

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 03/27/ 07 [ ] Consent [X] Regular [ ] Public Hearing

Department: Housing and Community Development

Submitted By: Housing and Community Development

Submitted For: Commission on Affordable Housing

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) **Approve:** A loan agreement with MerryPlace at Pleasant City Associates, Ltd., a Florida Limited Partnership for \$750,000, from Robert E. Pinchuck Memorial Affordable Housing Trust Fund (HTF). This funding will partially finance the construction of a one hundred twenty eight (128) unit rental garden apartment complex serving low income households. The project will be known as Merry Place at Pleasant City Apartments in West Palm Beach, Florida.

B) **Approve:** A budget transfer of \$750,000 from Reserve for Affordable Housing to Multi-family Rental Development.

**Summary:** Palm Beach County Housing and Community Development (HCD) through the Commission of Affordable Housing (CAH) provides State Housing Initiatives Partnership program (SHIP) financing to local developers to facilitate increased affordable rental opportunities. These projects target very low income (50% and below the local area median income) and low income (51% to 80% area median income) households. This agreement provides \$750,000 towards the construction of a one hundred twenty eight (128) unit garden rental apartment complex for low income households. The apartment complex will be built on 5.2 acres at 17<sup>th</sup> Street & Spruce Avenue. The SHIP financing from the CAH is a 20 year cash flow dependent loan at three percent (3%) annual interest. The total project cost is \$23,888,254 comprised of \$13,072,723 from MMA Mortgage Investment Corporation, \$1,850,000 from Florida Housing Finance Corporation, \$1,345,693 in public improvements and infrastructure from the City of West Palm Beach and \$7,619,838 from the West Palm Beach Community Redevelopment Agency for additional infrastructure and streetscape improvement within the Pleasant City area contiguous to and including Merry Place. These are State SHIP funds that require no local match. District 7 (TKF)

**Background and Justification:** On April 28, 2005 The Commission on Affordable Housing Advisory Committee recommended a \$750,000 cash flow dependent loan for MerryPlace at Pleasant City Associates, Ltd. a Florida limited partnership, at their April 28, 2005 regular meeting. The Commission on Affordable Housing makes recommendations to the Board of County Commissioners regarding expenditures out of the HTF which receives an annual allocation of State Housing Initiatives Partnership funding from the State of Florida.

**ATTACHMENTS:**

- A. Loan Agreement with MerryPlace at Pleasant City Associates, Ltd. with Exhibits "A" thru "C"
- B. Budget Transfer

Recommended By:

Department Director

Date

Approved By:

Assistant County Administrator

Date

## II. FISCAL IMPACT ANALYSIS

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

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

Is Item Included In Current Budget? Yes\_\_ No X Budget Account No.:

Fund 1100 - Dept 143 - Unit. 7508- Object 8201- Program Code/Period W/F

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

Approval of this agenda item will appropriate \$750,000 of SHIP funding to MerryPlace at Pleasant City which will partially fund a 128 unit rental garden apartment complex.

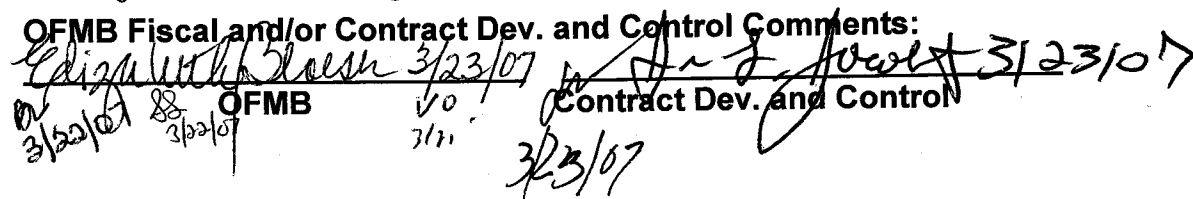
### C. Departmental Fiscal Review:

  
Larry D. Brown, Financial Analyst II

## III. REVIEW COMMENTS

Funding provided through Florida Housing Finance Corp.

### A. OFMB Fiscal and/or Contract Dev. and Control Comments:

  
OFMB 3/23/07  
Contract Dev. and Control 3/23/07

### B. Legal Sufficiency:

  
Assistant County Attorney 3/26/07

### C. Other Department Review:

\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.

## LOAN AGREEMENT

THIS AGREEMENT, dated as of this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter referred to as the "County" and the "Lender") and MerryPlace at Pleasant City Associates, Ltd. a Florida limited partnership, whose Federal I.D. number is 20-2905938 (the "Borrower").

### 1. RECITALS.

(a) Borrower is the lessee of approximately five and two tenths (5.2) acres of real property located in West Palm Beach, Palm Beach County, Florida, as more particularly described in Exhibit "A", attached hereto and made a part hereof, (the "Premises");

(b) Borrower has applied to the County for a loan in the principal amount of Seven Hundred and Fifty Thousand Dollars (\$750,000.00) (the "Loan") to be used by Borrower to construct apartments on the Premises. Borrower intends to construct a 128-unit garden apartment complex to serve low-income households on the Premises (the "Improvements"). The completed complex is to be known as MerryPlace at Pleasant City Apartments ("MerryPlace").

(c) Borrower and the County have negotiated the terms and conditions of, and wish to enter into, this Agreement in order to set forth the terms and conditions for the disbursement of the Loan.

(d) Bank of America has agreed to provide interim financing not to exceed \$13,072,723.00 for the construction of the Improvements, pursuant to a separate loan to Borrower, to be secured by a separate mortgage encumbering the Premises (the "Construction First Mortgage").

(e) MMA Mortgage Investment Corporation (the "Permanent First Mortgagee") has agreed to provide permanent financing, pursuant to a separate loan to be provided to Borrower at the time the Construction First Mortgage is repaid, to be secured by a separate mortgage encumbering the Premises (the "Permanent First Mortgage"). The terms "First Mortgage" and "First Mortgagee" shall mean either (i) the Construction First Mortgage and Construction First Mortgagee, respectively, during the time the Construction First Mortgage is outstanding, or (ii) the Permanent First Mortgage and Permanent First Mortgagee, respectively, during the time the Permanent First Mortgage is outstanding, it being understood that at no time shall both the Construction First Mortgage and the Permanent First Mortgage be outstanding.

(f) The Florida Housing Finance Corporation has agreed to finance not to exceed \$1,100,000 of the construction of the Improvements, pursuant to a separate loan to Borrower, to be secured by a separate mortgage encumbering the Premises (the "Second Mortgage").

(g) The City of West Palm Beach has allocated \$1,345,693.00 for the construction of public improvements and infrastructure for MerryPlace.

(h) The West Palm Beach Community Redevelopment Agency ("CRA") has allocated \$7,619,838.00 for additional infrastructure and streetscape improvements within the Pleasant City area contiguous to and including MerryPlace.

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants and agreements set forth below the receipt and sufficiency of which is hereby acknowledged, Borrower and the County agree as follows:

2. THE LOAN. The County shall make the Loan to Borrower in an amount not to exceed the principal amount of \$750,000.00 upon the terms and conditions set forth herein, and at the rates and terms set forth in its Note and Mortgage attached hereto as Exhibit "B" and "C" respectively, and Borrower shall take the Loan and expressly agrees to comply with and to perform all of the terms and conditions of this Loan Agreement, the Note, the Mortgage and any other documents evidencing and securing this Loan (collectively hereinafter referred to as the "Loan Documents"). The closing of the Loan, including the execution of the Note and

Mortgage, shall occur at the offices of the County Attorney or such other mutually agreed upon site no later than March 31, 2007.

3. RIGHT TO AUDIT. The Borrower shall maintain adequate records to justify all charges, expenses and costs incurred for completion of the Improvements for at least three (3) years after completion. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Borrower's place of business.

4. CONDITIONS PRECEDENT TO CLOSING. The conditions listed below are a condition precedent to the County's acceptance of the Mortgage documents and disbursement of funds and shall be complied with in form and substance satisfactory to the County prior to the closing:

(a) Title Insurance:

(I) Within thirty (30) days of the effective date hereof, Borrower shall deliver to County a title commitment issued by a title insurance company qualified to do business in the State of Florida and acceptable to County, agreeing to issue to County upon recordation of the Mortgage a Lender's Title Insurance Policy in the amount of said Mortgage, subject only to the Permitted Exceptions listed on Exhibit "D" attached hereto and made a part hereof. Said commitment shall have attached to it copies of all exceptions referred to in the title commitment. The cost of said title commitment and policy and any premium therefore shall be borne by Borrower.

(ii) County shall have fifteen (15) days after receipt of the title insurance commitment in which to review the same. In the event the title insurance commitment shall show as an exception any matter other than the Permitted Exceptions, County shall notify Borrower of its objections there to and Borrower shall use commercially reasonable efforts to remove such exceptions, which exception shall be deemed to constitute title defects. The Borrower shall be entitled to thirty (30) days from the day of notification within which to cure such defects or make arrangements with the title insurer for the removal of any such objections from the commitment. If the defect shall not have been so cured or removed from the commitment by endorsement thereto with the termination of said thirty (30) day period, the County shall have the option of accepting title as it then exists or terminating this Loan Agreement, by giving written notice thereof to Borrower, in which event the parties shall be relieved of all further obligations hereunder. Notwithstanding the foregoing, County shall not object to any exception necessary for the construction and development of the Improvements.

(iii) The title insurance commitment shall be endorsed at closing to remove any and all requirements of pre-conditions to the issuance of a Lenders Title Insurance Policy, and to delete any exceptions for: (a) any rights or claims or parties in possession not shown by the public records; (b) encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the Premises; (c) unrecorded easements and claims of liens; (d) taxes for the year 2007 and all prior years; (e) matters arising or attaching subsequent to the effective date of the commitment but before the Mortgage becomes recorded in the Public Records, except those matters necessary for the construction and development of the Improvements.

(b) Survey: Borrower shall deliver to the County a current certified survey prepared by a surveyor acceptable to the County of the Premises showing the following:

(i) the location of the perimeter of the Premises by courses and distances and perimeter footings in place, and by reference to Township, Range, Section:

(ii) the location of and the identification by reference to recording data of all easements, rights-of-way, conditions and restrictions on or appurtenant to the Premises:

(iii) the location of all building setback lines:

(iv) the lines of the streets abutting the Premises and the width thereof;

(v) all encroachments, and the extent thereof in feet and inches upon the Premises;

(vi) if the Premises are described as being on a filed map, a legend relating the plat of survey to such map;

(vii) flood zone certification; and

(viii) any other notations required for the deletion of the survey exception from the Title Insurance Policy to be issued in accordance with paragraph 4(a) above and any other requirements reasonably requested by the County.

(c) Note: The Note, in a form acceptable to the County Attorney, shall be duly authorized, executed and delivered to the County;

(d) Mortgage: The Mortgage, in a form acceptable to the County Attorney, shall be duly authorized, executed, acknowledged, delivered to the County, and when recorded, shall be a valid mortgage lien on the Premises and on all fixtures and personal property owned by Borrower to be used in connection with the Improvements.

(e) Mortgagor's Affidavit: An affidavit of Borrower shall be executed and delivered to the County as required by the Title Insurer as noted in paragraph 4 (a) above, certifying to all such facts as are required to delete the Standard Exceptions from the Lenders Title Insurance Policy and certifying that no liens exist on the Premises for taxes not yet due and payable and that no other parties are entitled to possession except as otherwise provided herein.

(f) Public Requirements: Borrower shall deliver to the County:

(i) letters from local utility companies or municipal authorities stating that electricity, telephone, sewer and water facilities will be available to the Premises upon the completion of the intended Improvements,

(ii) a letter from the appropriate Zoning Department certifying as to compliance with all zoning and land use regulations including but not limited to compliance with parking requirements, a copy of the applicable zoning ordinances certified by an appropriate official to be a complete and accurate statement thereof, and an up-to-date zoning map similarly certified,

(iii) evidence satisfactory to the County that all roads necessary for the full utilization of the intended Improvements for their intended purposes have either been acquired by the appropriate governmental authorities or have been dedicated to public use and accepted by such governmental authorities and that all necessary steps have been taken by Borrower and such governmental authorities to assure the complete construction and installation thereof,

(iv) copies of subdivision plats, restrictive covenants, plans of developments, and all other documents required by the local zoning and subdivision ordinances, and such other documents required by and satisfactory to the County; and evidence satisfactory to the County and its counsel that the Final Plans conform to all federal, state, and local laws, ordinances, rules and regulations, including, but not limited to, laws of the State of Florida regulating air and water pollution and land use,

(v) copies of all necessary approvals from appropriate environmental protection agencies, and

(vi) satisfactory soil test report;

(g) Partnership Documents: Borrower shall deliver to the County the following documents:

(i) The Certificate of Limited Partnership of the Borrower and all amendments thereof, certified by the appropriate official of the State of Florida, together with certificates of such official to the effect that Borrower is in good standing therein:

(ii) Certified resolutions of the Borrower, authorizing the execution and delivery of this Agreement, the Mortgage, Note and all other documents necessary or desirable, for the consummation of the transactions contemplated by this Agreement;

(h) Flood Insurance: Borrower shall deliver to the County evidence satisfactory to the County either that the Premises are not within a hazardous flood area as designated by the Department of Housing and Urban Development and any other governmental authority, or if the Premises are within such a hazardous area, that the Premises are covered by flood insurance supplied by the federal Insurance Administration to the maximum amount available, all as provided in the Flood Disaster Protection Act of 1973, as amended, together with appropriate endorsements thereto providing for the County's interests in the same manner as the Builder's Risk Insurance, including without limitation that such insurance will not be canceled without 30 days notice to the County. Borrower agrees that the County shall have the right to take any action necessary to continue said insurance in full force and effect including, but not limited to, paying premiums. Any funds disbursed to continue said policies in full force and effect shall be considered as Disbursements hereunder and shall bear interest from the date of disbursement at the same rate as other Disbursements and payment of said funds and interest shall be secured by the Mortgage. Satisfactory evidence of flood area designation shall be a certification from the Surveyor appearing on the survey drawing;

(i) Opinion of Borrower's Counsel: Borrower shall deliver to the County an opinion of counsel for Borrower and addressed to the County, such counsel to be reasonably satisfactory to the County, to the effect that:

(i) This Loan Agreement and all Loan Documents and any other documents required to be delivered hereunder have been duly authorized, executed and delivered and are valid, binding and enforceable in accordance with their terms.

(ii) Borrower is a Florida limited partnership in good standing under the laws of the State of Florida and has all the necessary power and authority to undertake its obligations hereunder,

(iii) To the best of counsel's knowledge and based upon representations from the Borrower, Borrower is in compliance with all laws, regulations, ordinances and orders of all governmental authorities, including, but not limited to, all applicable federal and state securities laws, and all laws of the State of Florida, applicable to the type of development contemplated hereunder,

(iv) To the best of counsel's knowledge and based upon the representations of the developer's engineer or architect, that the proposed construction of the Improvements and proposed use of the Premises comply with all applicable zoning and building laws and regulations, and all other applicable federal, state and local laws, ordinance and regulations, and that all permits and approvals required by all governmental agencies regulating air and water pollution have been obtained, and Florida Statute Chapter 380 pertaining to Development of Regional Impact (including the Aggregation Rule) as it relates to the Premises is not applicable,

(v) There is no charter or bylaw of Borrower and no provision of any existing mortgage, indenture, contract or agreement known to such counsel binding on Borrower or affecting its property which could conflict with or in any way prevent the execution, delivery and carrying out of the terms of this Agreement,

(vi) To counsel's knowledge there are no proceedings pending or threatened before any court or administrative agency which will materially adversely affect the financial condition or operation of Borrower or the Premises, including but not limited to

bankruptcy, reorganization or insolvency proceeding or any other debtor-creditor proceedings under the Bankruptcy Code or any similar statute, nor to counsel's knowledge are there any finance circumstances which could lead to such proceedings,

(vii) The lien of the Mortgage is a valid lien on the Premises and the security interest described in the mortgage are good and valid security interests.

(viii) Such other matters as the County may reasonably require.

(j) Expenses: Borrower shall have paid all those fees and charges due and payable or ordered paid by the County as provided herein under Paragraph 6 of this Loan Agreement entitled Expenses;

(k) Other Documents: Borrower shall deliver to the County such other documents and information as the County may reasonably require; and

(l) Representations and Warranties: The representations and warranties of Borrower as set forth in this Agreement and the Loan Documents are true and correct in all material respects.

5. DISBURSEMENT OF LOAN FUNDS: Upon receipt of documentation evidencing payment of construction costs associated with the construction of the Improvements on the Premises by Borrower, the County shall disburse the Loan funds to Borrower in an amount not to exceed \$750,000.00. Payment will not be made hereunder for any other purpose or purposes except with prior written approval of the Board of County Commissioners of Palm Beach County.

6. EXPENSES: Borrower shall pay fees and charges incurred in the procuring and making of this Loan, if applicable, and other expenses incurred by the County during the term of the Loan, including the Title Insurance Company's fees and premiums, charges for examination of title to the Premises, expenses of surveys, recording expenses, any and all insurance premiums, taxes, assessments, water rates, sewer rates and other charges, liens and encumbrances upon the Premises, and any other amounts necessary for the payment of the costs of Improvements.

7. SPECIAL PROVISIONS: Borrower expressly agrees to the following terms and conditions:

(a) Borrower agrees that the Improvements will consist of a 128-unit apartment complex, and that all of the apartment units to be constructed on the Premises shall be reserved for households, with incomes, which are 60% or less of the area median income, and therefore are eligible tenants pursuant to section 42 of the Internal Revenue Code, until December 31, 2028.

(b) The Borrower shall not discriminate on the basis of race, creed, religion, color, sex, marital status, sexual orientation, national origin, age, familial status or handicap in the use, or occupancy of any housing constructed on the Premises.

(c) The Mortgage shall not be subject to any prepayment penalty.

(d) The Mortgage shall become immediately due and payable upon sale, transfer, or refinancing of the Premises.

(e) The Mortgage shall not be assumable, without the consent of the County.

(f) Borrower agrees that the project will:

(i) provide energy efficient heating and cooling;

(ii) provide ceiling fans in at least one living area and bedroom;

- (iii) provide awnings, blinds, sun screening or similar window treatment;
- (iv) provide high efficiency appliances over 8 SEER;
- (v) provide high efficiency water heater;
- (vi) provide wall insulation R-13 or better (wood) or R-7 or better (CBS);
- (vii) provide outdoor living area attached to the units;
- (viii) provide water-conserving irrigation system;
- (ix) provide xeriscape vegetation;
- (x) provide washer and dryer hook up in each unit;
- (xi) provide safe pedestrian and bicycle paths;
- (xii) maximize open space (25% or more of site);
- (xiii) provide security;
- (xiv) provide resident programs in the form of first-time homebuyer education; financial counseling; resident activities; health and nutrition classes; life safety training; resident assistance referral program; computer lab; and welfare to work self-sufficiency programs;
- (xv) conduct background checks on adult members of household prior to occupancy;
- (xvi) utilize leases which require parents to be held legally and financially liable for the acts of their children in the complex and allows management to terminate the lease of any household where a household member is engaged in illegal or criminal activity or where a household member is engaged in anti-social behavior which denies the project's residents or area residents the quiet and peaceful enjoyment of their homes or businesses;

**Conditions (a) (b) and (f) above shall, upon closing become covenants running with the land for a period of fifteen (15) years and shall survive the closing, and the payment or other termination of the Mortgage and Note. These conditions and covenants will be recorded in the land records of Palm Beach County, Florida by inclusion in the mortgage and/or by separate document satisfactory to the County's Attorney citing the granting of this loan and mortgage as consideration.**

**8. REPRESENTATIONS AND WARRANTIES OF BORROWER.** Borrower represents and warrants (which representations and warranties shall be deemed continuing) as follows:

(a) **Organization Status.** Borrower is a Florida limited partnership, duly organized and validly existing in good standing under the laws of the State of Florida with full power and authority to consummate the transactions contemplated herein. Borrower is duly authorized to borrow from County the principal sum of \$750,000.00 and execute all the Loan documents pertaining thereto.

(b) **Financial Statements.** The Financial statements of Borrower heretofore reviewed with the County are true and correct in all material respects, have been prepared in accordance with generally accepted accounting principles, and fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by Borrower since the date thereof;



(c) Authority to Enter into Loan Documents. The Borrower has full power and authority to enter into the Loan Documents and consummate the transactions contemplated hereby, and the facts and matters expressed or implied in the opinions of its legal counsel are true and correct;

(d) Validity of Loan Documents. The Loan Documents have been approved by those persons having proper authority, and to the best of Borrower's knowledge are in all respects legal, valid and binding according to their terms;

(e) Conflicting Transactions of Borrower. The consummation of the transaction hereby contemplated and the performance of the obligations of Borrower under and by virtue of the Loan Documents will not result in any breach of, or constitute a default under, any other Agreement to which Borrower is a party or by which it may be bound or affected;

(f) Pending Litigation. To Borrower's knowledge there are no actions, suits or proceedings pending before any court of law or equity, or any Administrative Board, or, to the knowledge of the Borrower, threatened against or affecting it or the Premises, or, involving the validity or enforceability of the Mortgage, or of any of the Loan Documents.

(g) Availability of Utilities. All utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are or will be available at the boundaries of the Premises, including water supply, storm and sanitary sewer facilities, and electric and telephone facilities, and Borrower has obtained or will obtain all necessary permits and permissions required from governmental authorities for unrestricted access to and use of such services in connection with the construction and use of the intended Improvements;

(h) Condition of Premises. The Premises are not now damaged or injured as a result of any fire, explosion, accident, flood or other casualty, and to Borrower's knowledge there are no soil conditions, which would materially interfere with the construction of the Improvements;

(i) Availability of Roads. All roads necessary for the full utilization of the intended Improvements for their intended purposes have either been completed or the necessary rights of way therefor have either been acquired by the appropriate local authorities or have been dedicated to public use and accepted by such local authorities and all necessary steps have been taken by Borrower and such local authorities to assure the complete construction and installation thereof;

(j) No Default. There is no default on the part of the Borrower under this Loan Agreement, the Note or the Mortgage, and no event has occurred and is continuing which with notice, or the passage of time, or either, would constitute a default under any provision thereof; and

(k) Advertising. During the period of the construction of the Improvements, the County shall have the right to install and maintain on the Premises one or more signs identifying the County, or to be identified on such signs installed by others, as one of the institutions financing the Premises. Sign or signs will be provided by the County and erected at Borrower's expense.

(l) Hazardous Waste. To Borrower's knowledge, Borrower is in compliance with all provisions of the federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("Superfund") Act of 1980 and Solid Waste Disposal Act, Florida Statutes, Chapter 376, and other similar federal, state and local statutory schemes imposing liability on Borrower relating to the generation, storage, impoundment, disposal, discharge, treatment, release, seepage, emission, transportation or destruction of any sewage, garbage, effluent, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), toxic, hazardous or radioactive materials, petroleum products, pesticides, smoke, dust, or any other form of pollution as such laws are in effect as of the date of this Agreement and with any rules, regulations and order issued by any federal, state or local governmental body, agency or authority thereunder and with any orders or judgments of any courts of competent jurisdiction with respect thereto, and no assessment, notice of (primary or secondary) liability or notice of

financial responsibility, or the amount thereof, or to impose civil penalties has been received by the Borrower. Borrower has paid any environmental excise taxes imposed pursuant to Sections 4611, 4661 or 4681 of the Internal Revenue Code of 1986, as from time to time amended.

(m) The Borrower has filed all Federal, State and local tax reports and returns required by any law or regulation to be filed by them, and have either duly paid all taxes, duties and charges indicated due on the basis of such returns and reports, or made adequate provisions for the payment thereof, and the assessment of any material amount of additional taxes in excess of those paid and reported is not reasonably expected.

9. ADDITIONAL COVENANTS OF BORROWER. Borrower covenants and agrees with the County as follows:

(a) Mechanics' Liens. Borrower (i) will allow no work or construction to be commenced on the Premises, or goods specially fabricated for incorporation therein, which has not been fully paid for prior to the recording of the Mortgage and Notice of Commencement or which could constitute a lien on the Premises, (ii) will cause a certified copy of the Notice of Commencement to be posted as required by Chapter 713, Florida Statutes, as soon as possible after recording the Notice of Commencement, (iii) shall notify the County of any and all Notices to Borrower as Owner as that term is defined in Chapter 713, Florida Statutes, within five (5) days of receipt thereof, and (iv) will comply with all provisions of the Florida Mechanics' Lien Law, including but not limited to, payment and notice provisions contained therein. Borrower shall indemnify and hold the County harmless from the claims of any mechanics' lien or equitable lien and pay promptly upon demand any loss or losses which the County may incur as a result of the filing of any such lien, including the reasonable cost of defending same and the County's reasonable attorneys' fees in connection therewith.

In addition, Borrower agrees, at its sole cost and expense, to have any mechanics' lien or equitable lien which may be filed against the Premises or undisbursed funds of this Loan released, bonded or insured over within sixty (60) days of the date of filing same, time being of the essence. The County shall be under no obligation to make further disbursements while any such lien remains outstanding against the Premises. If Borrower fails, after demand, to cause said lien or liens to be released, bonded or insured over as aforesaid the County may take such steps as it deems necessary and any funds expended shall be charged to Borrower's Loan Account and shall bear interest as provided by the Loan Documents.

Borrower hereby authorizes the County to demand, on Borrower's behalf, the statement of account referred to in Section 713.16(2) of the Florida Statutes, of any potential lienor filing a Notice to Owner. It is specifically understood and agreed, however, that the County's right to request such statements of account will in no way impose any obligation on the County to use such authority, and the exercise of such authority on one or more occasion shall not create or imply any obligation on such party to exercise such authority on subsequent occasions.

(b) No Transfer of Premises. Except as specifically set forth in the Mortgage or herein, including in the Permitted Exceptions, the Premises or any part thereof shall not be sold, leased (except for tenant lease), conveyed, mortgaged or encumbered in any way without the prior written consent of the County which consent shall not be unreasonably withheld, or delayed except as provided elsewhere herein or in the Mortgage, it being understood and agreed that part of the consideration for the Loan is the obligation of Borrower. Notwithstanding the foregoing, Borrower may enter into utility easements or licenses or leases for tenant services, such as laundry or concessions.

(c) Compliance with Laws. Borrower will comply promptly with all federal, state and local laws, ordinances and regulations relating to the construction, use, and leasing of the Premises, and will obtain and keep in good standing all necessary licenses, permits and approvals required or desirable for construction and use of the Improvements.

(d) Brokerage Commissions. Borrower will not knowingly engage in any activity or enter into any relationship which will give rise to any loan or brokerage commission with regard to the Loan, and Borrower will indemnify and hold County harmless from the claims of any

broker(s) arising by reason of the execution hereof or the consummation of the transactions contemplated hereby.

(e) Financial Statements to be Furnished. Borrower shall furnish to the County:

(i) Upon the County's request, a complete and current financial statement of all assets and liabilities, contingent or otherwise, prepared in accordance with generally accepted accounting principles and verified by affidavit of Borrower and, at the request of the County, certified (in form satisfactory to the County) by an independent certified public accountant acceptable to the County;

(ii) within ninety (90) days after the end of each fiscal year of Borrower, a balance sheet and statements of income, surplus, and cash flow, together with schedules, all compiled and presented by an independent accounting firm in accordance with standard and uniform accounting practices showing the financial condition of Borrower at the close of each year and the results of operations of Borrower during each year;

(iii) with the statements submitted under (ii) above, a certificate signed by the principal financial officer of Borrower to the effect that no Event of Default specified herein, nor any event which upon notice or lapse of time or both, would constitute such an Event of Default, has occurred which has not been cured or otherwise waived in writing by the Lender; and

(iv) promptly, from time to time, such other information regarding the operations, business, affairs and financial condition of Borrower as the County may reasonably request.

(f) Borrower to Maintain Bookkeeping System. Borrower shall, if required by the County, maintain a bookkeeping system to the construction project in form and content sufficient for the County and Inspector to conduct reviews, inspections, certifications and reports required by this Agreement. The County shall have full (but confidential) access, as allowed under the Public Records Law, at any reasonable time to the books, records and contracts pertaining to the Premises and Borrower.

(g) Insurance Proceeds. The Mortgagor will keep the Mortgaged Property continuously insured in accord with the provisions of the First Mortgage, in an amount no less than full insurable value, which coverage shall insure the Mortgaged Property against loss or damage by fire and by the perils covered by extended coverage and against such other hazards as the First Mortgagee, in its sole discretion, shall from time to time require, for the benefit of the First Mortgagee. All such insurance at all times will be in an insurance company or companies in such amounts and with terms reasonably acceptable to the First Mortgagee and the County. Subject to the prior interests of the First and Second Mortgagees, loss, if any, shall be payable to the County as its interest may appear, pursuant to a non-contributory mortgagee clause, which shall be satisfactory to the County. Forthwith upon their issuance, certified copies of such insurance policies, copies of receipts for the premiums paid thereon and certificates of insurance shall be delivered to the County. Any policies furnished the County shall become its property in the event the County becomes the owner of the Premises by foreclosure or otherwise. Subject to the rights of the Mortgagees pursuant to the First and Second Mortgages, the County is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property. Each insurance company is hereby authorized and directed to make payment for all such losses to the Mortgagor and the County jointly. Should a loss be incurred, then in such event, County and Mortgagor may jointly elect to use the proceeds for the reconstruction and repair of the Mortgaged Property or, in the alternative, to apply the net proceeds to the payment of the indebtedness hereby secured, whether then due or not. The provisions of this Section 1.3 are subject to the rights under the First and Second Mortgages, to which the rights of the County are subordinate. Compliance with the insurance requirements of the First Mortgage shall be deemed to be

compliance hereunder.

(h) Indebtedness. With respect to the Premises encumbered by the Borrower of even date herewith, Borrower will not incur, create, assume or permit to exist any indebtedness, except in the ordinary course of business constituting the deferred purchase price of any property or assets, or any indebtedness or liability evidenced by notes, bonds, debentures or similar obligations without the written approval of the County, which approval shall not be unreasonably withheld or delayed, except indebtedness owed the County and the aforementioned First and Second Mortgages; provided however, that the First and Second Mortgages shall not exceed the amounts contained in the recitals incorporated in this Loan Agreement.

(i) Further Assurances and Preservation of Security. Borrower will do all reasonable acts and execute all documents for the better and more effective carrying out of the intent and purposes of this Loan Agreement, as the County shall reasonably require from time to time, and will do such other acts reasonably necessary or desirable to preserve and protect the collateral at any time securing or intending to secure the Note, as the County may reasonably require.

(j) No Assignment. Borrower shall not assign this Loan Agreement or any interest therein and any such assignment is void and of no effect.

10. INSPECTIONS. Borrower will permit County, or its representatives to enter upon the Premises during normal business hours, inspecting Improvements and all materials to be used in the construction thereof, and to examine all details, plans and shop drawings which are kept at the construction site, and will cooperate, and cause Borrower's general contractor and subcontractors to cooperate with the County's representative.

11. DEFAULT. The following events shall be deemed Events of Default:

(a) Bankruptcy. If there is filed by or against Borrower a petition in bankruptcy or a petition for the appointment of a receiver or trustee of the property of Borrower and any such petition not filed by Borrower is not dismissed within ninety (90) days of the date of filing, or if Borrower files a petition for reorganization under any of the provisions of the Bankruptcy Code or of any assignment for the benefit of creditors or makes any insolvency assignment or is adjusted insolvent by any court of competent jurisdiction; or

(b) Breach of Covenants, Warranties and Representations. If any material warranty or representation made by Borrower in this Loan Agreement or in any other Loan Document shall at any time be false or misleading in any material respect, or if Borrower shall fail to keep, observe or perform any of the material terms, covenants, representations or warranties contained in this Loan Agreement, the Note, the Mortgage, the Loan Documents, and any other document given in connection with the Loan or development of the Improvement (provided, that with respect to non-monetary defaults, the County shall give written notice to Borrower, who shall have thirty (30) days to cure), or is unwilling to meet its obligations thereunder; or

(c) Material Adverse Change of Borrower. If any material adverse change shall occur in the financial condition of Borrower at any time during the term of the Loan from the financial condition revealed in statements already presented to and accepted by the County; or

(d) Borrower shall fail to use all funds under this loan agreement for costs associated with the construction of the Premises by December 31, 2008. In the event Borrower fails to use all funds by December 31, 2008, all remaining funds shall revert to the County and the County may reallocate for other projects or needs, unless written agreement to the contrary has been executed by the Parties.

(e) Borrower shall fail to complete construction of the Improvements and secure a Certificate of Occupancy for the Improvements by December 31, 2008, unless written agreement to the contrary has been executed by the Parties.

(f) Borrower shall default under the First Mortgage, which is not cured within applicable cure periods.

12. REMEDIES OF LENDER. Upon the happening of an Event of Default, which default is not cured within any applicable cure or grace period, then the County may, at its option, upon written notice to Borrower:

- (a) Cancel this Loan Agreement;
- (b) Commence an appropriate legal or equitable action to enforce performance of this Loan Agreement;
- (c) Accelerate the payment of the Note and any other sums secured by the Mortgage, and commence appropriate legal and equitable action to foreclose the Mortgage and collect all such amounts due the County;
- (d) Exercise any other rights or remedies the County may have under the Mortgage or other Loan Documents executed in connection with the Loan or which may be available under applicable law.

13. GENERAL TERMS. The following shall be applicable throughout the period of this Agreement or thereafter as provided herein:

(a) Rights of Third Parties. All conditions of the County hereunder are imposed solely and exclusively for the benefit of the County and its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that the County will make Disbursements in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of this Loan Agreement or the Loan Documents, any provisions of which may be freely waived in whole or in part by the County at any time if, in its sole discretion, it deems it desirable to do so. In particular, the County makes no representations and assumes no duties or obligations as to third parties concerning the quality of the construction by Borrower of the Improvements or the absence thereof of defects.

(b) Borrower is not the County's Agent. Nothing in this Agreement, the Note, the Mortgager or any other Loan Document shall be construed to make the Borrower the County's agent for any purpose whatsoever, or the Borrower and the County partners, or joint or co-venturers, and the relationship of the parties shall, at all times, be that of debtor and creditor.

(c) The County Not Liable for Damage or Loss. All inspections and other services rendered by or on behalf of the County pursuant to this Loan Agreement shall be rendered solely for the protection and benefit of the County. Neither Borrower nor other third persons shall be entitled to claim any loss or damage against the County or against its agents or employees for failure to properly conduct inspections and other such services contemplated by this Loan Agreement.

(d) The County Not Obligated to Insure Proper Disbursement of Funds to Third Parties. Nothing contained in this Agreement, or any Loan documents, shall impose upon the County any obligation to oversee the proper use or application of any disbursements and disbursements of funds made hereunder so long as disbursements are made to Borrower.

(e) Indemnification from Third Party Claims. Borrower shall indemnify and hold County harmless from any liability, claims or losses resulting from the disbursement of the Loan proceeds to Borrower or from the condition of the Premises, whether related to the quality of construction or otherwise, and whether arising during or after the term of the Loan, except any liability due to the gross negligence or willful misconduct of County. This provision shall survive the repayment of the Loan and shall continue in a full force and effect so long as the possibility of such liability, claims, or losses exists.

(f) Rights of Subcontractors, Laborers and Materialmen. In no event shall this Agreement be construed to make the County, Title Company or agent of the County liable to Borrower's Contractor or any subcontractors, laborers, materialmen, craftsmen, or others for

labor, materials, or services delivered to the Premises or goods specially fabricated for incorporation therein, or for debts or liens accruing or arising to such persons or parties against Borrower or Borrower's Contractor. It is distinctly understood and agreed that there is no relation of any type whatsoever, contractual or otherwise, whether express or implied, between the County and Borrower's Contractor, any materialman, subcontractor, craftsman, laborer or any other person or entity supplying any labor, materials or services to the Premises or specially fabricating goods to be incorporated therein. Except as otherwise specifically provided herein, no such person or entities are intended to be third party beneficiaries of this Agreement or any document or instrument related to the Loan or to have any claim or claims in or to any undisbursed or retained Loan proceeds.

(g) Evidence of Satisfaction of Conditions. The County shall, at all time, be free independently to establish to its good faith and satisfaction, and in its absolute discretion, the existence or nonexistence of a fact of facts which are disclosed in documents or other evidence required by the terms of this Agreement.

(h) Headings. The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, and shall not limit or otherwise affect any of the terms hereof.

(i) Invalid Provisions to Affect No Others. If performance of any provision hereof or any transaction related hereto is limited by law, then the obligation to be performed shall be reduced accordingly; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in part, then the invalid part of said clause or provision only shall be held for naught, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

(j) Application of Interest to Reduce Principal Sums Due. In the event that any charge, interest or late charge is above the maximum rate provided by law, then any excess amount over the lawful rate shall be applied by the County to reduce the principal sum of the Loan or any other amounts due the County hereunder.

(k) Governing Law. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement and the venue shall be in Palm Beach County.

(l) Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the others and shall apply jointly and severally.

(m) Agreement. This Loan Agreement constitutes the entire understanding and agreement between the parties with respect the subject matter hereof and may not be modified or amended, except in writing and signed by all parties hereto.

(n) Waiver. If the County shall waive any provisions of the Loan Documents, or shall fail to enforce any of the conditions or provisions of this Loan Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and the County shall thereafter have the right to insist upon the enforcement of such conditions or provisions. Furthermore, no provision of this Agreement shall be amended, waived, modified, discharged or terminated, except by instrument in writing signed by the parties hereto.

(o) Notices. All notice from the Borrower to the County and the County to Borrower required or permitted by any provision of this agreement shall be in writing and sent by registered or certified mail and addressed as follows:

TO LENDER:

Board of County Commissioners  
c/o Palm Beach County Attorney's Office  
301 N. Olive Avenue, Suite 601  
West Palm Beach, FL 33401

TO BORROWER: MerryPlace at Pleasant City  
Associates, Ltd.  
c/o MerryPlace, LLC,  
its Managing General Partner  
c/o Banc of America Community Development Corporation  
101 East Kennedy Blvd. 6<sup>th</sup> floor  
Tampa, FL 33602  
Attn: Roxanne Amoroso, Senior Vice President

WITH COPIES TO: MMA MerryPlace, LLC  
c/o MMA Financial, Inc.  
101 Arch Street  
Boston, MA 02110  
Attn: Asset Management

and

Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Attn: James E. McDermott, Esq.

Such addresses may be changed by written notice to the other party.

(p) Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their heirs, legal representatives, successors and assigns; but nothing herein shall authorize the assignment hereof by the Borrower, without the consent of the County.

(q) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute collectively but one and the same instrument.

(r) Waiver of Jury Trial. BORROWER AND COUNTY WAIVES THEIR RIGHT TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS LOAN OR GRANT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COUNTY'S EXTENDING CREDIT TO BORROWER AND NO WAIVER OR LIMITATION OF THE COUNTY'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON THE COUNTY'S BEHALF.

(s) Not Federal Funds. This loan is not funded with federal funds or the proceeds of tax-exempt bonds.

14. SUBORDINATION. Lender hereby approves the Construction First Mortgage, provided that it does not exceed \$13,072,723.00, and further agrees to subordinate to such Construction First Mortgage. Lender hereby approves the Permanent First Mortgage and further agrees to subordinate to such Permanent First Mortgage (it being understood that the Permanent First Mortgage is to be sold to Freddie Mac and that Lender and Permanent First Mortgagee shall enter into a Subordination Agreement in the form promulgated by Freddie Mac). Lender also approves a Second Mortgage provided, that it does not exceed \$1,100,000.00, and agrees to subordinate to such Second Mortgage. The Chair of the Board of County Commissioners of Palm Beach County and the Clerk and Comptroller of the Court for Palm Beach County are hereby authorized to execute subordination agreements required herein, without further approval of the Board of County Commissioners of Palm Beach County, Florida, provided such documents are in a form acceptable to the County Attorney. Nothing contained herein shall, however, relieve the Borrower from its obligation to make payments under the Promissory Note in accordance with its terms.

15. NONRECOURSE. ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, IN THE EVENT OF ANY DEFAULT BY THE BORROWER UNDER THE LOAN REFERENCED HEREIN, THE SOLE REMEDY OF THE LENDER SHALL BE TO FORECLOSE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THIS LOAN, AND IN NO EVENT SHALL THE BORROWER HAVE ANY LIABILITY FOR THE PAYMENT OF THE LOAN OR ANY OTHER OBLIGATIONS REFERENCED HEREIN, OR FOR THE PAYMENT OF ANY DEFICIENCY FOLLOWING THE FORECLOSURE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THE LOAN.

16. EFFECTIVE DATE OF AGREEMENT. This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners. The Effective Date shall be the date on which this Loan Agreement is executed by the Board of County Commissioners.

17. DEFAULT. If an event of default occurs under the terms of any of the Loan, prior to exercising any remedies thereunder, Lender shall give the Borrower and each of the Limited Partners of Borrower, as identified to Lender or by written notice received by Lender prior to such default, thirty (30) days simultaneous written notice of such default. Lender shall accept cures of the default(s) by the Borrower or Limited Partners within the cure periods provided in this paragraph. Until the expiration of all cure periods provided to the Limited Partners in the Loan Documents and this paragraph, Lender shall not accelerate the Loan, exercise any remedies under the Loan Documents, charge a default rate of interest, retain an attorney for collection efforts or impose any impounds for insurance or taxes.


18. PARTIAL SUBORDINATION TO EXTENDED USE AGREEMENT. Lender acknowledges that Mortgagor and the Florida Housing Finance Corporation have entered or intend to enter into, or concurrently with the execution and delivery of the Loan Documents are entering into a Regulatory Agreement (the "Regulatory Agreement"), which constitutes the extended low-income housing commitment described in section 42(h)(6)(B) of the Internal revenue Code, as amended (the "Code"). Lender acknowledges and agrees that, in the event of a foreclosure of its interest under the Mortgage or delivery by the Partnership of a deed in lieu thereof (collectively a "Foreclosure"), the following rule contained in section 42(h)(6)(E)(ii) of the Code shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the Regulatory Agreement, (i) none of the eligible tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause, including but not limited to, the tenants' ineligibility pursuant to ... Section 42 of the Code), (ii) nor may any rent be increased except as otherwise permitted under section 42 of the Code.

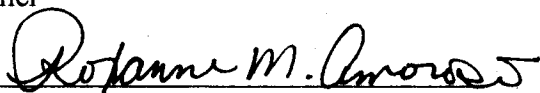
IN WITNESS WHEREOF, Borrower and the County have caused this Agreement to be executed on the date first above written.

Signed, sealed and delivered  
in the presence of:

MERRYPLACE AT PLEASANT  
CITY ASSOCIATES, LTD.



By: MerryPlace, LLC, Managing General  
Partner

By:   
Roxanne Amoroso, Senior Vice  
President, Banc of America  
Community Development Corp., its  
Manager



STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of March, 2007, by Roxanne Amoroso, Senior Vice President of Banc of America Community Development Corp., the Manager of MerryPlace, LLC, which is the General Partner of MerryPlace at Pleasant City Associates, Ltd., who is personally known to me ~~or who has produced~~ \_\_\_\_\_ as ~~identification~~ and who did/did not take an oath



Melissa L. Busi  
(Signature of Notary)

Melissa L. Busi  
Name of Notary

My Commission Expires: 08.12.07

ATTEST:  
SHARON R. BOCK, Clerk &  
Comptroller

PALM BEACH COUNTY, FLORIDA, a  
State of Florida, BY ITS BOARD OF  
COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY: J. R. B.  
County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS

BY: Edward W. Lavery  
~~Keturah Joseph, Manager,~~  
Commission on Affordable Housing  
Edward W. LOWERY

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All of Tracts C, C1, C2, C3, D1, D2, E1, E2, F, F1, M, M1, N and Z, MERRY PLACE, according to the Plat thereof, as recorded in Plat Book 108, Page 190, of the Public Records of Palm Beach County, Florida.

FORMERLY KNOWN AS:

PARCEL A-R:

Being a portion of Lots 10, 11, 12, (Block 4) "PLEASANT CITY", according to the Plat thereof, as recorded in Plat Book 1, Page 57, TOGETHER WITH a portion of Lots 25, 26, 27, 28, 29 and 30, (Block 9) "THE UPDATE ADDITION TO PLEASANT CITY AND CURRIE ADDITION TO PALM BEACH NORTH, as recorded in Plat Book 3, Page 3, according to the Plat thereof, TOGETHER WITH portions of public road right-of-ways and alleys, lying within the above said Plats, all being of the Public Records of Palm Beach County, Florida, said lands being more particularly described as follows: Commencing at the Northwest corner of Lot 12, Block 4, of the said Pleasant City Plat; thence South 88° 47' 12" East, along North line of said lot, a distance of 6.00 feet; thence South 01° 18' 15" West, a distance of 5.00 feet to the Point of Beginning; thence South 88° 47' 12" East, a distance of 137.51 feet; thence South 01° 20' 32" West, a distance of 221.14 feet; thence North 88° 47' 07" West, a distance of 137.36 feet; thence North 01° 18' 15" East, a distance of 221.14 feet to the Point of Beginning.

PARCEL B-R:

Being a portion of Lots 6, 7, 8 and 9, (Block 4) "PLEASANT CITY", according to the Plat thereof, as recorded in Plat Book 1, Page 57, all being of the Public Records of Palm Beach County, Florida, said lands being more particularly described as follows: Commencing at the Northeast corner of Lot 6, Block 4, of The Pleasant City Plat; thence South 01° 18' 17" West a distance of 5.00 feet to the Point of Beginning; thence South 01° 18' 17" West along lot line, a distance of 103.08 feet; thence North 88° 47' 12" West a distance of 153.85 feet; thence North 01° 28' 18" East, a distance of 103.08 feet; thence South 88° 47' 12" East, a distance of 153.55 feet to the Point of Beginning

PARCEL C-R:

Being a portion of Lots 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 31, 32, 33, 34, 35, 36, (Block 9) THE UPDATE ADDITION TO PLEASANT CITY AND CURRIE ADDITION TO PALM BEACH NORTH, as recorded in Plat Book 3, Page 3, TOGETHER WITH portions of public road right-of-ways and alleys, lying within the above said Plats, all being of the Public Records of Palm Beach County, Florida, said lands being more particularly described as follows: Commencing at the Northwest corner of Lot 31, Block 9 of the said Pleasant City Plat; thence South 01° 18' 15" West, a distance of 20.96 feet; thence South 88° 47' 17" East, a distance of 5.00 feet to the Point of Beginning; thence South 88° 47' 07" East a distance of 103.31 feet; thence North 61° 15' 16" East a distance of 16.02 feet; thence South 88° 47' 07" East, a distance of 47.13 feet; thence Easterly and Southerly along arc of said curve concave to the West a distance of 281.34, a radius of 89.55 feet, and a central angle of 180° 00' 18"; thence North 88° 46' 59" West, a distance of 56.06 feet; thence North 28° 12' 06" West, a distance of 9.18 feet; thence North 88° 46' 59" West, a distance of 104.00 feet; thence North 01° 18' 15" East, a distance of 103.10 feet to the Point of Beginning.

PARCEL D-R:

Being all of Lots 5, 6, 7, 8, 9, 10 and a portion of Lot 11, (Block 11) TOGETHER WITH all of Lots 11, 12, 13, 14, 15 and a portion of Lots 16, 17, (Block 12) TOGETHER WITH that portion of the alley and right-of-way for 17th Street, THE UPDATE ADDITION TO PLEASANT CITY AND CURRIE ADDITION TO PALM BEACH NORTH, as recorded in Plat Book 3, Page 3, according to the Plat thereof; TOGETHER WITH a portion of Lot 5 and all of Lots 6, 7, 12, 13, 14, 15, 16, 17, (Block 9) PALM BEACH NORTH RESUBDIVISION OF BLOCKS 7 AND 8, as recorded in Plat Book 8, Page 77, according to the Plat thereof; TOGETHER WITH portions of public road right-of-ways and alleys, lying within the above said Plats, all being of the Public Records of Palm Beach County, Florida, said lands being more particularly described as follows: Commencing at the Northwest corner of Lot 11, (Block 11); thence North 88° 46' 59" West, a distance of 9.41 feet; thence South 07° 27' 50" West, a distance of 4.00 feet, to the Point of Beginning; thence South 88° 46' 59" East along lot line, a distance of 183.89 feet; thence North 01° 27' 50" East, a distance of 2.02 feet; thence Easterly along arc of said curve concave to the Northwest, a distance of 78.12 feet, a radius of 141.55 feet, and a central angle of 31° 37' 07"; thence South 49° 51' 12" East, a distance of 13.69 feet; thence Easterly along arc of said curve concave to the Northeast, a distance of 29.49 feet, a radius of 102.00 feet, and a central angle of 16° 33' 50"; thence South 01° 27' 50" West, a distance of 132.74 feet; thence North 88° 46' 53" West, a distance of 10.00 feet; thence South 01° 27' 50" West, a distance of 200.31 feet; thence South 88° 56' 02" East, a distance of 110.12 feet; thence South 01° 18' 19" West, a distance of 68.56 feet; thence South 88° 56' 16" East, a distance of 100.00 feet; thence South 01° 18' 19" West, a distance of 22.85 feet; thence South 88° 56' 21" East, a distance of 88.03 feet; thence South 01° 18' 19" West, a distance of 45.70 feet; thence North 88° 56' 30" West, a distance of 338.06 feet; thence North 01° 18' 19" East, a distance of 68.58 feet; thence South 88° 56' 161" East, a distance of 33.14 feet; thence North 01° 03' 58" East, a distance of 118.57 feet; thence North 88° 56' 02" West, a distance of 229.79 feet; thence North 07° 21' 30" West, a distance of 275.08 feet to the Point of Beginning.

## EXHIBIT "B"

### PROMISSORY NOTE

\$750,000.00

West Palm Beach, Florida  
\_\_\_\_\_, 2007

FOR VALUE RECEIVED the undersigned MerryPlace at Pleasant City Associates, Ltd., a Florida Limited Partnership ("Maker"), promises to pay to the order of PALM BEACH COUNTY, a political subdivision of the State of Florida, together with any other holder hereof ("Holder"), at 301 North Olive Avenue, West Palm Beach, Florida 33401, or such other place as Holder may from time to time designate in writing, the principal sum of Seven Hundred and Hundred Fifty Thousand Dollars (\$750,000.00) plus accrued interest, to be paid in lawful money of the United States of America, as follows:

- 1) This Note shall bear simple interest only, computed at the stated rate of three (3%) percent per annum, on the outstanding principal balance from time to time remaining unpaid from the date of each disbursement.
- 2) Repayment hereunder shall occur as follows:
  - (a) From the date hereof until **December 31, 2008** no payments will be required and simple interest will accrue and be payable at the Maturity Date, as defined below.
  - (b) From and after December 31, 2008, annual payments shall be made from the Development Cash Flow of the Project, as such term is defined in Florida Administrative Rule 67-48.010 Terms and Conditions of SAIL Loans (the "Rule") (hereafter "Development Cash Flow"). Development Cash Flow shall be determined annually on a calendar year basis, commencing with the year 2009, and certified by an independent Certified Public Accountant reasonably acceptable to the County, prior to the annual payment due date, provided however that annual payments under this Note, together with payments under the loans to the Maker from the West Palm Beach Housing Authority and Florida Housing Finance Corporation, shall not exceed seventy five percent of Surplus Project Cash Flow. The first annual payment due date hereunder shall be on April 30, 2010. Annual payments for each year after 2009 shall be due on April 30<sup>th</sup> of the subsequent year. So for example, the payment for the 2010 calendar year shall be due on April 30, 2011. Annual payments shall be made through the later to occur of (i) December 31, 2028 or (ii) the day after the date on which the Permanent First Mortgage (as such term is defined in the Mortgage becomes due and payable (in either case, hereafter the "Maturity Date"). On the Maturity Date, all outstanding principal indebtedness, together with all accrued and unpaid interest thereon, shall be due and payable, unless Holder makes acceleration pursuant to the provisions hereof.
- 3) Maker agrees to provide annually to Holder a certification of Project income and expenses, and certified by an independent Certified Public Accountant acceptable to the County in its reasonable discretion, which shall be used by Holder to determine Development Cash Flow and the payments due hereunder. Said certification shall be provided prior to each annual due date commencing for the year 2009.
- 4) Commencing with the year 2009, payments from Development Cash Flow as determined by Holder shall be applied to pay the following items in order of

priority:

- a) First Mortgage fees, debt service and escrows, together with all other sums due by the Maker under the documents executed in connection with such First Mortgage; and
  - b) Second Mortgage fees, debt service and escrows, together with all other sums due by the Maker under the documents enacted in connection with the Second Mortgage;
  - c) Up to 20% of the total Developer's Fees per year, as permitted under the Rule.
  - d) All reasonable Project expenses, including without limitation any items set forth in section 10.1.A of the Borrower's Partnership Agreement; and
  - e) Base interest payment on principal balance hereof equal to three percent (3%) simple interest per annum; and
  - f) Any such base payment of interest hereunder deferred from previous years commencing with the year 2009.
- 5) To the extent that Development Flow is insufficient to make said payments pursuant to the payment priority schedule in paragraph (4) above and as determined by Maker, any payments of current or deferred base interest due annually hereunder shall be deferred until the next annual due date. The failure of the Project to generate sufficient Development Cash Flow to repay this Loan shall not be a default of the Mortgagor's obligations under the Loan Documents so long as full payment of the Loan is made at maturity.
- 6) This Note may be prepaid in whole or in part at any time, without penalty or premium. Any prepayment hereunder shall be applied first to unpaid costs of collection, servicing fees, and late charges, if any, then to accrued, deferred and unpaid interest and the balance, if any, to the principal balance.
- 7) After maturity or acceleration, this Note shall bear interest at the Default Interest Rate which shall be the maximum interest rate allowed by applicable law, until paid in full.
- 8) The capitalized terms listed below shall have the following meanings:
- (a) With respect to any period, the term "Surplus Project Cash Flow" shall mean any revenue of the Maker remaining after paying, or setting aside funds for paying, (i) all sums due or currently required to be paid under the First Mortgage Loan Documents (including but not limited to any principal or interest payments, any escrows, reserves or other deposits required by, or any other amounts due pursuant to the terms of the First Mortgage Loan Documents), and (ii) all reasonable operating expenses of the Premises, including but not limited to real estate taxes, insurance premiums, utilities, building painting and repairs, management fees, payroll, administrative expenses, legal expenses, and audit expenses (excluding any developer fees payable with respect to the Premises).
  - (b) The term "First Mortgage Loan Documents" shall mean any mortgage, promissory note, loan agreement or other document executed by Borrower in connection with the First Mortgage.
  - c) The term "First Mortgage" shall have the meaning ascribed to that term in the Mortgage.

d) The term "Second Mortgage" shall mean the loan secured by a second lien mortgage recorded in the Official Records of Palm Beach County, Florida. The Second Mortgage shall be a SAIL mortgage from Florida Housing Finance Corporation in an original principal amount not to exceed \$1,100,000.00.

9) All terms hereunder shall be as construed and defined in Chapter 91-28, Florida Administrative Code.

PALM BEACH COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA IS EXEMPT FROM PAYMENT OF EXCISE TAX ON DOCUMENTS. STAMPS HAVE BEEN AFFIXED TO THE MORTGAGE AND CANCELED AS REQUIRED BY LAW.

This Note is executed pursuant to the terms and conditions of that certain Loan Agreement dated \_\_\_\_\_, 2007 between Maker, as Borrower, and Holder, as Lender, is secured by a Mortgage and Security Agreement (the "Mortgage") encumbering certain real property located in Palm Beach County, Florida (the "Premises"), all of even date herewith. The foregoing and all other agreements, instruments and documents delivered in connection therewith and herewith are collectively referred to as the "Loan Documents." Capitalized terms used, but not defined, in this Note shall have the same meaning ascribed to them in the Mortgage.

This Note has been executed and delivered in, and is to be governed by and construed under the laws of, the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Nothing herein contained, nor any transaction related thereto, shall be construed or operate as to require the Maker to pay interest at a greater rate than is now lawful, in such case to contract for, or to make any payment, or to do any act contrary to ethical law. Should any interest or other charges paid by the Maker, or parties liable for the payment of this Note, in connection with the Loan Documents result in the computation or earning of interest in excess of the maximum rate of interest that is legally permitted under applicable law, any and all such excess shall be and the same is hereby waived by the Holder, and any and all such excess shall be automatically credited against and in reduction of the balance due under this indebtedness, and a portion of said excess which exceeds the balance due under this indebtedness shall be paid by the Holder to the Maker.

Holder shall have the right to declare the total unpaid balance hereof to be immediately due and payable in advance of the Maturity Date upon the failure of Maker to pay when due any payment of principal or interest or other amount due hereunder; or upon the occurrence, after all applicable cure periods, of an Event of Default pursuant to any other Loan Documents now or hereafter evidencing, securing or guarantying payment of this Note. Exercise of this right shall be with fifteen (15) days prior written notice to Maker or to any other person liable for payment hereof.

Any payment hereunder not paid when due (at maturity, upon acceleration or otherwise) shall bear interest at the highest rate allowed by applicable law from the due date until paid.

Provided Holder has not accelerated this Note, Maker shall pay holder a late charge of five percent (5%) of any required payment, which is not received by Holder when said payment is due pursuant to the Note. The parties agree that said charge is a fair and reasonable charge for the late payment and shall not be deemed a penalty.

Time is of the essence hereunder. In the event that this Note is collected by law or through attorneys at law, or under advice therefrom, Maker agrees to pay all costs of collection including reasonable attorneys' fees, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors proceedings or otherwise.

Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words to similar effect shall not affect the duty of Maker to pay all obligations due hereunder,

and shall not affect the right of Holder to pursue all remedies available to it under any Loan Documents.

The remedies of Holder shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder, including specifically any failure to exercise or forbearance in the exercise of any remedy, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Holder and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a case of dealing, nor shall it be construed as a bar to, or as a waiver or release of, any subsequent remedy as to a subsequent event.

Any notice to be given or to be served upon any party hereto in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Loan Documents.

The term "other person liable for payment hereof" shall include any endorser, guarantor, surety or other person now or hereafter primarily or secondarily liable for the payment of this Note, whether by signing this or another loan document.

Whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular number includes the plural, and the plural number includes the singular.

Maker and any other person liable for the payment hereof respectively, hereby (a) expressly waive any valuation and appraisal, presentment, notice of dishonor, protest, and diligence in collection; (b) consent that Holder may, from time to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments, (ii) release, exchange, add to or substitute all or any part of the collateral for this Note, and/or (iii) release Maker (or any co-maker) or any other person liable for payment hereof, without in any way modifying, altering, releasing, affecting or limiting their respective liability or the lien of any security instrument; and (c) agree that Holder, in order to enforce payment of this Note against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Maker (or any co-maker) or against any other person liable for payment hereof or to attempt to realize on any collateral for this Note.

ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, IN THE EVENT OF ANY DEFAULT BY THE BORROWER UNDER THE LOAN REFERENCED HEREIN, THE SOLE REMEDY OF THE HOLDER SHALL BE TO FORECLOSE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THIS LOAN, AND IN NO EVENT SHALL THE BORROWER HAVE ANY LIABILITY FOR THE PAYMENT OF THE LOAN OR ANY OTHER OBLIGATIONS REFERENCED HEREIN, OR FOR THE PAYMENT OF ANY DEFICIENCY FOLLOWING THE FORECLOSURE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THE LOAN.

MAKER AND HOLDER WAIVE THEIR RIGHTS TO A TRIAL BY JURY IF ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS NOTE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER'S EXTENDING CREDIT TO MAKER AND NO WAIVER OR LIMITATION OF HOLDER'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON HOLDER'S BEHALF.

IN WITNESS WHEREOF, Maker has executed this Note on the day  
and year first above written.

MERRYPLACE AT PLEASANT CITY  
ASSOCIATES, LTD.

By: MERRYPLACE, LLC, Managing General  
Partner

By: \_\_\_\_\_  
Roxanne Amoroso, Senior Vice President, Banc of  
America Community Development Corp., Manager  
of MerryPlace, LLC

## EXHIBIT "C"

This instrument prepared by  
and to be returned to:  
Tammy K. Fields, Esq.  
Palm Beach County Attorney's Office  
P.O. Box 1989  
West Palm Beach, FL 33402

### MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage"), executed this \_\_\_\_ day of \_\_\_\_\_, 2007 by MerryPlace at Pleasant City Associates, Ltd., a Florida limited partnership (the "Mortgagor"), as party of the first part, and PALM BEACH COUNTY, a political subdivision of the State of Florida ("County" or the "Mortgagee") (which term as used in every instance shall include the Mortgagee's successors and assigns), as party of the second part;

### WITNESSETH:

The Mortgagor is the owner of a leasehold interest in the premises described in Exhibit "A" attached hereto (hereinafter the "Premises") and made a part hereof. As owner of the Premises, the West Palm Beach Housing Authority, a governmental entity organized and existing in accord with chapter 421, Florida Statutes ("Owner"), has covenanted that is lawfully seized of the Premises in fee simple and consented to the encumbrance of the Premises by this Mortgage and Security Agreement. Mortgagee has this date loaned Seven Hundred Fifty Thousand Dollars ( \$750,000.00) to Mortgagor, and in connection therewith Mortgagor has this date executed and delivered to Mortgagee its Promissory Note in that amount (the "Note"). A true copy of the Note is annexed hereto as Exhibit "B" and forms a part hereof.

This Mortgage is given in accordance with that certain Loan Agreement executed on the day of \_\_\_\_\_, 2007 between Mortgagor and Mortgagee. This Mortgage and Security Agreement, the Note, and the Loan Agreement shall hereinafter collectively be referred to as the "Loan Documents".

### GRANTING CLAUSE

NOW, THEREFORE, the Mortgagor, in consideration of the foregoing premises and in order to secure payment of both the principal of, and the interest and any other sums payable on, the Note or this Mortgage, and the performance and observance of all the provisions hereof, and of the Loan Documents and subject to the Permitted Exceptions identified in the Loan Agreement, hereby gives, leases, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over and confirms unto the Mortgagee, all of the Mortgagor's estate, right, title and interest in, to and under any and all of the Premises, improvements (including improvements to be made hereafter), fixtures here and below described and located on the Premises which sometimes collectively referred to hereinafter as the "Mortgaged Property".

TOGETHER with all and singular the rights, interests and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Premises hereinabove mentioned or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor including but not limited to all of Mortgagor's sewer capacity rights, and Mortgagor's rights under contracts, permits, licenses and all other documents and payments affecting the Premises, reserving only the right to the Mortgagor to collect the same so long as the Mortgagor is not in default hereunder and so long as the same are not subjected to garnishment levy, attachment or lien.

TO HAVE AND TO HOLD the Premises and all parts, rights, members and



appurtenances thereof, to the use, benefit and behalf of the Mortgagee, its successors and assigns in fee simple forever, and the Mortgagor covenants that the Mortgagor is lawfully seized and possessed of the Premises in leasehold and has received from the Owner consent to encumber the same, that the same are unencumbered excepting taxes accruing subsequent to 2006, and those certain exceptions appearing on the Mortgagee's Title Insurance Policy given in connection herewith and specifically approved by Mortgagee, and that the Mortgagor will warrant and defend the title thereto against the claims of all persons whomsoever, except as hereinafter expressly provided.

Notwithstanding the foregoing, this Mortgage shall, upon the execution thereof, be subject and subordinate to the various mortgages encumbering or to encumber the Premises, along with all loan documents related respectively thereto, evidencing and securing the following loans: (i) a construction loan in favor of Bank of America (the "Construction First Mortgage") in the original principal amount of up to \$13,072,073 (the "Construction First Mortgage"); (ii) a permanent loan to be made at the time of repayment of the Construction First Mortgage in favor of MMA Mortgage Investment Corporation (the "Permanent First Mortgage") in the anticipated original principal amount of \$4,550,000 (the "Permanent First Mortgage"); and (iii) a loan in favor of the Florida Housing Finance Corporation (the "Second Mortgage") in the original principal amount not to exceed \$1,100,000 (the "Second Mortgage"). The terms "First Mortgage" and "First Mortgagee" shall mean either (i) the Construction First Mortgage and Construction First Mortgagee, respectively, during the time the Construction First Mortgage is outstanding, or (ii) the Permanent First Mortgage and Permanent First Mortgagee, respectively, during the time the Permanent First Mortgage is outstanding, it being understood that at no time shall both the Construction First Mortgage and the Permanent First Mortgage be outstanding.

PROVIDED ALWAYS that, if the Mortgagor (a) shall pay unto the Mortgagee all sums required under the terms of the Note, which Note is in the original principal amount of \$ 750,000.00 and the maturity date of which is the later to occur of (i) December 31, 2028 or (ii) the day after the date on which the Permanent First Mortgage (as such term is defined in the Mortgage) becomes due and payable (in either case, hereafter the "Maturity Date"), unless such maturity is accelerated as set forth in the Note, and (b) shall comply with and abide by each and every one of the stipulations, agreements, conditions and covenants of the Loan Documents, then in such event this Mortgage and Security Agreement and the estate hereby created shall cease and be null and void.

The Mortgagor covenants with the Mortgagee as follows:

1.1 Payments of Indebtedness. The Mortgagor shall punctually pay the principal and interest and all other sums to become due in respect to the Note at the time and place and in the manner specified in the Note, according to the true intent and meaning thereof, all and any coin or currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts.

1.2 Taxes, Liens and Other Charges.

(a) The Mortgagor, from time to time when the same shall become due and payable, will pay and discharge all taxes of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges and all other public charges, whether of a like or different nature, imposed upon or assessed against the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. This requirement does not in any way preclude Mortgagor from contesting real or personal property taxes when appropriate. The Mortgagor will, upon the request of the Mortgagee, deliver to the Mortgagee copies of receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against the Mortgaged Property or the revenues, rents, issues, income or profits thereof.

(b) The Mortgagor shall pay or cause to be bonded off or insured over, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and other persons or entities which, if unpaid, might result in or permit

the creation of, a lien on Mortgaged Property or any part hereof, or on the revenues, rents, issues, income and profits arising therefrom whether such lien is or may become prior or remain inferior to the Mortgage and also, irrespective of the priority of such other lien(s). Mortgagor in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee.

(c) The Mortgagor shall pay any taxes except income taxes imposed on the Mortgagee by reason of the Mortgagee's ownership of the Note or this Mortgage.

1.3 Insurance. The Mortgagor will keep the Mortgaged Property continuously insured in accord with the provisions of the First Mortgage, in an amount no less than full insurable value, which coverage shall insure the Mortgaged Property against loss or damage by fire and by the perils covered by extended coverage and against such other hazards as the First Mortgagee, in its sole discretion, shall from time to time require, for the benefit of the First Mortgagee. All such insurance at all times will be in an insurance company or companies in such amounts and with terms reasonably acceptable to the First Mortgagee and the County. Subject to the prior interests of the First and Second Mortgagees, loss, if any, shall be payable to the County as its interest may appear, pursuant to a non-contributory mortgagee clause, which shall be satisfactory to the County. Forthwith upon their issuance, certified copies of such insurance policies, copies of receipts for the premiums paid thereon and certificates of insurance shall be delivered to the County. Any policies furnished the County shall become its property in the event the County becomes the owner of the Premises by foreclosure or otherwise. Subject to the rights of the Mortgagees pursuant to the First and Second Mortgages, the County is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property. Each insurance company is hereby authorized and directed to make payment for all such losses to the Mortgagor and the County jointly. Should a loss be incurred, then in such event, County and Mortgagor may jointly elect to use the proceeds for the reconstruction and repair of the Mortgaged Property or, in the alternative, to apply the net proceeds to the payment of the indebtedness hereby secured, whether then due or not. The provisions of this Section 1.3 are subject to the rights under the First and Second Mortgages, to which the rights of the County are subordinate. Compliance with the insurance requirements of the First Mortgage shall be deemed to be compliance hereunder.

#### 1.4 Care of Premises.

(a) The Mortgagor will keep the improvements now or hereafter erected on the Premises in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof.

(b) If the Premises or any part thereof is damaged by fire or any other cause, which damage exceeds Two Hundred Thousand Dollars (\$200,000.00), the Mortgagor will give immediate written notice of the same to the Mortgagee.

(c) The Mortgagee or its representative is hereby authorized to enter upon and inspect the Premises at any time during normal business hours.

(d) The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof.

(e) If all or any part of the Premises shall be damaged by fire or other casualty, the Mortgagor will, upon request of the Mortgagee, promptly restore the Premises to the substantial equivalent of its condition immediately prior to such damage, and if a part of the Premises shall be damaged through condemnation, the Mortgagor will, upon request of Mortgagee, promptly restore, repair or alter the remaining part of the Premises in a manner satisfactory to the Mortgagee. The Mortgagee recognizes that this mortgage will be subordinate to the First and Second Mortgages, and to the extent this provision conflicts with the similar terms and conditions of the First or Second Mortgages, the First and Second Mortgages shall supersede and shall be controlling. Nothing contained herein shall, however, relieve the

Mortgagor from its obligation to make payments under the Promissory Note in accordance with its terms.

1.5 Further Assurances; Modifications. At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, exercise and deliver or cause to be made, executed and delivered, to the Mortgagee, any and all other further instruments, certificates and other documents as may, in the reasonable opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect or to continue and preserve (i) the obligations of the Mortgagor under the Note, (ii) the security interest of this Mortgage, and (iii) the mortgage lien hereunder. Upon any failure by the Mortgagor so to do the Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and the attorney in fact of the Mortgagor so to do.

1.6 Expenses. In addition to the expenses described in subparagraph 2.6(b) hereof, the Mortgagor will pay or reimburse the Mortgagee for all reasonable attorney's fees, costs and expenses, including those in connection with appellate proceedings, incurred by the Mortgagee in any proceedings or in any action, legal proceeding or dispute of any kind which relate to or arise from the Mortgage of the interest created herein, or the Premises, including but not limited to the exercise of the power of sale of this Mortgage, any condemnation action involving the Premises or any action to protect the security hereof; and any such amounts paid by the Mortgagee shall be secured by this Mortgage.

1.7 Estoppel Affidavits. The Mortgagor, upon ten days' prior written notice, shall furnish the Mortgagee a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any off-sets or defenses exist against such principal and interest.

1.8 Subrogation. The Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.9 Performance by Mortgagee of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Premises; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; in the performance of any covenant, term or condition of any leases affecting all or any part of the Premises; or in the performance or observance of any covenant, condition or term of this Mortgage; then the Mortgagee, at its option, may perform or observe the same, and all payments made or costs incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, with demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the maximum rate provided by law. The Mortgagee shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim, premium and obligation, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any other person in possession holding under the Mortgagor.

1.10 Condemnation. Subject to the rights of the First and Second Mortgagees, in the event of a condemnation (which term when used in the Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof) either temporarily or permanently, of any part of the Premises constituting twenty percent (20%) or more of the full value of the Premises, or in the event such condemnation makes the Premises unusable for the purposes contemplated herein and in the Loan Agreement, then in such event, the entire indebtedness secured hereby shall at the option of the County, become immediately due and payable. Such events shall be a Condemnation Event ("Condemnation Event"); however, any condemnation for less than twenty percent (20%) of value or not rendering the Premises unusable, shall not be affected by this section. In the event of a Condemnation Event: The County shall be entitled to all compensation, awards, and other payments or relief thereof,

and is hereby authorized at its option, to commence, appear in, and prosecute, in its own, or the Mortgagor's name, any action or proceeding relating to any condemnation, any to settle or compromise any claim in connection therewith; and all such compensation, awards, damages, claims, rights of action and proceeds, and the right thereto from any Condemnation Event are hereby assigned by the Mortgagor to the County, who, after deducting therefrom, all its expenses, including attorneys fees, may release any monies received by it without further affecting this Mortgage and may apply the same in such manner as the County shall determine, to the reduction of the sum secured hereby, and any balance of such monies then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds from a Condemnation Event as the County may require. The provisions of this Section 1.10 are subject to the rights under the First and Second Mortgages, to which the rights of the County are subordinate.

#### 1.11 Environmental Representations.

(a) The Mortgagor covenants with the Mortgagee that to the best of Mortgagor's knowledge the Premises have not been used and will not be used in whole or in part for the storage of hazardous waste.

(b) To the best of Mortgagor's knowledge, no violation of any Federal, State or local environmental regulations now exists regarding the Mortgage Property.

(c) Mortgagor shall comply with all Federal, State and local environmental regulations during the construction of the improvements on the Premises.

(d) Mortgagor shall give written notice to Mortgagee immediately upon Mortgagor's acquiring knowledge of the presence of any hazardous substances on the Mortgage Property or of any hazardous substances contamination thereon, or of any notices received by Mortgagor that are violations or potential violations of any environmental regulation laws, ordinances, rules or regulations exists on the Mortgage Property.

### ARTICLE II.

2.1 Due on Sale or Further Encumbrance Clause. In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor, found it acceptable and continues to rely upon the same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Premises, found it acceptable and continues to rely upon same as the means of maintaining the value of the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress or any kind for all of the terms and conditions of the loan, including this provision. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; (c) could detract from the value of the Premises should Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security both of repayment by Mortgagor and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein except as permitted under the Loan Agreement (whether voluntarily or by operation of law) without the Mortgagee's prior written consent, which consent shall not be unreasonably withheld, or delayed, shall be an Event of Default hereunder. For the purpose of and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder:

(a) any sale, conveyance, assignment or other transfer of or the grant of a security interest in, all or any part of the title to the premises, other than easements or licenses necessary for the development and use of the Improvements on the Premises, which shall include tenant services or benefits; or

(b) any new or additional liabilities secured by the property without the prior written consent of Mortgagee.

Any consent by the Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

2.2 Default. If an event of default occurs under the terms of any of the Loan, prior to exercising any remedies thereunder, Lender shall give the Borrower and each of the Limited Partners of Borrower, as identified to Lender or by written notice received by Lender prior to such default, thirty (30) days simultaneous written notice of such default. Lender shall accept cures of the default(s) by the Limited Partners within the cure periods provided in this paragraph. Until the expiration of all cure periods provided to the Limited Partners in the Loan Documents and this paragraph, Lender shall not accelerate the Loan, exercise any remedies under the Loan Documents, charge a default rate of interest, retain an attorney for collection efforts or impose any impounds for insurance or taxes.

A default shall have occurred hereunder if:

(a) The Mortgagor shall fail to pay in full within fifteen (15) days from the date due and payable any installment of principal, interest, late charges or escrow deposits as required by the Note, this Mortgage and otherwise; or

(b) The Mortgagor shall fail to duly observe on time any other material covenant, condition or agreement of this Mortgage the Loan Documents or of any other instrument evidencing, security or executed in connection with the indebtedness secured hereby, and such failure continues for a period of thirty (30) days following written notice by the Mortgagee; or

(c) Any material warranties or representations made or agreed to be made in any of the Loan Documents shall be breached by the Mortgagor or shall prove to be false or misleading in any material manner and such breach is not cured within thirty (30) days following notice from Mortgagee; or

(d) Any lien for labor or material or otherwise shall be filed against the Premises, and such lien is not canceled, removed, bonded over, insured against or transferred within sixty (60) days after notice of such lien; or

(e) A levy shall be made under any process on, or a receiver be appointed for, the Premises or any other property of the Mortgagor; or

(f) The Mortgagor shall file a voluntary petition in bankruptcy, or any other petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation or similar relief for the Mortgagor under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtor; or

(g) The Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any part of the Premises or of any or all of the rents, revenues, issues, earnings, profits or income thereof; or

(h) The Mortgagor shall make any general assignment for the benefit of creditors;  
or

(i) In any legal proceeding the Mortgagor shall be alleged to be insolvent or

unable to pay the Mortgagor's debts as they become due and is not dismissed within sixty (60) days of Filing; or

(j) The Mortgagor shall do, or shall omit to do, any act, or any event shall occur, as a result of which any obligation of the Mortgagor, not arising hereunder, may be declared immediately due and payable by the holder thereof and such act is not remedied within any applicable cure or grace period; or

(k) A breach by Mortgagor of any material covenant, representation, or warranty set forth in the Loan Agreement and the expiration of any applicable grace period, or an Event of Default occurs under the terms of the Loan Agreement or any of the other Loan Documents pertaining to the Note and Mortgage; or

(l) One Hundred Percent (100%) of the Mortgaged Property shall cease to be reserved for households, with incomes of 60% or less than the area median income and thus are deemed to be eligible tenants under section 42 of the Internal Revenue Code, until December 31, 2028. or beyond expiration of applicable cure or grace period.

If the Mortgagee shall reasonably believe that any one or more of the defaults enumerated in paragraphs (a) through (l) may occur, then the Mortgagee shall notify the Mortgagor of the specific facts which create the reasonable basis for its belief and shall request the Mortgagor to provide satisfactory evidence to the Mortgagee that such default is not likely to occur or that Mortgagor has taken appropriate steps to cure the default if it should occur.

### 2.3 Special Conditions.

(a) Upon sale, transfer (except those permitted in the Loan Documents), or refinancing of the Premises, all available proceeds of the sale shall be applied to pay the following items in order of priority:

- (1) Expenses of the sale;
- (2) First Mortgage debt in full, including fees;
- (3) Second Mortgage debt in full, including fees;
- (4) All accrued but unpaid interest on this Note;
- (5) This Mortgage debt in full, including fees.

(b) All of the principal and interest of the indebtedness secured hereby shall be due and payable upon sale, transfer, or refinancing.

(c) The indebtedness secured hereby shall be serviced by the Mortgagee or by a lending institution selected by Mortgagee.

(d) The provisions of §420.516, Florida Statutes, prohibiting discrimination, shall apply to the loan secured hereby.

After notice and a thirty day period in which to cure, a violation of any of the above stated Special Conditions by Mortgagor shall constitute a default hereunder.

2.4 Acceleration of Maturity. If a default shall have occurred hereunder and not cured within applicable cure periods, then the whole unpaid principal sum of the indebtedness secured hereby with interest accrued thereon may, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence of this Mortgage and of the Note secured hereby; and no omission on the part of the Mortgagee to exercise such option when entitled so to do shall be considered as a waiver of such right.

## 2.5 Right of Lender to Enter and Take Possession.

(a) If any default shall have occurred and be continuing beyond expiration of any applicable cure or grace period, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Premises and if, and to the extent permitted by law, the Mortgagee may enter and take possession of the Premises and may exclude the Mortgagor and the Mortgagor's agents and employees wholly therefrom. In the event Mortgagee exercises its rights pursuant to this subparagraph (a), the Mortgagee shall be deemed to be acting as agent of Mortgagor and not as owner of the Premises.

(b) For the purpose of carrying out the provisions of this paragraph 2.5, the Mortgagor hereby constitutes and appoints the Mortgagee the true and lawful attorney in fact of the Mortgagor to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney in fact in the Premises.

(c) Whenever all such defaults have been cured and satisfied, the Mortgagee shall surrender possession of the Premises to the Mortgagor, provided that the right of the Mortgagee to take possession, from time to time, pursuant to subparagraph 2.6(a) shall exist if any subsequent default shall occur and be continuing.

(d) The provisions of this Section 2.5 are subject to the rights under the First Mortgage, to which the rights of the Mortgagee are subordinate.

## 2.6 Appointment of a Receiver and Foreclosure.

(a) If a default shall have occurred hereunder and not cured within applicable cure periods, then the whole debt secured by this Mortgage, with all interest thereon, and all other amounts hereby secured shall, at the option of Mortgagee, become immediately due and payable, and may forthwith or at any time thereafter be collected by suit at law, foreclosure of or other proceeding upon this Mortgage or by any other proper, real or equitable procedure without declaration of such option and without notice.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication cost and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstract of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional debt secured hereby and shall be immediately due and payable with interest thereon at the maximum rate provided by law, when paid or incurred by Mortgagee in connection with (i) any proceeding, including foreclosure, probate and bankruptcy proceedings, to which it shall be a party, either as plaintiff, claimant, or defendant, by reason of this Mortgage, or any indebtedness hereby secured, (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced, or (iii) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

(c) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be

redemption or not, as well as during any further times when Mortgagor except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period.

(d) If a default shall have occurred hereunder and is not cured within applicable cure periods, Mortgagor shall deliver to Mortgagee at any time on its request, all agreements for deed, contracts, leases, abstracts, title insurance policies, muniments of title, surveys and other papers relating to the Premises, and in case of foreclosure thereof and failure to redeem, the same shall be delivered to and become the property of the person obtaining a deed to the Premises by reason of such foreclosure.

(e) The provisions of this Section 2.6 are subject to the rights under the First and Second Mortgages, to which the rights of the Mortgagee are subordinate.

**2.7 Discontinuance of Proceedings and Restoration of the Parties.** In case the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adverse to the Mortgagee, then in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

**2.8 Remedies Cumulative.** No right, power or remedy conferred upon or reserved by the Mortgagee in this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**2.9 Stamp and Excise Tax.** If any documentary additional stamp or excise tax shall become applicable with respect to this Mortgage, the Note, any loan or credit extended hereunder, or any security agreement, guaranty, the loan agreement or other document, the Mortgagor shall promptly pay such tax in full (including interest and penalties, if any) and shall hold the Mortgagee harmless with respect thereto. The Mortgagor's liability under this paragraph will survive the repayment of indebtedness under the Note.

### **ARTICLE III.**

**3.1 Successors and Assigns Included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this indenture by or on behalf of the Mortgagor and by or on behalf of the Mortgagee shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not. Provided, however, that the Mortgagor shall have no right to assign its obligations hereunder without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld.

**3.2 Headings.** The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only and shall not limit or otherwise affect any of the terms hereof.

**3.3 Invalid Provisions to Affect No Others.** If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Mortgage in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect. Notwithstanding any provision contained herein, the total liability of Mortgagor for payment of interest, including service charges, penalties or any other fees shall not exceed the maximum amount of such interest permitted by applicable law to be charged, and if any payments by



Mortgagor include interest in excess to the reduction of the unpaid principal amount due and pursuant hereto.

3.4 Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

#### ARTICLE IV.

4.1 Notice. Any notice or other communication required or permitted to be given hereunder shall be sufficient if in writing and delivered in person or sent by United States Certified Mail, postage prepaid, to the parties being given such notice at the following addresses:

Mortgagee: Palm Beach County  
c/o County Attorney's Office  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401

Mortgagor: Merry Place at Pleasant City Associates, Ltd.  
c/o MerryPlace, LLC, its Managing General Partner  
c/o Banc of America Community Development Corporation  
101 East Kennedy Blvd. 6<sup>th</sup> floor  
Tampa, FL 33602  
Attn: Roxanne Amoroso, Senior Vice President

WITH COPIES TO: MMA MerryPlace, LLC  
c/o MMA Financial, Inc.  
101 Arch Street  
Boston, MA 02110  
Attn: Asset Management

and

Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Attn: James E. McDermott, Esq.

Any party may change said address by giving the other parties hereto notice of such change of address. Notice given as hereinabove provided shall be deemed given on the date of its deposit in the United States Mail and, unless sooner received, shall be deemed received by the party to whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail, or if a courier system is used, on the date of delivery of the notice.

#### ARTICLE V.

5.1 Future Advances. It is agreed that this Mortgage shall also secure such future or additional advances as may be made by the Mortgagee at its option to the Mortgagor, or its successor in title, for any purpose, provided that all those advances are to be made within three (3) years from the date of this Mortgage, or within such lesser period of time as may be provided hereafter by law as a prerequisite for the sufficiency of actual notice or records notice of the optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the principal amount of the Note, plus interest, and any disbursements made for the payment of taxes, levies or insurance on the Premises with interest on those disbursements. If, pursuant to Florida Statutes Section 697.04, Mortgagor files a notice specifying the dollar limit beyond which future advances made pursuant to this Mortgage will not be secured by this Mortgage, then Mortgagor shall, within one (1) year of day of filing such notice, notify Mortgagee and its counsel by certified mail pursuant to Section 4.1 of this Mortgage. In addition, such a filing shall constitute a default hereunder.

5.2 Subordination. Mortgagee has approved the Construction First Mortgage, provided that it does not exceed \$13,072,723.00, and further has agreed to subordinate to such Construction First Mortgage. Mortgagee has approved the Permanent First Mortgage and further has agreed to subordinate to such Permanent First Mortgage (it being understood that the Permanent First Mortgage is to be sold to Freddie Mac and that Mortgagee and Permanent First Mortgagee shall enter into a Subordination Agreement in the form promulgated by Freddie Mac). Mortgagee has also approved a Second Mortgage provided, that it does not exceed \$1,100,000.00, and has agreed to subordinate to such Second Mortgage. The Chair of the Board of County Commissioners of Palm Beach County and the Clerk and Comptroller of the Court for Palm Beach County are hereby authorized to execute subordination agreements required herein without further approval of the Board of County Commissioners of Palm Beach County, Florida, provided such documents are in a form acceptable to the County Attorney. Nothing contained herein shall, however, relieve the Borrower from its obligation to make payments under the Promissory Note in accordance with its terms.

5.3 Lien Priority. The lien priority of this Mortgage shall not be affected by any changes in the Note including, but not limited to, an increase in the interest rate charged pursuant to the Note. Any parties acquiring an interest in the Premises subsequent to the date of this Mortgage is recorded shall acquire such interest in the Premises with notice that Mortgagee may increase the interest rate charged pursuant to the Note or otherwise modify the Note and the Note, as modified, and the Mortgage shall remain superior to the interest of any Party in the Premises acquired subsequent to the date of this Mortgage is recorded, other than the First and Second Mortgages.

5.4 Security Agreement. This instrument also creates a security interest in any and all equipment and furnishings as are considered or determined to be personal property or fixtures, together with all replacements, substitutions, additions, products and proceeds thereof, in favor of the Mortgagee under the Florida Uniform Commercial Code to secure payment of principal, interest and other amounts due Mortgagee now or hereafter secured hereby, and Mortgagee shall also have all the rights and remedies of a secured part under the Florida Uniform Commercial Code shall be cumulative and in addition to all other rights and remedies of Mortgagee arising under the common law or any other laws of the State of Florida or any other jurisdiction.

5.5 Nonrecourse. ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, IN THE EVENT OF ANY DEFAULT BY THE BORROWER UNDER THE LOAN REFERENCED HEREIN, THE SOLE REMEDY OF THE MORTGAGEE SHALL BE TO FORECLOSE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THIS LOAN, AND IN NO EVENT SHALL THE BORROWER HAVE ANY LIABILITY FOR THE PAYMENT OF THE LOAN OR FOR ANY OTHER OBLIGATIONS REFERENCED HEREIN, OR FOR THE PAYMENT OF ANY DEFICIENCY FOLLOWING THE FORECLOSURE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THE LOAN.

5.6 Choice of Law. This Mortgage is to be construed in all respects and enforced according to the laws of the State of Florida, and venue shall be in Palm Beach County.

5.7 Binding Effect. This Mortgage shall be binding upon and insure to the benefit of the Mortgagor and Mortgagee hereto, and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the Mortgagor has executed and sealed this Mortgage, the day and year first above written.

Witnesses:

MERRYPLACE AT PLEASANT CITY  
ASSOCIATES, LTD.

By MerryPlace, LLC,  
its Managing General Partner,  
c/o Banc of America Community Development  
Corporation  
101 East Kennedy Blvd. 6<sup>th</sup> floor  
Tampa, FL 33602

Attn: Roxanne Amoroso,  
Senior Vice President

STATE OF FLORIDA  
COUNTY OF HILLBOROUGH

The foregoing instrument was acknowledged before me this  
day of \_\_\_\_\_, 2007, by Roxanne Amoroso, Senior Vice President of Banc of America  
Community Development Corp., the Manager of MerryPlace, LLC, which is the Managing  
General Partner of MerryPlace at Pleasant City Associates, Ltd., who is personally known to me  
or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

(Signature of Notary) \_\_\_\_\_

(Typed, Printed, or Stamped  
Name of Notary) \_\_\_\_\_

My Commission Expires:

Witnesses

**WEST PALM BEACH HOUSING AUTHORITY**  
1715 Division Avenue  
West Palm Beach, FL 33407

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Laurel Robinson  
Its Executive Director

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_, 2007, by  
Laurel Robinson, the Executive Director of the **WEST PALM BEACH HOUSING  
AUTHORITY**, who is personally known to me and who did not take an oath.

(Notary Seal)

\_\_\_\_\_  
(print name)  
Notary Public-State of Florida  
My commission expires:

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All of Tracts C, C1, C2, C3, D1, D2, E1, E2, F, F1, M, M1, N and Z, MERRY PLACE, according to the Plat thereof, as recorded in Plat Book 108, Page 190, of the Public Records of Palm Beach County, Florida.

FORMERLY KNOWN AS:

PARCEL A-R:

Being a portion of Lots 10, 11, 12, (Block 4) "PLEASANT CITY", according to the Plat thereof, as recorded in Plat Book 1, Page 57, TOGETHER WITH a portion of Lots 25, 26, 27, 28, 29 and 30, (Block 9) "THE UPDATE ADDITION TO PLEASANT CITY AND CURRIE ADDITION TO PALM BEACH NORTH, as recorded in Plat Book 3, Page 3, according to the Plat thereof, TOGETHER WITH portions of public road right-of-ways and alleys, lying within the above said Plats, all being of the Public Records of Palm Beach County, Florida, said lands being more particularly described as follows: Commencing at the Northwest corner of Lot 12, Block 4, of the said Pleasant City Plat; thence South 88° 47' 12" East, along North line of said lot, a distance of 6.00 feet; thence South 01° 18' 15" West, a distance of 5.00 feet to the Point of Beginning; thence South 88° 47' 12" East, a distance of 137.51 feet; thence South 01° 20' 32" West, a distance of 221.14 feet; thence North 88° 47' 07" West, a distance of 137.36 feet; thence North 01° 18' 15" East, a distance of 221.14 feet to the Point of Beginning.

PARCEL B-R:

Being a portion of Lots 6, 7, 8 and 9, (Block 4) "PLEASANT CITY", according to the Plat thereof, as recorded in Plat Book 1, Page 57, all being of the Public Records of Palm Beach County, Florida, said lands being more particularly described as follows: Commencing at the Northeast corner of Lot 6, Block 4, of The Pleasant City Plat; thence South 01° 18' 17" West a distance of 5.00 feet to the Point of Beginning; thence South 01° 18' 17" West along lot line, a distance of 103.08 feet; thence North 88° 47' 12" West a distance of 153.85 feet; thence North 01° 28' 18" East, a distance of 103.08 feet; thence South 88° 47' 12" East, a distance of 153.55 feet to the Point of Beginning

PARCEL C-R:

Being a portion of Lots 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 31, 32, 33, 34, 35, 36, (Block 9) THE UPDATE ADDITION TO PLEASANT CITY AND CURRIE ADDITION TO PALM BEACH NORTH, as recorded in Plat Book 3, Page 3, TOGETHER WITH portions of public road right-of-ways and alleys, lying within the above said Plats, all being of the Public Records of Palm Beach County, Florida, said lands being more particularly described as follows: Commencing at the Northwest corner of Lot 31, Block 9 of the said Pleasant City Plat; thence South 01° 18' 15" West, a distance of 20.96 feet; thence South 88° 47' 17" East, a distance of 5.00 feet to the Point of Beginning; thence South 88° 47' 07" East a distance of 103.31 feet; thence North 61° 15' 16" East a distance of 16.02 feet; thence South 88° 47' 07" East, a distance of 47.13 feet; thence Easterly and Southerly along arc of said curve concave to the West a distance of 281.34, a radius of 89.55 feet, and a central angle of 180° 00' 18"; thence North 88° 46' 59" West, a distance of 56.06 feet; thence North 28° 12' 06" West, a distance of 9.18 feet; thence North 88° 46' 59" West, a distance of 104.00 feet; thence North 01° 18' 15" East, a distance of 103.10 feet to the Point of Beginning.

PARCEL D-R:

Being all of Lots 5, 6, 7, 8, 9, 10 and a portion of Lot 11, (Block 11) TOGETHER WITH all of Lots 11, 12, 13, 14, 15 and a portion of Lots 16, 17, (Block 12) TOGETHER WITH that portion of the alley and right-of-way for 17th Street, THE UPDATE ADDITION TO PLEASANT CITY AND CURRIE ADDITION TO PALM BEACH NORTH, as recorded in Plat Book 3, Page 3, according to the Plat thereof; TOGETHER WITH a portion of Lot 5 and all of Lots 6, 7, 12, 13, 14, 15, 16, 17, (Block 9) PALM BEACH NORTH RESUBDIVISION OF BLOCKS 7 AND 8, as recorded in Plat Book 8, Page 77, according to the Plat thereof; TOGETHER WITH portions of public road right-of-ways and alleys, lying within the above said Plats, all being of the Public Records of Palm Beach County, Florida, said lands being more particularly described as follows: Commencing at the Northwest corner of Lot 11, (Block 11); thence North 88° 46' 59" West, a distance of 9.41 feet; thence South 07° 27' 50" West, a distance of 4.00 feet, to the Point of Beginning; thence South 88° 46' 59" East along lot line, a distance of 183.89 feet; thence North 01° 27' 50" East, a distance of 2.02 feet; thence Easterly along arc of said curve concave to the Northwest, a distance of 78.12 feet, a radius of 141.55 feet, and a central angle of 31° 37' 07"; thence South 49° 51' 12" East, a distance of 13.69 feet; thence Easterly along arc of said curve concave to the Northeast, a distance of 29.49 feet, a radius of 102.00 feet, and a central angle of 16° 33' 50"; thence South 01° 27' 50" West, a distance of 132.74 feet; thence North 88° 46' 53" West, a distance of 10.00 feet; thence South 01° 27' 50" West, a distance of 200.31 feet; thence South 88° 56' 02" East, a distance of 110.12 feet; thence South 01° 18' 19" West, a distance of 68.56 feet; thence South 88° 56' 16" East, a distance of 100.00 feet; thence South 01° 18' 19" West, a distance of 22.85 feet; thence South 88° 56' 21" East, a distance of 88.03 feet; thence South 01° 18' 19" West, a distance of 45.70 feet; thence North 88° 56' 30" West, a distance of 338.06 feet; thence North 01° 18' 19" East, a distance of 68.58 feet; thence South 88° 56' 16" East, a distance of 33.14 feet; thence North 01° 03' 58" East, a distance of 118.57 feet; thence North 88° 56' 02" West, a distance of 229.79 feet; thence North 07° 21' 30" West, a distance of 275.08 feet to the Point of Beginning.

## **EXHIBIT D**

### **PERMITTED EXCEPTIONS**

1. Exceptions set forth on Schedule B (attached hereto) from the Owner's Policy, bearing Policy Number A97-0007134, issued by Lawyers Title Insurance Corporation on January 16, 2007 to the insured, MerryPlace at Pleasant City Associates, Ltd.
2. That certain mortgage to be executed in April 2007, securing a SAIL loan not to exceed \$1,100,000, to MerryPlace at Pleasant City Associates, Ltd., as Borrower, from the Florida Housing Finance Corporation, as Lender.

## LAWYERS TITLE INSURANCE CORPORATION

## OWNER'S POLICY

Case Number
52221927LA/ 11478.026

**SCHEDULE B**  
**EXCEPTIONS FROM COVERAGE**

Policy Number
A97-0007134

*This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:*

1. Taxes and assessments for the year 2007 and subsequent years, not yet due and payable.
2. Restrictions, covenants, conditions and reverter as set forth in that instrument recorded in Official Records Book 5119, Page 117 (As To Parcel C-R, Lots 19 and 20).
3. Restrictions, Dedications, and Easements as shown on the Plat of MERRYPLACE recorded in Plat Book 108, Page 190.
4. Terms, conditions, and provisions of (a) Ground Lease Agreement dated June 19, 2006 between MerryPlace at Pleasant City Associates, Ltd., as tenant, and the West Palm Beach Housing Authority, as landlord, as amended by First Amendment to Ground Lease dated December 12, 2006; and (b) Memorandum of Lease dated December 12, 2006, recorded on December 22, 2006, in Official Records Book 21233, Page 9.
5. Pending such time as the improvements contemplated upon the land shall be commenced, liability under this policy is limited to the purchase price paid for said land; but as and when the erection of such improvements shall be commenced, liability hereunder shall increase, as the improvements progress, in the amount of the cost thereof, up to the face amount of the policy.
6. Restrictions, covenants, conditions and reverter as set forth in that instrument recorded in Official Records Book 21009, Page 267 (As To Parcel C-R, Lots 19 and 20).
7. Restrictions, covenants, conditions and reverter as set forth in that instrument recorded in Official Records Book 21009, Page 273 (As To Parcel C-R, Lot 21).
8. Restrictions, covenants, conditions and reverter as set forth in that instrument recorded in Official Records Book 21009, Page 264 (As To Parcel D-R, Lot 6, Block 9).
9. Restrictions, covenants, conditions and reverter as set forth in that instrument recorded in Official Records Book 21009, Page 270 (As To Parcel D-R, Lot 7, Block 9).
10. Declaration of Trust, in favor of Housing Authority of the City of West Palm Beach, Florida and the United States Housing Authority, recorded in Official Records Book 1056, Page 140.
11. Declaration of Trust, in favor of Housing Authority of the City of West Palm Beach, Florida and the United States Housing Authority, recorded in Official Records Book 6239, Page 1364.
12. Declaration of Trust, in favor of Housing Authority of the City of West Palm Beach, Florida and the United States Housing Authority, recorded in Official Records Book 6064, Page 1494.

(Schedule B continues on next page)

# LAWYERS TITLE INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
Richmond, Virginia

## SCHEDULE B CONT'D.

CASE NO. 52221927LA/11478.026

13. The following state of facts as disclosed by survey prepared by Atlantic-Caribbean Mapping, Inc., dated November 28, 2006, Project No. 220264:
  - (a) Fences encroach into and beyond Tracts C, C1, D1, D2, E1, E2, F, M, M1 and N.
  - (b) Overhead Power lines encroach into Tracts C, D1, E2, F, F1, M1, and Z.
  - (c) Building encroaches beyond the south boundary of Tract C3.
  - (d) Entire subject property is currently under demolition and construction.
14. Restrictions, covenants, conditions and reverter as set forth in that instrument recorded in Official Records Book 21233, Page 1 (As To Parcel D-R, Lot 15, Block 9).
15. Construction Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of December 20, 2006, by MerryPlace at Pleasant City Associates, Ltd., as mortgagor, to Bank of America, N.A., as mortgagee, recorded on December 22, 2006, in Official Records Book 21233, Page 14.
16. Bridge Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of December 20, 2006, by MerryPlace at Pleasant City Associates, Ltd., as mortgagor, to Bank of America, N.A., as mortgagee, recorded on December 22, 2006, in Official Records Book 21233, Page 47.
17. Mortgage Deed dated as of December 20, 2006, by MerryPlace at Pleasant City Associates, Ltd., as mortgagor, to MerryPlace Development, LLC, as mortgagee, recorded on December 22, 2006, in Official Records Book 21233, Page 80.
18. Leasehold Mortgage and Security Agreement dated as of December 20, 2006, by MerryPlace at Pleasant City Associates, Ltd., as mortgagor, to West Palm Beach Housing Authority, as mortgagee, recorded on December 22, 2006, in Official Records Book 21233, Page 87, as subordinated by Subordination Agreement dated December 20, 2006, by and among MerryPlace at Pleasant City Associates, Ltd., West Palm Beach Housing Authority, and Bank of America, N.A. recorded on December 22, 2006, in Official Records Book 21233, Page 178.
19. Mortgage Deed dated as of December 20, 2006, by MerryPlace at Pleasant City Associates, Ltd., as mortgagor, to MerryPlace Development, LLC, as mortgagee, recorded on December 22, 2006, in Official Records Book 21233, Page 104.
20. Delivery Assurance Multifamily Mortgage, Assignment of Rents and Security Agreement dated as of December 21, 2006, by MerryPlace at Pleasant City Associates, Ltd., as mortgagor, to MMA Mortgage Investment Corporation, as mortgagee, recorded on December 22, 2006, in Official Records Book 21233, Page 111; as assigned to the Federal Home Loan Mortgage Corporation by Assignment of Security Instrument dated as of December 21, 2006, recorded on December 22, 2006, in Official Records Book 21233, Page 174.
21. Notice of Commencement recorded on December 22, 2006 in Official Records Book 21233, Page 205.
22. UCC-1 Financing Statement between MerryPlace at Pleasant City Associates, Ltd., as debtor, and Bank of America, N.A., as secured party, recorded on January 16, 2007, in Official Records Book 21307, Page 1440.

(Schedule B continues on next page)

Schedule B, Page 2, Owner's Policy No. A97-0007134

# LAWYERS TITLE INSURANCE CORPORATION

NATIONAL HEADQUARTERS  
Richmond, Virginia

SCHEDULE B CONT'D.

CASE NO. 52221927LA/11478.026

NOTES: All recording references in this policy shall refer to the Public Records of Palm Beach County, Florida, unless otherwise noted.

In accordance with Florida Statutes section 627.4131, please be advised that the insured hereunder may present inquiries, obtain information about coverage, or receive assistance in resolving complaints, by contacting the Lawyers Title Insurance Corporation Regional Office, 201 South Orange Avenue, Suite 1350, Orlando, FL 32801 Telephone 407-481-8181

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Schedule B, Page 3, Owner's Policy No. A97-0007134

ORIGINAL

035-0-136-0906  
G:\W-8\JM\11478026\TITLEOWNERS-POLICY-VI.wpd



07 - 0900

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA  
Budget Transfer

Attachment "B"  
Page 1 of 1 pages

FUND 1100 - Commission on Affordable Housing

Bkex 420 032207 #1263

Use this form to provide budget for items not anticipated in the budget.

ACCT. NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED AS OF	REMAINING BUDGET
Expenditures								
1100-143-7508-8201	Contributions-Non Governmental agencies	3,973,769	3,973,769	750,000		4,723,769	60,500	4,663,269
1100-143-7199-9902	Reserve for affordableHousing	6,015,144	6,015,144		750,000	5,265,144		
	Total Transfer			750,000	750,000			

Housing and Community Development  
INITIATING DEPARTMENT/DIVISION  
Administration/Budget Department Approval  
OFMB Department - Posted

Signature

*Edmund R. Brown*  
*Elizabeth Brown*  
883/22/07

Date

3/21/07  
3/23/07

By Board of County Commissioners  
At Meeting of 3/27/07

Deputy Clerk to the  
Board of County Commissioners