

May 23, 2017

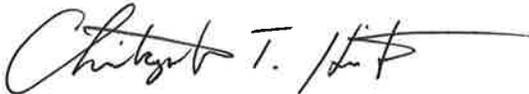
Mr. Harold Price III, Executive Director
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Dear Mr. Price:

Attached is our report for Project Number 2016-23, *Management Review of the Low-Income Housing Tax Credit Program's Internal Controls*. The review determined that Florida Housing Finance Corporation has implemented additional controls in their final cost certification review process to strengthen detection measures for the prevention of fraudulent activities. The Office of Inspector General concluded that alongside the measures currently being implemented, additional steps could be taken to strengthen controls in the final cost certification review process.

Management's responses are included in the report.

Sincerely,



Christopher T. Hirst
Inspector General

cc: Ken Reecy, Director of Multifamily Programs
Board of Directors, Florida Housing Finance Corporation

Rick Scott, Governor

Board of Directors: Bernard "Barney" Smith, Chairman • Ray Dubuque, Vice Chairman
Natacha Bastian • Renier Diaz de la Portilla • John David Hawthorne Jr. • Martha Lanahan • Ron Lieberman
Julie Dennis, Florida Department of Economic Opportunity

Harold "Trey" Price, Executive Director

Bernard Smith, Chairman
Trey Price, Executive Director

Martha Lanahan, Audit Committee Chair
Chris Hirst, Inspector General

Final Report

Management Review of the Low-Income Housing

Project #2016-23

Tax Credit Program's Internal Controls

May 23, 2017

SUMMARY

The Office of Inspector General (OIG) conducts reviews of Florida Housing Finance Corporation's (Florida Housing) programs to provide management and other stakeholders with unbiased, timely, and relevant information for use in promoting accountability, stewardship, and efficient operations.

In 2016, principals of Carlisle Development Group (CDG) and Biscayne Housing Group (BHG), two Miami based affordable housing developers, along with several business associates, pled guilty to submitting inflated construction contracts to Florida Housing representatives resulting in the theft of millions of dollars in federal tax credit subsidies. As a result of the Federal investigation of activities related to CDG/BHG, in 2014 Florida Housing began to review and strengthen controls related to the type of construction contracts required and final cost certification process, which provides the basis for the issuance of Low-Income Housing Tax Credits (LIHTC). Executive management also requested Florida Housing's OIG to review these controls and document all efforts of due diligence at the conclusion of the criminal proceedings. The review determined that Florida Housing has implemented additional controls in their final cost certification¹ review process to strengthen detection measures for the prevention of fraudulent activities, like the ones that resulted in the CDG and BHG conspiracy. The OIG concluded that alongside the measures currently being implemented, additional steps could be taken to strengthen controls in the final cost certification process.

In addition, the OIG was requested to conduct a limited review of DAXC, LLC (DAXC), an affiliated entity of Pinnacle Housing Group, Inc. (PHG), a low-income housing developer operating in Miami, Florida. The OIG's review of the DAXC inflated construction contract scheme resulted in additional recommendations for consideration by Florida Housing.

SCOPE, OBJECTIVES AND METHODOLOGY

In 2013, Florida Housing appointed a new Inspector General and OIG staff. Soon after arrival, the Inspector General was informed of the CDG/BHG conspiracy and subsequently included in a meeting discussing Florida Housing's role in the case. This was punctuated with the ongoing criminal investigation by the United States Government (Government) that was likely to result in the indictments and criminal prosecution of the conspirators. Given these circumstances, the consensus of Florida Housing's executive management and the Inspector General was to closely monitor the situation until the culmination of the investigation and prosecution.

¹ The purpose of the final cost certification process is to establish the total actual costs incurred by the developer in the delivery of a low-income housing tax credit development. This assists Florida Housing in determining certain development costs and the amount of subsidy to be allocated to the low-income housing tax credit development.

Upon conclusion of the Government’s criminal prosecution of the CDG/BHG conspirators in December of 2016, the former Executive Director of Florida Housing, Steve Auger, requested the OIG to initiate a management review of the events pertaining to the CDG/BHG conspiracy. The objectives of this review were to: (1) document the historical events surrounding the CDG/BHG cases; (2) document the outcome of the Government’s case against the conspirators; (3) identify process changes that have been implemented by Florida Housing’s Multifamily Programs (MFP) to address any identified control deficiencies; (4) identify new and recommend enhancements to existing controls to further strengthen the process; and (5) document the Assistant United States Attorney’s (AUSA) and OIG’s recommendations of additional controls that should be considered to detect and deter fraudulent activity.

In April 2017, Florida Housing’s Executive Director, Trey Price, requested the OIG to expand this review to include the recent events involving DAXC, an affiliated entity of PHG, a low-income housing developer operating in Miami, Florida. As outlined in the criminal Information² (Appendix A), DAXC was charged with the theft of millions of dollars in federal tax credit subsidies by submitting inflated construction contracts to Florida Housing representatives. However, on March 20, 2017, the Government and DAXC entered into a Deferred Prosecution Agreement³ (DPA) (Appendix B) in which DAXC agreed to forfeit \$4.2 million to which they were not entitled, along with an additional \$1 million penalty, totaling \$5.2 million.

Due to the ongoing administrative actions and potential litigation, the OIG conducted a limited review of this matter. The objectives of this part of the review were to: (1) identify process changes that have been implemented by Florida Housing’s MFP to address any identified control deficiencies; and (2) identify new and recommend enhancements to existing controls to further strengthen the process.

To achieve the objectives of this review, the OIG reviewed Section 420, Florida Statutes (F.S.); Chapter 67-48, Florida Administrative Code (F.A.C); Treasury Regulation §1.42-17; CDG/BHG case documentation; DAXC criminal Information and DPA; and MFP final cost certification procedures. The OIG attended new final cost certification process training, interviewed appropriate MFP staff, and coordinated a meeting with the AUSA and staff, who investigated and prosecuted the cases. Additionally, the meeting with the AUSA and staff included representatives from credit underwriters AmeriNational Community Services, Inc., Seltzer Management Group, and First Housing; the State of Florida’s Chief Inspector General; and various Florida Housing senior managers and staff.

BACKGROUND

Carlisle Development Group and Biscayne Housing Group

The Government funds the construction of affordable housing for low-income Americans through the award of federal tax credits to developers known as the Low-Income Housing Tax Credit (“LIHTC”, generally referred to throughout as “tax credits”) program. The Tax Reform Act of 1986 authorized state housing agencies to issue federal tax credits and federal grant monies to developers. These tax credits allow for the reduction of a taxpayer’s annual tax liability. Developers typically sell these tax credits to investors to finance the construction of low-income housing developments. Florida Housing is the designated state housing agency that issues these

² The formal accusation of a criminal offense made by a public official; the sworn, written accusation of a crime.

³ A deferred prosecution agreement is a voluntary alternative to adjudication in which a prosecutor agrees to grant amnesty in exchange for the defendant agreeing to fulfill certain requirements. A case of corporate fraud, for instance, might be settled by means of a deferred-prosecution agreement in which the defendant agrees to pay fines, implement corporate reforms, and fully cooperate with the investigation. Fulfillment of the specified requirements will then result in dismissal of the charges.

federal tax credits in Florida. Florida Housing issues tax credits to developers through a competitive application process where they submit applications to Florida Housing for the construction of proposed low-income housing developments. The selected developer is required to submit their costs to build the proposed development to Florida Housing. This submission includes a contract signed by the developer and general contractor setting forth the actual compensation to be paid to the general contractor to build the development. Florida Housing allocates federal tax credits based on the submitted costs, primarily from the construction contract.

In early 2012, the Federal Bureau of Investigation received information from two CDG employees, who had knowledge of criminal activity. Florida Housing was notified of the issue in September of 2012, by the U.S. Department of Housing and Urban Development's Office of Inspector General. In the spring of 2013, a federal grand jury began investigating CDG and BHG. The Government contended that between 2007-2012, CDG CEOs Lloyd Boggio and Matthew Greer conspired with BHG development partners Michael Cox and Gonzalo DeRamon and general contractors Michael Runyon, Rene Sierra, and Arturo Hevia in the theft of millions of dollars in federal tax credit subsidies. This was done by submitting inflated construction cost certifications, based on inflated construction contract costs, to Florida Housing for low-income housing developments. The result led to Florida Housing allocating at least \$34 million in excess federal tax credits for at least eight different low-income housing developments. Prior to trial, all defendants reached plea agreements and were sentenced in December of 2016. A summary of the pleas and sentences is attached to this report as Appendix C.

Upon learning of the CDG/BHG conspiracy in 2013, the Inspector General requested a meeting with the AUSA to discuss: what they uncovered; how they uncovered it; and what additional potential mitigating controls might need to be implemented or strengthened given this information. However, as a matter of protocol, the AUSA was unable to share any requested information with Florida Housing during the ongoing investigation and subsequent trial. The AUSA did indicate that they would be willing to share this information after the case was closed. This resulted in the meeting that occurred on February 15, 2017.

Florida Housing's Enhanced Cost Certification Requirements

In response to being notified of the criminal conspiracy, in 2014 Florida Housing began to strengthen controls related to the LIHTC program, to mitigate the risk of similar fraudulent activities occurring. In April of 2014, Florida Housing initiated rule development which was adopted by Florida Housing's Board of Directors and promulgated on October 8, 2014. This rule change required developers to use a guaranteed maximum price⁴ (GMP) construction contract instead of a stipulated sum construction contract. Another key enhancement resulting from the 2014 rule development was requiring a separate general contractor construction cost certification, aside from the developer cost certification. Furthermore, the construction costs associated with a minimum of eight subcontractors, or those associated with at least 40 percent of the construction costs of the development (whichever is greater) must be audited by an independent Certified Public Accountant (CPA). With the adoption of this enhanced accountability measure, Florida Housing now requires a more demanding and comprehensive cost certification process.

Since the inception of the LIHTC program, Florida Housing, like all other state housing finance agencies, has required a final cost certification. The final cost certification establishes the total actual costs incurred by the awardee in the delivery of an affordable housing development capitalized through tax credits. This final cost certification must be prepared by an independent CPA for the applicant to receive the tax credits.

⁴ A GMP contract is a cost-type contract where the contractor is compensated for actual costs incurred plus a fixed fee subject to a ceiling price. The contractor is responsible for cost overruns, unless the GMP has been increased via formal change order (only because of additional scope increases from the client, not price overruns, errors, or omissions). Savings resulting from cost underruns are returned to the owner. This is different from a stipulated sum contract or lump-sum where cost savings are typically retained by the contractor and essentially become additional profits.

In addition to requiring a GMP contract and a more comprehensive cost certification process, MFP instituted other changes to the Rules governing LIHTC and some of those changes are listed below:

- Ensure that none of the general contractor duties to manage and control the construction of a development are subcontracted;
- Ensure that no construction or inspection work that is normally performed by subcontractors is performed by the general contractor;
- Ensure that not more than 20 percent of the construction cost is subcontracted to any one entity, with the exception of a subcontractor contracted to deliver the building shell of a building of at least five stories which may not have more than 31 percent of the construction cost in a subcontract, unless otherwise approved by Florida Housing for a specific development. With regard to said approval, Florida Housing shall consider the facts and circumstances of each applicant's request, inclusive of construction costs and the general contractor's fees; and,
- Ensure that no construction cost is subcontracted to any entity that has common ownership or is an affiliate of the general contractor or the developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-48.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

DAXC, LLC and Pinnacle Housing Group, Inc.

On March 9, 2017, the United States Attorney's Office, Southern District of Florida, filed a criminal Information stating that PHG submitted inflated construction contracts to Florida Housing's representatives for the receipt of federal tax credits and grant monies for four housing developments between 2009–2011. As the criminal Information states, subcontractor DAXC, a related entity to PHG, used an inflated construction contract scheme to defraud the Government of funds.

As outlined in the criminal Information filed by the United States Attorney's Office, the Government alleged that the scheme DAXC used consisted of the following (paraphrased):

- Developer A (PHG) was selected to receive tax credits and grant monies for four housing developments.
- PHG selected its wholly owned Contractor A (Contractor) as the general contractor for the developments.
- The Contractor solicited and received bids from subcontractors for construction line items including the most expensive line item, the concrete shell work. Shell Subcontractor A (Subcontractor) was included as one of the subcontractors submitting bids for the developments.
- PHG and the Contractor did not list the Subcontractor's final bid for concrete shell work in the itemized construction contracts submitted to Florida Housing for the developments.
- The Contractor signed construction contracts for the concrete shell work with its affiliated company, DAXC, at an inflated price for each of the developments even though DAXC did not have the personnel or equipment to complete the shell work. DAXC subcontracted with the Subcontractor to actually complete the shell work at the actual cost of work price.
- The Contractor signed inflated construction contracts with DAXC on the developments with inflated amounts ranging from approximately \$200,000 to \$1.5 million for total inflated costs of approximately \$3.4 million on the four developments.
- PHG then submitted the inflated construction contracts to Florida Housing to receive federal tax credits and grant monies. The inflated contracts resulted in \$800,000 in additional fees

being paid to PHG and the Contractor. DAXC's inflated construction contract scheme resulted in Florida Housing distributing excess federal funds and grant monies totaling \$4.2 million.

- DAXC retained the excess funds distributed from the inflated construction contracts. In November 2011, the Contractors principals received wire transfers of approximately \$2.5 million from DAXC's bank account derived from the inflated construction contract scheme.

On March 20, 2017, the United States Attorney's Office and DAXC entered into a DPA (see Appendix B). By signing the DPA, DAXC acknowledged that at least \$4.2 million was proceeds/involved in transactions in violation of 18 United States Code § 641 and agreed to forfeit that amount, along with an additional \$1 million penalty, totaling \$5.2 million.

OBSERVATIONS, RECOMMENDATIONS AND MANAGEMENT'S RESPONSES

Observation 1: Recommendations provided by the AUSA and Management's Responses

During the February 15, 2017 meeting, the AUSA provided Florida Housing with the following observations and recommendations for consideration to add new or enhance existing controls to further detect and deter fraudulent activity:

1. Credit underwriters should be required to provide Florida Housing with copies of proposed development executive summaries such as the Plan and Cost Analysis Report, Market Feasibility Analysis Report, and Appraisal Report. These summaries should be submitted with the underwriting report to provide all parties with the same information upon which to make decisions.

Management Response:

Multifamily Programs staff implemented this recommendation on April 17, 2017, and will require that credit underwriters provide the executive summaries of the Plan and Cost Analysis report, Market Feasibility Analysis report and Appraisal report. MFP staff will review the material as part of their overall credit underwriting report review.

2. Florida Housing should be copied on all emails transmitted between the credit underwriter, the developer, and the general contractor to provide additional transparency between parties.

Management Response:

Due to the volume of emails involved, along with the unknown added value this measure would bring, MFP does not agree with this recommendation. MFP will work with the credit underwriters to ensure that they are more aware of the need to alert MFP staff to unusual situations they encounter during their interactions with Developers and General Contractors. Additionally, this material would be reviewed as part of the proposed post-audit of credit underwriting activities.

3. Florida Housing should consider designating an individual within the MFP to review each development to make sure everything is done correctly. This position may need to be a dedicated position and the individual should have experience in construction cost certification and credit underwriting.

Management Response:

Prior to receiving this recommendation, the Director of MFP was already in informal discussions with the former Executive Director and the CFO [Chief Financial Officer] about the need for an additional position in MFP (or reporting to the Director of Development Finance), in which the incumbent would have credit underwriting experience and would function as internal oversight for the credit underwriting process through comprehensive post-audits of completed credit underwriting reports. MFP plans to make a formal recommendation to the new Executive Director regarding the creation of this position as soon as is practical. This position would:

- *Work with outsourced credit underwriters on special issues regarding developments in the pipeline;*
 - *Perform comprehensive post-audits of credit underwriting reports looking at source documents:*
 - *To review bottom level source documentation used as the grist for credit underwriting reports with an eye toward crafting policy if needed;*
 - *To ensure credit underwriting consistency and adherence to the Florida Housing approach; and*
 - *To assist in the compilation of data to better manage administration of the MF programs.*
4. Federal law and HUD entrust Florida Housing with monitoring affordable housing funding and the associated risks. During the meeting, AUSA staff stated that relationships between some credit underwriters and developers appeared to be too “relaxed” as opposed to a more formal business relationship. They also stated that the judge found it troubling that developers were paying credit underwriters directly and felt this could lead to problems. Therefore, the AUSA recommended that all payments for services to credit underwriters should go through Florida Housing as a neutral party.

Management Response:

MFP understands the concern expressed by the AUSA, however, in our experience the relationship between the outsourced credit underwriting firms and developer/applicants is appropriately at arms-length, and at times, even slightly adversarial. Additionally, MFP staff assign credit underwriters, they are not chosen by developer/applicants, and the payment is an administrative function convenient for the Corporation. There would be no discernable benefit to inserting the Corporation as the “go-between” in the payment process, but there would be costs associated with such a change. We will continue to monitor the business relationship between the parties to ensure the proper posture is maintained.

5. Florida Housing should receive copies of all general contractors’ Schedule F. This schedule lists subcontract amounts by trade and cost (e.g. estimated plumbing cost: \$75,000.00, estimated electrical cost \$100,000.00, etc.). Florida Housing should also request the general contractor provide a listing of all the subcontractors working on the project. With these two pieces of information, Florida Housing could perform random “spot checks”⁵ to validate that the listed contractors are performing work for the general contractor and that the work completed is reasonably close to the estimated price. This would then help Florida Housing to compare the contract amounts to the final construction cost certification and inquire about any significant discrepancies. It will also affirm to the developers, general contractors, and sub-contractors, that Florida Housing will confirm and ensure the listed subcontractors are performing the work and are reasonably close to the estimated price listed in the Schedule F.

⁵ The AUSA recommended random checks via phone call.

Management Response:

MFP agrees with this recommendation and is currently working to operationalize a process similar to that recommended here. This will require a change to the Servicer contract.

6. Florida Housing should require the implementation of a “Failure to Disclose” agreement, signed by the developers, contractors, and sub-contractors. It should provide for penalties for nondisclosure to Florida Housing of consulting engagements, side-letter agreements, etc. Compliance will work only if the monetary penalties are substantial enough to impact them. Legislative reform may be needed to facilitate implementation of this control.

Management Response:

A Failure to Disclose agreement will be added to future RFAs and would be tied to a long-term “time out” recommendation in accordance with Chapter 67-48.004(2), F.A.C.

7. Florida Housing should conduct analysis and perform cost comparisons on developments based on geographic region; and then, if needed, on the population served (i.e. the elderly, low-income, minority, migrants, etc.). This can help to identify cost anomalies between similar developments that may require further scrutiny.

Management Response:

The Corporation has been working on this process for some time now. Data is currently being captured at the Application and credit underwriting stages of the process, however, the capture of data at final cost certification/final loan draw has not yet been completed. Once the data capture has been accomplished, the Director of Development Finance would be responsible for designing the cost analysis system in coordination with MFP staff, ITS [Information Technology Services] staff, and credit underwriters. The information would be reviewed and comparisons made to other comparable projects, if available. It is also the responsibility of the credit underwriters to identify and request information about outliers in addition to any discussed in the Plan and Cost Analysis report.

Observation 2: Selection of CPA Firms

It was noted during this review that the CPA firms conducting the final cost certifications are selected and compensated by the developers and general contractors. The final cost certifications are ultimately provided to Florida Housing for review as the basis for the issuance of tax credits. Currently, the cost certifications are provided by the CPA firm or the developer.

In accordance with Treasury Regulation §1.42-17(a)(5), the developers and general contractors (taxpayer) are required to hire an independent CPA firm, whose audit of the cost certification (project costs) must be conducted in accordance with generally accepted auditing standards and accompanied by an unqualified audit report. However, Florida Housing’s new final cost certification requirements have emphasized the need for more consistency throughout the final cost certification process. The absence of Florida Housing’s involvement in selecting the CPA firms participating in the completion of the final cost certifications could limit consistency and create unnecessary risk for Florida Housing.

The OIG **recommends** that Florida Housing develop and implement a process whereby Florida Housing establishes an approved pool of CPA firms to conduct final cost certifications for all LIHTC deals. This would allow Florida Housing to provide a more prescriptive approach for completing the cost certification forms, which would inherently create efficiencies in MFP's review process. This would ensure a more consistent, transparent, and objective review of the documentation which Florida Housing relies on to award federal tax credits. Furthermore, this additional control over the final cost certification and audit process would provide a greater level of assurance to Florida Housing's stakeholders.

Management Response:

MFP staff will present this concept at the next Rule development workshop for Chapter 67-48, F.A.C.

Observation 3: Review of the Enhanced Final Cost Certification Process

During fieldwork, the OIG determined that 36 tax credit allocations were awarded in 2015 for pending developments, totaling just over \$55 million, which are subject to the new final cost certification process. To obtain a better understanding of the new process, the OIG attended several MFP training meetings held for the staff responsible for reviewing cost certifications submitted as part of the enhanced process.

MFP acknowledged that a very limited number of final cost certifications have been reviewed due to the recent change in the process and the limited number submitted to date. Therefore, adequacy of the process and compliance with it could not be fully evaluated.

The OIG **recommends** that Florida Housing continue to implement and refine, as necessary, the review process of the final cost certifications for compliance with the new requirements. The OIG also recommends instituting a secondary random review process to ensure staff are accurate and consistent in their reviews.

Management Response:

Multifamily Programs (MFP) has initiated a new workflow paradigm, moving from a "task specific" approach to a "case management" approach, whereby all MFP Tax Credit staff will be assigned deals in the pipeline in teams of two, one as primary and the other staff member as back-up. All MFP staff will be responsible for all aspects of the deals they are assigned, from the point of beginning (Credit underwriting invitation) to the final action (issuing 8609's)⁶ and beyond (amending Extended Use Agreements)⁷. This will ensure that the staff member reviewing each cost certification will be intimately aware of the deal. Staff will be much more likely to recognize when discrepancies are present based on their greater understanding of the deal. Cost certifications will be reviewed by both the primary and back-up members of the team assigned to any particular deal, along with the Assistant Director, as part of this new paradigm. We will also consider instituting a random review process for the Director of Development Finance to ensure that MFP staff are accurate and consistent in their cost certification reviews.

Observation 4: Training for Performing Final Cost Certification Reviews

As stated in Observation 3, the OIG attended several MFP training meetings held for the staff responsible for reviewing cost certifications submitted as part of the enhanced process. The OIG also had follow-up discussions

⁶ IRS Form 8609 is generally used for a developer to obtain a tax credit allocation from the issuing housing credit agency, such as Florida Housing.

⁷ Extended Use Agreement means, with respect to the HC Program, an agreement which, among other requirements, encumbers the development with restrictions required to receive the tax credit allocation.

with MFP staff to gauge their level of confidence in being able to adequately perform the tasks associated with reviewing the new final cost certifications. MFP staff indicated their confidence in conducting the reviews was low due to the process being recently implemented and the level of technical detail required to complete the reviews.

The OIG **recommends** that appropriate Florida Housing staff continue providing support and periodic training to staff relating to the new final cost certification review process until such a time that MFP staff demonstrates proficiency and their confidence levels mature.

Management Response:

MFP Tax Credit staff will be given continuous training on cost certification review with the assistance of the Director of Development Finance using a case study approach to ensure that all staff understand and apply a consistent approach to the cost certification review process. These case studies will be performed on a quarterly basis to ensure continued learning opportunities and adherence to the new review process. We also plan to include several training sessions for MFP staff through other industry-related experts:

- *MFP staff will be trained by credit underwriters on the construction documentation analysis that they perform in the course of crafting draft underwriting reports.*
- *Our newly-hired Assistant Director, an MAI [Member of Appraisal Institute] appraiser, will also train staff on valuation scenarios and how these might be manipulated to inappropriately inflate eligible basis.*
- *Lastly, we will have a training session with one or more of the CPA firms that submit cost certifications for affordable housing developers to better understand what documentation the CPA firms receive from developers and to craft policy on what additional documentation should also be submitted to or processes required by the Corporation.*

Observation 5: Additional Oversight and Assurance

Risk is any threat to achieving Florida Housing's mission or the likelihood that an event or action may negatively impact Florida Housing. Each year, the OIG conducts a risk assessment to identify areas within Florida Housing with the perceived highest level of risk. The results of the 2015 and 2016 annual risk assessments indicated the LIHTC program is a high-risk area. The level of risk identified was discussed with MFP management, including possible assistance by the OIG to provide assurance that controls were in place to mitigate the risk. However, due to ongoing improvements to the cost certification process and the pending criminal investigations, it was determined to delay any reviews by the OIG until the process improvements were substantially complete and the criminal prosecution was finalized.

Historically, Florida Housing has not employed staff possessing experience in credit underwriting or construction auditing, who tend to have a higher level of understanding of the nuances of the construction process. Currently, MFP is planning to add at least one staff member with credit underwriting experience to provide additional oversight of the external credit underwriting process. While this addition will provide some assurance as it relates to credit underwriting, the internal capacity to conduct construction audit related services will remain a deficiency.

The OIG **recommends** that Florida Housing consider additional staff dedicated to performing specialized reviews related to LIHTC developments, such as construction audit services. Depending on the specific expertise of any staff added, the position could be placed in the MFP, the OIG, or in both areas, if deemed necessary. Due to the nature of the work involved, requirements for adherence to standards, and to provide a level of independent review, separate from operations, strong consideration should be given to placing one position within the OIG.

This would provide Florida Housing stakeholders with additional independent assurance that the risks related to the LIHTC program were being managed to an acceptable level.

The OIG also **recommends** that Florida Housing provide professional training to key staff members, especially those who are in a position to detect anomalies during the final cost certification review process. Ideally, the training would be conducted by recognized industry experts.

Management Response:

In response to this observation and as part of a new process to use CNAs [Capital Needs Assessment] to determine the scope of multifamily rehabilitations, MFP will formally propose to add a construction expert to MFP staff. This staff person may require knowledge, skills and abilities up to and including either engineering or architectural accreditation. MFP has also embarked on an aggressive training regime for housing credit staff, to improve the oversight required for cost certification.

Observation 6: DAXC, LLC and Pinnacle Housing Group, Inc.

The United States Attorney's Office, Southern District of Florida, filed a criminal Information (see Appendix A) on March 9, 2017 and DPA⁸ on March 20, 2017, (see Appendix B), stating that Developer PHG submitted inflated construction contracts to Florida Housing's representatives for the receipt of federal tax credits and grant monies for multiple housing developments between 2009–2011. As outlined in the criminal Information (see Appendix A), subcontractor DAXC, a related entity to PHG, used an inflated construction contract scheme and because of the inflated construction contracts, Florida Housing allocated approximately \$4.2 million in excess federal funds. On March 20, 2017, the United States Attorney's Office and DAXC entered into a DPA (see Appendix B). As part of the agreement, DAXC agreed to forfeit the \$4.2 million, along with an additional \$1 million penalty, totaling \$5.2 million.

Prior to the Government's discovery of this illegal activity by DAXC, MFP recognized a potential deficiency in Rule 67-48.0072(17), F.A.C and instituted a rule change on October 9, 2013. This change included the requirement listed below:

(g) Ensure that no construction cost is subcontracted to any entity that has common ownership or is affiliated with the General Contractor unless otherwise approved by the Board for a specific Development. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of construction costs and ownership interests in the Development.

The OIG **recommends** that Florida Housing continue its proactive approach in reviewing and determining rules that require enhancement, to prevent similar situations moving forward.

Management Response:

MFP staff strengthened the Rule provision regarding the prohibition of related-entity subcontractors in the 2017 rule making. This provision will be adopted on May 24th. MFP also strengthened the Rule with a provision that prohibits general contractors from performing tasks normally performed by subcontractors. This provision

⁸ A deferred prosecution agreement is a voluntary alternative to adjudication in which a prosecutor agrees to grant amnesty in exchange for the defendant agreeing to fulfill certain requirements. A case of corporate fraud, for instance, might be settled by means of a deferred prosecution agreement in which the defendant agrees to pay fines, implement corporate reforms, and fully cooperate with the investigation. Fulfillment of the specified requirements will then result in dismissal of the charges.

streamlines the cost certification process further. MFP has an ongoing review of the rules governing the HC process, and plans to continue to add provisions providing for better cost certification of housing credit developments.

INSPECTOR GENERAL COMMENT

In an effort to create fraud awareness with the entities doing business with Florida Housing, the Inspector General (IG) recommends that a high-level designee, for the developer and general contractor, as well as their pertinent staff, undergo mandatory fraud and detection awareness training, to include the Whistle-blower Act⁹, which will be conducted by the OIG.

The IG will share this report with the National Council of State Housing Agencies (NCSHA), for distribution to all state housing agencies and others who participate in the LIHTC program, in order to increase awareness of areas for potential improvement nationally.

ACKNOWLEDGEMENT

The Office of Inspector General would like to extend our appreciation to the management and staff of MFP and the United States Attorney's Office for their assistance and cooperation during this review.

AUSA Michael Sherwin¹⁰ acknowledged the Florida Housing management and staff regarding the CDG/BHG investigation and prosecution as expressed in his March 6, 2017 letter to Florida Housing (Appendix D), in which he stated:

None of the success of this prosecution, however, could have been achieved without the assistance of the Florida Housing Finance Corporation (FHFC). From extensive document production, to witness interviews, to facilitating meetings between federal agents and numerous private underwriters, FHFC played a central role in the Carlisle investigation. . .

This review was conducted using guidance from the *International Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors. The review was conducted by David Merck CIA, CISA, CISSP-ISSMP, CAP, CPM and Melanie Yopp CFE, CGAP, CIGI, CIGA under the supervision of Justin Evans, Director of Auditing, CIA, CFE, CIGA, CPM.

⁹ The Whistle-blower's Act, §112.3187-112.31895, F.S., is intended to protect current employees, former employees, or applicants for employment with state agencies or independent contractors from retaliatory action. Whistle-blower designation is determined by the OIG in consultation with the Governor's Chief Inspector General's office. If a complaint meets whistle-blower criteria, the whistle-blower's identity is protected from release and an investigation is conducted pursuant to §112.3189, F.S.

¹⁰ AUSA Sherwin and staff investigated and prosecuted the CDG/BHG criminal cases.

APPENDICES

Please see separate appendix for copies of the following documents:

1. Appendix A - Criminal Information - Pages 1-11
2. Appendix B - Deferred Prosecution Agreement - Pages 12-29
3. Appendix C - Summary of Pleas and Sentences - Pages 30 - 32
4. Appendix D - AUSA Sherwin letter - Pages 33 - 35

Appendix A – Criminal Information

Mar 9, 2017
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
17-20171-CR-UNGARO/OTAZO-REYES
CASE NO.

18 U.S.C. § 641
18 U.S.C. § 981

UNITED STATES OF AMERICA

v.

DAXC, LLC,

Defendant.

_____ /

INFORMATION

The Attorney for the United States charges that:

GENERAL ALLEGATIONS

At all times relevant to this Information:

The Federal Low-Income Housing Tax Credit and Grant Programs

1. The United States Government funded the construction of affordable housing for low-income Americans through, among other means, the award to developers of federal tax credits from the Internal Revenue Service (“IRS”) and federal grant monies from the United States Department of Treasury.

2. The U.S. Department of Treasury was a department of the federal government established to manage federal government revenue. The IRS was an agency of the U.S. Department of Treasury responsible for enforcing and administering the tax laws of the United States, and collecting federal taxes owed the United States.

3. The Tax Reform Act of 1986 authorized state housing agencies to issue IRS federal tax credits to developers for the construction of low-income housing. These federal tax credits allowed for a dollar-for-dollar reduction of a taxpayer's annual tax liability over a period of years. Developers typically sold these federal tax credits to investors to fund the construction of low-income housing developments.

4. The American Recovery and Reinvestment Act of 2009 authorized state housing agencies to issue federal grant monies from the U.S. Department of Treasury to developers for the construction of low-income housing. Developers used these federal grant monies to fund the construction of low-income housing developments.

5. Pursuant to both programs, state housing agencies received an annual allotment of federal tax credits and federal grant monies, directly from the federal government, for the construction of low-income housing developments. Florida Housing Finance Corporation ("FHFC"), located in Tallahassee, Florida, was the designated state housing agency that issued these federal tax credits and federal grant monies in Florida.

6. FHFC issued federal tax credits and federal grant monies to developers through an annual application process. Developers submitted applications to FHFC for the construction of proposed low-income housing developments. FHFC selected some of the proposed developments to receive federal tax credits and federal grant monies through a competitive process.

7. Once selected, FHFC required the selected developer to submit its costs to build the proposed development to FHFC's representatives. This submission included a contract

signed by the developer and contractor setting forth the itemized construction cost for the low-income housing development (the “construction contract”).

8. FHFC allocated federal low-income housing tax credits and federal grant monies based on the developer’s submitted costs, including primarily the construction contract. Generally, a development with higher submitted costs would receive a greater allocation of federal tax credits and/or federal grant monies.

9. FHFC allowed those developers receiving federal tax credits and federal grant monies to receive a fee of sixteen percent of the development’s costs, and allowed contractors to receive a fee of fourteen percent of the construction costs.

The Defendant and Related Entities

10. Developer A was a low-income housing developer in Miami, Florida, incorporated in 2001, with principals listed as Principal A, B, C, & D.

11. Contractor A was a low-income housing general contractor in Miami, Florida, incorporated in 2008, with principals listed as Principal A, B, C, D & E.

12. Defendant **DAXC, LLC** (“DAXC”) was an entity in Miami, Florida, incorporated in 2009, listing Principal A as the managing member.

Unaffiliated Entities

13. Shell Subcontractor A was a concrete shell company in Palm Beach, Florida, incorporated in 1991.

The Low-Income Housing Developments

14. FHFC awarded federal tax credits and grant monies to Developer A to construct numerous low-income housing developments, including the following four low-income housing

developments (the “Subject Developments”) located in the Southern District of Florida and elsewhere:

- **Vista Mar:** a 110-unit low-income apartment complex in Miami, Florida;
- **Pinnacle at Avery Glen:** a 140-unit low-income apartment complex in Sunrise, Florida;
- **Orchid Grove:** an 80-unit low-income apartment complex in Homestead, Florida; and
- **Cypress Cove:** an 80-unit low-income apartment complex in Winter Haven, Florida.

THE THEFT OF GOVERNMENT MONEY SCHEME

The scheme by which DAXC accomplished the theft of government money consisted of the following:

15. Developer A submitted applications to build several low-income housing projects to FHFC, and FHFC selected the Subject Developments as eligible for receipt of federal tax credits and/or federal grant monies.

16. Developer A selected its wholly owned contractor - Contractor A - as the general contractor for the Subject Developments.

17. Contractor A solicited final bids from subcontractors for the construction line items related to the Subject Developments.

18. With respect to the most expensive construction line item, Shell Subcontractor A submitted final bids to complete the concrete shell work for the Subject Developments.

19. Developer A and Contractor A did not list Shell Subcontractor A’s final bid amount for concrete shell work in itemized construction contracts submitted to FHFC’s representatives for the Subject Developments.

20. Contractor A signed construction contracts for concrete shell work with its affiliated company **DAXC** at an inflated price for each of the Subject Developments even though **DAXC** did not have the personnel or equipment to complete any concrete shell work. In turn, **DAXC** subcontracted with Shell Subcontractor A to actually complete the concrete shell work on the Subject Developments at Shell Subcontractor A's actual cost of work price.

21. For example, on or about April 15, 2010, Contractor A signed a contract with **DAXC** to complete the concrete shell work on Vista Mar for an inflated price of approximately \$6 million. Shell Subcontractor A, however, had previously signed a contract with **DAXC** to complete the concrete shell work on Vista Mar at the actual cost of work price of approximately \$4.6 million.

22. Contractor A signed inflated construction contracts with **DAXC** on the Subject Developments with inflated amounts ranging from approximately \$200,000 to \$1.5 million for a total inflation on the four developments of approximately \$3.4 million.

23. Developer A then submitted the inflated construction contracts to FHFC's representatives for the receipt of federal tax credits and grant monies. These inflated construction contracts also inflated Developer A's and Contractor A's fees by approximately \$800,000. As a result of the **DAXC** inflated construction contract scheme, FHFC allocated approximately \$4.2 million in excess federal funds that it otherwise would not have allocated.

24. From 2009 to 2011, Shell Subcontractor A completed the concrete shell work on the Subject Developments at its final bid price. **DAXC** did not conduct any construction or concrete shell work on the Subject Developments. Nonetheless, during that period, **DAXC** retained the excess funds from the inflated construction contracts.

25. On or about November 8, 2011, among other similar wire transfers, Contractor A's principals received wire transfers of payments of approximately \$2.5 million from the inflated construction contract scheme from the **DAXC** bank account.

Theft of Government Money
(18 U.S.C. § 641)

26. The General Allegations and Theft of Government Money Scheme sections of this Information are realleged and incorporated herein.

27. On or about November 8, 2011, in Miami-Dade and Broward Counties, in the Southern District of Florida, and elsewhere, the defendant,

DAXC, LLC,

did knowingly and willfully embezzle, steal, purloin, and convert to its own use and gain, a thing of value of the United States and of a department and agency thereof, the aggregate amount of which exceeded \$1,000.00, that is, Internal Revenue Code Section 42 federal tax credits and United States Department of Treasury grant monies, to which he was not entitled, in violation of Title 18, United States Code, Section 641.

FORFEITURE
(18 U.S.C. § 981)

1. The General Allegations and Theft of Government Money Scheme sections of this Information are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant, **DAXC, LLC**, has an interest.

2. Upon conviction of the violation of Title 18, United States Code, Section 641, charged in this Information, the defendant shall forfeit to the United States any property, real or

personal, involved in such violation, or any property traceable to such property, pursuant to Title 18, United States Code, Section 981(a)(1)(C).

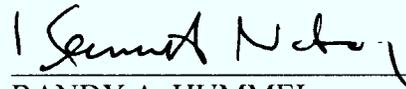
3. The property subject to forfeiture includes, but is not limited to, a forfeiture money judgment in the sum of \$4,212,825.00 in United States currency, which sum represents the value of property derived from proceeds of the offenses.

4. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States of America to seek forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p).

All pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and the procedures set forth in Title 21, United States Code, Section 853, as made applicable by Title 28, United States Code, Section 2461(c).



RANDY A. HUMMEL
ATTORNEY FOR THE UNITED
STATES, ACTING UNDER
AUTHORITY CONFERRED BY 28
U.S.C. § 515



MICHAEL R. SHERWIN
ASSISTANT U.S. ATTORNEY



MICHAEL N. BERGER
ASSISTANT U.S. ATTORNEY

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

DAXC, LLC,

Defendant.

_____ /

Superseding Case Information:

Court Division: (Select One)

X Miami Key West
 FTL WPB FTP

New Defendant(s) Yes No
 Number of New Defendants
 Total number of counts

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No) NO
 List language and/or dialect _____
4. This case will take 0 days for the parties to try.
5. Please check appropriate category and type of offense listed below:

(Check only one)		(Check only one)	
I	0 to 5 days	<u> X </u>	Petty
II	6 to 10 days	<u> </u>	Minor
III	11 to 20 days	<u> </u>	Misdem.
IV	21 to 60 days	<u> </u>	Felony
V:	61 days and over	<u> </u>	<u> X </u>

6. Has this case been previously filed in this District Court? (Yes or No) NO

If yes:
 Judge: _____ Case No. _____
 (Attach copy of dispositive order)
 Has a complaint been filed in this matter? (Yes or No) NO
 If yes:
 Magistrate Case No. _____
 Related Miscellaneous numbers: _____
 Defendant(s) in federal custody as of _____
 Defendant(s) in state custody as of _____
 Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes X No
8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes X No



 MICHAEL R. SHERWIN
 ASSISTANT UNITED STATES ATTORNEY
 COURT ID No. A5501230

*Penalty Sheet(s) attached

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: DAXC, LLC

Case No: _____

Count #: 1

Theft of Government Money

Title 18, United States Code, Section 641

*** Max. Penalty:** \$250,000 Fine

Count #: _____

***Max. Penalty:** _____

Count #: _____

***Max. Penalty:** _____

Count #: _____

***Max. Penalty:** _____

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

Appendix B – Deferred Prosecution Agreement

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-20171-CR-UU

UNITED STATES OF AMERICA

v.

DAXC, LLC,

Defendant.

DEFERRED PROSECUTION AGREEMENT

Defendant DAXC, LLC (the "Company"), pursuant to authority granted by the Company's Members, and the United States Attorney's Office (the "Office") enter into this deferred prosecution agreement (the "Agreement").

Criminal Information and Acceptance of Responsibility

1. The Company acknowledges and agrees that the Office will file the attached criminal Information in the United States District Court for the Southern District of Florida charging the Company with theft of government property, in violation of Title 18, United States Code, Section 641. In so doing, the Company knowingly waives its right to indictment on this charge, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b) and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the Southern District of Florida. The Office agrees to defer prosecution of the Company pursuant to the terms and conditions described below.

2. The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as set forth in the attached Statement of Facts, and that the facts described in the attached Statement of Facts are true and accurate. Should the Office pursue the prosecution that is deferred by this Agreement, the Company stipulates to the admissibility of the attached Statement of Facts in any proceeding, including any trial, guilty plea, or sentencing proceeding, and will not contradict anything in the attached Statement of Facts at any such proceeding.

Term of the Agreement

3. This Agreement is effective for a period beginning on the date on which the Information is filed and ending one year from that date (the "Term"). The Company agrees, however, that, in the event the Office determines, in its sole discretion, that the Company has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of the Company's obligations under this Agreement, an extension or extensions of the Term may be imposed by the Office, in its sole discretion, for up to a total additional time period of three years. If the Court rejects the Agreement, all the provisions of the Agreement shall be deemed null and void, and the Term shall be deemed to have not begun.

Future Cooperation and Disclosure Requirements

4. The Company, including its parent and affiliated companies, shall cooperate fully with the Office in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct under investigation by the Office at any time during the Term. The Company agrees that its cooperation pursuant to this paragraph shall include, but not be limited to, the following:

a. The Company shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or attorney work product doctrine with respect to its activities, those of its parent company and affiliates, and those of its present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which the Company has any knowledge or about which the Office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to the Office, upon request, any document, record or other tangible evidence about which the Office may inquire of the Company.

b. The Company shall use its best efforts to make available for interviews or testimony, as requested by the Office, present or former officers, directors, employees, agents and consultants of the Company. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation.

5. In addition to the obligations in Paragraph 4, during the Term, should the Company learn of any evidence or allegation of a violation of U.S. federal law, the Company shall promptly report such evidence or allegation to the Office.

Payment of Monetary Penalty

6. The Office and the Company agree that application of the United States Sentencing Guidelines (“USSG” or “Sentencing Guidelines”) to determine the applicable fine range yields the following analysis:

- a. The 2017 USSG are applicable to this matter.
- b. Offense Level. The total offense level is calculated as follows:

Base Offense Level	6
Loss Between \$3,500,000 and \$9,500,000	+18
Sophisticated Means	+2
Acceptance of Responsibility	-2
Timely Notification	-1
TOTAL	<u>20</u>

- c. Base Fine. Based upon USSG § 8C2.4(a)(1), the base fine is \$1,000,000.

The Company agrees to pay a monetary penalty in the amount of \$1,000,000 to the United States Treasury no later than five business days after the Agreement is fully executed. The Company and the Office agree that this penalty is appropriate given the facts and circumstances of this case, including. The \$1,000,000 penalty is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the Office that \$1,000,000 is the maximum penalty that may be imposed in any future prosecution, and the Office is not precluded from arguing in any future prosecution that the Court should impose a higher fine, although the Office agrees that under those circumstances, it will recommend to the Court that any amount paid under this Agreement should be offset against any fine the Court imposes as part of a future judgment. The Company acknowledges that no tax deduction may be sought in connection with the payment of any part of this \$1,000,000 penalty. The Company shall not seek or accept directly or indirectly reimbursement or indemnification from any source with regard to the penalty or disgorgement amounts that the Company pays pursuant to this Agreement or any other agreement

entered into with an enforcement authority or regulator concerning the facts set forth in the attached Statement of Facts.

Forfeiture

7. As a result of the Company's conduct, including the conduct set forth in the attached Statement of Facts, the parties agree the Office could institute a civil and/or criminal forfeiture action against certain funds held by the Company and that such funds would be forfeitable pursuant to 18 U.S.C. § 982. The Company hereby acknowledges that at least \$4,212.825.00 was proceeds of/involvement in transactions in violation of 18 U.S.C. § 641. The Company hereby agrees to forfeit to the United States the sum of \$4,212.825.00 (the "Forfeiture Amount"). The Company hereby agrees that, in the event the funds used to pay the Forfeiture Amount are not directly traceable to the transactions, the monies used to pay the Forfeiture Amount shall be considered substitute *res* for the purpose of forfeiture to the United States pursuant to 18 U.S.C. §§ 981, 982 and the Company releases any and all claims it may have to such funds. The Company shall pay the Forfeiture Amount plus any associated transfer fees no later than five business days after the Agreement is fully executed, pursuant to payment instructions provided by the Office in its sole discretion. The Company agrees to sign any additional documents necessary to complete forfeiture of the funds.

8. The Forfeiture Amount paid is final and shall not be refunded should the Office later determine that the Company has breached this Agreement and commences a prosecution against the Company. In the event of a breach of this Agreement and subsequent prosecution, the Office may pursue additional civil and criminal forfeiture in excess of the Forfeiture Amount. The Office agrees that in the event of a subsequent breach and prosecution, it will recommend to the

Court that the amounts paid pursuant to this Agreement be offset against whatever forfeiture the Court shall impose as part of its judgment. The Company understands that such a recommendation will not be binding on the Court.

Deferred Prosecution

9. In consideration of the undertakings agreed to by the Company herein, the Office agrees that any prosecution of the Company (its affiliates, members, employees, and agents) for the conduct set forth in the attached Statement of Facts be and hereby is deferred for the Term. To the extent there is conduct disclosed by the Company that is not set forth in the attached Statement of Facts, such conduct will not be exempt from further prosecution and is not within the scope of or relevant to this Agreement.

10. The Office further agrees that if the Company fully complies with all of its obligations under this Agreement, the Office will not continue the criminal prosecution against the Company described in Paragraph 1 and, at the conclusion of the Term, this Agreement shall expire. Within three months of the full payment of the forfeiture and fine, the Office shall seek dismissal with prejudice of the criminal Information filed against the Company described in Paragraph 1, and agrees not to file charges in the future against the Company based on the conduct described in this Agreement and the attached Statement of Facts, unless there is a breach of this Agreement.

Breach of the Agreement

11. If, during the Term, the Company (a) commits any felony under U.S. federal law; (b) provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (c) fails to cooperate as set forth in Paragraphs 4 and 5 of this Agreement; or (d)

otherwise fails to completely perform or fulfill each of the Company's obligations under the Agreement, regardless of whether the Office becomes aware of such a breach after the Term is complete, the Company shall thereafter be subject to prosecution for any federal criminal violation of which the Office has knowledge, including, but not limited to, the charges in the Information described in Paragraph 1, which may be pursued by the Office in the U.S. District Court for the Southern District of Florida or any other appropriate venue. Determination of whether the Company has breached the Agreement and whether to pursue prosecution of the Company shall be in the Office's sole discretion. Any such prosecution may be premised on information provided by the Company or its personnel. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Office prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, the Company agrees that the statute of limitations as to any violation of theft of government funds (or related charges) that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the Office is made aware of the violation or the duration of

the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

12. In the event the Office determines that the Company has breached this Agreement, the Office agrees to provide the Company with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty days of receipt of such notice, the Company shall have the opportunity to respond to the Office in writing to explain the nature and circumstances of such breach, as well as the actions the Company has taken to address and remediate the situation, which explanation the Office shall consider in determining whether to pursue prosecution of the Company.

13. In the event that the Office determines that the Company has breached this Agreement: (a) all statements made by or on behalf of the Company to the Office or to the Court, including the attached Statement of Facts, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Office against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, the Company, will be

imputed to the Company for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole discretion of the Office.

14. The Company acknowledges that the Office has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Company breaches this Agreement and this matter proceeds to judgment. The Company further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

Public Statements by Company

15. The Company expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Company make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company set forth above or the facts described in the attached Statement of Facts. Any such contradictory statement shall, subject to cure rights of the Company described below, constitute a breach of this Agreement, and the Company thereafter shall be subject to prosecution as set forth in Paragraph 11 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the attached Statement of Facts will be imputed to the Company for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Office. If the Office determines that a public statement by any such person contradicts in whole or in part a statement contained in the attached Statement of Facts, the Office shall so notify the Company, and the Company may avoid a breach of this Agreement by publicly repudiating such statement(s) within five business days after notification. The Company shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating

to the matters set forth in the attached Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the attached Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Company in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Company.

16. The Company agrees that if it, if the parent company or any of its direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, the Company shall first consult with the Office to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Office and the Company; and (b) whether the Office has any objection to the release.

17. The Office agrees, if requested to do so, to bring to the attention of law enforcement and regulatory authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, including the nature and quality of the Company's cooperation and remediation. By agreeing to provide this information to such authorities, the Office is not agreeing to advocate on behalf of the Company, but rather is agreeing to provide facts to be evaluated independently by such authorities.

Limitations on Binding Effect of Agreement

18. This Agreement is binding on the Company and the Office but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the Office will bring the cooperation of the Company and its compliance with its other obligations

under this Agreement to the attention of such agencies and authorities if requested to do so by the Company.

Complete Agreement

19. This Agreement, including its attachments, sets forth all the terms of the agreement between the Company and the Office. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Office, the attorneys for the Company and a duly authorized representative of the Company.

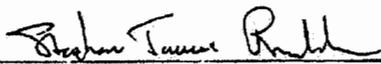
AGREED:

FOR DAXC:

Date: 2/20/17

By: 
Authorized Representative of DAXC LLC

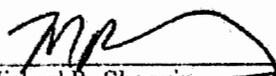
Date: 2/20/17

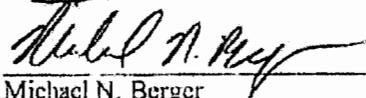
By: 
Stephen Binhak
Office of Stephen James Binhak, PLLC

FOR THE DEPARTMENT OF JUSTICE:

WIFREDO A. FERRER
United States Attorney

Date: 2/14/17

By: 
Michael R. Sherwin
Assistant U.S. Attorney


Michael N. Berger
Assistant U.S. Attorney

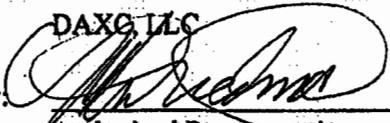
COMPANY OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for DAXC, LLC (the "Company"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Company, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Company. Counsel fully advised me of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Members of the Company. I have advised and caused outside counsel for the Company to advise the Members fully of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Company, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the Authorized Representative for the Company and that I have been duly authorized by the Company to execute this Agreement on behalf of the Company.

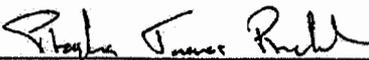
Date: 2/21/17

DAXC LLC
By: 
Authorized Representative

CERTIFICATE OF COUNSEL

I am counsel for DAXC (the "Company") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Company documents and have discussed the terms of this Agreement with the Company's Members. Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of the Company has been duly authorized to enter into this Agreement on behalf of the Company and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of the Company and is a valid and binding obligation of the Company. Further, I have carefully reviewed the terms of this Agreement with the Members and the Manager of the Company. I have fully advised them of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions and of the consequences of entering into this Agreement. To my knowledge, the decision of the Company to enter into this Agreement, based on the authorization of the Board of Directors, is an informed and voluntary one.

Date: 2/20/17 _____

By: 
Stephen Binhak
Office of Stephen James Binhak, PLLC
Counsel for DAXC, LLC

ATTACHMENT A

STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement (the "Agreement") between the United States Attorney's Office, Southern District of Florida (the "Office") and DAXC, LLC ("DAXC"). DAXC hereby agrees and stipulates that the following information is true and accurate. DAXC admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below. Should the Office pursue the prosecution that is deferred by this Agreement, DAXC agrees that it will neither contest the admissibility of, nor contradict, this Statement of Facts in any such proceeding.

DAXC was a shell construction subcontractor, which was set up to inflate the cost of four low-income housing contracts and obtain excess federal funds that ultimately went for the personal benefit of five individuals associated with DAXC and its affiliates.

Developer A applied for federal tax credits and grant monies issued by the federal government through a program administered by the Florida Housing Finance Corporation ("FHFC"). FHFC authorized the allocation of tax credits and grant monies based on development costs. Generally, a development with higher construction costs would receive more tax credits and/or grant monies. To receive the federal tax credit and/or grant allocation, FHFC required developers to submit an itemized construction contract between the developer and general contractor setting forth the compensation that the contractor would receive to build the development (the "construction contract"). FHFC authorized developers to earn a sixteen percent

fee of total development costs and contractors to earn a fourteen percent fee of total construction costs

Developer A used its captive contractor—Contractor A—as the contractor on numerous developments, including the following four developments built from 2009 to 2011 (together, the “Subject Developments”):

- **Cypress Cove:** an 80-unit low-income apartment complex in Winter Haven, Florida.
- **Orchid Grove:** an 80-unit low-income apartment complex in Homestead, Florida.
- **Pinnacle at Avery Glen:** a 140-unit low-income apartment complex in Sunrise, Florida.
- **Vista Mar:** a 110-unit low-income apartment complex in Miami, Florida.

Contractor A solicited final bids from subcontractors for each of the construction items related to the Subject Developments, including final bids for the concrete shell work from Shell Subcontractor A. Shell Subcontractor A agreed to complete the concrete shell work for its final bid price and did, in fact complete the concrete shell work on the Subject Developments.

Developer A and Contractor A did not list this final bid price for concrete shell work from Shell Subcontractor A in the itemized construction contracts submitted to FHFC’s representatives for the Subject Developments. Instead, Developer A and Contractor A submitted construction contracts to FHFC’s representatives with an inflated amount for concrete shell work. This inflated amount resulted in the award of excess federal funds for the Subject Developments.

Contractor A signed inflated contracts for the performance of the concrete shell work with the affiliated entity, DAXC, that inflated the concrete shell cost for each of the Subject Developments by a total of approximately \$3.4 million compared to Shell Subcontractor A's final bid prices. This contract inflation also inflated the developer's and contractor's fees available to Developer A and Contractor A by approximately \$800 thousand. DAXC did not have the equipment, personnel, or manpower to complete the concrete shell work for the projects.

As a result of the inflated construction contracts, FHFC authorized excess federal tax and grant monies, funds of which ultimately went to DAXC for the Subject Developments that were neither needed for or used for construction. From the contract inflation proceeds, DAXC received the inflated proceeds and directly distributed over \$3.1 million in funds for the personal benefit of five individuals associated with DAXC and its affiliates.

Appendix C – Summary of Pleas and Sentences

SUMMARY OF PLEAS AND SENTENCES

As of December 9, 2016, the criminal case and prosecution has been completed, with details listed below:

	Name / Title	Charges	Defendant plead:	Offense Ended	Judgment in a Criminal Case
The Developers	Lloyd Boggio, Chief Executive Officer (CEO), CDG from 2006 to mid-2007	2 counts: Conspiracy to steal government money and property ¹ ; 1 count: Conspiracy to Commit Wire Fraud ² ; 2 counts: Money Laundering ³	Guilty to 1 count: Money Laundering	3/23/2011	Imprisoned for 57 months (Reported on 2/7/17) Supervised release for 3 years Criminal Monetary Penalties: -Total assessment \$100; and -Forfeit \$7,174,357 US currency
	Matthew Greer, CEO, CDG from mid-2007 to 2012	2 counts: Conspiracy to steal government money and property	Guilty to 2 counts: Conspiracy to steal government money and property	2012	Imprisoned for 36 months concurrently (Reported on 1/27/17) Supervised release for 3 years Criminal Monetary Penalties: -Total assessment \$200; and -Forfeit \$16,004,137 US currency
	Michael Cox, Low-income Housing Developer, founded BHG	2 counts: Theft of government Money and property	Guilty to 1 count: Conspiracy to steal government money and property	2012	Probation for 5 years Criminal Monetary Penalties: -Total assessment \$100; and -Forfeit \$4.4 million US currency

¹ Title 18 USC 371

² Title 18 USC 1349

³ Title 18 USC 1957

	Gonzalo DeRamon, Low-income Housing Developer, founded BHG	2 counts: Conspiracy to steal government money; 1 count: Money Laundering; and 1 count: Obstruction of Justice ⁴	Guilty to 2 counts: Conspiracy to steal government money and property	2012	Imprisoned for 18 months concurrently (Reported on 1/27/17) Supervised release for 3 years concurrently Criminal Monetary Penalties: -Total assessment \$200; and -Forfeit \$4.4 million US currency
The Contractors	Arturo Hevia, Principal, founded Design Management and Builders Corporation	1 count: Conspiracy to steal government money and property	Guilty to 2 counts: Conspiracy to steal government money and property	2012	Probation for 3 years Criminal Monetary Penalties: -Ordered to pay \$20,000
	Michael Runyon, founded BJ&K Construction, Inc.	1 count: Conspiracy to steal government money and property	Guilty to 1 count: Conspiracy to steal government money and property	2012	Probation for 3 years Criminal Monetary Penalties: -Total assessment \$200; -Total Fine \$12,500; and -Forfeit \$1,147,408 US currency
	Rene Sierra, GC, founded Siltek Affordable Housing, LLC	1 count: Conspiracy to steal government money and property	Guilty to 1 count: Conspiracy to steal government money and property	2012	Probation for 3 years Criminal Monetary Penalties: -Total assessment \$100; and -Forfeit \$1,214,000 US currency

⁴ Title 18USC 1519

Appendix D – AUSA Sherwin Letter



U.S. Department of Justice

*United States Attorney
Southern District of Florida*

*Michael R. Sherwin
Assistant United States Attorney
99 N.E. 4th Street
Miami, FL 33132
Phone (305) 961-9067
michael.sherwin@usdoj.gov*

March 6, 2017

Mr. Ken Reecy
Interim Executive Director
Florida Housing Finance Corporation
227 North Bronough Street
Tallahassee, FL 32301

Re: Carlisle Development Group Low-Income Housing Investigation

Mr. Reecy:

As you are aware, the United States Attorney for the Southern District of Florida, in conjunction with several federal law enforcement agencies, has been investigating numerous persons and corporate entities suspected of committing fraud in the low-income housing industry. After years of sustained effort, the United States successfully charged and convicted seven prominent South Florida real estate developers and general contractors. This case – *Carlisle Development Ground and Biscayne Housing Group* – was one of the first criminal cases in the nation that focused on fraud in the low-income construction industry and the theft of tens of millions of dollars in federal grant monies and IRS Section 42 tax-credits.

As a result of the Carlisle prosecution, corporate executives were held accountable for their actions and sentenced to federal prison. Additionally, more than \$25 million dollars of stolen federal grant money and tax credits were collected by the United States Attorney's Office and returned to the Treasury. Most important, however, is the deterrent effect this case has had on other actors contemplating committing fraud in the low-income housing program – such conduct will not be tolerated and those who abuse this critically important program will be prosecuted and punished.

None of the aforementioned success of this prosecution, however, could have been achieved without the assistance of the Florida Housing Finance Corporation (FHFC). From extensive document production, to witness interviews, to facilitating meetings between federal agents and numerous private underwriters, FHFC played a central role in the Carlisle investigation. Specifically, Candice Allbaugh, the Assistant Director of Multifamily Programs, distinguished herself in her expertise of the low-income housing tax credit process and FHFC procedure. Ms. Allbaugh was invaluable to our efforts, as were all members of the FHFC Multifamily Programs team.

In sum, the Carlisle case highlights how cooperation among state and federal agencies is not aspirational and will provide positive results when quality people are committed to a worthy mission.

Very respectfully,

A handwritten signature in blue ink, appearing to read 'MRS.', with a long horizontal flourish extending to the right.

Michael R. Sherwin
Assistant United States Attorney
Southern District of Florida/ Miami