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RE: ALLEGATIONS CONCERNING GHURA/LIHTC AWARD

J&G is a member of the GREAT Homes LLC and so is following the public statements being made recently by Mr. Marcel Camacho about the award of Low Income Housing Tax Credits. Some of the statements contain slanderous innuendo, predictably infer-able, about GREAT Homes, with effects reflecting on its members, Catholic Social Services, J&G and Calvo Finance. These statements were contained in letters released to the press and widely reported in most media and followed up by them with more public comment.

I was not involved in the preparation, submission, presentation or negotiation of the GREAT Homes submission, so will not speak to the facts or circumstances. I do, however, take legal issue with the central plank of Mr. Camacho: his so-called authority.

Mr. Camacho claims he had “SOLE authority to accept or reject applications” and that the GHURA Board of Commissioners had no role in the LIHTC award. This is simply not true.

Mr. Camacho was “Executive Director”, but that is a title, not a description of the scope of his authority. In the legislative scheme, the Executive Director of GHURA is simply an administrative employee.

12 GCA § 5103(a) created GHURA as a “public body corporate and politic”. It also constituted GHURA as “a ‘public housing agency’ within the meaning of the United States Housing Act of 1937, as amended, and a ‘local public agency’ within the meaning of Title I of the Housing Act of 1949, as amended.”

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§ 5103(a) also, pertinently, gives to the Authority “all the powers, rights, duties, privileges, functions and obligations prescribed or provided by this Article.”

The Authority is not governed by some mere “policy making board” as Mr. Camacho asserts. 12 GCA § 5103(b) vests all “powers, rights, privileges, functions and duties of the Authority” in a board of seven commissioners. It is an Authority with functions and duties as well as policy privileges.

§ 5103(c) gives the Governor, with the advice and consent of the Legislature, the duty and power to appoint the commissioners, and § 5103(g) gives the Governor the duty and power to designate the Chair and Vice-Chair.

“The Commissioners shall constitute the Board of Commissioners of the Authority. The Board may employ an Executive Director of the Authority who shall serve at the pleasure of the Board...” (§ 5103(g).)

There is nothing in the law that defines the authority of the Executive Director or grants the Executive Director any particular power or duty, although “the Authority may delegate to one or more of its officers, agents or employees, such powers and duties as it may deem proper”. Powers of delegation include, implicitly, the power to revoke delegation, and usually require the delegation to be in writing, defining the scope and duration of the particular authority.

Where the law is silent about the power and authority of the Executive Director (should the Board desire to have one), the law is explicit in granting all “powers, rights, privileges, functions and duties of the Authority” to the Commissioners, acting as a Board. (§ 5103(h).)

The Qualified Allocation Plan and application distinguish the powers of GHURA and the powers of the Executive Director in the LIHTC application process. First, “GHURA reserves the right to disapprove any application or project for any tax credit reservation or allocation, regardless of ranking....” Second, “the GHURA Executive Director ... shall have the authority to defer consideration of any application....”

Only GHURA has the final say to disapprove an application. The Executive Director can only defer consideration of an application, but not disapprove it. Mr. Camacho’s claim that he had “sole authority to accept or reject any or all of the applications” is not supported by the law or the documents.

Mr. Camacho claims the QAP grants him sole authority over the award of LIHTCs. The U.S. Housing and Urban Development (HUD), however, on its

website describing the allocation of LIHTCs, explains that the allocation is made by a state agency, and provides a link that points to, in Guam's case, GHURA. Federal law does not grant the Executive Director any authority, nor does it even refer to one; its concern is with the "state agency".

There is nothing in either the HUD rules or local law that grants the Executive Director of GHURA sole authority to allocate the credits, and it would be a breach of the Guam laws mentioned above for the Commissioners to abdicate their duties to the Executive Director even if they wanted to.

Mr. Camacho has made way too much of his claim of authority, and has obviously failed to appreciate the limitations of it.

Respectfully,

/s/

John Thos. Brown