

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION
FHFC CASE NO: 2013-011VW
Application No. 2011-69(C) (H)

ST. MARTINS PL, LTD.,
and BHG ST. MARTINS PL, LTD.,

Petitioners,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION FOR WAIVER OF PART II.A.2.c.(2) OF THE 2011 UNIVERSAL
APPLICATION INSTRUCTIONS, UA1016 (Rev. 2-11), AND RULE 67-48.004, F.A.C. TO
ALLOW CHANGE OF APPLICANT ENTITY PRIOR TO HOME LOAN CLOSING**

Petitioners, ST. MARTINS PL, LTD., a Florida limited partnership, and the new proposed Applicant Entity, BHG ST. MARTINS PL, LTD, a Florida limited partnership, submit this Petition to the Florida Housing Finance Corporation ("FHFC") for a waiver of the restriction on changing the Applicant Entity from the borrowing entity prior to HOME loan closing. In support of this petition, Petitioners state as follows:

1. Pursuant to Section 120.542, Fla. Stat. (2011), and Rules 28-104.001 through 28-104.006, FAC. (2011), Petitioner requests a waiver of Part II A.2.c.(2) of the 2011 Universal Application (the "Rule") to allow Petitioners to change the identity of the Applicant Entity prior to the HOME loan closing. The 2011 Universal Application and Instructions are incorporated into Rule Chapter 67-48 by reference by Rule 67-48.004(1)(a), F.A.C.

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MAY 23 2013

NAME: AB

A. THE PETITIONERS

2. The name, address, and telephone for the Petitioners' attorneys are:

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For: BHG St. Martins PL, Ltd.
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B. INTRODUCTION

3. The St. Martins Place Application, number 2011-069CH, received an allocation of low income housing tax credits and HOME funding in the 2011 Universal Application Cycle. As documented on Exhibit 9 to that application, copy attached to this Petition as **Exhibit A**, the original Applicant entity was a limited partnership (St. Martins PL, Ltd.) whose general partner (MM St. Martins Place, LLC) was wholly owned by Biscayne Housing Group, LLC, which was in turn owned by two members in equal shares, Gonzalo DeRamon and Michael Cox. The sole limited partner of the Applicant entity was Michael Cox "and/or assigns."

4. Subsequent to St. Martins Place being invited into credit underwriting, a dispute arose between the principals of Biscayne Housing Group, LLC, resulting in an arbitration proceeding to resolve present obligations and future activities of Biscayne Housing. This rule

waiver/variance is necessitated as a result of that change in circumstances concerning the management of Biscayne Housing Group, LLC, and the entry of an Order by a panel of arbitrators specifically addressing the control and development of the St. Martin's Place Project. The arbitrators recognized the need to "move forward expeditiously" with the St. Martins Place project. Attached as **Exhibit B** is a true and correct copy of the Order entered by the arbitrators, redacted to protect certain confidential items.

5. As can be seen from a review of the order, the arbitrators ruled that Mr. DeRamon was to proceed with the St. Martin's Place Project independently of Mr. Cox. Consequently, in keeping with his obligations to the Florida Housing Finance Corporation and applicable law, Mr. DeRamon is seeking Florida Housing Staff and Board approval to substitute new entities for the original Applicant and Developer entities for purposes of the Housing Credit financing in order to comply with provisions of the Housing Credit program requiring FHFC Board approval for such changes. However, as the project will also be the recipient of HOME Program funding, Mr. DeRamon now seeks this rule waiver so that the Applicant entity may be changed prior to HOME loan closing, in keeping with the project timeline.

C. FACTUAL BACKGROUND

6. On or about December 6, 2011, St. Martins PL Ltd., timely submitted its 2011 Universal Cycle application for an affordable housing development to be known as St. Martins Place.

7. St. Martins Place is proposed to be a 94-unit homeless development in Miami-Dade County, Florida. St. Martins PL proposed to finance a portion of the development costs with a HOME loan (as defined below) of \$4.7 million, and with an annual allocation of \$2,561,000.00 in Housing Credits (as defined below).

8. FHFC allocates several forms of financing for affordable housing, including federal low income housing tax credits ("Housing Credits") and HOME Investment Partnerships ("HOME") loans. Applicants compete for the award of these forms of financing, which provide more favorable financing terms than would be available through conventional financing sources. In exchange for the receipt of such financing from FHFC, applicants enter into long-term agreements to set aside all or a portion of the residential units within such developments to low income residents, and, depending on the requirements of the particular program, may also be required to limit the rents charged to such residents.

9. Both of the above-named forms of financing (Housing Credits and HOME loans) were combined into a single "Universal Application Cycle" for 2011. Financing for any of these programs is sought through the use of a joint Universal Application form. HOME and Housing Credit applicants are subject to FHFC Rule Chapter 67-48, Fla. Admin. Code. The Universal Application form is incorporated by reference into FHFC's rules, as are exhibit forms to be used with the applications, and a 154-page document entitled Universal Application Instructions, designated UA1016 (revised 2-11).

10. The Applicant Entity that filed the application for St. Martins Place was St. Martins PL, Ltd., a Florida limited partnership. At the time of the submission, the identity of the Applicant Entity and the identity of its members were as included in Exhibit 9, which was attached to the Application.

11. Biscayne Housing Group, LLC, a Florida limited liability company, is the present owner of the majority interest (directly or indirectly through other entities) of the Applicant. The present general partner of the Applicant is MM St. Martins' Place, LLC, and the present limited partner of the Applicant is "Michael C. Cox &/or assigns."

12. An agreed-upon Panel of Arbitrators referenced above issued an Order (Exhibit B) with a finding that "[Gonzalo] DeRamon shall be awarded each and every aspect of the business opportunity known as St. Martin's Place under the full ownership, control, and management of DeRamon and his assigns. [Michael] Cox shall have no obligation, financial or otherwise for the St. Martin's Place project."

13. Petitioners have previously applied to the Board for a variance or waiver of Housing Credit program rules to allow Petitioners to change: (1) the identity of the Applicant Entity from St. Martins PL, Ltd., to BHG St. Martins PL, Ltd.; (2) the identity of the Developer Entity from St. Martin's Place Developers, LLC to BHG St. Martin's Place Developers, LLC; and (3) the identities of their managing entities. At this time, it appears that a formal rule variance or waiver of Housing Credit rules will not be necessary, but that Board approval of the Applicant and Developer entity changes will be required, which the Petitioners are seeking through a separate effort. Such resulting corporate structure, upon approval of the Board, will be as set out in the Revised Exhibit 9, attached hereto as **Exhibit C**.

D. RULES FROM WHICH THE WAIVER IS REQUESTED

14. The Petitioner requests a waiver of Part II.A.2.c.(2). of the Universal Application Instructions, which provides in pertinent parts as follows:

c. Applicant must be a legally formed entity [i.e., limited partnership, corporation, limited liability company, etc.] qualified to do business in the state of Florida as of the Application Deadline....

* * *

(2) If applying for MMRB or HOME, the Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material

change (33.3 percent or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

15. The HOME loan awarded to St. Martins Place has not closed. However, pursuant to the Arbitration Order attached as **Exhibit B**, the Petitioners seek to replace the original Applicant entity with a new Applicant entity. The new Applicant entity will consist of materially different General and Limited Partners than the original Applicant entity, in that Mr. Cox will no longer be involved. Both ownership and management of the General Partner of the new Applicant entity will be materially different than the ownership and management of the General Partner of the original Applicant entity, for the same reason. The individual constituting the Limited Partner of the Applicant entity will also change, from Michael C. Cox to Gonzalo DeRamon. Because of these material changes, a waiver of the Universal Instruction provisions prohibiting material changes to the ownership structure of the Applicant prior to HOME loan closing is necessary.

E. JUSTIFICATION FOR REQUESTED WAIVER

16. After the application for St. Martins PL was submitted to Florida Housing, the corporate reorganization of Biscayne Housing was started. The waiver is requested to allow the St. Martin Place development to move forward as contemplated by the corporate reorganization. There will not be any additional parties (beyond the substituted entities) or the introduction of new principals to the development. The change is not an attempt to "sell" the development to another party.

17. The granting of the waiver would not adversely affect any required set-asides or points considered by Florida Housing in the scoring of St. Martins PL Application, and would not

alter the scoring by Florida Housing that qualified St. Martins PL for Housing Credits. The experience of the development team will not change. The change would also not provide St. Martins PL with an unfair competitive advantage over other applicants. All scoring would have been the same with the new entities in place.

18. The requested Rule waiver or variance will not adversely impact the St. Martins PL development or the Florida Housing process, and will serve the statutory purposes of the Florida Housing process. A denial of this Petition, however, would result in substantial economic hardship to the developers of St. Martin's Place.

Statutory Purpose Served

19. Section 420.5089(6) requires Florida Housing to establish a competitive scoring process for the allocation of HOME funding. The factors to be analyzed include "demonstrated capacity of the project's development team."

20. In furtherance of this and other statutory purposes, Florida Housing has incorporated into the application process for HOME funding provisions to verify that the development team has adequate experience to successfully construct the project. This goal would be undermined if applicants could designate an experienced development team in order to succeed in the application process, but then other less experienced development team members after being selected for funding, or even transfer or sell the selected development proposal to another development team. Thus, Florida Housing has adopted rules to prevent applicants from modifying the make-up of the development team before certain steps of the funding process as completed.

21. Florida Housing's rule also serves a statutory purpose in ensuring the timely and successful completion of Developments to which Florida Housing has awarded its scarce funding resources. That purpose is not fulfilled if a less-experienced, less qualified development team is

allowed to be substituted without approval of Florida Housing and at early stages of the post-selection financing and development process, and such other development team is unable to timely and successfully complete the development.

22. In this case, allowing St. Martins Place to change the makeup of the Applicant entity prior to HOME loan closing still serves the statutory purposes. The new Applicant entity will retain as a principal a person with substantial recent development experience.

23. The St. Martins Place application number 2011-69CH contained at Exhibit 10 a Developer Certification identifying Gonzalo DeRamon as the principal of the Developer entity whose experience was being relied on to establish the capabilities of the Developer entity. Mr. DeRamon's experience as set forth in the Application included the completion of nine (9) affordable housing developments between 2008 and 2011, totaling over 900 units. Since Mr. DeRamon would continue as the principal with experience in the Developer entity, and will assume a larger role in the Applicant entity, the new development team is equally likely to successfully complete the St. Martins Place development as the initial developer.

Substantial Hardship

24. St. Martins Place would suffer substantial economic hardship if the rule prohibiting changes to the Applicant entity prior to HOME loan closing was strictly applied. St. Martins Place has expended substantial sums of money in the development of this project. Pursuant to the decision of the panel of arbitrators, Mr. DeRamon is to proceed with the development of St. Martins Place without Mr. Cox's involvement. Mr. DeRamon cannot so proceed without consent of Florida Housing and without waiver of rules prohibiting modification of the Applicant entity prior to HOME loan closing. The substantial investment already made in the St. Martins Place

development will be lost if the necessary changes in the Applicant and Development structure are not made.

25. The corporate reorganization of Biscayne Housing Group is in the best interest of the principals of Biscayne Housing Group. The division of control of the St. Martins Place project will provide greater viability to the project.

26. The reorganization of the St. Martins entity is in the best interest of Florida Housing. It would not be in the best interest of Florida Housing for the project to go forward without the change and at a later point find out that Florida Housing resources have been wasted.

27. Granting the requested waiver or variance and permitting BHG St. Martins PL, Ltd. to go forward with a development team that can assure successful completion of the development is in the best interest of Florida Housing and furthers the principal of fairness.

28. Failure to grant this waiver or variance is likely to cause substantial economic hardship to the end users of St. Martins Place and prevent the proper corporate reorganization of St. Martins Place in keeping with the decision of the panel of arbitrators.

29. The waiver being sought is permanent in nature.

30. If Florida Housing has questions or requires additional information, Petitioner is available to provide any information necessary for consideration of this Petition.

31. Undersigned counsel for BHG St. Martins PL, Ltd., has conferred with counsel for St. Martins PL, Ltd., who consents to this Petition being filed without his signature.

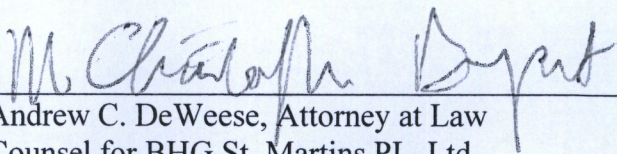
WHEREFORE, Petitioner St. Martins PL, Ltd respectfully requests that the Florida Housing Finance Corporation provide the following relief:

A. Grant the Petition and all the relief requested herein;

B. Enter an order granting a variance or waiver from the requirements of Rule 67-48.004(14) of the Florida Administrative Code (2011) and Universal Application (2011 Cycle) PART II.A.(2)(c)(2) to allow a change to the Applicant Entity so as to allow BHG St. Martin's PL, Ltd. to become the Applicant Entity prior to HOME loan closing, with the ownership and management structure shown on the Revised Exhibit 9.

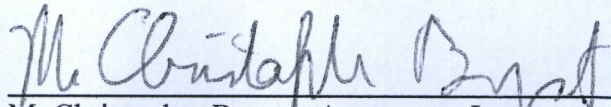
C. Grant such further relief as may be deemed appropriate.

RESPECTFULLY SUBMITTED this 23rd day of May, 2013.

for 

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CERTIFICATE OF SERVICE

The Amended Petition is being served by hand delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by U.S. Mail on the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, and by electronic transmission and Hand Delivery to Matthew Sirmans, Assistant General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301 this 23rd day of May, 2013.


M. Christopher Bryant

T RANSFORMING **C** OMMUNITIES **F** OUNDATION, INC.

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*IN THE MATTER OF THE ARBITRATION RE:
COX AND DE RAMON*

MICHAEL COX,

Claimant,

v.

GONZALO DE RAMON,

Respondent.

INTERIM ORDER ON ST. MARTIN'S PLACE

THIS MATTER, having come before the Panel of Arbitrators on the issue of St. Martin's Place, and the Panel having heard the documentary and testimonial evidence, having heard the argument of counsel, and otherwise being fully advised, it is

FOUND AND ORDERED:

1. The Panel of Arbitrators conducted an in-person hearing on March 25 and March 27, 2013. The Parties submitted documentary evidence and testimony, which testimony included the live witness testimony of Claimant, Respondent, and Eugenia Anderson and the deposition transcript of Adrianna Nelson. Counsel for the Parties presented legal argument, including written closing briefs submitted on March 29, 2013.

2. The issue before the Panel of Arbitrators is whether Respondent De Ramon had agreed with Claimant Cox to acquire the St. Martin's Place project, which was a business opportunity to belonging to Biscayne Housing Group LLC.

3. As of October and early November 2012, the St. Martin's Place project was uncertain. Other third-party disputes, recently resolved at that point, had sidetracked the project and it was unknown whether the property could be acquired. It is undisputed that at that point in time, the Parties were unable to collaborate effectively.

4. It is undisputed that the developer fees for St. Martin's Place are estimated at [REDACTED], with an adjustment upward or downward depending on the ability of the developer to meet or exceed the development budget.

5. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

6. [REDACTED]

7. [REDACTED]

8. The evidence demonstrates that the St. Martin's project is an opportunity that represents a significant pre-development investment by both Parties as principals of Biscayne Housing Group, LLC. Claimant Cox should not be obligated to participate in the St. Martin's project and further invest funds and secure the project with a personal guaranty. The Parties have not, however, indicated any desire to collaborate for the development of St. Martin's Place or support a joint effort with their personal guaranties for the next 15 years.

9. Respondent De Ramon urges a narrow, isolated view of a small portion of the chronology of the Parties' dispute, while Claimant Cox's position requires a global evaluation of all the facts and circumstances of the Parties' dispute. Claimant Cox's position is not well suited to an interim hearing, without a full and fair exposition of the facts.

10. The evidence demonstrates that the St. Martin's Place opportunity should [REDACTED] move forward expeditiously. Completion of the project is expected after the scheduled final hearing in this cause. Accordingly, interim relief is necessary, sufficient to permit the [REDACTED] St. Martin's Place project.

BASED UPON THE FOREGOING, the PANEL ORDERS as follows:

11. Respondent De Ramon shall be awarded each and every aspect of the business opportunity known as St. Martin's Place, under the full ownership, control, and management of Respondent De Ramon and his assigns.

12. Claimant Cox shall have no obligation, financial or otherwise, for the St. Martin's Place project.

13. With respect to the financial obligations arising from the transfer of the St. Martin's Place business opportunity to Respondent De Ramon:

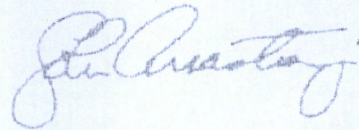
a. Respondent De Ramon shall pay Claimant Cox, as follows:

- (i) [REDACTED] upon closing;
- (ii) [REDACTED] upon the issuance of a temporary certificate of occupancy; and
- (iii) all of Claimant Cox's pre-development funds, which shall bear interest at the rate of [REDACTED].

b. Claimant Cox shall also be afforded the right and opportunity at the final hearing to present additional evidence that relates to his claim that the Parties did not agree to a piecemeal division of St. Martin's Place and that he is entitled to additional compensation for the relinquishment of this project. In such event, any funds already paid by Respondent De Ramon shall be set-off against those sums claimed by Claimant Cox.

c. In the event that any developer's fees are realized prior to a final award in these proceedings, Respondent De Ramon shall escrow one-half of any such fees pending a final award in these proceedings.

Dated: April 2, 2013



John Arrastia, Jr., Chair
For the Panel

cc: Justice Gerald Kogan (Retired)
Judge Jorge Perez (Retired)
Counsel of Record

Revised Exhibit 9

St. Martin's Place

Applicant Entity: BHG ST. MARTINS PL, LTD.

General Partner: MM BHG ST. MARTIN'S PLACE, LLC
(ownership .01%)

Managing Member *BHG Development Group, LLC, Ownership (99%)*
Manager/Member: *Gonzalo DeRamon, Ownership (100%)*

Member *BHG St. Martin's Place, Inc. (1%)*
Gonzalo DeRamon, President
(Ownership 100%)

Officers/Directors No officers/Directors

Limited Partner: GONZALO DERAMON and/or assigns
(ownership 99.99%)

Developer Entity: BHG ST. MARTIN'S PLACE DEVELOPERS, LLC

Managing Member: BHG DEVELOPMENT GROUP, LLC
(ownership 99%)

Manager/Member *Gonzalo DeRamon, Ownership 100%*

Officers/Directors No officers/Directors

Member: TRANSFORMING COMMUNITIES
(ownership 1%) FOUNDATION, INC.

Officers/Directors: See Attached
No shareholders; 501(c)(3) organization

TRANSFORMING COMMUNITIES FOUNDATION, INC

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