

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: May 19, 2015 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Department of Economic Sustainability

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends approval of a request to: **A) approve** the payoff of a junior mortgage prior to satisfaction of a County held mortgage from Executive Trust, Ltd. (ETL); **B) amend** the Board's April 21, 2015 Conceptual Approval of the subordination of a County mortgage to increase the first mortgage amount by \$719,900; and **C) confirm** that the Delegation of Authority granted on April 21, 2015, to the County Administrator, or his designee, to execute necessary documents encompasses the new first mortgage amount of \$20,729,900.

Summary: On April 21, 2015, the Board of County Commissioners (BCC) conceptually approved amendment of the loan documents with ETL and authorized subordination of the County mortgage to a new first mortgage loan from Walker & Dunlop, LLC in an amount not exceed the \$20,010,000 principal amount of the original first mortgage. Although ETL intended to refinance the first mortgage with a U.S. Department of Housing and Urban Development (HUD) loan in an amount not to exceed \$20,010,000, favorable interest rates have now allowed ETL to borrow \$20,729,900. ETL has requested that the County amend its subordination approval to allow the increased amount. ETL has informed Staff that HUD is requiring that the additional loan amount be reinvested into the property for renovations and used to pay off in full a \$447,104 mortgage held by the Florida Housing Finance Corporation (2011 FHFC Mortgage). Loan payments owed to date under the County mortgage will continue to be due and payable according to existing cash flow requirements contained in the loan documents, however, ETL has agreed to begin annual payments of a \$7,500 monitoring fee and a \$7,860 interest payment on the County loan. The original funding was provided from the State Housing Initiatives Partnership Program and no County funds are involved. (DES Contract Development) District 7 (JB)

Background and Justification: On March 1, 2005, the County entered into a cash flow dependent Loan Agreement (R2005-0463) with ETL to provide \$262,000 in State Housing Initiative Partnership Program funds towards the construction of Malibu Bay, a 262 unit affordable housing rental project located at 750 West Executive Center Drive, in West Palm Beach. The County's funding was secured by a Mortgage and Security Agreement and a Promissory Note from ETL. The County mortgage is third in seniority behind the Housing Finance Authority of Palm Beach County's first mortgage with a principal amount of \$20,010,000, and the South Florida Regional Planning Council's second mortgage with a principal amount of \$800,000. The City of West Palm Beach holds a fourth mortgage with a principal amount of \$200,000, and Florida Housing Finance Corporation holds the fifth mortgage with a principal amount of \$447,104, both of which are subordinate to the County mortgage. Cash flow dependent loans require the borrower to annually submit certified financial statements to the County. These statements are reviewed by the Office of Financial Management and Budget to determine whether a payment is due from the borrower for the period covered by the financial statement. Payments received in this regard are first applied towards accrued interest and then towards the reduction of principal.

Attachments:

1. Location Map
2. Mortgage and Security Agreement and Promissory Note from Executive Trust, Ltd.

Recommended By: Edward B. Jorgensen 5/14/2015
Department Director Date
Approved By: Sharon J. Jorgensen 5/15/2015
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures					
Operating Costs					
External Revenues	(\$15,360)	(\$15,360)	(\$15,360)	(\$15,360)	(\$15,360)
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	(\$15,360)	(\$15,360)	(\$15,360)	(\$15,360)	(\$15,360)

# ADDITIONAL FTE POSITIONS (Cumulative)					
---	--	--	--	--	--

Is Item Included In Current Budget? Yes _____ No X
Budget Account No.:

Fund _____ Dept _____ Unit _____ Object _____ Program Code/Period _____

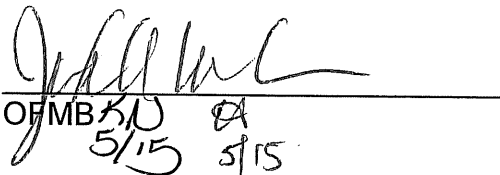
B. Recommended Sources of Funds/Summary of Fiscal Impact:

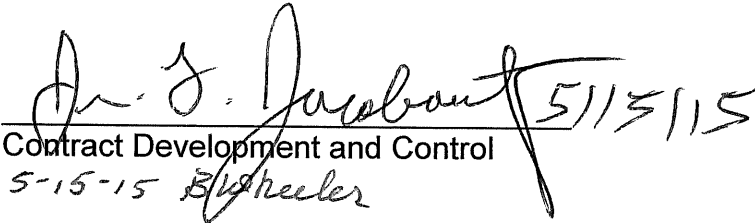
Palm Beach County will receive an annual monitoring fee in the amount of \$7,500, and an annual interest payment in the amount of \$7,860 if this item is approved by the BCC.

C. Departmental Fiscal Review: 
Shairette Major, Fiscal Manager I

III. REVIEW COMMENTS

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


OFMB 5/15 5/15


Contract Development and Control 5-15-15 5/15/15

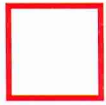
B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

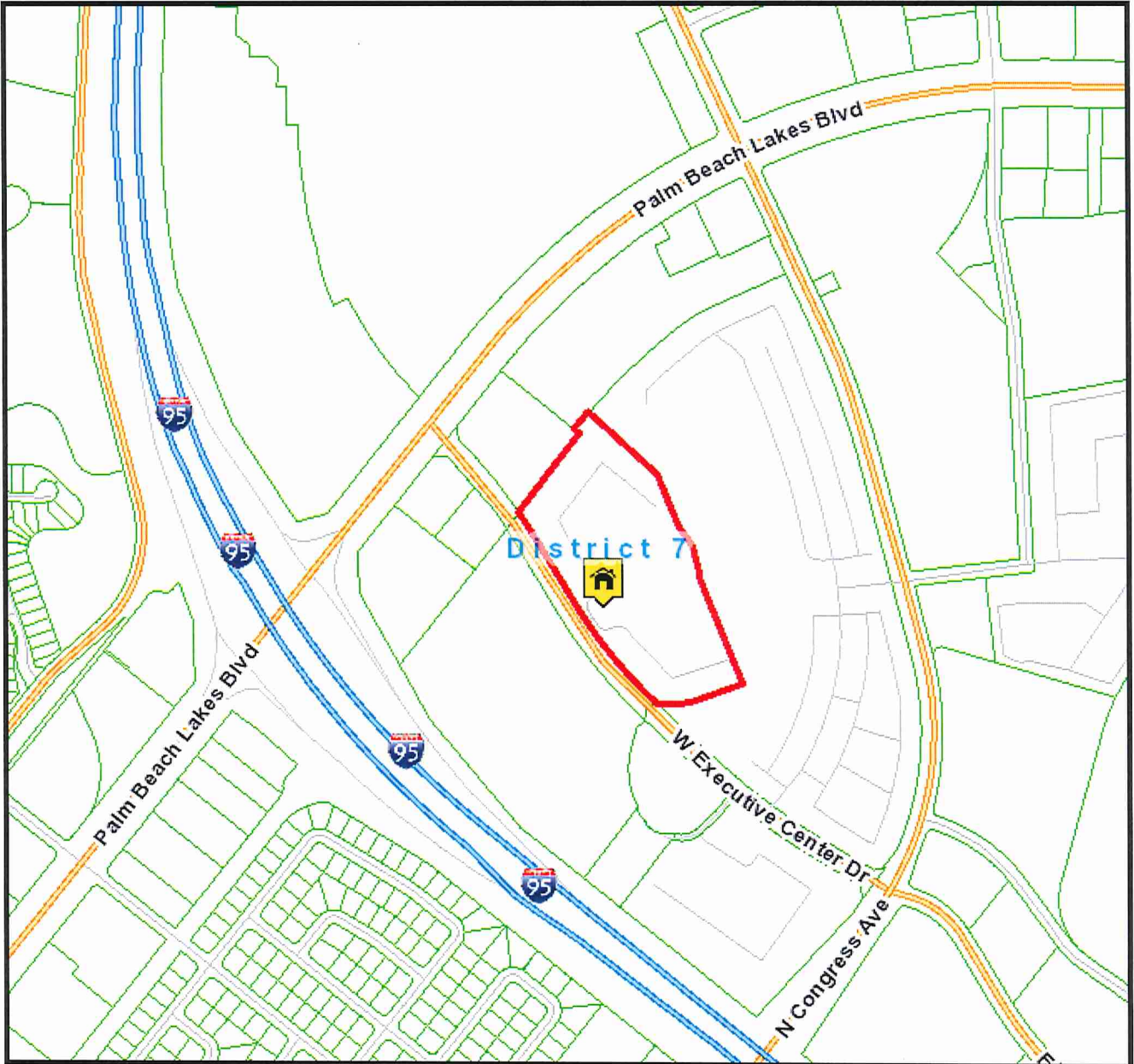
Department Director

LOCATION MAP



750 West Executive Center Drive, West Palm Beach

North



This instrument prepared by
and to be returned to:
Tammy K. Fields, Esq.
Palm Beach County Attorney's Office
P.O. Box 1989
West Palm Beach, FL 33402

CFN 20050198929
OR BK 18373 PG 0865
RECORDED 04/06/2005 15:33:59
Palm Beach County, Florida
AMT 262,000.00
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0865 - 883; (19pgs)

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE INDENTURE, executed this 30th day of March, 2005, by Executive Trust, Ltd., a Florida limited partnership, (the "Mortgagor") as party of the first part, and PALM BEACH COUNTY, a political subdivision of the State of Florida (the "Mortgagee") (which term as used in every instance shall include the Mortgagee's successors and assigns), as party of the second part;

W I T N E S S E T H:

The Mortgagor is the owner of the premises described in Exhibit "A" attached hereto (hereinafter the "Premises") and made a part hereof. Mortgagee has this date loaned Two Hundred Sixty-Two Thousand Dollars (\$262,000.00) to Mortgagor and in connection therewith Mortgagor has this date executed and delivered to Mortgagee its Promissory Note in that amount (the "Note"). A true copy of the Note is annexed hereto as Exhibit "B" and forms a part hereof.

This Mortgage is given in accordance with that certain Loan Agreement executed on the 1st day of March, 2005 between Mortgagor and Mortgagee. This Mortgage and Security Agreement, the Note, and the Loan Agreement shall hereinafter collectively be referred to as the "Loan Documents".

GRANTING CLAUSE

NOW, THEREFORE, the Mortgagor, in consideration of the premises and in order to secure payment of both the principal of, and the interest and any other sums payable on the Note or this Mortgage, and the performance and observance of all the provisions hereof, and of the loan documents, hereby gives, leases, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over and confirms unto the Mortgagee, all of the Mortgagor's estate, right, title and interest in, to and under any and all of the Premises, improvements (including improvements to be made hereafter), fixtures here and below described and located on the Premises which sometimes collectively referred to hereinafter as the "Mortgaged Property".

TOGETHER with all and singular the rights, interests and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Premises hereinabove mentioned or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor including but not limited to all of Mortgagor's sewer capacity rights, and Mortgagor's rights under contracts, permits, licenses and all other documents and payments affecting the Premises, reserving only the right to the Mortgagor to collect the same so long as the Mortgagor is not in default hereunder and so long as the same are not subjected to garnishment levy, attachment or lien.

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behalf

NOTE TO RECORDER: Section 159.621, Florida Statutes, exempts notes and mortgages from the documentary stamp tax imposed by Chapter 201, Florida Statutes, and from intangible tax by Part 11, Chapter 199, Florida Statutes with respect to those notes and mortgages used to secure repayment of SHIP funds as issued by Palm Beach County, a political subdivision of the State of Florida.

of the Mortgagee, its successors and assigns in fee simple forever, and the Mortgagor covenants that the Mortgagor is lawfully seized and possessed of the Premises in fee simple and has good right to convey the same, that the same are unencumbered excepting taxes accruing subsequent to 2003, and those certain exceptions appearing on the Mortgagee's Title Insurance Policy given in connection herewith and specifically approved by Mortgagee, and that the Mortgagor will warrant and defend the title thereto against the claims of all persons whomsoever, except as hereinafter expressly provided.

Notwithstanding the foregoing, this Mortgage shall be subject and subordinate to separate mortgage and security agreements and related loan documents encumbering the Premises upon their execution by Mortgagor in favor of The Housing Finance Authority of Palm Beach County, Florida, in an original principal amount not to exceed \$20,000,000.00 ("First Mortgage"), and The South Florida Regional Planning Council in an original principal amount not to exceed \$800,000.00 (collectively the "Senior Debt").

PROVIDED ALWAYS that if the Mortgagor shall pay unto the Mortgagee all sums required under the terms of the Note, which Note is in the original principal amount of \$262,000.00 and has a maturity date of December 31, 2020, unless such maturity is accelerated as set forth in the Note, and shall comply with and abide by each and every one of the stipulations, agreements, conditions and covenants of the Loan Documents, then in such event this Mortgage and Security Agreement and the estate hereby created shall cease and be null and void.

The Mortgagor covenants with the Mortgagee as follows:

1.1 Payments of Indebtedness. The Mortgagor shall punctually pay the principal and interest and all other sums to become due in respect to the Note at the time and place and in the manner specified in the Note, according to the true intent and meaning thereof, all and any coin or currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts.

1.2 Taxes, Liens and Other Charges.

(a) The Mortgagor, from time to time when the same shall become due and payable, will pay and discharge all taxes of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges and all other public charges, whether of a like or different nature, imposed upon or assessed against the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. This requirement does not in any way preclude Mortgagor from contesting real or personal property taxes when appropriate. The Mortgagor will, upon the request of the Mortgagee, deliver to the Mortgagee copies of receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against the Mortgaged Property or the revenues, rents, issues, income or profits thereof.

(b) The Mortgagor shall pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and other persons or entities which, if unpaid, might result in or permit the creation of, a lien on Mortgaged Property or any part hereof, or on the revenues, rents, issues, income and profits arising therefrom whether such lien is

or may become prior or remain inferior to the Mortgage and also, irrespective of the priority of such other lien(s). Mortgagor in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee.

(c) The Mortgagor shall pay any taxes except income taxes imposed on the Mortgage by reason of the Mortgagee's ownership of the Note or this Mortgage.

1.3 Insurance. The Mortgagor will keep the Mortgaged Property continuously insured in an amount no less than full insurable value which coverage shall insure the Mortgaged Property against loss or damage by fire and by the perils covered by extended coverage and against such other hazards as the Mortgagee, in its sole discretion, shall from time to time require, for the benefit of the Mortgagee. All such insurance at all times will be in an insurance company or companies in such amounts and with terms reasonably acceptable to the Mortgagee, with loss, if any, payable to the Mortgagee as its interest may appear, pursuant to a non-contributory mortgagee clause which shall be satisfactory to the Mortgagee; and forthwith upon the issuance of such policies they will deliver to the Mortgagee copies of receipts for the premiums paid thereon and certificates of insurance and certified copies of such policies. Any policies furnished the Mortgagee shall become its property in the event the Mortgagee becomes the owner of the Premises by foreclosure or otherwise. Subject to the rights of the Mortgagee pursuant to the First and Second Mortgages, the Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property. Each insurance company is hereby authorized and directed to make payment for all such losses to the Mortgagor and the Mortgagee jointly. Should a loss be incurred, equal to or in excess of fifty percent (50%) of the full insurable value of the Mortgaged Property, then in such event, Mortgagee and Mortgagor may jointly elect to use the proceeds for the reconstruction and repair of the Mortgaged Property or, in the alternative, to apply the net proceeds to the payment of the indebtedness hereby secured, whether then due or not. The provisions of this Section 1.3 are subject to the rights under the First and Second Mortgages, to which the rights of the Mortgagee are subordinate.

1.4 Care of Premises.

(a) The Mortgagor will keep the improvements now or hereafter erected on the Premises in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof.

(b) If the Premises or any part thereof is damaged by fire or any other cause, which damage exceeds Two Hundred Thousand Dollars (\$200,000.00), the Mortgagor will give immediate written notice of the same to the Mortgagee.

(c) The Mortgagee or its representative is hereby authorized to enter upon and inspect the Premises at any time during normal business hours.

(d) The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof.

(e) If all or any part of the Premises shall be damaged by fire or other casualty, the Mortgagor will, upon request of the

Mortgagee, promptly restore the Premises to the equivalent of its condition immediately prior to such damage, and if a part of the Premises shall be damaged through condemnation, the Mortgagor will, upon request of Mortgagee, promptly restore, repair or alter the remaining part of the Premises in a manner satisfactory to the Mortgagee. The Mortgagee recognizes that this mortgage will be subordinate to the First Mortgage, and to the extent this provision conflicts with the similar terms and conditions of the First Mortgage, the First Mortgage shall supersede and shall be controlling. Nothing contained herein shall, however, relieve the Mortgagor from its obligation to make payments under the Promissory Note in accordance with its terms.

1.5 Further Assurances; Modifications. At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, exercise and deliver or cause to be made, executed and delivered, to the Mortgagee, any and all other further instruments, certificates and other documents as may, in the opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect or to continue and preserve (i) the obligations of the Mortgagor under the Note, (ii) the security interest of this Mortgage, and (iii) the mortgage lien hereunder. Upon any failure by the Mortgagor so to do the Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and the attorney in fact of the Mortgagor so to do.

1.6 Expenses. In addition to the expenses described in subparagraph 2.6(b) hereof, the Mortgagor will pay or reimburse the Mortgagee for all reasonable attorney's fees, costs and expenses, including those in connection with appellate proceedings, incurred by the Mortgagee in any proceedings or in any action, legal proceeding or dispute of any kind which relate to or arise from the Mortgage of the interest created herein, or the Premises, including but not limited to the exercise of the power of sale of this Mortgage, any condemnation action involving the Premises or any action to protect the security hereof, and any such amounts paid by the Mortgagee shall be secured by this Mortgage.

1.7 Estoppel Affidavits. The Mortgagor, upon ten days' prior written notice, shall furnish the Mortgagee a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any off-sets or defenses exist against such principal and interest.

1.8 Subrogation. The Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.9 Performance by Mortgagee of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Premises; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; in the performance of any covenant, term or condition of any leases affecting all or any part of the Premises; or in the performance or observance of any covenant, condition or term of this Mortgage; then the Mortgagee, at its option, may perform or observe the same, and all payments made or costs incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, with demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the maximum

rate provided by law. The Mortgagee shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim, premium and obligation, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any other person in possession holding under the Mortgage.

1.10 Condemnation. In the event of a condemnation (which term when used in the Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof, either temporarily or permanently, of any part of the Premises constituting twenty percent (20%) or more of the full value of the Premises, or in the event such condemnation makes the Premises unusable for the purposes contemplated herein and in the Loan Agreement, then in such event, the entire indebtedness secured hereby shall at the option of the Mortgagee, become immediately due and payable. Such events shall be a Condemnation Event ("Condemnation Event"); however, any condemnation for less than twenty percent (20%) of value or not rendering the Premises unusable, shall not be affected by this section. In the event of a Condemnation Event, the Mortgagee shall be entitled to all compensation, awards, and other payments or relief thereof, and is hereby authorized at its option, to commence, appear in, and prosecute, in its own name, the Mortgagor's name, any action or proceeding relating to any condemnation, any to settle or compromise any claim in connection therewith; and all such compensation, awards, damages, claims, rights of action and proceeds, and the right thereto from any Condemnation Event are hereby assigned by the Mortgagor to the Mortgagee, who, after deducting therefrom, all its expenses, including attorneys fees, may release any monies received by it without further affecting this Mortgage and may apply the same in such manner as the Mortgagee shall determine, to the reduction of the sum secured hereby, and any balance of such monies then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds from a Condemnation Event as the Mortgagee may require. The provisions of this Section 1.10 are subject to the rights under the First and Second Mortgages, to which the rights of the Mortgagee are subordinate.

1.11 Environmental Representations

(a) The Mortgagor covenants with the Mortgagee that to the best of Mortgagor's knowledge the Premises have not been used and will not be used in whole or in part for the storage of hazardous waste.

(b) To the best of Mortgagor's knowledge, no violation of any Federal, State or local environmental regulations now exists regarding the Mortgage Property.

(c) Mortgagor shall comply with all Federal, State and local environmental regulations during the construction of the improvements on the Premises.

(d) Mortgagor shall give written notice to Mortgagee immediately upon Mortgagor's acquiring knowledge of the presence of any hazardous substances on the Mortgage Property or of any hazardous substances contamination thereon, or of any notices received by Mortgagor that are violations or potential violations of any environmental regulation laws, ordinances, rules or

regulations exists on the Mortgage Property.

ARTICLE II.

2.1 Due on Sale or Further Encumbrance Clause. In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor, found it acceptable and continues to rely upon the same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Premises, found it acceptable and continues to rely upon same as the means of maintaining the value of the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress or any kind for all of the terms and conditions of the loan, including this provision. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; (c) could detract from the value of the Premises should Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing, and for the purposes of (i) protecting Mortgagee's security both of repayment by Mortgagor and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that, except for the Senior Debt and the City Home Loan not to exceed \$250,000.00 and which must be subordinated to this Loan, any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntarily or by operation of law) without the Mortgagee's prior written consent, which consent shall not be unreasonably withheld, or delayed, shall be an Event of Default hereunder. For the purpose of and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder.

(a) any sale, conveyance, assignment or other transfer of or the grant of a security interest in, all or any part of the title to the premises, other than easements necessary for the development of the Improvements on the Premises.

(b) any new or additional liabilities secured by the property without the prior written consent of Mortgagee,

Any consent by the Mortgagee, or any waiver of an Event of Default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

2.2 Default. An Event of Default shall have occurred hereunder if:

(a) The Mortgagor shall fail to pay in full within fifteen (15) days from the date due and payable any installment of principal, interest, late charges or escrow deposits as required by

the Note, this Mortgage and otherwise; or

(b) The Mortgagor shall fail to duly observe on time any other covenant, condition or agreement of this Mortgage the Loan Documents or of any other instrument evidencing, security or executed in connection with the indebtedness secured hereby, and such failure continues for a period of thirty (30) days following written notice by the Mortgagee; or

(c) Any warranties or representations made or agreed to be made in any of the Loan Documents shall be breached by the Mortgagor or shall prove to be false or misleading in any material manner and such breach is not cured within thirty (30) days following notice from Mortgagee; or

(d) Any lien for labor or material or otherwise shall be filed against the Premises, and such lien is not canceled, removed or transferred within sixty (60) days after notice of such lien; or

(e) A levy shall be made under any process on, or a receiver be appointed for, the Premises or any other property of the Mortgagor; or

(f) The Mortgagor shall file a voluntary petition in bankruptcy, or any other petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation or similar relief for the Mortgagor under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtor; or

(g) The Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any part of the Premises or of any or all of the rents, revenues, issues, earnings, profits or income thereof; or

(h) The Mortgagor shall make any general assignment for the benefit of creditors; or

(i) In any legal proceeding the Mortgagor shall be alleged to be insolvent or unable to pay the Mortgagor's debts as they become due and is not dismissed within sixty (60) days of Filing

(j) The Mortgagor shall do, or shall omit to do, any act, or any event shall occur, as a result of which any obligation of the Mortgagor, not arising hereunder, may be declared immediately due and payable by the holder thereof and such act is not remedied within any applicable cure or grace period; or

(k) A breach by Mortgagor of any covenant, representation, or warranty set forth in the Loan Agreement and the expiration of any applicable grace period, or an Event of Default occurs under the terms of the Loan Agreement or any of the other Loan Documents pertaining to the Note and Mortgage; or

(l) With the exception of two (2) manager units, One Hundred Percent (100%) of the Mortgaged Property shall cease to be reserved for households who have low income pursuant to U.S. Government HUD guidelines for a period of fifteen years (15) from the date hereof; or beyond expiration of applicable cure or grace period.

(m) The Mortgagor shall default on the First or Second Mortgage and such default remains uncured after expiration of any applicable cure or grace period.

(n) If the Mortgagee shall reasonably believe that any one or more of the defaults enumerated in paragraphs (a) through (m) may occur, then the Mortgagee shall notify the Mortgagor of the specific facts which create the reasonable basis for its belief and shall request the Mortgagor to provide satisfactory evidence to the Mortgagee that such default is not likely to occur or that the Mortgagor has taken appropriate steps to cure the default if it should occur.

2.3 Special Conditions.

(a) Upon sale, transfer, or refinancing of the Premises, all available proceeds of the sale shall be applied to pay the following items in order of priority:

- (1) Expenses of the sale;
- (2) First Mortgage debt in full, including fees;
- (3) Second Mortgage debt in full, including fees;
- (4) All accrued but unpaid interest on this Note;
- (5) This Mortgage debt in full, including fees.

(b) All of the principal and interest of the indebtedness secured hereby shall be due and payable upon sale, transfer, or refinancing.

(c) The indebtedness secured hereby shall be serviced by the Mortgagee or by a lending institution selected by Mortgagee.

(d) The discrimination provision of §420.516, Florida Statutes, shall apply to the loan secured hereby.

A violation of any of the above stated Special Conditions by Mortgagor shall constitute a default hereunder.

2.4 Acceleration of Maturity. If an Event of Default shall have occurred hereunder and not cured within applicable cure periods, then the whole unpaid principal sum of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence of this Mortgage and of the Note secured hereby; and no omission on the part of the Mortgagee to exercise such option when entitled so to do shall be considered as a waiver of such right.

2.5 Right of Lender to Enter and Take Possession.

(a) If any default shall have occurred and be continuing beyond expiration of any applicable cure or grace period, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Premises and if, and to the extent permitted by law, the Mortgagee may enter and take possession of the Premises and may exclude the Mortgagor and the Mortgagor's agents and employees wholly therefrom. In the event Mortgagee exercises its rights pursuant to this subparagraph (a), the Mortgagee shall be deemed to be acting as agent of Mortgagor and not as owner of the Premises.

(b) For the purpose of carrying out the provisions of this paragraph 2.5, the Mortgagor hereby constitutes and appoints the Mortgagee the true and lawful attorney in fact of the

Mortgagor to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney in fact in the Premises.

(c) Whenever all such defaults have been cured and satisfied, the Mortgagee shall surrender possession of the Premises to the Mortgagor, provided that the right of the Mortgagee to take possession, from time to time, pursuant to subparagraph 2.5(a) shall exist if any subsequent default shall occur and be continuing.

(d) The provisions of this Section 2.5 are subject to the rights under the First and Second Mortgages, to which the rights of the Mortgagee are subordinate.

2.6 Appointment of a Receiver and Foreclosure.

(a) If a default shall have occurred hereunder and not cured within applicable cure periods, then the whole debt secured by this Mortgage, with all interest thereon, and all other amounts hereby secured shall, at the option of Mortgagee, become immediately due and payable, and may forthwith or at any time thereafter be collected by suit at law, foreclosure or other proceeding upon this Mortgage or by any other proper, real or equitable procedure without declaration of such option and without notice.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication cost and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstract of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional debt secured hereby and shall be immediately due and payable with interest thereon at the maximum rate provided by law, when paid or incurred by Mortgagee in connection with (i) any proceeding, including foreclosure, probate and bankruptcy proceedings, to which it shall be a party, either as plaintiff, claimant, or defendant, by reason of this Mortgage, or any indebtedness hereby secured, (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced, or (iii) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

(c) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, and in case of a sale and a deficiency,

during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period.

(d) If a default shall have occurred hereunder and is not cured within applicable cure periods, Mortgagor shall deliver to Mortgagee at any time on its request, all agreements for deed, contracts, leases, abstracts, title insurance policies, muniments of title, surveys and other papers relating to the Premises, and in case of foreclosure thereof and failure to redeem, the same shall be delivered to and become the property of the person obtaining a deed to the Premises by reason of such foreclosure.

(e) The provisions of this Section 2.6 are subject to the rights under the First and Second Mortgages, to which the rights of the Mortgagee are subordinate.

2.7 Discontinuance of Proceedings and Restoration of the Parties. In case the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adverse to the Mortgagee, then in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

2.8 Remedies Cumulative. No right, power or remedy conferred upon or reserved by the Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.9 Stamp and Excise Tax. If any documentary additional stamp or excise tax shall become applicable with respect to this Mortgage, the Note, any loan or credit extended hereunder, or any security agreement, guaranty, the loan agreement or other document, the Mortgagor shall promptly pay such tax in full (including interest and penalties, if any) and shall hold the Mortgagee harmless with respect thereto. The Mortgagor's liability under this paragraph will survive the repayment of indebtedness under the Note.

ARTICLE III.

3.1 Successors and Assigns Included in Parties. Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this indenture by or on behalf of the Mortgagor and by or on behalf of the Mortgagee shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not. Provided, however, that the Mortgagor shall have no right to assign its obligations hereunder without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld.

3.2 Headings. The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference

only and shall not limit or otherwise affect any of the terms hereof.

3.3 Invalid Provisions to Affect No Others. If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Mortgage in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect. Notwithstanding any provision contained herein, the total liability of Mortgagor for payment of interest, including service charges, penalties or any other fees shall not exceed the maximum amount of such interest permitted by applicable law to be charged, and if any payments by Mortgagor include interest in excess to the reduction of the unpaid principal amount due and pursuant hereto.

3.4 Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

ARTICLE IV.

4.1 Notice. Any notice or other communication required or permitted to be given hereunder shall be sufficient if in writing and delivered in person or sent by United States Certified Mail, postage prepaid, to the parties being given such notice at the following addresses:

Mortgagor: Executive Trust, Ltd.
3250 Mary Street
Miami, FL 33130
Attn: Stewart L. Marcus, President

Mortgagee: Palm Beach County
c/o County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

Any party may change said address by giving the other parties hereto notice of such change of address. Notice given as hereinabove provided shall be deemed given on the date of its deposit in the United States Mail and, unless sooner received, shall be deemed received by the party to whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail, or if a courier system is used, on the date of delivery of the notice.

ARTICLE V.

5.1 Future Advances. It is agreed that this Mortgage shall also secure such future or additional advances as may be made by the Mortgage at its option to the Mortgagor, or its successor in title, for any purpose, provided that all those advances are to be made within three (3) years from the date of this Mortgage, or within such lesser period of time as may be provided hereafter by law as a prerequisite for the sufficiency of actual notice or records notice of the optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the principal amount of the Note, plus interest, and any disbursements made for the payment of taxes, levies or

insurance on the Premises with interest on those disbursements. If, pursuant to Florida Statutes Section 697.04, Mortgagor files a notice specifying the dollar limit beyond which future advances made pursuant to this Mortgage will not be secured by this Mortgage, then Mortgagor shall, within one (1) year of day of filing such notice, notify Mortgagee and its counsel by certified mail pursuant to Section 4.1 of this Mortgage. In addition, such a filing shall constitute a default hereunder.

5.2 Subordination. Mortgagee has approved a First Mortgage provided that it does not exceed \$20,010,000.00 and further has agreed to subordinate to such First Mortgage. Mortgagee has approved a Second Mortgage provided that it does not exceed \$800,000 and further has agreed to subordinate to such Second Mortgage. The Chair 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 Promissory Note in accordance with its terms.

5.3 Lien Priority. The lien priority of this Mortgage shall not be affected by any changes in the Note including, but not limited to, an increase in the interest rate charged pursuant to the Note. Any parties acquiring an interest in the Premises subsequent to the date of this Mortgage is recorded shall acquire such interest in the Premises with notice that Mortgagee may increase the interest rate charged pursuant to the Note or otherwise modify the Note and the Note, as modified, and the Mortgage shall remain superior to the interest of any Party in the Premises acquired subsequent to the date of this Mortgage is recorded, other than the First Mortgage and Second Mortgage.

5.4 Security Agreement. This instrument also creates a security interest in any and all equipment and furnishings as are considered or determined to be personal property or fixtures, together with all replacements, substitutions, additions, products and proceeds thereof, in favor of the Mortgagee under the Florida Uniform Commercial Code to secure payment of principal, interest and other amounts due Mortgagee now or hereafter secured hereby, and Mortgagee shall also have all the rights and remedies of a secured part under the Florida Uniform Commercial Code shall be cumulative and in addition to all other rights and remedies of Mortgagee arising under the common law or any other laws of the State of Florida or any other jurisdiction.

5.5 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 MORTGAGEE SHALL BE TO FORECLOSE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THIS LOAN, AND IN NO EVENT SHALL THE BORROWER HAVE ANY LIABILITY FOR THE PAYMENT OF THE LOAN OR FOR ANY OTHER OBLIGATIONS REFERENCED HEREIN, OR FOR THE PAYMENT OF ANY DEFICIENCY FOLLOWING THE FORECLOSURE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THE LOAN.

5.6 Choice of Law. This Mortgage is to be construed in all respects and enforced according to the laws of the State of Florida and you shall be in Palm Beach County.

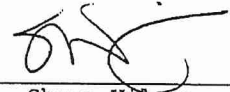
5.7 Binding Effect. This Mortgage shall be binding upon and insure to the benefit of the Mortgagor and Mortgagee hereto, and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the Mortgagor has executed and sealed this Mortgage, the day and year first above written.

Signed, sealed and delivered
in the presence of:

EXECUTIVE TRUST, LTD.
By: Executive Trust Associates,
L.L.C.



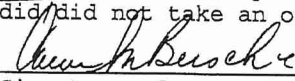
By: 
Shawn Wilson
Vice-President

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th
day of March, 2005 by Shawn Wilson, Vice-President of
Executive Trust Associates, L.L.C., general partner of Executive
Trust, Ltd., who is personally known to me or who has produced —
as identification and who did not take an oath.



Carmen M. Bersch
MY COMMISSION # D0274971 EXPIRES
December 18, 2006
BONDED THRU TROY FARM INSURANCE, INC.


(Signature of Notary)

Carmen M. Bersch
(Typed, Printed, or Stamped
Name of Notary)

My Commission Expires:

G:\WPDATA\ENG\TKF\HTF.AGT\Executive-Trust--(Malibu Bay)\Mortg-Security.Agr-01-11--05.wpd

EXHIBIT "A"

LEGAL DESCRIPTION

SEE ATTACHED LEGAL DESCRIPTION

This is not a certified copy

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel 1:

Being a parcel of land lying in portions of Section 17, 19 and 20, Township 43 South, Range 43 East, Palm Beach County, Florida, and being more particularly described as follows:

Commencing at a point in the south line of Palm Beach Lakes Boulevard, as recorded in Plat Book 28, Page 94 of the Public Records of Palm Beach County, Florida at the intersection with the Northwest corner of the Plat of Executive Center Drive, as recorded in Plat Book 88, Page 55 of the Public Records of Palm Beach County, Florida; thence along the north line of said Plat of Executive Center Drive the following four (4) courses and distances:

1. South 04°03'34" East, a distance of 52.51 feet;
2. South 45°04'45" East, a distance of 71.77 feet to a point of curvature of a circular curve concave to the southwest having a radius of 2007.85 feet and a central angle of 9°30'08";
3. Along the arc of said curve an arc length of 132.99 feet;
4. North 36°57'36" East, a distance of 2.62 feet to the Point of Beginning;

Thence, continue North 36°57'36" East, a distance of 417.18 feet; thence North 53°02'24" West, a long a line radial to the next described curve, 30.00 feet to a point of curvature of a circular curve concave to the southeast having a radius of 2538.27 feet and a central angle of 2°08'32"; thence along the arc of said curve an arc distance of 95.15 feet; thence south 49°23'42" East, a distance of 395.50 feet; thence south 23°46'37" East, a distance of 942.46 feet; thence South 63°28'10" West, a distance of 176.16 feet to a point of curvature of a circular curve concave to the northwest having a radius of 460.00 feet and a central angle of 25°03'41"; thence along the arc of said curve an arc length of 201.21 feet to a point in the said northerly line of the Plat of Executive Center Drive; thence along said northerly line the following four (4) courses and distances:

1. North 48°34'10" W, a distance of 4.12 feet to a point of curvature of a circular curve concave to the northeast having a radius of 2017.61 feet and a central angle of 15°34'12";
2. Along the arc of said curve an arc distance of 548.28 feet;
3. North 32°59'58" West a distance of 354.71 feet to a point of curvature of a circular curve concave to the southwest having a radius of 2010.35 feet and a central angle of 2°35'59";
4. Along the arc of said curve an arc distance of 91.21 feet to the Point of Beginning.

Together with the following described property:

A parcel of land lying in Section 20, Township 43 South, Range 43 East, City of West Palm Beach, Palm Beach County, Florida, said parcel more particularly described as follows:

Commence at the Northwest corner of said Section 20, and proceed South 89°51'41" East along the North line of said Section 20, a distance of 509.39 feet; thence South 49°23'42" East, a distance of 34.76 feet; thence South 23°46'37" East, a distance of 216.19 feet to the Point of Beginning; thence South 29°18'43" East, a distance of 31.53 feet; thence South 38°50'37" East,

a distance of 43.83 feet; thence South 35°50'27" East, a distance of 46.10 feet; thence South 16°29'21" East, a distance of 130.50 feet; thence South 24°42'56" West, a distance of 8.29 feet; thence North 23°46'37" West, a distance of 243.73 feet to the Point of Beginning.

Together with the following described property:

Parcel 2:

A drainage easement, lying in Section 17, Township 43 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commencing at the Southwest corner of said Section 17; thence South 89°51'41" East along the south line of said Section 17, a distance of 95.10 feet; thence departing said South line North 36°57'36" East, a distance of 176.22 feet; thence North 53°02'24" West on a radial bearing, a distance of 30.00 feet to a point on the northerly line of an 80 foot Non-Exclusive Outfall Easement and Drainage Easement recorded in Official Record Book 8135, Page 1017, Official Record Book 11870, Page 300 and Official Record Book 2550, Page 1406, Public Records of Palm Beach County, Florida and a point of curvature of a curve concave to the southeast, having a radius of 2538.27 feet, a radial bearing of South 53°02'24" East and a central angle 02°08'52"; thence northeasterly along said northerly line and arc of said curve, a distance of 95.15 feet to the Point of Beginning; thence continue along said northerly line, and said curve, concave to the southeast, having a radius of 2538.27 feet, a radial bearing of South 50°53'32" East and a central angle of 11°24'29"; thence easterly along the arc of said curve, a distance of 505.39 feet to a point on the north line of a 60 foot Drainage Easement, as described in Official Record Book 2550, Page 1406, Public Records of Palm Beach County, Florida; thence North 62°01'43" East along said north line, a distance of 328.99 feet, to a point on the westerly line of a 50 foot Drainage Easement, as described in said Official Record Book 2550, Page 1406; thence departing said north line North 26°37'24" West along the westerly line of said 50 foot Drainage Easement, a distance of 182.97 feet to a point on the northerly line of a Parcel of land described in Official Record Book 11242, Page 1534, Public Records of Palm Beach County, Florida; thence North 63°55'19" East along said northerly line, a distance of 50.00 feet to a point on the easterly line of said 50 foot Drainage Easement; thence South 26°37'24" East along the easterly line, a distance of 241.33 feet to the southeast corner of said 60 foot Drainage Easement described in Official Record Book 2550, Page 1406; thence South 62°01'43" West along the southerly line of said 60 foot Drainage Easement, a distance of 365.37 feet; thence South 39°29'03" East to the southeast corner of said 80 foot Non-Exclusive Outfall Easement and Drainage Easement recorded in Official Record Book 8135, Page 1017, Official Record Book 11870, Page 300 and Official Record Book 2550, Page 1406, a distance of 18.77 feet and the point of curvature of a non-tangent curve concave to the southeast, having a radius of 2458.27 feet, a radial bearing of South 39°29'03" East and a central angle of 11°27'24"; thence southwesterly along the south line of said 80 foot easement and the arc of said curve, a distance of 491.55 feet; thence departing said south line, North 49°23'42" West, a distance of 80.03 feet to the Point of Beginning.

PROMISSORY NOTE

\$262,000.00

West Palm Beach, Florida
March 30, 2005

FOR VALUE RECEIVED the undersigned Executive Trust, Ltd., a Florida limited partnership ("Maker"), promises to pay to the order of PALM BEACH COUNTY, a political subdivision of the State of Florida, together with any other holder hereof ("Holder"), at 301 North Olive Avenue, West Palm Beach, Florida 33401, or such other place as Holder may from time to time designate in writing, the principal sum of Two Hundred Sixty-Two Thousand Dollars (\$262,000.00) plus accrued interest, to be paid in lawful money of the United States of America, as follows:

- 1) This Note shall bear interest only computed at the stated rate of three (3%) percent per annum on the outstanding principal balance from time to time remaining unpaid from the date of each disbursement.
- 2) Repayment hereunder shall occur as follows:
 - (a) From the date hereof until December 31, 2005 no payments will be required and interest will accrue and be payable at the maturity date.
 - (b) Repayment thereafter shall be limited to the actual cash flow of the Project which shall be determined annually on a calendar year basis, commencing with the year 2005, and certified by an independent Certified Public Accountant reasonably acceptable to the County, prior to the annual payment due date. The first annual payment due date hereunder shall be on April 30, 2006, with respect to all payments due under subparagraph 4) below for the preceding calendar year. Subsequent annual payments shall be due on the 30th day of April for each preceding calendar year thereafter through December 31, 2025 (Maturity Date), at which time all outstanding principal indebtedness together with all accrued and unpaid interest thereon shall be due and payable, unless acceleration is made by Holder pursuant to the provisions hereof.
- 3) Maker agrees to provide annually to Holder a certification of Project income and expenses, and certified by an independent Certified Public Accountant acceptable to the County, which shall be used by Holder to determine payments due hereunder. Said certification shall be provided prior to each annual due date commencing for the year 2005.
- 4) Subject to requirements under the First Mortgage and the Limited Partnership Agreement, commencing with the year 2005, payments from Project income as determined by Holder shall be applied to pay the following items in order of priority:
 - a) First Mortgage fees and debt service, and all reasonable Project expenses; and
 - b) Second Mortgage fees and debt service;

- c) Base interest payment on principal balance hereof equal to three percent (3%) per annum; and
- d) Any such base payment of interest hereunder deferred from previous years commencing with the year 2005.
- 5) Any payments of current or deferred base interest due annually hereunder shall be deferred until the next annual due date to the extent that Project income is insufficient to make said payments pursuant to the payment priority schedule in paragraph (4) above and as determined by Maker.
- 6) This Note may be prepaid in whole or in part at any time, without penalty or premium. Any prepayment hereunder shall be applied first to unpaid costs of collection, servicing fees, and late charges, if any, then to accrued, deferred and unpaid interest and the balance, if any, to the principal balance.
- 7) After maturity or acceleration, this Note shall bear interest at the Default Interest Rate until paid in full.
- 8) All terms hereunder shall be as construed and defined in Chapter 91-28, Florida Administrative Code.

PALM BEACH COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA IS EXEMPT FROM PAYMENT OF EXCISE TAX ON DOCUMENTS. STAMPS HAVE BEEN AFFIXED TO THE MORTGAGE AND CANCELED AS REQUIRED BY LAW.

This Note is executed pursuant to the terms and conditions of that certain Loan Agreement dated March 1st, 2005 between Maker, as Borrower, and Holder, as Lender, is secured by a Mortgage and Security Agreement (the "Mortgage") encumbering certain real property located in Palm Beach County, Florida (the "Premises"), all of even date herewith. The foregoing and all other agreements, instruments and documents delivered in connection therewith and herewith are collectively referred to as the "Loan Documents."

This Note has been executed and delivered in, and is to be governed by and construed under the laws of, the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Nothing herein contained, nor any transaction related thereto, shall be construed or so operate as to require the Maker to pay interest at a greater rate than is now lawful in such case to contract for, or to make any payment, or to do any act contrary to ethical law. Should any interest or other charges paid by the Maker, or parties liable for the payment of this Note, in connection with the Loan Documents result in the computation or earning of interest in excess of the maximum rate of interest that is legally permitted under applicable law, any and all such excess shall be and the same is hereby waived by the Holder, and any and all such excess shall be automatically credited against and in reduction of the balance due under this indebtedness, and a portion of said excess which exceeds the balance due under this indebtedness shall be paid by the Holder to the Maker.

Holder shall have the right to declare the total unpaid balance hereof to be immediately due and payable in advance of the Maturity Date upon the failure of Maker to pay when due any payment of principal or interest or other amount due hereunder; or upon the occurrence of an Event of Default pursuant to any other Loan

Documents now or hereafter evidencing, securing or guarantying payment of this Note. Exercise of this right shall be with five (5) days prior written notice to Maker or to any other person liable for payment hereof.

Any payment hereunder not paid when due (at maturity, upon acceleration or otherwise) shall bear interest at the highest rate allowed by applicable law from the due date until paid.

Provided Holder has not accelerated this Note, Maker shall pay holder a late charge of five percent (5%) of any required payment which is not received by Holder when said payment is due pursuant to the Note. The parties agree that said charge is a fair and reasonable charge for the late payment and shall not be deemed a penalty.

Time is of the essence hereunder. In the event that this Note is collected by law or through attorneys at law, or under advice therefrom, Maker agrees, to pay all costs of collection including reasonable attorneys' fees, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors proceedings or otherwise.

Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words to similar effect shall not affect the duty of Maker to pay all obligations due hereunder, and shall not affect the right of Holder to pursue all remedies available to it under any Loan Documents.

The remedies of Holder shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder including specifically any failure to exercise or forbearance in the exercise of any remedy, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Holder and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a case of dealing, nor shall it be construed as a bar to, or as a waiver or release of, any subsequent remedy as to a subsequent event.

Any notice to be given or to be served upon any party hereto in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Loan Documents.

The term "other person liable for payment hereof" shall include any endorser, guarantor, surety or other person now or hereafter primarily or secondarily liable for the payment of this Note, whether by signing this or another loan document.

Whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular number includes the plural, and the plural number includes the singular.

Maker and any other person liable for the payment hereof respectively, hereby (a) expressly waive any valuation and appraisal, presentment, notice of dishonor, protest, and diligence in collection; (b) consent that Holder may, from time to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments, (ii) release, exchange, add to or substitute all or any part of the collateral for this Note, and/or (iii) release Maker (or any co-maker) or any other person liable for payment hereof, without in any way modifying, altering, releasing, affecting or limiting their respective liability or the

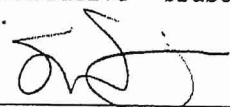
lien of any security instrument; and (c) agree that Holder, in order to enforce payment of this Note against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Maker (or any co-maker) or against any other person liable for payment hereof or to attempt to realize on any collateral for this Note.

ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, IN THE EVENT OF ANY DEFAULT BY THE MAKER UNDER THE LOAN REFERENCED HEREIN, THE SOLE REMEDY OF THE HOLDER SHALL BE TO FORECLOSE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THIS LOAN, AND IN NO EVENT SHALL THE MAKER 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.

MAKER AND HOLDER WAIVE THEIR RIGHTS TO A TRIAL BY JURY IF ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS NOTE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER'S EXTENDING CREDIT TO MAKER AND NO WAIVER OR LIMITATION OF HOLDER'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON HOLDER'S BEHALF.

IN WITNESS WHEREOF, Maker has executed this Note on the day and year first above written.

EXECUTIVE TRUST, LTD.
By: Executive Trust Associates,
L.L.C.

By: 
Shawn Wilson
Vice-President

G:\WPDATA\ENG\TKF\HTF.AGT\Executive-Trust-Ltd-(Malibu Bay)-Prom-Note-01-11-05-(Clear).wpd