

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**ABILITY MAYFAIR II, LLC,**

**Petitioner,**

**v.**

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

**FLORIDA HOUSING FINANCE  
CORPORATION,**

**Respondent.**

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**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)  
850-425-6694 (facsimile)

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:

Item #	Reason(s)	Corrected As Result
1S	Because the Application does not qualify as a Homeless Development (See Item 18T), it is not eligible to receive double points for Rehabilitation Developments - Features and Amenities.	NOPSE
2S	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(10b), 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 1/16 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.	NOPSE
3S	Because the Application does not qualify as a Homeless Development (See Item 18T), it is not eligible to receive double points for Energy Conservation Features and Amenities.	NOPSE
5S	Because the Application does not qualify as a Homeless Development (See Item 18T), it is no longer eligible for automatic Special Needs points. The Applicant Notification to Special Needs Household Referral Agency form was not provided.	NOPSE
8S	Because the Application does not qualify as a Homeless Development (See Item 18T), the Applicant is not eligible to select Qualified Resident Programs for Homeless Developments.	NOPSE
10S	Because the Application does not qualify as a Homeless Development (See Item 18T), it is no longer eligible for automatic Local Government contribution points. No Local Government contribution forms were provided.	NOPSE
11S	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(10b), F.A.C.). Therefore, the Development Location on the Local Government Verification of Affordable Housing Incentives 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.	NOPSE

16. Florida Housing also determined that the Mayfair Application failed threshold, stating:

5T	V	A	1	FHFC Funding Request	The Application fails threshold for Funding Request because the annual Housing Credit allocation requested (\$1,366,000) exceeds the annual HC request limit (\$1,278,000) on page 66 of the 2009 Universal Application Instructions.	Preliminary
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7T	III	A	2.b	Scattered Sites	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.). The Applicant failed to correctly answer the question at Part II.A.2.b. of the Application.	NOPSE
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9T	III	C	1	Site Plan Approval / Plat Approval	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.). The 2009 Universal Application Instructions require that site plan approval be demonstrated for all sites if the proposed Development consists of Scattered Sites. Although site plan approval has been demonstrated for the site located at 1787 Mayfair Village Road, it has not been demonstrated for the other site.	NOPSE
10T	III	C	3.a	Availability of Electricity	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.). The 2009 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.	NOPSE
11T	III	C	3.b	Availability of Water	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.). The 2009 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.	NOPSE

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of
12T	III	C	3.c	Availability of Sewer	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.). 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.	NOPSE
13T	III	C	3.e	Availability of Roads	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.). 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.	NOPSE
14T	III	C	4	Zoning	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.). 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.	NOPSE
15T	III	C	5	Environmental Site Assessment	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.). 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.	NOPSE

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of
16T	III	D		Demographic Commitment	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 87-48.002(10), F.A.C.). Therefore, the Development Location on the Verification of Inclusion in Local Homeless Assistance Continuum of Care Plan by Lead Agency form should reflect all of the Scattered Sites. Because the form is incomplete, the proposed Development does not qualify as a Homeless Development.	NOPSE
17T	III	A	1	Programs Applied For	Because the proposed Development failed to qualify as a Homeless Development (See Item 16T above), the Applicant is not eligible to request Competitive HC and HOME funding.	NOPSE
18T	III	A	2.b	Scattered Sites	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 87-48.002(10), F.A.C.). The Applicant failed to provide the required information for each of the Scattered Sites at Exhibit 20, as required by the 2009 Universal Application Instructions.	NOPSE
19T	III	H		HOME Consolidated Plan	As a Cure for item 8T, the HOME Certification of Consistency With the Consolidated Plan was provided by the appropriate authorities; however, the Development site is divided by an easement (3C), and all sites were not identified on the Certification.	Final

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, 1A 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:



Item #	Reason(s)	Created As Result
1A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for site plan approval. See Item 07 above.	NOPSE
2A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of electricity. See Item 10T above.	NOPSE
3A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of water. See Item 11T above.	NOPSE
4A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of sewer. See Item 12T above.	NOPSE
5A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for availability of roads. See Item 13T above.	NOPSE
6A	The Application is not eligible for 1 Ability to Proceed Tie-Breaker Point for appropriate zoning and land use. See Item 14T above.	NOPSE

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

Item #	Reason(s)	Created As Result
1P	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 subsection 87-48.002(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 at Exhibit 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.	NOPSE
1P	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.	NOPSE
2P	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.	NOPSE
2P	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 subsection 87-48.002(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 at Exhibit 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.	NOPSE
5P	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 subsection 87-48.002(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 at Exhibit 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.	NOPSE
5P	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.	NOPSE

Item #	Reason(s)	Created As Result
6P	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 with 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.	NOPSE
6P	Because the Application does not qualify as a Homeless Development (See Item 18T), the Applicant is not eligible for automatic proximity points.	NOPSE
6P	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 subsection 67-48.002(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 at Exhibit 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.	NOPSE

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: 

Donna Blanton  
Florida Bar No. 948500  
Toni A. Egan  
Florida Bar No. 647764  
Counsel for Petitioner  
Radey, Thomas, Yon & Clark, P.A.  
301 S. Bronough St., Suite 200  
Tallahassee, Florida 32301  
Telephone No. (850) 425-6654  
Facsimile No. (850) 425-6694

By: 

Matthew A. Sirmans  
Florida Bar No. 0961973  
Assistant General Counsel  
Florida Housing Finance Corporation  
227 North Bronough Street  
Suite 5000  
Tallahassee, Florida 32301-1329  
Telephone: (850) 488-4197  
Faesimile: (850) 414-6548