Agenda Item #: 31-1

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Department:	Department of Hous	stainability		
Meeting Date:	January 7, 2020	[X] Consent [] Ordinance	[] Regular [] Public Hearing	

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to Receive and File: a First Allonge to the Section 108 Promissory Note (Note) by and between Shellco Construction Corp., Simplified Inc., and Simplified Fabricators Inc., (collectively, the "Borrower) and Palm Beach County (County) amending the Maturity Date of the Note to April 30, 2020.

Summary: Staff recommends the Board of County Commissioners' (BCC) receive and file the First Allonge with the Borrower. The attached document has been executed on behalf of the BCC by the Director of the Department of Housing and Economic Sustainability, in accordance with the BCC's delegation of authority relating to the County's Section 108 Loan Program. The Note provides a \$600,000 loan (County 108 Loan) in the form of a working capital revolving line of credit to the Borrower. The term of the loan was for one year, renewable for no greater than four additional one-year terms. The First Allonge modifies the Maturity Date of the Borrower's Note from October 31, 2019 to April 30, 2020. The 6-month extension of the Maturity Date was approved by the Palm Beach County Business Loan Program Loan Review Committee (LRC) on October 1, 2019. An extension was necessitated by delays with other loans used to leverage the County 108 Loan.

In accordance with County PPM CW-0-051, all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. <u>These are Federal funds which do not require a local match.</u> District 6 (DB)

Background and Justification: The Borrower's project focused on the purchase, renovation, and furnishing of an existing building located at 9040 Belvedere Rd, West Palm Beach, FL 33411 to house its new fabrication business. The total project cost of \$6.5 million is financed through the \$600,000 County 108 Loan as well as a \$2.3 million US Small Business Administration 504 Loan, and a \$2.9 million commercial loan. The Borrower contributed nearly \$600,000 in cash toward the total project costs. An interim loan was used to support building acquisition, which was repaid from the proceeds of the SBA loan. A delay in the repayment process between lenders and interim loan restrictions on the start of business operations created a financial hardship for the Borrower, necessitating the Note's extension. Since the County 108 Loan closing, the Borrower has been in compliance with all terms and conditions of its loan documents.

Recommended By:	Department Director	12/3/19 Date	
	Glomo M. Miler	/1/4 /	
Approved By:	Assistant County Administrator		

Attachment(s):

1. First Allonge to Section 108 Promissory Note

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT					
# ADDITIONAL FTE POSITIONS (Cumulative)					
s Item Included In Curren Does this Item include the	nt Budget? e use of Federal	funds? \	/es <u>X</u> /es <u>X</u>	No No	
Budget Account No.:					
Fund Dept l	Jnit Object	Progr	am Code/P	eriod	_
3. Recommended Sou	rces of Funds/S	Summary o	f Fiscal Im	pact:	
No Fiscal Impact					
C. Departmental Fisca	I Review: 🖟 🕹	rerly Reid, I	Division Mar	nager	
	III. <u>REVIEW</u>	COMMEN	TS		
A. OFMB Fiscal and/or	Contract Devel	opment ar	nd Control (Comments:	
OFMBKIP 12/3	12/4/19	Contrac	Developme	and Cont	12/1/),
B. Legal Sufficiency:				(Cin	
Assistant County Atto	12/5/19 orney				
c. Other Department R	eview:				
Department Director					

FIRST ALLONGE TO SECTION 108 PROMISSORY NOTE

THIS FIRST ALLONGE TO SECTION 108 PROMISSORY NOTE ("Allonge") shall be effective as of the 31st day of October, 2019 (the "Effective Date"), by and between SHELLCO CONSTRUCTION CORP., a Florida corporation, SIMPLIFIED INC, a Florida corporation, and SIMPLIFIED FABRICATORS INC, a Florida corporation, each with a mailing address of 1300 Gateway Road, Florida 33403 (collectively, the "Borrower"), and PALM BEACH COUNTY, a political subdivision of the State of Florida, with a mailing address of Department of Housing and Economic Sustainability, 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406 (the "Lender").

RECITALS

- A. Borrower entered into a certain Section 108 Promissory Note in the original maximum principal amount of Six Hundred Thousand Dollars and 00/100 (\$600,000.00) in favor of the Lender dated October 31, 2018 (the "Note"), pursuant to which the Lender made available to Borrower a certain U.S. Department of Housing and Urban Development Section 108 loan (the "Loan"), subject to the terms and conditions thereof.
- B. The Borrower and the Lender have agreed to extend the maturity date of the Loan, as more particularly set forth below.

The above recitals constitute a substantive part of this instrument.

- **NOW, THEREFORE,** for value received, and in consideration of the foregoing recitals and of the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which the Borrower and the Lender hereby acknowledge, the Note is amended by the following:
- 1. <u>Definition</u>. The Borrower and the Lender agree and acknowledge that the definition of "Maturity Date" set forth in Section 2 of the Note which references the definition of such term in the Loan Agreement is hereby amended to mean April 30, 2020.
- 2. Ratification. Except as specifically amended hereby, the rest and remainder of the Note is hereby ratified and reaffirmed, and shall remain in full force and effect. It is the intention of Borrower and the Lender that the execution and delivery of this Allonge evidence merely the modification in certain respects of Borrower's obligations under the Note, and not the payment or satisfaction of such indebtedness or the release or impairment of any security therefor, or any novation or making of any new loan or loans to Borrower, and that all of Borrower's indebtedness and obligations, and all security therefor, if any, do and shall continue uninterrupted and in full force and effect unchanged except as expressly modified herein.
- 3. <u>Authorization</u>. The Borrower represents and warrants that the execution, delivery and performance of this Allonge has been duly authorized by all necessary and appropriate organizational action of the Borrower and constitutes the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms.

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4. <u>Counterparts</u>. This Allonge may be executed in separate counterparts, each of which when taken together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY BLANK]
[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, Borrower and the Lender have caused this Allonge to be executed as of the date first above written.

BORROWER:				
Print Name: Dego	SHELLCO CONSTRUCTION CORP., a Florida corporation By: Jean M. Chardon, President			
Print Name: Drego Orte Res	By:			
Print Name: Nego Oct 27(2) Print Name: Menign Kaufman	SIMPLIFIED FABRICATORS INC, a Florida corporation By: Jean M. Chardon, President			
COUNTY OF PALM BEACH) ss: THE FOREGOING INSTRUMENT was acknowle 2019, before me, the undersigned, personally appeared one or () has produced a Florida driver's license of the My Commission Expires: AMANDAL. SWIRLES Commission # GG 014976 Expires July 24, 2020 Bonded Thru Budget Notary Services	d Jean M. Chardon, who is () personally known			

LENDER:

PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida

By: Its Board of County Commissioners

Ionathan B. Brown, Director

Department of Housing and Economic

Sustainability

Approved as to Form and Legal Sufficiency:

David Behar, Esq.
Assistant County Attorney

Approved as to Terms and Conditions:

By:

By

Sherry Howard, Deputy Director Department of Housing and Economic

Sustainability

COUNTY OF PALM BEACH)
STATE OF FLORIDA) ss:

THE FOREGOING INSTRUMENT was acknowledged before me this day of work of day of work of 2019, by Jonathan B. Brown, as Director of the Department of Housing and Economic Sustainability of Palm Beach County, Florida, a political subdivision of the State of Florida. He is operated by personally known to me or () has produced a Florida driver's license or _______ as identification.

My Commission Expires:

CARMEN CEPEDA
Commission # GG 192908
Expires March 6, 2022
Bonded Thru Troy Fain Insurance 800-385-701

Notary Public, State of Florida

BORROWER'S CERTIFICATE

- JEAN M. CHARDON, the President of SHELLCO CONSTRUCTION CORP., a Florida corporation, SIMPLIFIED INC, a Florida corporation, and SIMPLIFIED FABRICATORS INC, a Florida corporation, each with a mailing address of 1300 Gateway Road, Florida 33403 (collectively, the "Borrower"), hereby represents, warrants and certifies to Palm Beach County, a political subdivision of the State of Florida, having an address of 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406 ("Lender"), and its successors and assigns, and Lender's counsel, Fowler White Burnett, P.A., a Florida professional association, as follows:
- 1. Borrower entered into a certain Section 108 Promissory Note in the original maximum principal amount of Six Hundred Thousand and 00/100 Dollars (\$600,000.00) in favor of Lender dated October 31, 2018 (the "Note"), pursuant to which the Lender made available to Borrower a certain U.S. Department of Housing and Urban Development Section 108 loan (the "Loan"), subject to the terms and conditions thereof.
- 2. The Loan is secured by a lien on certain collateral (the "Collateral") more particularly described in a certain Loan Agreement dated October 31, 2018 (the "Loan Agreement"), and such other loan documents dated of same date as described in the Loan Agreement (collectively, the "Loan Documents") (all capitalized terms not defined herein shall have the meanings ascribed to them in the Loan Documents).
- 3. This Certificate is made and given in order to induce Lender to extend the Maturity Date in the Loan Documents, as more particularly set forth in a certain First Allonge to Section 108 Promissory Note dated October 31, 2019 (the "First Allonge").
- **4.** The Borrower is a corporation duly formed under the laws of the State of Florida, is validly existing and is in good standing as a corporation under the laws of the State of Florida, with full power and authority to own its property and conduct its business, and is lawfully qualified to do business in each jurisdiction where the ownership of its property requires such qualification.
- 5. The execution, delivery and performance of the First Allonge has been duly authorized by all necessary and appropriate organizational action of the Borrower, and constitutes the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms.
- 6. There is neither any action, litigation, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body, pending, or, to the best of my knowledge, threatened against or affecting the Borrower which involves the possibility of materially or adversely affecting this transaction, the repayment of the Loan, or the property, business, profits or conditions (financial or otherwise) of the Borrower.
- 7. There are no liens against the Borrower (other than Permitted Liens), or overdue taxes, assessments, fees or other governmental charges payable by the Borrower to the United States, the

State of Florida or to any other municipality, or agency thereof. Borrower is not in default under any loan or contract with any other lender, the State of Florida or any municipality or agency thereof.

- 8. Neither Borrower nor any shareholder of Borrower is currently a debtor in any bankruptcy, reorganization, insolvency or similar proceeding.
- 9. Borrower is not presently insolvent. As used in this Certificate, the term "insolvent" means that the sum total of all of an entity's liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all of such entity's non-exempt assets, i.e., all of the assets of the entity that are available to satisfy claims of creditors.
- 10. Borrower has sufficient working capital, including cash flow or other assets, to pay all of Borrower's outstanding debts as they come due.
- 11. Borrower represents to Lender that there is no action, suit or proceeding, or any governmental investigation or any arbitration, in each case pending or, to the knowledge of Borrower, threatened against Borrower before any governmental or administrative body, agency or official which (i) challenges the validity of the First Allonge and the Loan Documents, or the authority of Borrower to perform the transactions contemplated hereby or thereby, or (ii) if adversely determined would have a material adverse effect on the business, financial condition or results of operations of Borrower.
- 12. No Event of Default under and as defined in the Loan Documents executed by the Borrower in connection with the Loan has occurred and is continuing as of the date hereof.

IN WITNESS WEREOF, the undersigned President of SHELLCO CONSTRUCTION CORP., a SIMPLIFIED INC, and SIMPLIFIED FABRICATORS INC has executed this Certificate as of the 31st day of October, 2019.

Jean M. Chardon