

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

PINNACLE GROVE, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Agency Case No. 2002-705H

Respondent.

_____/

**PETITION REQUESTING INFORMAL HEARING
AND GRANT OF THE RELIEF REQUESTED**

Pursuant to Sections 120.569 and 120.57, Florida Statutes ("F.S."), Rule 67-48.005, Florida Administrative Code ("FAC") and Rule 28-106.301, FAC, Petitioner, PINNACLE GROVE, LTD. ("Petitioner") requests an informal hearing concerning the scoring by Florida Housing Finance Corporation ("FHFC") of Petitioner's HOME Rental ("HOME") Application No. 2002-705H, and to then grant the relief requested. In support of this Petition, Petitioner states as follows:

AGENCY AFFECTED

1. The name and address of the agency affected is Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The Agency's file or identification number with respect to this matter is 2002-705H.

PETITIONER

2. The Petitioner is Pinnacle Grove, Ltd., a Florida limited partnership. The address of the Petitioner is c/o Pinnacle Housing Group, Inc., 9400 S. Dadeland Boulevard, Suite 100, Miami, Florida 33156, telephone number (305) 854-7100. Petitioner's representative is Gary J. Cohen, Esq., whose address is c/o Shutts & Bowen LLP, 201 S. Biscayne Boulevard, Suite 1500, Miami, Florida 33131, telephone number (305) 347-7308, and Wilbur E. Brewton, Esq. Whose address is c/o Brewton, Plante & Plante, P.A., 225 South Adams Street, Suite 250, Tallahassee, Florida 32301, telephone (850) 222-7718.

PETITIONER'S SUBSTANTIAL INTERESTS

3. Petitioner's substantial interests will be affected by the determination of FHFC as follows:

(a) Petitioner has applied for an allocation of funds under the HOME program. The HOME program awards developers with below market rate interest loans for the construction of affordable rental housing units.

(b) A HOME application is comprised of numerous forms which request information of each applicant. FHFC adopted the forms by reference in Rule 67-48.002(61), FAC.

(c) On or about April 15, 2002, Petitioner submitted to FHFC a HOME application for the 2002 funding cycle. The application was submitted in an attempt to assist in the financing of the construction of a 234 unit apartment complex in Indian River County, Florida.

(d) The application was scored by FHFC in accordance with the provisions of Rule 67-48, FAC. By letter dated on or about May 13, 2002, FHFC advised Petitioner that its

preliminary score was 84 points. As a result of Notices of Potential Scoring Errors ("NOPSE") filed against Petitioner, FHFC notified Petitioner on or about June 10, 2002 that its score had been reduced by 5 points to 79 points, as a result of the deduction of 5 points with respect to Petitioner's "match" in Part III, Section F of the HOME application.

(e) On or about June 26, 2002, Petitioner submitted "cure" documentation to FHFC contending that (i) additional points should be awarded with respect to the "match" in Part III, Section F, (ii) 2 additional points should be awarded in Part IV for local government incentives, and (iii) certain failures to satisfy threshold requirements should be reversed as a result of the submission of additional "cure" documentation.

(f) On or about July 22, 2002, FHFC advised Petitioner that its final pre-appeal score had been increased to 81 points and that all failures to meet threshold requirements had been "cured". FHFC, in the 2002 HOME Rental Application Summary attached as Exhibit "A", accepted all of Petitioner's arguments contained in its "cure" documentation, except for Petitioner's arguments pertaining to the scoring of its "match" in Part III, Section F. FHFC's scoring of this "match" is the subject matter of this Petition.

(g) Under the HOME program, the HOME applications are scored by FHFC. A finite amount of HOME funds are allocated to applicants. Only those applications receiving the highest scores are awarded HOME funds. Petitioner's ability to finance its proposed project will be jeopardized if HOME funds are not obtained; accordingly, Petitioner's substantial interests are affected by this proceeding.

NOTICE OF AGENCY DECISION

4. Petitioner received notice of FHFC's scoring of its "cure" documentation by Federal Express delivery on or about July 22, 2002. Attached as Exhibit "A" is a copy of the

2002 HOME Rental Application Summary setting forth the scoring, which scoring gives rise to this Petition.

ULTIMATE FACTS ALLEGED

5. In Petitioner's initial HOME application submitted on or about April 15, 2002, Petitioner indicated (in Part III, Section F and Exhibit 28, excerpts attached as Exhibit "B") that, under HUD Regulation 24 CFR Part 92.220a.5.i. (attached as Exhibit "C"), Petitioner was providing a qualifying match represented by 50% of Florida Housing Finance Corporation's commitment to issue \$9,100,000 of tax exempt bonds to Petitioner. In its initial scoring of Petitioner's application, FHFC agreed and awarded 5 points for this qualifying "match". Under the HOME instructions to the HOME application, applicants who provide a "match" greater than or equal to 25 percent of the HOME loan requested received a maximum score of 5 points. Applicant requested a \$3,000,000 HOME loan; therefore, it needed to provide evidence of a \$750,000 "match" in order to receive the full 5 points. Applicant provided evidence of a qualifying "match" in the amount of \$4,550,000 (50% of FHFC's commitment to issue tax-exempt bonds), and FHFC determined that the 5 points should be awarded.

6. As a result of a "Notice of Potential Scoring Error" ("NOPSE") filed against Petitioner with FHFC, FHFC determined that the 5 points previously awarded with respect to the "match" should be deducted, because "the financing structure at Exhibit 44 does not include bonds as a source." See the 2002 HOME Rental Application Summary attached as Exhibit "A".

7. On or about June 26, 2001, Petitioner submitted "cure" documentation to FHFC. The portion of such "cure" documentation pertaining to the "match" is attached as Exhibit "D".

8. In the "cure" documentation submitted for the "match", Petitioner pointed out that there is no requirement in the HOME application that the "match" commitment be included in

Exhibit 44 (presumably, FHFC meant Exhibits 41 and 42) and, further, that there is no requirement in the HOME Rental Application that any such "match" commitment be "firm". As such, Petitioner contended (in its "cure" documentation) that the 5 points should be restored for the "match".

9. In the 2002 HOME Rental Application Summary (attached as Exhibit "A"), FHFC determined that Petitioner's "cure" documentation "... attempted to provide a cure for 9S but the material submitted did not address the issue for 9S identified during the NOPSE process". For the reasons set out herein, this conclusion, as a matter of law, by FHFC is incorrect.

**FACTS WHICH WARRANT REVERSAL
OF AGENCY'S PROPOSED ACTION**

The specific facts which warrant reversal of FHFC's proposed action are as follows:

10. FHFC has incorrectly determined that the "match" claimed from 50% of the FHFC bond allocation is ineligible because the financing structure contained in Petitioner's HOME application (more particularly set forth in Exhibits 41 and 42 of Petitioner's original HOME application detailing the sources of construction and permanent financing for the proposed development) did not include the FHFC bonds as a source of financing. FHFC's conclusion, as a matter of law, is incorrect for the reasons set forth below.

11. The instructions to the HOME Rental Application issued by FHFC, pertaining to Part III, Section F ("Match") (see pages 17 and 18 of the instructions, attached as Exhibit "E") require an applicant to do the following in order to qualify for "match" points: (i) review HUD HOME regulations at 24 CFR Part 92.220 in order to determine how to calculate "match"; and (ii) for each source of match funding identified, applicant must provide a signed statement from the source detailing the type and amount of contribution.

12. Petitioner complied with these instructions. Petitioner reviewed HUD HOME regulation 24 CFR Part 92.220 and determined that, under HUD HOME regulation 24 CFR Part 92.220a.5.i. (copy enclosed as Exhibit "C"), proceeds from multi-family affordable housing project bond financing from a state government or an agency thereof (that is, FHFC) constitutes a qualifying "match", and 50% of the loan amount made from bond proceeds to a multi-family affordable housing project qualifies. Petitioner correctly identified a qualifying form of match, satisfying the requirement of (i) in Paragraph 11 above. Petitioner also provided a signed statement from the source (FHFC) detailing the type and amount of contribution (see the letter from FHFC dated December 7, 2001 included in the original application and attached as part of Exhibit "B"). Petitioner has done everything required by the instructions issued by FHFC in connection with the HOME application.

13. Nowhere in the HOME application or in the instructions thereto is it required that the "match" must be reflected in the construction or permanent financing sources in order to constitute a "qualifying" match for purposes of the application. In fact, certain types of qualifying "matches" cannot be included as sources of construction and permanent financing in Exhibits 41 and 42. See, for example, HUD Rule 24 CFR Part 92.220a.2. (forbearance of local taxes or fees), HUD Rule 24 CFR Part 92.220a.3. (donated real property), and HUD Rule 24 CFR Part 92.220a.6. through 11. (reasonable value of donated site-preparation and construction materials; reasonable rental value of donated use of site preparation or construction equipment; value of donated or voluntary labor or professional services; value of sweat equity; direct cost of supportive services provided to families residing in HOME-assisted units; and the direct cost of homebuyer counseling services) (attached as Exhibit "C"). None of the foregoing forms of qualifying "matches" are capable of being included as a "source" of funds on Exhibit 41 and 42

of the HOME rental application. Notwithstanding that fact, all of these forms of "matches" would qualify for points under the HOME rental application and the instructions thereto, because nowhere in the application or in the instructions is it required that such forms of "match" be included as a "source" of financing in Exhibits 41-42. FHFC's position that Petitioner's "match" does not qualify because it (the "match") is not included as a "source" of funds is, as a matter of law, incorrect and not supported by either the HOME application, the instructions thereto, or HOME regulation 24 CFR Part 92.220.

14. Applicant did not include the FHFC December 7, 2001 MMRB letter in Exhibit 44 (evidencing a source of construction and permanent mortgage financing), because Petitioner understood that it may not have constituted a "firm" commitment for financing, which may have resulted in disqualification of the application for failure to meet a threshold requirement (that is, that all financing sources be "firm"). Notwithstanding the foregoing, Applicant intends to use the FHFC 2001 MMRB \$9,100,000 allocation in lieu of the debt commitment from Alliant Mortgage Company, Inc. submitted in the "cure" documentation once the MMRB allocation is firmly committed. FHFC has always permitted applicants to substitute debt or equity commitments for those contained in an application, so long as the new substitute commitment contains terms and conditions at least as favorable as those set forth in the commitment contained in the application. It is clear that the MMRB commitment will be on terms more favorable (lower interest rate and longer amortization) than those indicated in Exhibit 44 of the "cure" documentation. Indeed, the first mortgage commitment contained in Exhibit 44 of the "cure" documentation (see Exhibit "D") indicates that if the project obtains a firm commitment for FHFC 2001 MMRB bonds, the debt commitment from Alliant Mortgage Company, Inc. will be replaced.

15. There is no requirement in the HOME rental application that the "match" commitment be "firm". The information provided by Petitioner behind Exhibit 28 of the original application was all that was required by page 18 (Article III, Section F) of the HOME rental application instructions; Petitioner provided the amount, source and a signed statement detailing the type and amount of contribution. The Universal Application Instructions (UA1016), utilized for applicants applying for tax credits, bond financing and/or SAIL funds but not for HOME applicants, requires a "local government contribution" (somewhat analogous to the "match" requirement of the HOME Rental Application) to have received final approval; that is, to be "firm" (see page 38, Part IV.A end of second paragraph of the Universal Application Instructions, copy enclosed as Exhibit "F"). By significant contrast, the HOME Rental Application Instructions have no such requirement that a "match" be "firm" in order to receive points. It is clear that the "match" provided by Petitioner (FHFC MMRB Letter dated December 7, 2001) satisfies all the requirements of the HOME rental application and the instructions thereto; the HOME Rental Application (and the instructions thereto) should not and cannot be read to require anything more.

RELEVANT RULES AND STATUTES

16. Rule 67-48.002(61), FAC, specifically incorporates the HOME application, and the forms referenced therein. The instructions to Part III Section F (incorporated by the aforementioned Rule) provide, in relevant part, that points will be awarded if the "match" is properly documented and conforms to HUD Rule 24 CFR Part 92.220. Petitioner has complied with these instructions and provided evidence of a valid "match", and should receive the full 5 points.

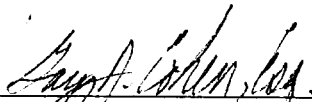
RELIEF SOUGHT

17. The specific action which Petitioner wishes FHFC to take is to reverse its previous decision and add 5 points to Petitioner's score on Part III Section F.

WHEREFORE, Petitioner respectfully requests FHFC:

1. To add 5 points to Petitioner's score, resulting in a total score of 86 points.

Respectfully submitted,

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

WILBUR E. BREWTON, ESQ.
Florida Bar No. 110408
Brewton, Plante & Plante, P.A.
225 South Adams Street
Suite 250
Tallahassee, Florida 32301
(850) 222-7718 telephone
(850) 222-8222 facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Kerey Carpenter, Deputy Development Officer, Attn: Corporation Clerk of the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301, on this 12 day of August, 2002.



GARY J. COHEN, ESQ.

EXHIBIT A

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2002 Home Rental Application Summary

As of: 07/22/2002

File # 2002-705H

Development Name: Pinnacle Grove

As Of:	Total Points	Met Threshold?	HOME as Percentage of Total Development Cost
07 - 22 - 2002	81	Y	15.49%
Preliminary	84	N	15.49%
NOPSE	79	N	15.49%
Final	81	Y	15.49%
Post-Appeal	0	Y	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2.b.	Non-Entitlement Area	25	25	25	25	0
2S	III	B	2.a.	Optional Features:					
2S	III	B	2.a.	New Construction	9	9	9	9	0
2S	III	B	2.b.	Rehabilitation	9	0	0	0	0
3S	III	B	2.c.	All Development Except SRO	12	12	12	12	0
3S	III	B	2.d.	SRO Developments	12	0	0	0	0
4S	III	B	2.e.	Energy Conservation Features	9	9	9	9	0
5S	III	D	2.b.	Set-Aside Commitments:					
5S	III	D	2.b.	Set-Aside Units Beyond the Minimum	5	5	5	5	0
6S	III	D	4.	Affordability Period Beyond Required	5	5	5	5	0
7S	III	E	1.	Resident Programs:					
7S	III	E	1.	Programs for Non-SRO Developments	4	4	4	4	0
7S	III	E	2.	Programs for SRO Developments	4	0	0	0	0
8S	III	E	3.	Programs for All Developments	8	8	8	8	0
9S	III	F	F.	Match	5	5	0	0	0
10S	IV			Local Government Incentives	4	2	2	4	0

2002 Home Rental Application Summary

As of: 07/22/2002

File # 2002-705H Development Name: Pinnacle Grove

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded as Result
9S	The match claimed from bonds is ineligible because the financing structure at Exhibit 44 does not include bonds as a source.	NOPSE	
10S	Applicant failed to submit a properly completed and executed incentive exhibit for Exhibit 36. Applicant also failed to submit a properly completed and executed incentive exhibit for Exhibit 37.	Preliminary	Final

Threshold(s) Failed:

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1. Site Plan	Applicant did not provide properly executed Site Plan Approval form.	Preliminary	Final
2T	III	C	2. Site Control	Contract does not have provision for extension until 12/31/02.	Preliminary	Final
3T	V	B	Syndication Commitment	Application shows that it will have equity proceeds derived from housing credits in the amount of \$5,080,659 for construction and \$6,350,824 for permanent. The Applicant failed to provide any evidence that it is qualified for housing credits. As such, the equity commitment is not counted as firm and was not counted as a source of financing. Applicant has a financial shortfall of \$3,317,568 for construction and \$5,917,568 for permanent.	NOPSE	Final

Additional Application Comments:

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	V	B	Deferred Developer Fee	Although Applicant indicates a deferred developer fee of \$1,500,000, Applicant has sources which total more than uses without using this deferred developer fee.	Preliminary	Final
2C	III	F	Match Funds	Applicant attempted to provide a cure for 9S but the material submitted did not address the issue for 9S identified during the NOPSE process.	Final	
3C	V	B	Deferred Developer Fee	Although Applicant indicates a deferred developer fee of \$1,500,000, Applicant has sources which equal or exceed uses for construction of this development without using this deferred developer fee. A portion of this fee is used for permanent financing.	Final	
4C	V	B	Total Development Cost	Total development cost and development cost have been reduced by \$145,151 representing fees associated with housing credits (FHFC Administrative Fee \$61,219, Underwriting Fees \$10,000, FHFC Compliance Fee \$73,932). Since the development does not have housing credits, these fees do not represent costs to the development. This changes the Total Development Cost from \$19,517,568 to \$19,372,417.	Final	

EXHIBIT B

- b. Homeownership Opportunity Program. Financial Assistance with Purchase of a Home (2 points)
- c. After School Program for Children (3 points)
- d. First Time Homebuyer (1 point)
- e. Literacy Training (1 point)
- f. Job Training (2 points)
- g. Staffed kitchen/Cafeteria (3 points)
- h. Daily Activities (3 points)
- i. Private Transportation (3 Points)

AND

3. Qualified Resident Programs for ALL Developments (Maximum 8 Points)

- a. Health Care (1 point)
- ✓ b. Resident Activities (2 points)
- ✓ c. Health and Nutrition Classes (1 point)
- ✓ d. Financial Counseling (1 point)
- e. English as a Second Language (2 points)
- ✓ f. Computer Lab (4 points)
- g. Resident Assistance Referral Program (1 point)
- h. Swimming Lessons (2 points)
- i. Life Safety Training (2 points)
- j. Mentoring (1 point)

F. Match

1. HOME loan request \$ 3,000,000 x 25% = 750,000 (state required match)

2. List below and provide documented evidence each source of match behind the tab labeled "Exhibit 28".

Dollar amount of match:

- \$ 4,550,000 - Source 1
- \$ _____ - Source 2
- \$ _____ - Source 3
- \$ _____ - Source 4
- \$ _____ - Source 5
- \$ _____ - Source 6
- \$ _____ - Source 6
- \$ _____ - Total Match

3. Match as a % of loan request

152.67 %

(HOME loan request divided by total match. Carry the percentage to two decimal places.)

G. Uniform Relocation Act

1. Does any portion of the Development involve rehabilitation work?

Yes (Complete both 2 and 3)

No (Complete 3 only)

2. Tenant Relocation Information for Existing Properties

a. Are there any units occupied?

Yes

No - Skip items c-f.

b. How many total units now exist in the development?

0

c. How many units are occupied?

d. Based on the income information of each tenant, is permanent relocation (displacement) anticipated during or after the rehabilitation period?

No

Yes - Number of units affected: _____

e. During rehabilitation, will temporary relocation of any tenants be required?

No

Yes - how many tenants will require temporary relocation? _____

f. Provide the following items in a separate notebook entitled "Relocation Documentation."

(1) List of all occupied units

(2) Tenant Income Certifications for all occupied units

(3) Description of how the Development will meet the HOME set-aside requirements

(4) Description of how the cost of relocation will be covered.

(5) Copies of each General Information Notice provided to each tenant

3. Uniform Relocation Act (URA) Acquisition Information (New Construction and Rehabilitation Developments)

a. Does the Applicant own the Development site as documented in the site control section of this Application?

Exhibit 28

The match is represented by 50% of Florida Housing Finance Corporation's commitment to issue \$9,100,000 of Tax Exempt Bonds to the applicant. See HUD Rule 24 CFR Part 92.220a.5.i.



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Governor

ROBERT JAY TAYLOR
Chairman

CINDY MEYER-WEBB
Vice Chairman

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Executive Director

VIA FACSIMILE AND FEDEX

December 7, 2001

Mr. David Deutch
Pinnacle Housing Group, Inc.
9400 South Dadeland Blvd., Suite 100
Miami, Florida 33156

RE: Pinnacle Grove - 2001MF-006

Dear Mr. Deutch:

At the December 6, 2001 meeting of Florida Housing's Board of Directors, the Board approved the invitation of the next eleven (11) applications to enter Final Credit Underwriting. Please accept this letter as Florida Housing's invitation for the above-referenced Application to enter credit underwriting "at your own risk". The Board also authorized the issuance of an Acknowledgement Resolution in a tax-exempt bond amount not to exceed \$9,100,000.

It is important to note that this invitation to Final Credit Underwriting does not assure the Applicant of successfully completing credit underwriting or of an allocation amount. Although your Application is among those for which funding is currently anticipated to be available, you should nevertheless be aware that if you decide to proceed into Final Credit Underwriting, it is solely "at your own risk".

Please also note that the invitation to Final Credit Underwriting and the issuance of an Acknowledgement Resolution allows you to be reimbursed for project costs incurred within sixty (60) days prior to the official action date, which is December 6, 2001, the date the Board extended the invitation to Final Credit Underwriting.

Upon receipt of your acceptance to proceed to Final Credit Underwriting, the Credit Underwriter will contact you concerning any credit underwriting fees or information required to complete a Final Credit Underwriting Report. All information required to complete the report should be submitted to the Credit Underwriter within thirty (30) days of the date of this letter. Failure to submit the Final Credit Underwriting and Appraisal Fee or meet the deadlines set forth above shall result in the immediate termination of Credit Underwriting activities and the Application shall be moved to the bottom of the

Mr. David Deut
December 7, 2001
Page 2 of 2

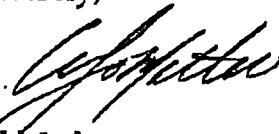
ranked list. The contact information for the Credit Underwriter assigned to this transaction is as follows:

Ben Johnson
Seltzer Management Group
7500 McElvey Road
Panama City Beach, Florida 32408-4629
850.233.3616 / 850.233.1429 fax

Please indicate whether you are planning to proceed into Final Credit Underwriting and the date you plan to enter. A written response should be faxed to Florida Housing, attention Bill Metler, Multifamily Bond Manager at (850) 414-5479 by Friday, December 14, 2001.

Pursuant to Rule 67-21.003(7), F.A.C., should you decline the invitation to Final Credit Underwriting, the Application shall be removed from the ranked list. If you have any questions or concerns, please contact me at (850) 488-4197.

Sincerely,



Bill Metler
Multifamily Bond Manager

Cc: David Westcott, Multifamily Bond Administrator
Wayne Conner, Deputy Development Officer
Jan Rayboun, Loan Closing Coordinator
Ben Johnson, Seltzer Management Group

EXHIBIT C

This page is located on the U.S. Department of Housing and Urban Development's Homes and Communities Web site at
<http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/regs/home/sube/92220.cfm>.



92.220 form of matching contribution

[Code of Federal Regulations]
[Title 24, Volume 1]
[Revised as of April 1, 2001]
From the U.S. Government Printing Office via GPO Access
[CITE: 24CFR92.220]

- a. Eligible forms. Matching contributions must be made from nonfederal resources and may be in the form of one or more of the following:
 1. Cash contributions from nonfederal sources. To be recognized as a cash contribution, funds must be contributed permanently to the HOME program (or to affordable housing not assisted with HOME funds), regardless of the form of investment provided to the project. Therefore, to receive match credit for the full amount of a loan to a HOME project, all repayment, interest, or other return on investment of the contribution must be deposited in the local account of the participating jurisdiction's HOME Investment Trust Fund to be used for eligible HOME activities in accordance with the requirements of this part. A cash contribution to affordable housing that is not assisted with HOME funds must be contributed permanently to the project. Repayments of matching contributions in affordable housing projects, as defined in § 92.219(b), that are not HOME-assisted, must be made to the local account of the participating jurisdiction's HOME Investment Trust Fund to get match credit for the full loan amount.
 - i. A cash contribution may be made by the participating jurisdiction, non-Federal public entities, private entities, or individuals, except as prohibited under paragraph (b)(4) of this section. A cash contribution made to a nonprofit organization for use in a HOME project may be counted as a matching contribution.
 - ii. A cash contribution may be made from program income (as defined by 24 CFR § 85.25(b)) from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G) and the Housing Development Grant Program (24 CFR part 850), and from the Rental Rehabilitation Grant Program (24 CFR part 511) after all fiscal year Rental Rehabilitation grants have been closed out.
 - iii. The grant equivalent of a below-market interest rate loan to the project that is not repayable to the participating jurisdiction's HOME Investment Trust Fund may be counted as a cash contribution, as follows:
 - A. If the loan is made from funds borrowed by a jurisdiction or public agency or corporation the contribution is the present discounted cash value of the difference between the

payments to be made on the borrowed funds and payments to be received from the loan to the project based on a discount rate equal to the interest rate on the borrowed funds.

- B. If the loan is made from funds other than funds borrowed by a jurisdiction or public agency or corporation, the contribution is the present discounted cash value of the yield foregone. In determining the yield foregone, the participating jurisdiction must use as a measure of a market rate yield one of the following, as appropriate:
1. With respect to one- to four-unit housing financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points;
 2. With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points;
 3. With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 300 basis points; or
 4. With respect to housing receiving financing for rehabilitation, a rate equal to the 10-year Treasury note rate plus 400 basis points.
- iv. Proceeds of bonds that are not repaid with revenue from an affordable housing project (e.g., general obligation bonds) and that are loaned to a HOME-assisted or other qualified affordable housing project constitute a cash contribution under this paragraph.
- (v) A cash contribution may be counted as a matching contribution only if it is used for costs eligible under §§ 92.206 or 92.209, or for the following (which are not HOME eligible costs): the cost of removing and relocating an ECHO housing unit during the period of affordability in accordance with § 92.258(d)(3)(ii), payments to a project reserve account beyond payments permitted by §92.206(d)(5), operating subsidies, or costs relating to the portion of a mixed-income or mixed-use HOME-assisted project not related to the affordable housing units.

2. Forbearance of fees.

- i. State and local taxes, charges or fees. The value (based on customary and reasonable means for establishing value) of State or local taxes, fees, or other charges that are normally and customarily imposed or charged by a State or local government on all transactions or projects in the conduct of its operations, which are waived, foregone, or deferred (including State low-income housing tax credits) in a manner that achieves affordability of HOME-assisted projects, may be counted as match. The amount of any real estate taxes may be based on post-improvement property value. For taxes, fees, or charges that are forgiven for future years, the value is the present discounted

cash value, based on a rate equal to the rate for the Treasury security with a maturity closest to the number of years for which the taxes, fees, or charges are waived, foregone, or deferred. - -

- ii. Other charges or fees. The value of fees or charges associated with the transfer or development of real estate that are normally and customarily imposed or charged by public or private entities, which are waived or foregone, in whole or in part, in a manner that achieves affordability of HOME-assisted projects, may be counted as match. Fees and charges under this paragraph do not include fees or charges for legal or other professional services; professional services which are donated, in whole or in part, are an eligible matching contribution in accordance with paragraph (a)(7) of this section.
 - iii. Fees or charges that are associated with the HOME Program only (rather than normally and customarily imposed or charged on all transactions or projects) are not eligible forms of matching contributions.
3. Donated Real Property. The value, before the HOME assistance is provided and minus any debt burden, lien, or other encumbrance, of donated land or other real property may be counted as match. The donation may be made by the participating jurisdiction, non-Federal public entities, private entities, or individuals, except as prohibited under paragraph (b)(4) of this section.
- i. Donated property not acquired with Federal resources is a contribution in the amount of 100% of the value.
 - ii. Donated property acquired with Federal assistance may provide a partial contribution as follows. The property must be acquired with Federal assistance specifically for a HOME project (or for affordable housing that will be counted as match pursuant to § 92.219(b)(2)). The property must be acquired with the Federal assistance at demonstrably below the appraised value and must be acknowledged by the seller as a donation to affordable housing at the time of the acquisition with the Federal assistance. The amount of the contribution is the difference between the acquisition price and the appraised value at the time of acquisition with the Federal assistance. If the property is acquired with the Federal assistance by someone other than the HOME project (or affordable housing) owner, to continue to qualify as a contribution, the property must be given to the HOME project (or affordable housing) owner at a price that does not exceed the amount of the Federal assistance used to acquire the property.
 - iii. Property must be appraised in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value must be based on the best available data properly analyzed and interpreted. The appraisal of land and structures must be performed by an independent, certified appraiser.
4. The cost, not paid with Federal resources, of on-site and off-site infrastructure that the participating jurisdiction documents are directly required for HOME-assisted projects. The infrastructure must have been

completed no earlier than 12 months before HOME funds are committed to the project.

5. Proceeds from multifamily and single family affordable housing project bond financing validly issued by a State or local government, or an agency or instrumentality of a State or local government or a political subdivision of a State and repayable with revenues from the affordable housing project financed as follows:
 - i. Fifty percent of the loan amount made from bond proceeds to a multifamily affordable housing project owner may qualify as match.
 - ii. Twenty-five percent of the loan amount from bond proceeds made to a single-family affordable housing project owner may qualify as match.
 - iii. Loans made from bond proceeds may not constitute more than 25 percent of a participating jurisdiction's total annual match contribution.
6. The reasonable value of donated site-preparation and construction materials, not acquired with Federal resources. The value of site-preparation and construction materials is to be determined in accordance with the participating jurisdiction's cost estimate procedures.
7. The reasonable rental value of the donated use of site preparation or construction equipment.
8. The value of donated or voluntary labor or professional services (see § 92.354(b)) in connection with the provision of affordable housing. A single rate established by HUD shall be applicable for determining the value of unskilled labor. The value of skilled labor or professional services shall be determined by the rate that the individual or entity performing the labor or service normally charges.
9. The value of sweat equity (see § 92.354(c)) provided to a homeownership project, under an established component of a participating jurisdiction's program, up until the time of project completion (i.e., submission of a project completion form). Such labor shall be valued at the rate established for unskilled labor at paragraph (a)(8) of this section.
10. The direct cost of supportive services provided to families residing in HOME-assisted units during the period of affordability or receiving HOME tenant-based rental assistance during the term of the tenant-based rental assistance contract. The supportive services must be necessary to facilitate independent living or be required as part of a self-sufficiency program. Examples of supportive services include: case management, mental health services, assistance with the tasks of daily living, substance abuse treatment and counseling, day care, and job training and counseling.
11. The direct cost of homebuyer counseling services provided to families that acquire properties with HOME funds under the provisions of §

92.254(a), including ongoing counseling services provided during the period of affordability. These services may be provided as part of a homebuyer counseling program that is not specific to the HOME Program, but only the cost of services to families that complete purchases with HOME assistance may be counted as match.

- b. Ineligible forms. The following are examples that do not meet the requirements of paragraph (a) of this section and do not count toward meeting a participating jurisdiction's matching contribution requirement:
1. Contributions made with or derived from Federal resources or funds, regardless of when the Federal resources or funds were received or expended. CDBG funds (defined in 24 CFR 570.3) are Federal funds for this purpose;
 2. The interest rate subsidy attributable to the Federal tax-exemption on financing or the value attributable to Federal tax credits;
 3. Owner equity or investment in a project; and
 4. Cash or other forms of contributions from applicants for or recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for, assistance for a HOME-assisted project. The prohibition in this paragraph (b)(4) does not apply to contractors (who do not own any HOME project) contributing professional services in accordance with paragraph (a)(8) of this section or to persons contributing sweat equity in accordance with paragraph (a)(9) of this section.

U.S. Department of Housing and Urban Development
451 7th Street, S.W., Washington, DC 20410
Telephone: (202) 708-1112 TTY: (202) 708-1455

EXHIBIT D

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2002 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. 2002-705H and pertains to:

Part III Section F Subsection _____ Exhibit No. 28 (if applicable)

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

- I. Preliminary Scoring and/or a NOPSE resulted in the imposition of a failure to achieve maximum points, a failure to achieve tie-breaker points selected, and/or failure to achieve threshold relative to this form. Check applicable item(s) below:

	2002 Universal or HOME Rental Scoring Summary	Created by:	
		Preliminary Scoring	NOPSE
<input checked="" type="checkbox"/> Reason Score Not Maxed	Item No. <u>9</u> S	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/> Reason Threshold Failed	Item No. _____ T	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____ P	<input type="checkbox"/>	<input type="checkbox"/>

OR

- II. 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 _____, as applicable).

Brief Statement of Explanation for Cure
For Application 2002 – 705H

Provide a separate brief statement for each Cure.

As a result of a NOPSE, applicant lost five (5) points with respect to its “match” because the financing structure at Exhibit 44 did not reflect utilization of the tax-exempt bonds as a financing source. The five points should be restored for the reasons set forth below:

Applicant did not include the FHFC December 7, 2001 letter (included in Exhibit 28) in Exhibit 44 because applicant understood it did not constitute a “firm” commitment for financing, and would have resulted in disqualification of the application for failure to meet a threshold requirement. There is no requirement that the “match” commitment be reflected in Exhibit 44. Applicant intends to utilize the FHFC 2001 MMRB \$9,100,000 allocation in lieu of the debt commitment from Alliant Mortgage Company, Inc. once the MMRB allocation is firmly committed. FHFC has always permitted applicants to substitute debt or equity commitments for those contained in the Application, so long as the substitute commitment contains terms and conditions at least as favorable as those set forth in the commitment contained in the application. It is clear that MMRB commitment will be on terms more favorable (lower interest rate and longer amortization period) than those contained in Exhibit 44. See revised Exhibit 44 attached, wherein Alliant indicates that if the project obtains a firm commitment for FHFC 2001 MMRB, the Alliant debt commitment will be replaced.

There is no requirement in the HOME Rental Application (unlike the Universal Application) that the “match” commitment be “firm”. The information provided by applicant behind Exhibit 28 is all that is required by page 18 (art III, Section F) of the HOME Rental Application Instructions; applicant provided the amount, the source, and a signed statement detailing the type and amount of contribution. The Universal Application Instructions (page 38, Part IV.A. end of second paragraph) require a “Local Government Contribution” to have received final approval; the HOME Rental Application Instructions have no such requirement.

As a result, 5 points should be restored for the “match”.



REVISED

June 18, 2002

Mr. David O. Deutch
Pinnacle Grove, Ltd.
c/o Pinnacle Housing Group, Inc.
9400 South Dadeland Boulevard
Miami, Florida 33156

Re: **Pinnacle Grove, Ltd.**
234 Multi-Family Unit Apartments

Dear Mr. Deutch,

I am pleased to inform you that Alliant Mortgage Company, Inc., ("Alliant") or its assignees, has agreed to provide a firm commitment for construction and permanent loan financing for Pinnacle Grove ("The Project") on the terms and conditions set forth below:

Borrower: Pinnacle Grove, Ltd.

Property Address: 1935 45th Street
Vero Beach, Florida 32967

Construction Loan Amount: \$11,700,000.

Permanent Loan Amount: \$9,100,000; this loan amount is subject to the final appraised value and stabilized three (3) month occupancy.

Term: Construction Phase of Loan – Construction Phase shall be that period of time until the project reaches rental achievement for three (3) consecutive months but not greater than twenty-four (24) months. Rental achievement shall be defined as not less than 90% of the units leased and occupied to qualifying tenants at rental rates approved by the lender. The construction loan will have one six (6) month extension at the borrower's option. Interest only will be payable monthly during the construction phase of the loan.

Permanent Phase of Loan – Thirty (30) years from the date the loan is converted to a permanent loan. Amortization schedule shall be thirty (30) years; principal and interest payable monthly on a fully amortizing basis.

Mr. David O. Deutch
Pinnacle Grove Debt Letter
June 18, 2002
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REVISED

Construction Loan Interest Rate:	The construction loan interest rate is the J.P. Morgan Chase prime rate plus 1%.
Permanent Loan Interest Rate:	The permanent loan rate is determined by adding 274 basis points to the 10 year U.S. Treasury Rate.
Commitment Fee:	Construction Loan: 1% due upon construction loan closing. Permanent Loan: 1% due upon construction loan closing.
Recourse:	Construction Loan: Performance of all construction loan obligations will be jointly and severally guaranteed by the General Partner of the borrower, and Pinnacle Housing Group, Inc., or such other entities with reasonable net worth as approved by Alliant. Permanent Loan: None, with the exception of customary, "carve-out" for matters such as, but not limited to, fraud, misappropriation of funds, environmental matters, other bad acts, breach of Special Purpose Entity requirements, and breach of reporting requirements.
Anticipated Funding Date:	June 2003—Construction Loan
Minimum DSCR:	1.15x (First Mortgage)
Maximum LTV:	90% excluding the value of the housing credits.
Minimum Occupancy:	90% for 3 consecutive months prior to conversion to the permanent loan.
Minimum Low Income:	The referenced project must be maintained as a low income housing as defined by applicable HOME regulations.
Prepayment:	No penalty.
Subordinate Debt:	Subordinate debt is allowed.

Mr. David O. Deutch
Pinnacle Grove Debt Letter
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- Security: First priority mortgage encumbering the referenced project. First security interest in all furniture, fixtures, equipment, permits, documents and contracts. First priority assignment of leases, rents, profits, licenses, permits and contracts. Pledge of all escrow and reserve accounts.
- Taxes and Insurance: A monthly escrow deposit for taxes and insurance will be required.
- Replacement Reserve: \$200 annually per unit subject to change pursuant to the recommendation of the third party reports referenced below. A monthly escrow deposit equal to 1/12 of the annual reserve amount will be required.
- Third Party Reports: Dated not more than 6 months prior to closing will be required. Any updated third party reports must be received not less than 30 days prior to closing.
- Capital Improvement Reserve (if applicable): Immediate deferred maintenance items (i.e., to be completed over the first 12 months after closing) disclosed by the third party reports shall be escrowed at 150%.
- Additional Loan Expenses: The borrower will pay all customary closing costs, including but not limited to, Alliant's application fee, Alliant's legal fees, and third party due diligence reports.

This commitment and the obligations of Alliant hereunder are subject to all laws, regulations and regulatory decisions to which Alliant and the Loans may be subject.

This commitment expires March 31, 2003.

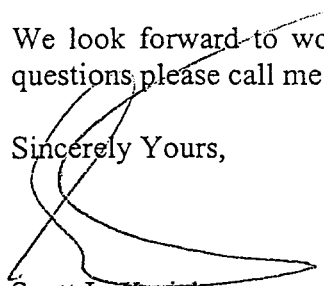
Any material adverse change in the condition of the Borrower or the Property, prior to funding in the sole discretion of Alliant, will render this commitment null and void. Prior to funding this loan, the partnership must receive a commitment of HOME Funds from the Florida Housing Finance Corporation in an amount not less than \$3,000,000. The subject loan shall be evidenced by loan documents executed on Alliant's form and acceptable to Alliant. In the event the borrower receives an allocation of tax-exempt bond financing from the Florida Housing Finance Corporation, this commitment will terminate and be replaced by the tax-exempt bond allocation. If the above arrangement is acceptable to you, please execute and return this Commitment Letter, by the close of business on June 21, 2002, otherwise this commitment shall become null and void.

Mr. David O. Deutch
Pinnacle Grove Debt Letter
June 18, 2002
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REVISED

We look forward to working with you to bring this loan to a rapid closing. If you have any questions, please call me at (614) 473-8682 or Allan Schnier at (561) 482-9310.

Sincerely Yours,


Scott L. Kotick
Executive Vice President

THE FOREGOING COMMITMENT LETTER IS HEREBY ACKNOWLEDGED AND
ACCEPTED THIS 19th DAY OF JUNE 2002.

Pinnacle Grove, Ltd.
By: PHG-Grove, Inc., Its General Partner

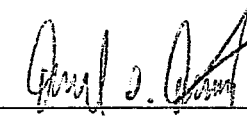
By: 
David O. Deutch
Vice President

EXHIBIT E

Personal Finances”, “Predatory Lending”, or “Comparison Shopping for the Consumer”. (1 point)

- e. English as a Second Language – The Applicant or its Management Agent must make available, at no cost to the resident, literacy tutor(s) who will provide weekly English lessons to residents in private space on-site. (2 points)
- f. Computer Lab - The Applicant or its Management Agent must provide an area on-site, at no cost to the resident, with a minimum of one computer per 50 units, with basic word processing, spreadsheets and assorted educational and entertainment software programs. At least one printer must also be provided. (4 points)
- g. Resident Assistance Referral Program - The Applicant or its Management Agent will make available to residents information about services such as crisis intervention, individual and family needs assessment, problem solving and planning, appropriate information and referral to community resources and services based on need, monitoring of ongoing ability to retain self sufficiency, and advocacy to assist clients in securing needed resources. This service must be provided at no cost to the resident. (1 point)
- h. Swimming Lessons – The Applicant or its Management Agent must provide on-site swimming lessons for children or adults, at no cost to the resident, at least twice each year. (2 points)
- i. Life Safety Training – The Applicant or its Management Agent must provide courses such as fire safety, first aide (including CPR), etc., on-site, at least twice each year, at no cost to the resident. (2 points)
- j. Mentoring – Establish a partnership with a primary or secondary education institution to encourage mentoring, tutoring and/or financial support that will benefit the residents of the proposed affordable housing community. This service must be provided at no cost to the resident. (1 point)

F. Match

- 1. Insert requested HOME loan amount and calculate the state required match amount. HUD regulation 24 CFR Part 92.220 requires Florida Housing to match funds for each HOME dollar spent on a Development. Applicants who can provide the full 25 percent match requirement will receive the maximum score of 5 points. For information on eligible match

sources and instructions on how to calculate match, refer to the HUD HOME regulations at 24 CFR Part 92.220. The 10-year Treasury note rate to be used for the purposes of match calculations will be the rate in effect as of the date of publication of the HOME Rental Notice of Funding Ability (NOFA).

2. Provide amounts of each source of match. For each source of match funding identified, Applicant must provide a signed statement from the source detailing the type of contribution, amount, and how it was calculated. If the amount of the contribution is determined based upon a present value calculation, include the actual present value calculation as described in 24 CFR Part 92.220. No points will be awarded for any source for which a narrative and documented evidence are not provided. This documentation must be provided behind a tab labeled "Exhibit 28".
3. Points will be calculated to the nearest 2 decimal places and awarded based on the percentage of match provided. For example, if the percentage calculated is 23.25%, the total number of available points (5) will be multiplied by the percentage calculated. Therefore, 1.16 points would be awarded (23.25% x 5).

G. Uniform Relocation Act (Threshold)

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) is government-wide legislation and compliance begins at the initiation of negotiation for federal assistance. Failure to provide all Uniform Relocation Act required information will result in rejection of this Application.

1. Indicate "yes" that the Development involves rehabilitation work if any portion of the Development will involve rehabilitation, regardless of whether or not the Development Category indicated earlier in the Application was Rehabilitation or not.
2. a. - e. - Answer all questions as appropriate.
f. (1) & (2) List of all occupied units and tenant income certifications – The income of persons and households who are currently occupying a unit that will receive HOME assistance must be provided to determine whether they are income eligible. For all occupied units, the Applicant must provide a summary list of all residents and income certifications for those residents in occupied units that will be HOME-Assisted units. The income certification form is available at www.floridahousing.org. If the existing residents and/or Development is/are currently participating in a federally subsidized program (such as Project-based Section 8,

EXHIBIT F

Part IV. Local Government Support

A. Contributions (Maximum 5 Points):

To be eligible for 5 points, Applicants applying for Competitive HC with or without SAIL and Applicants applying for SAIL only without any tax-exempt bond financing must obtain a Local Government contribution equal to or greater than the amounts listed on the County Contribution List. All other Applicants will automatically receive 5 points without any requirement to obtain a Local Government contribution.

In order to be eligible for points for Local Government contribution, the contribution must provide a tangible economic benefit that results in a quantifiable cost reduction and must be given specifically because the development will provide affordable housing. Local Government contributions that are not specifically made for the benefit of affordable housing but are instead of general benefit to the area in which the Development is located will NOT qualify as a contribution to the Development. Further, the fact that no impact fees or other such fees are levied by a local jurisdiction for ANY type of development DOES NOT constitute a "Local Government Contribution" to the proposed Development. Similarly, if such fees ARE levied by the local jurisdiction but the nature of the proposed Development exempts it (e.g., typically, a Rehabilitation Development is not subject to impact fees), for purposes of this form, no "Local Government Contribution" exists and no points will be awarded. State, federal, or Local Government funds initially obtained by or derived from a Local Government qualify as a Local Governmental contribution even though the funds are directly administered by an intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Organization, provided that they otherwise meet the requirements set forth in this Application, including those relating to the executed verification form. Local Government contributions that have not received final approval will not qualify as a Local Government contribution for purposes of this Application. HOPE VI funds may be used as a Local Government contribution.

The only Local Government contributions that will count for the purpose of scoring are:

- Monetary grants
- Loans with the exception of USDA RD funds
- A one-year or more deferral of a fee beyond the date that it is routinely due
- Waiver of fees

The appropriate Local Government Verification of Contribution Form, properly completed and executed, must be provided as follows or zero points will be awarded: