

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

FLORIDA HOUSING FINANCE CORPORATION,

Petitioner,

vs.

DOAH CASE NO.: 12-2905
FHFC CASE NO.: 2012-031UC
Application Nos: 2011-070C,
2011-076C and 2011-077C

FLAGLER SQUARE APTS, LTD.,
FLAGLER SQUARE DEVELOPERS, LLC,
BISCAYNE RIVER VILLAGE PHASE I, LTD.,
MM BISCAYNE RIVER VILLAGE I, LLC,
BISCAYNE RIVER VILLAGE PHASE II, LTD.,
MM BISCAYNE RIVER VILLAGE II, LLC,
GONZALO DERAMON AND MICHAEL COX,

Respondent,

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CONSENT AGREEMENT

Petitioner, Florida Housing Finance Corporation ("Florida Housing"), and Respondents, Flagler Square Apts., Ltd., Flagler Square Developers, LLC, Biscayne River Village Phase I, Ltd., MM Biscayne River Village I, LLC, Biscayne River Village Phase II, Ltd., MM Biscayne River Village II, LLC, Gonzalo DeRamon, and Michael Cox (collectively, the "Respondents"), by and through undersigned counsel, hereby present for consideration by the Florida Housing Finance Corporation Board of Directors (the "Board") the following Consent Agreement:

PRELIMINARY STATEMENT

On or about December 6, 2011, Respondents submitted or caused to be submitted Applications numbered 2011-070C, 2011-076C, and 2011-077C, for projects known as Flagler Square Apartments, Biscayne River Village I, and Biscayne River Village II, respectively ("the Applications"). Each Application sought an allocation of federal Low Income Housing Tax Credits ("tax credits") from the Petitioner, through the 2011 Universal Application Cycle, which is explicated more completely below.

None of the referenced Applications were awarded tax credits in the 2011 Universal Application Cycle.

On June 6, 2012, Florida Housing filed an Administrative Complaint, which it amended twice, alleging in its Second Amended Administrative Complaint, filed on September 5, 2012 that Respondents had, by including the two Downtown Miami Grocery stores in the referenced Applications in order to gain tie-breaker points for proximity to services, committed fraud or misrepresentation.

STIPULATED FACTS

1. Petitioner is Florida Housing Finance Corporation ("Florida Housing"), a public corporation, with its address at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, organized to provide and promote the public welfare

by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida.

2. Respondent, Flagler Square Apts., Ltd. ("Flagler Square"), is a limited partnership authorized to conduct business in the State of Florida. Respondent MM Flagler Square Apartments, LLC, is a limited liability company authorized to conduct business in the State of Florida, and is the sole General Partner of Flagler Square Apts., Ltd. Respondent, Biscayne River Village Phase I, Ltd. ("Biscayne Village I"), is a limited partnership authorized to conduct business in the State of Florida. Respondent MM Biscayne River Village I, LLC, is a limited liability company authorized to conduct business in the State of Florida, and is the sole General Partner of Biscayne River Village Phase I, Ltd. Respondent, Biscayne River Village Phase II, Ltd. ("Biscayne Village II"), is a limited partnership authorized to conduct business in the State of Florida. MM Biscayne River Village II, LLC, is a limited liability company authorized to conduct business in the State of Florida, and is the sole General Partner of Biscayne River Village Phase II, Ltd. Biscayne Housing Group, LLC, is the sole manager/member of Downtown Miami Grocery, LLC, is the sole manager/member of Flagler Square Apartments, LLC, is the sole manager/member of, MM Biscayne River Village I, LLC, and is the sole manager/member of MM Biscayne River Village II, LLC. Respondent Gonzalo DeRamon ("DeRamon") and Respondent Michael Cox

("Cox") are the manager/members of Biscayne Housing Group, LLC. The business address for each and all the Respondents is 150 SW 2nd Street, Suite 1302, Miami, Florida 33131. All Respondents are referred to herein collectively as "the Respondents."

7. Florida Housing administers various affordable housing programs, including the Low Income Housing Tax Credit Program under Section 42 of the Internal Revenue Code and Section 420.5099, Fla. Stat., by which Florida Housing is designated as the tax credit allocating agency for the state of Florida within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code, and Rule Chapter 67-48, Fla. Admin. Code.

8. The 2011 Universal Cycle Application, through which affordable housing developers apply for tax credits under the above-described affordable housing program administered by Florida Housing, together with Instructions and Forms, comprise the Universal Application Package or UA1016 (Rev. 2-11) adopted by and incorporated into Rule 67-48.004(1)(a), Fla. Admin. Code.

9. Because the demand for tax credits far exceeds the available allocation, qualified affordable housing developments must compete for tax credits. To assess the relative merits of proposed developments, Florida Housing has established a competitive application process known as the Universal Cycle pursuant to Rule Chapter 67-48, Fla. Admin. Code. Specifically, Florida

Housing's application process for the 2011 Universal Cycle, as set forth in Rule 67-48.001-48.005, Fla. Admin. Code, involves the following:

- a. the publication and adoption by rule of a "Universal Application Package," which applicants use to apply for funding under the tax credit and HOME Programs administered by Florida Housing;
- b. the completion and submission of applications by developers;
- c. Florida Housing's preliminary scoring of applications (preliminary scoring summary);
- d. an initial round of scoring challenges in which an applicant may take issue with Florida Housing's scoring of another application by filing a Notice of Possible Scoring Error ("NOPSE");
- e. Florida Housing's consideration of the NOPSEs submitted, with notice (NOPSE scoring summary) to applicants of any resulting change in their preliminary scores;
- f. an opportunity for the applicant to submit additional materials to Florida Housing to "cure" any items for which the applicant was deemed to have failed to satisfy threshold or received less than the maximum score;
- g. a second round of challenges whereby an applicant may raise scoring issues arising from another applicant's cure materials by filing a Notice of Alleged Deficiency ("NOAD");
- h. Florida Housing's consideration of the NOADs submitted, with notice (final scoring summary) to applicants of any resulting change in their scores;
- i. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing's evaluation of any item in their own application for which the applicant was deemed

to have failed to satisfy threshold or received less than the maximum score;

j. final scores, ranking of applications, and award of funding to successful applicants, including those who successfully appeal the adverse scoring of their application; and

k. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing's final scoring and ranking of competing applications where such scoring and ranking resulted in a denial of Florida Housing funding to the challenging applicant.

11. During the 2011 Universal Cycle, Flagler Square submitted an Application to Florida Housing for the Flagler Square apartment project, No. 2011-070C; Biscayne Village I submitted an application to Florida Housing for the Biscayne River Village Phase I apartment project, No. 2011-076C; and Biscayne Village II submitted an application to Florida Housing for the Biscayne River Village Phase II apartment project, No. 2011-077C, each seeking an allocation of tax credits. (Collectively, the "three Applications")

12. As the competition for tax credits is intense and the supply limited, Florida Housing has included "tie-breaker" items in the Universal Cycle Application. Among these is a system of awarding tie-breaker points for proximity to services, such as grocery stores, medical facilities, and public transportation.

13. A "Grocery Store," is defined at page 33 in the Universal Application Instructions:

Grocery Store - For purposes of proximity tie-breaker points, a Grocery Store means a retail establishment, open to the public, regardless of a requirement of a membership fee, consisting of 4,500 square feet or more of contiguous air conditioned space available to the public, which as its major retail function sells groceries, including foodstuffs, fresh and packaged meats, produce and dairy products, which are intended for consumption off-premises, and household supplies, such as Publix Super Markets, Winn Dixie Stores, Super Wal-Mart Stores, etc.

14. In Application No. 2011-070C, Flagler Square sought an award of tie-breaker points for the development's proximity to "Downtown Miami Grocery," located at 100 South Miami Avenue, 2nd Floor, Miami, Florida.

15. In Application No. 2011-076C, Biscayne Village I, and in Application No. 2011-077C, Biscayne Village II, respectively, each sought an award of tie-breaker points for each development's proximity to "Downtown Miami Grocery," located at 500 West Flagler Street, Miami, Florida.

16. In preliminary scoring, Florida Housing awarded tie-breaker points for each of the three projects' proximity to the respective Downtown Miami Grocery locations. After receipt of NOPSE's filed against each of the three applications, Florida Housing rescinded the award of tie-breaker points based on each project's proximity to one of the Downtown Miami Grocery stores.

17. The Applicants filed Cures, stating that the NOPSEs were inadequate.

18. NOAD's were filed against each of the three Applications, containing a private investigator's report that stated that the two grocery stores had none of the licenses, permits, certificates, or other documentation required by city, county, and state government to operate grocery stores, that the two stores were not fully stocked, and that the two stores were not open to the public.

19. Florida Housing rejected the Applicants' Cures, based on the NOAD's filed against the Applications, and did not allow tie-breaker points for proximity to either Downtown Miami Grocery to any of the three Applications.

20. None of the three Applications were selected for an allocation of tax credits in Florida Housing's Universal Application Cycle Final Rankings issued by the Board on June 8, 2012.

21. On June 6, 2012, Florida Housing filed an Administrative Complaint¹ alleging *inter alia* that the Downtown Miami Grocery stores located at 500 West Flagler Street, and 100 South Miami Avenue, Miami, Florida, did not meet the definition of "grocery store" in the Universal Cycle rules, and were established for the sole purpose of inducing Florida Housing to award tie-breaker proximity points. Florida Housing further alleged that by including the grocery stores in the three Applications, Respondents had committed fraud or misrepresentation

¹ Florida Housing filed an Amended Administrative Complaint, making technical corrections, on June 26, 2012.

prohibited by section 420.407(35), Fla. Stat., and Rule 67-48.004(12), Fla. Admin. Code².

22. During discovery in preparation for trial, Respondents voluntarily produced documentation demonstrating that the two Downtown Miami Grocery stores had obtained all required licenses, permits and permissions required by state, county, and city governments to lawfully build out and operate a grocery store.

23. Florida Housing filed a Second Amended Complaint on September 5, 2012, restating most of the allegations of the original Administrative Complaint and Amended Administrative Complaint, and removing the allegations concerning non-licensure of the grocery stores. Respondents filed pleadings disputing the allegations in the Second Amended Complaint.

24. During further discovery, documentary evidence and uncontroverted witness testimony established that on December 6, 2011, both of the Downtown

² Section 420.507(35), Fla. Stat., provides that the Board has the authority:

To preclude from further participation in any of the corporation's programs, for a period of up to 2 years, any applicant or affiliate of an applicant which has made a material misrepresentation or engaged in fraudulent actions in connection with any application for a corporation program.

Rule 67-48.004(12), Fla. Admin. Code, further provides:

(12) If the Board determines that any Applicant or any Affiliate of an Applicant:

- (a) Has engaged in fraudulent actions;
- (b) Has materially misrepresented information to the Corporation regarding any past or present Application or Development;
- (c) Has been convicted of fraud, theft or misappropriation of funds;
- (d) Has been excluded from federal or Florida procurement programs; or
- (e) Has been convicted of a felony;

The Applicant and any of the Applicant's Affiliates will be ineligible for funding or allocation in any program administered by the Corporation for a period of up to two (2) years, which will begin from the date the Board makes such determination. Such determination shall be either pursuant to a proceeding conducted pursuant to Sections 120.569 and 120.57, F.S., or as a result of a finding by a court of competent jurisdiction.

Miami Grocery locations (1) were retail establishments open to the public, with no membership fee; (2) exceeded 4,500 square feet of air conditioned space; (3) having as their major retail function to sell groceries, including foodstuffs, fresh and packaged meats, produce and dairy products, intended for consumption off-premises, and household supplies.

STIPULATED CONCLUSION OF LAW

1. Pursuant to Sections 120.569 and 120.57, Florida Statutes, and Florida Administrative Code Chapter 67-48, the Florida Housing Board of Directors has jurisdiction over the parties to this proceeding.

2. Florida Housing is statutorily authorized to institute a competitive application process for the allocation of Tax Credits and has done so through Rules 67-48.004 and 67-48.005, Florida Administrative Code.

CONDITIONS OF SETTLEMENT

1. Respondents Gonzalo DeRamon and Michael Cox represent that, as reflected in the Exhibits to Applications numbered 2011-070C, 2011-076C, and 2011-077C, they are the Principals of the six co-Respondent entities in this proceeding; that they have the authority to bind those six co-Respondent entities in this Consent Agreement, and by the authorized signatures of their respective counsel do bind those six co-Respondent entities to the terms of this Consent

Agreement; and that reliance on these representations by Florida Housing and the Florida Housing Board of Directors is reasonable.

2. Petitioner hereby completely releases and forever discharges each and all Respondents, and each and all Respondents hereby completely release and forever discharge Petitioner, from any and all past, present, or future claims regarding all issues raised or which may have been timely raised by the Second Amended Administrative Complaint relating to the three applications set forth above.

3. The Parties agree that this Consent Agreement resolves any and all actions regarding the scoring, ranking and the content of Respondents' Universal Cycle Applications, No. 2011-70C, No. 2011-076C, and 2011-077C.

4. Petitioner agrees that neither Application No. 2011-070C, Application No. 2011-076C, nor Application No. 2011-077C has violated the 2011 Universal Application Cycle Rules regarding proximity to services.

5. Petitioner hereby withdraws allegations included in its Second Amended Petition, related to the tiebreaker points sought for proximity to a grocery store in the three Applications, and withdraws allegations that any Respondent or affiliated person or entity has perpetrated or attempted to perpetrate a fraud or material misrepresentation on Florida Housing.

6. Petitioner represents and acknowledges that none of the Respondents or any of their affiliates including, without limitation, St. Martin, have at anytime prior to the date hereof been sanctioned, suspended, debarred, terminated, or otherwise restricted in any manner whatsoever by Petitioner, as those terms are contemplated in 24 CFR Part 200 or otherwise defined by the U.S. Department of Housing and Urban Development in its guidebooks or policy notices.

7. Respondents agree that they will not challenge the determination by Florida Housing that none of the three Applications demonstrated entitlement to an allocation of tax credits.

8. There is no wrongdoing committed by any Party or employee of any Party in the matters addressed in this action. No Respondent or any affiliated person or entity is subject to any adverse action related to this matter by Petitioner within the meaning of any applicable state federal law, rule or regulation.

9. It is understood and agreed to by the Parties that this Consent Agreement is a compromise of a dispute, and is not to be construed as an admission of liability on the part of the Petitioner or any Respondent, by whom liability is expressly denied.

10. Each Party hereto shall bear all attorney fees and costs arising from the actions of its own counsel in connection with this Consent Agreement and all related matters and documents referred to herein.

11. Each Party hereto expressly and knowingly waives any right to appeal or further judicial, administrative, or disciplinary action in any forum regarding the issues raised in this matter.

12. All Parties agree to cooperate fully to execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Consent Agreement.

13. The Parties acknowledge and agree that no promise or agreement not herein expressed has been made; that the terms of this Consent Agreement are contracted and not a mere recital; that there is no agreement or compromise on the part of any Party to do any act or thing not herein mentioned; that this Consent Agreement shall benefit and be a fully binding and complete settlement of all claims among the Parties; that this Consent Agreement constitutes the entire agreement between the Parties hereto, and this Consent Agreement supersedes any prior agreement.

14. Upon execution of this Consent Agreement, Petitioner will move the Division of Administrative Hearings to relinquish jurisdiction of this matter so that this Consent Agreement may be considered by the Florida Housing Board of Directors.

15. Petitioner agrees to recommend to the Florida Housing Board of Directors at its December 7, 2012 meeting, that it adopt the Recommended Order entered October 25, 2012, in the case of St. Martins PL, Ltd. v. Florida Housing Finance Corporation, FHFC Case No. 2012-034UC, as modified in accordance with the Written Argument filed by St. Martins PL in that case to clarify that St. Martins will receive both its requested HOME loan and tax credits if the Recommended Order is adopted. Upon Florida Housing's issuance of a Final Order adopting this Consent Agreement, Petitioner will file a dismissal with prejudice of all claims against each and all Respondents in the above captioned administrative action.

16. Should the Board decline to issue such Final Order, this Consent Agreement shall be null and void.

STIPULATED DISPOSITION

Upon acceptance of this Consent Agreement by the Board, the Second Amended Administrative Complaint filed against Respondents Flagler Square Apts., Ltd., MM Flagler Square Apartments, LLC, Biscayne River Village Phase I, Ltd., MM Biscayne River Village I, LLC, Biscayne River Village Phase II, Ltd., MM Biscayne River Village II, LLC, Gonzalo DeRamon, and Michael Cox ("Cox"), shall be DISMISSED WITH PREJUDICE.

Respectfully submitted this 12th day of November, 2012.

For Petitioner Florida Housing Finance Corporation:



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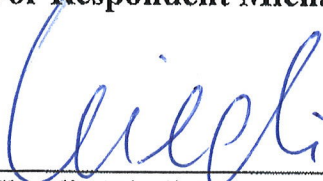


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