

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: AMBER GARDEN, LLC

FHFC Case No.: 2006-051VW
2006-052VW
Application No.: 2005-041C

**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 October 20, 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” and “Petition for a Variance of the 2006 Qualified Allocation Plan’s Requirement for Returning Housing Credit Allocations, and to Immediately Receive a Binding Commitment for an Allocation of 2007 Housing Credits” (the “Petitions¹”). Florida Housing Finance Corporation (“Florida Housing”) received the Petitions on September 15, 2006, from Amber Garden, LLC, (“Petitioner”). On September 29, 2006, Florida Housing published the Notice of the Petitions in Volume 32, Number 39, 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.

¹ Petitioner submitted one application in the 2005 Universal Cycle and due to partial funding requirements of the Universal Application, section B.7.b.(1)(b) at p. 96, received a 2005 credit allocation and a 2006 Binding Commitment. Petitioner’s two Petitions reflect these two different allocations, but as the relief requested pertains to the one underlying application, the Petitions are consolidated for the purposes of the Order.

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D. Green /DATE. 10-23-06

2. During the 2005 Universal Cycle, Petitioner applied for an allocation of \$1,694,617.00 in Housing Credits to finance the development of Amber Garden Apartments, a 110 unit high rise apartment building to be located in Miami-Dade County, Florida. On December 22, 2005, Florida Housing issued its Preliminary Allocation of Housing Credits reserved in the amount of \$1,088,940.00 ("2005 Housing Credit Allocation"). Petitioner and Florida Housing entered into a Carryover Allocation Agreement ("2005 Carryover Agreement"). Under the 2005 Carryover Agreement, the Development's Placed-in-Service Date is December 31, 2007.

3. Petitioner also received housing credits in the amount of 605,677.00 pursuant Florida Housing's Binding Commitment of 2006 Housing Credits that was issued in accordance with the 2005 Universal Cycle Application's Ranking and Selection Criteria ("2006 Binding Commitment"). Petitioner and Florida Housing entered into a second Carryover Allocation Agreement ("2006 Carryover Agreement"). Under the 2006 Carryover Agreement, the Development's Placed-in-Service Date is December 31, 2007, the same Placed-in-Service Date required under the 2005 Carryover Agreement.

4. On April 19, 2006, Petitioner submitted its RFP 2006-04 Request to Florida Housing, and was awarded an additional preliminary commitment for a SAIL loan of up to \$1,250,000.00.

5. 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."

6. 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.

7. 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...

8. 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 Housing Credit Allocation and 2006 Binding Commitment.

9. 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 as 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. Additionally, Petitioner demonstrated that a denial of its requested variance would result in its tax credit syndicator being unwilling to provide equity financing for the Development.

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

Variations 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.

11. 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.

12. 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 also 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.

13. For practical reasons, 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 Housing Credit Allocation and Petitioner's 2006 Binding Commitment, with a Placed-in- Service date of December 31, 2008.

14. 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.

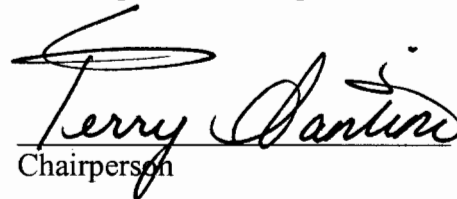
IT IS THEREFORE ORDERED:

The relief requested in the "Petitions" 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 its 2006 Binding Commitment, and to receive a Binding Commitment for an allocation of 2007 Housing Credits in an amount not to exceed its 2005 Housing Credit Allocation and 2006 Binding Commitment, with a Placed-in Service Date of December 31, 2008. All other relief requested in the Petition, if any, is denied.

DONE and ORDERED this 20th day of October, 2006.

Florida Housing Finance Corporation

By:


Chairperson



Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW 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.