



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA REGION 1 - NEW ENGLAND
1 Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023

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2009 MAR 26 P 3:48

OFFICE OF
ENVIRONMENTAL STEWARDSHIP

REGIONAL HEARING CLERK

HUGH W. MARTINEZ
direct: (617) 918-1867

BY HAND

March 26, 2009

Ms. Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 - New England
One Congress St., Suite 1100 (RAA)
Boston, MA 02114-2023

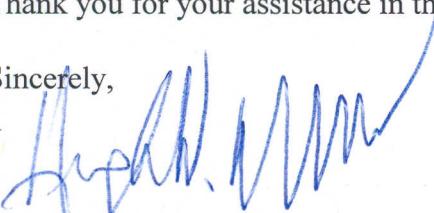
Re: In the Matter of: The Community Builders, Inc. et al., Docket No. TSCA-01-2008-0079
Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of the Consent Agreement and Final Order (CAFO), signed by Complainant and Respondents in the above-referenced enforcement case. Note that the Final Order has been executed by the Regional Judicial Officer and, upon filing, the CAFO effectively concludes this matter, consistent with the schedule established by the Presiding Officer's February 20, 2008 Order on Second Motion for Extension of Time.

Thank you for your assistance in this matter.

Sincerely,


Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
EPA Region 1

Enclosures

cc: The Honorable Susan L. Biro, Presiding Officer
Robert C. Kirsch, Esquire, Counsel for Respondent, The Community Builders, Inc., and Agent
for Service for all other Respondents
John B. Shumway, Esquire, U.S. Dept. of Housing and Urban Development

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

RECEIVED

IN THE MATTER OF:)

THE COMMUNITY BUILDERS, INC. et al.,)

Respondents.)

Proceeding under Section 16(a) of the Toxic)
Substances Control Act, 42 U.S.C. § 2615(a).)

2009 MAR 26 P 3:48
CONSENT AGREEMENT
AND
FINAL ORDER
REGIONAL HEARING CLERK

Docket No.
TSCA-01-2008-0079

INTRODUCTION

This is a Consent Agreement (“Agreement”) resolving violations, alleged in a Complaint and Notice of Opportunity for Administrative Hearing (“Complaint”) filed on July 3, 2008 by the United States Environmental Protection Agency - Region 1 (“EPA”), of certain requirements of Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“Lead Act”), 42 U.S.C. §§ 4851 *et seq.*, Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 *et seq.*, and the implementing regulations entitled Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (the “Disclosure Rule”), 40 C.F.R. Part 745, Subpart F. The Complainant is the Manager of the Enforcement Office within EPA’s Office of Environmental Stewardship.

The Complaint alleged that The Community Builders, Inc. (“TCB”) and the twenty-three (23) other named Respondents (“Property Owners”) listed in Appendix A (collectively, TCB and the Property Owners are the “Respondents” herein) violated Section 1018(b)(5) of the Lead Act, 42 U.S.C. § 4852d(b)(5), Section 409 of TSCA, 15 U.S.C. § 2689, and the Disclosure Rule.

This Agreement is entered into concurrently with a parallel agreement between Respondents and the U.S. Department of Housing and Urban Development (“HUD”).

I. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in the text of this Agreement have the same meaning as those in the Lead Act, TSCA, and the Disclosure Rule. Whenever the terms listed below are used in this Agreement, the following definitions apply:

a. "Abatement" shall mean any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes the removal of lead-based paint and dust-lead hazards, the permanent enclosure of lead-based paint (or encapsulation for non-friction, non-impact surfaces only), and the replacement of components or fixtures painted with lead-based paint, as listed in Paragraph 4 of Appendix B (Scope of Work).

b. "Appropriate Respondents" shall mean the Respondent that owns the property to which the paragraph applies and TCB.

c. "Clearance" shall mean an activity conducted after lead-based paint window replacement and other lead-based paint Abatement Work, pursuant to Chapter 15 of the HUD Guidelines, have been performed to determine that the lead-based paint window replacement and Abatement Work are complete and that no settled dust-lead hazards exist in the dwelling unit, soil, or worksite. The clearance process involves a visual assessment and collection and analysis of environmental samples. If Abatement Work is performed in separate stages, clearance shall be achieved after each Abatement Work event, before occupants are allowed to re-enter the work area. The appropriate clearance standards shall be the more restrictive of those set by the jurisdiction where the property is located or by Section 403 of TSCA and its implementing regulations, 40 C.F.R. § 745.227(e)(8)-(9).

d. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" shall mean the date the Final Order is filed with the EPA Regional Hearing Clerk, in accordance with 40 C.F.R. § 22.31(b).

f. "Elevated Blood-Lead Level" shall mean a blood-lead concentration equal to or greater than ten (10) micrograms per deciliter ($\mu\text{g}/\text{dl}$) as measured through a venous blood lead test.

g. "Friction surface" shall mean an interior or exterior surface that is subject to abrasion or friction, including, but not limited to certain window components, tight fitting or rubbing

doors, cabinet doors and drawers, stairway treads and railings, floors, and similar components on outside decks and porches.

h. "HUD Guidelines" shall mean the edition of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing in effect on the day the work required in this Agreement is begun at a Subject Property, pursuant to this Agreement.

i. "Impact surface" shall mean an interior or exterior surface that is subject to damage by repeated sudden force such as doorjambs, door trim, door stops, outside corners of walls, baseboards and shoe moldings, stair risers, and chair rails.

j. "Interest" shall mean interest pursuant to Paragraph 15 of this Agreement.

k. "Lead Abatement Supervisor" shall mean a person certified or licensed by EPA or an EPA-authorized state to perform lead abatement, supervise lead abatement workers who perform lead abatement, and prepare occupant protection plans and abatement reports as defined in 40 C.F.R. § 745.226 or the applicable state law and/or regulations in an EPA-authorized state.

l. "Lead-Based Paint" shall mean paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or 0.5 percent by weight. If Abatement Work is carried out under this Agreement (and Appendix B) in any Subject Property located in a jurisdiction that has a more stringent numerical definition of Lead-Based Paint or similar numerical safety standard for lead then, for that Abatement Work, "Lead-Based Paint" shall mean paint or other surface coatings that meet the more stringent numerical standard.

m. "Lead-Based Paint Free" shall mean housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or 0.5 percent by weight. If Abatement Work is carried out under this Agreement (and Appendix B) in any Subject Property located in a jurisdiction that has a more stringent numerical definition of Lead-Based Paint or similar numerical safety standard for lead then, for that Abatement Work, "Lead-Based Paint Free" shall mean housing that meets the more stringent numerical standard.

n. "Month" shall mean thirty (30) consecutive days.

o. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral.

p. "Parties" shall mean all of the parties to this Agreement, namely, EPA, TCB and the other Respondents.

q. "Section" shall mean a portion of this Agreement identified by a roman numeral.

r. "Subject Property/ies" shall mean, as appropriate within the context of its use herein, one or more of the properties listed in Appendix C of this Agreement and any other properties built before 1978 that are acquired or first managed by TCB or TCB affiliates after the Effective Date of this Agreement.

s. "Subparagraph" shall mean a portion of this Agreement identified by a lower case letter.

t. "Section 1018" shall mean Section 1018 of the Lead Act, 42 U.S.C. § 4852d.

u. "Submit" shall mean to dispatch via first class United States mail or other delivery service of demonstrated reliability and equivalent or better speed.

II. GENERAL PROVISIONS

2. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 16(a) of TSCA and 40 C.F.R. § 745.118, by filing the above-mentioned Complaint in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits at 40 C.F.R. Part 22. Based on documents and factual information provided to EPA after the Complaint was filed by Respondent Verano Apartments Limited Partnership ("Verano"), Complainant hereby withdraws the single violation alleged in the Complaint against Verano, with prejudice, and agrees that Verano shall not be responsible for any obligations under this Agreement.

3. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted. Respondents waive any defenses they might have as to jurisdiction and venue and consent to the issuance of

this Agreement without adjudication.

4. For purposes of this proceeding, Respondents neither admit nor deny the factual allegations or legal conclusions set forth in the Complaint. The Parties acknowledge that, on or about August 26, 2008, Respondents filed an Answer in which they denied certain allegations in the Complaint, asserted a number of affirmative defenses and mitigating factors to the alleged violations, and requested a hearing.

5. Respondents agree to waive any right to further contest any statement of fact or violation set forth in the Complaint. Respondents waive their right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and their right to appeal the Final Order accompanying this Agreement.

6. This Agreement constitutes a settlement by EPA of all claims for civil penalties, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 42 U.S.C. § 4852d, for the violations alleged in the Complaint of TSCA Section 409, Section 1018 of the Lead Act, and the Disclosure Rule, as well as all other violations of the Disclosure Rule requirements at 40 C.F.R. §§ 745.107(a)(1), 745.107(a)(2), 745.107(a)(4), 745.113(b)(1), and/or 745.113(b)(2) that occurred at the properties listed in Paragraph 35 of the Complaint from the date of the first violation alleged therein through the date of the last violation alleged, namely, from August 26, 2003 through March 1, 2006, inclusive. Nothing in this Agreement is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Nothing in this Agreement shall prevent EPA from taking any necessary action to address conditions which may present an imminent and substantial endangerment to public health or the environment.

Nothing in this Agreement shall be construed to limit the authority of EPA or HUD to undertake any action against Respondents for future violations of the Lead Act or TSCA or any other violations within EPA or HUD's jurisdiction. Subject to the terms of this Agreement, EPA and HUD each reserve any rights and remedies available to them to enforce the provisions of this Agreement, TSCA, the Lead Act, and the Disclosure Rule, following the issuance of this Agreement.

7. This Agreement shall apply to and be binding upon Respondents, their agents, successors, and assigns. TCB shall be responsible for all Abatement Work required under this Agreement and Appendix B. As to any Respondent other than TCB (i.e., any Respondent Property Owner), affirmative obligations under this Agreement, unless otherwise indicated, shall be apportioned between and among them according to each such Respondent Property Owner's share of the potential liability (hereinafter, "Proportional Share"), as alleged in the Complaint and further described in Paragraph 205 thereof. Accordingly, for all purposes under this Agreement, the maximum financial obligation of each such Respondent Property Owner arising out of this Agreement —whether for any stipulated penalty or for the minimum \$2,050,000 SEP costs— shall be strictly limited to each such Property Owner's respective Proportional Share. The Proportional Share applicable to each of the Respondent Property Owners pursuant to this Agreement is listed in Appendix A as a percentage next to each such Respondent Property Owner, consistent with the allegations in the Complaint.

8. Respondents shall remain liable to EPA and HUD for all their obligations set forth in this Agreement, as applicable to Appropriate Respondents, regardless of whether an Appropriate

Respondent sells or transfers a Subject Property. If, prior to the termination of this Agreement, any Respondent intends to sell or transfer a Subject Property at which Abatement Work is performed, all of the following shall occur before the sale or transfer in order to have any of the cost of such Abatement Work considered eligible for SEP credit: (a) all inspections and Abatement Work must be completed at the Subject Property as set forth in Section IV herein and Appendix B; (b) a clearance examination must be passed as set forth in Section IV and the clearance examination report ("Clearance Report") sent to HUD requesting an expedited approval due to the pending sale or transfer; and (c) HUD must approve the final Clearance Report. HUD shall provide its approval in writing. To the extent any Abatement Work for which a Respondent seeks credit hereunder will not be completed prior to the sale or transfer, Appropriate Respondents can choose either: (a) to stop work, perform Clearance on the Abatement Work that has been completed, and seek credit for the completed work as set forth above, or (b) to complete the Abatement Work after the sale or transfer. If any Appropriate Respondent chooses to complete Abatement Work after the sale or transfer of a Subject Property, the decision as to whether the costs associated with such work will be creditable as eligible SEP costs shall be within the sole discretion of HUD and EPA. In any case, to obtain any credit for the cost of Abatement Work completed at Subject Properties after they are sold or transferred, Respondents must ensure that EPA and HUD have access to inspect the Subject Properties, as EPA and HUD deem necessary and appropriate under Paragraph 25 herein.

III. TERMS OF SETTLEMENT

9. Respondents shall comply with all requirements of Section 1018 and its implementing

regulations. In addition, by signing this Agreement, Respondents acknowledge that they have fully addressed the violations alleged in the Complaint.

10. Within sixty (60) days after the Effective Date of this Agreement, Respondents shall provide to each tenant in the Subject Properties a lead hazard information pamphlet approved by EPA and a completed "lead paint disclosure form" (or, as appropriate, a MA Tenant Certification Form) which includes, at a minimum, the following:

- a. Any information concerning Lead-Based Paint and/or Lead-Based Paint hazards in the unit, common areas, and/or exterior or an indication of a lack of such knowledge;
- b. A list and copies of any available records or reports concerning Lead-Based Paint or Lead-Based Paint hazards in the unit, common areas, and/or exterior or an indication of a lack of records or reports;
- c. A lead warning statement containing the specific language set forth in 40 C.F.R. § 745.113(b)(1); and,
- d. Signatures and dates of both Appropriate Respondents and tenant(s).

11. Within sixty (60) days of the Effective Date of this Agreement, Respondents shall provide written notice to EPA and HUD that they have complied with the requirements of Paragraphs 9 and 10 of this Agreement and, for each Subject Property, provide a copy of at least one disclosure form completed pursuant to Paragraph 10.

12. Based upon the nature of the violations alleged in the Complaint, the agreement to perform a Supplemental Environmental Project ("SEP") consisting of the Abatement Work specified in this Agreement and Appendix B (Scope of Work), and other relevant factors, EPA and HUD have determined that an appropriate civil penalty to settle this action is in the amount of two hundred thousand dollars (\$200,000.00). This penalty shall be paid by TCB and shall be split equally between EPA and HUD.

13. Respondents consent to the issuance of this Agreement and, for the purposes of settlement, consent to payment of the civil penalty cited in the foregoing Paragraph 12. Respondents also consent to the performance of the SEP set forth in Section IV below and Appendix B.

14. *Payment of the penalty*: No later than 30 days after the Effective Date of this Agreement, TCB shall submit EPA's half of the penalty (\$100,000), by certified or cashier's check payable to "Treasurer, United States of America" and referencing the title and docket number of this case (*In re: The Community Builders, Inc. et al.*, TSCA-01-2008-0079), to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

TCB shall also send simultaneous notice of such payment, including a copy of the certified or cashier's check to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

and

Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023

15. Pursuant to 31 U.S.C. § 3717, EPA and HUD are entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on any civil or stipulated penalty if it is not submitted by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees, as set forth in 31 C.F.R. § 901.9. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. § 901.9(d).

16. Respondents shall not deduct the civil penalty paid to EPA and HUD, or any Interest or Stipulated Penalties, paid under this Agreement from their federal, state, or local income taxes, and EPA and HUD do not in any way release Respondents from any claims arising under Title 26 of the United States Code. In addition, for federal income tax purposes, TCB and each Appropriate Respondent Property Owner agree that they will neither capitalize into inventory or basis nor deduct any of their costs or expenditures incurred in performing the SEP and credited by EPA and HUD as required SEP costs under this Agreement.

17. Each party shall bear its own costs and attorneys fees in the action resolved by this Agreement and Respondents specifically waive their right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT

18. TCB and the other Appropriate Respondents shall complete the SEP as specified in this Agreement and the Scope of Work (Appendix B). The SEP consists of window replacement and Abatement of interior and exterior friction and impact surfaces containing Lead-Based Paint and other secondary Lead-Based Paint work specified in this Agreement and Appendix B (as used herein, collectively, "Abatement Work"), for a total expenditure of at least \$2,050,000 in eligible SEP costs at the Subject Properties. At least 35% of the total expenditure of \$2,050,000 in eligible SEP costs shall be incurred at the Subject Properties listed in Paragraph 35 of the Complaint. The purpose of the SEP is to reduce lead-based paint exposure. The Parties agree that the SEP is intended to secure significant environmental or public health protection and improvements.

19. TCB and the other Appropriate Respondents shall complete the Abatement Work within four (4) years of the Effective Date (or within five (5) years if the time for performance is extended under Paragraph 30(e) herein), in accordance with the schedule and requirements of this Agreement and Appendix B, the terms of which are incorporated herein by reference and enforceable by this Agreement. To complete the Abatement Work, TCB and/or other Appropriate Respondents shall incur or cause to be incurred at least \$2,050,000 in eligible SEP costs. The total eligible SEP costs may include credit for eligible costs incurred by TCB and/or other Appropriate Respondents after January 2006 but before the Effective Date, *provided* any such prior-incurred cost credit does not exceed twenty-five percent (25%) of the total eligible SEP costs credited (e.g., no more than \$512,500 if the full \$2,050,000 in eligible costs are

credited). Commencement of planning or contracting relating to Abatement Work prior to the Effective Date but after January 2006 shall not cause costs for such Abatement Work to be counted toward this 25% allocation if such costs are incurred after the Effective Date.

20. In order for Respondents to count eligible SEP costs incurred after January 2006 but before the Effective Date, as discussed in Paragraph 19 above, Respondents must provide documentation of such costs to EPA and HUD within ninety (90) days of the Effective Date for approval. Any costs submitted after that date will not be considered for approval.

21. Respondents hereby certify that they are not required to perform or develop the SEP by any federal, state, or local law or regulation (including any lead abatement order) and also certify that, with the exception of the prior-referenced HUD matter resolved through a parallel settlement agreement, Respondents have not received, and are not presently negotiating to receive, credit for the SEP in any other enforcement action.

22. Respondents shall not use any HUD Office of Healthy Homes and Lead Hazard Control grant funds to complete any work required by this Agreement, nor shall Respondents seek credit for such funds as eligible SEP costs under this Agreement and Appendix B. In addition, Respondents shall not seek credit (as eligible SEP costs) for any federal, state, or local funds obtained for the primary purpose of lead abatement or treatment of Lead-Based Paint in a manner specified in Appendix B. Respondents agree that none of the funding described in this Paragraph may be credited as eligible costs under this Agreement and Appendix B.

23. TCB shall submit a SEP Completion Report and semi-annual SEP progress reports in accordance with the schedule and specifications set forth in Paragraphs 13 - 16 of Appendix B.

The failure to submit such documents in accordance with those requirements shall be deemed a violation of this Agreement for which EPA and HUD may seek stipulated penalties as provided in Paragraph 29 below.

24. TCB shall submit all SEP reports required by this Agreement and Appendix B to EPA as follows:

Jeff Norcross, Paralegal/Compliance Inspector
U.S. EPA, Region 1
One Congress Street
Suite 1100 (SEL)
Boston, MA 02114-2023

and to HUD as follows:

Director, Lead Programs Enforcement Division
Office of Healthy Homes and Lead Hazard Control
U.S. Department of Housing and Urban Development
451 7th Street, SW, Room 8236
Washington, DC 20410

EPA and HUD will coordinate their responses to any SEP reports submitted by TCB under this Agreement and Appendix B.

25. Respondents agree that EPA and HUD and their representatives, contractors, consultants, and attorneys may inspect the Subject Properties at any time in order to confirm that the Abatement Work is being undertaken in conformance with this Agreement. This Agreement in no way limits or affects any right of entry and inspection held by the United States, EPA, HUD, or any State or municipality in which a property owned and/or managed by Respondents is located, under applicable Federal, State or local laws, regulations, or permits.

26. Respondents shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA and HUD pursuant to this Agreement and shall provide the documentation of any such underlying research and data to EPA and HUD not more than fourteen (14) days after a request for such information. For all documents or reports submitted to EPA and HUD pursuant to this Agreement, the Appropriate Respondent(s) submitting such documents or reports shall sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

27. *Acceptance of SEP Reports:* (a) After receipt of a Semi-Annual SEP Report described in Section II of Appendix B, EPA and HUD will notify TCB, in writing, and:

(i) specifically identify any deficiencies in the Semi-Annual Report itself and grant TCB fifteen (15) business days, or such additional time period agreed to by EPA and HUD, to correct any deficiencies;

(ii) indicate that work during the reporting period has been completed satisfactorily; and/or,

(iii) determine that work during the reporting period has not been completed satisfactorily and, after identifying any deficient work, require that the deficient work be corrected or repeated if credit will be sought for such work hereunder.

Notwithstanding this Subparagraph 27(a), for any Semi-Annual Report submitted after the applicable deadline specified by this Agreement and Appendix B, EPA and HUD may seek stipulated penalties from TCB in accordance with Section V herein.

(b) After receipt of the SEP Completion Report described in Section III of Appendix B, EPA and HUD will notify TCB, in writing, and:

(i) specifically identify any deficiencies in the Completion Report itself and grant TCB an additional forty-five (45) days to correct any deficiencies; or

(ii) indicate that the SEP has been completed satisfactorily; or

(iii) determine that the SEP has not been completed satisfactorily within the time period provided in Paragraph 19 of this Agreement (or Paragraph 30(e), if applicable) and seek stipulated penalties in accordance with Section V herein.

Notwithstanding this Subparagraph 27(b), for any SEP Completion Report submitted after the applicable deadline specified by this Agreement and Appendix B, EPA and HUD may seek stipulated penalties from TCB in accordance with Section V herein.

(c) If EPA and HUD elect to exercise option (iii) of Subparagraph 27(b) above (after receipt of an original or resubmitted Completion Report), such that EPA and HUD conclude that TCB has not implemented part or all of the SEP in accordance with the Agreement, EPA and HUD may require TCB to:

(i) Pay a stipulated penalty as provided in Section V;

(ii) Repeat or correct any deficient work; and/or,

(iii) If specific tasks set forth in Appendix B were not performed, perform such work.

EPA and HUD will provide TCB with notice of any such requirement, in writing, within one hundred eighty (180) days after submission of any original or resubmitted SEP Completion Report.

28. Any public statement, oral or written, in print, film, or other media, made by TCB and/or any other Respondent or a representative of the Respondents acting in his or her official capacity, making reference to the SEP shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency and the U.S. Department of Housing and Urban Development for violations of the Lead Act, TSCA, and the Lead Disclosure Rule.”

29. *Dispute Resolution:* All disputes arising from this Agreement shall be resolved pursuant to this Dispute Resolution provision. The Parties shall attempt to resolve, expeditiously and informally, any disagreement concerning this Agreement. If any Appropriate Respondent objects to an action taken by EPA and/or HUD pursuant to this Agreement, such Appropriate Respondent shall notify EPA and HUD in writing of the objection and the reasons for the objection within fourteen (14) days of such action, unless the objection has been informally resolved. This written notice shall include a statement of the issue(s) in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting the position of the Appropriate Respondent, and all supporting documentation on which the Appropriate Respondent relies (hereinafter “Statement of Position”). EPA, HUD and the Appropriate Respondents shall attempt to resolve the dispute through negotiations (“Negotiation Period”). The Negotiation Period shall not exceed twenty (20) days from EPA’s receipt of the Appropriate

Respondents' written objection and Statement of Position. The Negotiation Period may be extended at the sole discretion of EPA and HUD. EPA and HUD's decision regarding an extension of the Negotiation Period shall not constitute an action subject to dispute resolution. Any agreement reached by the Parties pursuant to this Dispute Resolution provision shall be in writing, signed by the parties to the dispute and, upon signature by such parties, shall be incorporated into and become an enforceable element of this CAFO. If the parties to the dispute are unable to reach an agreement within the Negotiation Period, the Director of the Office of Environmental Stewardship for EPA Region 1, will issue a written decision on the dispute to the Appropriate Respondent. The Director's decision shall be binding and shall be incorporated into and become an enforceable element of this CAFO upon the Appropriate Respondents' receipt of the Director's decision regarding the dispute.

V. STIPULATED PENALTIES

30. In the event that TCB fails to pay the penalty in a timely manner in accordance with Paragraphs 12 and 14 above, or Respondents fail to comply with the terms of this Agreement, including performance of the SEP described in Section IV above and Appendix B, TCB shall, upon written demand, pay stipulated penalties to EPA and HUD in the amounts specified for each failure to fully and timely comply with the following requirements:

a. If TCB fails to pay all or any portion of the civil penalty by the date specified in Paragraph 14 above, in addition to any Interest or charges due under Paragraph 15, TCB shall pay stipulated penalties of \$400 per day (\$200 to EPA and \$200 to HUD) from the date the payment was due until such time as the original penalty and all accrued Interest and stipulated penalties are paid;

b. If TCB fails to submit the SEP Completion Report by the deadline or in the manner

specified in Section III of Appendix B, TCB shall pay \$300 per day (\$150 to EPA and \$150 to HUD) from the date the SEP Completion Report was due until the date the report (or corrected report) is received by EPA and HUD;

c. If TCB fails to submit a Semi-Annual SEP Report by the applicable deadline or in the manner specified in Section II of Appendix B, TCB shall pay \$200 per day (\$100 to EPA and \$100 to HUD) from the date the Semi-Annual SEP Report was due until the date the report (or corrected report) is received by EPA and HUD;

d. If TCB and the other Appropriate Respondents entirely fail to undertake and perform the SEP in accordance with Appendix B and Section IV of this Agreement, TCB shall pay \$2,050,000 (\$1,025,000 to EPA and \$1,025,000 to HUD) plus Interest from the Effective Date of this Agreement;

e. If EPA determines that TCB and the other Appropriate Respondents made good faith and timely efforts to complete the SEP in accordance with Appendix B and this Agreement and *at least* 90% of the \$2,050,000 in total eligible SEP costs required under this Agreement (i.e., at least \$1,845,000) has been spent, then TCB and the other Appropriate Respondents shall have one (1) additional year to complete any remaining Abatement Work (or to demonstrate that they already have completed such work) in order to meet the total required SEP expenditure of \$2,050,000. If after this additional year, at least \$2,050,000 in eligible SEP costs still has not been spent, then TCB and/or the other Appropriate Respondents shall pay a stipulated penalty equal to the difference between \$2,050,000 and the amount of eligible costs actually expended, plus Interest on that amount from the Effective Date (such amount to be split equally between EPA and HUD). If, however, EPA determines that TCB and the other Appropriate Respondents made good faith and timely efforts to complete the SEP in accordance with Appendix B and this Agreement but *less than* 90% of the \$2,050,000 in total eligible SEP costs was spent, then TCB and/or the other Appropriate Respondents (unless granted one (1) additional year by EPA and HUD, at their discretion, to complete remaining Abatement Work) shall pay a stipulated penalty equal to the difference between \$2,050,000 and the amount of eligible costs actually incurred, plus Interest accrued on such amount from the Effective Date of this Agreement (such amount to be split equally between EPA and HUD); and,

f. The Parties acknowledge that, under this Agreement and Appendix B, TCB bears primary responsibility for completing the SEP and that, accordingly, TCB may be subject to any of the stipulated penalties set forth in this Section V. Nonetheless, the Parties also acknowledge that for Abatement Work associated with any Subject Property in which a Respondent Property Owner has an ownership interest, then, such Appropriate Respondent bears responsibility, up to the maximum allowable amount in accordance with its respective Proportional Share (as indicated in Appendix A), for completion of that Abatement Work, including but not limited to cooperating with TCB and providing access to permit the completion of Abatement Work.

Accordingly, *in the event of TCB's failure to pay any stipulated penalties that become due and owing under Subparagraph 30(e) above*, then EPA and HUD may seek to recover such stipulated penalties from another Appropriate Respondent who shall be liable for the same, provided that no Respondent Property Owner's liability for stipulated penalties under this Subparagraph exceeds its respective Proportional Share of the same, less credited amounts expended in completing Abatement Work.

31. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity, even if no notice of such violation is sent to Respondents.

32. TCB (or any other Appropriate Respondent, as applicable) shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA and HUD. Respondents shall pay Interest on any stipulated penalty, or portion thereof, that is not paid within thirty (30) days of EPA's and HUD's written demand in accordance with Paragraph 15, above. Payment of stipulated penalties and any Interest or late charges due (if any) shall be made by certified or cashier's check payable to "Treasurer, United States of America" in accordance with the procedures specified in Paragraphs 14 and 15 herein.

33. EPA and HUD will coordinate the collection of stipulated penalties. Payment of stipulated penalties shall be in addition to any other relief available under federal law.

34. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA and HUD to seek any other remedies or sanctions available by virtue of Respondents' violation of this Agreement or of the statutes and regulations upon which this Agreement is based, or for Respondents' violation of any applicable provision of law.

35. This Agreement shall not relieve Respondents of their obligation to comply with all

applicable provisions of federal, state or local law. Nor shall this Agreement be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, or to constitute EPA or HUD approval of the equipment, materials, or technology used by Respondents in connection with the SEP.

36. If any event occurs which causes or may cause delays in the completion of the Abatement Work detailed in Section IV of this Agreement and Appendix B, TCB shall notify EPA and HUD in writing not more than seven (7) days after the delay or TCB's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Appropriate Respondents to prevent or minimize the delay, and the timetable by which those measures will be implemented. Appropriate Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Appropriate Respondents to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved, or for the period of failure for the particular incident involved, and shall constitute a waiver of the Appropriate Respondents' right to request an extension of any obligation under this Agreement based on such incident or period of failure.

37. If EPA and HUD agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Appropriate Respondents (including those directly attributable to an extraordinary economic crisis resulting in the complete unavailability of financing), the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In

such event, EPA and HUD shall stipulate to such extension of time.

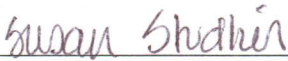
38. In the event that EPA and HUD do not agree with Appropriate Respondents that a delay in achieving compliance with the requirements of this Agreement has been or will be caused by circumstances entirely beyond the control of Appropriate Respondents, EPA and HUD will notify Appropriate Respondents, in writing, of EPA's and HUD's decision and any delays in the completing such requirements shall not be excused.

39. The burden of proving that any delay is caused by circumstances entirely beyond the control of Appropriate Respondents shall rest with the Appropriate Respondents. Increased costs or expenses associated with the implementation of actions called for by this Agreement and Appendix B shall not, in any event, be a basis for changes in the Agreement or for extensions of time. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

40. This Agreement and its Appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. It may not be enlarged, modified, or altered unless such modifications are made in writing and approved by the Parties. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

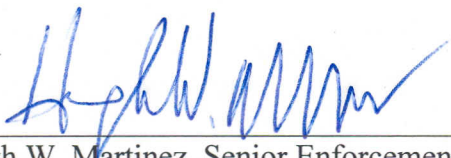
41. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized by the party (or parties) represented to enter into the terms and conditions of this Agreement and to execute and legally bind the party (or parties) to it.

FOR COMPLAINANT:



Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 03/20/09



Hugh W. Martinez, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 3-17-09

In the Matter of: The Community Builders, Inc. et al. Docket No. TSCA-01-2008-0079
Consent Agreement and Final Order

FOR RESPONDENT, THE COMMUNITY BUILDERS, INC.

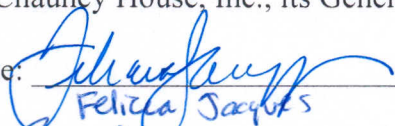


Karen E. Kelleher
Senior Vice President

Date: March 19, 2009

FOR RESPONDENT, Chauncy House Limited Partnership

By: Chauncy House, Inc., its General Partner

Name: 
Felicia Jacobs

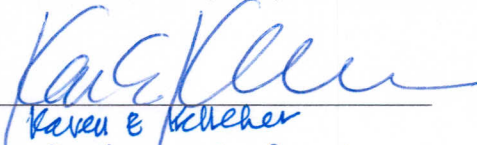
Title: President

Date: March 19, 2009

FOR RESPONDENT, Churchill Homes II Limited Partnership

By: Churchill Homes II, Inc., its General Partner

Name: _____



Title: _____

Authorized Agent

Date: _____

March 19, 2009

In the Matter of: The Community Builders. Inc. et al. Docket No. TSCA-01-2008-0079
Consent Agreement and Final Order

FOR RESPONDENT, Cinque Green Limited Partnership

By: TCB Church Street South Corporation, its General Partner

Name: 
Karen E. Mitchell

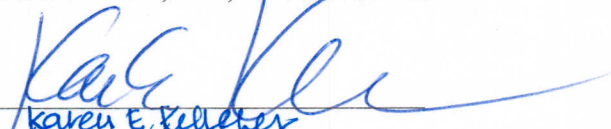
Title: Authorized Agent

Date: March 19, 2009

In the Matter of: The Community Builders, Inc. et al. Docket No. TSCA-01-2008-0079
Consent Agreement and Final Order

FOR RESPONDENT, Dartmouth TCB Limited Partnership

By: Dartmouth TCB, Inc., its General Partner

Name: 
Karen E. Kelleher

Title: Authorized Agent

Date: March 19, 2009

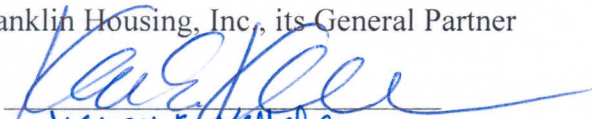
FOR RESPONDENT, Franklin School Housing Limited Partnership

By: Franklin Housing, Inc., its General Partner

Name: _____

Title: _____

Date: _____

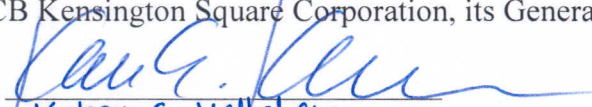

Karen E. Ketcher
AbRounded Agent
March 19, 2009

In the Matter of: The Community Builders, Inc. et al. Docket No. TSCA-01-2008-0079
Consent Agreement and Final Order

FOR RESPONDENT, Kensington Square I Limited Partnership

By: TCB Kensington Square Corporation, its General Partner

Name:



Title:

Karen E. Kelleher
Authorized Agent

Date:

March 19, 2009

FOR RESPONDENT, Kensington Square II Limited Partnership

By: TCB Kensington Square Corporation, its General Partner

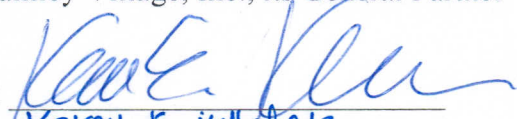
Name: Karen E. Kelleher

Title: Authorized Agent

Date: March 19, 2009

FOR RESPONDENT, Plumley Village LLC

By: Plumley Village, Inc., its General Partner

Name: 

Title: Karen E. Kelleher
Authorized Agent

Date: March 19, 2009

FOR RESPONDENT, Project III Housing Corporation

By: Project III Housing Corporation

Name: 

Title: Karen E. Kelleher
Authorized Agent

Date: March 19, 2009

FOR RESPONDENT, TCB Corky Row I Limited Partnership

By: TCB Corky Row I, Inc., its General Partner

Name: 

Title: Karen E. Kelleher
Authorized Agent

Date: March 19, 2009

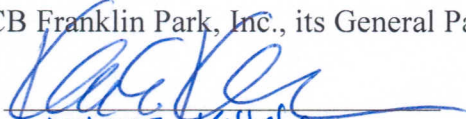
FOR RESPONDENT, TCB Franklin Park Limited Partnership

By: TCB Franklin Park, Inc., its General Partner

Name: _____

Title: _____

Date: _____

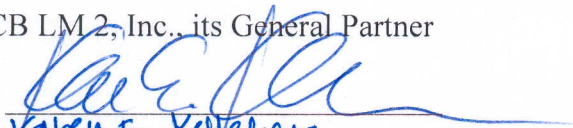

Karen E. Kelleher
Authorized Agent
March 19, 2009

In the Matter of: The Community Builders, Inc. et al, Docket No. TSCA-01-2008-0079
Consent Agreement and Final Order

FOR RESPONDENT, TCB LM 2 Limited Partnership

By: TCB LM 2, Inc., its General Partner

Name: _____



Title: _____

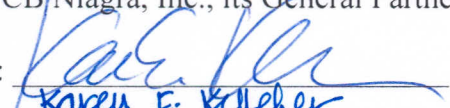
Karen E. Kelleher
Authorized Agent

Date: _____

March 19, 2009

FOR RESPONDENT, TCB Niagara Limited Partnership

By: TCB Niagra, Inc., its General Partner

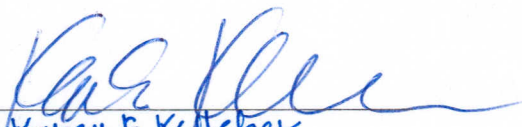
Name: 

Title: Karen E. Kelleher
Authorized Agent

Date: March 19, 2009

In the Matter of: The Community Builders, Inc. et al., Docket No. TSCA-01-2008-0079
Consent Agreement and Final Order

FOR RESPONDENT(S), Westfield 202, Inc.

Name: 
Karen E Kitcher

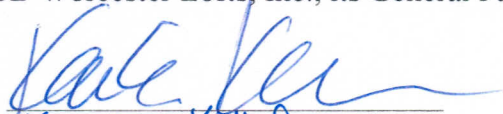
Title: Authorized Agent

Date: March 19, 2009

FOR RESPONDENT, Worcester Lofts Limited Partnership

By: TCB Worcester Lofts, Inc., its General Partner

Name:



Title:

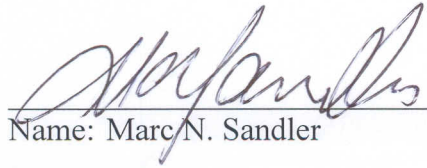
Karen E. Keheler
Authorized Agent

Date:

March 19, 2009

FOR RESPONDENT(S), Central Grammar Limited Partnership

by its General Partner, Central Grammar, Inc.



Name: Marc N. Sandler

Title: President

Date: March 19, 2009

FOR RESPONDENT(S), Park West Residents Association, Inc.

Name: 
Patricia Leonard

Title: President

Date: 3/18/09

FOR RESPONDENT(S), Puerta De La Esperanza LLC and South Canal Limited Partnership

Name: M. M. [Signature]

Title: Manager

Date: 3/1/09

In the Matter of: The Community Builders, Inc. et al., Docket No. TSCA-01-2008-0079
Consent Agreement and Final Order

FOR RESPONDENT(S), South City Housing Limited Partnership and South Holyoke Housing Limited Partnership.

Name: John Hatzakis

Title: Authorized Representative

Date: March 19, 2009

In the Matter of: The Community Builders, Inc. et al., Docket No. TSCA-01-2008-0079
Consent Agreement and Final Order

FOR RESPONDENT(S), South Summer Street Associates Limited Partnership

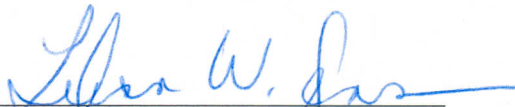
Name: Gustaf Costa

Title: President, Board of Directors

Date: March 19, 2009

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondents are hereby ordered to comply with the terms of the above Consent Agreement.



LeAnn W. Jensen
Acting Regional Judicial Officer
U.S. EPA - Region 1

3/26/09

Date

APPENDIX A: PROPERTY OWNER RESPONDENTS

- **CENTRAL GRAMMAR LIMITED PARTNERSHIP [1.4%]**
- **CHAUNCY HOUSE LIMITED PARTNERSHIP [.7%]**
- **CHURCHILL HOMES II LIMITED PARTNERSHIP [7.4%]**
- **CINQUE GREEN LIMITED PARTNERSHIP [28.7%]**
- **DARTMOUTH TCB LIMITED PARTNERSHIP [7%]**
- **FRANKLIN SCHOOL HOUSING LIMITED PARTNERSHIP [5.4%]**
- **KENSINGTON SQUARE I LIMITED PARTNERSHIP [8%]**
- **KENSINGTON SQUARE II LIMITED PARTNERSHIP [7%]**
- **PARK WEST RESIDENTS ASSOCIATION, INC. [13.6%]**
- **PLUMLEY VILLAGE LLC [6.4%]**
- **PROJECT III HOUSING CORPORATION [0.7%]**
- **PUERTA DE LA ESPERANZA LLC [0.2%]**
- **SOUTH CANAL LIMITED PARTNERSHIP [2.6%]**
- **SOUTH CITY HOUSING LIMITED PARTNERSHIP [1.1%]**
- **SOUTH HOLYOKE HOUSING LIMITED PARTNERSHIP [0.6%]**
- **SOUTH SUMMER STREET ASSOCIATES LIMITED PARTNERSHIP [0.2%]**
- **TCB CORKY ROW I LIMITED PARTNERSHIP [1.9%]**
- **TCB FRANKLIN PARK LIMITED PARTNERSHIP [1.2%]**
- **TCB LM 2 LIMITED PARTNERSHIP [0.6%]**
- **TCB NIAGARA LIMITED PARTNERSHIP [1.3%]**
- **VERANO APARTMENTS LIMITED PARTNERSHIP [0.0%]***
- **WESTFIELD 202, INC. [1.1%]**
- **WORCESTER LOFTS LIMITED PARTNERSHIP [2.9%]**

* Under the Agreement, Complainant has agreed to withdraw the allegations of violation against Verano Apartments LP, as set forth in the Complaint. Accordingly, Verano's Proportional Share has been reduced to zero since this Respondent has no affirmative penalty or SEP obligations under the Agreement.

APPENDIX B
SEP SCOPE OF WORK

In the Matter of The Community Builders, Inc., et al., TSCA-01-2008-0079

I. SEP and Statement of Value

1. Respondents shall incur or cause to be incurred at least \$2,050,000 in eligible SEP costs within four (4) years after the Effective Date of the Consent Agreement and Final Order ("Agreement") to complete the Lead-Based Paint Abatement Work described below. Under the terms of the Agreement and this Scope of Work ("SOW" or "Appendix B"), eligible SEP costs may include credit for eligible costs incurred or caused to be incurred by Respondents after January 2006 but before the Effective Date of the Agreement, *provided* that such credit for costs incurred prior to the Effective Date of the Agreement does not exceed twenty-five percent (25%) of the total eligible costs credited for Abatement Work (e.g., no more than \$512,500 if the total eligible costs credited is \$2,050,000). Commencement of planning or contracting relating to Abatement Work prior to the Effective Date but after January 2006 shall not cause costs for such Abatement Work to be counted toward this 25% allocation if such costs are incurred after the Effective Date.

2. Subsequent and in response to EPA issuing a subpoena to TCB in January 2006, Respondents incurred costs to complete certain activities associated with Lead-Based Paint Abatement Work at properties Respondents own and/or manage. At least some of the specific work Respondents completed was not otherwise required by law and included, *inter alia*, performing Lead-Based Paint inspections at target housing and replacing windows at Kensington I. Under the Agreement and this SOW, Respondents may seek credit for at least some of those prior-incurred costs as eligible SEP costs, subject to the monetary limits for such prior cost credit and all other requirements and conditions applicable to eligible costs hereunder, including all prioritization, certification and documentation (accounting) requirements relating to completion of Abatement Work and the procedures for requesting such prior cost credit under Paragraph 20 of the Agreement. For purposes of determining applicable allocations of Abatement Work and/or eligible SEP costs, the above-referenced Lead-Based Paint inspections for which TCB incurred costs after January 2006 but before the Effective Date of the Agreement will be considered as Tier I Abatement Work. In addition, for purposes of determining the applicable percentage of eligible SEP costs incurred at the Subject Properties listed in Paragraph 35 of the Complaint, the eligible SEP costs arising out of those same Lead-Based Paint inspections (for which TCB incurred costs after January 2006 but before the Effective Date) that are credited by EPA and HUD will be counted as costs incurred at the Subject Properties listed in Paragraph 35 of the Complaint.

3. No later than six (6) Months after the Effective Date of this Agreement, TCB shall provide copies to HUD and EPA of a plan for Lead-Based Paint Abatement Work ("Abatement Plan") for all Subject Properties not found to be Lead-Based Paint Free, using the addresses set forth in Paragraph 24 of the Agreement. The Abatement Plan shall be prepared by a certified Lead Abatement Supervisor and shall include a list of property addresses to be abated, information about the components to be abated, the

Appendix B - Scope of Work

In Re: The Community Builders, Inc., et al.
TSCA-01-2008-0079

method of abatement chosen, and the names of certified abatement contractors who will perform required Lead-Based Paint Abatement Work. The Abatement Plan shall be prepared to ensure that Lead-Based Paint Abatement and window replacement required by this SEP are conducted in accordance with Chapters 12 and/or 13 of the HUD Guidelines, as applicable. After review of the Abatement Plan, HUD shall, in writing: (a) approve, in whole or in part, the submission; (b) approve the submission with modifications; or (c) disapprove, in whole or in part, the submission, directing TCB to resubmit the document after modification to address HUD's comments. If HUD disapproves or requires revisions to the Abatement Plan, in whole or in part, TCB shall amend and submit to HUD a revised Abatement Plan which is responsive to the directions in HUD's comments, within fifteen (15) days of receiving such comments. The Abatement Plan must be approved by HUD before any work is performed at the Subject Properties, pursuant to this Agreement. Notwithstanding the provisions in this Paragraph, alternatively, TCB may submit, and HUD may approve the Abatement Plan on or prior to the Effective Date of this Agreement and, in so doing, TCB would fully and effectively satisfy all obligations under this Paragraph.

4. Implementation of the Supplemental Environmental Project shall include completion of the following types of Lead-Based Paint Abatement Work in accordance with the Abatement Plan and Chapters 12, and/or 13 of the HUD Guidelines and all necessary preparation, cleanup, disposal, clearance, training and/or relocation costs required to accomplish the foregoing (referred to herein, generally, as "Abatement Work"). Respondents shall use best efforts to minimize costs associated with relocation, however, by carrying out Abatement Work in unoccupied units, wherever possible. The Abatement Work performed shall consist of the following kinds of work—tiered to indicate relative priority—and shall be completed according to the following specified minimum and maximum eligible SEP costs incurred (and credited by EPA and HUD):

Tier I Abatement Work (Highest Priority)

- a. Replacing windows containing Lead-Based Paint, except where the windows contain no moveable parts; and
- b. Abating interior and exterior friction and impact surfaces containing Lead-Based Paint.

Tier II Abatement Work (High Priority)

- c. Abating interior and exterior non-friction and non-impact surfaces that contain Lead-Based Paint using methods other than encapsulation;
- d. Abating interior and exterior non-friction and non-impact surfaces that contain Lead-Based Paint, including encapsulation where appropriate and permitted under the HUD Guidelines; and

Appendix B - Scope of Work

In Re: The Community Builders, Inc., et al.
TSCA-01-2008-0079

- e. For target housing located in Massachusetts, performance of work specified by the Massachusetts Lead Law and regulations, at M.G.L. c. 111, §§ 189A-199B and 105 C.M.R. 460.000 *et seq.*, to obtain Letters of Full Compliance as long as the work is done in units where such work is not already required by law.

Tier III Abatement Work (Priority)

- f. Covering soil-lead hazards in accordance with Chapter 11 of the HUD Guidelines;
- g. Rendering any uneven or pitted horizontal surfaces to be smooth and cleanable; and
- h. HEPA vacuuming and steam cleaning or replacing carpet in properties where Lead-Based Paint has been identified.

Implementation of the SEP shall include completion of Tier I, Tier II, and/or Tier III Abatement Work according to the following minimum and maximum percentage guidelines which refer to the relative percentage of eligible costs incurred (and credited by EPA and HUD) for completion of the SEP: At least eighty-five (85) percent of all eligible Abatement Work costs shall be for Tier I or Tier II work. Of that eighty-five (85) percent, at least fifty (50) percent of such eligible costs shall be for Tier I Abatement Work. Whenever possible, Respondents shall give priority to Tier I Abatement Work over Tier II work.

5. The timelines and priorities for Abatement Work under this SOW shall not apply where Appropriate Respondents or owners of Subject Properties have been notified by a governmental entity or become aware of a unit where a child with an Elevated Blood-Lead Level resides or is a regular visitor (i.e., visits at least two (2) different days within any week for at least three (3) hours on each day, and the combined annual visits last at least sixty (60) hours). Appropriate Respondents shall comply with such notice(s) including the timelines set forth in the notice(s). Additionally, Appropriate Respondents shall perform all Lead-Based Paint window replacement and Abatement of interior and exterior friction and impact surfaces work under this SOW in the unit, common areas, and exterior within sixty (60) Days of notification or becoming aware of a unit where a child with an Elevated Blood-Lead Level resides or is a regular visitor. Costs for work that Appropriate Respondents are ordered or otherwise required to conduct in response to Elevated Blood-Lead Levels are not eligible SEP costs and cannot be credited as such.

6. All Abatement Work performed under the SEP shall be consistent with the HUD Guidelines and conducted by individuals authorized to perform the work in accordance with the laws of the jurisdiction where the property is located. TCB and the other Appropriate Respondents shall ensure that all Clearance Examinations are conducted by individuals and/or business entities independent of those conducting the Abatement Work, performed under this SEP, which is being evaluated by the Clearance Examination. However, Clearance Examinations may be conducted by the same

Appendix B - Scope of Work

In Re: The Community Builders, Inc., et al.
TSCA-01-2008-0079

individuals and/or business entities that performed Lead-Based Paint inspections at the Subject Properties, provided such individuals and/or businesses did not also conduct any Abatement Work there.

7. Ongoing operations and maintenance (O&M) of all remaining Lead-Based Paint on treated components shall be performed during the term of this Agreement in each Subject Property where Abatement Work has taken place in accordance with Chapters 6 and 17 of the HUD Guidelines. O&M shall be performed to ensure that any selected Abatement Work methods do not fail and that all remaining Lead-Based Paint on treated components is in an intact condition. Properties receiving HUD assistance may have additional requirements for O&M under 24 CFR Part 35 with which they must comply.

8. The SEP is intended to yield significant environmental or public health benefits and can include only Abatement Work that is above and beyond what is required of Respondents under existing law, regulation, contract or agreement (other than the parallel settlement with HUD referenced in the Agreement). Lead-based paint present on old (i.e., pre-1978) interior housing components are known to be primary contributors to lead poisonings since they can be the source of lead-containing dust and/or paint that can be ingested. The replacement or enclosure of interior surfaces and components finished with Lead-Based Paint and/or the removal of Lead-Based Paint from such surfaces under the SEP is intended to help reduce the risk of lead poisonings. Lead-based paint present on old (pre-1978) exterior surfaces may also contribute to lead poisonings, particularly as a source of lead contamination in soils located in the vicinity of housing with such exterior surfaces.

II. SEP Requirements and Reporting

9. All work undertaken as part of this SEP shall be performed in accordance with applicable state and local laws or regulations, EPA's work practice standards for conducting Lead-Based Paint activities, at 40 C.F.R. § 745.227, and the HUD Guidelines, including, but not limited to, the following:

- a. Worksite preparation and occupant protection in accordance with Chapter 8 of the HUD Guidelines;
- b. Daily and final cleanups in accordance with Chapter 14 of the HUD Guidelines; and,
- c. Clearance Examinations completed by a certified Lead-Based Paint Risk Assessor in each property, upon completion of final cleanup, in accordance with Chapter 15 of the HUD Guidelines. Clearance Reports shall contain all results of dust sample analyses by an EPA-approved laboratory and the results of the visual assessment of the property. If analytical results indicate that clearance is not achieved, Appropriate Respondents shall repeat the cleaning procedures identified under Paragraph 9.b of this Appendix B and shall repeat dust clearance sampling within five (5) days of receiving notice of the failed

Appendix B - Scope of Work

In Re: The Community Builders, Inc., et al.
TSCA-01-2008-0079

Clearance Examination. Appropriate Respondents shall repeat this procedure until clearance has been achieved. Clearance Reports shall be submitted to HUD on a monthly basis using the address set forth in Paragraph 24 of the Agreement.

10. Pursuant to EPA's Pre-Renovation Education Rule, 40 C.F.R. Part 745, Subpart E, Appropriate Respondents shall provide advanced notice of all Abatement Work and, prior to initiating the work, provide a copy of the latest EPA lead hazard information pamphlet (in Spanish, where appropriate), titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools* (rev. March 2008), to tenants who occupy apartments where work will be performed.

Abatement Work Costs

11. Under the Agreement and this SOW, Respondents shall incur or cause to be incurred no less than \$2,050,000 in eligible SEP costs to complete the Abatement Work described above. Eligible SEP costs do not include TCB's overhead, additional employee time and salary, administrative expenses, legal fees, contractor oversight costs, O&M costs, and any costs associated with preparing plans and the Semi-Annual SEP progress and SEP Completion Reports.

Work Schedule and Semi-Annual Reporting

12. The Abatement Work shall be completed within four (4) years from the Effective Date, unless extended under Paragraph 30(e) of the Agreement. Throughout the implementation period, Respondents agree to exercise best efforts by taking good faith, timely action to ensure completion of the Abatement Work specified by the Agreement and this SOW.

13. TCB shall submit semi-annual SEP progress reports in accordance with the schedule contained in Paragraph 14 of this SOW. The Semi-Annual Reports shall contain the following information:

- a. A list of properties and units in which Lead-Based Paint Abatement Work activities were undertaken during the prior six months ending thirty days prior to the date the Semi-Annual Report is due (reporting period);
- b. A description of all SEP Work carried out during the reporting period, with reference to the types of Abatement Work listed in Paragraph 4 and the category of that work (i.e., Tier I, II, or III);
- c. For any SEP Work completed during the reporting period, a summary of the eligible costs incurred during the reporting period, an itemization of such costs, and documentation of the costs including, at a minimum, the following additional information:

Appendix B - Scope of Work

In Re: The Community Builders, Inc., et al.
TSCA-01-2008-0079

- (i) A description of the Lead-Based Paint Abatement Work activities as completed, including any representative photographs;
 - (ii) Copies of any clearance examination results and/or data not already submitted;
 - (iii) Itemized costs of goods and services used to complete the Lead-Based Paint Abatement Work activities, documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of those goods and services; and
 - (iv) Itemized costs of goods and services used to complete all clearance examinations, documented by copies of invoices or canceled checks that specifically identify and itemize the costs of those goods and services.
- d. Evidence establishing that the individuals who performed the Abatement Work and Clearance Examinations during the reporting period were authorized to perform such work;
 - e. A statement by TCB that it completed the Lead-Based Paint Abatement Work activities in compliance with the Agreement;
 - f. A description of any significant problems encountered in connection with the Abatement Work reported on during the reporting period and the solutions thereto;
 - g. A summary of all SEP activities completed as of the end of the reporting period and the eligible costs incurred to complete that work;
 - h. A list of properties and units in which Lead-Based Paint Abatement Work activities are expected to be performed during the next six months (reporting period); and
 - i. Any notices related to Lead-Based Paint hazards or elevated-blood lead levels received by Respondents.

14. TCB shall submit Semi-Annual SEP Reports in accordance with the following schedule:

- a. Within 6 months from the Effective Date of the Agreement, TCB shall submit its first Semi-Annual Report containing the information specified in the preceding Paragraph 13 of this SOW; and,
- b. Within 12 months from the Effective Date of the Agreement, and every 6 months thereafter until completion of the SEP by or before 48 months after the Effective Date (or 60 months if extended under Subparagraph 30(e) of the Agreement), TCB shall submit a Semi-Annual Report containing the information specified in Paragraph 13 of this SOW.

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15. All reports submitted by TCB under Appendix B shall be submitted using the addresses set forth in Paragraph 24 of the Agreement and shall contain the certification language provided in Paragraph 26 of the Agreement.

III. Completion Report and Cost Documentation

16. Within fifty (50) months (62 months if extended under Subparagraph 30(e) of the Agreement) from the Effective Date of the Agreement or within sixty (60) days of completing the SEP, whichever is earlier, TCB shall submit a SEP Completion Report, containing the following information:

- a. A description of the Lead-Based Paint Abatement Work activities as completed, including any representative photographs;
- b. Copies of any clearance examination results and/or related clearance data not already submitted;
- c. Itemized costs of goods and services used to complete the Lead-Based Paint Abatement Work activities, documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Itemized costs of goods and services used to complete all clearance examinations, documented by copies of invoices or canceled checks that specifically identify and itemize the costs of the services;
- e. Evidence establishing that the individuals who performed the Abatement Work and Clearance Examinations were authorized to perform such work;
- f. A statement by TCB that it completed the Lead-Based Paint Abatement Work activities in compliance with the Agreement; and,
- g. A description of any significant operating problems encountered and the solutions thereto.

To the extent Respondents previously submitted any of the above information to EPA and HUD as part of a Semi-Annual SEP Report, Respondents need not resubmit the information. If Respondents choose not to resubmit information previously included in a Semi-Annual Report, Respondents shall reference such responsive information with sufficient specificity to direct the reader to the nature of the information and its location in the prior Semi-Annual Report and, also, shall provide the date of the prior report and any responsive attachments or exhibits enclosed therewith.

17. In itemizing costs in the SEP Completion Report, TCB shall identify and provide acceptable documentation for all eligible SEP costs. Where the Completion Report includes costs not eligible for credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes, without limitation, invoices, purchase orders, or other documentation that identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled

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drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

18. The completion of Abatement Work under the SEP discussed in this SOW shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law.

APPENDIX C: SUBJECT PROPERTIES

Property Name and Location
Carriage House (New Bedford, MA)
Central Grammar Apartments (Gloucester, MA)
Chauncy House (Boston, MA)
Churchill Homes II (Holyoke, MA)
Church Street South (New Haven, CT)
Cohoes Apartments (Cohoes, NY)
Dutch Point I (Hartford, CT)
Dartmouth TCB (Boston, MA)
Downtown Revival (Coatesville, MA)
East Mountain View (Westfield, MA)
Edgewood Apartments (Indianapolis, IN)
Fairlawn Marshall (Washington, DC)
Franklin School Apartments (Lexington, MA)
Hope Manor (New Brunswick, NJ)
Kensington Square I (New Haven, CT)
Kensington Square II (New Haven, CT)
Lawrence Methuen I (Lawrence, MA)
Lawrence Methuen II (Lawrence, MA)
Mansion Initiative (Albany, NY)
Mission Springs (Holliston, MA)
Monument Square (Troy, NY)
Mountain Valley Place (New Haven, CT)
Nevins Manor (Methuen, MA)
Ormont Court/Walter S. Brooks (New Haven, CT)

Parkside View (Schenectady, NY)
Park West Apartments (Vernon, CT)
Perry Street Apartments (Lawrence, MA)
Plumley Village East (Worcester, MA)
Worcester Square/Project III/153 Worcester Street (Boston, MA)
Puerta de la Esperanza (Holyoke, MA)
Sherman Forest East (Indianapolis, IN)
South View Apartments (Holyoke, MA)
Spring Garden (Philadelphia, PA)
Phoenix Apartments (Holyoke, MA)
South Holyoke Housing (Holyoke, MA)
South Summer Street (Holyoke, MA)
St. Stephens' Tower Apartments (Lynn, MA)
Village at Hospital Hill I (Northampton, MA)
Corky Row (Fall River, MA)
Franklin Park Apartments (Dorchester, MA)
330 and 356 Haverhill Street (Lawrence, MA)
Niagara Court (Fall River, MA)
Odd Fellows (Worcester, MA)
Verano Apartments (Springfield, MA)
East Mountain View (Westfield, MA)

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CERTIFICATE OF SERVICE

I, Hugh W. Martinez, hereby certify that on this 26th day of March 2009, I caused the foregoing Consent Agreement and Final Order, along with a cover letter to the Regional Hearing Clerk, to be served on the following persons in the manner indicated:

Original and One Copy by Hand Delivery

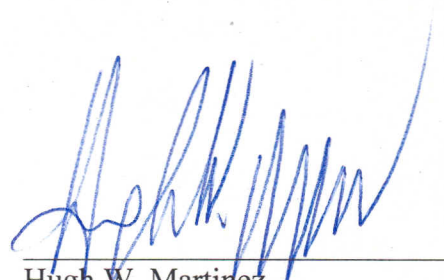
Wanda I. Santiago, Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

One Copy by Fax [202-565-0044] and Pouch Mail

The Honorable Susan L. Biro
Chief Administrative Law Judge and Presiding Officer
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

One Copy, Electronically (.pdf by e-mail) and by Federal Express

Robert C. Kirsch, Esquire
Jamie C. Beard, Esquire
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109



Hugh W. Martinez
Senior Enforcement Counsel
EPA Region 1