STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

ABILITY MAYFAIR II, LLC,

Petitioner,

v. FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

FHFC CASE NO.: 2009-070UC
Application No. 2009-121CH
2009 Universal Cycle

CONSENT AGREEMENT

Petitioner, Ability Mayfair II, LLC ("Mayfair") and Respondent, Florida Housing Finance Corporation ("Florida Housing"), by and through undersigned counsel, hereby present the following Consent Agreement:

APPEARANCES

For Petitioner:

Donna E. Blanton
Florida Bar No.: 948500
Toni A. Egan
Florida Bar No.: 647764
Radey Thomas Yon & Clark, P.A.
301 S. Bronough Street, Suite 200
Tallahassee, Florida 32301
850-425-6654 (phone)
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For Respondent:

Matthew A. Sirmans, Assistant General Counsel
Florida Bar No.: 0961973
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

PRELIMINARY STATEMENT

On or before August 20, 2009, Mayfair submitted an Application to Florida Housing for funding through the 2009 Universal Cycle. On December 3, 2009, Florida Housing notified Mayfair of the results of scoring its Application and provided Mayfair with a Notice of Rights pursuant to Section 120.569 and 120.57, Florida Statutes. Mayfair timely filed a Petition for Review of the 2009 Final Scoring Summary Report challenging the finding that Mayfair consisted of “scattered sites” and therefore failed threshold requirements and was not entitled to 70 total points, 6 ability to proceed tie-breaker points, and 7.5 proximity tie-breaker points. Florida Housing determined that the utility easement did not divide the Mayfair Development site within the meaning of the “scattered sites” definition of Rule 67-48.002(106). Thus, Mayfair is entitled to 70 total points, 6 ability to proceed tie-breaker points, and 7.50 proximity tie-breaker points. Additionally, Mayfair has satisfied all threshold requirements.

Upon issuance of a Final Order adopting the terms of this Consent Agreement, Mayfair agrees to dismiss its petition with prejudice. The parties waive all right to appeal this Consent Agreement or the Final Order to be issued in this case, and each party shall bear his own costs and attorney’s fees. This Consent Agreement is subject to the approval of the Board of Directors of Florida Housing (“The Board”). If the Board does not approve this Consent Agreement, no Final Order will be issued and this Consent Agreement shall be null and void as if it were never executed.
STIPULATED FINDINGS OF FACT

1. Mayfair is a Florida non-profit limited liability company with its address at 126 W. Adams Street, Suite 502, Jacksonville, FL 32202, and is in the business of providing affordable rental housing units.

2. Florida Housing is a public corporation, organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida. § 420.504, Fla. Stat.; Rule Chapter 67-48, Fla. Admin. Code.

3. Florida Housing administers the Home Investment Partnerships ("HOME") Program, as provided in Section 420.5089, Florida Statutes. The HOME program loans funds to entities constructing or rehabilitating affordable rental units for low income and/or very low income persons. The HOME funds are allocated each year through the Universal Application Cycle and a scoring process, in accordance with Rule Chapter 67-48, Florida Administrative Code.

4. The Low Income Housing Tax Credit ("Tax Credit") program is created within the Internal Revenue Code, and awards a dollar for dollar credit against federal income tax liability in exchange for the acquisition and substantial rehabilitation or new construction of rental housing units targeted at low and very low income population groups. Developers sell, or syndicate, the Tax Credits to generate a substantial portion of the funding necessary for construction of affordable housing development.

5. Florida Housing is the designated "housing credit agency" responsible for the allocation and distribution of Florida's Tax Credits to applicants for the development of rental housing for low income and very low income families.
6. Florida Housing uses a Qualified Allocation Plan (QAP), the Universal Application and a scoring process for the award of Tax Credits, as outlined in Rule 67-48.004, Florida Administrative Code. The provisions of the QAP are adopted and incorporated by reference in Rule 67-48.002(95), Florida Administrative Code. Pursuant to the QAP, Tax Credits are apportioned among the most populated counties, medium populated counties, and least populated counties. The QAP also establishes various set-asides and special targeting goals.

7. The 2009 Universal Cycle Application is adopted as Form UA1016 (Rev. 5-09) by Rule 67-48.004(1)(a), Fla. Administrative Code, and consists of Parts I through V and Instructions, some of which are not applicable to every Applicant.

8. Florida Housing's scoring process for 2009, found at Rules 67-48.004-.005, Florida Administrative Code, involves the following:

   a. the publication and adoption by rule of an application package;
   b. the completion and submission of applications by developers;
   c. Florida Housing's preliminary scoring of applications;
   d. an initial round of administrative challenges in which an applicant may take issue with Florida Housing's scoring of another application by filing a Notice of Possible Scoring Error ("NOPSE");
   e. Florida Housing's consideration of the NOPSEs submitted, with notice to applicants of any resulting change in their preliminary scores;
   f. an opportunity for the applicant to submit additional materials to Florida Housing to "cure" any items for which the applicant received less than the maximum score;
   g. a second round of administrative challenges whereby an applicant may raise scoring issues arising from another applicant's cure materials by filing a Notice of Alleged Deficiency ("NOAD");
h. Florida Housing’s consideration of the NOADs submitted, with notice to applicants of any resulting change in their scores;

i. an opportunity for applicants to challenge, via informal or formal administrative proceedings, Florida Housing’s evaluation of any item for which the applicant received less than the maximum score; and

j. final scores, ranking, and allocation of funding to successful applicants, as well as those who successfully appeal through the adoption of final orders.

9. The 2009 Universal Cycle Application offers a maximum score of 70 points. In the event of the tie between competing applications, the Universal Cycle Application Instructions provide for a series of tie-breaking procedures to rank such applications for funding priority including the use of lottery numbers (randomly assigned during the application process).

10. On or about August 20, 2009, Mayfair and others submitted applications for financing in Florida Housing’s 2009 funding cycle. Mayfair (Application #2009-121CH) applied for $1,339,000 of Tax Credit equity funding and $4,000,000 in HOME funding to help finance the acquisition and rehabilitation of a 83-unit affordable apartment complex in Jacksonville, Duval County, Florida.

11. Mayfair received notice of Florida Housing’s initial scoring of the Application on or about September 21, 2009, at which time Mayfair was awarded a preliminary score of 70 points out of a possible 70 points, 7.5 of 7.5 possible “tie breaker” points (awarded for geographic proximity to certain services and facilities), and 6 of 6 possible ability to proceed tie-breaker points. Florida Housing also concluded that the Mayfair application had passed all threshold requirements.

12. On or about October 1, 2009, Florida Housing received NOPSEs in connection with Mayfair’s application. On or about October 23, 2009, Florida Housing sent Mayfair any
NOPSEs relating to its application submitted by other applicants, Florida Housing's position on any NOPSEs, and the effect the NOPSEs may have had on the applicant's score.

13. On or before November 3, 2009, Mayfair timely submitted its cure materials to Florida Housing.

14. On or about November 12, 2009, Florida Housing received NOADs in connection with Mayfair's application. Florida Housing issued its final scores on December 3, 2009.

15. At the conclusion of the NOPSE, cure review and NOAD processes, Florida Housing awarded the Mayfair Application a score of 32 points. The basis for the score was:

<table>
<thead>
<tr>
<th>Item #</th>
<th>Reason(s)</th>
<th>Graded As Result</th>
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<tbody>
<tr>
<td>15</td>
<td>Because the Application does not qualify as a Homeless Development (See Item 16T), it is not eligible to receive double points for Rehabilitation Developments - Features and Amenities</td>
<td>NOPSE</td>
</tr>
<tr>
<td>25</td>
<td>Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites (see subsection 67-48.002,106; F.A.C.), because the Applicant failed to commit to locate each selected feature and amenity that is not unit-specific on each of the Scattered Sites, or no more than 1/10 mile from the site with the most units, or a combination of both, points can only be awarded for those selected features and amenities that are unit specific. Because the Applicant did not commit to any unit-specific features and amenities, no points could be awarded.</td>
<td>NOPSE</td>
</tr>
<tr>
<td>35</td>
<td>Because the Application does not qualify as a Homeless Development (See Item 16T), it is not eligible to receive double points for Energy Conservation Features and Amenities.</td>
<td>NOPSE</td>
</tr>
<tr>
<td>55</td>
<td>Because the Application does not qualify as a Homeless Development (See Item 16T), it is no longer eligible for automatic Special Needs points. The Applicant Notification to Special Needs Household Referral Agency form was not provided.</td>
<td>NOPSE</td>
</tr>
<tr>
<td>65</td>
<td>Because the Application does not qualify as a Homeless Development (See Item 16T), the Applicant is not eligible to select Qualified Resident Programs for Homeless Developments.</td>
<td>NOPSE</td>
</tr>
<tr>
<td>125</td>
<td>Because the Application does not qualify as a Homeless Development (See Item 16T), it is no longer eligible for automatic Local Government contribution points. No Local Government contribution forms were provided.</td>
<td>NOPSE</td>
</tr>
<tr>
<td>115</td>
<td>Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites (see subsection 67-48.002,106; F.A.C.). Therefore, the Development Location on the Local Government Verification of Affordable Housing Income forms (Exhibits 47, 48, 49 and 50) should reflect all of the Scattered Sites. Because the forms are incomplete, the proposed Development is not eligible for any points for Local Government Incentives.</td>
<td>NOPSE</td>
</tr>
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16. Florida Housing also determined that the Mayfair Application failed threshold, stating:

<table>
<thead>
<tr>
<th>C</th>
<th>V</th>
<th>A</th>
<th>1</th>
<th>FHFC Funding Request</th>
<th>The Application fails threshold for Funding Request because the annual Housing Credit allocation request (1,364,500) exceeds the annual HC request limit (1,278,000) on page 68 of the 2006 Universal Application instructions.</th>
<th>Preliminary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item #</td>
<td>Part</td>
<td>Section</td>
<td>Description</td>
<td>Source(s)</td>
<td>Created on</td>
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<tr>
<td>7T III A 2.b Scattered Sites</td>
<td>Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites (see subsection 67.48.02(109), F.A.C.). The Applicant failed to correctly answer the question at Part III A 2.b of the Application.</td>
<td>NOPSE</td>
<td></td>
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<tr>
<td>8T III C 1 Site Plan Approval: Plan Approval</td>
<td>Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites (see subsection 67.48.02(109), F.A.C.). The 2006 Universal Application Instructions require that site plan approval be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of electricity be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of electricity has been demonstrated for the site located at 1787 Mayfair Village Road, it has not been demonstrated for the other site.</td>
<td>NOPSE</td>
<td></td>
<td></td>
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<tr>
<td>10T III C 3.a Availability of Electricity</td>
<td>Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites (see subsection 67.48.02(109), F.A.C.). The 2006 Universal Application Instructions require that evidence of the availability of electricity be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of electricity has been demonstrated for the site located at 1787 Mayfair Village Road, it has not been demonstrated for the other site.</td>
<td>NOPSE</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>11T III C 3.b Availability of Water</td>
<td>Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites (see subsection 67.48.02(109), F.A.C.). The 2006 Universal Application Instructions require that evidence of the availability of water be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of water has been demonstrated for the site located at 1787 Mayfair Village Road, it has not been demonstrated for the other site.</td>
<td>NOPSE</td>
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### Additional Table

<table>
<thead>
<tr>
<th>Item #</th>
<th>Part</th>
<th>Section</th>
<th>Description</th>
<th>Source(s)</th>
<th>Created on</th>
</tr>
</thead>
<tbody>
<tr>
<td>12T III C 3.c Availability of Sewer</td>
<td>Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites (see subsection 67.48.02(109), F.A.C.). The 2009 Universal Application Instructions require that evidence of the availability of sewer be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of sewer has been demonstrated for the site located at 1787 Mayfair Village Road, it has not been demonstrated for the other site.</td>
<td>NOPSE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13T III C 3.c Availability of Roads</td>
<td>Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites (see subsection 67.48.02(109), F.A.C.). The 2009 Universal Application Instructions require that evidence of the availability of roads be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of the availability of roads has been demonstrated for the site located at 1787 Mayfair Village Road, it has not been demonstrated for the other site.</td>
<td>NOPSE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14T III C 4 Zoning</td>
<td>Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites (see subsection 67.48.02(109), F.A.C.). The 2009 Universal Application Instructions require that evidence of appropriate zoning be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of appropriate zoning has been demonstrated for the site located at 1787 Mayfair Village Road, it has not been demonstrated for the other site.</td>
<td>NOPSE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15T III C 5 Environmental Site Assessment</td>
<td>Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites (see subsection 67.48.02(109), F.A.C.). The 2009 Universal Application Instructions require that evidence of appropriate environmental site assessment be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although evidence of appropriate environmental site assessment has been demonstrated for the site located at 1787 Mayfair Village Road, it has not been demonstrated for the other site.</td>
<td>NOPSE</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
17. With respect to the “scattered sites” issue, Florida Housing provided the following additional comment:

In its cure materials for Items 1S, 2S, 3S, 5S, 8S, 10S, 11S, 5T, 7T, 9T through 18T, IA through 6A, 1P, 2P, 5P and 6P, the Applicant provided an affidavit from a licensed surveyor concerning the abandonment of Mayfair Village Road by the City of Jacksonville. However, documentation and an affidavit from a licensed surveyor provided by a NOAD demonstrates that although the road was vacated and abandoned as a public road by Ordinance No. 95-1032-593, the ordinance provided that “there is hereby reserved unto the City of Jacksonville a perpetual, unobstructed easement for all public utilities . . . . over, under, through and across the property . . . .” Thus, even though the road was vacated, the development site nevertheless remains divided by the easement reserved over that same property by the City. Because it is divided by an easement, the site meets the definition of Scattered Sites.

18. Florida Housing also determined that Mayfair failed to achieve selected ability to proceed tie-breaker points stating:
19. Finally, Florida Housing determined that Mayfair failed to achieve selected proximity tie-breaker points stating:

<table>
<thead>
<tr>
<th>Item #</th>
<th>Element(s)</th>
<th>Covered As Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>1A</td>
<td>The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for site plan approval. See Item 10 above.</td>
<td>NOPSE</td>
</tr>
<tr>
<td>1B</td>
<td>The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of electricity. See Item 10 above.</td>
<td>NOPSE</td>
</tr>
<tr>
<td>1C</td>
<td>The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of water. See Item 10 above.</td>
<td>NOPSE</td>
</tr>
<tr>
<td>1D</td>
<td>The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of sewer. See Item 10 above.</td>
<td>NOPSE</td>
</tr>
<tr>
<td>1E</td>
<td>The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of roads. See Item 10 above.</td>
<td>NOPSE</td>
</tr>
<tr>
<td>1F</td>
<td>The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for appropriate zoning and land use. See Item 10 above.</td>
<td>NOPSE</td>
</tr>
</tbody>
</table>

Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites. Per sub-section 07-48-002(115), F.A.C., if a Development consists of Scattered Sites, the Tie-Breaker Measurement Point must be located on the parcel with the most units. Because the Applicant did not provide information for each of its Scattered Sites as Exhibits 10-20, FHFC is unable to verify that the Tie-Breaker Measurement Point is on the site with the most units and therefore it is impossible to measure the distance between it and the other services.

Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites. Because the Yes/No box was not checked within the Surveyor Certification form certifying that part of boundary of each parcel of the Scattered Sites is within 1/2 mile of the Tie-Breaker Measurement Point, the form could not be scored.

Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites. Because the Yes/No box was not checked within the Surveyor Certification form certifying that part of boundary of each parcel of the Scattered Sites is within 1/2 mile of the Tie-Breaker Measurement Point, the form could not be scored.

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Based on information provided by a NOPSE, it appears that the Development site is divided by a street and thus meets the definition of Scattered Sites. Because the Yes/No box was not checked within the Surveyor Certification form certifying that part of boundary of each parcel of the Scattered Sites is within 1/2 mile of the Tie-Breaker Measurement Point, the form could not be scored.
20. On or before December 28, 2009, Mayfair submitted a Petition for Review of 2009 Universal Cycle Final Scoring Summary Report pursuant to Sections 120.569 and 120.57(2), Florida Statutes.

21. The sole issue raised by the petition was the determination by Florida Housing during the Universal Cycle scoring process that Mayfair’s development site “is divided by one or more easements and thus meets the definition of Scattered Sites” in rule 67-48.002(106). As noted in the charts above, the determination that Mayfair consists of scattered sites resulted in Mayfair failing threshold requirements and achieving a total score of 32, with 0 ability to proceed tie-breaker points, and 0 proximity tie-breaker points when final scores were issued on December 3, 2009. Had Florida Housing not found that Mayfair consisted of scattered sites, all threshold requirements would have been met and Mayfair would have achieved a total score of 70, and 6 ability to proceed tie-breaker points, as well as 7.50 proximity tie-breaker points.

22. Florida Housing determined that the utility easement did not divide the Mayfair Development site within the meaning of the “scattered sites” definition of Rule 67-48.002(106). Thus, Mayfair is entitled to 70 total points, 6 ability to proceed tie-breaker points, and 7.50 proximity tie-breaker points. Additionally, Mayfair has satisfied all threshold requirements.
STIPULATED CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Florida Administrative Code Chapter 67-48, the Board has jurisdiction over the parties to this proceeding.

2. Florida Housing is statutorily authorized to institute a competitive application process for the allocation of Tax Credits and has done so through Rules 67-48.004 and 67-48.005, Florida Administrative Code.

3. An agency’s interpretation of its own rules will be upheld unless it is clearly erroneous, or amounts to an unreasonable interpretation. Legal Envtl. Assistance Found., Inc., v. Board of County Comm’rs of Brevard County, 642 So. 2d 1081 (Fla 1994); Miles v. Florida A and M Univ., 813 So. 2d 242 (Fla. 1st DCA 2002). This is so even if the agency’s interpretation is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. Golfcrest Nursing Home v. Agency for Health Care Admin., 662 So. 2d 1330 (Fla. 1st DCA 1995).

STIPULATED DISPOSITION

Mayfair has met all threshold requirements and is entitled to 70 total points, 6 ability to proceed tie-breaker points, and 7.50 proximity tie-breaker points.
Respectfully submitted this 15th day of January 2010.

By:
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