

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: June 5, 2007

Consent       Regular  
 Public Hearing

Department: Housing and Community Development

Submitted By: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to receive and file: A. A Mortgage Subordination Agreement with Bank of America and MerryPlace at Pleasant City Associates, Ltd., dated March 30, 2007, for the MerryPlace at Pleasant City Associates, Ltd., project. B. A Mortgage Subordination Agreement with West Palm Beach Housing Authority and MerryPlace at Pleasant City Associates, Ltd., dated March 30, 2007. C. A Mortgage Subordination Agreement with Florida Housing Finance Authority and MerryPlace at Pleasant City Associates, Ltd., dated May 17, 2007.

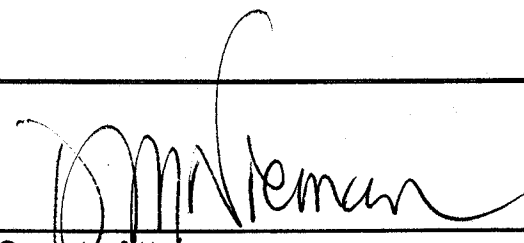
**Summary:** The Board of County Commissioners authorized the Chairperson to execute these Subordination Agreements pursuant to the Loan Agreement approved on March 27<sup>th</sup>, 2007 (Document R-2007-0442). District 7 (TKF)

**Background and Policy Issues:** N/A

**Attachments:**

1. Mortgage Subordination Agreement with Bank of America
2. Mortgage Subordination Agreement with West Palm Beach Housing Authority
3. Mortgage Subordination Agreement with Florida Housing Finance Authority

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Recommended by:       5/24/07  
County Attorney      Date

Approved by: N/A      \_\_\_\_\_  
Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	750,000	_____	_____	_____	_____
External Revenues	<750,000>	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<b>0</b>	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No \_\_\_\_\_

Budget Account No.: Fund 1100 Department 143 Unit 7508 Object 8201

Reporting Category \_\_\_\_\_

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

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

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

Funding provided through Florida Housing Finance Corp.

*[Handwritten signatures and dates]*  
 OFMB 5/23/07  
 5/23/07  
 5/23/07  
 5/17/07

*[Handwritten signatures and dates]*  
 Contract Development and Control  
 5/24/07  
 5/24/07

**B. Legal Sufficiency:**

*[Handwritten signature]*  
 Assistant County Attorney

**C. Other Department Review:**

*[Handwritten signature]*  
 Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
Richard I. Blinderman, Esq. )  
Stearns Weaver Miller Weissler )  
Alhadeff & Sitterson, P.A. )  
150 West Flagler Street, Suite 2200 )  
Miami, Florida 33130 )

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SUBORDINATION AGREEMENT

Among

PALM BEACH COUNTY, FLORIDA,

BANK OF AMERICA, N.A.,

and

MERRYPLACE AT PLEASANT CITY ASSOCIATES, LTD.

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## SUBORDINATION AGREEMENT

This SUBORDINATION AGREEMENT dated March 30, 2007 (as amended, modified, supplemented or assigned from time to time, this "**Agreement**"), by and among the PALM BEACH COUNTY, FLORIDA (together with its successors and assigns, the "**Subordinate Lender**"), BANK OF AMERICA, N.A. (together with any successor trustee under the Indenture described below and their respective successors and assigns, the "**Bank**") and MERRYPLACE AT PLEASANT CITY ASSOCIATES, LTD. (together with its permitted successors and assigns, the "**Borrower**"),

### WITNESSETH:

WHEREAS, the Borrower is the owner of certain property located in the City of West Palm Beach, Palm Beach County, Florida, more particularly described on Exhibit A attached hereto, on which the Borrower intends to construct certain improvements consisting of a 128-unit multifamily garden apartment facility, together with related amenities (such property and the improvements described above are collectively referred to herein as the "**Property**");

WHEREAS, the Property is being acquired, constructed and equipped, in part, with the proceeds of a construction loan (the "Construction Loan") and a bridge loan (the "**Bridge Loan**", and together with the Construction Loan, collectively, the "**Senior Indebtedness**"), the proceeds of which are being loaned to the Borrower pursuant to the terms of a Construction and Bridge Loan Agreement dated December 14, 2006 between the Bank and the Borrower (as amended, modified or supplemented from time to time, the "**Loan Agreement**") and the Borrower's obligations under the Loan Agreement pertaining to the Construction Loan are evidenced, in part, by a Construction Promissory Note dated December 14, 2006 (as amended, modified or supplemented from time to time, the "**Construction Note**"), and secured by, among other things, a first-priority mortgage lien on the Property granted pursuant to a Construction Mortgage, Assignment of Lease and Security Agreement dated December 14, 2006 (as amended, modified or supplemented from time to time, the "**First Mortgage**"). Borrower's obligations under the Loan Agreement pertaining to the Bridge Loan are evidenced, in part, by a Bridge Promissory Note dated December 14, 2006 (as amended, modified or supplemented from time to time, the "**Bridge Note**"), and secured by, among other things, a second-priority mortgage lien on the Property granted pursuant to a Bridge Mortgage, Assignment of Lease and Security Agreement dated December 14, 2006 (as amended, modified or supplemented from time to time, the "**Second Mortgage**"). The Loan Agreement, the Construction Note, Bridge Note, the First Mortgage, the Second Mortgage and all other agreements contemplated therein or evidencing or securing the Borrower's obligations under the Loan Agreement are hereinafter collectively referred to as the "**Senior Loan Documents**". The principle amount of the "**Senior Indebtedness**" is in the amount of \$13,072,723.00.;

WHEREAS, the Subordinate Lender has agreed to make a loan to the Borrower in the amount of \$750,000 pursuant to the terms of a Loan Agreement dated as of March 27, 2007 (as amended, modified or supplemented from time to time, the "**Subordinate Loan Agreement**") and evidenced by a Promissory Note dated March 30, 2007 in the original face amount of \$750,000 (as amended, modified or supplemented from time to time, the "**Subordinate Note**");

WHEREAS, the Borrower's obligations to the Subordinate Lender under the Subordinate Loan Agreement and the Subordinate Note (the "**Subordinate Indebtedness**") are secured by a Mortgage and Security Agreement dated as of March 30, 2007 (as the same may be amended, modified or supplemented from time to time, the "**Subordinate Mortgage**") (the Subordinate Loan Agreement, the Subordinate Note, the Subordinate Mortgage and all other agreements contemplated therein or evidencing or securing the Subordinate Indebtedness are hereinafter referred to as the "**Subordinate Loan Documents**"); and

WHEREAS, it is a condition precedent to the Issuer's issuance and the initial purchaser's purchase of the Bonds that the Senior Mortgage Documents and shall be and remain liens or charges upon the Property prior and superior to the lien or charge of the Subordinate Mortgage Documents, and that the Subordinate Indebtedness be subordinated in right of payment to the Senior Indebtedness.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, it is hereby declared, understood, and agreed as follows:

1. Subordination of Subordinate Mortgage. The Subordinate Lender declares, agrees and acknowledges that the Senior Mortgage Documents, and any renewals or extensions thereof, and any modifications thereof or substitutions therefor which do not increase the principal balance secured thereby (except increases by reason of protective advances or payment of the Bank' costs) and all advances made pursuant to the Senior Mortgage Documents, all costs and expenses secured thereby and interest on the foregoing shall unconditionally be and remain at all times liens or charges on the Property prior and superior to the lien or charge of the Subordinate Mortgage Documents. Any foreclosure, deed in lieu of foreclosure or similar event with respect to the Senior Mortgage Documents will terminate and extinguish the Subordinate Mortgage Documents, including the Regulatory Agreement, and the same shall thereafter be of no further force or effect.

2. Subordination of Subordinate Indebtedness. The Subordinate Indebtedness is hereby subordinated in right of payment to any and all of the Senior Indebtedness. Notwithstanding the foregoing, unless and until Bank gives the Subordinate Lender notice of the occurrence of a Default under the Senior Loan Documents, the Subordinate Lender may receive and accept payments on account of principal and interest payable under the Subordinate Note. If the Subordinate Lender shall receive any payments or other rights in any property of the Borrower after Bank has given the Subordinate Lender notice of a Default under the Senior Loan Documents, such payment or property shall be received by the Subordinate Lender in trust for the Bank and shall immediately be delivered and transferred to the Bank.

3. Exercise of Remedies.

(a) The Subordinate Lender declares, agrees, and acknowledges that it will not, without prior written notice to the Bank: (i) accelerate the Subordinate Indebtedness; (ii) commence any action to foreclose or exercise any power of sale under the Subordinate Mortgage; (iii) accept a deed or assignment in lieu of foreclosure for the Property or any part or portion thereof; (iv) seek or obtain a receiver for the Property or any part or portion thereof; (v) take possession or control of the Property, or collect or accept any rents from the Property; (vi) sue the Borrower under any of the Subordinate Loan Documents; (vii) take any action that would terminate any leases or other rights held by or granted to or by third parties with respect to the Property; (viii) initiate any petition for bankruptcy, assignment for the benefit of creditors or creditor's agreement with respect to the Borrower; (ix) incur any obligation to the Borrower other than as provided in the Subordinate Note; or (x) take any other enforcement action against the Property or any part or portion thereof.

(b) The Subordinate Lender agrees that the Bank shall have, as determined in accordance with and subject to the terms of the Senior Loan Documents, upon the occurrence of an Event of Default under and as defined in the Senior Loan Documents, the right to (i) accelerate any Senior Indebtedness; (ii) commence any action to foreclose or exercise any power of sale under the Senior Mortgage; (iii) accept a deed or assignment in lieu of foreclosure for the Property or any part or portion thereof; (iv) seek or obtain a receiver for the Property or any part or portion thereof; (v) take possession or control of the Property, and collect and accept rents from the Property; (vi) sue the Borrower under any of the Senior Loan Documents; (vii) exercise any rights of set-off or recoupment that Bank may have against the Borrower; or (viii) take any other enforcement action against the Property or any part or portion thereof, all without any responsibility or liability to the Subordinate Lender with respect to the Property.

(c) The Subordinate Lender agrees that the Bank shall have absolute power and discretion, to deal in any manner with the Senior Indebtedness, including interest, costs and expenses payable by the Borrower to the Bank, and any security and guaranties therefor, including, but not by way of limitation, release, surrender, extension, renewal, acceleration, compromise or substitution; provided that the Bank shall not increase the principal amount of the indebtedness to which the Subordinate Loan Documents are subordinate (other than increases resulting from protective advances or payment of the