

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: BHG St. Martins PL, Ltd.

FHFC Case No.: 2013-026VW

**ORDER GRANTING WAIVER OF PART II.A.c.(2) OF
THE 2011 UNIVERSAL APPLICATION INSTRUCTIONS**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (“Florida Housing”) on September 20, 2013, pursuant to a “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” (“Petition”). Florida Housing received the Petition on August 28, 2013, from BHG St. Martins PL, Ltd. (“Petitioner”). On August 30, 2013, Notice of the Petition was published in Volume 39, Number 170, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 09/23/13

2. During the 2011 Universal Cycle, Petitioner was awarded an allocation of low income housing tax credits (“Housing Credits”) and HOME funds to finance the construction of a Homeless development known as St. Martin’s Place (the “Development”) located in Miami-Dade County, Florida.

3. Rule 67-48.004(1)(a) Fla. Admin. Code (2011) provides, in pertinent part:

(a) The Universal Application Package or UA1016 (Rev. 2-11) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation’s Website under the 2011 Universal Application link labeled Instructions and Application, or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-00703>, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the HOME and HC Program(s).

4. Part II.A.2.c. (2). of the 2011 Universal Cycle Instructions provides in pertinent part:

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.

5. Petitioner requests a waiver of the above Rules to allow it to make certain changes in its ownership structure prior to the closing of the HOME loan, per the Petition:

(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 GO, Inc., a Missouri corporation, which in turn will be wholly owned by MBA Properties, a Missouri corporation. The officers and directors of St. Martins Place MBS GP, Inc., are shown on Petitioner's "Second Revised Exhibit 9" (Attachment A to the Petition).

(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.

6. In addition to the above, simultaneous changes will also be made to the ownership and management structure of the Developer entity, consistent with the above changes. As delegated by the Board, the 2011 Universal Cycle Instructions authorize approval of these changes by Corporation staff without requiring a waiver or variance.

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

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

8. Strict application of the above Rule (incorporated Instructions) under these circumstances would result in a substantial economic hardship to the Development, and that the granting of the relief requested in the Petition will serve the statutory purposes of the Corporation, as set forth below.

9. The changes are necessary to meet the equity investor's request for an additional experienced Developer, and failure to permit this change may result in loss of the equity investment in the Development.

10. Under these circumstances the proposed changes should be permitted now, rather than introduce further delay by waiting until after the closing of the HOME loan, after which the changes could be made by Board approval and without the necessity of a petition for waiver.

11. The granting of this request for a waiver would neither effect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants.

12. The changes in ownership structure requested by Petitioner should be conditioned upon a positive review and recommendation of the changes by the Credit underwriter assigned to this Development.


IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Part II.A.2.c.(2) of the 2011 Universal Cycle Instructions to allow Petitioner to make the changes to the Applicant entity as requested and prior to the closing of the HOME loan is hereby **GRANTED**, conditioned upon a positive review and recommendation of the proposed changes by the Development's assigned Credit Underwriter.

DONE and ORDERED this 20th day of September, 2013.



Florida Housing Finance Corporation

By:  _____
Chairperson

Copies furnished to:

Wellington H. Meffert II, Esq.
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Ken Reecy
Director of Multifamily Programs
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

M. Christopher Bryant, Esq.
Counsel for Petitioner
Oertel, Fernandez, Bryant & Atkinson, P.A.
2060 Delta Way
Tallahassee, Florida 32303

Richard Alayon, Esq.
Counsel for Petitioner
Alayon & Associates, P.A.
135 San Lorenzo Avenue, Suite 820
Coral Gables, Florida 33146

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.