

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

ABILITY MAYFAIR II, LLC

FHFC CASE NO.: 2009-070UC
APPLICATION NO. 2009-121CH

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation for consideration and final agency action on February 26, 2010. Ability Mayfair II, LLC, (“Petitioner”) timely submitted its 2009 Universal Cycle Program Application (the “Application”) to Florida Housing Finance Corporation (“Florida Housing”) to compete for funding from the 2009 Universal Cycle Program. Subsequently, Petitioner timely filed its petition for an informal hearing, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, challenging Florida Housing’s scoring on parts of the Application. Prior to the informal hearing, Petitioner and Respondent entered into a Consent Agreement. A true and correct copy of the Consent Agreement is attached hereto as “Exhibit A.” Pursuant to the Consent Agreement, Petitioner and Respondent recommend that:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Debra M. Harrell / DATE: 2/26/10

1. Florida Housing enter a Final Order concluding that the Petitioner met all threshold requirements, and that its application receive a total score of 70 points, 6 ability to proceed tie-breaker points and 7.50 proximity tie-breaker points.

RULING ON THE CONSENT AGREEMENT

The Stipulated Findings of Fact and Stipulated Conclusions of Law of the Consent Agreement are supported by competent substantial evidence.

ORDER

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

1. The Stipulated Findings of Fact of the Consent Agreement are adopted as Florida Housing's Findings of Fact and incorporated by reference as though fully set forth in this Order.

2. The Stipulated Conclusions of Law of the Consent Agreement are adopted as Florida Housing's Conclusions of Law and incorporated by reference as though fully set forth in this Order.


Based on the Findings of Fact and Conclusions of Law stated above,

IT IS FURTHER ORDERED that Petitioner's application is scored as having met all threshold requirements, and that its application receives a score of 70 points, 6 ability to proceed tie-breaker points and 7.50 proximity tie-breaker points.

DONE and ORDERED this 26th day of February, 2010.



FLORIDA HOUSING FINANCE
CORPORATION

By: 
Chairperson

Copies to:

Matt Sirmans
Assistant General Counsel
Florida Housing Finance Corporation
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Tallahassee, FL 32301

Kevin Tatreau
Director of Multifamily Development Programs
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NOTICE OF RIGHT TO JUDICIAL REVIEW

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

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

HTG LAKERIDGE GREENS, LTD.,

Petitioner,

**FHFC Case No. 2009-071UC
Application No. 2009-222C**

v.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

_____ /

CONSENT AGREEMENT

Petitioner, HTG Lakeridge Green, Ltd. ("HTG") and Respondent, Florida Housing Finance Corporation ("Florida Housing"), by and through undersigned counsel, hereby present the following Consent Agreement:

APPEARANCES

For Petitioner:

Michael P. Donaldson, Esquire
Florida Bar No. 080276
Carlton Fields, P.a.
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850/224-1585 (phone)
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For Respondent:

Hugh Brown, Deputy General Counsel
Florida Bar No. 0003484
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

PRELIMINARY STATEMENT

On or before August 20, 2009, HTG submitted an Application to Florida Housing for funding through the 2009 Universal Cycle. On December 3, 2009, Florida Housing notified HTG of the results of scoring its Application and provided HTG with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes. Florida Housing determined that HTG had not provided documentation that one of the purposes of the non-profit entity was to foster low income housing. Based on this, Florida Housing determined that HTG failed threshold requirements and was not entitled to 70 total points and 6 ability to proceed tie-breaker points. Florida Housing has determined that proper documentation has been provided concerning the non-profit entity issue. Thus, HTG is entitled to 70 total points, 6 ability to proceed tie-breaker points, and 7.50 proximity tie-breaker points. Additionally, HTG has satisfied all threshold requirements.

Upon issuance of a Final Order adopting the terms of this Consent Agreement, HTG 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 its 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. HTG is a Florida limited partnership with its address at 3250 Mary Street, Suite 500, Miami, Florida 33133, 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. 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 targeting 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.

4. 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.

5. 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.

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

7. 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.

8. 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).

9. On or about August 20, 2009, HTG and others submitted applications for financing in Florida Housing's 2009 funding cycle (Application #2009-222C) applied for \$2,110,000 of Tax Credit equity funding to help finance the construction of a 95-unit affordable apartment complex in West Palm Beach, Palm Beach County, Florida.

10. HTG received notice of Florida Housing's initial scoring of the Application on or about September 21, 2009, at which time HTG was awarded a preliminary score of 66 points out of a possible 70 points, and 7.5 of 7.5 possible "tie-breaker" points (awarded for geographic proximity to certain services and facilities), and 5 of 6 possible ability to proceed tie-breaker points. Florida Housing also concluded that the HTG application had not passed all threshold requirements.

11. On or about October 1, 2009, Florida Housing received a NOPSE in connection with HTG's application. On or about October 23, 2009, Florida Housing sent HTG NOPSE's 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.

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

13. At the conclusion of the NOPSE, cure review and NOAD process, Florida Housing awarded the HTG Application a score of 70 points.

14. Florida Housing also determined that the HTG Application failed threshold requirement, stating:

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
IT	II	A	2.e	Non-Profit Applicant	The Applicant failed to qualify as a Non-Profit because the Articles of Incorporation provided in the Application do not demonstrate that one of the purposes of the non-profit entity is to foster low-income housing.	Preliminary	

15. On or before December 28, 2009, HTG submitted a Petition for Review pursuant to Sections 120.569 and 120.57(2), Florida Statutes.

16. The sole issue raised by the Petition was the determination by Florida Housing during the Universal Cycle scoring process that HTG did not provide adequate documentation as to the purpose of the non-profit entity being to foster low-income housing. Had Florida Housing not found this issue, all threshold requirements would have been met and HTG 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.

17. Florida Housing has determined that adequate documentation has indeed been submitted as to the non-profit entity issue. Thus, HTG is entitled to 70 total points, 6 ability to proceed tie-breaker points, and 7.50 proximity tie-breaker points. Additionally, HTG has satisfied all threshold requirements.

STIPULATED CONCLUSIONS OF LAW

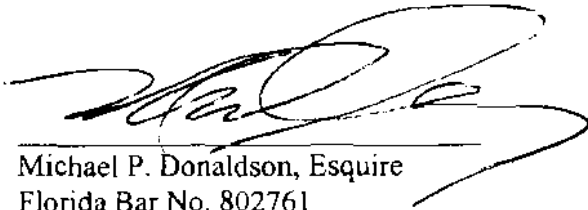
18. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Florida Administrative Code Chapter 67-48, the Board has jurisdiction over the parties to this proceeding.

19. 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.

STIPULATED DISPOSITION

20. HTG 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 10th day of February, 2010.



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