

Agenda Item #: **3D-2**

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: March 11, 2008

[X] 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 Mortgage Subordination Agreement with Federal Home Loan Mortgage Corporation and Azalea Place Apartments, Limited, dated January 1st, 2008, for the Azalea Place Apartments, Limited.

Summary: The Board of County Commissioners authorized the Chairperson to execute this Subordination Agreement pursuant to the Loan Agreement approved on May 15, 2001 (Document R-2001-0801). (District 7) TKF

Background and Justification: N/A

Attachments:

1. Mortgage Subordination Agreement with Federal Home Loan Mortgage Corporation

Recommended by:

County Attorney

Date _____

Approved by:

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact: Not Applicable

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

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:**
There is no additional fiscal impact associated with the receipt and filing of this Mortgage Subordination Agreement. The original loan agreement amount was \$208,050.

[Signature] 1-18-08
11/17/08 OFMB *[Signature]* 11/18/08

[Signature] 11/22/08
Contract Development and Control 11/22/08

B. Legal Sufficiency:

[Signature] 11/16/08
Assistant County Attorney

C. Other Department Review:

Department Director

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

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SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "**Agreement**") is entered into as of the 1st day of January 2008, by and between (i) FEDERAL HOME LOAN MORTGAGE CORPORATION, a shareholder-owned, government-sponsored enterprise organized and existing under the laws of the United States (the "**Senior Mortgagee**"), and (ii) PALM BEACH COUNTY, a political subdivision of the State of Florida (the "**Subordinate Mortgagee**").

RECITALS

A. Pursuant to that certain Purchase and Sale Agreement by and between Azalea Place Apartments, Limited, a Florida limited partnership (the "**Original Borrower**") and SP Azalea Place LP, a Florida limited partnership (the "**Borrower**") dated August 6, 2007, as amended by Amendment 1 dated September 5, 2007 and Amendment 2 dated September 14, 2007, as may be further amended and supplemented, the Borrower has acquired all of the Original Borrower's rights, title and interest in and to certain land located in West Palm Beach, Palm Beach County, Florida, described in Exhibit A hereto (the "**Land**") improved with a multifamily housing project (the "**Improvements**"), and together with the Land, the "**Project**") and has assumed certain obligations of the Original Borrower (the "**Assumption**") accruing from and after the date of the closing of such acquisition (the "**Closing Date**"), including, but not limited to, the Original Borrower's obligations to the Subordinate Mortgagee.

B. The Housing Finance Authority of Palm Beach County (the "**Issuer**") has issued and sold its Multifamily Housing Revenue Bonds, Series 1999A (Azalea Place Apartments Project) (the "**Bonds**") pursuant to an indenture of trust that is being amended and restated by that certain Amended and Restated Trust Indenture dated as of January 1, 2008 (the "**Indenture**") between the Issuer and U.S. Bank National Association, as successor in interest to U.S. Bank Trust National Association, as trustee (the "**Bond Trustee**").

C. Pursuant to a loan agreement that is being amended and restated by that certain Amended and Restated Financing Agreement dated as of January 1, 2008 (the "**Financing Agreement**") among the Issuer, Bond Trustee and Borrower (as successor in interest to the Original Borrower and prior obligor with respect to the Bonds), the Issuer used the proceeds of the sale of Bonds to make a mortgage loan (the "**Bond Mortgage Loan**") to the Borrower as successor in interest to the Original Borrower, to finance the Project and the proceeds of the Bond Mortgage Loan were used to provide for the acquisition, rehabilitation and equipping of the Project.

D. The Borrower's repayment obligations in respect of the Bond Mortgage Loan are evidenced by an Amended and Restated Promissory Note dated as of the date herewith from the Borrower to the Issuer, which note is being assigned by the Issuer to the Bond Trustee (together with all riders and addenda thereto, the "**Bond Mortgage Note**").

E. To secure the Borrower's obligations under the Bond Mortgage Note, the Borrower has executed and delivered for the benefit of the Issuer an Amended and Restated Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of January 1, 2008 (the "**Bond Mortgage**") with respect to the Project, which Bond Mortgage has been assigned by the Issuer to the Bond Trustee pursuant to the Indenture.

F. Freddie Mac has entered into a Credit Enhancement Agreement dated as of the date hereof with the Bond Trustee (the "**Credit Enhancement Agreement**") pursuant to which Freddie Mac has agreed to make certain advances to the Bond Trustee (a) with respect to amounts due under the Bond Mortgage Loan for the Project and (b) to provide funds to purchase the Bonds tendered under certain circumstances in accordance with the Indenture.

G. The Borrower has entered into a Reimbursement and Security Agreement dated as of the date hereof with Freddie Mac (the "**Reimbursement Agreement**") to evidence the Borrower's obligation to reimburse Freddie Mac for advances under the Credit Enhancement Agreement.

H. The Reimbursement Agreement will be secured by an Amended and Restated Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of the date hereof (the "**Reimbursement Mortgage**") and together with the Bond Mortgage hereinafter sometimes collectively referred to as the "**Senior Mortgage**"), encumbering the Land and Improvements and other "**Mortgaged Property**" (as defined in the Senior Mortgage).

I. The rights of the Issuer, the Bond Trustee and Freddie Mac to enforce remedies under the Bond Mortgage and the Reimbursement Mortgage, respectively, are governed by an Intercreditor Agreement dated as of January 1, 2008 among the Issuer, the Bond Trustee and Freddie Mac.

J. Pursuant to a Loan Agreement between the Subordinate Mortgagee and the Original Borrower dated May 15, 2001 (the "**Subordinate Loan Agreement**"), the Subordinate Mortgagee has made a loan to the Original Borrower in the original principal amount of \$208,050.00 and agreed that the Subordinate Mortgage (as defined below) securing such loan is subordinate to the Senior Mortgage. The loan is secured by a Mortgage and Security Agreement dated as of May 24, 2001 by Original Borrower in favor of Subordinate Mortgagee, which was recorded in the Public Records of Palm Beach County, Florida (the "**Recording Offices**") on May 29, 2001 in Official Records Book 12591 Pages 1860 through 1872 (the "**Subordinate Mortgage**") encumbering the Land and Improvements.

K. The Subordinate Mortgagee has approved the Assumption by the Borrower of the Original Borrower's obligations and acknowledges that the Subordinate Mortgage is subordinate to the Senior Mortgage.

L. The Senior Mortgage is intended to be recorded in the Recording Offices.

M. The execution and delivery of this Agreement is a condition of Senior Mortgagee's entering into the Credit Enhancement Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **DEFINITIONS.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), shall have the following meanings.

(a) The terms **"Condemnation"**, **"Impositions"**, **"Leases"**, **"Rents"**, **"Restoration"** and **"Transfer"**, as well as any term used in this Agreement and not otherwise defined in this Agreement, shall have the meanings given to those terms in the Senior Mortgage.

(b) **"Bankruptcy Proceeding"** means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to the Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

(c) **"Borrower"** means all persons or entities identified as "Borrower" in the first paragraph of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Land and Improvements after the date of this Agreement; provided that the term "Borrower" shall not include the Senior Mortgagee in the event that the Senior Mortgagee may acquire title to the Land and Improvements.

(d) **"Casualty"** means the occurrence of damage to or loss of any of the Mortgaged Property by fire or other casualty.

(e) **"Enforcement Action"** means the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against the Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

(f) **"Enforcement Action Notice"** means a written notice from the Subordinate Mortgagee to the Senior Mortgagee, given following a Subordinate Mortgage Default and the expiration of any notice or cure periods provided for such Subordinate Mortgage Default in the Subordinate Loan Documents, setting forth in reasonable detail the Enforcement Action proposed to be taken by the Subordinate Mortgagee.

(g) **"Loss Proceeds"** means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result or any Condemnation or Casualty.

(h) **"Senior Indebtedness"** means the "Indebtedness" as defined in the Senior Mortgage.

(i) **“Senior Loan Documents”** means the “Loan Documents” as defined in the Senior Mortgage.

(j) **“Senior Mortgage Default”** means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Mortgage.

(k) **“Senior Mortgagee”** means the entity named as such in the first paragraph of this Agreement and any other person or entity who subsequently becomes the obligor under the Credit Enhancement Agreement.

(l) **“Subordinate Indebtedness”** means all sums evidenced or secured or guaranteed by, or otherwise due and payable to the Subordinate Mortgagee pursuant to, the Subordinate Loan Documents.

(m) **“Subordinate Loan Documents”** means the Subordinate Loan Agreement, Subordinate Mortgage, the promissory note or other evidence of the Subordinate Indebtedness referred to in the Subordinate Mortgage and any replacement thereof (the **“Subordinate Note”**), and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as the same may be amended from time to time.

(n) **“Subordinate Mortgage Default”** means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), the Subordinate Mortgagee to take an Enforcement Action.

(o) **“Subordinate Mortgagee”** means the person or entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.

2. SUBORDINATION OF SUBORDINATE INDEBTEDNESS.

(a) The Subordinate Indebtedness is and shall at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness.

(b) Until the occurrence of a Senior Mortgage Default, the Subordinate Mortgagee shall be entitled to retain for its own account all payments made on account of the principal of and interest on the Subordinate Indebtedness in accordance with the requirements of the Subordinate Loan Documents; provided no such payment is made more than ten (10) days in advance of the due date thereof. However, immediately upon the Subordinate Mortgagee’s receipt of notice or actual knowledge of a Senior Mortgage Default, the Subordinate Mortgagee will not accept any payments on account of the Subordinate Indebtedness, and the provisions of Section 2(c) of this Agreement shall apply. The Subordinate Mortgagee acknowledges that a Subordinate Mortgage Default

constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, the Subordinate Mortgagee shall be deemed to have actual knowledge of a Senior Mortgage Default.

(c) If (i) the Subordinate Mortgagee receives any payment, property, or asset of any kind or in any form on account of the Subordinate Indebtedness (including, without limitation, any proceeds from any Enforcement Action) after a Senior Mortgage Default of which the Subordinate Mortgagee has actual knowledge or has been given notice, or (ii) the Subordinate Mortgagee receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any Bankruptcy Proceeding, such payment, property, or asset will be received and held in trust for the Senior Mortgagee. The Subordinate Mortgagee will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to the Senior Mortgagee. The Senior Mortgagee shall apply any payment, asset, or property so received from the Subordinate Mortgagee to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as the Senior Mortgagee shall determine in its sole and absolute discretion. The Subordinate Mortgagee hereby designates and appoints, irrevocably and coupled with an interest, the Senior Mortgagee (and all persons and entities designated by the Senior Mortgagee) as the Subordinate Mortgagee's true and lawful attorney-in-fact with power to endorse the name of the Subordinate Mortgagee upon any check or other instrument and to take any action necessary to collect any payment, property, or asset referred to in, or otherwise to effectuate the provisions of, this Section 2(c).

(d) Without limiting the complete subordination of the Subordinate Indebtedness to the payment in full of the Senior Indebtedness, in any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) the Senior Indebtedness shall first be paid in full in cash before the Subordinate Mortgagee shall be entitled to receive any payment or other distribution on account of or in respect of the Subordinate Indebtedness, and (ii) until all of the Senior Indebtedness is paid in full in cash, any payment or distribution to which the Subordinate Mortgagee would be entitled but for this Agreement (whether in cash, property, or other assets) shall be made to the Senior Mortgagee.

(e) The subordination of the Subordinate Indebtedness shall continue in the event that any payment under the Senior Loan Documents (whether by or on behalf of the Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to the Borrower or its insolvent estate, or avoided, set aside or required to be paid to the Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

3. SUBORDINATION OF SUBORDINATE LOAN DOCUMENTS.

(a) The Subordinate Mortgage and each of the other Subordinate Loan Documents are, and shall at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of the Senior Mortgage and each of the other Senior Loan Documents.

(b) The subordination of the Subordinate Loan Documents and of the Subordinate Indebtedness shall apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of the Senior Mortgage and other Senior Loan Documents and of the Subordinate Mortgage and other Subordinate Loan Documents, and (ii) the availability of any collateral to the Senior Mortgagee, including the availability of any collateral other than the Mortgaged Property.

(c) By reason of, and without in any way limiting, the full subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, all rights and claims of the Subordinate Mortgagee under the Subordinate Mortgage or under the Subordinate Loan Documents in or to the Mortgaged Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto, are expressly subject and subordinate in all respects to the rights and claims of the Senior Mortgagee under the Senior Loan Documents in and to the Mortgaged Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto.

(d) If the Subordinate Mortgagee, by indemnification, subrogation or otherwise, shall acquire any lien, estate, right or other interest in any of the Mortgaged Property, that lien, estate, right or other interest shall be fully subject and subordinate to the receipt by the Senior Mortgagee of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.

(e) In confirmation, and not as a condition, of the subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, the Subordinate Mortgagee shall place on or attach to the Subordinate Note the following notice, and shall provide the Senior Mortgagee with a copy of the Subordinate Note showing such notice:

“The right of the holder of this promissory note to payment of any of the indebtedness evidenced by this promissory note is and shall at all times be subordinate to the right of The Federal Home Loan Mortgage Corporation under a certain Reimbursement and Security Agreement dated as of December 1, 2007 between SP Azalea Place LP and The Federal Home Loan Mortgage Corporation (the “Reimbursement Agreement”), to payment in full of the obligations evidenced by the Reimbursement Agreement. The foregoing subordination is pursuant to a Subordination Agreement dated as of December 1, 2007 between The Federal Home Loan Mortgage Corporation and the holder on the date of the Subordination Agreement of this promissory note.”

4. ADDITIONAL REPRESENTATIONS AND COVENANTS.

(a) The Subordinate Mortgagee represents and warrants that (i) the Subordinate Mortgagee is now the owner and holder of the Subordinate Loan Documents; (ii) the Subordinate Loan Documents are now in full force and effect; (c) the Subordinate Loan Documents have not been modified or amended; (iv) no Subordinate Mortgage Default has occurred, (v) the current principal balance of the Subordinate Indebtedness is \$208,050.00; (vi) no scheduled monthly payments under the Subordinate Note have been or will be prepaid; and (vii) none of the rights of the Subordinate Mortgagee under any of the Subordinate Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.

(b) Without the prior written consent of the Senior Mortgagee in each instance, the Subordinate Mortgagee shall not (i) amend, modify, waive, extend, renew or replace any provision of any of the Subordinate Loan Documents, or (ii) pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents; or (iii) accept any payment on account of the Subordinate Indebtedness other than a regularly scheduled payment of interest or principal and interest made not earlier than ten (10) days prior to the due date thereof or as expressly authorized in Section 4(i); or (iv) take any action which has the effect of increasing the Subordinate Indebtedness, or (v) appear in, defend or bring any action to protect the Subordinate Mortgagee's interest in the Mortgaged Property, or (vi) take any action concerning environmental matters affecting the Mortgaged Property.

(c) The Subordinate Mortgagee shall deliver to the Senior Mortgagee a copy of each notice received or delivered by the Subordinate Mortgagee pursuant to the Subordinate Loan Documents or in connection with the Subordinate Indebtedness, simultaneously with the Subordinate Mortgagee's delivery or receipt of such notice. The Senior Mortgagee shall deliver to the Subordinate Mortgagee a copy of each notice of a Senior Mortgage Default delivered by the Senior Mortgagee, simultaneously with the Senior Mortgagee's delivery of such notice. Neither giving nor failing to give a notice to the Senior Mortgagee or Subordinate Mortgagee pursuant to this Section 4(c) shall affect the validity of any notice given by the Senior Mortgagee or Subordinate Mortgagee to the Borrower, as between the Borrower and such of the Senior Mortgagee or the Subordinate Mortgagee as provided the notice to the Borrower.

(d) Without the prior written consent of the Senior Mortgagee in each instance, the Subordinate Mortgagee will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, the Subordinate Mortgagee shall not vote affirmatively in favor of any plan of reorganization or liquidation unless the Senior Mortgagee has also voted affirmatively in favor of such plan. In the event of any Bankruptcy Proceeding, the Subordinate Mortgagee shall not contest the continued accrual of interest on the Senior Indebtedness, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings.

(e) Whenever the Subordinate Loan Documents give the Subordinate Mortgagee approval or consent rights with respect to any matter, and a right of approval or consent with regard to the same or substantially the same matter is also granted to the

Senior Mortgagee pursuant to the Senior Loan Documents or otherwise, the Senior Mortgagee's approval or consent or failure to approve or consent, as the case may be, shall be binding on the Subordinate Mortgagee. None of the other provisions of this Section 4 are intended to be in any way in limitation of the provisions of this Section 4(e).

(f) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) shall be deemed satisfied if the Borrower complies with the insurance requirements under the Senior Loan Documents. All original policies of insurance required pursuant to the Senior Loan Documents shall be held by the Senior Mortgagee. Nothing in this Section 4(f) shall preclude the Subordinate Mortgagee from requiring that it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by the Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Proceeds, or that the Subordinate Mortgagee be named as an additional insured under all policies of liability insurance maintained by the Borrower with respect to the Mortgaged Property.

(g) In the event of a Condemnation or a Casualty, the following provisions shall apply:

(i) the rights of the Subordinate Mortgagee (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, shall be and remain subordinate in all respects to the Senior Mortgagee's rights under the Senior Loan Documents with respect thereto, and the Subordinate Mortgagee shall be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by the Senior Mortgagee;

(ii) all Loss Proceeds shall be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by the Senior Mortgagee in its sole discretion;

(iii) in the event the Senior Mortgagee applies or releases Loss Proceeds for the purposes of Restoration of the Mortgaged Property, the Subordinate Mortgagee shall release for such purpose all of its right, title and interest, if any, in and to such Loss Proceeds. If the Senior Mortgagee holds Loss Proceeds, or monitors the disbursement thereof, the Subordinate Mortgagee shall not do so. Nothing contained in this Agreement shall be deemed to require the Senior Mortgagee to act for or on behalf of the Subordinate Mortgagee in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of the Subordinate Mortgagee, and all or any Loss Proceeds may be commingled with any funds of the Senior Mortgagee; and

(iv) if the Senior Mortgagee elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss

Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by the Senior Mortgagee shall be paid to the Subordinate Mortgagee unless another party has asserted a claim to the remaining Loss Proceeds.

(h) The Subordinate Mortgagee shall enter into recognition and non-disturbance agreements with any tenants under commercial or retail Leases to whom the Senior Mortgagee has granted recognition and non-disturbance, on the same terms and conditions given by the Senior Mortgagee.

(i) Except as provided in this Section 4(i), and regardless of any contrary provision in the Subordinate Loan Documents, the Subordinate Mortgagee shall not collect payments for the purpose of escrowing for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if the Senior Mortgagee is not collecting escrow payments for one or more Impositions (as defined in the Senior Mortgage), the Subordinate Mortgagee may collect escrow payments for such Impositions; provided that all payments so collected by the Subordinate Mortgagee shall be held in trust by the Subordinate Mortgagee to be applied only to the payment of such Impositions.

(j) Within ten (10) days after request by the Senior Mortgagee, the Subordinate Mortgagee shall furnish the Senior Mortgagee with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and such other information with respect to the Subordinate Indebtedness as the Senior Mortgagee may request.

(k) The Senior Mortgagee may waive, postpone, extend, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing notice to the Subordinate Mortgagee, and without affecting any of the provisions of this Agreement. Notwithstanding the forgoing, Senior Mortgagee may not modify any provisions of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that results from advances made by Senior Mortgagee to protect the security or lien priority of Senior Mortgagee under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.

5. DEFAULT UNDER LOAN DOCUMENTS.

(a) For a period of ninety (90) days following delivery of an Enforcement Action Notice given by the Subordinate Mortgagee as a consequence of the Subordinate Mortgage Default, the Senior Mortgagee shall have the right to cure any Subordinate Mortgage Default, provided if such Subordinate Mortgage Default is not capable of being cured within such ninety (90) days period and Senior Mortgagee has commenced and is diligently pursuing such cure to completion, such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as the Senior Mortgagee's delivery to the Subordinate Mortgagee of written consent to an Enforcement Action described in an Enforcement Action Notice given by the

Subordinate Mortgagee as a consequence of the Subordinate Mortgage Default. The Senior Mortgagee shall not have any obligation whatsoever to cure any Subordinate Mortgage Default. The Senior Mortgagee shall not be subrogated to the rights of the Subordinate Mortgagee under the Subordinate Loan Documents by reason of the Senior Mortgagee having cured any Subordinate Mortgage Default. However, the Subordinate Mortgagee acknowledges that all amounts advanced or expended by the Senior Mortgagee in accordance with the Senior Loan Documents to cure a Subordinate Mortgage Default shall be added to and become a part of the Senior Indebtedness under Section 12 of the Senior Mortgage and shall be secured by the lien of, the Senior Mortgage.

(b) The Senior Mortgagee shall deliver to the Subordinate Mortgagee a notice within five business days in each case where the Senior Mortgagee has given notice to the Borrower of a Senior Mortgage Default. Failure of the Senior Mortgagee to send notice to the Subordinate Mortgagee shall not prevent the exercise of the Senior Mortgagee's rights and remedies under the Senior Mortgage Documents, subject to the provisions of this Agreement. The Subordinate Mortgagee shall have the right, but not the obligation, to cure any such Senior Mortgage Default within 30 days following the date of such notice; provided, however, that the Senior Mortgagee shall be entitled during such 30-day period to continue to pursue its remedies under the Senior Mortgage Documents. Subordinate Mortgagee may have up to 90 days from the date of the notice to cure a non-monetary default if during such 90-day period Subordinate Mortgagee keeps current all payments required by the Senior Mortgage Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Mortgagee's secured position relative to the Mortgaged Property, as determined by Senior Mortgagee in its sole discretion, then Senior Mortgagee may exercise during such 90-day period all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. All amounts paid by the Subordinate Mortgagee to the Senior Mortgagee to cure a Senior Mortgage Default shall be deemed to have been advanced by the Subordinate Mortgagee pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

(c) In the event of a Subordinate Mortgage Default, the Subordinate Mortgagee will not commence any Enforcement Action until after the expiration of a period of ninety (90) days after the Subordinate Mortgagee has given the Senior Mortgagee an Enforcement Action Notice with respect to such Enforcement Action, provided that during such 90 day period, the Subordinate Mortgagee shall be entitled to seek specific performance to enforce covenants and agreements of the Borrower relating to income, rent, or affordability restrictions contained in the Restrictive Covenant subject to Senior Mortgagee's right to cure a Subordinate Mortgage Default set forth in Section 5(a). The Subordinate Mortgagee may not commence any other Enforcement Action, including but not limited to any foreclosure action under the Subordinate Loan Documents, until the earlier of (A) the expiration of such ninety (90) day period or; (B) the delivery by Senior Mortgagee to the Subordinate Mortgagee of the Senior Mortgagee's written consent to such Enforcement Action by the Subordinate Mortgagee. The Subordinate Mortgagee acknowledges that the Senior Mortgagee may grant or refuse consent to the Subordinate Mortgagee's Enforcement Action in the Senior Mortgagee's

sole and absolute discretion, and that such discretion may be exercised in an arbitrary manner. At the expiration of such ninety (90) day period, subject to Senior Mortgagee's right to cure set forth in Section 5(a), Subordinate Mortgagee may commence any Enforcement Action. Any Enforcement Action on the part of the Subordinate Mortgagee shall be subject to the provisions of this Agreement. The Subordinate Mortgagee acknowledges that the provisions of this Section 5(c) are fair and reasonable under the circumstances, that the Subordinate Mortgagee has received a substantial benefit from the Senior Mortgagee having granted its consent to the Subordinate Mortgage, and that the Senior Mortgagee would not have granted such consent without the inclusion of these provisions in this Agreement.

(d) The Senior Mortgagee may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by the Subordinate Mortgagee. No action or failure to act on the part of the Senior Mortgagee in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action shall constitute a waiver on the part of the Senior Mortgagee of any provision of the Senior Loan Documents or this Agreement.

(e) In the event that an Enforcement Action taken by the Subordinate Mortgagee is the appointment of a receiver for any of the Mortgaged Property, all of the rents, issues, profits and proceeds collected by the receiver shall be paid and applied by the receiver solely to and for the benefit of the Senior Mortgagee until the Senior Indebtedness shall have been paid in full.

(f) The Subordinate Mortgagee hereby expressly consents to and authorizes the release by the Senior Mortgagee of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. The Subordinate Mortgagee hereby waives to the fullest extent permitted by law, all equitable or other rights it may have (i) in connection with any release of any portion of the Mortgaged Property, (ii) to require the separate sales of any portion of the Mortgaged Property or to require the Senior Mortgagee to exhaust its remedies against any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness, or (iii) to require the Senior Mortgagee to proceed against the Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of the Borrower if the Borrower is a partnership), any portion of the Mortgaged Property or combination of portions of the Mortgaged Property, or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as the Senior Mortgagee determines. The Subordinate Mortgagee hereby expressly consents to and authorizes, at the option of the Senior Mortgagee, the sale, either separately or together, of all or any portion of the Mortgaged Property. The Subordinate Mortgagee acknowledges that without notice to the Subordinate Mortgagee and without affecting any of the provisions of this Agreement, the Senior Mortgagee may (i) extend the time for or waive any payment or performance under the Senior Loan Documents; (ii) modify or amend in any respect any provision of the Senior Loan Documents; and (iii) modify, exchange,

surrender, release and otherwise deal with any additional collateral for the Senior Indebtedness.

(g) If any party other than the Borrower (including the Senior Mortgagee) acquires title to any of the Mortgaged Property pursuant to a foreclosure of, or trustee's sale or other exercise of any power of sale under, the Senior Mortgage conducted in accordance with applicable law, the lien, operation, and effect of the Subordinate Mortgage and other Subordinate Loan Documents automatically shall terminate with respect to such Mortgaged Property.

6. MISCELLANEOUS PROVISIONS

(a) In the event of any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall control.

(b) This Agreement shall be binding upon and shall inure to the benefit of the respective legal successors and assigns of the parties hereto.

(c) This Agreement does not constitute an approval by the Senior Mortgagee of the terms of the Subordinate Loan Documents.

(d) Each notice, request, demand, consent, approval or other communication (collectively, "notices", and singly, a "notice") which is required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any notice so delivered shall be deemed to have been received on the next business day following receipt by the courier), or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

(i) Notices intended for the Senior Mortgagee shall be addressed to the address set forth in the Senior Mortgage for notices to the Senior Mortgagee.

(ii) Notices intended for the Subordinate Mortgagee shall be addressed to:

Palm Beach County Board of County Commissioner
Attention: County Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401

Any party, by notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its notices, but notice of a change of address shall only be effective upon receipt. Neither party shall refuse or reject delivery of any notice given in accordance with this Section.

(e) Nothing herein or in any of the Senior Loan Documents or Subordinate Loan Documents shall be deemed to constitute the Senior Mortgagee as a joint venturer or partner of the Subordinate Mortgagee.

(f) Upon notice from the Senior Mortgagee from time to time, the Subordinate Mortgagee shall execute and deliver such additional Instruments and documents, and shall take such actions, as are required by the Senior Mortgagee in order to further evidence or effectuate the provisions and intent of this Agreement.

(g) This Agreement shall be governed by the laws of the State in which the Land is located.

(h) If any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereby.

(i) The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the Senior Indebtedness; provided that this Agreement shall be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by the Senior Mortgagee as described in Section 2(e) hereof; (ii) the payment of all of the Subordinate Indebtedness other than by reason of payments which the Subordinate Mortgagee is obligated to remit to the Senior Mortgagee pursuant to this Agreement; (iii) the acquisition by the Senior Mortgagee or by a third party purchaser, of title to the Land and Improvements pursuant to a foreclosure of, or trustee's sale or other exercise of a power of sale under, the Senior Mortgage; or (iv) without limiting the provisions of Section 5(d), the acquisition by the Subordinate Mortgagee, with the prior written consent of the Senior Mortgagee, of title to the Land and Improvements subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.

(j) No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

(k) Each party hereto acknowledges that in the event any party fails to comply with its obligations hereunder, the other parties shall have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

(l) No party other than the Senior Mortgagee and the Subordinate Mortgagee shall have any rights under, or be deemed a beneficiary of any of the provisions of, this Agreement.

(m) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against any party unless such amendment, supplement, modification, waiver or termination is contained in a writing signed by such party.

(n) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[BALANCE OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

WITNESSES:

By: [Signature]
Name

By: [Signature]
Name

SENIOR MORTGAGEE:

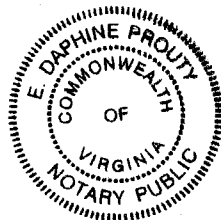
FEDERAL HOME LOAN MORTGAGE CORPORATION, a shareholder-owned, government-sponsored enterprise organized and existing under the laws of the United States

By: [Signature]
Name: Christine Kaufman
Title: Director Multifamily

**COMMONWEALTH OF VIRGINIA)
COUNTY OF MCLEAN)**

The foregoing Agreement was acknowledged before me this 8 day of January, 2008 by Christine Kaufman on behalf of the Federal Home Loan Mortgage Corporation. Such person is personally known to me or has produced a WA as identification.

[Signature]
Notary Public



E. Daphne Prouty
NOTARY PUBLIC
Commonwealth of Virginia
ID# 126655
My Commission Expires
November 30, 2008

SUBORDINATE MORTGAGEE:

WITNESSES:

PALM BEACH COUNTY

By: *Sharon R. Bock*
Name

By: *Addie L. Greene*
Name: **Addie L. Greene**
Title: **Addie L. Greene, Chairperson**

By: *Sharon Due*
Name

Sharon R. Bock, Clerk & Comptroller
Palm Beach County
By: *Nancy Bock*
Deputy Clerk
BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY
FLORIDA

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
[Signature]
COUNTY ATTORNEY

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing Agreement was acknowledged before me this 14th day of January 2008 by Addie L. Greene, as Chairperson of Palm Beach County, a political subdivision of the State of Florida. Such person is personally known to me ~~or has~~ ~~produced a~~ ~~XX~~ as identification.

Gloria Madison
Notary Public
NOTARY PUBLIC-STATE OF FLORIDA
Gloria Madison
Commission # DD710864
Expires: OCT. 19, 2011
BONDED THRU ATLANTIC BONDING CO., INC.

CONSENT OF BORROWER

Borrower hereby acknowledges receipt of a copy of this Subordination Agreement, dated January 1, 2008, by and between Federal Home Loan Mortgage Corporation and Palm Beach County and consents to the agreement of the parties set forth herein.

BORROWER

SP AZALEA PLACE LP

By: m r l
Name: MARY R THURMAN
Title: VICE PRESIDENT

Date: January __, 2008

STATE OF FLORIDA)

COUNTY OF Pinellas)

The foregoing Agreement was acknowledged before me this 8th day of January, 2008 by Mary R Thurman, as Vice President of SP Azalea Place LP, a limited partnership of the State of Florida. Such person is personally known to me or has produced a _____ as identification.

Sandra R St George
Notary Public

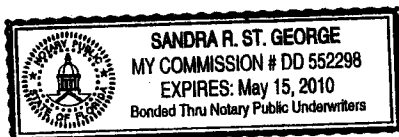


EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN TRACT "BB", AUSTRALIAN PARK, WEST PALM BEACH, FLORIDA, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 28, PAGES 4 THROUGH 6, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT "BB", THENCE ON AN ASSUMED BEARING OF NORTH 9 DEGREES 27 MINUTES 34 SECONDS WEST ALONG THE WEST LINE OF SAID TRACT "BB", A DISTANCE OF 182.37 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE WEST AND HAVING A RADIUS OF 1254.59 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AND CONTINUING ALONG THE WEST LINE OF SAID TRACT "BB" AND THROUGH AN ANGLE OF 11 DEGREES 11 MINUTES 20 SECONDS, A DISTANCE OF 245.0 FEET; THENCE NORTH 69 DEGREES, 21 MINUTES 06 SECONDS EAST, ALONG A LINE RADIAL TO THE AFOREDESCRIBED CURVE, A DISTANCE OF 475.92 FEET TO THE EAST LINE OF SAID TRACT "BB" AND A POINT IN A CURVE CONCAVE TO THE EAST AND HAVING A RADIUS OF 3014.93 FEET; THENCE SOUTHERLY, ALONG THE ARC OF SAID CURVE, AND ALONG THE EAST LINE OF SAID TRACT "BB" AND THROUGH AN ANGLE OF 1 DEGREE 51 MINUTES 53 SECONDS, A DISTANCE OF 98.12 FEET TO THE END OF SAID CURVE; THENCE SOUTH 9 DEGREES 20 MINUTES 45 SECONDS EAST, CONTINUING ALONG THE EAST LINE OF SAID TRACT "BB"; A DISTANCE OF 494.01 FEET TO THE SOUTHEAST CORNER OF SAID TRACT "BB", THENCE NORTH 89 DEGREES 56 MINUTES 45 SECONDS WEST, ALONG THE SOUTH LINE OF SAID TRACT "BB", A DISTANCE OF 446.39 FEET TO THE POINT OF BEGINNING.