BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

PINNACLE AT HAMMOCK SQUARE, LLC, as Applicant for Pinnacle at Hammock Square - Application No. 2009-140C,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

FHFC File No.: 2010-007UC

Application No. 2009-216C

RECEIVED
10 JAN 22 AM 9:24

PETITION REQUESTING INFORMAL ADMINISTRATIVE PROCEEDING AND THE GRANT OF THE RELIEF REQUESTED

Pursuant to §§120.569 and 120.57(2), Florida Statutes ("FS"), Rule 67-48.005, Florida Administrative Code ("F.A.C.") and Rule 28-106.301, F.A.C., Petitioner, PINNACLE AT HAMMOCK SQUARE, LLC, as Applicant for Pinnacle at Hammock Square - Application No. 2009-140C, ("Petitioner") requests an informal administrative proceeding to challenge the scoring by Respondent, FLORIDA HOUSING FINANCE CORPORATION ("FHFC") of the following competing application for funding in the 2009 Universal Cycle: Flagler Village, Application No. 2009-216 ("Applicant"). The scoring issue being challenged is whether Applicant's application should have been rejected without an opportunity to cure by virtue of misidentifying the name of the Applicant in Part II.A.2.a. of the 2009 Universal Application. FHFC incorrectly determined that Applicant's application should not be rejected, and erroneously allowed Applicant to change the "Name of Applicant" in "cure" documentation

submitted to FHFC. That determination resulted in FHFC improperly denying Petitioner its requested federal tax credit funding. In support of this Petition, Petitioner states as follows:

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

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

2. The address and telephone number of the Petitioner is:

Pinnacle at Hammock Square, LLC
c/o Pinnacle Housing Group LLC
9400 South Dadeland Blvd., Suite 100
Miami, FL 33156
Telephone: (305) 854-7100

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

Gary J. Cohen, Esq.
Shutts & Bowen, LLP
201 S. Biscayne Blvd., Ste. 1500
Miami, Florida 33131
Telephone No. (305) 347-7308
Fax: (305) 347-7808
Email: gcohen@shutts.com

STATEMENT OF WHEN AND HOW THE PETITIONER RECEIVED NOTICE OF THE AGENCY'S DECISION

4. On or about March 1, 2010, Petitioner received formal notice from FHFC of the final rankings and scores, along with notice of its rights under Chapter 120 to challenge them. The Petitioner did timely file its response to that Notice.

STATEMENT OF MATERIAL FACTS

5. There are no disputed issues of material fact. However, it is important to set out the factual background and legal framework for this challenge at the outset.

The Low-Income Housing Tax Credit Program

6. The United States Congress has created a program, governed by Section 42 of the Internal Revenue Code ("IRC"), by which federal income 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.

7. The tax eredits 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 very-low-income tenants.

8. Pursuant to section 420.5099, Florida Statutes, FHFC is the designated "housing credit agency" for the State of Florida and administers Florida's low-income housing tax credit program. Through this program, FHFC allocates Florida's annual fixed pool of federal tax credits to developers of affordable housing.[1]

The 2009 Universal Application Cycle

9. Because FHFC's available pool of federal tax credits each year is limited, qualified projects must compete for this funding. To assess the relative merits of proposed

[1] FHFC 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. FHFC is an "agency" as defined in section 120.52(1), Florida Statutes, and is therefore subject to the provisions of Chapter 120, Florida Statutes.

projects, FHFC 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., FHFC's application process for 2009 consisted of the following:

(a) the publication and adoption by rule of a "Universal Application Package," which applicants use to apply for a variety of FHFC-administered funding programs, including federal tax credits;

(b) the completion and submission of applications by developers;

(c) FHFC's preliminary scoring of applications;

(d) an initial round of administrative challenges in which an applicant may take issue with FHFC's scoring of another application by filing a Notice of Possible Scoring Error ("NOPSE");

(e) FHFC's consideration of the NOPSE's submitted, with notice to applicants of any resulting change in their scores;

(f) an opportunity for the applicant to submit additional materials to FHFC 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) FHFC's consideration of the NOAD's submitted, with notice to applicants of any resulting change in their scores;

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

(j) final scores, ranking, and allocation of tax credit funding to applieants, adopted through final orders; and

(k) an opportunity for applicants to challenge, via informal or formal administrative proceedings, FHFC's final scoring and ranking of competing applications where sueh seoring and ranking resulted in a denial of FHFC funding to the ehallenger.[2]

CONCISE STATEMENT OF THE ULTIMATE FACTS WARRANTING RELIEF

10. On or about August 20, 2009, numerous applications were submitted to FHFC seeking tax eredit and HOME funding. Petitioner applied for $980,000.00 in annual tax eredits to help finance the development of its project, a 100-unit garden apartment complex in Lynn Haven, Bay County, Florida.

11. At its February 26, 2010 meeting, FHFC's Board adopted final scores and rankings. Petitioner's application met all of FHFC's threshold application requirements, received the maximum application score of 70 points, the maximum proximity tie-breaker score of 7.5 points, and the maximum ability to proceed tie-breaker score of 6 points. Petitioner's application competed for tax credits in the Medium County Geographic Set-Aside.[3] As between competing applicants with "perfect" scores, the ultimate tie-breaker (subject to the Set-Aside Unit Limitation rules described below) is that the applicant with the lower lottery number (arbitrarily assigned to each applicant by FHFC) prevails.

12. Petitioner would have received its requested tax credit funding if not for FHFC's erroneous scoring of the Applicant's application. Applicant was one of the two applicants

[2] This Petition initiates such a challenge. Notably, if successful in such a challenge, FHFC funding is not taken away from the competing applicant who was scored or ranked in error and given to the challenger. Instead, the competing applicant keeps its funding, and the challenger receives its requested fnnding "off-the-top" from the next available source of such funds allocated to FHFC. Rule 67-48.005(7), F.A.C.

[3] Aside from applicants proposing projeets targeted to specific tenant populations (e.g., the Homeless) or located in specific areas (e.g., the Florida Keys), applicants generally compete against each other for funding within Geographic Set-Asides (Large, Medium, and Small) based upon the population of the county in which their project is located.

awarded tax eredit funding in the Florida Keys Set-Aside. Had Applicant been properly rejected, there was no other application eligible to receive funds in the Florida Keys Set-Aside. As a result, the amount of tax credits awarded to Applicant ($1,225,000.00) would have been re-alloeated 62% to the Large County Geographic Set-Aside, 34% to the Medium County Geographic Set-Aside and 4% to the Small County Geographic Set-Aside. Had an additional $416,500.00 of tax eredits had been added to the amount available for allocation in the Medium County Geographic Set-Aside, there would have been approximately $650,569.00 of tax credits remaining (after funding The Fountains at San Remo Court – Phase I (Application No. 2009-246C), and Petitioner's application was the highest remaining application eligible to be funded, requesting $980,000.00 in tax credits. Under FHFC's Universal Cycle Application Instructions ("Instructions"), if the remaining tax credits in a geographic set-aside equal or exceed 60% of the next highest ranked applicant's tax credit request, such applicant is to be awarded the remaining tax credits and given a binding commitment for the remainder in the succeeding year. As such, Petitioner would have received its tax credit funding but for FHFC's error in scoring Applicant's application.

13. If FHFC had not improperly scored Applicant's application, Petitioner would have received its requested tax credit funding. Petitioner's substantial interests are therefore materially and adversely affected by FHFC's improper actions, and Petitioner has standing to challenge those actions in this proceeding.

14. FHFC should have rejected Applicant's application without an opportunity to cure, for the following reasons: (a) Rule 67-48.004(14)(a), F.A.C. prohibits any revision or correction to the "Name of Applicant" after the application deadline, and failure to correctly provide the "Name of Applicant" at the time of the application deadline results in rejection of an

application without an opportunity to submit additional information, and (b) the Instructions clearly require that an applicant entity be legally formed as of the application deadline, and as of such date there was no entity legally formed or qualified to do business in the State of Florida under the name "Flagler Village Limited Partnership", the name which was used by Applicant in Part II.A.2.a. of its Applieation. Had FHFC correctly rejected Applicant's application, Petitioner would (as a result) would have been within the funding range for tax credits.

Chronology of Case

15. Applicant submitted its Universal Application on or about August 20, 2009. In such application, Applicant identified the "Name of Applicant" in Part II.A.2.a. of its originally submitted application as "Flagler Village Limited Partnership". *See Exhibit "A".*

16. On or about September 23, 2009, FHFC issued preliminary scores. In the Scoring Summary Report issued to Applicant, FHFC noted (in Scoring Item 1T), that the name stated at Part II.A.2.a. of Applicant's application (Flagler Village Limited Partnership) did not match the name of the entity on the good standing certificate provided by the Applicant in Exhibit 3 of its application. The name of the entity reflected in the good standing certificate was "Flagler Village Limted Partnership, Ltd.", an entity which was legally formed and existing under Florida law. Obviously, the name of the legally existing entity did not match the "Name of Applicant" provided in Part II.A.2.a. of Applicant's originally submitted application. *See Exhibit "B".*

17. On or about October 1, 2009, a NOPSE was filed against Applicant on this issue, notwithstanding that FHFC had already indicated Applicant was deficient with respect to the "Name of Applicant". *See Exhibit "C".* The NOPSE made two primary arguments: (a) the misidentification of the "Name of Applicant" could not be revised or cured pursuant to Rule 67-48.004(14)(a), F.A.C. and (b) FHFC misidentified the name provided on the good standing certificate from the Florida Secretary of State (the correct name as registered with the State of

Florida was "Flagler Village Limted Partnership, Ltd.", not "Flagler Village Limited Partnership, Ltd.").

18. On or about November 3, 2009, Applieant submitted "cure" documentation with respect to the "Name of Applicant". *See Exhibit "D"*.

19. On or about November 12, 2009, a NOAD was filed against the cure documentation filed by Applicant. *See Exhibit "E"*. The issues raised in the NOAD were substantially identical to the issues raised in the NOPSE: (a) that the "Name of Applicant" is one of the non-curable items under Rule 67-48.004(14)(a), F.A.C. and therefore cannot be revised, corrected or supplemented and that an error with respect to one of the non-curable items must lead to rejection of the application, and (b) there was no entity formed as of the application deadline named "Flagler Village Limited Partnership" (the name provided in Part II.A.2.a. of the originally submitted application), in violation of Page 6 of the 2009 Universal Application Instructions (Part II.A.2.c., providing that "Applicant must be a legally formed entity (i.e, limited partnership, corporation, limited liability company, etc.) qualified to do business in the state of Florida as of the Application Deadline").

20. On or about December 3, 2009, FHFC issued final scores and notices of rights. With respect to the final Scoring Summary Report issued to Applicant, FHFC (without explanation) reversed its earlier finding with respect to Scoring Item 1T. *See Exhibit "F"*.

21. At the February 26, 2010 FHFC Board meeting, the FHFC Board approved all final Scoring Summary Reports and approved final rankings for the 2009 Universal Cycle. As a result of its adoption of Applicant's Scoring Summary Report, Applicant fell within the funding range for tax credits, and Petitioner (as a direct result of the Board's actions in approving the Applicant's final Scoring Summary Report) fell outside the funding range.

22. Since FHFC gave no further explanation for its acceptance of Applicant's cure documentation and its rejection of the NOAD referenced herein, the rationale for FHFC's conclusion that Applicant should be permitted to "cure" a "non-eurable" item is unclear.

Name of Applicant

23. FHFC has provided by rule that there are 16 items which must be correctly submitted at the time of submission of the original application, and that failure to correctly submit any of those 16 items shall result in rejection of an application without an opportunity to cure. See Rule 67-48.004(14), F.A.C. One of the 16 items is "Name of Applicant". See Rule 67-48.004(14)(a), F.A.C.

24. Rule 67-48.002(8), F.A.C. defines "Applicant" as "... any person or legally formed entity that is seeking a loan or funding from the Corporation by submitting an Application ..." (emphasis added). Thus, an "applicant" must be a legally formed entity. Page 6 of the Instructions further provides (see Part II.A.2.c. on Page 6 of the Instructions) that "Applicant must be a legally formed entity (i.e., limited partnership, corporation, limited liability company, etc.) qualified to do business in the state of Florida as of the Application Deadline") (emphasis added).

25. These requirements could not be more clear. In order to meet threshold, an applicant must be legally in existence as of August 20, 2009 (the application deadline) and the name of the applicant must be correctly identified in Part II.A.2.a. of the 2009 Universal Application (requesting the "Name of Applicant"). Failure to correctly identify the name of an applicant causes automatic rejection of an applicant's application for two reasons; first, if the name submitted in Part II.A.2.a. of the original application does not match the name of a legally formed entity registered with the state of Florida, the "applicant" is not in legal existence as of the application deadline; and second, the incorrect "Name of Applicant" provided in the original

application cannot be changed and is cause for rejection of the application, pursuant to Rule 67-48.004(14)(a), F.A.C. Stated differently, if an incorrect name is provided, the application fails for two reasons: (i) the identified applicant was not legally existing as of the application deadline and such name cannot be changed to the name of an entity which was in legal existence as of the application deadline, due to the prohibition on name change under Rule 67-48.004(14)(a), F.A.C. and (ii) if the "Name of Applicant" is not correctly identified in the original application, failure to correctly provide such name is grounds for automatic rejection without an opportunity to cure under Rule 67-48.004(14)(a), F.A.C.

26. In numerous instances in the recently completed 2009 Universal Cycle and in previous cycles (note that the Rules discussed herein have not changed regarding this issue), FHFC has routinely rejected applications for seemingly minor errors in the names of legal entitles. See Renaissance Preserve Phase II, Application No. 2009-151C wherein FHFC, in Scoring Item 1T, rejected the general contractor due to misidentification of its name (Brooks and Freund, LLC on the certification form, versus Brooks and Freund, Inc. on the corresponding prior experience chart); Pine Berry Senior Limited Partnership vs. Florida Housing Finance Corporation, FHFC Case No. 2008-101UC, wherein FHFC admitted it erred in accepting a general contractor identified as "Batson-Cook Construction" when no such entity was legally existing in the state of Florida, and the correct name was "Batson-Cook Company"; Savannah Springs Apartments II, Ltd. vs. Florida Housing Finance Corporation, FHFC Case No. 2007-048UC, wherein FHFC admitted it erred in accepting Atlantic Housing Partners, LLLP as the developer in numerous challenged applications, where Atlantic Housing Partners Managers, LLC was misidentified as the general partner of the developer in each of the challenged applications"; GHG Flagler Crossing Limited Partnership vs. Florida Housing Finance Corporation, FHFC

Case Nos. 2005-037UC, 2005-038UC and 2005-040UC, wherein FHFC admitted it erred in not disqualifying several challenged applications wherein the identified developer, RLI Beneficial Development 5 LLC, was identified as the developer in numerous places in the challenged applications but did not legally exist as of the application deadline; and Finlay Interests 35, Ltd. vs. Florida Housing Finance Corporation, FHFC Case No. 2005-019UC (ruling that a real estate purchase contract was valid notwithstanding the misidentification of the general partner of the applicant entity on the signature block, due to the fact that the name of the applicant entity itself was correctly identified, and noting that "Had that name (the name of the applicant) been misspelled or misstated, that may have constituted grounds for rejection of the document ...").

27. Applicant changed its response to Part II.A.2.a. in its original application ("Flagler Village Limited Partnership") to the name of the entity legally existing and registered with the Secretary of State ("Flagler Village Limted Partnership, Ltd.") as part of its "cure" documentation. As correctly noted in the NOAD filed against Applicant, "If this is not a change to the "Name of Applicant" pursuant to Rule 67-48.004(14), it begs the question then what would constitute an impermissible change of "Name of Applicant" pursuant to such rule. Why even have this rule? If Florida Housing allows this to be "cured", then the requirement of having a validly formed Applicant entity is meaningless. For example, if an application identified at Part II.A.2.a. the "Name of Applicant" as "ABC, Ltd." but there was no such entity formed as of the Application Deadline, the Applicant could simply use another entity that has been formed as of the application deadline, say "XYZ, Ltd." and then just change every doeument in the application to "XYZ, Ltd."."

28. FHFC allows "cures" for scriveners' errors or other mistakes generally pursuant to the "cure" process; however, the 16 items listed in Rule 67-48.004(14), F.A.C. are not capable

of being cured at all, even due to minor or technical errors. Rule 67-48.004(14), F.A.C. clearly and unequivocally states that "... certain items cannot be revised, corrected or supplemented after the Application Deadline", and the "Name of Applicant" is one of such items. As such, Applicant's application should have been disqualified for failure to meet threshold, without an opportunity to cure.

Administrative Stare Decisis

29. Prior FHFC precedent does exist which demonstrates that FHFC has consistently ruled, in the past, that misidentification or other errors in the provision of information regarding "non-eurable" items under Rule 67-48.004(14) must result in rejection of an application. Prior FHFC precedent also exists that, with respect to "curable" items which have been incorrectly "cured" (for example, the name of an entity such as a general contractor is incorrectly provided in "cure" documentation pertaining to a threshold item), such applications must also be rejected for failure to meet threshold requirements.

30. The prior scoring decisions of FHFC, which were affirmed by the FHFC Board, constitute binding precedent here. Not only were these decisions final agency actions in those disputes, they have an effect on the issue to be decided here by virtue of administrative stare decisis. FHFC was required to, but in its consideration of the NOAD filed against each Applicant failed to, consider the precedental effect of its own prior decisions before making subsequent decisions on the same issue. Plante v. Department of Business and Professional Regulation, 716 So. 2d 790 (Fla. 4th DCA 1998) (prior agency decisions are administrative stare decisis). FHFC's previous scoring decisions have created administrative stare decisis on the issues contained herein, and FHFC is required to follow the precedent its own prior decisions created forward.

31. Once FHFC has interpreted its application instructions pertaining to correct identification of legally existing entities, if it desired to change its position, it should have done so by amending the application instructions, not simply diverging from its established interpretation and its subsequent decision. FHFC cannot simply "change its mind" about interpretations of its rules. See Cleveland Clinic v. Agency for Health Care Administration, 679 So. 2d 1237, 1241 (Fla. 1st DCA 1996), wherein the Court explained:

> Without question, an agency must follow its own rules, ... but if the rule, as it plainly reads, should prove impractical in operation, the rule can be amended pursuant to established rule making procedures. However, "absent such amendment, experience cannot be permitted to dictate its terms." That is, while an administrative agency "is not necessarily bound by its initial construction of the statute evidenced by the adoption of a rule," the agency may implement its changed interpretation only by "validly adopting subsequent rule changes". The statutory framework under which administrative agencies must operate in this state provides adequate mechanisms for the adoption or amendment of rules.

679 So. 2d at 1242 (emphasis supplied), quoting Boca Raton Artificial Kidney Center v. Department of Health and Rehabilitative Services, 493 So. 2d 1055, 1057 (Fla. 1st DCA 1986), and Department of Administration, Division of Retirement v. Albanese, 445 So. 2d 639, 642 (Fla. 1st DCA 1984); see also Brookwood-Walton Convalescent Center v. Agency for Health Care Administration, 845 So. 2d 223, 229 (Fla. 1st DCA 2003) ("The agency failed to explain why its policy had changed abruptly when applied to Appellants, despite the lack of any intervening change in the applicable provisions. AHCA's unexplained, inconsistent policies are contrary to establish administrative principles and sound public policy.").

32. Thus, to be consistent with its prior interpretation of its application instructions and rules pertaining to misidentification of entities (such as developers, applicants and general contractors) in both "curable" and "non-curable" situations, FHFC must find here that Applicant's failure to correctly identify the "Name of Applicant" in its originally submitted

application must result in rejection of Applicant's application, because the FHFC scoring decisions referenced herein have established binding precedent on that point.

STATEMENT OF SPECIFIC RULES AND STATUTES WARRANTING RELIEF

33. The scoring issue being challenged with respect to Applicant is whether Applicant should have been permitted to "cure" its misidentification of the "Name of Applicant" in its originally submitted application. FHFC incorrectly determined that Applicant was permitted to cure such error.

34. That determination resulted in FHFC improperly denying Petitioner its requested tax credit funding.

35. By rule, FHFC has sought to limit the types of scoring errors that an applicant may challenge via Chapter 120 proceedings. FHFC'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 petitioner must prove that the contested issue was not feasibly curable within the time allowed for cures in subseetion 67-48.004(6).

36. The misidentification of the "Name of Applicant" involves an issue that could not have been cured pursuant to Rule 67-48.004(14), F.A.C., and as such, a post-final rank appeal with respect to such issue is permitted hereunder.

RELIEF SOUGHT BY PETITIONER

37. The specific action which Petitioner seeks is a determination that Applicant's application should have been rejected without an opportunity to cure, due to its misidentification

of the "Name of Applicant" in the originally submitted application, and as a result of such rejection Applicant would have fallen outside of the funding range by virtue of failing threshold. Petitioner further requests FHFC to determine that, but for the error by FHFC in determining that Applicant had not failed threshold, Petitioner's application would have been allocated tax credits in the 2009 Universal Cycle. Finally, Petitioner requests FHFC to provide the allocation requested by Petitioner in its 2009 Universal Cycle application and to declare Petitioner eligible for funding under FHFC's Request for Proposal 2010-04, Section One (third paragraph therein).

WHEREFORE, Petitioner requests the following:

(a) FHFC award Petitioner its requested tax credits from either currently available allocation or next available allocation;

(b) FHFC conduct an informal hearing on the matters presented in this Petition;

(c) FHFC's designated hearing officer enter a recommended order directing FHFC to award Petitioner its requested tax credits;

(d) FHFC enter a final order awarding Petitioner its requested tax credits and declaring Petitioner eligible for funding under RFP 2010-04; and

(e) Petitioner be granted such other and further relief as may be deemed just and proper.

Respectfully submitted on this 19th day of March, 2010.

By: _____

GARY J. COHEN, ESQ.
Florida Bar No. 353302
Shutts & Bowen LLP
201 S. Biscayne Boulevard
1500 Miami Center
Miami, Florida 33131
(305) 347-7308 (telephone)
(305) 347-7808 (facsimile)

Attorney for Petitioner

CERTIFICATE OR SERVICE

I HEREBY CERTIFY that the original and a true and correct eopy of the foregoing document was served via Federal Express to the **CORPORATION CLERK**, Florida Housing Finance Corporation, 227 N. Bronough Street, City Center Building, Suite 5000, Tallahassee, Florida, 32301-1329, on this 17th day of March, 2010.

Attorney

PINNACLE AT HAMMOCK SQUARE, LLC v. FHFC

APPLICATION NO. 2009-216C

EXHIBIT "A"

2009 Universal Application
Multifamily Mortgage Revenue Bonds (MMRB) Program
HOME Investment Partnerships (HOME) Rental Program
Housing Credit (HC) Program

Part I. Applicant Certification / Related and Priority I Applications

A. Applicant Certification:

The Applicant must provide the property completed and executed Applicant Certification and Acknowledgement form behind a tab labeled "Exhibit 1.A."

B. Related Applications and Priority I Application Designation

(Applies only to Competitive HC Applications):

1. Is this Application a Related Application?

(•) Yes ( ) No

If "Yes", answer the applicable question at B.2. below.

If "No", the Application will automatically be considered to be designated by the Applicant as a Priority I Application and the Applicant is not required to provide the Declaration of Priority I Related Applications form.

2. Indicate which one of the following applies to this Related Application and, if the Applicant selects item 2.a., 2.b., or 2.c. below, provide the Decleration of Priority I Related Applications form behind a tab labeled "Exhibit 1.B.":

(•) a. This is a Non-Joint Venture Application designated as a Priority I Application.

( ) b. This is a Joint Venture Application designated as a Priority I Application and the Applicant is a Joint Venture Public Housing Authority Applicant.

( ) c. This is a Joint Venture Application designated as a Priority I Application and the Applicant is a Joint Venture Non-Profit Applicant. The questions at Part II.A.2.e. of the Application must be answered and the required documentation must be provided.

( ) d. This Application is not designated as a Priority I Application.

Part II. Applicant and Development Team

A. Applicant

1. Indicate the Corporation program(s) applied for in this Application (see Application Instructions for permitted program combinations):

- [ ] Tax-Exempt Multifamily Mortgage Revenue Bonds (Corporation-Issued MMRB)
- [ ] Taxable Multifamily Mortgage Revenue Bonds
- [x] Housing Credits (HC) [Competitive 4% and/or 9%]
- [ ] Housing Credits (HC) [non-competitive 4%]
- [ ] HOME Investment Partnerships (HOME) Rental

2. Applicant Information:

a. Name of Applicant:	Flagler Village Limited Partnership
Street Address:	3158 Northside Drive
City:	Key West State: FL Zip: 33040
Telephone:	(305)294-1049 Facsimile: (305)294-3951
E-Mail Address: (Optional)	oropeza@oropeza-parks.com
b. Federal Employer Identification Number	27-0730147

EXHIBIT "B"

Scoring Summary Report

File #: 2009-216C Development Name: Flagler Village

As Of:	Total Points	Met Threshold?	Ability to Proceed Tie-Breaker Points	Proximity Tie-Breaker Points
09/21/2009	70.00	N	4.00	5.00
Preliminary	70.00	N	4.00	5.00
NOPSE				
Final				
Final-Ranking				

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
				Construction Features & Amenities					
1S	III	B	2.a	New Construction	9.00	9.00			
1S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9.00	0.00			
2S	III	B	2.c	All Developments Except SRO	12.00	12.00			
2S	III	B	2.d	SRO Developments	12.00	0.00			
3S	III	B	2.e	Energy Conservation Features	9.00	9.00			
4S	III	B	3	Green Building	5.00	5.00			
				Set-Aside Commitment					
5S	III	E	1.b.(2)	Special Needs Households	4.00	4.00			
6S	III	E	1.b.(3)	Total Set-Aside Commitment	3.00	3.00			
7S	III	E	3	Affordability Period	5.00	5.00			
				Resident Programs					
8S	III	F	1	Programs for Non-Elderly & Non-Homeless	6.00	6.00			
8S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6.00	0.00			
8S	III	F	3	Programs for Elderly	6.00	0.00			
9S	III	F	4	Programs for All Applicants	8.00	8.00			
				Local Government Contributions					
10S	IV	A		Contributions	5.00	5.00			
				Local Government Incentives					
11S	IV	B		Incentives	4.00	4.00			

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
1T	II	A		Applicant	The name stated at Part II.A.2.a. of the Application (Flagler Village Limited Partnership) does not match the entity on the Department of State certificate provided at Exhibit 3 (Flagler Village Limited Partnership, Ltd.).	Preliminary	
2T	III	C	2	Site Control	To demonstrate site control, the Applicant provided a Sub -Lease Agreement which refers to a copy of a Ground Lease dated July 19, 2006. A Ground Lease was also provided; however, it is dated September 20, 2006 and is therefore inconsistent with the Sub-Lease.	Preliminary	
3T	III	C	3.a	Availability of Electricity	The Verification of Availability of Infrastructure – Electricity form provided in the Application is incomplete because the correct city is not included in the Development Location. The form states "Stock Island" as the city instead of "Key West" as stated in the Application at Part III A.2.a.	Preliminary	
4T	III	C	3.b	Availability of Water	The Verification of Availability of Infrastructure – Water form provided in the Application is incomplete because the correct city is not included in the Development Location. The form states "Stock Island" as the city instead of "Key West" as stated in the Application at Part III A.2.a.	Preliminary	

Ability To Proceed Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1A	III	C	1	Site Plan/Plat Approval	1.00	1.00			
2A	III	C	3.a	Availability of Electricity	1.00	0.00			
3A	III	C	3.b	Availability of Water	1.00	0.00			
4A	III	C	3.c	Availability of Sewer	1.00	1.00			
5A	III	C	3.d	Availability of Roads	1.00	1.00			
6A	III	C	4	Appropriately Zoned	1.00	1.00			

Reason(s) for Failure to Achieve Selected Ability To Proceed Tie-Breaker Points:

Item #	Reason(s)	Created As Result	Rescinded As Result
2A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of electricity. See Item 3T above.	Preliminary	
3A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of water. See Item 4T above.	Preliminary	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.b.(2) (a)	Grocery Store	1.25	1.00			
2P	III	A	10.b.(2) (b)	Public School	1.25	1.25			
3P	III	A	10.b.(2) (c)	Medical Facility	1.25	0.00			
4P	III	A	10.b.(2) (d)	Pharmacy	1.25	0.00			
5P	III	A	10.b.(2) (e)	Public Bus Stop or Metro-Rail Stop	1.25	1.25			
6P	III	A	10.c	Proximity to Development on FHFC Development Proximity List	3.75	1.50			
7P	III	A	10.a	Involvement of a PHA	7.50	0.00			

Certificate of Status

I certify from the records of this office that FLAGLER VILLAGE LIMTED PARTNERSHIP, LTD., is a Limited Partnership organized under the laws of the state of Florida, filed electronically on August 05, 2009, effective August 05, 2009.

The document number of this Limited Partnership is A09000000558.

I further certify said Limited Partnership has paid all filing fees due this office through December 31, 2009, and its status is active.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code noted below.

Authentication Code: 090806095956-100159288711#1

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this the
Sixth day of August, 2009

Kurt S. Browning
Secretary of State

EXHIBIT "C"

UNIVERSAL APPLICATION PACKAGE
NOTICE OF POSSIBLE SCORING ERROR (NOPSE)
REQUEST FOR REVIEW FORM

NOPSE TRACKING NO. **071**

Notice of Possible Scoring Error(s) regarding Application No. 2009- 216C
(one Application number per notice)

Part/Section/Subsection			Number of Issues For Review
II	A	2.c. Ex 3	1

Total Number of Issues For Review 1

Submitted by Authorized Representative for Application Number 2009- 246C

Signature of Authorized Representative for above-designated Application.

Signature: ________________ Print Name: Jay P. Brock

All notices must be submitted in accordance with subsection 67-48.004(4), F.A.C., and should contain enough information for staff to evaluate them. This will include, but may not be limited to, a detailed description of the issue being identified and action requested by the submitting Applicant, such as reduction of score or threshold failure. Attach additional pages if necessary. All notices should be submitted in typewritten form.

Brief Statement of Explanation regarding Application No. 2009-216C

Provide a separate brief statement for each NOPSE

In the FHFC Preliminary Scoring Summary Report threshold scoring item 1t indicated that Florida Housing determined that the Applicant Name at Part II.A.2 of the application ("Flagler Village Limited Partnership") does not match the entity on the certificate of good standing at Exhibit 3. Aecording to the scoring summary item 1t, Florida Housing states that the name of the entity on the certificate of good standing is "Flagler Village Limited Partnership, Ltd.". This is incorrect as the name on the certificate of good standing located at Exhibit 3 (See Ex A) is actually "Flagler Village Limted Partnership, Ltd." (underline emphasis added to note the apparent missing "i"). Therefore, there is an additional issue other than the difference Florida Housing recognized and noted in its preliminary scoring for this item on thc summary report.

The application instructions require that the Applicant entity be legally formed as of the application deadline. The "Name of Applicant" provided at Part II.A.2 of the application is "Flagler Village Limited Partnership" (See Ex B and C). That is also the name used in Exhibit 55 (See Ex D) and Exhibit 56 (see Ex E). As described above, the certificate of good standing provided in Exhibit 3 is for the entity "Flagler Village Limted Partnership, Ltd.".

Aecording to www.sunbiz.org, there were no entities formed as of the application deadline with the names of "Flagler Village Limited Partnership" or "Flagler Village Limited Partnership, Ltd." (See Ex F and G).

Furthermore, according to Rule 67-48.004(14), which provides in part:

> "...there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:
>
> (a) Name of Applicant; notwithstanding the foregoing, the name of the Applicant may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting;..."

The above referenced rule clearly sets forth that certain items cannot be revised, corrected, or supplemented. Although the error seems to be an unintended typographical or clerical mistake, the FHFC rules are very strict that a certain number of items cannot be revised or corrected. Permitting any opportunity to "cure" the above described error would be allowing the applicant to revise or correct which is clearly against Florida Housing rules. Clearly, there was no entity formed as of the application deadline for either "Flagler Village Limited Partnership" (the name provided in Part II.A.2 of the application and at Exhibit 55 and Exhibit 56 or for "Flagler Village Limited Partnership, Ltd." (the name

provided at Exhibit 9). The name of the only entity formed as of the applicant deadline was "Flagler Village Limted Partnership, Ltd." It may seem harsh but there are very few items that cannot be cured under the application process and the "name of the applicant" is one of those few. As such, the application should be disqualified without an opportunity to cure.

Ex A

Certificate of Status

I certify from the records of this office that FLAGLER VILLAGE LIMTED PARTNERSHIP, LTD., is a Limited Partnership organized under the laws of the state of Florida, filed electronically on August 05, 2009, effective August 05, 2009.

The document number of this Limited Partnership is A09000000558.

I further certify said Limited Partnership has paid all filing fees due this office through December 31, 2009, and its status is active.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code noted below.

Authentication Code: 090806095956-100159288711#1

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this the
Sixth day of August, 2009

Kurt S. Browning
Secretary of State

FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

Entity Name List

Corporate Name	Document Number	Status
FLAGLER VILLAGE CORP.	P05000048213	INACT
FLAGLER VILLAGE 6TH STREET, LTD.	A04000001522	ACT
FLAGLER VILLAGE APARTMENTS, L.L.C.	L05000013054	ACT
FLAGLER VILLAGE APTS INC	323809	INACT
FLAGLER VILLAGE CIVIC ASSOCIATION, INC.	N05000007414	ACT
FLAGLER VILLAGE DEVELOPERS, LLC	L06000052299	INACT
FLAGLER VILLAGE GROUP, LLLP	A06000000663	INACT
FLAGLER VILLAGE HOLDING, LLC	L09000075642	ACT
FLAGLER VILLAGE HOMEOWNER'S ASSOCIATION, INC.	N07000009588	ACT
FLAGLER VILLAGE IMPROVEMENT ASSOCIATION, INC.	N03000010499	ACT
FLAGLER VILLAGE LIMTED PARTNERSHIP, LTD.	A09000000558	ACT
FLAGLER VILLAGE REALTY GROUP, LLC	L04000043353	INACT
FLAGLER VILLAGE TENANT ASSOCIATION, INC.	N01000004558	INACT
FLAGLER VISION CENTER, INC.	P03000043631	INACT
FLAGLER VISION CENTER, INC.	P94000046661	INACT
FLAGLER VITAMINS & DISCOUNT, INC.	P01000047895	INACT
FLAGLER VOLUNTEER SERVICES, INC.	N00000002655	ACT
FLAGLER AND VOLUSIA COMMUNITY DEVELOPMENT CORPORATION, INC.	757695	INACT
FLAGLER/VOLUSIA HEALTH CENTER, INC.	H65711	INACT
FLAGLER-VOLUSIA SUPPORT SERVICES, INC.	P03000072192	ACT
FLAGLER VOLUSIA TITLE COMPANY, LLC	L04000033858	INACT
FLAGLER WAREHOUSE I, LLC	L98000002642	ACT
FLAGLER WATCHES, INC.	P08000028028	ACT
FLAGLER WATER, INC	P05000032577	INACT

FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

Detail by Entity Name

Florida Limited Partnership

FLAGLER VILLAGE LIMTED PARTNERSHIP, LTD.

Filing Information

Document Number	A09000000558
FEI/EIN Number	NONE
Date Filed	08/05/2009
State	FL
Status	ACTIVE
Effective Date	08/05/2009

Principal Address

3158 NORTHSIDE DRIVE
KEY WEST FL 33040 US

Mailing Address

3158 NORTHSIDE DRIVE
KEY WEST FL 33040 US

Registered Agent Name & Address

KOENIG, TIMOTHY J
3158 NORTHSIDE DRIVE
KEY WEST FL 33040 US

General Partner Detail

Name & Address

Document Number L09000075337

OVERSEAS GP, LLC
3158 NORTHSIDE DRIVE
KEY WEST FL 33040 US

Annual Reports

No Annual Reports Filed

Document Images

08/05/2009 -- Domestic LP | View image in PDF format

Note: This is not official record. See documents if question or conflict.

Certificate of Limited Partnership

A09000000558
FILED
August 05, 2009
Sec. Of State
gharvey

Name of Limited Partnership:

FLAGLER VILLAGE LIMTED PARTNERSHIP, LTD.

Street Address of Limited Partnership:

3158 NORTHSIDE DRIVE
KEY WEST, FL. US 33040

Mailing Address of Limited Partnership:

3158 NORTHSIDE DRIVE
KEY WEST, FL. US 33040

The name and Florida street address of the registered agent is:

TIMOTHY J KOENIG
3158 NORTHSIDE DRIVE
KEY WEST, FL. 33040

I certify that I am familiar with and accept the responsibilities of registered agent.

Registered Agent Signature: TIMOTHY J. KOENIG

The name and address of all general partners are:

Title: G
OVERSEAS GP, LLC
3158 NORTHSIDE DRIVE
KEY WEST, FL. 33040 US

The effective date for this Limited Partnership shall be:

08/05/2009

Signed this Fifth day of August, 2009

I (we) declare the I (we) have read the foregoing and know the contents thereof and that the facts stated herein are true and correct.

General Partner Signature: ROBERT E. HIGHSMITH

EXHIBIT "D"

CURE
TRACKING NO.

416

2009 CURE SUMMARY FORM

This Cure Summary Form is submitted with regard to **Application No. 2009- 216C** and pertains to the Application parts, sections, subsections, and exhibits listed below (please list the parts, sections, subsections and exhibits in the order they appear in the most recent Scoring Summary Report):

				Submitted in Response to:					Created by:	
Part (I, II, III, IV, or V)	**Section** (A, B, C, D, etc.)	**Subsection** (1, 2, 3, etc or 1.a., 2.a., etc.)	**Exhibit** (1, 2, 3, etc.)	**Reason Score Not Maxed** (Provide item No. from Application Scoring Summary)	**Reason Ability to Proceed Score Not Maxed** (Provide item No. from Application Scoring Summary)	**Reason Failed Threshold** (Provide item No. from Application Scoring Summary)	**Proximity Scoring** (Provide item No. from Application Scoring Summary)	**Additional Comment** (Provide item No. from Application Scoring Summary)	**Mark this column if Item No. indicated in "Submitted in Response to" column(s) resulted from Preliminary Scoring**	**Mark this column if Item No. indicated in "Submitted in Response to" column(s) resulted from NOFSE Scoring and state NOFSE Tracking No., if known**
			Cover Page	S	A	1 T	P	C	X	
II	A	2.a		S	A	1 T	P	C	X	
II	A	2.b	2	S	A	1 T	P	C	X	
II	A	3	9	S	A	5 T	P	C		X
III	C	2	27	S	A	2 T	P	C	X	
III	C	3.a	28	S	A	3 T	P	C	X	
III	C	3.b	29	S	A	4 T	P	C	X	
III	E	1.b.2	36	S	A	1 T	P	C	X	
V	D		55	S	A	1 T	P	C	X	
V	D		56	S	A	1 T	P	C	X	
				S	A	6 T	P	C		X
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		

2009 CURE FORM

(Submit a SEPARATE form for EACH reason relative to EACH Application Part, Section, Subsection, and Exhibit)

This Cure Form is being submitted with regard to **Application No. 2009-**216C and pertains to:

Part _____ Section _____ Subsection _____ Exhibit No. Cover Page (if applicable)

The attached information is submitted in response to the 2009 Universal Scoring Summary Report because:

☐ **1.** Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve threshold, and/or a failure to achieve maximum proximity points relative to the Part, Section, Subsection, and/or Exhibit stated above. Check applicable item(s) below:

	2009 Universal Scoring Summary Report	**Created by:**	
		Preliminary Scoring	**NOPSE Scoring**
☐ Reason Score Not Maxed	Item No. ____S	☐	☐
☐ Reason Ability to Proceed Score Not Maxed	Item No. ____A	☐	☐
☐ Reason Failed Threshold	Item No. ____T	☐	☐
☐ Reason Proximity Points Not Maxed	Item No. ____P	☐	☐
☐ Additional Comment	Item No. ____C	☐	☐

☒ **2.** Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a cure to Part II Section A Subsection2.a Exhibit _____ (if applicable).

2009 Universal Cycle Application

for

Flagler Village

Flagler Village Limted Partnership, LTD
3158 Northside Drive
Key West, FL 33040
(305)294-1094

"Original Hard Copy"

Submitted to:
Florida Housing Finance Corporation
227 North Bronough Street
Tallahassee, FL 32301

Brief Statement of Explanation regarding Cure for Application

No.2009-216C

Provide a separate brief statement for each Cure

Cover Sheet

The Cover Sheet has been modified to reflect the correct applicant entity as established with the Department of State and to keep the application consistent.

AEBCBF7D-3654-4B06-A136-927EBC8851C9

2009 Universal Application
Multifamily Mortgage Revenue Bonds (MMRB) Program
HOME Investment Partnerships (HOME) Rental Program
Housing Credit (HC) Program

Part I. Applicant Certification / Related and Priority I Applications

A. Applicant Certification:

The Applicant must provide the properly completed and executed Applicant Certification and Acknowledgement form behind a tab labeled "Exhibit 1.A."

B. Related Applications and Priority I Application Designation

(Applies only to Competitive HC Applications)

1. Is this Application a Related Application?

(•) Yes ( ) No

If "Yes", answer the applicable question at B.2. below.

If "No", the Application will automatically be considered to be designated by the Applicant as a Priority I Application and the Applicant is not required to provide the Declaration of Priority I Related Applications form.

2. Indicate which one of the following applies to this Related Application and, if the Applicant selects item 2.a., 2.b., or 2.c. below, provide the Declaration of Priority I Related Applications form behind a tab labeled "Exhibit 1.B.":

(•) a. This is a Non-Joint Venture Application designated as a Priority I Application

( ) b. This is a Joint Venture Application designated as a Priority I Application and the Applicant is a Joint Venture Public Housing Authority Applicant.

( ) c. This is a Joint Venture Application designated as a Priority I Application and the Applicant is a Joint Venture Non-Profit Applicant. The questions at Part II.A.2.e. of the Application must be answered and the required documentation must be provided.

( ) d. This Application is not designated as a Priority I Application.

Part II. Applicant and Development Team

A. Applicant

1. Indicate the Corporation program(s) applied for in this Application (see Application Instructions for permitted program combinations):

[ ] Tax-Exempt Multifamily Mortgage Revenue Bonds (Corporation-Issued MMRB)
[ ] Taxable Multifamily Mortgage Revenue Bonds
[✓] Housing Credits (HC) [Competitive 4% and/or 9%]
[ ] Housing Credits (HC) [non-competitive 4%]
[ ] HOME Investment Partnerships (HOME) Rental

2. Applicant Information:

a. Name of Applicant:	Flagler Village Limited Partnership, Ltd.		
Street Address:	3168 Northside Drive		
City	Key West	State: FL	Zip: 33040
Telephone	(305)294-1049	Facsimile:	(305)294-3951
E-Mail Address: (Optional)	oropeza@oropeza-parks.com		
b. Federal Employer Identification Number	27-0730147		

Brief Statement of Explanation regarding Cure for Application No. 2009-216C

Provide a separate brief statement for each Cure

As reflected in the official records of the Florida Department of State submitted in Exhibit 3 of the original Application, the Applicant seeking FHFC funding for this proposed Development is "Flagler Village Limted Partnership, Ltd." While there was obviously an inadvertent scrivener's error in the filing of the Applicant's formation documents with respect to omitting the second "i" in the word "Limited," there is no doubt that the Applicant was legally formed under the above-quoted name prior to the Application Deadline. Flagler Village Limted Partnership, Ltd., is and always was the legally formed entity serving as the Applicant for this Application.

Further, as indicated at Part II.A.2.b. of the original Application, this Applicant has been assigned Federal Employer Identification Number ("FEIN") 27-0730147. While the Applicant submitted in Exhibit 2 of the original Application a document from the Internal Revenue Service ("IRS") indicating the assignment of this FEIN to "Flagler Village Limited Partnership Ltd.," the IRS has since issued a correction making clear that this FEIN is assigned to the Applicant in its legal name, "Flagler Village Limted Partnership Ltd." The IRS document is submitted as part of the Applicant's cure materials as a new Exhibit 2.

Unfortunately, elsewhere in the original Application and in several exhibits, the Applicant is identified as "Flagler Village Limited Partnership" or as "Flagler Village Limited Partnership, Ltd.," which is inconsistent with the Applicant's legal name. This oversight produced some confusion and led FHFC to indicate a threshold failure as Item 1T in its preliminary scoring, citing the following reason:

> The name stated at Part II.A.2.a. of the Application (Flagler Village Limited Partnership) does not match the entity on the Department of State certificate provided at Exhibit 3 (Flagler Village Limited Partnership, Ltd.).

Thus, in the Applicant's cure materials, the Applicant is correcting the entry at Part II.A.2.a., as well as the references to the Applicant at Exhibits 2, 9, 27, 36, 55, and 56 to reflect the Applicant's legal name, "Flagler Village Limted Partnership Ltd." Notably, the Principals of the Applicant and their relative ownership interests remain the same as disclosed in the original Application. Further, as stated above, the IRS has recognized that the Applicant's FEIN, as stated in the original Application, belongs to the Applicant in its legal name, "Flagler Village Limted Partnership Ltd."

As such, the Applicant's cure should resolve Item 1T and reverse the threshold failure.

The Applicant also notes that, in a NOPSE filed against its Application, a competing applicant has argned that the Applicant cannot change the Applicant's name as stated in the Application, in particular the Applicant's name as stated at Part II.A.2.a. of the Application. This argument fails for several reasons.

First, the legal name of the Applicant, as indicated in Exhibit 3 of the original Application, is and always was "Flagler Village Limted Partnership Ltd." No document has been filed with the Florida Department of State to change the Applieant's name. Such a change would he prohibited hy Rule 67-48.004(14)(a), which prohibits a change to thc:

> (a) Name of Applieant; notwithstanding the foregoing, thc name of the Applicant may he changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting;

This Rule, however, does not prohibit a change to thc Applicant's name as stated in a particular part of the Application, e.g., in Part II.A.2.a. In contrast, there are other "non-curable" items which are tied to a specific part, section, or line of the Application itself, for example:

> (j) With regard to the SAIL and HC Programs, the ELI Set-Aside commitment on the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of thc Application;
>
> (k) With regard to the SAIL and HC Programs, the Total Set-Aside Percentage as stated in the last row of thc total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application. With regard to the HOME Program, the Total Set-Aside Percentage as stated in the Set-Aside Commitment section of the Application, unless the change results from the revision allowed under paragraph (m) below;

Rule 67-48.004(14), Florida Administrative Code.

Thus, if FHFC had intended to prohibit a change to thc recitation of the Applicant's name at a particular part, section, or linc in the Application, then FHFC certainly could have expressly done so, but it cannot do so now after thc fact. *See Cypress Senior Village, LLC v. FHFC*, FHFC Case No. 2006-027UC, Recommended Order at ¶¶26-29 (Final Order July 28, 2006); *Aswan Village Assoc's, LLC v. FHFC*, FHFC Case No. 2003-042, Recommended Order at ¶¶6-9 (Final Order Oct. 9, 2003).

Indeed, to thc extent there is any ambiguity as to whether FHFC's rules prohibit a change to a particular part, section, or linc in the Applieation in order for it to

be consistent with the Applicant's legal name as indicated elsewhere in the original Application, such ambiguity must be decided in favor of the Applicant. *Cypress Senior Village, LLC v. FHFC*, FHFC Case No. 2006-027UC, Recommended Order at ¶¶32 (Final Order July 28, 2006); *Ybor III, Ltd., v. FHFC*, FHFC Case No. 2001-091, Recommended Order at 10 (FHFC Final Order Sept. 20, 2001). This must particularly be the case here where the construction suggested in the NOPSE would result in the harshest of consequences – rejection of the Application.

EXHIBIT "E"

NOAD
TRACKING NO.

572

COPY

2009 NOTICE OF ALLEGED DEFICIENCIES (NOAD) SUMMARY FORM

This NOAD Summary Form is being submitted with regard to **Application No. 2009- 216C** and pertains to the revisions/additions made to the Application parts, sections, subsections and exhibits listed below (please list the parts, sections, subsections, and exhibits in the order they appear in the most recent Scoring Summary Report with regard to the Application revisions/additions being challenged):

				Submitted in Response to:					Created by:	
Part (I, II, III, IV, or V)	**Section** (A, B, C, D, etc.)	**Subsection** (1, 2, 3, etc. or 1.a., 2.a., etc.)	**Exhibit** (1, 2, 3, etc.)	**Reason Score Not Maxed** (Provide Item No. from Application Scoring Summary)	**Reason Ability to Proceed Score Not Maxed** (Provide Item No. from Application Scoring Summary)	**Reason Failed Threshold** (Provide Item No. from Application Scoring Summary)	**Proximity Scoring** (Provide Item No. from Application Scoring Summary)	**Additional Comment** (Provide Item No. from Application Scoring Summary)	**Mark this Column if Item No. indicated in "Submitted in Response to" column(s) resulted from Preliminary Scoring**	**Mark this Column if Item No. indicated in "Submitted in Response to" column(s) resulted from NOPSE scoring and state NOPSE Tracking No., if known**
II	A	2.a		S	A	1 T	P	C	X	
II	A	3	9	S	A	5 T	P	C		X
III	C	2	27	S	A	2 T	P	C	X	
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		
				S	A	T	P	C		

SUBMITTED BY APPLICATION NO. 2009-244C IN ACCORDANCE WITH RULE 67-48.004, F.A.C.

2009 CURE FORM

(Submit a SEPARATE form for EACH reason relative to EACH Application Part, Section, Subsection, and Exhibit)

This Cure Form is being submitted with regard to **Application No. 2009-**216C and pertains to:

Part II Section A Subsection 2.a Exhibit No. ____ (if applicable)

The attached information is submitted in response to the 2009 Universal Scoring Summary Report because:

☒ **1.** Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve threshold, and/or a failure to achieve maximum proximity points relative to the Part, Section, Subsection, and/or Exhibit stated above. Check applicable item(s) below:

	2009 Universal Scoring Summary Report	Created by: Preliminary Scoring	Created by: NOPSE Scoring
☐ Reason Score Not Maxed	Item No. ____S	☐	☐
☐ Reason Ability to Proceed Score Not Maxed	Item No. ____A	☐	☐
☒ Reason Failed Threshold	Item No. 1T	☒	☐
☐ Reason Proximity Points Not Maxed	Item No. ____P	☐	☐
☐ Additional Comment	Item No. ____C	☐	☐

☐ **2.** Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a cure to Part _____ Section _____ Subsection_____ Exhibit _____ (if applicable).

Brief Statement of Explanation regarding Application 2009- 216C

Provide a separate brief statement for each NOAD

Item 1T, Part II.A.2.a.

Florida Housing determined there was a threshold failure during preliminary scoring in that the Name of Applicant at Part II.A.2.a. of the application originally submitted did not match the entity on the State of Florida Certificate of Good Standing at Exhibit 3.

The "Name of Applicant" at Part II.A.2.a. of the originally submitted application was identified as "Flagler Village Limited Partnership". Now, as part of a purported "cure", the Applicant has submitted documents that have changed the "Name of Applicant" at Part II.A.2.a. to "Flagler Village Limted Partnership, Ltd." Clearly, this is in violation of Rule 67-48.004(14), which provides in part:

> "...there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:
>
> (a) Name of Applicant; notwithstanding the foregoing, the name of the Applicant may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to enter credit underwriting..."

The above referenced rule clearly sets forth that certain items cannot be revised, corrected, or supplemented. Although the error seems to be an unintended typographical or clerical mistake, the FHFC rules are very strict that just a few number of items cannot be revised or corrected. Permitting any opportunity to "cure" the above described error would be allowing the applicant to revise or correct "Name of Applicant" which is clearly against Florida Housing rules. Clearly, there was no entity formed as of the application deadline for either "Flagler Village Limited Partnership" (the name provided in Part II.A.2 of the application and at Exhibit 55 and Exhibit 56 or for "Flagler Village Limited Partnership, Ltd." (the name provided at Exhibit 9). The name of the only entity formed as of the applicant deadline was "Flagler Village Limted Partnership, Ltd." It may seem harsh but there are very few items that cannot be cured under the application process and the "name of the applicant" is one of those few. As such, the application should be disqualified without an opportunity to cure.

If this is not a change to the "Name of Applicant" pursuant to Rule 67-48.004(14), it begs the question then what would constitute an impermissible change of "Name of Applicant" pursuant to such rule. Why even have this rule?

If Florida Housing allows this to be "cured", then the requirement of having a validly formed Applicant entity is meaningless. For example, if an application identified at Part II.A.2.a. the "Name of Applicant" as "ABC, Ltd." but there was no such entity formed as of the application deadline, the Applicant could simply use another entity that has been formed, say "XYZ, Ltd." and then just change every document in the application to "XYZ, Ltd."

The Applicant clearly made a mistake and some might argue it is only an inadvertent scrivener's error. Florida Housing's process allows "cures" for scrivener's error or other minor mistake except for those few items listed at Rule 67-48.004(14), F.A.C.. And with regard to those items, as Rule 67-48.004(14) F.A.C. clearly and unequivocally states "...certain items cannot be revised, corrected or supplemented.

As such, the application should remain disqualified for failure to meet threshold.

EXHIBIT "F"

Scoring Summary Report

File #: 2009-216C Development Name: Flagler Village

As Of:	Total Points	Met Threshold?	Ability to Proceed Tie-Breaker Points	Proximity Tie-Breaker Points
02/26/2010	70.00	Y	5.00	5.00
Preliminary	70.00	N	4.00	5.00
NOPSE	70.00	N	4.00	5.00
Final	70.00	Y	5.00	5.00
Final-Ranking	70.00	Y	5.00	5.00

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
				Construction Features & Amenities					
1S	III	B	2.a	New Construction	9.00	9.00	9.00	9.00	9.00
1S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9.00	0.00	0.00	0.00	0.00
2S	III	B	2.c	All Developments Except SRO	12.00	12.00	12.00	12.00	12.00
2S	III	B	2.d	SRO Developments	12.00	0.00	0.00	0.00	0.00
3S	III	B	2.e	Energy Conservation Features	9.00	9.00	9.00	9.00	9.00
4S	III	B	3	Green Building	5.00	5.00	5.00	5.00	5.00
				Set-Aside Commitment					
5S	III	E	1.b.(2)	Special Needs Households	4.00	4.00	4.00	4.00	4.00
6S	III	E	1.b.(3)	Total Set-Aside Commitment	3.00	3.00	3.00	3.00	3.00
7S	III	E	3	Affordability Period	5.00	5.00	5.00	5.00	5.00
				Resident Programs					
8S	III	F	1	Programs for Non-Elderly & Non-Homeless	6.00	6.00	6.00	6.00	6.00
8S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6.00	0.00	0.00	0.00	0.00
8S	III	F	3	Programs for Elderly	6.00	0.00	0.00	0.00	0.00
9S	III	F	4	Programs for All Applicants	8.00	8.00	8.00	8.00	8.00
				Local Government Contributions					
10S	IV	A		Contributions	5.00	5.00	5.00	5.00	5.00
				Local Government Incentives					
11S	IV	B		Incentives	4.00	4.00	4.00	4.00	4.00

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
1T	II	A		Applicant	The name stated at Part II.A.2.a. of the Application (Flagler Village Limited Partnership) does not match the entity on the Department of State certificate provided at Exhibit 3 (Flagler Village Limited Partnership, Ltd.).	Preliminary	Final
2T	III	C	2	Site Control	To demonstrate site control, the Applicant provided a Sub -Lease Agreement which refers to a copy of a Ground Lease dated July 19, 2006. A Ground Lease was also provided; however, it is dated September 20, 2006 and is therefore inconsistent with the Sub-Lease.	Preliminary	Final
3T	III	C	3.a	Availability of Electricity	The Verification of Availability of Infrastructure – Electricity form provided in the Application is incomplete because the correct city is not included in the Development Location. The form states "Stock Island" as the city instead of "Key West" as stated in the Application at Part III A.2.a.	Preliminary	Final
4T	III	C	3.b	Availability of Water	The Verification of Availability of Infrastructure – Water form provided in the Application is incomplete because the correct city is not included in the Development Location. The form states "Stock Island" as the city instead of "Key West" as stated in the Application at Part III A.2.a.	Preliminary	Final
5T	II	A	3	Principals	Although the Applicant provided the required list of Principals at Exhibit 9, the list does not disclose the members and managers of the Initial Limited Partner, Flagler Village Holding, LLC.	NOPSE	Final

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
6T				Financial Arrears	Pursuant to subsection 67-48.004(5), F.A.C., NOPSE scoring may include financial obligations for which an Applicant or Developer or Principal, Affiliate or Financial Beneficiary of an Applicant or the Developer is in arrears to the Corporation or an agent or assignee of the Corporation as of the due date for NOPSE filing (October 1, 2009). As provided in paragraph 67-48.004(13)(d), F.A.C., following the submission of the "Cures," the Corporation shall reject an Application if the Applicant fails to satisfy any arrearages described in subsection 67-48.004(5), F.A.C. The Applicant or Developer or Principal, Affiliate or Financial Beneficiary of the Applicant or the Developer is listed on the October 1, 2009 Past Due Report as being in arrears to the Corporation in connection with the following Development(s): Whistler's Cove. The October 1, 2009 Past Due Report is posted to the FHFC Website at http://www.floridahousing.org/Home/PropertyOwnersManagers/PastDueReports.htm. Payments and questions should be addressed to the servicer.	NOPSE	Final

Ability To Proceed Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1A	III	C	1	Site Plan/Plat Approval	1.00	1.00	1.00	1.00	1.00
2A	III	C	3.a	Availability of Electricity	1.00	0.00	0.00	0.50	0.50
3A	III	C	3.b	Availability of Water	1.00	0.00	0.00	0.50	0.50
4A	III	C	3.c	Availability of Sewer	1.00	1.00	1.00	1.00	1.00
5A	III	C	3.d	Availability of Roads	1.00	1.00	1.00	1.00	1.00
6A	III	C	4	Appropriately Zoned	1.00	1.00	1.00	1.00	1.00

Reason(s) for Failure to Achieve Selected Ability To Proceed Tie-Breaker Points:

Item #	Reason(s)	Created As Result	Rescinded As Result
2A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of electricity. See Item 3T above.	Preliminary	Final
3A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of water. See Item 4T above.	Preliminary	Final

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.b.(2) (a)	Grocery Store	1.25	1.00	1.00	1.00	1.00
2P	III	A	10.b.(2) (b)	Public School	1.25	1.25	1.25	1.25	1.25
3P	III	A	10.b.(2) (c)	Medical Facility	1.25	0.00	0.00	0.00	0.00
4P	III	A	10.b.(2) (d)	Pharmacy	1.25	0.00	0.00	0.00	0.00
5P	III	A	10.b.(2) (e)	Public Bus Stop or Metro-Rail Stop	1.25	1.25	1.25	1.25	1.25
6P	III	A	10.c	Proximity to Development on FHFC Development Proximity List	3.75	1.50	1.50	1.50	1.50
7P	III	A	10.a	Involvement of a PHA	7.50	0.00	0.00	0.00	0.00

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Comment(s)	Created as Result of	Rescinded as Result of
1C				Financial Arrears	The Applicant or Developer or Principal, Affiliate or Financial Beneficiary of the Applicant or the Developer is listed on the October 1, 2009 Past Due Report as being in arrears to the Corporation in connection with the following Development(s): Crescent Club (Camden Club). The October 1, 2009 Past Due Report is posted to the FHFC Website at http://www.floridahousing.org/Home/PropertyOwnersManagers/PastDueReports.htm. Either the arrearage was satisfied or a work-out agreement was finalized prior to issuance of the NOPSE Scoring Summary.	NOPSE	