

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

EMERALD TERRACE LIMITED PARTNERSHIP,

FHFC CASE NO.: 2006-028UC
APPLICATION NO. 2006-080C

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

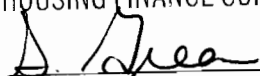
FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on December 15, 2006. On or before February 1, 2006, Emerald Terrace Limited Partnership (“Petitioner”), submitted its 2006 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) to compete for an allocation from the Low Income Housing Tax Credit Program. Petitioner timely filed its “Petition for Formal Administrative Hearing,” (the “Petition”) challenging Florida Housing’s scoring on parts of the Application. The parties stipulated to the facts at issue. Accordingly, an informal hearing was held before Florida Housing Finance Corporation’s appointed Hearing Officer Diane D. Tremor, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, on November 3, 2006. A Recommended Order was filed on December 8, 2006.

A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.” The Recommended Order recommends that Florida Housing enter a Final Order finding that:

1. Petitioner’s 2006 Universal Application should be deemed to have met threshold requirements with respect to environmental safety.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 12-18-06

RULING ON THE RECOMMENDED ORDER

The findings and conclusions of the Stipulation are supported by competent substantial evidence in the record.

ORDER

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

1. The Findings of Fact of the Recommended Order are adopted as Florida Housing’s Findings of Fact and incorporated by reference as though fully set forth in this Order.
2. The Conclusions of Law of the Recommended Order are adopted as Florida Housing’s conclusions of law and incorporated by reference as though fully set forth in this Order.

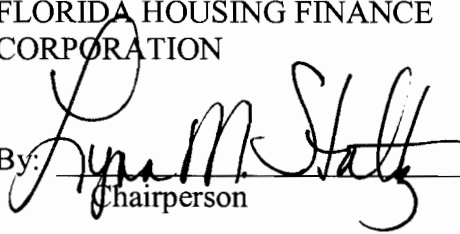
Accordingly, it is found and ordered that Petitioner’s Application is scored as follows:

1. Petitioner’s Application is deemed to have met threshold requirements with respect to environmental safety.

IT IS HEREBY ORDERED that Petitioner’s Application is scored as having met threshold requirements with respect to environmental safety.

DONE and ORDERED this 15th day of December, 2006.

FLORIDA HOUSING FINANCE CORPORATION

By:  _____
Chairperson



Copies to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

EMERALD TERRACE
LIMITED PARTNERSHIP,

Petitioner,

vs.

FHFC CASE NO.: 2006-028C
Application No.: 2006-080C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2) of the Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in Tallahassee, Florida, in the above styled case on November 3, 2006.

APPEARANCES

For Petitioner:

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For Respondent:

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Florida Housing Finance
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STATEMENT OF THE ISSUE

There are no disputed issues of material fact. The sole issue for determination in this proceeding is whether Petitioner met the Respondent's threshold requirements with respect to the Verification of Environmental Safety Phase I Environmental Site Assessment Form.

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 16. Petitioner's Exhibit 1 and Respondent's Exhibit 1 were also received into evidence. Joint Exhibit 1 contains a Joint Stipulation of Facts and a listing of Joint Exhibits. That document basically describes the application process, the circumstances regarding the scoring of Petitioner's application with regard to the issues in dispute, and instructions and forms from previous application cycles. The Prehearing Stipulation is attached to this Recommended Order as Attachment A, and the facts recited therein are incorporated in this Recommended

Order.

Subsequent to the hearing, the parties timely submitted their Proposed Recommended Orders.

FINDINGS OF FACT

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

1. Petitioner, EMERALD TERRACE LIMITED PARTNERSHIP, submitted to the Respondent its application seeking an allocation of housing tax credits from the 2006 Universal Application Cycle.

2. As part of their applications, applicants are required to submit an executed Verification of Environmental Safety Phase I Environmental Site Assessment Form (“Verification Form”), demonstrating that a Phase I Environmental Site Assessment (“ESA”) has been performed meeting the standards of either ASTM Practice #E-1527-00 or #E-1527-5. Failure to submit or complete the requested Verification Form is a basis for a determination that an applicant has failed to achieve threshold, and the application will be rejected. (Joint Exhibits 1 and 3)

3. During the cure phase of the application process, Petitioner submitted a Verification Form executed by a Professional Engineer employed by Ardaman &

Associates, Inc. Petitioner's Phase I ESA was performed in accordance with ASTM Practice #E-1527-05. (Joint Exhibits 1 and 4)

4. At the time Petitioner's Phase I assessment was prepared, a building was located on the proposed development site. Upon funding, the building is to be demolished. Petitioner's Phase I ESA was not required to address, nor did it address, the presence or absence of asbestos or lead-based paint. No separate report addresses the presence or absence of asbestos or asbestos containing material and/or lead-based paints. (Joint Exhibit 1)

5. The Verification Form submitted by Petitioner certified that the Phase I ESA was conducted and that it met the standards of applicable ASTM Practices. The Form, which is adopted by Rule of the Respondent, requires the date of the Phase I ESA, and then requires the applicant or its representative to "Check all that apply in Items 1, 2 and 3 below." As pertinent to this proceeding, Item 2 of the form states:

If there are one or more existing buildings on the proposed site, the Phase I ESA

- a. addresses the presence or absence of asbestos or asbestos containing materials (ACM) and lead based paint (LBP); or
- b. separate report(s) addressing the presence or absence of asbestos or asbestos containing materials and lead-based paint have been prepared and the undersigned has reviewed the separate report(s). Such separate report(s) may or may not be incorporated by reference in the Phase I ESA.

The Verification Form submitted by Petitioner intentionally left both boxes within Item 2 unchecked. (Joint Exhibits 1 and 4)

6. A competing applicant filed a Notice of Alleged Deficiencies (“NOAD”), asserting that Petitioner’s Verification Form was deficient. There was no allegation that the Phase I ESA was not performed in accordance with ASTM Practice Standards. (Joint Exhibit 1)

7. In its Final Scoring Summary, Respondent concluded that Petitioner failed to meet threshold requirements with regard to verification of environmental safety, stating:

As a cure for Item 3T, the Applicant provided a Verification of Environmental Safety Phase I Environmental Site Assessment form that is incomplete. As indicated at paragraph 160 on page 19 of Exhibit B to the Contract for Purchase and Sale of Real Property, there is an existing building on the site. Therefore, the environmental provider should have addressed asbestos and lead-based paint by checking the appropriate item at question No. 2 on the Phase I ESA form.

(Joint Exhibit 5)

8. Pages 28 and 29 of the 2006 Universal Application Instructions address Environmental Site Assessments. The Instructions require that the applicant demonstrate that a Phase I ESA has been performed in accordance with specified ASTM Practices and also require the applicant to address the issue of what must be

provided if the Phase I ESA disclosed potential problems. The Instructions do not address the presence or absence of asbestos or lead-based paint. Likewise, neither the Instructions nor the application form address the status of existing buildings on site; i.e., whether they are to be demolished or rehabilitated. (Joint Exhibits 3 and 4)

9. The ASTM Standard Practices referenced in the instructions and on the application form do not require that asbestos or lead-based paint be addressed in the Phase I Environmental Site Assessment. Indeed, both asbestos-containing building materials and lead-based paint are specifically designated as “non scope considerations that persons **may** want to assess in connection with commercial real estate.” (Emphasis supplied) (Joint Exhibit 12, at §1, 13.1.5)

10. The parties have stipulated and presented joint exhibits regarding the application forms and instructions in the 2001, 2002 and 2004 application cycles. While the undersigned accepts the representations on those documents and the parties’ stipulations with respect thereto as true, such extrinsic evidence is not necessary for a resolution of the issue to be determined in this proceeding.

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, Florida Administrative Code, the Hearing Officer has jurisdiction of the parties

and the subject matter of this proceeding. The Petitioner's substantial interests are affected by the proposed action of the Respondent Corporation. Therefore, Petitioner has standing to bring this proceeding.

The issue in this proceeding is whether the Petitioner's Verification of Environmental Safety Phase I Environmental Site Assessment form submitted as a part of its application meets the requirements of law. As pertinent to this proceeding, that law is set forth in the Respondent's Universal Application Instructions and the Application Forms, which are adopted as rules. See Rule 67-48.004(1)(a), Florida Administrative Code.

When interpreting the law, the plain meaning of the language is the first consideration. State v. J. M., 824 So.2d 105 (Fla. 2002); Florida State Racing Commission v. McLaughlin, 102 So.2d 574 (Fla. 1958). A review of the Verification Form itself, along with a reading of the applicable ASTM Practice and the parties' stipulations regarding the same, leads to the conclusion that the requirements of the Verification Form are clear and that such plain meaning is not rendered ambiguous by any conflicting language in the Application Instructions.

The primary dispute here is whether Petitioner, whose proposed development site contains an existing building, was required to check either of the two boxes under Item 2 of the Verification Form, after having certified that a Phase I ESA

meeting the standards of ASTM Practice #E-1527 had been performed. This issue is not determined by whether the existing building on the proposed site will be demolished or rehabilitated (as contended by Petitioner), nor is it determined by the Respondent's "reasonable interest" in determining the condition of property prior to agreeing to fund a project (as contended by Respondent). Instead, the issue is determined by applying the "plain meaning" rule to the language contained upon the Verification Form.

The form itself requires a checking only of items "that apply." A clear reading of Item 2 requires a check only in two circumstances: (1) when the Phase I ESA addresses the presence or absence of asbestos and lead-based paint, and/or (2) when a separate report addressing asbestos and/or lead-based paint, whether or not incorporated in the Phase I ESA, has been prepared and reviewed.

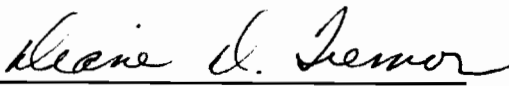
As the parties have stipulated in this case, Petitioner's Phase I ESA was not required to and it did not address the presence or absence of asbestos or lead-based paint. Likewise, the parties have stipulated that no separate report was prepared addressing the presence or absence of asbestos and/or lead-based paint. (Joint Exhibit 1, ¶ 21) Accordingly, neither of the two statements under Item 2 of the Application Form were applicable and Petitioner correctly checked neither box. The first box required checking only if the Petitioner's Phase I ESA addressed asbestos

and/or lead-based paint. It did not. The second box required checking only if a separate report addressing asbestos or lead-based paint had been prepared and reviewed. It was not. There is simply nothing on the Verification Form or the Instructions which require a separate report on asbestos or lead-based paint. Should Respondent wish to make it a requirement that a report concerning asbestos and/or lead-based paints in existing buildings on site be prepared and reviewed, it must make that explicit statement in its rules. It has not done so for the 2006 universal cycle.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that a Final Order be entered determining that Petitioner met threshold requirements with respect to environmental safety.

Respectfully submitted and entered this 8th day of December, 2006.



DIANE D. TREMOR
Hearing Officer for Florida Housing
Finance Corporation
Rose, Sandstorm & Bentley, LLP
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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(3), Florida Administrative Code, all parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on December 15, 2006. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

EMERALD TERRACE
LIMITED PARTNERSHIP,

Petitioner,

Case No.: 2006-028UC
FHFC Application No.: 2006-080C

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

JOINT STIPULATION OF FACTS

The parties, EMERALD TERRACE LIMITED PARTNERSHIP (“Emerald Terrace”), and FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”), stipulate and agree to the following facts in the above entitled matter.

APPEARANCES

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Limited Partnership

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Housing Finance Corporation

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STATEMENT OF THE ISSUE

The issue in this matter involves whether application and cure material submitted by Emerald Terrace satisfies the application's threshold requirement with respect to Verification of Environmental Safety Phase I Environmental Site Assessment Form ("Verification Form").

GENERAL

1. Florida Housing is a public corporation organized pursuant to Section 420.504, Florida Statutes, to provide and promote the public welfare by administering the governmental function of financing and refinancing affordable housing and related facilities in Florida. Florida Housing is governed by a Board of Directors (the "Board"), appointed by the Governor with Secretary of the Department of Community Affairs sitting *ex-officio*. Florida Housing is an agency as defined in Section 120.52, Florida Statutes and, therefore, is subject to the provisions of Chapter 120, Florida Statutes.

2. Florida Housing is the statutorily created "housing credit agency" responsible for the allocation and distribution of Tax Credits in Florida to developers of rental housing for low-income and very low-income families. *See*, Section 420.5099, Fla. Stat. (2005). In this capacity, Florida Housing administers the Housing Credit ("HC") Program to determine which entities will be allocated Tax Credits for financing the construction or rehabilitation of low and moderate income rental units. Tax Credits are allocated by Florida Housing through a competitive application process. Applications for Tax Credit funding are submitted to Florida Housing through a once-a-year process commonly referred to as the "Universal Application Cycle," which is governed by Chapter 67-48, F.A.C. Applicants compete for a limited number of Tax Credits available during a particular cycle. To determine which applications will be funded, Florida Housing scores and competitively ranks the applications as discussed in more detail below.

3. Rule 67-48.004, F.A.C., is entitled “Application and Selection Procedures for Developments.” This rule establishes a multistage process by which Florida Housing must score applications submitted in the Universal Application Cycle.

4. Rule 67-48.004, F.A.C., provides in relevant part, the following:

67-48.004 Application and Selection Procedures for Developments.

(1) When submitting an Application, Applicants must utilize the Universal Application in effect at the Application Deadline.

(a) The Universal Application Package or UA1016 (Rev. 1-06) is adopted and incorporated herein by reference and consists of the forms and instructions, . . . which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME, HC, or SAIL and HC Program(s).

(2) Failure to submit an Application completed in accordance with the Application instructions and these rules will result in the failure to meet threshold, rejection of the Application, a score less than the maximum available, or a combination of these results in accordance with the instructions in the Application and this rule chapter.

(3) Each submitted Application shall be evaluated and preliminarily scored using the factors specified in the Universal Application Package and these rules.

(Exhibit 2).

These provisions govern the submission of applications for the 2006 Universal Application Cycle. The HC application is comprised of numerous forms, which require information of each applicant. Applicants must use the forms that were adopted by Florida Housing in order to compete for HC. Applicants applying for HC are also advised by Florida Housing to review the Universal Application Instructions (the “Instructions”) and Rule 67-48, F.A.C. when completing and submitting such applications to Florida Housing. The Instructions set forth the manner in

which the competitive applications are scored. Only those matters that are specifically requested in the Universal Application Package (i.e., the Universal Application forms and instructions) are evaluated and scored.

5. Applications may receive a maximum score of 66 points. In the event of a tie among competing applications receiving 66 points, the Instructions set forth a series of tie-breakers to be used to rank such applications.

6. Pursuant to Rule 67-48.004(3), F.A.C., applications are evaluated and preliminarily scored by Florida Housing following which the scores are transmitted to all applicants.

7. Rule 67-48.004(4), F.A.C., provides a mechanism by which an applicant may challenge the preliminary score of another applicant through written submission to Florida Housing. Such a submission is referred to as a Notice of Possible Scoring Error or "NOPSE." Once a NOPSE is filed, Florida Housing reviews the challenge and transmits the NOPSE and Florida Housing's position with respect to the challenge to each affected applicant. *See*, Rule 67-48.004(5), F.A.C.

8. Under Rule 67-48.004(6), F.A.C., an applicant may cure alleged deficiencies in its application raised as a result of the preliminary scoring or Florida Housing's position regarding a NOPSE. In curing an alleged deficiency, an applicant is permitted to submit "additional documentation, revised pages and such other information as the Applicant deems appropriate to address the issues ..." raised by the preliminary scoring or NOPSE. Additional information submitted under this provision is referred to as a "cure."

9. Pursuant to Rule 67-48.004(7), F.A.C., applicants may submit to Florida Housing a Notice of Alleged Deficiency ("NOAD") contesting a cure filed by another applicant. A NOAD

is “limited only to the issues created by document revisions, additions, or both, by the Applicant submitting the Application pursuant to subsection (6) [of the Rule].”

10. Following the receipt and review of NOPSEs, cures and NOADs, Florida Housing prepares, and transmits to all applicants, final scores. *See*, Rule 67-48.004(9), F.A.C.

11. An applicant may contest its final score by filing a petition with Florida Housing. If the petition does not raise a disputed issue of material fact, an informal hearing will be conducted; if the petition raises one or more disputed issues of material fact, a formal hearing will be conducted. *See*, Rule 67-48.005, F.A.C. Rule 67-48.005, F.A.C., establishes a procedure through which an applicant can challenge the final score of its application. As set forth below, Emerald Terrace timely submitted a petition challenging the final scoring of its application.

Emerald Terrace’s Application

12. On or before the submission deadline of February 1, 2006, Emerald Terrace and numerous other entities submitted applications seeking an allocation of Tax Credits from the 2006 Universal Application Cycle. Emerald Terrace’s application was assigned Application Scoring No. 2006-080C (the “Application”).

13. During the application process, an HC applicant is required to submit an executed Verification of Environmental Safety Phase I Environmental Site Assessment Form (“Verification Form”), demonstrating that a Phase I Environmental Site Assessment (“Phase I ESA”) has been performed. Failure to submit the requested Verification Form is a basis for a determination that an applicant has failed to achieve threshold, and the application will be rejected.

14. The Universal Application Instructions set forth the specific requirements necessary to demonstrate that an acceptable Phase I ESA has been performed. The Instructions provide in relevant part as follows:

Environmental Site Assessment (Threshold)

Applicant must demonstrate that a Phase I Environmental Site Assessment (ESA) has been performed. The firm performing the ESA must certify that the review was performed in accordance with either ASTM Practice #E-1527-00 or ASTM Practice #E-1527-05. The properly completed and executed Verification of Environmental Safety - Phase I Site Assessment Form must be provided behind a tab labeled “**Exhibit 33**”.

(Pages 28 and 29 of the Universal Application Instructions, Exhibit 3).

15. During the cure phase of the application process and in accordance with the ASTM Practice, Emerald Terrace submitted a Verification Form that was executed by a Professional Engineer employed by Ardaman & Associates, Inc.

16. With respect to Emerald Terrace’s application, the engineer who performed the Phase I and executed the Verification Form certified the following relevant provisions:

As a representative of the firm that performed the Phase I Environmental Site Assessment (ESA), I certify that a Phase I ESA of the above referenced Development location was conducted by the undersigned environmental firm as of 3/27/06 (Date of Phase I ESA – mm/dd/yyyy) and such Phase I ESA meets the standards of either ASTM Practice #E-1527-00 or #E-1527-05.

Check all that apply in Item . . . 2 . . . below: (emphasis added)

* * *

2. If there are one or more existing buildings on the proposed site, the Phase I ESA:

___ a. addresses the presence or absence of asbestos or asbestos containing materials (ACM) and lead-based paint (LBP); or

___ b. separate report(s) addressing the presence or absence of asbestos or asbestos containing materials and lead-based paint have been prepared and the undersigned has reviewed the separate

report(s). Such separate report(s) may or may not be incorporated by reference in the Phase I ESA.

(2006 Verification Form, Exhibit 4).

17. Emerald Terrace's Phase I ESA was performed in accordance with ASTM Practice #E-1527-05.

18. As part of a NOAD, a competing applicant asserted that Emerald Terrace's Verification Form was deficient. The competing applicant did not allege that the Phase I ESA was not performed in accordance with ASTM Practice Standards.

19. On or about May 4, 2006, Florida Housing released "final scores" after receiving the documentation contained in NOPSEs, Cures and the NOADs for the 2006 Universal Application Cycle. Emerald Terrace was scored as having 66 total points; 7.5 proximity tie breaker points; and, except for the remaining issue described herein, satisfied all application threshold requirements. In the Final Scoring and Ranking, however, Florida Housing agreed with the competitor's NOAD position, finding that the ESA form was not properly completed, and rejected Emerald Terrace's Application on the grounds that it purportedly failed to achieve threshold.

20. The final score sheets issued by Florida Housing for Emerald Terrace's Application contain a notation reflecting Florida Housing's basis for determining that the Application failed to achieve threshold:

As a cure for Item 3T, the Applicant provided a Verification of Environmental Safety Phase I Environmental Site Assessment form that is incomplete. As indicated at paragraph 160 on page 19 of Exhibit B to the Contract for Purchase and Sale of Real Property, there is an existing building on the site. Therefore, the environmental provider should have addressed asbestos and lead-based paint by checking the appropriate item at question No. 2 on the Phase I ESA form.

(Exhibit 5).

21. At the time the Emerald Terrace's Phase I assessment was prepared, a building was located on the proposed development site. Upon funding, the building will be demolished. Emerald Terrace's Phase I ESA was not required to, nor did it address, the presence or absence of asbestos or lead-based paint. In addition, no separate report addressed the presence or absence of asbestos or asbestos containing material and lead-based paints. Emerald Terrace intentionally left blank Item 2 on the Verification Form.

PRIOR APPLICATION CYCLES

22. The Gatehouse Group, Inc. and the Gatehouse Group, LLC (collectively referred to as "Gatehouse") has been the developer of a number of applications submitted to Florida Housing. Gatehouse is the developer for the Emerald Terrace development. In addition, Gatehouse was the developer that submitted the following relevant applications: Brisas del Mar Apartments, Application No. 2001 108CS ("Brisas 2001"); Brisas del Mar Apartments, Application No. 2002 - 0167C ("Brisas 2002"); and the Pearl Apartments, Application No. 2004-088C ("the Pearl").

Brisas 2001

23. During the 2001 Combined Rental Cycle ("Combined Cycle") Gatehouse submitted to Florida Housing the Brisas 2001 application. The Combined Cycle instructions set forth the specific requirements necessary to demonstrate that an acceptable Phase I ESA had been performed. The instructions provided in relevant part as follows:

ENVIRONMENTAL SAFETY (20 points)

In order to receive points, Applicant must submit a completed "Verification of Environmental Safety- Phase I

Environmental Assessment" Form (found at Form 7, Pg.15 of 20), certifying that a Phase I Environmental Report, prepared in accordance with ASTM Practice # E1527-00, has been performed.

.....

The Phase I Verification Form must be executed by the firm that performed the Phase I Environmental Report, and must address the following:

1. The presence or absence of asbestos or asbestos containing material and lead-based paint, if there are any existing structures on the site of proposed Development.

(Page 8 of the Combined Rental Cycle Instructions, Exhibit 6).

24. As part of its application, the Brisas 2001 applicant submitted a Verification of Environmental Safety Phase I Environmental Assessment (2001 Verification Form) that included the following relevant certifications:

A Phase I Environmental Assessment of the above referenced Development site was conducted as of January 9, 2001 by Ardaman & Associates Inc. in accordance with ASTM Practice #E 1527-00.

.....

ALL APPLICANTS MUST ANSWER QUESTIONS 1 BELOW:

1. Are there one or more existing buildings on the proposed site?

Yes If yes, does the Phase I Environmental Report address the presence or absence of asbestos or asbestos containing materials and lead-based paint? Yes No

No

(Combined Cycle, Form 7, Page 15 of 20, Exhibit 7).

25. When the Brisas 2001 Phase I was prepared, a building was located on the proposed development site. The building was to be destroyed rather than rehabilitated. For reasons not related to any matters in this case, the Brisas 2001 application was not funded.

Brisas - 2002

26. During the 2001 Combined Cycle, Florida Housing's form and instructions stated that the Phase I ESA "must address" the presence or absence of asbestos-containing materials, or lead-based paint, if there were any structures on the proposed sit. (Exhibit 5). The phrase "must address" was deleted from the form and instructions adopted during the 2002 Universal Cycle. (See Exhibits 7 and 8)

27. During the 2002 Universal Application Cycle, Gatehouse submitted to Florida Housing the Brisas 2002 application. The Brisas 2002 application was, in all relevant respects, identical to the Brisas 2001 application. The 2002 Universal Application Instructions set forth the requirements necessary to demonstrate that an acceptable Phase I ESA had been performed. The instructions provided in relevant part as follows:

Environmental Site Assessment (Threshold)

Applicant must demonstrate that a Phase I Environmental Site Assessment (ESA) has been performed. The firm performing the ESA must certify that the review was performed in accordance with either ASTM Practice #E-1527-00. The properly completed and executed Verification of Environmental Safety - Phase I Site Assessment Form must be provided behind a tab labeled "**Exhibit 29**".

(Page 18 of the 2002 Universal Application Instructions, Exhibit 8).

28. As part of its application, Brisas 2002 submitted a Verification of Environmental Safety Phase I Environmental Site Assessment ("2002 Verification Form"). The professional engineer executing the 2002 Verification Form certified the following relevant provisions:

As a representative of the firm that performed the Phase I Environmental Site Assessment (ESA), I certify that a Phase I ESA of the above referenced Development site was conducted by the undersigned environmental firm as of April 8, 2002.

In accordance with ASTM Practice #E1527-00; and (check all that apply in Items 2 below)

2. If there are one or more existing buildings on the proposed site, the Phase I ESA:

___ a. Address the presence or absence of asbestos or asbestos containing materials (ACM) and lead based paint (LBP); or

___ b. Separate report(s) addressing the presence or absence of asbestos or asbestos containing materials and lead-based paint have been prepared and the undersigned has reviewed the separate report(s). Such separate report(s) may or may not be incorporated by reference in the Phase I ESA.

(2002 Verification Form, Exhibit 9).

29. The 2002 Verification Form was prepared by Ardaman & Associates, Inc., the same firm that executed the 2001 Verification Form. The person certifying the 2002 form did not check either 2 (a) or 2 (b) as applicable. The 2002 Phase I ESA did not address the presence or absence of asbestos containing materials or lead-based paint. In addition, no separate report addressed the presence or absence of asbestos or asbestos containing material and lead-based paints. The Applicant intentionally left blank Item 2 on the Verification Form.

30. In scoring the application, Florida Housing scored the application as having satisfied the application's threshold requirements. The Brisas 2002 Application was funded.

31. At the time the Phase I was prepared, a building was located on the proposed development site. Upon funding, the building was demolished.

The Pearl - 2004

32. During the 2004 Universal Application Cycle, Gatehouse submitted the Pearl application to Florida Housing. The 2004 Universal Application Instructions set forth the

requirements necessary to demonstrate that an acceptable Phase I ESA had been performed. The

Instructions provided in relevant part as follows:

Environmental Site Assessment (Threshold)

Applicant must demonstrate that a Phase I Environmental Site Assessment (ESA) has been performed. The firm performing the ESA must certify that the review was performed in accordance with either ASTM Practice #E-1527-00. The properly completed and executed Verification of Environmental Safety - Phase I Site Assessment Form must be provided behind a tab labeled “**Exhibit 33**”.

(See page 26 of the 2004 Universal Application Instructions, Exhibit 10).

33. As part of its application, the applicant included a Verification of Environmental Safety Phase I Environmental Site Assessment (“2004 Verification Form”). The professional engineer who executed the 2004 Verification Form included the following relevant certifications:

As a representative of the firm that performed the Phase I Environmental Site Assessment (ESA), I certify that a Phase I ESA of the above referenced relevant site was conducted by the undersigned environmental firm as of March 20, 2004 and such Phase I ESA meets the standards of ASTM Practice #E1527-00. Check all that apply in Items 2 :

2. If there are one or more existing buildings on the proposed site, the Phase I ESA:

a. Addresses the presence or absence of asbestos or asbestos containing materials (ACM) and lead-based paint (LBP); or

b. Separate report(s) addressing the presence or absence of asbestos or asbestos containing material and lead-based paint have been prepared and the undersigned has reviewed the separate report(s) may or may not be incorporated by reference in the Phase I ESA.

(2004 Verification Form, Exhibit 11).

34. The 2004 Verification Form was executed by Ardaman & Associates, Inc., the same firm that executed all of the verification forms described herein. At the time the Pearl

Verification Form was prepared, a building was located on the proposed site. The building located on the Pearl's Development site was to be rehabilitated rather than demolished. However, the application was not funded and the Pearl did not purchase the property.

35. All of the above described Phase I Environmental Site Assessments met the standards of either ASTM Practice #E1527-00 or #1527-05.

JOINT EXHIBITS

The parties stipulate and agree to the admission of the following joint exhibits:

1. Joint Stipulation of Facts
2. 67-48.004 Application and Selection Procedures for Developments
3. Pages 28 and 29 of the 2006 Universal Application Instruction
4. Emerald Terrace Verification of Environmental Safety Phase I Environmental Site Assessment Form
5. Emerald Terrace Final Scoring Summary
6. Page 8 of the 2001 Combined Rental Cycle Instructions
7. Brisas 2001 Verification of Environmental Safety Phase I Environmental Assessment
8. Page 18 of the 2002 Universal Application Instructions
9. Brisas 2002 Verification of Environmental Safety Phase I Environmental Site Assessment
10. Page 26 of the 2004 Universal Application Instructions
11. The Pearl Verification of Environmental Safety Phase I Environmental Site Assessment
12. ASTM Practice #E-1527-05
13. 2002 Draft Instruction and Form regarding Environmental Safety Phase I Environmental Site Assessment

14. Final Order: City View Apartments v. Florida Housing Finance Corporation,
FHFC Case No. 2004-028-UC

Respectfully submitted this 15th day of November, 2006,



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