

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO: 2013-005VW
Application No. 2011-69(C) (H)

ST. MARTINS PL, LTD

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____ /

RECEIVED
13 APR -5 AM 10:28
FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR WAIVER OR VARIANCE OF PART II.A.(2)(c)(1) OF THE 2011 UNIVERSAL APPLICATION INSTRUCTIONS, UA1016 (Rev. 2-11), AND RULES 67-48.004(1)(a) and 67-48.0004(15) OF THE FLORIDA ADMINISTRATIVE CODE, WHICH PROHIBITS CHANGES TO APPLICANT ENTITIES WITHOUT BOARD APPROVAL

AND

PETITION FOR WAIVER OR VARIANCE OF PART II.B.(1) OF THE 2011 UNIVERSAL APPLICATION INSTRUCTIONS, UA1016 (Rev. 2-11), AND RULE 67-48.004(14)(b) OF THE FLORIDA ADMINISTRATIVE CODE WHICH PROHIBITS A CHANGE OF THE IDENTITY OF THE DEVELOPER PRIOR TO COMPLETION OF CONSTRUCTION OF THE DEVELOPMENT WITHOUT BOARD APPROVAL

Petitioner ST. MARTINS PL LTD, a Florida limited partnership ("St. Martins PL"), through its undersigned counsel, petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver or variance of the restriction on making changes in the Applicant Entity and changing the identity of the Developer without board approval prior

to the approval of the Final Housing Credit Allocation Agreement or completion of the construction proposed in the Application submitted by St. Martins PI, Ltd. during the 2011 Universal Application Cycle. In support of this petition, Petitioner states as follows:

1. Pursuant to Section 120.542, Fla. Stat. (2011), and Rules 28-104.001 through 28-104.006, F.A.C. (2011), Petitioner requests a waiver or variance of Part II A.(2)(C)(1) and Part II B.(1) of the 2011 Universal Application (the "Rule") to allow St. Martins PL to (1) change the members of the general partner of the Applicant prior to the execution of a Carryover Allocation Agreement and (2) to change the identity of the Developer of the Applicant prior to completion of construction.

2. Pursuant to Rule 67-48.004(1)(a), FAC. (2011), the 2011 Universal Application and Instructions are incorporated into Rule Chapter 67-48.

A. THE PETITIONER

3. The name, address, and telephone for the Petitioner and its qualified representative are:

St. Martins PI, Ltd.
c/o BHG Development Group, LLC
Attention: Gonzalo DeRamon
175 SW 7th Street, Suite 2115
Miami, Florida 33130
Telephone: 786-395-3792

4. The name, address, telephone and facsimile numbers, and e-mail address

of Petitioner's attorneys, for purposes of this Petition are:

WASHINGTON & ASSOCIATES, P.A.
4 Midtown
3301 NE 1st Avenue, Suite M-501
Miami, Florida 33131
Attn: Lynn C. Washington, Esquire
Telephone: 305-573-2929
Facsimile: 305-749-8988
E-mail: l.washington@walaw.us.com

B. FACTUAL BACKGROUND

5. 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.

6. St. Martins Place is proposed to be a 94-unit homeless development in Miami-Dade County, Florida. St. Martins PL proposes 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).

7. Florida Housing 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 Florida Housing, 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.

8. 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).

9. 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. A copy of the original Exhibit 9 is attached hereto as Exhibit A.

10. 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 general partner of the Applicant is MM St. Martins' Place, LLC and the developer of St. Martins Place is St. Martin's Place Developers, LLC.

11. After the submission of the applicant, Biscayne Housing Group, LLC begin a major corporate reorganization, which resulted, among other thing, in the reallocation of the control of St. Martins Place.

12. An agreed upon Panel of Arbitrators issued an order with a finding that "[Gonzalo] 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 De Ramon and his assigns. [Michael] Cox shall have no obligation,

financial or otherwise for the St. Martin's Place project.”

13. The resulting corporate structure, upon a favorable issuance of this waiver or variance request, will be as set out in the Revised Exhibit 9, attached hereto as Exhibit B.

C. **RULES FROM WHICH THE WAIVER IS REQUESTED**

14. The Petitioner requests a waiver of Part II. A (2) (c) (1). of the Universal Application Instructions¹, 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.....

(1) If applying for HC, the Applicant must be a limited partnership (including a limited liability limited partnership) or a limited liability company. For Competitive HC Applicants, the Applicant entity shall be the recipient of the Housing Credits **and may not change until after the Carryover Allocation Agreement is in effect.**² **Changes to the Applicant entity prior to the execution of a Carryover Allocation Agreement or without Board approval prior to the approval of the Final Housing Credit Allocation Agreement and issuance of the**

¹ As noted earlier, Rule 67-48.004(1)(a), FAC. (2011) incorporates by references the 2011 Universal Application and Instructions into Rule Chapter 67-48.

² This Petition is being filed in order to be totally transparent. While there is not a change in the name of the general partner or a change of the general partner, there will be a change in the members of the general partner.

IRS Forms 8609 will result in a disqualification from receiving funding and shall be deemed a material misrepresentation. Changes to the limited partner of a limited partnership or member of a limited liability company owning the syndicating interest therein will not result in disqualification.

15. The Petitioner also requests a waiver of Part II. B (1) of the Universal Application Instructions³ and Rule 67.48-004(14)(b).

16. Part II. B (1) of the Universal Application Instructions provides in pertinent parts as follows:

1. Developer or Principal of Developer

The identity of the Developer(s) listed in this Application may not change until the construction or rehabilitation work proposed in this Application is complete, unless approved by the Board as provided in Rule 67-48.004, F.A.C.

17. Rule 67.48-004(14)(b) provides in pertinent parts as follows:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to

³ As noted earlier, Rule 67-48.004(1)(a), FAC. (2011) incorporates by references the 2011 Universal Application and Instructions into Rule Chapter 67-48.

submit additional information. **Any attempted changes to these items will not be accepted.** Those items are as follows:

(b) **Identity of each Developer⁴**, including all co-Developers; notwithstanding the foregoing, the identity of the Developer(s) may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting;

D. **JUSTIFICATION FOR REQUESTED WAIVER**

18. 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 or the introduction of **NEW** principals to the development. The change is not an attempt to “sell” the development to another party.

19. This 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.

20. The requested Rule waivers or variances, will not adversely impact the St.

⁴ The Applicant is also requesting an waiver of this Rule in order to be transparent. The developer entity is not being changed. However, there will be a change in the members of the Developer.

Martins PL development or the Florida Housing process. A denial of this Petition, however, would (a) result in substantial economic hardship to St. Martins PL, and (b) violate principles of fairness. § 120.542(2), Fla. Stat. (2011).

21. 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 for a great insurance that the project will become a viable project. Without the separation of control, the completion of the project could be in jeopardy.

22. 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 because the project is withdrawn, or because of business realities the project cannot be taken to completion.

23. By granting the requested waivers or variances and permitting St. Martins PL to go forward with a development team that will provide an opportunity for a successful completion of the development is in the best interest of Florida Housing and furthers the principal of fairness.

24. Failure to grant this waiver or rule will cause substantial economic hardship to the developer of St. Martins Place. Without the corporate reorganization and the changes requested by this waiver or variance, the developers of St. Martin Place will continue to experience business difficulties.

25. The waivers being sought are permanent in nature.

26. If Florida Housing has questions or requires additional information, Petitioner

is available to provide any information necessary for consideration of this Petition.

WHEREFORE, Petitioner St. Martins PI, 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 **Rules 67-48.004(1) (a) and 67-48.0004(15)** of the Florida Administrative Code (2011) and Universal Application (2011 Cycle) **PART II.A.(2)(c)(1)** to allow a change to the members of the general partner of the applicant entity so as to allow BHG Development Group, LLC to become the sole member of MM St. Martin's Place, LLC, the sole general partner of the applicant entity.
- C. Enter an order granting a variance or waiver from the requirements of **Rule 67-48.004(14(b))** of the Florida Administrative Code (2011), and Universal Application (2011 Cycle) **PART II.B.(1)**, so as to allow BHG Development Group, LLC to become managing member of the developer of the applicant entity.
- D. Grant such further relief as may be deemed appropriate.

Respectfully submitted,
Lynn C. Washington, Esquire
WASHINGTON & ASSOCIATES, P.A.
Attorneys for Petitioner
3301 NE 1st Avenue, Suite M-501
Miami, Florida 33131
Telephone: 305-573-2929
Facsimile: 305-749-8988
E-mail: lwashington@walaw.us.com

By 
Lynn C. Washington, Esq.

CERTIFICATE OF SERVICE

The original Petition is being served by overnight 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 overnight delivery on the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, this 3rd day of April, 2011



Lynn C. Washington

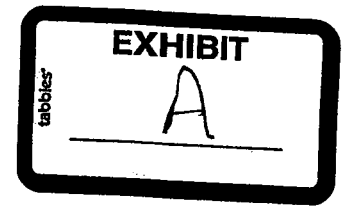


Exhibit 9

St. Martin's Place

Applicant Entity: ST. MARTINS PL, LTD.

General Partner: MM St. Martin's Place, LLC
(ownership .01%)

Member: (ownership 100%)
Members: **Biscayne Housing Group, LLC**
Gonzalo DeRamon, Ownership 50%
Michael C. Cox, Ownership 50%

Limited Partner: Michael C. Cox &/or assigns
(ownership 99.99%)

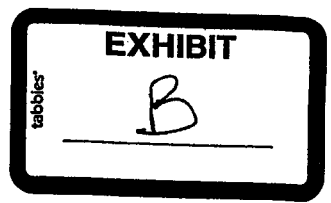
Developer Entity: ST. MARTIN'S PLACE DEVELOPERS, LLC

Managing Member: Biscayne Housing Group, LLC
(ownership 99%)

Members: Gonzalo DeRamon, Manager, Ownership 50%
Michael C. Cox, Manager, Ownership 50%

Member: Transforming Communities Foundation, Inc.
(ownership 1%)

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



Revised Exhibit 9

St. Martin's Place

Applicant Entity: ST. MARTINS PL, LTD.

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

Member: BHG DEVELOPMENT GROUP, LLC
(ownership 100%)
Member: Gonzalo DeRamon, Ownership (100%)

Limited Partner: GONZALO DERAMON
(ownership 99.99%)

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

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

Members: Gonzalo DeRamon, Manager, Ownership 100%

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