

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION
FHFC FILE NO: 2013-026VW
Application No. 2011-69CH

BHG ST. MARTINS PL, LTD.,

Petitioners,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

_____ /

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FLORIDA HOUSING
FINANCE CORPORATION

**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 MATERIAL CHANGE IN APPLICANT ENTITY PRIOR TO
HOME LOAN CLOSING**

Petitioner, BHG ST. MARTINS PL, LTD, a Florida limited partnership, hereby submits this Petition to the Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the rule restriction on making a material change in the ownership structure of the Applicant Entity prior to HOME loan closing. In support of this petition, Petitioners state as follows:

1. Pursuant to Section 120.542, Fla. Stat., 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 Petitioner to make a material change in ownership 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.

A. THE PETITIONER

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

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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, 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, and at the joint request of St. Martins PL, Ltd., and BHG St. Martins PL, Ltd., the Florida Housing Board of Directors granted a rule waiver to allow a change of the Applicant entity for this development to BHG St. Martins PL, Ltd. The General Partner (and .01% owner) of that entity is MM BHG St. Martins Place, LLC. The managing member of the General Partner is BHG Development Group, LLC, which owns 99% of the General Partner; the sole manager and member of BHG

Development Group, LLC is Gonzalo DeRamon. The remaining 1% of the General Partner is owned by BHG St. Martins Place, Inc., of which Mr. DeRamon is president and the sole shareholder. The limited partner of the Applicant entity, with 99.99% ownership, is Mr. DeRamon “and/or assigns.” The current structure of the Applicant and Development entities are reflected on a document entitled “Revised Exhibit 9” a copy of which is attached to this Petition as Exhibit A.

5. As BHG St. Martins PL, Ltd., and Mr. DeRamon have secured an experienced HC equity provider for this Development, the equity provider has requested changes to the Applicant and Development structure to enhance the success of this Homeless demographic development. Mr. DeRamon and BHG Development Group, LLC, will continue their involvement in the Development, and Mr. DeRamon, whose Development experience was relied on in the Application scoring process, will remain within the structure of the Applicant and Developer entities. The proposed new structure is contained on the Second Revised Exhibit 9, attached hereto as Exhibit B.

6. The Applicant proposes to change its ownership structure as follows:

(a) The Applicant entity will remain BHG St. Martins PL, Ltd. The new Managing General Partner of the Applicant, with a .0051% ownership interest, will be St. Martins Place MBS GP, Inc., a Missouri corporation, which in turn will be wholly owned by MBA Properties, Inc., a Missouri corporation. The officers and directors of St. Martins Place MBS GP, Inc., are shown on the enclosed Attachment A to the Second Revised Exhibit 9.

(b) The current General Partner of the Applicant entity, MM BHG St. Martins Place, LLC, will continue as Co-General Partner, with a .0049% ownership interest. BHG Development Group, LLC, will remain a managing member of that Co-General Partner, with a 1% ownership interest. BHG St. Martins Place, Inc.,

currently a 1% owner of the General Partner, will no longer have any ownership interest or management role in the Applicant or its general or limited partners. The other Member of the Co-General Partner, with a 99% ownership interest, will be the MDES Trust, an irrevocable family trust, with Jose Luis DeRamon serving as Trustee. The Limited Partner of the Applicant entity, with a 99.99% ownership interest, will remain Gonzalo DeRamon and/or assigns.

(c) Changes will also be made to the ownership and management structure of the Developer entity. Approval of such changes is being sought from Florida Housing simultaneously to this Petition by letter of August 28, 2013, to Mr. Ken Reecy, Director of Development Programs, as required by Florida Housing's rules and Applicant Instructions, but no rule waiver or variance is necessary for such changes.

C. FACTUAL BACKGROUND

7. 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. 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. By rule waiver granted by the Florida Housing Board of Directors on June 21, 2013, the Applicant entity has been changed to BHG St. Martins PL, Ltd. Currently, the General Partner (and .01% owner) of the Applicant is MM BHG St. Martins Place, LLC, and the Managing Member (and 99% owner) of that LLC is BHG Development Group, LLC. The Limited Partner (and 1% owner) of MM BHG St. Martins Place, LLC, is BHG St. Martins Place, Inc., of which Gonzalo DeRamon is President and 100% owner. The Applicant is majority owned by Gonzalo DeRamon and/or assigns, the 99.99% Limited Partner.

11. Petitioner previously obtained approval of the Florida Housing Board to allow Petitioner to change, for purposes of the housing credit program: (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. Martins Place Developers, LLC to BHG St. Martins Place Developers, LLC; and

(3) the identities of their respective managers and members. That approval was obtained on June 21, 2013. A formal rule variance or waiver of Housing Credit rules was not necessary to accomplish such a change, as the applicable rules and Instructions allow such changes upon written request.

12. As addressed in the prior Petition for Waiver for St. Martins Place, the prior change in the ownership and management structure arose because of a business dispute between the two principals of Biscayne Housing Group, Mr. DeRamon and Mr. Michael Cox. The dispute was submitted to arbitration which ruled that Mr. DeRamon was to solely proceed with developing St. Martins Place, without Mr. Cox's involvement. In the original Application, Mr. DeRamon and Mr. Cox had equal ownership and management responsibilities for both the General Partner of the Applicant Entity and the Managing Member of the Developer Entity. The loss of a 50% owner of the Applicant's General Partner and of a 50% owner of the Developer's Managing Member have left Mr. DeRamon solely responsible for pre-development and development costs. Further, as noted in the credit underwriting report prepared by First Housing Development Corporation, total development costs have increased by approximately \$1 million over the costs projected in the Application. In order to successfully complete this development, and to mitigate the risk associated with this Homeless development, and to provide additional assurance to the HC equity provider in the development, additional entities are proposed to be added into the structure of both the Applicant and Developer.

D. RULES FROM WHICH THE WAIVER IS REQUESTED

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

(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.

(Emphasis added.)

14. The HOME loan awarded to St. Martins Place has not closed. The Applicant is not being replaced, but Petitioner does propose a material change in the ownership and management of the Applicant's General Partner. 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

15. The waiver is requested to allow the St. Martin Place development to move forward as contemplated by the initial application and the prior approved corporate reorganization. The original Principal whose development experience was relied upon in the Application, Mr. DeRamon, will remain a Principal in the Applicant and Development entities. The change is not an attempt to "sell" the development to another party unrelated to the original Applicant and Developer.

16. 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 and HOME loan. 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.

17. 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. Martins Place.

Statutory Purpose Served

18. 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.”

19. 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.

20. 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.

21. In this case, allowing St. Martins Place to change the ownership and management of the Applicant entity prior to HOME loan closing still serves the statutory purposes. The Applicant entity will retain as a Principal the same person with substantial recent development experience who was relied upon in the original application.

22. 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. Mr. DeRamon will continue his involvement with the Developer entity, and the new development team, with the addition of McCormack Baron Salazar, Inc., is equally likely to successfully complete the St. Martins Place development as the initial developer.

Substantial Hardship

23. 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. The housing credit equity investor's request for an additional experienced developer and additional access to capital will assure the success of the development, and the failure to make such changes may result in the loss of the housing credit investor, and will prevent Mr. DeRamon from proceeding with and completing the development. 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 ownership and management of the Applicant structure are not made.

24. 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.

25. 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.

26. Failure to grant this waiver or variance is likely to cause substantial economic hardship to the end users of St. Martins, who are homeless residents of Miami-Dade County, and thus among the most vulnerable segment of the population.

27. The waiver being sought is permanent in nature; except that, if the HOME loan had closed, St. Martins PL could seek the requested changes to the Applicant structure with Board approval only, and without a rule waiver.

28. 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 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 material change to the ownership of the Applicant Entity prior to

HOME loan closing, with the ownership and management structure shown on the Second Revised Exhibit 9.

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

RESPECTFULLY SUBMITTED this 28th day of August, 2013.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Petition is being served via Hand Delivery, with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301; a copy via U.S. Mail to the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300; and a copy via Electronic Transmission to Candice Allbaugh, Housing Credit Administrator, Wellington Meffert, General Counsel, and Hugh A. Brown, Deputy General

Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida
32301 this 28th day of August, 2013.


M. Christopher Bryant

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

Second Revised Exhibit 9

St. Martin's Place

Applicant Entity: **BHG ST. MARTINS PL, LTD.**

Managing General Partner (ownership .0051%)

St. Martin's Place MBS GP, Inc., a Missouri corporation
Officers and Directors: See Attachment A

Sole Shareholder: MBA Properties, Inc., a Delaware corporation

Co-General Partner (ownership .0049%) **MM BHG St. Martin's Place, LLC**

Member/Manager: **BHG Development Group, LLC** (Ownership 1%)
Gonzalo DeRamon, Sole Manager and Member

Member: **MDES Trust** (Ownership 99%)
Trustee: Jose Luis DeRamon

Limited Partner (ownership 99.99%): Gonzalo DeRamon &/or assigns

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

Member/Manager (51% ownership): **McCormack Baron Salazar, Inc.**, a Missouri corporation
Officers and Directors: See Attachment B

Sole Shareholder: MBA Properties, Inc. a Delaware corporation

Member (ownership 49%): **St. Martin's Place MM Partners, LLC**

Member/Manager: **Gonzalo DeRamon, LLC** (Ownership 1%)
Gonzalo DeRamon, Sole Manager and Member

Member: **BHG Development Group, LLC** (Ownership 1%)
Gonzalo DeRamon, Sole Manager and Member

Member: **MDES Trust** (Ownership 98%)
Trustee: Jose Luis DeRamon

CORPORATE OFFICERS AND DIRECTORS

St. Martin's Place MBS GP, Inc.

<u>Office Title</u>	<u>Officer Name</u>	<u>Elected</u>
Director	Hillary B. Zimmerman	8/22/2013
	Kevin J. McCormack	8/22/2013
	Vincent R. Bennett	8/22/2013
President	Kevin J. McCormack	8/22/2013
Secretary	Hillary B. Zimmerman	8/22/2013
Treasurer	Kim Hartmann	8/22/2013
Vice President	Hillary B. Zimmerman	8/22/2013
	Kim Hartmann	8/22/2013
	Michael C. Duffy	8/22/2013
	Vincent R. Bennett	8/22/2013

**Attachment A to Second Revised Exhibit 9,
St. Martins Place**

CORPORATE OFFICERS AND DIRECTORS

McCormack Baron Salazar, Inc.

<u>Office Title</u>	<u>Officer Name</u>	<u>Elected</u>
Director	Hillary B. Zimmerman	8/13/1997
	Kevin J. McCormack	8/13/1997
	Richard D. Baron	6/4/1975
	Tony M. Salazar	8/13/1997
	Vincent R. Bennett	6/1/2005
Assistant Secretary	Kim Hartmann	6/13/2011
Chairman	Richard D. Baron	6/4/2008
President	Kevin J. McCormack	6/5/2001
Secretary	Hillary B. Zimmerman	2/1/1986
Treasurer	Kim Hartmann	6/13/2011
Vice President	Claudia Brodie	9/1/2011
	Daniel F. Acosta	8/5/2013
	Daniel Falcon, Jr.	9/1/2007
	Hillary B. Zimmerman	2/1/1986
	Kim Hartmann	8/1/2010
	Laurel J. Tinsley	7/26/2010
	Michael C. Duffy	6/3/2009
	Tony M. Salazar	4/1/1998
	Vincent R. Bennett	4/1/1998
	Yusef Freeman	1/1/2013

**Attachment B to Second Revised Exhibit 9,
St. Martins Place**