

**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
NVC – SPRING HILL, LTD.	FHFC Application No. 2009-0208C

Petitioners,  
vs.

*FHFC No.: 2010-099C*

FLORIDA HOUSING FINANCE CORPORATION,  
  
Respondent.

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**AMENDED PETITION FOR ADMINISTRATIVE PROCEEDING**

Petitioners, WESTMONT PARK PARTNERS, LP ("Westmont"); THE VERANDAS OF PUNTA GORDA, LLP ("Verandas"); JANIE POE ASSOCIATES 3, LLC ("Janie's Garden"); NVC – SPRING HILL, LTD ("NVC"), (collectively "Petitioners"), pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rules 28-106.301 and 67-48.005(5), Florida Administrative Code ("F.A.C."), hereby request an administrative proceeding to challenge the erroneous scoring and ranking by Respondent, the FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing"), of several competing applications for funding in the 2009 Universal Application Cycle. The challenged actions resulted in Florida Housing denying Petitioners requested federal tax credit funding. In support, Petitioners provide as follows:

1. The name and address of the agency affected by this action is:

Florida Housing Finance Corporation  
City Center Building, Suite 5000  
227 N. Bronough Street  
Tallahassee, Florida 32301-1329

Florida Housing is a public corporation created by law in section 420.504, Florida Statutes, to provide and promote the financing of affordable housing and related facilities in Florida. Florida Housing is an "agency" as defined in section 120.52(1), Florida Statutes, and is therefore subject to the provisions of Chapter 120, Florida Statutes.

2. 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
- D) NVC, 2602 Merida Lane, Tampa, Florida 33618

3. The name, address, telephone number, and fax number of the Petitioners' attorney, which shall be the Petitioners' address and telephone number for service purposes during the course of this proceeding is:

Michael P. Donaldson  
Carlton Fields  
215 S. Monroe Street, Suite 500  
Tallahassee, Florida 32301  
Telephone: (850) 224-1585  
Facsimile: (850) 222-0398

### **The Low Income Housing Tax Credit Program**

4. Each Petitioner has applied for an award of Low Income Housing Tax Credits, the sale of which will provide a significant portion of the funding for the construction of their respective affordable housing developments. The United States Congress has created this program, governed by Section 42 of the Internal Revenue Code ("IRC"), by which federal income housing tax credits are allotted annually to each state on a per capita basis to help facilitate private development of affordable low-income housing for families. These tax credits entitle the holder to a dollar-for-dollar reduction in the holder's federal tax liability, which can be taken for up to ten years if the project continues to satisfy all IRC requirements.

5. The tax credits allocated annually to each state are awarded by state "housing credit agencies" to single-purpose applicant entities created by real estate developers to construct and operate specific multi-family housing projects. The applicant entity then sells this ten-year stream of tax credits, typically to a "syndicator," with the sale proceeds generating much of the funding necessary for development and construction of the project. The equity produced by this sale of tax credits in turn reduces the amount of long-term debt required for the project, making it possible to operate the project at below-market-rate rents that are affordable to low-income and extremely-low-income tenants.

6. Pursuant to section 420.5099, Florida Statutes, Florida Housing is the designated "housing credit agency" for the State of Florida and administers Florida's low-

income housing tax credit program. Through this program, Florida Housing allocates Florida's annual fixed pool of federal tax credits to developers of affordable housing.

### **The 2009 Universal Application Cycle**

7. Florida Housing's available pool of federal tax credits each year is limited; accordingly, affordable housing developers must compete for this limited funding. To assess the relative merits of proposed developments, Florida Housing has established a competitive application process pursuant to Chapter 67-48, F.A.C. As set forth in Rules 67-48.002-005, F.A.C., Florida Housing's application process for 2009 consisted of the following:

- a. the publication and adaption by rule of a "Universal Application Package," which applicants use to apply for a variety of Florida Housings' administered funding programs, including federal tax credits and SAIL loans;
- b. the completion and submission of applications by developers;
- c. Florida Housing's preliminary scoring of applications ("Preliminary Scores");
- 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 NOPSE's submitted, with notice to applicants of any resulting change in their scores ("NOPSE Scores");
- f. an opportunity for the applicant to submit additional materials to Florida Housing to "cure" any items for which the applicant 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 NOAD's submitted, with notice to applicants of any resulting change in their scores ("Final Scores");

i. An opportunity for an applicant to challenge, via informal or formal administrative proceedings, Florida Housing's evaluation of any item in their own application for which the applicant received less than the maximum score;

j. Final Post-Appeal Scores, ranking, and allocation of tax credit funding to applicants, adopted by action of Florida Housing's Board of Directors; and

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

### **PETITIONERS' APPLICATIONS**

8. 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. NYC applied for \$1,275,000 in annual tax credits to help finance the development of its project, a 90-unit apartment complex in Hernando County, Florida.

9. 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. The NVC 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.

10. All Petitioners would have received the requested tax credit funding if not for Florida Housing's erroneous final scoring and ranking of the following applications: (a) Town Park Apartments, Application No. 2009-244C; (b) Howell Branch Cove, Application No. 2009-247C; (c) San Remo Court, Application No. 2009-246C; (d) The Fountains at Pershing Park Na. 2009-240C; (e) Ability Mayfair Application No. 2009-121CH; (f) Dr. Kennedy Homes, Application No. 2009-144C, and (g) Ehlinger Apartments, Application No. 2009-146C.

11. The Verandas, Janie's Garden, and NVC applications competed for tax credit funding in the Medium County Geographic Set-Aside. Pursuant to Florida Housing's ranking methodology, there are not enough tax credits to fund these deals. As explained below, if Florida Housing had not erroneously scored Applications No. 2009-244C, 2009-246C and 2009-247C, Petitioners the Verandas, Janie's Garden, and NVC would have received their requested tax credit funding for the Medium County Category. These Petitioners' substantial interests are therefore materially and adversely affected by Florida Housing's improper actions and these Petitioners have standing to challenge those actions in this proceeding.

12. Westmont competed for tax credit funding in the Large County Geographic Set-Aside. Pursuant to Florida Housing's ranking methodology there are not enough credits to fund this deal. As explained below, if Florida Housing had not erroneously scored application 2009-240C, 2009-144C, 2009-146C and 2009-121HC, which are all Large County application, Westmont would have received its requested tax credit funding. Westmont's substantial interests are therefore materially and adversely affected by Florida Housing's erroneous actions and Westmont has standing to challenge those actions in this proceeding.

### **Related Applications and Priority I/Priority II Application Designation**

13. The issues raised in this challenge concern Florida Housing's failure to implement the application limitation provisions of the 2009 Universal Application in issuing its final scores and rankings. In the 2009 Universal Cycle, Florida Housing added

a new component to the application process which requires each Applicant to designate its Application as a "Priority I" or "Priority II" Application. In essence the applications submitted by related Applicants, Developers, the Principals or Affiliates of an Applicant, and the Principals or Affiliates of a Developer will, collectively, be considered a "Pool of Related Applications," and within each Pool of Related Applications 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. If Applicants within a Pool of Related Applications have entered into such "Joint Venture" relationships, then up to three joint Venture Applications within a given Pool can also be designated as Priority I applications. In essence, the rule limits Related Applicants to a maximum of six Priority I Applications, including a minimum of three Joint Venture applications. All Priority I applications for a given Set-Aside are funded before any Priority II applications are funded.

### **Basis for Priority I and Priority II**

14. The purpose of the Priority I/Priority II limitation was to level the playing field so that all applicants would have a fair opportunity to compete for limited funding resources. Over the years certain applicants were flooding the application process with increasing numbers of applications. With the increase in the number of applications being submitted, came the realization that many applications being submitted, so-called "shell applications," were not as complete or "fully cooked" as in the past. In essence, it was perceived that applicants were submitting applications to better their chances of



obtaining a low (and thus more favorable) lottery number with no real intent to proceed with all submitted applications. This perception is supported by the number of submitted applications with curable errors that applicants elected not to cure.

15. The practice of submitting large numbers of applications is known in the business as buying lottery tickets or lottery balls, in effect for \$3,000 each (the application fee charged by Florida Housing). For example, in the 2008 Cycle one applicant (Atlantic Housing) submitted 49 applications. This number of applications was, by far, more than any other applicant. Many, if not most, applicants would be unable to afford the \$147,000 it would cost simply to submit that number of applications. The more applications submitted by an applicant, the better chance that applicant has at obtaining at least one, if not multiple, low lottery numbers. Notwithstanding the efforts of Florida Housing to avoid this outcome, the vast majority of tax credit allocations awarded over the past several years have been awarded based upon the lottery number drawn by the applicant. In 2008, for example, 85% of the tax credits allocated to applicants by Florida Housing were determined by the lottery number assigned to the application. Indeed in 2008, over 40% of the tax credit allocation went to two large developers which included Atlantic. Likewise, 40% of the available SAIL funds went to Atlantic. (See *Atlantic Housing Partners LLP v. Florida Housing*, [FHFC Case No. 09-2267 RP] [where Atlantic unsuccessfully challenged the current Priority I/Priority II System]).

16. Implementation of the Priority I/Priority II provisions was intended to help ensure that Florida Housing's limited resources are allocated in an efficient manner by

ensuring that the applications received are ready to proceed and not mere shell applications. Staff time was being absorbed with reviews of applications that were neither ready, nor intended, to proceed absent a favorable lottery draw. Ability to proceed was selected as a limiting criterion because of the importance of timely commencement and completion of construction to a project's ability to retain the tax credits allocated to it. A low-income housing tax credit allocation may be lost, not only to the development but to the State, if a development is not timely completed.

17. The Priority I/Priority II provisions also aid Florida Housing in promoting diversification in its portfolio of Developments, ensuring that the State of Florida's affordable housing stock is not concentrated in the hands of only a few Developers, thereby protecting the State's investment in affordable housing. In this regard, the provisions help ensure the maximum use of resources and minimize the risks inherent in a limited base of developers. Indeed, Florida Housing is on record as asserting that a large concentration of Florida Housing's development portfolio in a smaller group of developers would be a "disastrous" situation in the current financial market.

18. Additionally, requiring Developers to select three or six Developments as Priority I applications would encourage local governments to commit funding and support to those prioritized Developments. Requiring Developers to prioritize their Applications will result in a smaller pool of higher quality Applications, placed in locations more in need of affordable housing. For these reasons, it is imperative that Florida Housing properly implement the Priority I and Priority II rules. Local governments often are not in a

position to determine which applications are real and which are shell. Forcing the applicants to make this determination saves local governments from attempting to sort through competing demands for commitment of local funds.

19. All Applications not expressly designated as Priority I Applications by the Applicant will be designated as Priority II Applications. The Universal Application, Instructions and Rules define the applicable terms and lists certain occurrences and circumstances that will result in an Application being designated a Priority II application by Florida Housing even if the Applicant designated the Application as Priority I.

20. "Pool of Related Applications" pursuant to Rule 67-48.002(87) F.A.C. means a group of Related Applications comprised of all Related Applications submitted in the same Funding Cycle that share among such Related Applications one or more **Principals** or **Affiliates** or Developer.

21. "Principal" is defined at Rule 67-48.002(92) F.A.C. to mean (i) any general partner of an Applicant or Developer, any limited partner of an Applicant or Developer, any manager or member of an Applicant or Developer, any officer, director or shareholder of an Applicant or Developer, (ii) any officer, director, shareholder, manager, member, general partner or limited partner of an Applicant or Developer, (iii) any officer, director, shareholder, manager, member, general partner or limited partner of any manager or member of an Applicant or Developer, and (iv) any officer, director, shareholder, manager, member, general partner or limited partner of any shareholder of an Applicant or Developer.

22. "Affiliate" is defined at Rule 67-48.002(4) F.A.C. to mean 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, (ii) serves as an officer or director of the Applicant or Developer or of any Affiliate of 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., or (iv) is the spouse, parent, child, sibling, or relative by marriage of a person described in (i), (ii) or (iii) above. (emphasis supplied).

23. Additionally, the Application Instructions, at Part I(B)(9) provides as follows:

All Applications designated as Priority I Applications within a Pool of Related Applications will be deemed by the Corporation to be Priority II Applications if (i) the Declaration of Priority I Related Applications form is not provided in each Application designated as a Priority I Application within the Pool of Related Applications, as required in paragraph B.4. above or **(ii) it is determined that the number of Applications designated as Priority I Applications within the Pool of Related Applications exceeds the limitations outlined in paragraph B.3. above.** (emphasis supplied).

24. Further the Instructions at Part I(B)(3) provides as follows:

There is no limit to the number of Related Applications within a Pool of Related Applications that may be submitted. However, within a Pool of Related Applications no more than six (6) Applications, all of which must be the same across the Pool of Related Applications, may be designated as Priority I Applications. Of those six (6) Priority I Applications, the following limitations apply: (i) no more than three (3) Applications may be Non-Joint Venture Applications, and (ii) no individual Public Housing Authority or Non-Profit may participate in more than three (3) Priority I Joint Venture Applications among all of the Priority I Joint Venture Applications submitted by all of the Applicants in the Funding Cycle.

25. In essence, the Rules governing the 2009 Universal Cycle set up a broad net to address and impede an applicant's ability to benefit from submitting as many applications as possible. The rules must be interpreted and enforced to achieve this goal.

**Basis Of Priority I/Priority II Scoring And Ranking Error**

26. In response to the Priority I/Priority II requirements, Applications numbers 2009-244C, 2009-245C, 2009-246C, 2009-247C, 2009-248C and 2009-249C, all submitted by Atlantic, at Exhibit 1.B., listed a total of six applications in Lake, Osceola and Seminole Counties as their only "Related Applications". All applications were designated as Priority I applications, and on its face these responses seem to comply with the application limitations and the "Pool of Related Applications" criteria.

27. However, in reality, Petitioners contend that at least twelve (12) applications submitted to Florida Housing in the 2009 Universal Cycle with Priority I designations are "related" to Atlantic. The Applications which Petitioners contend are related are, in addition to the six Priority I Applications listed by Atlantic above, three Priority I Non-Joint Venture Applications submitted by a newly-formed entity, Southern Affordable Development, L.L.C. ("Southern") as developer for Applications 2009-238C, 2009-239C, 2009-240C. Additionally, three Priority I Non-Joint Venture Applications were submitted by a newly-formed entity, WHS Development Services, L.L.C. ("WHS") as developer for Applications 2009-241C, 2009-242C, 2009-243C.

28. This Pool of Related Applications, consisting of 12 Priority I applications, is inconsistent with the limits on Priority I applications established by the 2009 Universal

Cycle. There is a common thread of identical actions, consultants, and documents which confirms that all twelve applications fall into the net of being related applications. Consequently, according to the rules adopted by Florida Housing for the 2009 Universal Cycle, each of these applications were appropriately reclassified by Florida Housing, and should have remained, reclassified, as Priority II applications.

29. Multiple NOPSEs were submitted challenging the Priority I status of all 12 applications. As a result of the submitted NOPSEs, Florida Housing agreed that 9 out of the 12 Applications were related and, in accordance with its Priority I/Priority II rules, redesignated them as Priority II applications in the NOPSE scoring round. The Applications so redesignated were Applications 2009-241C (WHS), 2009-242C (WHS), 2009-243C (WHS), 2009-248C (Atlantic), 2009-249C (Atlantic), 2009-244C (Atlantic), 2009-245C (Atlantic), 2009-246C (Atlantic), and 200-247C (Atlantic). In response to what was, in essence, the same cure submitted on behalf of all impacted applicants, Florida Housing rescinded its initial determination and restored the Priority I designation to all 9 applications. Petitioners contend that Florida Housing's decision was erroneous as the evidence will show that there is a common scheme and relationship between all these applications, as well as the Southern applications, as outlined below.

Common General Contractor.

30. The General Contractor identified at Exhibit 13 as CPG is common to all of the collective 12 applications of Atlantic, Southern, and WHS. CPG's qualifying agent is Mr. W. Scott Culp, who is a designated Principal of Atlantic. **(See Exhibit A).**

### Common Financial Benefit

31. The three Southern applications were all characterized by atypically high construction costs in Orange County for frame-built garden apartments, the designation type selected by the applicants in their applications. For instance, in Application 2009-240C, total construction costs listed in the application as \$9,904,319, or \$107,656 per unit for the planned 92 units. As the general contractor, Atlantic affiliate CPG is the primary beneficiary of higher construction costs. Among other benefits, the 14% General Contractor Fee is \$1,216,319. In contrast, the total construction costs for other proposed similar developments in the 2009 Universal Cycle were significantly less. Interestingly, in Application 2009-240C, as in the other Southern and WHS applications, the developer fee is fully deferred not only during the construction financing phase, but also in the permanent phase. It is hard to discern the financial benefits of the transactions to Kenneth L. White, the principal of Southern, and Charles B. Palmer, the principal of WHS, absent some other financial understanding.

### Common Debt and Equity Financing Source.

32. In this challenging financing environment, it would ordinarily be difficult for a new and inexperienced developer entities like Southern and WHS to obtain the necessary financing. However, Southern and WHS were able to obtain construction/permanent loan letters and equity investment letters for all six of their applications from Regions Bank, the same financing source used in all six of the 2009 Universal Cycle Applications submitted by Atlantic. All 12 loan letters, and all 12 equity

letters were signed by the same person – John Koromilas, Vice President of Commercial Real Estate. All 12 loan letters had exactly the same terms – the same interest rate, construction loan term, permanent loan term, amortization schedule, debt service coverage ratio and maximum loan-to-value amount. All 12 equity letters had the same major financial terms – payment schedule (1<sup>st</sup> installment: 45% of total equity, 2<sup>nd</sup> installment: 45%, 3<sup>rd</sup> installment: 8%, 4<sup>th</sup> installment: 2%), 95% of distributed cash flow to the general partner and 90% of residual proceeds from a sale or refinancing to the general partner. While WHS’s proposed homeless developments received a lower equity pricing, Southern even received the same equity pricing as that of the vastly more experienced and presumably financially stronger Atlantic. There was no discount applied to Southern’s lack of experience in the financing terms, nor did Atlantic receive any comparative benefit in its financing terms. **(See Exhibit B).**

Common Submission.

33. All 12 applications were submitted to Florida Housing at the same time on the final submission date of August 20, 2009. This fact is documented in that Application numbers are assigned based on the order and time of submission. Please note the consecutive numbering of Applications for Southern, WHS and Atlantic 2009-238C, 239C, 240C, 241C, 242C, 243C, 244C, 245C, 246C, 247C, 248C, 249C. **(See Exhibit C).**



Common Management Agent.

34. Both the Southern and the WHS applications have Riverstone Residential Affordable, LLC as the management agent, even though Southern's applications were for family and elderly projects, while WHS's three applications were all for homeless projects. **(See Exhibit D).**

Common Architect.

35. The architect, as listed in Exhibit 14, for all 12 applications of Atlantic, Southern and WHS is Slocum Platts Architects, P.A., based in Winter Park, Florida. Atlantic is also headquartered in Winter Park. All 12 Architect Certification forms are signed by William P. Platts, a principal of Slocum Platts. Slocum Platts has designed many previous projects for Atlantic. **(See Exhibit E).**

Common Attorney.

36. The Southern applications and WHS applications have a common attorney, J. Darin Stewart of Gray Rabinson, who signed the Attorney Certification in Exhibit 16 of these applications. **(See Exhibit F).**

Common Accountant.

37. Both the Southern WHS applications have the common accountant of Richard Cloyd of KPMG, who signed the Accountant Certification form in Exhibit 17 of these applications. **(See Exhibit G).**

Common Geographic Nexus.

38. All 12 applications were submitted in the four Central Florida counties that constitute Atlantic's traditional base of operations – Orange, Seminole, Osceola and Lake Counties. **(See Exhibit H).**

Newly Formed Development Entities.

39. Per records obtained from the Florida Secretary of State's Office, the organizational filing for Southern occurred on August 19, 2009, two days before the Application deadline. The organizational filing for WHS occurred on August 18, 2009. While it is common for *applicant* entities to be formed shortly before the application deadline, it is most unusual for a *developer* entity to be formed just before applications are submitted. The Articles of Organization for both Southern and WHS are identical. The filings for both Southern and WHS were done by the same law firm, which is also used by Atlantic, and all 12 applications have a common registered agent. **(See Exhibit I).**

Prior Purchase Agreements on Same Sites.

40. The three Southern applications all have Purchase Agreements executed on August 20, 2009, between Southern Affordable Services, Inc. ("Seller") and the respective applicant limited partnership entities ("Purchaser" and "Applicant"), with Scott D. Clark the signatory for both parties. All three Southern applications have previous purchase agreements between a third party seller ("Seller") and Southern Affordable Services, Inc. ("Purchaser") that were signed by Scott D. Clark on behalf of the Purchaser

and by the various Sellers on August 5 or 6, 2009. The Petitioners have information and reason to believe that for each of these three projects, there was a prior purchase agreement in 2009 in which Atlantic or an Atlantic affiliate was the purchaser of the same parcel that later became the subject of the three Southern purchase agreements that were included in their applications to satisfy the site control requirement. For two of the Southern projects, the infrastructure forms were executed nearly three months before the sites were put under contract by Southern. Similarly, there was a prior purchase agreement between an Atlantic affiliate and the Seller for Application 2009-242C that was terminated prior to the new WHS contract for the same site. **(See Exhibit J).**

Attorney Role.

41. Scott D. Clark is the designated real estate attorney for Atlantic in all six of its purchase agreements. Indeed in three of the purchase agreements, he also serves as the Escrow Agent, holding the purchase deposits. Mr. Clark also serves as Escrow Agent for one of the WHS applications (2009-242C). Mr. Clark is the president of the sole member of the three Southern applicants' general partners. Additionally, Mr. Clark is identified in all three Southern purchase agreements as the signatory for the purchaser while simultaneously serving as the escrow agent in these transactions, including the The Fountains at Pershing Park. Suffice to say it is most unusual for a purchaser to serve as his own escrow agent for a real estate purchase and sale agreement. **(See Exhibit K).**

Local Government Support.

42. An application to Orange County for local government support for Application No.: 2009-240C was submitted by Southern and was executed on July 31, 2009, by Mr. W. Scott Culp. Mr. Culp is a Principal of Atlantic, and is the designated Developer/Builder, using the name, CPG Construction, L.L.P. ("CPG"). CPG is also Atlantic's affiliated general contractor entity. Similarly, Mr. Culp executed applications on July 31, 2009, for local government contributions from Orange County on the two other Southern applications, Applications 2009-238C and 2009-239C. As Southern did not exist at the time of the local government applications, CPG submitted a summary of its experience as an Atlantic affiliate to satisfy Orange County's experience requirement. In effect, CPG on behalf of Atlantic represented to the local government that it was an experienced developer, and then through a post-application insertion of a purchase agreement signed by an entity that would become the sole member of the general partners of the Southern applicants, arranged for a new developer entity to be listed in the state applications, evading the Priority I application limitations. As for their confirmation of this relationship, an architectural drawing submitted as part of the local government support application for Application 2009-238C is stamped as being for Atlantic, not Southern. **(See Exhibit L).**

43. In Seminole County, Atlantic submitted an application for local government support in February 2009 for a project named Myrtle Cove. When this application did not receive funding, this same site, with the same purchase agreement (with changes only

in the names and purchase price), was sold through a series of steps to WHS Myrtle Cove, Ltd. and became the basis for Application No. 2009-242C. Since the application was submitted utilizing the Homeless demographic selection, it received an automatic exemption from the local government support requirement.

Legal Structure.

44. Exhibit 9 of all 12 Southern, WHS and Atlantic applications utilized the same organizational structure for the applicant entity, in which an entity named "Managers" was the .01% general partner, and an entity named "Holdings" was the 99.99% limited partner. The same nonprofit entity, Southern Affordable Services, Inc. ("SAS"), serves as the sole member of the general partner entity, limited partner entity, and developer entity for all three Southern Applications. The same nonprofit entity, Workforce Housing Services, Inc., serves as the sole member of the general partner entity, limited partner entity and developer entity for all three WHS Applications. **(See Exhibit M).**

Legal Link

45. A Seminole County filing on 12/31/09 establishes a clear link between SAS and CED Capital Holdings XIII, Ltd., one of a series of limited partnerships using the CED name that is affiliated with Atlantic Housing. The filing is an Amended and Restated Certificate of Limited Partnership of Seminole Co. Loma Vista Partners, Ltd., in which SAS Loma Vista Managers, L.L.C., through its sole member, SAS, with Scott Clark signing as President, is admitted as the general partner of the limited partnership, and CED Capital

Holdings XIII, Ltd., by CED Capital Holdings XIII, Inc., its managing general partner, with Paul M. Missigman signing as Vice President, withdraws from the limited partnership. Paul Missigman is a manager of the general partner and limited partner for the Applicant entities for all six of the declared Atlantic applications in the 2009 Universal Cycle, and is both a manager and member of the general partner for the Atlantic developer entity for all six Atlantic applications. **(See Exhibit N).**

Other Correlations.

46. The "Relationship to Applicant" section of Developer Certifications in all 12 applications is completed with exactly the same wording. With the exception of one transaction, nearly all of the infrastructure forms were executed as of the same date in May, nearly three months before the Southern and WHS purchase agreements became effective and before the development entities were even formed. **(See Exhibit O).**

47. The same environmental consultant and surveyor were used to provide cure documentation in all six Atlantic applications and the cure documents submitted by Southern and WHS. On February 11, 2010, two Atlantic applications, two WHS applications and one Southern application were simultaneously withdrawn. The actual withdrawal deadline was February 12, 2010.

Continuum Of Core Plan

48. Perhaps the most telling evidence of the relationship is how the applicants addressed the continuum of care plan. All WHS Applications selected "3. Homeless" in response to Part III.D of the Universal Applications. The Universal Application and

Instructions require Applicants who make this selection to "Provide a properly completed and executed Verification of Inclusion in Local Homeless Continuum of Care Plan by Lead Agency form behind a tab labeled 'Exhibit 35'." In response to this requirement, a Verification of Inclusion in Local Homeless Continuum of Care Plan by Lead Agency form (the "Verification Form") signed by Catherine Jackson, Executive Director of the Homeless Service Network of Central Florida was submitted on all 3 WITS Applications. Section 2 of the Verification Form states:

"The nature and scope of the proposed Development is in conformance with the Local Homeless Assistance Continuum of Care Plan that is on file, at the time of Application Deadline, with the State Office of Homelessness."

The Homeless Services Network Continuum of Care was filed on July 29, 2009, and was on file at the time of the Application Deadline.

49. A review of the plan referenced by the Verification Form indicates at Objective 4 of the Continuum of Care that the Homeless Services Network will "Partner with an **affordable housing developer** to develop 60 units of transitional housing ..." and further, that the "2009 locations include: Sanford (Ridgewood Cove), Oviedo (Myrtle Cove), Kissimmee (Vine Place) through Atlantic Housing." These three projects are the WHS projects submitted this year.

50. Interestingly enough, Atlantic submitted Application 2008-290CS in the 2008 Universal Application Cycle for a Homeless development project with the same address, same Development Name, and number of units as one of the WHS Application submitted this year. The implication of Atlantic being designated as the Developer for

the 3 WHS deals is important in two respects. First, the Universal Cycle Application Instructions require the Applicant to provide a list of the Principals for each Developer in Part II.A.3.b., Exhibit 9 (emphasis added). Part II.B.1.a of the Universal Application requires the Applicant to submit the "Name of each Developer [include all co-Developers]" (emphasis added). The Universal Instructions also require the Applicant to submit a completed Developer or Principal of Developer Certification form as Part II.B.1.b., Exhibit 11 for each Developer with experience. "and provide the name, address, telephone and facsimile numbers, e-mail address, if available, and the relationship of the co-Developer to the Applicant for any co-Developer..." (emphasis added). WHS did not include Atlantic Housing or its Principals in Exhibit 9, Exhibit 11, nor in Part II.B.1.a of the Application.

51. Atlantic is the Developer who submitted the Verification Form to the Homeless Services Network and is the "Developer" according to the Continuum of Care Plan on file with the State Office on Homelessness at the time of the Application Deadline. However, Atlantic is not named a Part II.A.3.b., Exhibit 9, Part II.B.1.a., or Part II.B.1.b., Exhibit 11 as part of the identity of the Developer or as a co-Developer.

52. Perhaps more importantly, Florida Housing has previously deemed Applications 2009-241C through 2009-249C as "Related Applications" not disclosed as such in violation of the application limitation. This was based on the fact that Atlantic was clearly identified as the Developer of the 3 WHS deals. All 9 Applications were accordingly redesignated as Priority II applications.



53. To address this issue, all the Applicants included in their cure was a simple undocumented assertion that Atlantic is not the Developer or Co-Developer of the 3 WHS deals despite what the Continuum Plan indicates and that Atlantic denied that its applications were "Related Applications." The Applicants cite the definition of "Related Application" and deny that the Applicant or Developer of the WHS Applications share any Principals or Affiliates with any Application in which Atlantic is the Developer.

54. The Applicants went on to note that even though Atlantic is clearly listed as the Developer of record for Ridgewood Cove for 2009 in the Continuum of Care Plan on file with the State Office of Homelessness, it should not be regarded as the Developer for Ridgewood Cove for the Application by Florida Housing. In other words "pay no attention to that man behind the curtain." There was no evidence provided of any revision to the Continuum of Care Plan on file with the State prior to the expiration of the cure period for this year's Funding Cycle. Nor was there any documentation from the State Office of Homelessness, indicating that Developer of these projects was anyone other than Atlantic.

55. The Applicant's - and apparently Florida Housing's - attempted narrow reading of the definition of Related Application ignores the very reasons for adopting the Priority I/Priority II limitation. Indeed, it also ignores Rule 67-48.002 which defines "Affiliate" 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,** (ii) serves as an officer or director of the Applicant or

Developer or of any Affiliate of the Applicant or Developer, (iii) **directly or indirectly receives or will receive a financial benefit from a Development...**" (*Italics added*). Additionally, Rule 67-48.002(87) defines a "Pool of Related Applications" as "a group of Related Applications submitted in the same Funding Cycle that share among such Related Applications one or more Principals **or Affiliates** of an Applicant or Developer common to any or all such Related Applications." Rule 67-48.002(48) defines "Financial Beneficiary" as "any Principal of the Developer or Applicant entity who receives any **direct or indirect** financial benefit from a Development ..."

56. In response to this cure, Florida Housing revised its Final Scoring Summary and concluded that the Applications were not related. In reaching this conclusion, Florida Housing ignored all the facts listed above which clearly show the relationship between all 12 applications and lead to the conclusion that they are related Applications and should have been designated as Priority II Applications. Had the correct scoring decision been made, all Petitioners' Applications would have been in the funding range.

#### Scattered Sites Scoring Issue

{57} The Universal Application at Part III asks an applicant to provide information concerning the proposed development. Specifically, at Part III, Section A.2.b., the Application requires the Applicant to disclose whether the proposed project site is a "scattered site." If a site is a scattered site, then documentation, including availability of infrastructure, environmental assessments, etc., for each designated site is required.

**Application # 2009-144C**

(58) In its original submittal, Application 2009-144C, Dr. Kennedy Homes, indicated that its project site was not a "scattered site" and submitted documentation accordingly. Florida Housing scored the site as a single site in the preliminary scoring round. In response to a NOPSE however Florida Housing found as follows:

Based on information provided by a NOPSE, it appears that the Development site is divided one or more easements and thus meets the definition of "scattered sites" (see subsection 67-48.002(106), F.A.C.). The Applicant failed to correctly answer the question at Part III.A.2.b of the Application.

(59) In a cure, the Applicant submitted various documents to address the "scattered sites" issue. After conducting its final review of the Application, cures and all applicable NOADS, Florida Housing maintained its prior position that the development site was a "scattered site" and found as follows:

In its cure materials for Items 2S, 5S, 10S, 11S, 1T through 9T, 1A through 6A, 1C and 2C, the Applicant provided an affidavit from a licensed surveyor and various documents in an effort to demonstrate that the existing easements do not make the proposed Development site a Scattered Site. However, documentation and an affidavit from a licensed surveyor provided by a NOAD support the original determination that the site is divided by one or more easements and thus meets the definition of "scattered sites".

(60) As a result of a challenge filed by the Applicant, Florida Housing has now subsequently changed its position to conclude that the development site is not a "scattered site." This change in position allows Application No. 2009-144C to be ranked in the funding range ahead of Westmont.

**Application # 2009-146C**

(61) In its original submittal, Application 2009-146C, Ehlinger Apartments indicated that its project site was not a "scattered site" and submitted documentation accordingly. Florida Housing scored the site as a single site in the preliminary scoring round. In response to a NOPSE however Florida Housing found as follows:

Based on information provided by a NOPSE, it appears that the Development site is divided one or more easements and thus meets the definition of "scattered sites" (see subsection 67-48.002(106), F.A.C.). The Applicant failed to correctly answer the question at Part III.A.2.b of the Application.

(62) In a cure, the Applicant submitted various documents to address the "scattered sites" issue. After conducting its final review of the Application, cures and all applicable NOADS, Florida Housing maintained its prior position that the TPC site was a scattered site and found as follows:

In its cure materials for Items 2S, 5S, 10S, 11S, 1T through 9T, 1A through 6A, 1C and 2C, the Applicant provided an affidavit from a licensed surveyor and various documents in an effort to demonstrate that the existing easements do not make the proposed Development site a Scattered Site. However, documentation and an affidavit from a licensed surveyor provided by a NOAD support the original determination that the site is divided by one or more easements and thus meets the definition of "scattered sites".

(63) As a result of a challenge filed by the Applicant, Florida Housing has now subsequently changed its position to conclude that the development site is not a "scattered site." This change in position allows Application No. 2009-146C to be ranked ahead of at least one Petitioner.

**Application # 2009-121HC**

(64) In its original application, the Applicant indicated that its site was not a "scattered site" and submitted documentation accordingly. Florida Housing scored the site as a single site in the preliminary scoring round.

(65) As allowed by the Universal Cycle process, a NOPSE was filed by a competing applicant claiming that the site was a "scattered site".

(66) After conducting its preliminary review of the Application and all NOPSEs, Florida Housing, as to the "scattered sites" issue, found as follows:

Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of "scattered sites" (see subsection 67-48.002(106), F.A.C.).

(67) In response to Florida Housing's preliminary scoring decision, the applicant provided cure documents, including an affidavit from a licensed surveyor that explained why the proposed development site was not a scattered site.

(68) In response to the Cures and a NOAD which raised the scattered site issue, Florida Housing on December 3, 2009, concluded as follows:

In its cure materials for Items 1S, 2S, 3S, 5S, 8S, 10S, 11S, 5T, 7T, 9T through 18T, 1A through 6A, 1P, 2P, 5P and 6P, the Applicant provided an affidavit from a licensed surveyor concerning the abandonment of Mayfair Village Road by the City of Jacksonville. However, documentation and an affidavit from a licensed surveyor provided by a NOAD demonstrates that although the road was vacated and abandoned as a public road by Ordinance No. 95-1032-593, the ordinance provided that "there is hereby reserved unto the City of Jacksonville a perpetual, unobstructed easement for all public utilities . .

., over, under, through and across the property . . ." Thus, even though the road was vacated, the development site nevertheless remains divided by the easement reserved over that same property by the City. Because it is divided by an easement, the site meets the definition of Scattered Sites.

(69) As a result of a challenge filed the Applicant, Florida Housing conceded that the scattered site issue without need for hearing. This change in position allows Application No. 2009-121CH to be ranked ahead of at least one Petitioner.

(70) Florida Housing's scaring decisions are erroneous. The Easements in the above referenced Applications, do divide the development sites and fall squarely within the definition of Rule 67-48.002(106), F.A.C., which defines "'Scattered Sites" for a single Development as follows:

Means a development consisting of real property in the same county (i) any part of which is not contiguous ("non-contiguous parts") or (ii) any part of which is divided by a street or easement ("divided parts") and (iii) it is readily apparent from the proximity of the non-contiguous parts or the divided parts of the real property, chain of title or other information available to the Corporation (Florida Housing) that the non-contiguous parts or the divided parts of the real property are part of a common or related scheme of development."

(71) Part III Section A.2.b. of the Florida Housing Application Instructions for the 2009 Universal Cycle (the "Instructions"), which are incorporated into Rule 67-48.002(106), F.A.C. by reference, states

If the Development will consist of "scattered sites", for each of the non-contiguous parts or divided parts ("sites"), provide behind a Tab labeled "**Exhibit 20**", the Address, total number of units, and latitude and longitude coordinates, determined in degrees, minutes

and seconds truncated after one decimal place, located anywhere on the site. If requesting Competitive HC, for the site where the tie breaker Measurement Point is located, only the Address and total number of units is required. This information should be provided behind a tab labeled "**Exhibit 20**". If the Applicant indicates that the proposed Development will consist of "scattered sites", but fails to provide the required information for each of the sites, the Application will fail threshold.

MMRB & HC Applications – To be eligible to apply as a Development with "scattered sites", a part of the boundary of each site must be located within ½ mile of the site with the most units.

(72) The Easements and streets in the cases referenced above clearly divide the sites as explained in the NOPSE's NOADS.

### **Satisfaction of Florida Housing Requirements for Post-Ranking Challenge**

(73) By rule, Florida Housing has sought to limit the types of scoring errors that an applicant may challenge via Chapter 120 proceedings, Florida Housing's rule in this regard, Rule 67-48.005[5][b], states as follows:

For any Application cycle closing after January 1, 2002, if the contested issue involves an error in scoring, the contested issue must (i) be one that could not have been cured pursuant to subsection 67-48.004(14), F.A.C., or (ii) be one that could have been cured, if the ability to cure was not solely within the Applicant's control. The contested issue cannot be one that was both curable and within the Applicant's sole control to cure. With regard to curable issues, a petitioners must prove that the contested issue was not feasibly curable within the time allowed for cures in subsection 67-48.004(6), F.A.C.

(74) In this proceeding, the contested issues involve a violation of the application limitation or scattered site rule. In the case of the Southern applications, no cure materials were required of the Applicants relating to the application limitation rule.

For the WHS applications, the final documentation which led to Florida Housing rescinding its scoring decision concerning the application limitation violation were submitted by the WHS and Atlantic Applicants in their cure materials. As such, there was no lawful opportunity under Florida Housing's rules for any of the Petitioners to "cure" the fatal defects in these documents and the Southern, WHS and Atlantic Applications. As such, these scoring errors are of the type identified in Rule 67-48.005(5) and may be properly challenged in this proceeding. Likewise the "scattered sites" issues are properly challenged in this proceeding.

WHEREFORE, Petitioners requests that:

- a. Florida Housing award Petitioners their requested tax credits from the next available allocation;
- b. Florida Housing conducts an informal hearing on the matters presented in this Petition if there are no disputed issues of material fact to be resolved;
- c. Florida Housing forward this Petition to the Florida Division of Administrative Hearings for a formal administrative hearing pursuant to section 120.57(1), Florida Statutes, if there are disputed issues of material fact to be resolved, or if non-rule policy forms the basis of any Florida Housing actions complained of herein;
- d. Florida Housing's designated hearing officer or an Administrative Law Judge, as appropriate, enter a Recommended Order directing Florida Housing to award Petitioners their requested tax credits from the next available allocation;

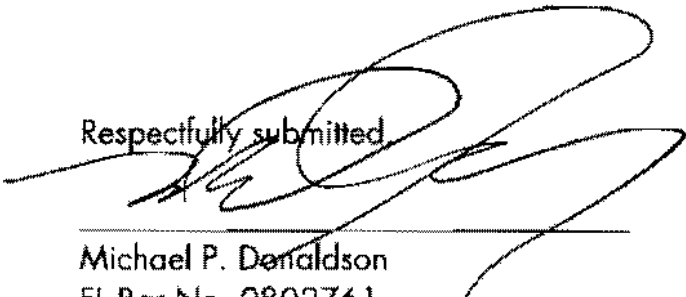


e. That such hearing be granted on an expedited basis so that a Recommended Order may be presented to the Board of Directors of Florida Housing at its meeting of June 18, 2010 in accordance with the requirements of RFP 2010-04, which enables all applicants in the 2009 Universal Cycle who are recipients of housing tax credits to apply for and receive Exchange funds.

f. Florida Housing enter a Final Order awarding Petitioners their requested tax credits; and

g. Petitioners be granted such other and further relief as may be deemed just and proper.

Respectfully submitted

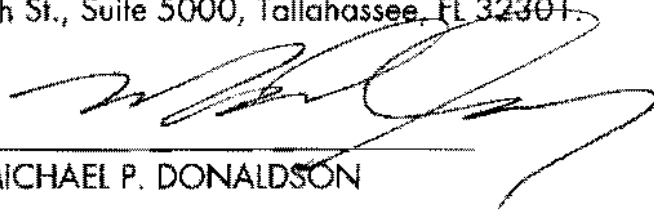


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing have been furnished this 23<sup>rd</sup> day of March, 2010 to the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough St., Suite 5000, Tallahassee, FL 32301.

  
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MICHAEL P. DONALDSON