STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

WESTMONT PARK PARTNERS, LP, **App. No. 2009-187C**
and JANIE POE ASSOCIATES 3, LLC, **App. No. 2009-089C**

Petitioners,

v. **FHFC Case No. 2010-019UC**

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on June 18, 2010, pursuant to Sections 120.569 and 120.57(2), Florida Statutes. On or before application deadline, Westmont Park Partners, LP and Janie Poe Associates 3, LLC, ("Petitioners") [1, 2] submitted their 2009 Universal Cycle Applications ("Applications") to Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation housing credits. Petitioners' applications met all of Florida Housing's threshold application requirements, received the maximum application score and the maximum tie-breaker points. However, based on its

[1] Petitioner, NVC-Spring Hill, Ltd. voluntarily dismissed its Petition prior to the informal hearing.
[2] Florida Housing filed a Motion to Dismiss Petitioner Verandas of Punta Gorda, LLP ("Verandas") for lack of standing. The Hearing Officer subsequently issued an Order Closing File, as it became apparent during oral argument on the Motion that the issues required a resolution of disputed issues of material fact which could not be resolved in an informal hearing. Verandas' Petition is therefore severed from this case and currently remains pending resolution.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION
Wilda M Harris /DATE: 6/18/2010

ranking order relative to other applications under Florida Housing's ranking methodology there were not enough housing credits available to fund Petitioners' Applications.

Thereafter, Petitioners filed a "Second Amended Petition for Administrative Proceeding" pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rule 67-48.005(5), Florida Administrative Code, in which it challenged Florida Housing's scoring of twelve (12) competing applications. Petitioner alleged that application numbers 2009-244C, 2009-245C, 2009-246C, 2009-247C, 2009-248C and 2009-249C, submitted by Atlantic Housing Partners, LLLP ("Atlantic Housing"); application numbers 2009-238C, 2009-239C, and 2009-240C submitted by Southern Affordable Development, LLC ("SAD"); and application numbers 2009-241C, 2009-242C and 2009-243C submitted by WHS Development Services, LLC ("WHS") were Related Applications in violation of Florida Housing's rules and should be designated as Priority II applications. Petitioner alleged that but for Florida Housing's erroneous scoring of those applications, Petitioner's application would have received its requested housing credit funding.

Florida Housing reviewed the Petition pursuant to Section 120.569(2)(c), Florida Statutes, and determined that the Petition did not raise disputed issues of material fact. An informal hearing was held in this case on May 21, 2010, in

Tallahassee, Florida, before Florida Housing's designated Hearing Officer, Diane Tremor. Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence, arguments, testimony presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as "Exhibit A." The Hearing Officer recommended Florida Housing enter a Final Order holding that Florida Housing's determination that the twelve (12) competing applications challenged by the Petitioner were not Related Applications as defined in Florida Housing's Rules.

On June 16, 2010, Petitioners filed a Written Argument in response to the Recommended Order, pursuant to Rule 67-48.005, Florida Administrative Code.

RULING ON PETITIONERS' WRITTEN ARGUMENT

The Written Argument presented by the Petitioner in opposition to the Findings of Fact and Conclusions of Law in the Recommended Order is essentially the same argument made at the informal hearing, where the Hearing Officer upheld Florida Housing's determination that Petitioner presented insufficient evidence to establish that the subject applications were Related Applications pursuant to Rule 67-48.002(100), Florida Administrative Code. The Board finds no reason to depart from that finding, and finds that the Hearing Officer's Findings of Fact and

Conclusions of Law are based on competent, substantial evidence. The Written Argument presented by Petitioner is therefore rejected.

RULING ON THE RECOMMENDED ORDER

The Findings of Fact and Conclusions of Law of the Recommended Order are supported by competent substantial evidence.

ORDER

In accordance with the foregoing, it is hereby **ORDERED:**

1. The arguments presented in Petitioner's Written Argument are specifically rejected.

2. The Findings of Fact of the Recommended Order are adopted as Florida Housing's Findings of Fact and incorporated by reference as though fully set forth in this Final Order.

3. The Conclusions of Law of the Recommended Order are adopted as Florida Housing's Conclusions of Law and incorporated by reference as though fully set forth in this Final Order.

Accordingly, it is found and ordered that the twelve (12) applications challenged by the Petitioner, to wit, application numbers 2009-244C, 2009-245C, 2009-246C, 2009-247C, 2009-248C and 2009-249C, submitted by Atlantic

Housing; application numbers 2009-238C, 2009-239C, and 2009-240C submitted by SAD; and application numbers 2009-241C, 2009-242C and 2009-243C submitted by WHS were not scored in error with regard to Priority I designation as they are not Related Applications pursuant to Rule 67-48.002(100), Florida Administrative Code. The Petitions filed in this matter are therefore DISMISSED.

DONE and ORDERED this 18th day of June, 2010.

FLORIDA HOUSING FINANCE CORPORATION

By: _____
Chairperson

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

WESTMONT PARK PARTNERS, LP;	FHFC APP. NO. 2009-0187C
THE VERANDAS OF PUNTA GORDA, LLP;	FHFC APP. NO. 2009-015C
and JANIE POE ASSOCIATES 3, LLC,	FHFC APP. NO. 2009-089C

Petitioners,

vs. FHFC CASE NO. 2010-019C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, and Rule 67-48.005(5), Florida Administrative Code, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in the captioned proceeding on May 21, 2010, in Tallahassee Florida.

APPEARANCES

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and

EXHIBIT A

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For Respondent: Matthew A. Sirmans, Esq.
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STATEMENT OF THE ISSUES

There are no disputed issues of material fact in this proceeding.[1] The issue for determination in this proceeding is whether twelve applications submitted in the 2009 Universal Cycle should have been designated as Priority II applications because they exceeded the limit upon Priority I "Related Applications", as defined by Respondent's rules. Secondary issues raised in the Second Amended Petition were whether five applications should have been rejected because they were "scattered sites" and whether one application should have been rejected because of an equity commitment letter error. In subsequent Final Orders, Respondent Florida Housing acknowledged its errors in the scattered site cases and in the equity commitment letter

[1] See subsequent Preliminary Statement's discussion of disputed issues of fact regarding the standing of The Verandas of Punta Gorda, LLP, one of the Petitioners named in the Second Amended Complaint.

case. Accordingly, no findings of fact or conclusions of law are included regarding those two issues.

PRELIMINARY STATEMENT

The Second Amended Complaint named four Petitioners. One of those Petitioners, NVC–Spring Hill, LTD., noticed its voluntary dismissal prior to the hearing. The Respondent, Florida Housing, moved to dismiss another of the Petitioners, The Verandas of Punta Gorda, LLP, on the ground that such Petitioner lacked standing to request an administrative hearing. It became apparent during oral argument on the Motion to Dismiss that the issues raised in support of the Motion required a resolution of disputed issues of material fact, which issues could not be resolved in an informal hearing. Accordingly, the issue as to The Verandas' standing must be addressed in a subsequent formal hearing held pursuant to Section 120.57(1), Florida Statutes. A separate Order closing file as to The Verandas has been entered by the undersigned.

At the commencement of the final hearing on the merits, the parties submitted a Joint Stipulation of Facts and Exhibits. The Joint Stipulation basically describes the application process and the scoring of Petitioners' applications. It was marked and received as Joint Exhibit 1, is attached to this Recommended Order as Attachment A, and the facts recited therein are incorporated in this Recommended Order. Joint

Exhibits 2 through 4 and Petitioners' Exhibits 1 through 10, portions of Exhibit 11 (all but pages 226 through 261), portions of 12 (pages 322 through 422), 14, 16 through 23 and 25 through 28 were received into evidence.

The parties timely filed their Proposed Recommended Orders subsequent to the hearing, and those have been fully considered by the undersigned.

FINDINGS OF FACT

Based upon the undisputed facts and documents received into evidence at the hearing, the following relevant facts are found:

1. Along with other competing applicants, Petitioners Westmont Park Partners, LP and Janie Poe Associates 3, LLC (hereinafter referred to as Petitioners) submitted applications for tax credit funding in the 2009 Universal Cycle. Both Petitioners met all of Florida Housing's threshold application requirements, received the maximum base application score of 70 points, the maximum ability-to-proceed tie-breaker score of 6.0 points and the maximum proximity tie-breaker score of 7.5 points. Each was properly designated as a Priority I application. Pursuant to Florida Housing's ranking methodology, there were not enough tax credits available to fund Petitioners. Had the applications at issue in this proceeding been designated as Priority II applications, Petitioners would have received funding.

2. The Universal Application Package, or UA 1016 (Rev. 5-09), which

includes both forms and instructions, is adopted as a rule. *See*, Rule 67-48.004(1)(a), Florida Administrative Code. For the first time in the 2009 Universal Cycle, applicants were required by the application instructions to designate themselves as Priority I or Priority II applicants, and preference for funding was to be given to Priority 1 applicants. With certain exceptions, all Priority I applications for a given Set-Aside were to be funded before any Priority II applications were funded.

3. In essence the rules, as set forth in the instructions and in certain definitions contained within Rules 67-48.002 and 67-48.0075, Florida Administrative Code, require that applications submitted by related applicants be considered a "Pool of Related Applications." While there is no limit to the number of related applications within a Pool of Related Applications that may be submitted, there can be no more than three Priority I applications, unless applicants within the Pool have entered into Joint Ventures with a non-profit entity or public housing authority, in which case they are permitted up to three additional Joint Venture Priority I applications. If the number of Priority I applications designated by related applicants exceeds the limitations established in the Instructions, all such applications will be deemed to be Priority II applications. (Application Instructions, Part I.B)

4. The Priority I/Priority II rules were challenged by Atlantic Housing Partners, LLLP. By Final Order dated July 14, 2009, the Administrative Law Judge

concluded that the rules did not constitute an invalid exercise of delegated legislative authority. Atlantic Housing Partners, LLLP v. Florida Housing Finance Corporation, (DOAH Case No. 09-2267RP). The application due date for the 2009 Universal Cycle was August 20, 2009.

5. The twelve applications at issue in the instant proceeding include six applications submitted as Priority I applications by Atlantic Housing Partners, L.L.L.P. (hereinafter "Atlantic"), three applications designated as Priority I by Southern Affordable Development, L.L.C. (hereinafter "Southern") and three applications designated as Priority I by WHS Development Services, L.L.C. (hereinafter "WHS"). The Atlantic applications are designated as Application Numbers 2009-244C through 2009-249C. The Southern applications are Application Numbers 2009-238C through 2009-240C. The WHS applications are Application Numbers 2009-241C through 2009-243C. Each of these three development entities referenced their own applications as the only Related Applications in a Pool of Related Applicants.

6. During the scoring process, upon the receipt of numerous challenges to the status of the 12 Atlantic, Southern and WHS applications as being related applications that were part of one common Pool of Related Applications, Florida Housing initially determined that the Atlantic and the WHS applications were related

and deemed them to be Priority II applications. This determination was thereafter rescinded and Priority I status was restored to the Atlantic and the WHS applications.

7. A "Related Application" and a "Pool of Related Applications" are defined by rule in terms of a sharing of one or more Principals or Affiliates. Rules 67-48.002(100) and (87), Florida Administrative Code. As relevant to this proceeding, an "Affiliate" is a person who "directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant or Developer" or who "directly or indirectly receives or will receive a financial benefit from a Development, except as further described in Rule 67-48.0075." Rule 67-48-002(4), Florida Administrative Code. Rule 67-48-0075(5) provides as follows:

> Financial Beneficiary and Affiliate, as defined in Rule 67-48-002, F.A.C., do not include third party lenders, third party management agents or companies, third party service providers, Housing Credit Syndicators, credit enhancers regulated by a state or federal agency, or contractors whose total fees are within the limit described in Rule 67-48.0072, F.A.C., provided such parties do not share in the profits of the Development.

8. As noted above, the application deadline for the 2009 Universal Cycle was August 20, 2010. The Application Instructions require that the Applicant entity be in existence as of the application deadline. The organizational filing for Southern occurred on August 19, 2009, and the organizational filing for WHS occurred on

August 18, 2009. Other than the name, address and Managers of the two entities, the Articles of Organization for both Southern and WHS are identical, both list the same Registered Agent and the filings for both were done by the same law firm. (Petitioners' Exhibit 10)

9. The twelve applications submitted by Atlantic, Southern and WHS were submitted to Florida Housing at the same time, and bear consecutive application numbers. (Petitioners' Exhibit 5)

10. The General Contractor for all 12 Atlantic, Southern and WHS applications is CPG Construction, L.L.P. CPG's qualifying agent is W. Scott Culp, who is a Principal of Atlantic Housing Partners Managers, L.L.L.C., which is the managing partner of Atlantic Housing Partners L.L.P. (Petitioners' Exhibits 2 and 14) The form that the General Contractor signs (Application Exhibit 13) contains a certification of a "willingness and intention to enter good faith negotiations or participate in a bidding process with the Applicant to act as the General Contractor for this proposed Development . . ." (Petitioners' Exhibit 2) There is no evidence of a contract or employment arrangement by Mr. Culp with the Southern or WHS applicants.

11. The project construction costs per wood frame unit for the 12 Atlantic, Southern and WHS proposals were considerably higher than the average cost per unit

for comparable proposals in applications submitted by other developers. (Petitioners' Exhibit 3) The Southern and WHS applications were structured so that the developer fees were deferred. (Petitioners' Exhibit 28) There was no evidence that the General Contractor would receive fees in excess of that permitted by Florida Housing's rules.

12. Regions Bank was the financing source for all 12 applications submitted on behalf of Atlantic, Southern and WHS. All 12 loan letters and equity letters were signed by the same person on behalf of Regions Bank on the same day and had exactly the same terms and payment schedules. The signatures on behalf of Atlantic, Southern and WHS were by different persons. (Petitioners' Exhibit 4)

13. The Southern and the WHS applications all designate Susan Whitney on behalf of Riverstone Residential Affordable, LLC as the management agent for their individual projects. (Petitioners' Exhibit 6)

14. Slocum Platts Architects, P.A. has submitted Architect Certifications for Atlantic applications submitted in prior Universal Cycles. All 12 Architect Certification forms submitted by Atlantic, Southern and WHS list Slocum Platts Architect, P.A. and are signed by William P. Platts. Each certification form certifies the architect's "willingness and intention to enter good faith negotiations or participate in a bidding process with the Applicant to act as the architect and/or engineer for this proposed Development . . ." (Petitioners' Exhibit 7)

15. The Attorney Certification forms submitted by both Southern and WHS identify GrayRobinson, PA - J. Darin Stewart as the attorney. This form also bears a certification of "willingness and intention to enter into good faith negotiations with the Applicant to act as the attorney of record for this proposed Development . . ." (Petitioners' Exhibit 8)

16. Richard Cloyd, on behalf of KPMG, signed the Certification of Accountant Form for both the Southern and the WHS applications. That form contains a certification of "willingness and intention to enter into good faith negotiations with the Applicant to serve as the Accountant for this proposed Development . . ." (Petitioners' Exhibit 9)

17. Petitioners presented evidence that several purchase and sale agreements used by Southern and WHS to demonstrate site control contained a "footer" on the bottom of the page referencing "Ahp," which Petitioners claim shows that those documents were produced on Atlantic's computer system. (Petitioners' Exhibit 11) Petitioners further assert that they "have information and reason to believe" that Atlantic was a previous purchaser of five of the six Southern and WHS development sites. No documents or other evidence was received verifying that information.

18. Petitioners point to Exhibit 9 of the Application to show a similarity in the organizational structure of Atlantic, Southern and WHS. An examination of these

documents, other than appearing similar in style and font, does not lead to the conclusion that the Atlantic, Southern and WHS entities are Affiliates of each other. (Petitioners' Exhibit 14)

19. A large number of Verification of Availability of Infrastructure Forms were executed by local officials or other entity infrastructure providers on the same date for the Atlantic, Southern and WHS applications. The date precedes the date that the Southern and WHS entities were formed, and reference the name and address of the development. (Petitioners' Exhibit 16)

20. With one exception, the same environmental consultant and surveyor supplied cure documentation forms for the Atlantic, Southern and WHS applications. (Petitioners' Exhibit 17)

21. Petitioners' Exhibit 18 demonstrates that two Atlantic applications, two WHS applications and one Southern application were withdrawn as of February 12, 2010. There was no evidence identifying the person who actually effectuated the withdrawal of those applications.

22. Prior to the formation of Southern as a legal entity, and prior to the 2009 Universal Cycle application deadline, CPG Construction LLLC, through W. Scott Culp, submitted to Orange County Workforce Housing Certification Applications for several projects which eventually became the subject of Southern's application to

Florida Housing filed on August 20, 2010. To support its development and construction experience, the Orange County application includes a summary of Mr. Culp's experience with Atlantic projects. (Petitioners' Exhibit 12, pages 322-422).

23. The three WHS applications selected a "homeless" designation as their demographic commitments. When a homeless designation is selected, an applicant must include a "Verification of Inclusion in Local Homeless Continuum of Care Plan by Lead Agency" as Exhibit 35 of its application. If no such Plan exists, the applicant must submit a needs analysis demonstrating the local need for homeless housing. (Application Instructions, Part III.D.3.b) The verification form, while requiring the identity of the development, does not require an identification of the developer. The WHS applications submitted the verification form signed by the Executive Director of the Homeless Service Network of Central Florida, verifying that the proposed development was in conformance with the Continuum of Care Plan on file with the State Office of Homelessness as of the application deadline. The Application Instructions do not require that the Continuum of Care Plan be submitted to Florida Housing. The Plan filed with the State Office of Homelessness on July 29, 2009, identifies the three projects which are currently the subject of the WHS applications, and states that an objective of the Plan is to partner with an affordable housing developer through Atlantic. (Petitioners' Exhibit 19) Based on this, Florida

Housing initially determined that Atlantic and WHS were related applicants. In almost identical "cure" documents submitted by Atlantic and WHS, it was asserted that Atlantic had met with representatives of the Homeless Service Network ("HSN") and had elected not to pursue applications with HSN because of the limitation imposed by Florida Housing on the number of Priority I applications that a developer could pursue and that such limitation took effect on August 6, 2009. The "cure " documents stated that as a result, a different developer (WHS) was pursuing the three projects. The documents affirmed that "Atlantic Housing is not the Developer or Co-Developer of Ridgewood Cove, Myrtle Cove, or Vine Place [the three current WHS projects] and is not a 'Related Application' to any of those three applications. . . . neither those Applicants nor their Developer shares any Principals of Affiliates with any Joint Venture or Non-Joint Venture Application in which Atlantic Housing is the Developer." (Petitioners' Exhibit 22)

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, Florida Administrative Code, the Informal Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. Disputed issues of material fact having arisen with regard to the standing of The Verandas of Punta Gorda, LLP, that

Petitioner is severed from this informal proceeding. The substantial interests of the remaining Petitioners, Westmont Park Partners, LP and Janie Poe Associates 3, LLC, are affected by Florida Housing's scoring in the 2009 Universal Cycle and have standing to bring this proceeding.

The issue for determination in this proceeding is whether the applications submitted on behalf of Atlantic, Southern and WHS, or any two of them, are "related applications" within the meaning of Florida Housing's rules so as to be subject to the limitations on the number of such applications which may be designated as Priority I applications. The issues raised in the Second Amended Petition regarding scattered sites and the equity commitment letter have previously been resolved by Final Order and are not addressed herein.

Pursuant to Rule 67-48.002(100), Florida Administrative Code, a "related application" is defined as an application

> submitted in the same Funding Cycle that shares one or more Principals or Affiliates of an Applicant or Developer common to any or all of the Principals or Affiliates of an Applicant or Developer in another Application in the same Funding Cycle.

The key words in this rule are "common", " Principals" and "Affiliates". A "Principal" is defined in Rule 67-48.002(92) in terms of partners, managers, officers, directors and shareholders. It is apparent from the organizational papers of Atlantic,

Southern and WHS that the three entities share no common Principals, and Petitioners do not contend otherwise.

As pertinent to the facts in this case, an "affiliate" is defined by Rule 67-48.002(4) as any person that

> (i) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant or Developer . . . (iii) directly or indirectly receives or will receive a financial benefit from a Development except as further described in Rule 67-48.0075, F.A.C. . . .

The further description set forth in Rule 67-48.0075(5) exempts from the definition of "financial beneficiary" and "affiliate"

> third party lenders, third party management agents or companies, third party service providers, . . . or contractors whose total fees are within the limit described in Rule 67-48.0072, F.A.C., provided such parties do not share in the profits of the Development.

The determination of whether the applications submitted on behalf of Atlantic, Southern and/or WHS share one or more "affiliates"with each other must be decided in accordance with the above rules.

Petitioners have demonstrated that the three sets of applications submitted by Atlantic, Southern and WHS have many commonalities. The twelve applications were submitted at the same time and some were withdrawn at the same time. The projects each have the same general contractor, the same financing source, the same

architect, the same surveyor, the same environmental consultant and some similarity in organizational structure. The Southern and WHS applications utilize the same accountant, the same attorney and the same management agent. However, none of these commonalities establish by a preponderance of the evidence that any of the events, persons or entities identified above demonstrate a direct or indirect control by or from such individuals or entities upon any or all of the other two applicants. There is no evidence that any of the service providers is controlled by any of the applicants.

Moreover, there is an exception to the definition of "affiliate" which allows the use of the same third party service provider by multiple applicants as long as such service providers do not share in the profits of the Development. Petitioners presented no evidence that the general contractor, bank, architect, accountant, attorney, management agent, surveyor, or environmental consultant would "share in the profits" of the developments at issue.

Petitioners attempted to demonstrate that the general contractor for all three applicant entities would somehow benefit from the higher costs of the projects contained within the 12 applications, as compared to the construction costs of other applicants, and that this would translate into a financial benefit to Atlantic. Petitioner failed to demonstrate how Atlantic would exercise control so as to directly or indirectly benefit from the construction costs of the Southern or the WHS

applications. Indeed, Petitioners failed to demonstrate that any funds or profits inuring to Southern or WHS would flow to Atlantic.

Petitioners further attempted to demonstrate that Atlantic controlled Southern and WHS by producing evidence that Atlantic was involved in the Purchase and Sale Agreements regarding certain real property over which it had a prior interest and, further, by showing that Atlantic was recognized as a partner in certain "homeless" developments named in a local Continuum of Care Plan. The exhibits offered by Petitioners simply do not establish the "control" required by Respondent's rules to demonstrate the existence of "related applications." The evidence of the commonalities among the applications submitted on behalf of Atlantic, Southern and WHS is insufficient to conclude that any of those applicants were "affiliates" of each other. The rules allow third party service providers to be a part of different applications. Unless such service providers share in the profits of the development or otherwise directly or indirectly control the various applicants or developer, they do not meet the definition of an "affiliate" within Florida Housing's rules.

There is no doubt that Atlantic did not support the 2009 rules regarding related applications and the Priority I/Priority II designations in the scoring process, as indicated by its rule-challenge proceeding before the Division of Administrative Hearings. There is also evidence that Atlantic had some prior interest in some of the

projects which later became the focus of the Southern and the WHS applications. However, having lost its legal challenge to such rules by Final Order dated July 14, 2009, steps were taken to divest Atlantic's interest in such projects. This does not constitute a violation of Respondent's rules, nor does it result in the conclusion that Atlantic, or any of its Principles or Affiliates, directly or indirectly controls, is controlled by, or is under common control with Southern or WHS. Florida Housing's rules do not address real estate transactions prior to the application deadline date. Presumably, Florida Housing could have enacted rules which take into account the ownership or control over specific developments within three months or any other specified period of time prior to the application deadline. It did not do so. As it currently stands, Florida Housing has no control or oversight over what developers do with proposed developments prior to the application deadline.

Based upon the documents submitted into evidence and the duly adopted rules which govern this proceeding, it is concluded that Florida Housing did not err in its determination that the Atlantic, Southern and WHS applications were not "related applications" for the purpose of the numeric limitations upon Priority I designations.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that Florida Housing's determination that the applications

submitted on behalf of Atlantic, Southern and WHS are not "related applications" be confirmed by Final Order.

Respectfully submitted this 11th day of June, 2010.

Diane D. Tremor

DIANE D. TREMOR
Hearing Officer for Florida
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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

WESTMONT PARK PARTNERS, LP	FHFC Application No. 2009-0187C
THE VERANDAS OF PUNTA GORDA, LLP	FHFC Application No. 2009-0154C
JANIE POE ASSOCIATES 3, LLC	FHFC Application No. 2009-089C
Petitioners,	
vs.	FHFC CASE NO.: 2010-019UC
FLORIDA HOUSING FINANCE CORPORATION,	
Respondent.	

_____/

JOINT STIPULATION OF FACTS AND EXHIBITS

Petitioners, WESTMONT PARK PARTNERS, LP ("Westmont"); THE VERANDAS OF PUNTA GORDA, LLP ("Verandas"); JANIE POE ASSOCIATES 3, LLC ("Janie's Garden") (collectively "Petitioners") and Respondent, Florida Housing Finance Corporation, ("Florida Housing") by and through undersigned counsel, submit this stipulation for purposes of expediting the informal hearing scheduled for 1:00 pm, May 21, 2010, in Tallahassee, Florida, and agree to the following findings of fact and to the admission of the exhibits described below:

STIPULATED FACTS

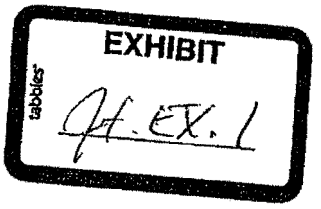
1. Petitioners are Florida corporations and limited partnerships in the business of providing affordable housing. The business addresses of the Petitioners are as follows:

A) Westmont, 8380 Resource Drive, Suite 1, West Palm Beach, Florida 33404

B) Verandas, 3629 Madaca Lane, Tampa, Florida 33618

C) Janie's Garden, 3 East Stow Road, Marlton, New Jersey 08053

ATTACHMENT A



2. Florida Housing is a public corporation, 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. See Section 420.504, Fla. Stat., and Rule Chapter 67-48, Fla. Admin. Code.

Background

3. Florida Housing administers various affordable housing programs including the Housing Credit (HC) Program pursuant to Section 42 of the Internal Revenue Code (IRC), Section 420.5099, Fla. Stat., and Rule Chapter 67-48, Fla. Admin. Code under which Florida Housing is designated the Housing Credit agency for the State of Florida.

4. The 2009 Universal Cycle Application, through which affordable housing developers apply for funding under various affordable housing programs administered by Florida Housing is adopted as the Universal Application Package or UA1016 (Rev. 5-09) by Rule 67-48.004(1)(a), Fla. Admin. Code, respectively, and consists of Parts I through V with instructions.

5. Because the demand for an allocation of Housing Credits exceeds that which is available under the HC Programs, qualified affordable housing developments must compete for this funding. 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, respectively. Specifically, Florida Housing's application process for the 2009 Universal Cycle is set forth in Rule and 67-48.001-.005, Fla. Admin. Code and involves the following:

a. the publication and adoption by rule of an application package;

b. the completion and submission of applications by developers;

c. Florida Housing's preliminary scoring of applications;[1]

d. an initial round of administrative 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 administrative 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, via informal or formal administrative proceedings, Florida Housing's evaluation of any item for which the applicant was deemed to have failed to satisfy threshold or received less than the maximum score; and

j. final ranking scores, ranking of applications, and allocation of Housing Credits and SAIL (or other) funding to successful applicants as well as those who successfully appeal through the adoption of final orders.

6. On or about August 20, 2009, each of the Petitioners submitted an application to Florida Housing seeking competitive 9% housing tax credit funding. Westmont applied for $1,823,905 in annual tax credits to help finance the development of its project, a 132-unit apartment complex in Orange County, Florida. Verandas applied for $1,144,046 in annual tax credits to help finance the development of its project, a 60-unit apartment complex in Charlotte County, Florida. Janie's Garden applied for $1,144,046 in annual tax credits to help finance the development of its project, a 73-unit apartment complex in Sarasota County, Florida.

[1] Certain items in the application are designated threshold items (the failure to satisfy which will result in the rejection of the application), while other items, if satisfied, result in the award of points.

7. On February 26, 2010, Florida Housing's Board of Directors adopted "Final Post-Appeal Scores and rankings." Westmont met all of Florida Housing's threshold application requirements, received the maximum base application score of 70 points, the maximum ability-to-proceed tie-breaker score of 6.0 points and the maximum proximity tie-breaker score of 7.5 points. The Verandas project met all of Florida Housing's threshold application requirements, received the maximum base application score of 70 points, the maximum ability-to-proceed tie-breaker score of 6.0 points and the maximum proximity tie-breaker score of 7.5 points. The Janie's Garden project met all of Florida Housing's threshold application requirements, received the maximum base application score of 70 points, the maximum ability-to-proceed tie-breaker score of 6.0 points and the maximum proximity tie-breaker score of 7.5 points. Each of the Petitioners' applications were in Leveraging Group A and each of Petitioner's applications were properly designated Priority I applications.

8. The applications that are the subject of these proceedings are as follows: No. 2009-121CH Ability Mayfair; No. 2009-240C, The Fountains at Pershing Park; No. 2009-244C, Town Park Apartments Phase II; No. 2009-246C, The Fountains at San Remo Court Phase I; No. 2009-247C, Howell Branch Cove; No. 2009-097C, Lodges at Pinellas Park; No. 2009-123C, Progresso Pointe; No. 2009-144C, Dr. Kennedy Homes; No. 2009-146C Ehlinger Apartments; and No. 2009-255C, Town Park Crossing.

9. Applications numbers 2009-244C, 2009-245C, 2009-246C, 2009-247C, 2009-248C and 2009-249C were submitted by the same development team, Atlantic Housing Partners, LLLP.

10. Application numbers 2009-238C, 2009-239C, and 2009-240C were submitted by the same development team, Southern Affordable Development, LLC.

11. Pursuant to Florida Housing's ranking methodology, including the application of a Set Aside Unit Limitation (SAUL), there were not enough tax credits available in the Medium County Geographic Set-Aside to fund Petitioners, Verandas, and Janie's Garden.

12. Pursuant to Florida Housing's ranking methodology, including the application of a Set Aside Unit Limitation (SAUL), there were not enough tax credits available in the Large County Geographic Set-Aside to fund Petitioner, Westmont.

13. Under Rule 67-48.005, Fla. Admin. Code, Petitioners[2] have standing to initiate the instant proceedings.

EVIDENTIARY STIPULATIONS

The parties stipulate, subject to objections on the grounds of applicability, to the official recognition of any Final Orders of the Florida Housing Finance Corporation and to any Rules promulgated by the Florida Housing Finance Corporation, including past and present versions of the Universal Cycle Application, Instructions, and any forms and exhibits attached thereto or incorporated by reference therein.

The parties offer the following joint exhibits into evidence:

Exhibit 1:	This Prehearing Stipulation.
Exhibit 2:	2009 Universal Cycle Rankings (final), dated February 26, 2009.
Exhibit 3:	Excerpts from the 2009 Universal Cycle Application Instructions: Part I.B
Exhibit 4:	Excerpts from Rule Chapter 67-48, Fla. Admin. Code: 67-48.002(4), 67-48.002(87), 67-48.002(92), 67-48.0075

[2] Subject to the Hearing Officer's ruling on Florida Housing's Motion to Dismiss Petitioner, The Verandas of Punta Gorda, LLP, for Lack of Standing.

Respectfully submitted this 21th day of May, 2010.

By: _____

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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(3), Florida Administrative Code, all parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages, excluding the caption and certificate of service. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on June 16, 2010. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.