

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MERRYPLACE AT PLEASANT CITY  
ASSOCIATES, LTD.

FHFC Case No.: 2006-069VW  
Application No.: 2005-036C

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**ORDER GRANTING VARIANCE OF PARAGRAPH 11  
OF THE 2005 QUALIFIED ALLOCATION PLAN**

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on December 15, 2006, pursuant to a "Petition for a Variance of the 2005 Qualified Allocation Plan's Requirement for Returning Housing Credit Allocations, and to Immediately Receive a Binding Commitment for an Allocation of 2007 Housing Credits," from MerryPlace at Pleasant City Associates, Ltd. ("Petitioner"). On November 9, 2006, Florida Housing published the Notice of the Petitions in Volume 32, Number 45, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petitions. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. During the 2005 Universal Cycle, Petitioner applied for an allocation of Low Income Housing Tax Credits to finance the development of MerryPlace, a 128 unit family apartment project, to be located in Palm Beach County, Florida. On November 29, 2005, Florida Housing issued a Preliminary Allocation of Housing Credits, reserving an allocation in the amount of \$1,309,044 ("2005 Housing Credit Allocation") for MerryPlace, as permitted by Rule 67-48.028, F.A.C.(2005). Petitioner and Florida Housing entered into a Carryover Allocation

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A. Green /DATE: 12-18-06

Agreement (“2005 Carryover Agreement”), which set the Development’s Placed-in-Service Date as December 31, 2007.

3. Rule 67-48.025(1), Fla. Admin. Code (2005) requires that Florida Housing’s allocation of Housing Credits “shall be in accordance with the Corporation’s Qualified Allocation Plan.”

4. Rule 67-48.002(83), Fla. Admin. Code (2005) defines the Qualified Allocation Plan as follows:

“QAP” or “Qualified Allocation Plan” means, with respect to the HC program, the 2005 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the state of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits.

5. The 2005 QAP provides, in pertinent part:

[W]here a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, such failure is due to circumstances beyond the Applicant’s control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met...

6. Petitioner requests a waiver of the above QAP provision (as incorporated by reference into Chapter 67-48. Fla. Admin. Code) to permit the return of its allocated tax credits at this time instead of within the last quarter of 2007, and to permit the immediate reallocation of 2007 Housing Credits in exchange for its 2005 allocation.

7. Petitioner cites substantial hardship and circumstances beyond its control to justify the granting of this waiver, including the effects of Hurricane Wilma (October 24, 2005)

on Miami-Dade County, which was declared a major disaster area. Petitioner states that the effects of Hurricanes Dennis, Katrina and Wilma and the increased costs of crude oil prices have resulted in an unforeseen increase in construction costs. Petitioner has been unable to secure additional funding necessary to cover the increased development costs, in order to meet its construction completion date of December 31, 2007.

8. The water/sewer infrastructure serving the MerryPlace project is at least 50 years old, and is being replaced by, and at the expense of, the Community Development Authority of West Palm Beach. The infrastructure replacement must be complete before construction on the MerryPlace project can commence. The infrastructure replacement work has begun but is behind schedule, such that completion of MerryPlace's construction and placing units in service by December 31, 2007, is not a reasonable expectation.

9. Section 120.542(2), Florida Statutes provides in pertinent part:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

10. IRS Revenue Procedure 95-28 allows extensions of time for the placed-in-service date of a development only after a major disaster area has been declared, for which a carryover allocation for the development is already in place prior to the disaster area being declared. Hurricane Wilma struck shortly before this Development received its carryover allocation and Petitioner is not eligible for relief under IRS Procedure 95-28. Absent a waiver from Florida Housing, Petitioner will not receive a one-year extension of the placed in service date. It would violate the principles of fairness to not allow Petitioner to have an extension of time for the placed-in-service date because it did not have its carryover allocation at the time the area had

been declared a major disaster area. Petitioner also demonstrated that it is necessary to waive the QAP requirement that such returns be made only in the last quarter of the year the project is to be placed in service, to allow sufficient lead time to complete construction of the project.

13. The Board finds that a variance from the above Rule is necessary and that denial thereof would create a substantial hardship for Petitioner or would violate the principles of fairness, in that Petitioner may lose syndicator equity financing for its allocation of Housing Credits, and thus its ability to construct the Development, due to circumstances beyond its control.

14. Florida Housing cannot “immediately” allocate 2007 Housing Credits to Petitioner, as the Internal Revenue Service has not yet issued allocation authority regarding 2007 Housing Credits. Therefore Florida Housing will instead provide to Petitioner a binding commitment for 2007 Housing Credits, in an amount not to exceed Petitioner’s 2005 allocation, with a Placed-in- Service date extended to December 31, 2008.

15. The granting of a variance of the aforementioned rule would serve the purpose of the underlying statute, Chapter 420, Part V, Fla. Stat., in that it would further the goal of facilitating the availability of decent, safe and sanitary housing in the State of Florida to low-income households and elderly persons.

**IT IS THEREFORE ORDERED:**

The relief requested in the “Petition” is hereby **GRANTED**, in the form of a variance from the requirements of the 2005 QAP, as follows: Petitioner shall be permitted to return its 2005 Housing Credit allocation, and to receive a Binding Commitment for an allocation of 2007 Housing Credits in an amount not to exceed its 2005 allocation, with a Placed-in Service Date of December 31, 2008.

DONE and ORDERED this 15<sup>th</sup> day of December, 2006.

Florida Housing Finance Corporation

By:

  
Chairperson

**Copies furnished to:**

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**NOTICE OF RIGHTS**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO PROCEEDINGS PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.**