HCD shall have the right under this Agreement to suspend or terminate payments if after 15 days written notice the Agency has not complied with any additional conditions that may be imposed, at any time, by HCD, the County, or U.S. HUD.

(7) PRIOR WRITTEN APPROVALS-SUMMARY

The following activities among others require the prior written approval of the HCD Director or designee to be eligible for reimbursement or payment:

- (a) All subcontracts and agreements pursuant to this Agreement;
- (b) All capital equipment expenditures of \$1,000 or more;
- (c) All out-of-county travel; (travel shall be reimbursed in accordance with Florida Statutes, Chapter 112.061);
- (d) All change orders; and
- (e) All requests to utilize uncommitted funds after the expiration of this Agreement for programs described in Exhibit A; and
- (f) All rates of pay and pay increases paid out of CDBG funds, whether for merit or cost of living.

(8) PROGRAM-GENERATED INCOME

All income earned by the Agency from activities financed in whole or in part by funds provided hereunder must be reported to HCD. Such income would include, but not be limited to, income from service fees, sale of commodities, and rental or usage fees. Such income shall only be used to undertake the activities authorized by this Agreement. Accounting and disbursement of such income shall comply with OMB Circular A-110 and other applicable regulations incorporated herein by reference.

## McCURDY SENIOR HOUSING CORPORATION

### PART IV

#### GENERAL CONDITIONS

1. OPPORTUNITIES FOR RESIDENTS AND CIVIL RIGHTS COMPLIANCE

The Agency agrees that no person shall on the ground of race, color, disability, national origin, religion, age, financial status, familial status, marital status, sexual orientation, or gender, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.

To the greatest extent feasible, lower-income residents of the project areas shall be given opportunities for training and employment; and to the greatest feasible extent eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded contracts in connection with the project. The Agency shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968.

2. OPPORTUNITIES FOR SMALL AND MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES

In the procurement of supplies, equipment, construction, or services to implement this Agreement, the Agency shall make a positive effort to utilize small business and minority/women-owned business enterprises of supplies and services, and provide these sources the maximum feasible opportunity to compete for contracts to be performed pursuant to this Agreement. To the maximum extent feasible these small business and minority/women-owned business enterprises shall be located in or owned by residents of the CDBG areas designated by Palm Beach County in the CDBG Annual Consolidated Plan approved by U.S. HUD.

3. PROGRAM BENEFICIARIES

At least fifty-one percent (51%) of the beneficiaries of a project funded through this Agreement must be low- and moderate- income persons. If the project is located in an entitlement city, as defined by U.S. HUD, or serves beneficiaries countywide, at least fifty-one percent (51%) of the beneficiaries directly assisted through the use of funds under this Agreement must reside in unincorporated Palm Beach County or in municipalities participating in the County's Urban County Qualification Program. The project funded under this Agreement shall assist beneficiaries as defined above for the time period designated in this Agreement. The Agency shall provide written verification of compliance to HCD upon HCD's request.

4. EVALUATION AND MONITORING

The Agency agrees that HCD will carry out periodic monitoring and evaluation activities as determined necessary by HCD or the County and that payment, reimbursement, or the continuation of this Agreement is dependent upon satisfactory evaluation conclusions based on the terms of this Agreement. The Agency agrees to furnish upon request to HCD, the County, or the County's designees copies of transcriptions of such records and information as is determined necessary by HCD or the County. The Agency shall submit status reports required under this Agreement on forms approved by HCD to enable HCD to evaluate progress. The Agency shall provide information as requested by HCD to enable HCD to complete reports required by the County or HUD. The Agency shall allow HCD, the County, or HUD to monitor the Agency on site. Such visits may be scheduled or unscheduled as determined by HCD or HUD.

5. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as HCD, the County, U.S. HUD, or the Comptroller General of the United States may deem necessary, there shall be made available by the Agency to HCD, the County, U.S. HUD, or the Comptroller General for examination all its records with respect to all matters covered by this Agreement.

If during the year, the Agency expends over \$500,000 of Federal awards, the Agency shall comply with the provisions of OMB Circular A-133. The Agency shall submit a single audit, including any management letter, made in accordance with the general program requirements of OMB Circulars A-110, A-122, A-133, and other applicable regulations within the earlier of thirty (30) days after receipt of the audit's report, or nine (9) months after the end of the audit period covered by this Agreement. Said audit shall be made by a Certified Public Accountant of the Agency's choosing, subject to the County's approval. In the event the Agency anticipates a delay in producing such audit, the Agency shall request an extension in advance of the deadline. The cost of said audit shall be borne by the Agency. In the event the Agency is exempt from having an audit conducted under A-133, the Agency shall submit audited financial statements and/or the County reserves the right to conduct a "limited scope audit" of the Agency as defined by A-133. The County will be responsible for providing technical assistance to the Agency, as deemed necessary by the County.

## McCURDY SENIOR HOUSING CORPORATION

### 6. UNIFORM ADMINISTRATIVE REQUIREMENTS

The Agency agrees to comply with the applicable uniform administrative requirements as described in Federal Community Development Block Grant Regulations 24 CFR 570.502.

### 7. REVERSION OF ASSETS

Upon expiration of this Agreement, the Agency shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Agency's control upon expiration of this Agreement which was acquired or improved in whole or part with CDBG in the excess of \$25,000 must either be used to meet one of the national objectives in Federal Community Development Block Grant Regulations 24 CFR 570.508 for a period of five years after expiration of this Agreement (unless a longer period is specified elsewhere in this Agreement), or, the Agency shall pay the County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

### 8. DATA BECOMES COUNTY PROPERTY

All reports, plans, surveys, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the Agency for the purpose of this Agreement shall be made available to the County by the Agency at any time upon request by the County or HCD. Upon completion of all work contemplated under this Agreement copies of all documents and records relating to this Agreement shall be surrendered to HCD if requested. In any event the Agency shall keep all documents and records for five (5) years after expiration of this Agreement.

### 9. INDEMNIFICATION

The Agency shall protect, defend, reimburse, indemnify and hold the County, its agents, its employees and elected officers harmless from and against any and all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during the performance of the terms of this Agreement, or due to the acts or omissions of the Agency. Agency's aforesaid indemnity and hold harmless obligation, or portion or applications thereof, shall apply to the fullest extent permitted by law. The Agency will hold the County harmless and will indemnify the County for funds which the County is obligated to refund the Federal Government arising out of the conduct of activities and administration of Agency.

### 10. INSURANCE

Unless otherwise specified in this Agreement, the Agency shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages, limits, including endorsements, as described herein. The requirements contained herein as to types and limits, as well as the County's review or acceptance of insurance maintained by the Agency, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Agency under this Agreement.

#### (1) COMMERCIAL GENERAL LIABILITY

The Agency shall agree to maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted by the County's Risk Management Department. The Agency agrees this coverage shall be provided on a primary basis.

#### (2) BUSINESS AUTOMOBILE LIABILITY

The Agency shall agree to maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event the Agency does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the Agency to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. The Agency shall agree this coverage shall be provided on a primary basis.

## McCURDY SENIOR HOUSING CORPORATION

- (3) WORKERS COMPENSATION INSURANCE  
The Agency shall agree to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. The Agency agrees this coverage shall be provided on a primary basis.
- (4) ADDITIONAL INSURED  
The Agency shall agree to endorse the County as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Department of Housing and Community Development". The Agency shall agree the Additional Insured endorsements provide coverage on a primary basis.
- (5) CERTIFICATE OF INSURANCE  
The Agency shall agree to deliver to the County a certificate(s) of insurance evidencing the required insurance is in full force and effect within thirty (30) calendar days prior to the execution of this Agreement by the County. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be included on the certificate(s). The Agency shall deliver the certificate(s) to HCD at its office at 160 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.
- (6) RIGHT TO REVIEW AND ADJUST  
The Agency shall agree that the County, by and through its Risk Management Department, in cooperation with the Department of Housing and Community Development, reserves the right to periodically review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the life of this Agreement. The County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.
11. MAINTENANCE OF EFFORT  
The intent and purpose of this Agreement is to increase the availability of the Agency's services. This Agreement is not to substitute for or replace existing or planned projects or activities of the Agency. The Agency agrees to maintain a level of activities and expenditures, planned or existing, for projects similar to those being assisted under this Agreement which is not less than that level existing prior to this Agreement.
12. CONFLICT OF INTEREST  
The Agency covenants that no person who presently exercises any functions or responsibilities in connection with the Project, has any personal financial interest, direct or indirect, in the target areas or any parcels therein, which would conflict in any manner or degree with the performance of this Agreement and that no person having any conflict of interest shall be employed by or subcontracted by the Agency. Any possible conflict of interest on the part of the Agency or its employees shall be disclosed in writing to HCD provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation of low and moderate-income residents of the project target area.
13. CITIZEN PARTICIPATION  
The Agency shall cooperate with HCD in the implementation of the Citizen Participation Plan by establishing a citizen participation process to keep residents informed of the activities the Agency is undertaking in carrying out the provisions of this Agreement. Representatives of the Agency shall attend meetings and assist HCD in the implementation of the Citizen Participation Plan, as requested by HCD.
14. RECOGNITION  
All facilities purchased or constructed pursuant to this Agreement shall be clearly identified as to funding source. The Agency will include a reference to the financial support herein provided by HCD in all publications and publicity. In addition, the Agency will make a good faith effort to recognize HCD's support for all activities made possible with funds made available under this Agreement.



## McCURDY SENIOR HOUSING CORPORATION

### 15. AGREEMENT DOCUMENTS

The following documents are herein incorporated by reference and made a part hereof, and shall constitute and be referred to as the Agreement; and all of said documents taken as a whole constitute the Agreement between the parties hereto and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:

- (1) This Agreement, including its Exhibits;
- (2) Office of Management and Budget Circulars A-110, A-122, A-133, and 24CFR Part 84;
- (3) Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;
- (4) Executive Orders 11246, 11478, 11625, 12432, the Davis Bacon Act, and Section 3 of the Housing and Community Development Act of 1968, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;
- (5) Executive Orders 11063, 12259, 12892, the Fair Housing Act of 1988, and Section 109 of the Housing and Community Development Act of 1974, as amended;
- (6) Florida Statutes, Chapter 112;
- (7) Palm Beach County Purchasing Code;
- (8) Federal Community Development Block Grant Regulations (24 CFR Part 570), and Federal Consolidated Plan Regulations (24 CFR Part 91), as amended;
- (9) The Agency's personnel policies and job descriptions;
- (10) The Agency's incorporation Certificate and Articles of Incorporation;
- (11) The Agency's By-laws;
- (12) The Agency's Certificate of Insurance;
- (13) Current list of the Agency's officers and members of its Board of Directors; and
- (14) Proof of the Agency's 501(c)(3) certification from the Internal Revenue Service.

All of these documents will be maintained on file at HCD. The Agency shall keep an original of this Agreement, including its Exhibits, and all amendments thereto, on file at its principal office.

### 16. TERMINATION

In event of termination for any of the following reasons, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, and capital equipment secured by the Agency with funds under this Agreement shall be returned to HCD or the County.

In the event of termination, the Agency shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Agency, and the County may withhold any payment to the Agency for set-off purposes until such time as the exact amount of damages due to the County from the Agency is determined.

#### (1) TERMINATION FOR CAUSE

If through any cause either party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement in whole or part by giving a fifteen (15) working day written notice of such termination to the other party and specifying therein the effective date of termination.

#### (2) TERMINATION DUE TO CESSATION

In the event the grant to the County under Title I of the Housing and Community Development Act of 1974 (as amended) is suspended or terminated, this Agreement shall be suspended or terminated effective on the date the U.S. HUD specifies.

### 17. SEVERABILITY OF PROVISIONS

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

## McCURDY SENIOR HOUSING CORPORATION

18. AMENDMENTS

The County may, at its discretion, amend this Agreement to conform with changes required by Federal, State, County, or U.S. HUD guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Palm Beach County Board of County Commissioners. Except as otherwise provided herein, no amendment to this Agreement shall be binding on either party unless in writing, approved by the Board of County Commissioners and signed by both parties.

19. NOTICES

All notices required to be given under this Agreement shall be sufficient when delivered to HCD at its office at 160 Australian Avenue, Suite 500, West Palm Beach, Florida 33406, and to the Agency when delivered to its office at the address listed on page one (1) of this Agreement.

20. INDEPENDENT AGENT AND EMPLOYEES

The Agency agrees that, in all matters relating to this Agreement, it will be acting as an independent agent and that its employees are not Palm Beach County employees and are not subject to the County provisions of the law applicable to County employees relative to employment, hours of work, rates of compensation, leave, unemployment compensation and employee benefits.

21. NO FORFEITURE

The rights of the County under this Agreement shall be cumulative and failure on the part of the County to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the said rights.

22. PUBLIC ENTITY CRIMES

As provided in F.S. 287.133 by entering into this Agreement or performing any work in furtherance hereof, the Agency certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3)(a).

23. COUNTERPARTS OF THE AGREEMENT

This Agreement, consisting of Nineteen (19) enumerated pages which include the exhibits referenced herein, shall be executed in three (3) counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument.

THIS SPACE LEFT BLANK INTENTIONALLY

McCURDY SENIOR HOUSING CORPORATION

24. ENTIRE UNDERSTANDING

This Agreement and its provisions merge any prior agreements, if any, between the parties hereto and constitutes the entire understanding. The parties hereby acknowledge that there have been and are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

WITNESS our Hands and Seals on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(AGENCY SEAL BELOW)



McCURDY SENIOR HOUSING CORPORATION

BY: Joseph Glucksmann  
Joseph Glucksmann, President

By: Jim Lakatos  
Jim Lakatos, Secretary

BY: N/A  
Attorney for Agency  
(Signature Optional)

(COUNTY SEAL BELOW)

**PALM BEACH COUNTY, FLORIDA, a  
Political Subdivision of the State of Florida**

**BOARD OF COUNTY COMMISSIONERS**

ATTEST: Sharon R. Bock,  
Clerk & Comptroller

By: \_\_\_\_\_  
Addie L. Greene, Chairperson  
Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

Document No.: \_\_\_\_\_

Approved as to Form and  
Legal Sufficiency

Approved as to Terms and Conditions  
Dept. of Housing and Community Development

By: \_\_\_\_\_  
Tammy K. Fields  
Senior Assistant County Attorney

By: Amin Horry  
Amin Horry, Manager  
Housing and Capital Improvements

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**McCURDY SENIOR HOUSING CORPORATION**  
**EXHIBIT A**  
**WORK PROGRAM NARRATIVE**

**I. THE AGENCY AGREES TO:**

- A. **PROFESSIONAL SERVICES:** The Agency shall retain the services of an architectural or engineering consultant for this project to create specifications for the purchase and delivery of the below described equipment to be located in the City of Belle Glade. The consultant shall also prepare, obtain and review bids, prepare contract documents, inspect work in progress, recommend payment to contractor, and provide other professional services customarily provided by similar professionals. The consultant shall also coordinate the design and construction work with the asbestos abatement contractor, should such abatement become necessary. The cost of the consultant services shall be funded by the Agency.

In addition, upon completion of the project, the Agency shall cause its architectural/engineering consultant to provide HCD a written certification. Such certification shall indicate that the equipment below has been permanently installed and attached to the facility described below.

- B. **PROJECT SCOPE :** The scope of this project subject to funding availability shall include the following :

Purchase and delivery of fixed equipment to be installed at the affordable rental housing project to be constructed at 1101 Dr. Martin Luther King, Jr., Blvd., West, in Belle Glade, FL 33430. The equipment shall consist of one emergency generator and up to ten roof mounted HVAC units.

The Agency shall procure the emergency generator through one bid process, and the HVAC units through a separate second bid process.

**NOTE 1: All equipment shall be permanently installed by permanently attaching it to a concrete slab or the building. The consultant shall provide written certification that the equipment has been permanently installed and attached.**

NOTE 2: The Agency shall submit its bid packages (drawings/specifications and instructions to bidders), to HCD and obtain a letter of approval prior to bidding. Furthermore, the Agency shall obtain HCD approval prior to issuing any addenda to its bid documents for this project.

NOTE 3: The Agency shall prioritize the work in the project, and shall bid such work in a manner that would allow the receipt of itemized costs from bidders which would then allow the award of items that can be funded by the budget provided under this Agreement.

NOTE 4: The Agency shall not award the purchase and delivery contracts for the project until sufficient funding is available to complete the established scope of work. The Agency shall obtain HCD approval prior to awarding the purchase and delivery contracts to be funded through this Agreement. After awarding such contracts, the Agency shall obtain HCD approval prior to executing any change orders to such contracts.

NOTE 5: Should the contract amount for this project exceed the amount to be funded by the County through this Agreement, then the Agency shall fund all amounts in excess of the amount to be funded by the County. The Agency shall not request the County for reimbursement of any of the County's funds until after it has expended all amounts in excess of the amount to be funded by the County.

The Agency further agrees that HCD, in consultation with any parties it deems necessary, shall be the final arbiter on the Agency's compliance with the above.

- C. **ASBESTOS REQUIREMENTS:** The Agency shall comply with all applicable requirements contained in Exhibit C, attached hereto, for construction work in connection with the project funded through this Agreement.
- D. **BONDING REQUIREMENTS:** The Agency shall comply with the requirements of OMB Circular A-110 and 24CFR Part 84 in regard to bid guarantees, performance bonds, and payment bonds.
- E. **FORMER PROJECTS:** The Agency shall maintain all previously completed CDBG funded projects. Failure to do so will result in forfeiture of future CDBG funds and will delay funding for ongoing activities.

## McCURDY SENIOR HOUSING CORPORATION

- F. WORK SCHEDULE: The time frame for completion of the outlined activities shall be September 30, 2009.

Complete Bid Documents by	Nov 30, 2008
Advertise & Accept Bids by	Jan 31, 2009
Award Contract by	Mar 31, 2009
Complete Delivery by	Sept 30, 2009

- I. REPORTS: The Agency shall submit to HCD detailed monthly progress reports in the form provided as Exhibit B to this Agreement. Each report must account for the total activity for which the Agency is funded under this Agreement. The progress reports shall be used by HCD to assess the Agency's progress in implementing the project.

In addition, the Agency shall provide HCD the information specified in Exhibit E to this Agreement twelve (12) months after issuance of the certificate of occupancy for the affordable rental housing project whose improvements are funded by this Agreement.

- J. USE OF THE PROJECT FACILITY AND PREREQUISITES TO THE EXPENDITURE OF FUNDS: The Agency (McCurdy Senior Housing Corporation) hereby represents to the County that it is the sole shareholder of McCurdy Center GP, Inc., a Florida profit corporation, that McCurdy Center GP, Inc., is the general partner of McCurdy Center, Ltd., a Florida limited partnership, and that McCurdy Center, Ltd., has agreed, in writing, that any change in the general partner of McCurdy Center, Ltd., will result in the repayment of \$250,000 to the County unless McCurdy Center, Ltd., receives the prior written authorization of the County for a change in its general partner. The Agency hereby also represents to the County that McCurdy Center, Ltd., owns the land described in Exhibit D, hereto, and that McCurdy Center, Ltd., will own the affordable rental housing project to be construct on said land (at 1101 Dr. Martin Luther King, Jr., Blvd., West, in Belle Glade, FL 33430) in part with the CDBG funds provided by this Agreement. The Agency agrees in regard to the use of said affordable rental housing project, whose acquisition or improvements are being funded in part or in whole by CDBG funds as provided by this Agreement, that it shall comply with the provisions of Exhibit D, that it shall, in like manner, compel McCurdy Center GP, Inc., to comply with the provisions of Exhibit D, and that it shall further compel McCurdy Center GP, Inc., in its capacity as general partner, to cause McCurdy Center, Ltd., to comply with the provisions of Exhibit D. The parties acknowledge that the Agency will contribute the funds to the capital McCurdy Center GP, Inc., which in turn will contribute the funds to the capital of McCurdy Center, Ltd.

As evidence of the above, the Agency shall, upon execution of this Agreement, compel McCurdy Center GP, Inc., to cause McCurdy Center, Ltd., to execute and deliver to the County Exhibit D, which the Agency shall record in the public records. Recording fees associated with this Exhibit shall be borne by the Agency.

As a prerequisite to the expenditure of funds made available under this Agreement, the Agency shall provide documentation to County evidencing the following:

- (1) That the Agency is the sole shareholder of McCurdy Center GP, Inc.
- (2) That McCurdy Center GP, Inc., is the general partner of McCurdy Center, Ltd.
- (3) That McCurdy Center, Ltd., has agreed, in writing, that any change in the general partner of McCurdy Center, Ltd., will result in the repayment of \$250,000 to the County unless McCurdy Center, Ltd., receives the prior written authorization of the County for a change in its general partner.

## II. THE COUNTY AGREES TO:

- A. Provide funding for the above specified purchases as described above in "Project Scope", during the term of this Agreement, in the amount of \$250,000. However, the County shall not provide any funding for these purchases until the Agency provides documentation showing that sufficient funds are available to complete the project.
- B. Provide project administration and inspection to the Agency to ensure compliance with U.S. HUD and the Department of Labor, and applicable State, Federal and County laws and regulations.
- C. Monitor the Agency at any time during the term of this Agreement. Visits may be scheduled or unscheduled as determined by HCD, be conducted by HCD staff or its contractor, and will serve to ensure compliance with U.S. Department of HUD regulations, that planned activities are conducted in a timely manner, and to verify the accuracy of reporting to HCD on program activities.
- D. The County shall perform an environmental review of the project, and review and approve project design and bids submitted for the work. The County shall also perform Davis Bacon Act Labor Standards monitoring and enforcement. Environmental review costs incurred by the County may be charged to the project budget identified above.

McCURDY SENIOR HOUSING CORPORATION

EXHIBIT B

PALM BEACH COUNTY

HOUSING & COMMUNITY DEVELOPMENT

MONTHLY NARRATIVE REPORT

Report For:	Month: _____ Year: _____
Subrecipient Name:	McCURDY SENIOR HOUSING CORPORATION
Project Name:	Purchase & Delivery of Generator and HVAC Equipment
Report Prepared By:	<div>Name _____ Signature _____ Date _____</div>

BUDGETING AND EXPENDITURES

Amounts Expended this Reporting Period: CDBG Funds:\$\_\_\_\_\_ Other Funds:\$\_\_\_\_\_

Amounts Expended to Date:

////////////////////////////////////	BUDGETED	EXPENDED	PERCENTAGE
CDBG Funds:	\$	\$	%
Other Funds:_____	\$	\$	%
Other Funds:_____	\$	\$	%
TOTAL:	\$	\$	%

Describe any changes in budgeted amounts during this reporting period and the source of funds:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe your efforts to obtain any additional funds for the project during this reporting period (if your project is underfunded): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PROJECT ACTIVITIES

Describe your accomplishments during the reporting period: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe any problems encountered during this reporting period: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Other comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Send report to: Amin Houry  
Department fo Housing and Community Development  
160 Australian Avenue, Suite 500, West Palm Beach, FL 33406

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**McCURDY SENIOR HOUSING CORPORATION**  
**EXHIBIT C**

**ASBESTOS REQUIREMENTS**  
**SPECIAL CONDITIONS FOR DEMOLITION AND RENOVATION OF BUILDINGS**

The provisions of this part apply to all demolition and renovation work contemplated in this Agreement and described in Exhibit A of this Agreement.

**I. DEFINITIONS**

ACBM: Asbestos Containing Building Materials  
AHERA: Asbestos Hazard Emergency Response Act  
EPA: Environmental Protection Agency  
FLAC: Florida Licensed Asbestos Consultant  
HCD: Palm Beach County Department of Housing and Community Development  
NESHAP: National Emission Standards for Hazardous Air Pollutants  
NRCA: National Roofing Contractors Association  
NVLAP: National Voluntary Laboratory Accreditation Program  
OSHA: Occupational Health and Safety Administration  
PBCAC: Palm Beach County Asbestos Coordinator (in Risk Management)  
TEM: transmission electron microscopy

**II. ASBESTOS SURVEYS**

All properties scheduled for renovation or demolition are required to have a comprehensive asbestos survey conducted by a Florida Licensed Asbestos Consultant (FLAC). The survey shall be conducted in accordance with AHERA guidelines. Analysis must be performed by a NVLAP accredited laboratory.

For Renovation Projects (projects which will be reoccupied):

- Point counting must be done for all asbestos containing building materials (ACBM) indicating less than 1% asbestos (to determine if any asbestos is present).
- Samples of vinyl floor tile indicating asbestos not detected must be confirmed by transmission electron microscopy (TEM).
- Joint compound shall be analyzed as a separate layer.
- Roofing material shall be sampled only if a renovation requires the roof to be disturbed (in lieu of sampling the roof, it may be presumed to contain asbestos).

For Demolition Projects:

- Point counting must be done for all "friable" asbestos containing building materials (ACBM), indicating less than 1% asbestos. This includes joint compounds (to be analyzed as a separate layer), and vinyl asbestos tile.
- Roof materials shall be presumed to be asbestos containing.

If the Agency has a recent asbestos survey report prepared by a licensed asbestos consultant, a copy may be provided to HCD and PBCAC for review to determine if the survey is adequate to proceed with renovation/demolition work. If no survey is available, a survey may be initiated by the Agency or requested by HCD. A copy of the completed survey will be forwarded to the Agency. All asbestos survey's shall be forwarded to the PBCAC.

**III. ASBESTOS ABATEMENT**

**A. RENOVATION**

- (a) Prior to a renovation, all asbestos containing materials that will be disturbed during the renovation, must be removed by a Florida Licensed Asbestos Contractor under the direction of a FLAC. Exceptions may be granted by HCD prior to the removal, (such as asbestos containing roofs, transite pipe). The Agency must obtain approval for all exceptions from HCD. HCD will request the PBCAC to review and approve all exceptions.
- (b) Asbestos Abatement work may be contracted by the Agency or by HCD upon request.
- (c) If the Agency contracts the asbestos abatement, the following documents are required to be provided to the HCD and the PBCAC.
  - 1. An Asbestos Abatement Specification (Work Plan), sealed by an FLAC.
  - 2. Pre and Post Job submittals, reviewed and signed by the FLAC.

## McCURDY SENIOR HOUSING CORPORATION

- (d) If the Agency requests HCD to contract the asbestos abatement, HCD will initiate the request through the PBCAC who will contract the asbestos abatement. HCD will provide a copy of all contractor and consultant documents to the Agency.
- (e) Materials containing <1% asbestos are not regulated by EPA/NESHAPS. However, OSHA compliance is mandatory. OSHA requirements including training, wet methods, prompt cleanup in leak tight containers, etc. The renovation contractor must comply with US Dept of Labor, Standard Interpretation (OSHA), Compliance requirements for renovation work involving material containing <1% asbestos, 11/24/2003. The renovation contractor must submit a work plan to HCD and the PBCAC prior to removal of the materials.

### B. DEMOLITION

All "friable" ACM must be removed by a Florida Licensed Asbestos Contractor under the direction of a FLAC prior to demolition. Friable materials include: resilient asbestos tile and mastic which is not intact, linoleum, asbestos containing joint compound, asbestos containing cement panels (e.g. transite), etc.

Intact resilient tile and asbestos roof materials may be demolished with adequate controls (e.g. wet method) by a demolition contractor provided the contractor is aware of the asbestos containing materials present and exercises adequate control techniques (wet methods, etc.). In all cases, demolition work should be monitored by a FLAC to insure proper control measures and waste disposal. Any exceptions to these guidelines may be requested through HCD prior to the removal, (such as asbestos containing roofs, transite pipe). Exceptions may be granted by HCD prior to the removal, (i.e. asbestos containing roofs, transite pipe). The Agency must obtain approval for all exceptions from HCD and the PBCAC.

- (a) Asbestos Abatement work may be contracted by the Agency or by HCD upon request.
- (b) If the Agency contracts the asbestos abatement, the following documents must be provided to the PBC/HCD and reviewed by the PBCAC.
  - 1. An Asbestos Abatement Specification (Work Plan), sealed by an FLAC.
  - 2. Pre and Post Job submittals, reviewed and signed by the FLAC.
- (c) If the Agency requests HCD to contract the asbestos abatement, HCD will initiate the request through the PBCAC who will contract the asbestos abatement. HCD will provide a copy of all contractor and consultant documents to the Agency.
- (d) Recycling, salvage or compacting of any asbestos containing materials or the substrate is strictly prohibited.
- (e) In all cases, compliance with OSHA "Requirements for demolition operations involving material containing <1% asbestos is mandatory.
- (f) For all demolitions involving asbestos containing floor tile, asbestos containing roofing material and materials containing <1%, the Demolition Contractor shall submit the following documents to HCD. HCD will provide a copy of these documents to PBCAC.
  - 1. Signed statement that the demolition contractor has read and understood the requirements for complying with EPA, OSHA and the State of Florida Licensing regulations for demolition of structures with asbestos materials.
  - 2. Submit a plan for the demolition of asbestos containing roofing and floor tile. State if these materials are likely to remain intact. Include in the plan what shall occur if materials become "not intact".
  - 3. Submit a plan for compliance with OSHA requirements such as but not limited to: competent person, establishing a regulated area, asbestos training of workers, respiratory protection, use of disposable suits, air monitoring, segregation of waste, containerizing asbestos waste, waste disposal.
- (g) If materials are discovered that are suspect asbestos materials that were not previously sampled, stop all work that will disturb these materials and immediately notify HCD.



## McCURDY SENIOR HOUSING CORPORATION

### IV. NESHAPS NOTIFICATION

#### A. RENOVATION

A NESHAP form must be received by the Palm Beach County Health Department at least ten working days prior to an asbestos renovation that includes regulated asbestos containing material greater than 160 square feet or 260 linear feet or 35 cubic feet. For lesser quantities, the Agency (or its contractor) shall provide a courtesy notification to the Palm Beach County Health Department at least ten working days prior to an asbestos renovation. The removal of vinyl asbestos floor tile and linoleum shall be considered regulated. Asbestos roof removal requires a notification at least 3 working days prior to the removal.

#### B. DEMOLITION

A NESHAP form must be received by the Palm Beach County Health Department at least ten working days prior to the demolition.

- C. The NESHAP notification shall be sent return receipt requested to the address shown below with a copy to HCD. HCD shall provide a copy to the PBCAC. All fees shall be paid by the Agency.

Palm Beach County Department of Health  
Asbestos Coordinator  
901 Evernia Street  
Post Office Box 29  
West Palm Beach, Florida 33401

### V. APPLICABLE ASBESTOS REGULATIONS/GUIDELINES

The Agency, through its demolition or renovation contractor, shall comply with the following asbestos regulations/guidelines. This list is *not* all inclusive:

- (a) Environmental Protection Agency (EPA) NESHAP, 40 CFR Parts 61 Subpart M – National Emission standard for Asbestos, revised July 1991
- (b) Occupational Health and Safety Administration (OSHA) Construction Industry Standard, 29 CFR 1926.1101
- (c) EPA: A Guide to Normal Demolition Practices Under the Asbestos NESHAP, September 1992
- (d) Demolition practices under the Asbestos NESHAP, EPA Region IV
- (e) Asbestos NESHAP Adequately Wet Guidance
- (f) Florida State Licensing and Asbestos Laws
  1. Title XVIII, Chapter 255, Public property and publicly owned buildings.
  2. Department of Business and Professional Regulations, Chapter 469 Florida Statute, Licensure of Asbestos Consultants and Contractors
- (g) Resilient Floor Covering Institute, NRCI, Updated Recommended Work Practices and Asbestos Regulatory Requirements, September 1998.
- (h) Florida Roofing Sheet Metal and Air Conditioning Contractors Association, NRCA, June 1995
- (i) US Dept of Labor, Standard Interpretation (OSHA)
  1. Application of the asbestos standard to demolition of buildings with ACM in Place, 8/26/2002.
  2. Requirements for demolition operations involving material containing <1% asbestos, 8/13/1999.
  3. Compliance requirements for renovation work involving material containing <1% asbestos, 11/24/2003.

**McCURDY SENIOR HOUSING CORPORATION**  
**EXHIBIT D**

Return to:

Prepared by: Tammy K. Fields,  
Senior Assistant County Attorney  
Attention: Amin Houry

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**DECLARATION OF RESTRICTIONS**

The undersigned, McCurdy Center, Ltd., a limited partnership duly organized and existing under the laws of the State of Florida, having its principal office at 534 Datura Street, Suite 420, West Palm Beach, FL 33401 hereinafter referred to as "Declarant", for the property described below, in consideration of funding in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) received from the Palm Beach County Board of County Commissioners (the "County") does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as the Property, and described as:

A composite of four parcels of land in State Lot 28, Section 31, Township 43 South, Range 37 East, City of Belle Glade, Palm Beach County, Florida, described as follows:

Commencing at a point on the East line of said Lot 28, said point being the centerline intersection at Southwest Avenue C Place and Southwest 10th Street in the City of Belle Glade; thence North 0° 07' 10" West, 85.64 feet along the East line of said Lot 28; thence South 88° 56' 00" West 25.00 feet to the Point of Beginning of the hereinafter described composite parcel; thence South 0° 07' 10" East 83.98 feet along a line 25.00 feet West of and parallel with the East line of said State Lot 28; thence South 89° 57' 21" West 166.02 feet; thence South 0° 01' 14" West 211.57 feet; thence North 89° 57' 21" East 166.54 feet; thence South 0° 07' 10" East 184.63 feet to a point on a line 45 feet North of, measured at right angles to the South line of Section 31, Township 43 South, Range 37 East, said line being the same as the centerline of Southwest Avenue E, now known as Dr. Martin Luther King Jr. Boulevard; thence North 89° 59' 44" West 417.12 feet along said line parallel with and 45 feet North of the South line of Section 31, Township 43 South, Range 37 East; thence North 0° 09' 59" West 290.47 feet along a line parallel with the West line of State Lot 28; thence South 88° 56' 00" West 35.02 feet; thence North 0° 09' 59" West 81.12 feet along a line parallel with the West line of State Lot 28; thence South 88° 56' 00" West 157.00 feet to a line parallel with and 25 feet East of the West line of said State Lot 28; thence North 0° 09' 59" West 271.19 feet along said line parallel with and 25 feet East of the West line of State Lot 28; thence South 89° 59' 44" East 609.64 feet to a line 25 feet West of measured at right angles to the East line of State Lot 28; thence South 0° 07' 10" East 159.02 feet along said parallel with and 25 feet West of the East line State Lot 28, to the Point of Beginning.

Property Control Number(s): 04-37-43-31-01-028-0030

1. These restrictions shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and executed with the same formalities as this document.
2. In consideration of the County's grant in the amount of \$250,000 (in CDBG dollars) as provided through a grant Agreement between the County and McCurdy Senior Housing Corporation dated March 11, 2008, the Declarant hereby covenants and agrees for a period of 10 years commencing with the expiration date of said grant Agreement (as may be amended from time to time) to use the subject property as described in the Declarant's funding application to the County, and as described in said grant Agreement.
3. The Declarant agrees that there shall be no change in its general partner during the term of this Declaration without the prior written authorization of the County or the payment \$250,000 to the County.

#### McCURDY SENIOR HOUSING CORPORATION

4. The Declarant agrees in regard to the use of the facility/property whose acquisition or improvements were funded through the grant Agreement that for a period of ten (10) years after the expiration date of said Agreement (as may be amended from time to time):

- (a) The Declarant may not change the use or planned use, or discontinue use, of the facility/property (including the beneficiaries of such use) from that for which the acquisition or improvements were made, unless the Declarant provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:
  - 1. The new use of the facility/property, in the opinion of the County, qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for the general conduct of government; or
  - 2. The requirements of paragraph 4(b) of this section are met.
- (b) If the Declarant determines after consultation with affected citizens, that it is appropriate to change the use of the facility/property to a use which does not qualify under Paragraph 4(a)(1) of this section or discontinue use of the facility/property, it may retain or dispose of the facility for such use if the County is reimbursed in the amount of the current fair market value of the facility/property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to the facility/property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made by the County.
- (c) Following the reimbursement of CDBG funds by the Declarant to the County pursuant to Paragraph 4(b) above, the facility/property will then no longer be subject to these restrictions, and the County shall then release these restrictions as described above.

In the event of any proposed sale, conveyance or transfer of the subject property, the Declarant must obtain approval of the County, through its Housing and Community Development Department. Any approved sale or conveyance of the subject property by the Declarant will be contingent upon the receipt of the payment by the County in accordance with the provisions of Paragraph 3(b) above, or the receipt of a commitment, executed by a subsequent owner acceptable to the County, confirming its acceptance of the restrictions and conditions provided herein for the duration of this Declaration.

Notwithstanding the foregoing, unless otherwise released, the restrictions set forth herein shall run with the land whether or not such commitment is obtained from a subsequent owner.

5. The Declarant agrees to notify the County of any liens, judgements or pending foreclosure on the subject property within five (5) working days of the receipt of said notice by the Declarant.

6. The Declarant acknowledges and covenants that the provisions specified below constitute a default under this Declaration:

- (a) Failure of the Declarant to perform any covenant, agreement, term, or condition contained herein or in the Agreement referenced in Section 2 above.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, the County may, from time to time, at its sole discretion, cure each default under any covenant so curable in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County, at its sole discretion, determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to the legal rate of interest from the time of expenditure and shall constitute a lien against the property which may be foreclosed if not discharged and satisfied within three (3) months of expenditure of such funds by the County. The County shall also become subrogated to whatever rights the holders of a prior lien might have under such instrument.

**McCURDY SENIOR HOUSING CORPORATION**

7. If the Declarant fails, neglects or refuses to perform any of the provisions, terms and conditions set forth herein, for any material breach of this Declaration, the County shall have the right to file in court of competent jurisdiction an action for:

- (a) Repayment and reimbursement by the Declarant to the County of all CDBG funds advanced by the County, together with interest thereon at the rate of eight percent (8%) from the date of notice of default. In such event, this Declaration shall constitute a lien against the Property which may be foreclosed upon; and
- (b) Collection of due and unpaid real estate taxes, assessments, charges and penalties for which the Declarant is obligated to pay; and
- (c) Specific performance of the provisions hereof.

In addition to any remedy set forth herein the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration shall not bar or breach any of the County's rights or remedies on any subsequent default. Before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained of which such notice shall be given to the Declarant at their address shown above. The Declarant shall then have twenty (20) working days from the date such notice is given to cure or correct any default. Payment or performance by the Declarant's limited partner, in the event of default by the Declarant, shall be acceptable.

8. Declarant shall submit to the County once each year a report detailing the Declarant's compliance with the terms of the grant Agreement and this Declaration of Restrictions.

9. Declarant relinquishes all rights to alter, amend, modify, or release these covenants prior to the completion of the ten year period described above.

10. In the event of any litigation necessary to enforce the terms of the Declaration, the Declarant agrees to reimburse the County for attorneys fees and costs associated with litigation.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**McCURDY CENTER, Ltd.**  
A Florida Limited Partnership

By its General Partner,  
**McCURDY CENTER GP, Inc.**  
A Florida Profit Corporation

**(DO NOT SIGN THIS EXHIBIT)**

By: \_\_\_\_\_  
Joseph Glucksman, President

(CORPORATE SEAL ABOVE)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The forgoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by  
Joseph Glucksman, who is personally known to me or has produced \_\_\_\_\_  
\_\_\_\_\_ as identification and who did (did not) take an oath.

**(DO NOT SIGN THIS EXHIBIT)**

Signature: \_\_\_\_\_

Notary Name: \_\_\_\_\_

(NOTARY SEAL ABOVE)

Notary Public - State of Florida

McCURDY SENIOR HOUSING CORPORATION

EXHIBIT E

PALM BEACH COUNTY

HOUSING & COMMUNITY DEVELOPMENT

DIRECT BENEFIT REPORT

Project Name:	McCurdy Senior Housing Corporation Affordable Rental Housing Project - Belle Glade	Prepared By:		Report Date:		Page ____ of ____ Pages
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TOTAL NUMBER OF INDIVIDUALS OR HOUSEHOLDS SERVED DURING THE 12 MONTH PERIOD	TOTAL NUMBER OF INDIVIDUALS OR HOUSEHOLDS SERVED DURING THE 12 MONTH PERIOD WHO ARE:							
	INCOME				RACIAL/ETHNIC CHARACTERISTICS			FEMALE HEADED HOUSEHOLDS
	Over 80%	Moderate Income 51% to 80%	Low income 31% to 50%	Very Low Income Below 30%	Racial Category	Total	Hispanic	
_____	_____	_____	_____	_____	White			_____
					African American			
					Asian			
					American Indian or Alaskan Native			
					Native Hawaiian Pacific Islander			
					American Indian or Alaskan Native and White			
					Asian and White			
					African American and White			
					American Indian/Alaskan Native and African American			
					Other Multi-racial			

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<b>ACORD</b>		<b>CERTIFICATE OF LIABILITY INSURANCE</b>		OP ID CW LANDM-3	DATE (MM/DD/YYYY) 03/06/08
PRODUCER  Sobel Affiliates 595 Stewart Avenue Garden City NY 11530-4735 Phone: 516-745-0000		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED  Landmark Development Corp. 1666 Kennedy Causeway North Bay Village FL 33141		INSURERS AFFORDING COVERAGE		NAIC #	
		INSURER A: Mt. Hawley Insurance Company		37974	
		INSURER B:			
		INSURER C:			
		INSURER D:			
		INSURER E:			

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	GENERAL LIABILITY	MCF0004748	12/20/07	12/20/08	EACH OCCURRENCE	\$ 1000000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5000
		<input checked="" type="checkbox"/> Per Project Agg				PERSONAL & ADV INJURY	\$ 1000000
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	\$ 2000000
		<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG	\$ 1000000
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		<input type="checkbox"/> HIRED AUTOS					
		<input type="checkbox"/> NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
							\$
		<input type="checkbox"/> DEDUCTIBLE					\$
		<input type="checkbox"/> RETENTION \$					\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS	OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$
		OTHER				E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is included as additional insured atima.

CERTIFICATE HOLDER

MCCUR-1

McCurdy Senior Housing Corp.  
534 Datura Street  
West Palm Back FL 33401

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Maria Elena Lopez* EVP

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.