

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**EMERALD TERRACE
LIMITED PARTNERSHIP,**

Petitioner,

vs.

Case No.: 2006-0284C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, Emerald Terrace Limited Partnership (the "Emerald"), by and through its undersigned attorneys and pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2005), and Rule 28-106.201, Florida Administrative Code, hereby files this petition for formal administrative hearing to challenge the Respondent Florida Housing Finance Corporation's evaluation and scoring of the Emerald's application submitted in the 2006 Universal Application Cycle funding batch ("Universal Application Cycle") and "FHFC's utilization of non-rule policy in its decision that the Emerald's application failed to meet threshold requirements. FHFC's erroneous evaluation and improper use of non-rule policy has affected the substantial interests of the Emerald as set forth in this Petition. Accordingly, this Petition also seeks review pursuant to Section 120.57(1)(e)1, Florida Statutes, of the scoring determinations made by the FHFC and the ultimate allocation of tax credits from the 2006 Universal Application Cycle. In support of its Petition, the Emerald states:

1. The name, address and telephone number of Petitioner are:

Emerald Terrace Limited Partnership
c/o Gatehouse Companies
120 Forbes Boulevard
Mansfield, MA 02048
(508) 337-2525

For purposes of this proceeding, notices and pleadings directed to Petitioner should be sent to undersigned counsel for the Emerald as follows:

Michael G. Maida, Esq.
J. Stephen Menton, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
215 S. Monroe Street, Ste. 420
Tallahassee, Florida 32301
(850) 681-6788 (telephone)
(850) 681-6515 (telecopier)

2. The name and address of the affected agency are:

Florida Housing Finance Corporation (“FHFC” or the “Corporation”)
227 N. Bronough Street
City Centre Building, Room 5000
Tallahassee, Florida 32399

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

4. As discussed below, the Emerald submitted an application seeking an allocation of tax credits from the 2006 Universal Application Cycle. The Emerald achieved a perfect score for its Application. However, the FHFC improperly determined that the Emerald failed to satisfy the application’s threshold requirements. This conclusion was predicated, in part, upon a determination by FHFC that does not comport its adopted rules. If FHFC had evaluated the Emerald’s application in accordance with its adopted rules, the Emerald would be entitled to an allocation of Tax Credits

from the 2006 Universal Application Cycle. The Corporation's actions, if upheld, would effectively eliminate the Emerald from funding consideration.¹

5. Through this Petition, the Emerald challenges the Corporation's erroneous threshold determination and its improper use of invalid non-rule policy in reaching its determination. The Emerald also challenges the FHFC's actions as contrary to the existing adopted rules that govern the award of Tax Credits. Thus, the Emerald's substantial interests are subject to determination in this proceeding.

Background Information

6. In 1987, Congress, in an effort to encourage the development of low-income housing for families, created federal income tax credits that are allotted annually to each state including Florida. The program is administered under Section 42 of the Internal Revenue Code. "Tax Credits" equate to a dollar for dollar reduction of the holder's federal tax liability which can be taken for up to ten years if the Internal Revenue Code requirements are met. A developer awarded Tax Credits sells or syndicates the Tax Credits to generate a substantial portion of the funding necessary for the construction of a low-income housing development.

7. FHFC 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, FHFC 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

¹Pursuant to Rule 67-48.004(13)(b), F.A.C., the Corporation will reject an application that fails to achieve threshold.

are allocated by FHFC through a competitive application process. Applications for Tax Credit funding are submitted to FHFC 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, FHFC scores and competitively ranks the applications as discussed in more detail below.

8. Each year, FHFC adopts by rule the Universal Application Package which incorporates the application forms and instructions for the Universal Application Cycle. Rule 67-48.004(1)(a), F.A.C. The amendments to Chapter 67-48, F.A.C., for the 2006 Universal Application Cycle became effective on January 29, 2006.

The 2006 Universal Application Cycle

9. For 2006, FHFC estimated that \$37,006,873, in housing credits will be available for allocation to applicants. FHFC received requests from developers that substantially exceeded this amount during the 2006 Universal Application Cycle.

10. The FHFC review and scoring process for applications submitted to the HC Program for 2006 are set forth in Rule 67-48.004, F.A.C., which, in relevant part, provides as follows:

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.

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 FHFC in order to compete for HC. Applicants applying for HC are also advised by FHFC to review the Universal Application Instructions (the "Instructions") and Rule 67-48, F.A.C. when completing and submitting such applications to FHFC. The Instructions set forth the manner in which the competitive applications are scored. The evaluation and scoring of an application is limited to those matters that are specifically requested in the Universal Application Package (i.e., the Universal Application forms and instructions).

11. The Instructions to the Universal Application provide a maximum score of 66 points. In the event of a tie among competing applications receiving 66 points, a series of tie-breakers are set forth to rank such applications. Generally (in descending order), an application in "Group A" prevails over an application in "Group B"; an application with a greater amount of "proximity tie-breaker points" (7.5 being the maximum) prevails over an application with fewer "proximity tie-breaker points"; and finally, an application with a lower lottery number prevails over an application with a higher lottery number.

12. On or before the submission deadline of February 1, 2006, the Emerald and numerous other entities submitted applications seeking an allocation of Tax Credits from the 2006 Universal

Application Cycle. The Emerald's application was assigned Application Scoring No. 2006-080C (the "Application").

The Scoring Process

13. As previously noted, Rule 67-48.004, F.A.C., is entitled "Application and Selection Procedures for Developments." This rule establishes a multi-stage process for scoring by FHFC of the applications submitted in the Universal Application Cycle.

14. Pursuant to Rule 67-48.004(3), F.A.C., applications are evaluated and preliminarily scored by FHFC, then the scores are transmitted to all applicants.

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

16. Under Rule 67-48.004(6), F.A.C., an applicant is allowed to cure alleged deficiencies in its application raised as a result of the preliminary scoring or the Corporation's announced 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."

17. Pursuant to Rule 67-48.004(7), F.A.C., challengers can submit to FHFC Corporation a Notice of Alleged Deficiency ("NOAD") contesting a Cure filed by an applicant. A NOAD is

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

18. Following receipt and review by FHFC of the documentation contained in the NOPSEs, the Cures and the NOADs for the 2006 Universal Application Cycle, FHFC prepared “final scores” which were released on or about May 4, 2006. A copy of the final score sheets for the Emerald’s Application are attached as Exhibit “A”.

19. Rule 67-48.005, F.A.C., establishes a procedure through which an applicant can challenge the final score of its application. See, Final Scores and Notice of Rights dated May 4, 2006, attached hereto as Exhibit “B”.

The Emerald’s Application

20. 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.

21. The Universal Application Instructions set forth the specific conditions that must be satisfied in order 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**".

(See pages 28 and 29 of the Universal Application Instruction attached as Exhibit "C").

22. During the Cure phase of the application process and in accordance with the above-cited instructions, the Emerald submitted a properly completed and executed Verification of Environmental Safety Phase I Site Assessment Form (See attached Exhibit "D"). This Phase I ESA was performed in accordance with the standards cited in the Application Instructions. Significantly, a Phase I ESA, performed in accordance with ASTM Practice #E-1527-05, is not required to address the presence or absence of asbestos or lead based paint in any building located on a proposed site. The Verification of Environmental Safety Phase I Environmental Site Assessment Form submitted by the Emerald was properly prepared and executed by the engineer who did not check any box with respect to Item 2 because neither box was applicable since the properly prepared Phase I ESA did not address those items.

23. As part of a NOAD, a competing applicant asserted that the Verification Form submitted by the Emerald was deficient and specifically alleged that "in completing a Phase I Environmental Site Assessment (ESA), it is essential that the Engineer address the presence or absence of asbestos and/or lead based paint for a commercial building, either within the body of Phase I Report or in separately prepared reports." No provision in the ASTM Practice Standards was cited to support this allegation. The licensed professional engineer who prepared the Phase I ESA for the Emerald has certified that the report was prepared in accordance with the Practice Standards. As a matter of fact, the Emerald asserts that the applicable Practice Standards do not require an evaluation of the potential presence of asbestos containing materials or lead based paint.

24. In the Final Scoring and Ranking, the Corporation agreed with the competitor's NOAD position and rejected the Emerald's Application on the grounds that it purportedly failed to achieve threshold.

25. The final score sheets issued by FHFC for the Emerald's Application contain a notation reflecting the basis for FHFC's determination 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.

See attached Exhibit A.

26. The Verification Form requires that the person performing the Phase I, certify to 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 _____ (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.

(See Verification Form attached hereto as Exhibit "D"). By its terms, Item 2 required a response only if two requirements were met: 1) buildings existed on the proposed site; and 2) the Phase I or a separate report addressed the presence or absence of asbestosis and lead based paint in any existing building on the proposed site. Because the Phase I did not address the presence or absence of asbestos or lead based paint (and was not required to do so), Item 2 on the Verification Form was not applicable and was left blank.

27. The engineer concluded there was no reason to check either of the "Item 2" boxes on the Verification Form.

28. Scoring of the applications is limited to those matters required by Application Package which is adopted by Rule. The Emerald submitted a valid Phase I ESA certified to comply with the applicable Practice Standards. If FHFC intended to impose obligations on the applicant beyond what is contained in the Practice Standards, it was obligated to clearly delineate those requirements in its adopted rules and/or the application forms incorporated by reference in the rules.

29. Despite the assertions made by a competitor, the Emerald submitted a Phase I ESA that complied with the applicable Practice Standards FHFC's rejection of the Emerald's Application is inconsistent with the adopted rules of the Board and is based upon invalid non-rule policy contrary to Section 120.54(1)(a), Florida Statutes. FHFC's rejection of the Emerald's Application, reflects an invalid non-rule policy that an applicant can be deemed to not meet threshold based upon failing to provide information that is not specifically required in the Application Package or required by the

Instructions. Because the Emerald submitted a Phase I ESA that satisfied the designated Practice Standards, the decision to reject the application was erroneous and must be over-turned.

Disputed Issues of Material Fact

30. Disputed issues of material fact in this proceeding include the following:
- (a) What are the applicable Practice Standards for a Phase I ESA and did the Emerald's Verification Form properly certify compliance with those standards;
 - (b) Whether the Emerald failed to achieve threshold for the 2006 Universal Application Cycle;
 - (c) Whether FHFC erred in concluding that Emerald's Application failed to meet threshold in the 2006 Universal Application Cycle, whether FHFC's determination imposes obligations that were not clearly delineated in its adopted rules and as a result, whether FHFC has improperly applied non-rule policy;
 - (d) Whether the Verification Form submitted with the Emerald's application was completed and executed in accordance with the Application's Rules and Instructions;
 - (e) Whether the Emerald is entitled to an allocation of Tax Credits based upon the adopted rules including the application forms applicable to the 2006 Universal Application Cycle;

- (f) Whether FHFC's action in evaluating and scoring the Emerald's application effectively supplemented or modified its existing rules and/or contravened Rules 67-48.004(1),(2), and (3) F.A.C.;
- (g) Whether FHFC's action in evaluating and scoring the Emerald's application effectively supplemented, modified or contravened the application Instructions; and
- (h) Whether FHFC's action in evaluating and scoring the Emerald's application constitutes an improper application of non-rule policy in contravention of Sections 120.54(1) and 120.57(1)(e), Fla. Stat.(2005).

Disputed Issues of Law

31. Disputed issues of law in this proceeding include the following:

- (a) Whether Rule 67-48.004, F.A.C., limits the FHFC's scoring and evaluation of applications to those matters contained within the Rule and the Application Instructions;
- (b) Whether FHFC's actions in evaluating and scoring the Emerald's Application constitute an invalid exercise of delegated legislative authority as defined in Section 120.52(8), Fla. Stat. (2005);
- (c) Whether FHFC's actions in evaluating and scoring the Emerald's Application was based on an erroneous interpretation of the FHFC's rules and/or was based on invalid non-rule policy;

- (d) Whether FHFC's actions in evaluating and scoring the Emerald's Application were consistent with the requirements of the Application Instructions and Rules 67-48.004(1), (2) and (3) F.A.C.;
- (e) Whether the FHFC's non-rule policies employed in the evaluation and scoring of the Emerald's Application vest unbridled discretion in the FHFC to reject an application that should have been ranked within funding based upon the adopted rules;
- (f) Whether FHFC's non-rule policies that led to rejection of the Emerald's Application constitute an invalid exercise of delegated legislative authority;
- (g) Whether the FHFC's action in rejecting the Emerald's Application was arbitrary, capricious and/or contrary to its adopted rules; and
- (h) Whether the FHFC's evaluation, scoring and rejection of the Emerald's Application is consistent with the requirements of Rule 67-48.004(1), (2) and (3) F.A.C.

Ultimate Facts and Law

The ultimate facts in this proceeding that warrant reversal of FHFC's determination that the Emerald's Application failed to achieve threshold thereby eliminating the Emerald from funding from the 2006 Universal Application Cycle include:

- (a) The Emerald submitted a valid Phase I ESA that fully complied with the applicable Practice Standards;
- (b) FHFC's evaluation and scoring of the Emerald's Application for the 2006 Universal Application Cycle is inconsistent with the existing adopted rules;

- (c) Rules 67-48.004(1), (2) and (3), F.A.C., as well as the Application Instructions control the evaluation and scoring determinations for applications filed in the 2006 Universal Application Cycle;
- (d) FHFC was required to evaluate and score the Emerald's Application based solely on the information required by the Applications's Instructions;
- (e) FHFC's non-rule policy that it may evaluate and score the Emerald's Application based on the Emerald's failure to provide information not required by the Applications's Instructions violates Section 120.54(1)(a), Fla. Stat. (2005);
- (f) FHFC's determination that it could evaluate and score the Emerald's Application based on criteria not required by the Application Instructions is an agency statement that "implements, interprets or prescribes law or policy or describes the procedure or practice requirements of the agency." This interpretation constitutes a rule as defined in Section 120.52, Fla. Stat., which has not been adopted as required by Section 120.54(1), Fla. Stat.;
- (g) The Emerald's Application achieved a perfect score and is entitled to funding from the 2006 Universal Application Cycle based upon the rules adopted to govern that cycle; and
- (h) The FHFC's evaluation and scoring determinations embodied in the Final Scoring Summary constitute an invalid exercise of delegated legislative authority.

Statutes and Rules at Issue in this Proceeding

The Statutes and rules at issue in this proceeding include, but are not limited to, the following:

Section 420.5099, Fla. Stat. (2005)

Section 120.52, Fla. Stat.

Section 120.54, Fla. Stat.

Section 120.56(4), Fla. Stat.

Section 120.569, Fla. Stat.

Section 120.57(1), Fla. Stat.

Rule 67-48.004(1), F.A.C.

Rule 67-48.004(2), F.A.C.

Rule 67-48.004(3), F.A.C.

Rule 67-48.004(4), F.A.C.

Rule 67-48.026, F.A.C.

WHEREFORE, Petitioner, the Emerald, respectfully requests that this matter be referred to the Division of Administrative Hearings for assignment of an administrative law judge to conduct a Formal Administrative Hearing pursuant to Sections 120.56(4), 120.569 and 120.57(1), Fla. Stat. (2005), regarding the rejection of the Emerald's Application and FHFC's use of non-rule policy in the scoring and evaluation process. The Emerald further requests that a Final Order be entered which determines that:

a) Rule 67-48.004, F.A.C., precludes the FHFC from determining that the Emerald failed to meet the Application's threshold requirements;

b) The Corporation's rejection of the Emerald's Application in the 2006 Universal Application Cycle, was based upon an invalid application of non-rule policy in violation of Chapter 120, Fla. Stat.;

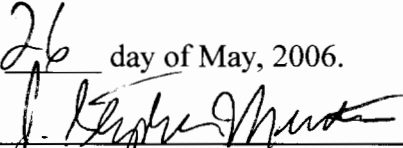
c) The FHFC's rejection of the Emerald's Application should be set aside;

d) The Emerald's Application should be ranked within the funding range in the 2006 Universal Application Cycle and the Emerald is entitled to an allocation of Tax Credits from the 2006 Universal Application Cycle;

e) An award of attorneys' fees and costs to the Emerald is warranted based on Section 120.595, Fla. Stat.; and

f) Such further relief as may be necessary and appropriate.

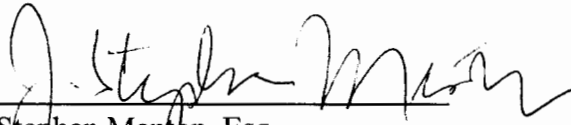
RESPECTFULLY SUBMITTED this 26 day of May, 2006.



MICHAEL G. MAIDA
FL BAR No.: 0435945
J. STEPHEN MENTON
FL BAR No: 331181
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850/681-6788 (telephone)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing has been filed with the General Counsel of Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, and a copy provided by hand delivery to the Clerk on this 26 day of May, 2006.



J. Stephen Menton, Esq.

2006 MMRB, SAIL & HC Scoring Summary

As of: 05/03/2006

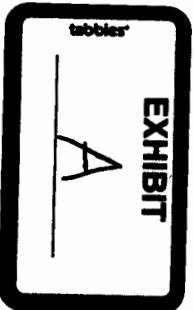
File # 2006-080C

Development Name: The Emerald

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
05 - 03 - 2006	66	N	7.5	\$71,370.44	%	N
Preliminary	61	N	6.25	\$71,370.44	%	N
NOPSE	61	N	6.25	\$71,370.44	%	N
Final	66	N	7.5	\$71,370.44	%	N
Final-Ranking	0	N	0		0	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Optional Features & Amenities									
1S	III	B	2.a.	New Construction	9	9	9	9	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
2S	III	B	2.c.	All Developments Except SRO	12	12	12	12	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	9	9	9	9	0
Set-Aside Commitments									
4S	III	E	1.b.(2)(a)	ELI Set-Aside Commitment	5	5	5	5	0
5S	III	E	1.b.(2)(b)	Total Set-Aside Commitment	3	3	3	3	0
6S	III	E	3	Affordability Period	5	0	0	5	0
Resident Programs									
7S	III	F	1	Programs for Non-Elderly & Non-Homeless	6	6	6	6	0
7S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
7S	III	F	3	Programs for Elderly	6	0	0	0	0
8S	III	F	4	Programs for All Applicants	8	8	8	8	0
Local Government Support									
9S	IV		a.	Contributions	5	5	5	5	0
10S	IV		b.	Incentives	4	4	4	4	0



2006 MMRB, SAIL & HC Scoring Summary

As of: 05/03/2006

File # 2006-080C

Development Name: The Emerald

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
6S	The Applicant failed to specify the number of years committed to set aside units in the proposed Development. Therefore, the Applicant received no points for Affordability Period.	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 Approval	The Applicant failed to provide the required Local Government Verification of Status of Site Plan Approval for Multifamily Developments form for any of the Scattered Sites which comprise the Development.	Preliminary	Final
2T	III	C	4	Zoning	The Applicant failed to provide the required Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form for any of the Scattered Sites which comprise the Development.	Preliminary	Final
3T	III	C	5	Environmental Safety	The Applicant failed to provide the required Verification of Environmental Safety Phase I Environmental Site Assessment form and, if applicable, the Verification of Environmental Safety Phase II Environmental Site Assessment form for any of the Scattered Sites which comprise the Development.	Preliminary	Final
4T	III	C	5	Environmental Safety	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.	Final	Final

Proximity Tie-Breaker Points:

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final Ranking	
1P	III	A	10.a.(2)(a)	Grocery Store	1.25	1.25	1.25	1.25	0
2P	III	A	10.a.(2)(b)	Public School	1.25	1.25	1.25	1.25	0
3P	III	A	10.a.(2)(c)	Medical Facility	1.25	0	0	0	0
4P	III	A	10.a.(2)(d)	Pharmacy	1.25	0	0	0	0
5P	III	A	10.a.(2)(e)	Public Bus Stop or Metro-Rail Stop	1.25	0	0	1.25	0
6P	III	A	10.b.	Proximity to Developments on FHFC Development Proximity List	3.75	3.75	3.75	3.75	0

2006 MMRB, SAIL & HC Scoring Summary

As of: 05/03/2006

File # 2006-080C

Development Name: The Emerald

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
5P	The Applicant failed to truncate the coordinates provided on the Surveyor Certification Form for this service as required on page 17 of the Universal Application Instructions.	Preliminary	Final

we make housing affordable

MEMORANDUM

TO: Applicants for the 2006 Universal Cycle
FROM: Vicki Robinson, Deputy Development Officer *VR*
DATE: May 4, 2006
SUBJECT: Final Scores and Notice of Rights

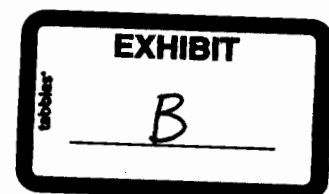
Enclosed is a 2006 Universal Scoring Summary reflecting the Corporation's decision regarding any revisions ("Cures") and Notices of Alleged Deficiencies ("NOAD"), together with an Election of Rights Form with attachments. NOADs and program spreadsheets, including A/B leveraging, are now available on Florida Housing's web site at www.floridahousing.org.

Applicants who wish to contest the decision relative to their own Application must petition the Corporation for review of the decision in writing within 21 Calendar Days of the date of receipt of this notice. Only petitions received by this deadline will be considered. The petition must specify in detail each issue and score sought to be reviewed. Unless the appeal involves disputed issues of material fact, the appeal will be conducted on an informal basis pursuant to section 120.57(2), Florida Statutes. If the appeal raises disputed issues of material fact, a formal administrative hearing will be conducted pursuant to Section 120.57 (1), Florida Statutes. Failure to timely file a petition shall constitute a waiver of the right of the Applicant to such an appeal. Written notifications, petitions or requests for review will NOT be accepted via telefax or other electronic means. No Applicant or other person or entity will be allowed to intervene in the appeal of another Applicant.

Petitions must be received by 5:00 p.m. Eastern Time on May 26, 2006. Petitions must comply with the provisions of Rule 28-106.201 or 28-106.301, Florida Administrative Code, and must be filed with:

Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

An Applicant that requests a hearing will have the right to be represented by counsel or other qualified representative. Pursuant to section 120.573, Florida Statutes, mediation is not available.



Memorandum to Applicants

Page Two

May 4, 2006

Please complete and submit the enclosed Election of Rights Form as soon as possible to facilitate the scheduling of hearings. This form may be submitted prior to the submission of petitions. Florida Housing will make every effort to have a hearing schedule completed and posted on the Corporation web site by May 30, 2006.

Applicants will not be permitted to make oral presentations to the board in response to recommended orders. An Applicant may 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 font or Courier New 12-point font, and may not exceed five (5) pages. Any written argument must be received by Florida Housing's Corporation Clerk at the above address no later than 5:00 p.m. Eastern Time on the date stated in the Recommended Order filed in each matter. Failure to timely file a written argument shall constitute a waiver of the right of the Applicant to be heard on the recommended order.

Enc.

To demonstrate that, on or before the date that signifies the end of the cure period outlined in Rules 67-21.003 and 67-48.004, F.A.C., the proposed Development site is appropriately zoned and consistent with local land use regulations regarding density and intended use or that the proposed Development site is legally non-conforming, the Applicant must provide the appropriate verification form behind a tab labeled **“Exhibit 32”**. Evidence of appropriate zoning must be demonstrated for all property locations if the proposed Development has Scattered Sites.

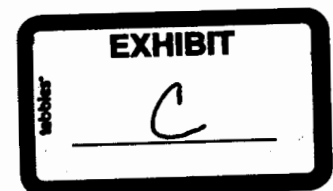
If the proposed Development is in the Florida Keys Area, proper execution of the Local Government Verification That Development Is Consistent with Zoning and Land Use Regulations Form or the Local Government Verification That Permits Are Not Required For This Development Form will constitute the Local Government’s certification that the Applicant has obtained the necessary Rate of Growth Ordinance (ROGO) allocations from the Local Government.

5. Environmental Site Assessment (Threshold)

- a. 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”**.
- b. If the Phase I ESA disclosed potential problems on the proposed site and required or recommended a Phase II ESA, the firm that performed the Phase II ESA, even if it is the same firm that performed the Phase I ESA, must certify that the Phase II ESA has been performed in accordance with ASTM Practice #E-1527-00. The properly completed and executed Verification of Environmental Safety – Phase II Site Assessment Form must be provided behind a tab labeled **“Exhibit 34”**.

If the proposed Development consists of Scattered Sites, the Applicant must provide the appropriate evidence that a Phase I ESA and, if applicable, a Phase II ESA, has been performed for all of the sites.

Note: If the Phase I ESA and/or the Phase II ESA disclosed environmental problems requiring remediation, a plan, including time frame and cost, for the remediation is required. By answering the applicable questions and executing the Phase I and/or Phase II verification(s), the environmental provider is certifying that such plan has been prepared. In addition, by executing the Applicant Certification and Acknowledgement Form, the Applicant certifies that the plan has been prepared and the costs associated



with such remediation have been included in the Development Cost Pro Forma submitted in this Application.

D. Demographic Commitment (Threshold)

Selection of the Elderly, Farmworker/Commercial Fishing Worker, or Homeless Demographic Commitment will be included in the Land Use Restriction Agreement(s) and/or Extended Use Agreement and must be maintained in order for the Development to remain in compliance, unless the Board approves a change.

In order to compete in the SAIL Elderly, SAIL Farmworker/Commercial Fishing Worker or SAIL Homeless Special Set-Asides (see Designation at Part V.) or to be selected to fulfill a HC goal, the Applicant must have also selected and qualified for the applicable Demographic Commitment in this section.

All Applicants must select one of the following Demographic Commitments. If an Applicant selects more than one commitment, fails to select a commitment, or fails to qualify for the selected commitment, the Application will be rejected.

1. Elderly

Indicate whether the proposed Development will be an Assisted Living Facility (ALF).

In order for a proposed Development to be classified as Elderly (ALF or non-ALF), the Development must meet the following requirements:

- a. The total number of units is limited as follows:
 - (1) Non-ALF Developments –
 - (a) New Construction (Applicant selected New Construction Category at Part III.A.3.) in all counties except Miami-Dade County and Broward County is limited to 160 total units;
 - (b) Rehabilitation/Substantial Rehabilitation, with or without Acquisition (Applicant selected the applicable Development Category at Part III.A.3.), that does not constitute an existing, occupied elderly housing facility that is operating as an elderly housing facility as set forth in the Federal Fair Housing Act as of the Application Deadline in all counties except Miami-Dade County and Broward County is limited to 160 total units;

**VERIFICATION OF ENVIRONMENTAL SAFETY
PHASE I ENVIRONMENTAL SITE ASSESSMENT**

Name of Development: The Emerald
The North and South side of 72nd Terrace, West of NW 2nd Avenue, Miami, FL 33150

Development Location: _____
 (At a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, closest designated intersection and city)

As a representative of the firm that performed the Phase I Environmental Site Assessment (ESA), I certify that the Phase I ESA of the above referenced Development location was conducted by the undersigned environmental firm as of 3/27/06 and
 (Date of Phase I ESA - mm/dd/yyyy)

such Phase I ESA meets the standards of either ASTM Practice #E-1527-00 or #E-1527-05

Check all that apply in Items 1, 2 and 3 below

1. If the Phase I ESA is over 12 months old from the Application Deadline for this Application, has the site's environmental condition changed since the date of the original Phase I ESA?

Yes No

If "Yes", to demonstrate the condition of the site, answer question (1) or (2) below

(1) an update to the original Phase I ESA was prepared on _____ (Date - mm/dd/yyyy)
 (Date of update must be within 12 months of the Application Deadline for this Application), or

(2) a new Phase I ESA was prepared on _____ (Date - mm/dd/yyyy)
 (Date of new Phase I ESA must be within 12 months of the Application Deadline for this Application)

Note: The Corporation will not consider a Phase II ESA to be a substitute for the updated Ph I ESA or new Ph I ESA

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

3. If the Phase I ESA discloses potential problems (including, but not limited to asbestos or asbestos containing materials, lead-based paint, radon gas, etc.) on the proposed site

a. environmental safety conditions on the site require remediation and a plan that includes anticipated costs and estimated time needed to complete the remediation has been prepared, either as a part of the Phase I ESA or as a separate report

b. a Phase II ESA is required or recommended (the firm that performed the Phase II ESA, even if it is the same firm that prepared the Phase I ESA MUST complete and execute the Phase II Environmental Site Assessment Verification)

c. although environmental safety conditions exist on the site, no remediation or further study is required or recommended

CERTIFICATION

I certify that the foregoing information is true and correct

Rafael Diner 3-27-06
 Authorized Signature Date (mm/dd/yyyy)

Rafael Diner, P.E.
 Print or Type Name of Signatory

Project Engineer
 Print or Type Title of Signatory

Ardaman & Associates, Inc.
 Name of Firm that Performed the Phase I ESA

2608 West 84th Street, Hialeah, FL 33016
 Address of Environmental Firm

305-825-2683
 Telephone Number Including Area Code

This certification must be signed by a representative of the firm that performed the Phase I ESA for the proposed Development location. If this certification contains corrections or 'white-out', or if it is scanned, imaged, altered, or retyped, the Application will fail to meet threshold and will be rejected. The certification may be photocopied

