

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. \_\_\_\_\_

ABILITY MAYFAIR II, LLC,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULES 67-48.009(5)(e) and 67-48.023(1)(c) AND  
INSTRUCTION III. A. 4 OF THE UNIVERSAL APPLICATION INSTRUCTIONS**

Petitioner Ability Mayfair II, LLC (“Mayfair”), petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for waivers of Rules 67-48.009(5)(e) and 67-48.023(1)(c), F.A.C. (2008) (collectively “2008 Rules”), and proposed Rules 67-48.009(5)(e) and 67-48.023(1)(c) for the 2009 Universal Cycle (“Proposed Rules”), as well as a waiver of Instruction III. A. 4 of the 2008 Universal Application Instructions (“2008 Instruction”), and proposed Instruction III. A. 4 of the 2009 Universal Application Instructions (“Proposed Instruction”). The 2008 Rules and Proposed Rules are referred to collectively as the “Rules,” and the 2008 Instruction and Proposed Instruction are referred to collectively as the “Instruction.”

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2008), Mayfair requests a waiver of the Rules that preclude Mayfair from submitting a Universal Application for the State Apartment Incentive Loan (“SAIL”) Program and Housing Credit (“HC”) Program in the 2009 Universal Cycle because its Development site is subject

to an Extended Use Agreement (“EUA”). Mayfair also requests a waiver of the Instruction’s requirement that a development must have 5 or more dwelling units in each residential building.

2. Mayfair recognizes and understands that the Proposed Rules and Proposed Instruction have not yet been adopted for the 2009 Universal Cycle. However, as they are currently drafted, the Proposed 2009 Rules and Instruction are not expected to change significantly, or at all, with respect to Mayfair’s eligibility to submit a 2009 Universal Application and the minimum number of dwelling units that are the subject of this Petition.

3. The requested waivers are essential for the continued viability of an existing affordable housing development which, if waivers are permitted, will provide housing for Jacksonville and Duval County’s escalating population of homeless individuals and families.

**A. The Petitioner and The Development**

4. The name, address, telephone and facsimile numbers and email address for Mayfair and its qualified representative are:

Ability Mayfair II, LLC  
Attention: Shannon Nazworth  
126 West Adams Street, Suite 502  
Jacksonville, Florida 32202  
Telephone: (904) 359-9650  
Facsimile: (904) 359-9653

5. The name, address, telephone and facsimile numbers, and e-mail addresses of Mayfair's attorneys are:

Brian J. McDonough, Esquire  
STEARNS WEAVER MILLER  
WEISSLER ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
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STEARNS WEAVER MILLER  
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Fort Lauderdale, Florida 33301  
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6. Mayfair anticipates submitting its 2009 Universal Application requesting a SAIL loan and HCs utilizing the Homeless Set-Aside. If its application is successful, the SAIL loan and HCs will be used for the acquisition and substantial rehabilitation of a 12-residential building, 83-dwelling unit apartment complex known as Mayfair Village Apartments (the "Development"). Three of the 12 buildings have fewer than 5 dwelling units per building. The Development will serve the Homeless demographic in Jacksonville and Duval County, Florida, and is included within the Continuum of Care Plan as developed by the lead agency, the Emergency Services and Homeless Coalition of Jacksonville, Inc.

7. Since as early as 1994, the Development has provided affordable housing to low income families. As a result, the Development is currently subject to an EUA with Florida Housing's predecessor. The EUA was recorded on November 11, 1994, in Official Records Book 7984 at Page 1144-1166 of the Public Records of Duval County, Florida. A copy of the EUA is attached as Exhibit A.

8. The requested waivers would not adversely affect the Development, but would allow Mayfair to submit its 2009 Universal Application for consideration during the 2009 Universal Cycle.

9. However, a denial of this Petition (a) would prevent Mayfair from submitting an application during the 2009 Universal Cycle; (b) would deprive the homeless community in Jacksonville and Duval County of critically needed safe, clean and affordable dwelling units; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2007).

10. The waivers being sought are permanent in nature.

**B. The Rules and Instruction from which Relief is Requested and the Statute Implementing the Rules**

11. Mayfair requests a waiver of the Rule that governs applications submitted for the SAIL Program and provides:

(5) Unless the Board approves a competitive allocation process outside the Universal Cycle, an Applicant is not eligible to apply for SAIL Program funding if any of the following pertain to the proposed Development:

(e) The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing intended to foster the development or maintenance of affordable housing, with two exceptions. Those exceptions being (i) a LURA recorded in conjunction with the Predevelopment Loan Program, and (ii) a LURA recorded in conjunction with a Multifamily Mortgage Revenue Bond Program loan closed after January 1, 2007  
~~2006:~~

Rule 67-48.009(5)(e), F.A.C. (2008). With the exception of the change from January 1, 2006 to January 1, 2007, the Proposed Rule is identical to the 2008 Rule.

12. Mayfair also requests a waiver of the Rule governing procedures and requirements for applications under the HC Program, which provides:

(1) Unless the Board approves a competitive allocation process outside the Universal Cycle, an Applicant is not eligible to apply for Competitive Housing Credits if any of the following pertain to the proposed Development: . . .

(c) The proposed Development site or any part thereof is subject to any Land Use Restriction Agreement or Extended Use Agreement, or both, in conjunction with any Corporation affordable housing financing, excluding Predevelopment Loan Program funds, intended to foster the development or maintenance of affordable housing.

Rule 67-48.023(1)(c), F.A.C. (2008). The Proposed Rule is identical to the 2008 Rule.

13. Mayfair further requests a waiver for the requirement that “Applicants requesting SAIL (SAIL only, HC and SAIL or MMRB and SAIL) must be for a proposed Development consisting of 5 or more dwelling units in each residential building.” Instruction III. A. 4., 2008 Universal Application Instructions.<sup>1</sup> The Proposed Instruction is identical to the 2008 Instruction.

14. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),<sup>2</sup> the statute that created the SAIL and HC Programs. *See* §§ 420.5087 and 420.5099, Fla Stat. (2008). The purpose of the SAIL Program is to provide “first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.” § 420.5087, Fla. Stat. (2008). Accordingly, the Rules are implementing Florida Housing’s statutory authorization to establish the requirements, rules, and procedures for the SAIL Program and the statutory

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<sup>1</sup>The Instruction is adopted and incorporated into Chapter 67-48, F.A.C. (2008).

<sup>2</sup>The Act is set forth in Sections 420.501 through 420.516, Florida Statutes (2008).

authorization for procedures for the allocation and distribution of low-income housing tax credits for the HC Program.

**C. Justification for Mayfair’s Requested Waivers**

15. Florida Housing has the authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principles of fairness<sup>3</sup>, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2008).

16. Mayfair requests a waiver of the Rules under which it is not eligible to apply for SAIL Program funds or for competitive HCs under the HC Program because the Development is subject to an EUA recorded in 1994. Mayfair also requests a waiver of the 5-dwelling unit requirement for three of the Development’s 12 buildings.

17. The following facts justify the requested Rule waiver.

18. The Jacksonville and Duval County community desperately needs permanent housing affordable to homeless individuals and families. At present, the community has an over-subscription of housing affordable to households earning 60% of the Area Median Income (AMI).

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<sup>3</sup>“Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “Principles of Fairness” are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Rule Section 120.542(2), Florida Statutes (2008).

19. The EUA currently in place on the Development limits residency to households earning 60% AMI or less. Due to changes in market conditions since the EUA was signed in November 1994, this rental restriction no longer meets the community's affordable housing needs.

20. In 2000, the Jacksonville and Duval County community conducted its first Point In Time Count of the homeless population in accord with methodologies established by the U.S. Department of Housing and Urban Development. Since that time, the community has experienced a 92.4% increase in homelessness.

21. During the same period, the vacancy rate among projects with 60% AMI restrictions has increased significantly due to various market factors. As a result, developments subject to EUAs that previously addressed an affordable housing need are no longer affordable to households in genuine need.

22. Mayfair's intent is to acquire and substantially rehabilitate the Development so that quality, permanent housing can be provided to the community's homeless households. Without the funding available through the 2009 Universal Cycle's Homeless Set-Aside, Mayfair will not have the financial wherewithal to convert the Development into a project that is affordable to homeless individuals and families.

23. One-half of the Development's 83 units will be reserved for households meeting Florida Housing's definition of homeless under Rule 67-48.002(60), F.A.C. (2008), and Rule 67-48.002(59), proposed for the 2009 Universal Cycle. The remaining units will be targeted to low-income, very low-income, and extremely low-income households which may or may not meet the definition of homeless. Additionally, the Development is ideally located for a homeless project. It is on a major bus route, with a covered bus stop at the entrance to the community. It is across the street from a shopping center containing a supermarket and affordable shopping opportunities. The

Development is in very close proximity to many employment opportunities, opportunities especially advantageous to homeless individuals. It is also within easy access to support services which are essential to many within the homeless population.

24. The Jacksonville and Duval County community has been particularly and negatively affected by economic conditions. The adverse impact is evidenced by, among other factors, a dramatic increase in the homeless population. According to the *2008 Report of Duval, Clay and Nassau Counties' Homeless Population* (the "Report"), prepared by the community's Continuum of Care lead agency,<sup>4</sup> Duval County has experienced a 92.4% increase in homelessness since 2000. *See Report, Part II., p. 6, The 2008 Homeless Counts, attached hereto as Exhibit B.*

25. The Report also states that within the previous year, 18,088 Jacksonville and Duval County individuals were homeless. This represents a 9.8% increase from the previous year. Additionally, 2,638 individuals were homeless on a given day. Among the fastest growing homeless populations are families facing situational poverty – the reduction or loss of income due to the downturn in the economy. The lack of housing affordable to these households is stated as the primary cause of homelessness.

26. Since the homeless count was conducted in January 2008, the number of families in crisis has increased significantly. "Every shelter in Duval County has a waiting list" and all housing affordable to these individuals and families is full. *Florida Times-Union*, November 10, 2008, attached hereto as Exhibit C.

27. According to the University of Florida's Shimberg Center for Affordable Housing, 53% of the community's ELI households (21,518) pay more than half of their income for housing.

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<sup>4</sup>Emergency Services and Homeless Coalition of Jacksonville, Inc., is the community's Continuum of Care Lead Agency.

An additional 5,993 ELI households pay more than 30% of their income for housing. In total 68% of Jacksonville and Duval County ELI households are cost-burdened. The Shimberg Center also reports that 14% of the community’s population (116,476 individuals) live in poverty.<sup>5</sup>

28. The Shimberg Center projects a 61% increase in the need for housing affordable to ELI households by 2030:

<b>Income - %AMI</b>	<b>2005</b>	<b>2010</b>	<b>2015</b>	<b>2020</b>	<b>2025</b>	<b>2030</b>
ELI (30% or less)	27,511	30,729	33,990	37,423	40,988	44,418

29. Wight Greger, Deputy Director of the City of Jacksonville Housing and Neighborhoods Department, recently noted the dire need for approximately 10,000 units for ELI households. According to Mr. Greger, “We need to serve those with the lowest income,” but “Jacksonville doesn’t do a very good job providing for this income level.” *Jacksonville Business Journal*, November 21, 2008, attached hereto as Exhibit D.

30. In Jacksonville and Duval County, 64% of the nearly 14,000 units funded by Florida Housing are targeted to households earning 60% of the AMI. The Development is one of those properties.

31. According to the November 21, 2008 *Jacksonville Business Journal* article, Florida Housing’s Executive Director noted that the agency has determined that the Jacksonville and Duval County rental market is over saturated with affordable housing for households earning 60% AMI. Over saturation is determined by the occupancy rate of rental projects; which hovers in the mid-80% range in Duval County. Exhibit D, *Jacksonville Business Journal*, November 21, 2008.

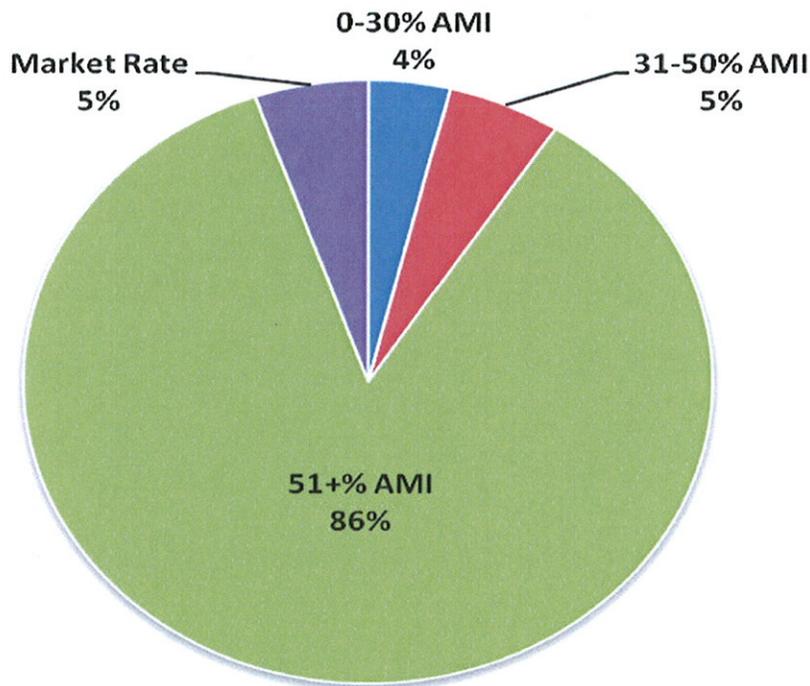
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<sup>5</sup>The federal poverty level for a family of four is \$21,200 and \$10,400 for a single adult.

32. On October 31, 2008, Florida Housing's Board of Directors considered the community's overly saturated market in rejecting a positive underwriting report for a proposed development intended to serve households earning 50% AMI in Duval County. The statistics and data presented to the Board were daunting and underscore the dire need for housing that would be available in Mayfair's Development for the homeless population. As indicated in the following chart, data included the staff's report demonstrating that within a 10-mile ring of the proposed development:

- 4% of the units are reserved for households earning 0-30% AMI
- 5% of the units are reserved for households earning 31-50% AMI
- 86% of the units are reserved for households earning 51+% AMI
- 5% of the units are Market Rate

### Duval 10 Mile Ring Number of Units Targeted to Each Income Category



Within the projects, 15% of the units are vacant. Additional data is attached as Composite Exhibit E.

33. The information and data demonstrate the dire lack of housing affordable to ELI and homeless households. Without access to SAIL funds and HCs, Mayfair's Development cannot be structured as a project affordable to these households.

34. Through a successful application for funding under the 2009 Universal Cycle, Mayfair will be able to provide desperately needed permanent, affordable housing to homeless individuals and families within Jacksonville and Duval County whereby Mayfair would commit to set aside 50% of the Development's 83 two-bedroom dwelling units to homeless households.

35. Failure to permit Mayfair to apply for SAIL funds and HCs would constitute a substantial hardship upon the community with more than 2,500 homeless persons on any given day. It would also result in an unintended consequence that is diametrically opposed to the intent of the SAIL legislation, especially given its specific requirement to meet the housing needs of homeless individuals and families. *See* § 420.5087, Fla. Stat. (2008).

36. Without the requested Rule waivers and as a consequence of the 1994 EUA, Mayfair is not eligible to apply for SAIL funds and HCs that are critical for providing affordable, clean, safe and secure housing for the increasingly urgent circumstances facing the homeless community and others within Jacksonville and Duval County.

37. For the same reasons that justify a waiver of the Rules, Mayfair also requests a waiver of the Instruction's 5-dwelling unit requirement for three of the Development's 12 buildings.<sup>6</sup> This requirement also negates Mayfair's ability to apply for a SAIL loan and HCs as it is not economically

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<sup>6</sup>As identified above, because of the Development's configuration, one of the buildings has 4 dwelling units, and two buildings have 2 units each.

or financially feasible to reconfigure the Development in order to ensure that all 12 residential buildings contain at least 5 dwelling units. Absent a waiver of the Instruction, the homeless population would be deprived of the availability of 42 dwelling units for families and individuals, and would negatively impact the financial feasibility of the Development.

**D. Conclusion**

38. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended consequences. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2007).

39. Moreover, it was never the intent of Rules to prevent a community from obtaining housing which addresses affordable housing needs that did not exist when the initial EUA was signed. Nor was it the intent of the Instruction to preclude the utilization of an existing project for the housing needs of their homeless population.

40. The requested waivers will not adversely impact the Development or Florida Housing, but will ensure that 83 dwelling units will be available for low-income households, with a minimum of 42 dwelling units set aside for homeless families and individuals in Jacksonville and Duval County, Florida.

41. However, a denial of the requested waiver would result in a substantial hardship for the community which would be deprived of desperately needed homeless housing. Rents for the units within the Development would remain out-of-reach for the community's increasing homeless

population, and Mayfair would be denied the ability to provide decent, safe, and affordable dwelling units to a community in dire need of housing for homeless families and individuals.

42. The denial of the Petition would also result in an unintended consequence as it was not the intent of the Rules and Instruction to prevent a development from being restructured so that it may serve the needs of the community's homeless households.

43. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities in meeting the purpose of the Florida Housing Finance Corporation Act in an economical and efficient manner.

44. Should Florida Housing require additional information, Mayfair is available to answer questions and provide all information necessary for consideration of its Petition for Waiver of Rules 67-48.009(5)(e) and 67-48.023(1)(c) and Instruction III. A. 4. of the Universal Application Instructions.

WHEREFORE, Petitioner Ability Mayfair II, LLC, respectfully requests that the Florida Housing Finance Corporation:

- A. Grant the Petition and all the relief requested therein;
- B. Waive Rules 67-48.009(5)(e) and 67-48.023(1)(c), F.A.C. (2008) and proposed 67-48.009(5)(e) and 67-48.023(1)(c) under which Mayfair is not eligible to apply for SAIL funds or HCs because of the 1994 Extended Use Agreement;
- C. Waive Instruction III. A. 4. of the 2008 Universal Application Instructions and proposed 2009 Universal Application Instructions to allow for three of the Development's 12 buildings to contain less than 5 dwelling units; and

D. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.

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By:   
MIMI L. SALL

**CERTIFICATE OF SERVICE**

The Original Petition is being served by overnight delivery, with a copy served by electronic transmission, for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 19th day of December, 2008.

By:   
Mimi L. Sall

Bk: 7984  
Pg: 1144 - 1166  
Doc# 94193678  
Filed & Recorded  
11/29/94  
01:16:48 P.M.  
HENRY W. COOK  
CLERK CIRCUIT COURT  
DUVAL COUNTY, FL  
REC. \$ 105.00

EXTENDED LOW-INCOME HOUSING AGREEMENT

THIS EXTENDED LOW-INCOME HOUSING AGREEMENT (this "Agreement") is made and entered into this 28th day of November, 1994, between the FLORIDA HOUSING FINANCE AGENCY (the "Agency"), a state agency and instrumentality and a public body corporate and politic duly existing under the laws of the State of Florida, and MAYFAIR ASSOCIATES, LTD., a Florida limited partnership (the "Developer").

PREAMBLE

WHEREAS, the Agency has been created and organized pursuant to and in accordance with the provisions of the Florida Housing Finance Agency Act, Sections 420.501-420.516, Florida Statutes, as amended (the "Act"), and pursuant to Section 420.5099 of said Act, the Agency is the housing credit agency for the State of Florida (the "State") specifically authorized by statute to allocate low-income housing credit dollar amounts ("Tax Credits") under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Agency has agreed, under certain conditions, to allocate Tax Credits to the Developer in connection with the rehabilitation of a multi-family residential rental housing project (the "Project") located within Duval County, Florida (the "County"), the legal description for which is set forth in Exhibit "A" hereto, to be occupied partially (at least forty percent (40%) by individuals whose income is sixty percent (60%) or less of area median gross income within the meaning of Section 42(g) of the Code; and

WHEREAS, The Developer has made a knowing, voluntary and intelligent election to waive for fifteen additional years following the last day of the Compliance Period any prerogative it would have to collect rents on the Low-Income Units at rates determined by the rental market as set forth in its application to the Agency for 1993 Tax Credits and attested and sworn to in the Carryover Allocation Certificate dated December 23, 1993; and

THIS INSTRUMENT PREPARED BY:  
Susan J. Leigh  
FLORIDA HOUSING FINANCE AGENCY  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329



WHEREAS, Section 42 of the Code provides that no Tax Credits shall be allowed with respect to any building unless an extended low-income housing commitment is in effect for such building at the end of such taxable year; and

WHEREAS, in order to assure Developer compliance with the provisions of, and to evidence the Developer's extended low-income housing commitment as required by, Section 42 of the Code, the Agency and the Developer have determined to enter into this Agreement in which they set forth certain terms and conditions relating to the Developer's operation of the Project;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agency and the Developer do hereby contract and agree as follows:

#### AGREEMENT

##### Section 1. Definitions and Interpretation.

(a) Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for all purposes of this Agreement.

"Act" shall mean the Florida Housing Finance Agency Act, Florida Statutes, Section 420.501-.516, as amended.

"Agency" shall mean the FLORIDA HOUSING FINANCE AGENCY, a state agency and instrumentality and a public body corporate and politic duly existing under the laws of the State of Florida, and any agency or other entity of the State of Florida that shall hereafter succeed to the powers, duties and functions of the Agency.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and any successor statute as it applies to the Tax Credits described herein, together with all applicable final, temporary or proposed Treasury Regulations and Revenue Rulings thereunder. Reference in this Agreement to any specific provision of the Code shall be deemed to include any applicable successor provision of such provision of the Code that may apply to the Tax Credits described herein.

"Compliance Period" shall mean, with respect to any building that is included in the Project, a period of fifteen (15) years beginning on the first day of the first taxable year of the Credit Period with respect thereto.

"County" shall mean Duval County, Florida.

"Credit Period" shall mean, with respect to any building that is included in the Project, the period of ten (10) years beginning with (x) the taxable year in which the building is placed in service, or (y) at the election of the Developer, the succeeding taxable year.

"Developer" shall mean MAYFAIR ASSOCIATES, LTD., a Florida limited partnership and its successors and assigns as permitted under Section 4 of this Agreement.

"Extended Low-Income Housing Agreement" or "Agreement" shall mean this Extended Low-Income Housing Agreement, as amended or supplemented from time to time.

"Extended Use Period" shall mean, with respect to any building that is included in the Project, the period that begins on the first day of the Compliance Period in which such building is part of the Project and ends on the date that is the fifteenth (15th) anniversary of the last day of the Compliance Period, unless earlier terminated as provided in the Preamble of this Agreement.

"Gross Rent" shall mean any amount paid by a tenant in connection with the occupancy of a Residential Rental Unit, plus the cost of any services that are required to be paid by a tenant as a condition for occupancy, plus the cost of any utilities, other than telephone, for such unit. If any utilities (other than telephone) are paid directly by the tenant, "gross rent," also includes a utility allowance determined as set forth in this paragraph. "Gross Rent" does not include any payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program with respect to such Residential Rental Unit or to the occupants thereof, or any fee for supportive service that is paid to the owner of the unit on the basis of the low income status of the tenant of such Residential Rental Unit by any governmental program of assistance or by any tax-exempt organization if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services within the meaning of Section 42(g)(2)(B) of the Code. For purposes of the foregoing, the allowable utility allowance is: (i) the United States Department of Housing and Urban Development ("HUD") utility allowances (except as provided in clause (iv) hereof) in the case of a building whose rents and utility allowances are reviewed by HUD on an annual basis; (ii) the applicable Public Housing Authority ("PHA") utility allowances established for the Section 8 Existing Housing Program (except as provided in clause (iv) hereof) in the case of a building occupied by one or more tenants receiving HUD rental assistance payments ("HUD Tenant Assistance"); (iii) in the case of a building for which there is neither (x) HUD Tenant Assistance, nor (y) an applicable HUD or FmHA utility allowance, utility allowances based on letters from local utility providers certifying the estimated costs of all covered utilities for units of comparable size and construction in the county where

the building is located, determined in accordance with Internal Revenue Service Notice 89-6; or (iv) the applicable FmHA utility allowance in the case of any Rent-Restricted Unit in a building where either the building receives FmHA housing assistance (including a building that is HUD-regulated) or any tenant receives FmHA housing assistance (including any Low-Income Tenant receiving HUD Tenant Assistance who resides in a building where the building or any other tenant receives FmHA housing assistance).

"Low-Income Tenants" shall mean individuals whose income is sixty percent (60%) or less of area median gross income (adjusted for family size) within the meaning of Section 42(g)(1) of the Code, as the same may be amended from time to time (but only to the extent such amendments apply to the Project). In no event, however, shall occupants of a unit be considered to be of low income if all the occupants are students (as defined in Section 151(c)(4) of the Code, but excluding from such definition an individual who is (x) a student and receiving assistance under Title IV of the Social Security Act, or (y) deemed to be a student merely because that individual is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, state or local laws), no one of whom is entitled to file a joint federal income tax return.

"Low-Income Unit" shall mean any unit in a building if: (i) the unit is a Rent-Restricted Unit satisfying the requirements of Section 2 hereof, and (ii) the individuals occupying the unit are Low-Income Tenants (or the unit is held available for rental to Low-Income Tenants if previously rented to and occupied by Low-Income Tenants) as set forth in Section 3(a) hereof.

"Monitoring Agent" shall mean any monitoring agent appointed by the Agency.

"Rehabilitation Expenditures" shall mean those amounts chargeable to the capital account and incurred with respect to depreciable property or improvements in connection with the rehabilitation of a building, but shall exclude the cost of acquisition of such building (or any interest therein) and such other amounts as are excluded pursuant to Section 42(e) of the Code.

"Related Person" to a person shall mean a relationship such that the "related person" bears a relationship to such person specified in Section 267(b) or Section 707(b)(1) of the Code, or the related person and such person are engaged in trades or businesses under common control within the meaning of Section 52(a)-(b) of the Code, except that for purposes hereof, the phrase "10 percent" shall be substituted for the phrase "50 percent" in applying Section 267(b) and Section 707(b)(1).

"Rent-Restricted Unit" shall mean a Residential Rental Unit where the Gross Rent with respect to such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit (or such higher limitation as provided by Section 42(g)(2)(E) of the Code). For purposes of the foregoing, the imputed income limitation applicable to a Residential Rental Unit is the income limitation set forth for Low-Income Tenants occupying the unit if the number of individuals occupying the unit are (x) one (1) individual, in the case of a unit that does not have a separate bedroom, and (y) one and one-half (1.5) individuals for each separate bedroom, in the case of a unit that has one or more separate bedrooms.

"Residential Rental Units" shall mean dwelling units made available for rental, and not ownership, by Low-Income Tenants and members of the general public, each of which units shall contain complete living facilities that are to be used other than on a transient basis together with facilities that are functionally related or subordinate to the living facilities. The units shall at all times be constructed and maintained in substantial accordance with the applicable building code standards of the County. For purposes of the foregoing, a unit that contains sleeping accommodations and kitchen and bathroom facilities and that is located in a building used exclusively to facilitate the transition of homeless individuals to independent living and in which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing shall not be deemed to be a unit occupied on a transient basis within the meaning hereof.

(b) All capitalized words and terms herein which are not otherwise defined herein shall have the same meanings ascribed to them in Section 42 of the Code or in Treasury Regulations thereunder.

(c) The terms and phrases used in the Recitals of this Agreement have been included for convenience of reference only, in the meaning, construction and interpretation of all such terms and phrases shall be determined by reference to this Section 1. The titles and headings in this Agreement have been inserted for convenience of reference only and shall be deemed to modify and restrict any other provisions of this Agreement.

(d) Unless the context clearly requires otherwise, words of masculine, feminine or neuter gender, as the case may be, shall be construed as including the other genders, and words of the singular number shall be construed to include the plural number, and vice versa. This Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth in this Agreement and to sustain the validity hereof.

Section 2. Qualified Low-Income Housing Project. The Agency and the Developer hereby declare their understanding and

intent that, during the Extended Use Period, the Project is to be owned, managed, and operated as a qualified low-income housing project as such phrase is defined in Section 42(g) of the Code. To that end, the Developer hereby represents, covenants and agrees as follows:

(a) That the Project is being rehabilitated for purposes of providing a qualified low-income housing project, and the Developer shall own, manage and operate the Project as a qualified low-income housing project all in accordance with Section 42 of the Code; and

(b) That all of the Residential Rental Units in the Project shall be similarly constructed and each such unit shall contain complete facilities for living, sleeping, eating, cooking and sanitation for at least a single individual or a family; provided, however, that a unit that contains sleeping accommodations and kitchen and bathroom facilities and that is located in a building used exclusively to facilitate the transition of homeless individuals to independent living and in which a governmental entity or a qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing shall not be deemed to be a unit occupied on a transient basis within the meaning of this Section 2(b); and

(c) That, during the Extended Use Period, none of the Residential Rental Units in the Project shall at any time be utilized on a transient basis; except as provided in this Section 2(c), none of the Residential Rental Units in the Project shall ever be leased or rented for an initial period of less than one hundred eighty (180) days; and neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, trailer court or trailer park, or health club or recreational facility (other than recreational facilities that are available only to tenants and their guests without charge for their use and that are customarily found in multi-family rental housing projects); provided, however; that a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-to-month basis; and provided, further, that a unit that contains sleeping accommodations and kitchen and bathroom facilities and that is located in a building used exclusively to facilitate the transition of homeless individuals to independent living and in which a governmental entity or a qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing shall not be deemed to be a unit occupied on a transient basis within the meaning of this Section 2(c); and

(d) That, during the Extended Use Period, the Residential Rental Units in the Project shall be leased and

rented, or made available for rental on a continuous basis, to members of the general public; and the Developer shall not give preference in renting Residential Rental Units in the Project to any particular class or group of persons, other than Low-Income Tenants as provided in this Agreement; and

(e) That the Project shall consist of one (1) or more discrete edifices or other man-made construction, each consisting of an independent foundation, outer walls and roof, and containing four (4) or more Residential Rental Units and functionally-related facilities, all of which shall be: (x) owned by the same person for federal tax purposes; (y) located on a common tract of land or two (2) or more contiguous tracts of land; provided, however, that separate tracts of land that are separated only by a road, street, stream or similar property shall for purposes hereof be deemed to be contiguous; and (z) financed pursuant to a common plan of financing, and which shall consist entirely of:

- (1) Residential Rental Units which are similar in quality and type of construction and amenities; and
- (2) Facilities functionally related and subordinate in purpose and size to the property described in Section 2(e)(1) above, e.g., parking areas, laundries, swimming pools, tennis courts and other recreational facilities (none of which may be unavailable to any person because such person is a Low-Income Tenant and other facilities that are reasonably required for the Project e.g., heating and cooling equipment, trash disposal equipment, dwelling units for resident managers and maintenance personnel; and

(f) That, during the Extended Use Period, the Project shall not include a unit in a building where all Residential Rental Units in such building are not also included in the Project; and

(g) That, during the Compliance Period, the Developer shall not convert the Project to condominium ownership; and

(h) That, during the Compliance Period, no part of the Project shall at any time be owned or used by a cooperative housing corporation; and

(i) That, during the Extended Use Period, no unit in the Project shall be occupied by the Developer or a Related Person to the Developer at any time (x) unless such person resides in a unit in a building or structure which contains at least five (5) Residential Rental Units, or (y) except as provided in Section 42(i)(3)(E) of the Code; and

(j) That, within a twenty-four (24) month period, the Developer shall incur Rehabilitation Expenditures allocable to or that substantially benefit Low-Income Units in such building in an amount that is not less than the greater of (x) ten percent (10%) of the adjusted basis of the building as of the first day of such period, or (y) \$3,000 per Low-Income Unit in such building.

(k) That the Developer shall not discriminate on the basis of age, race, creed, religion, color, sex, marital status, family status, handicap or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project; provided, however, that nothing herein shall be deemed to preclude the Developer from discrimination based on income in renting Residential Rental Units set aside for Low-Income Tenants in compliance with the requirements of the Code; and

(l) That the Developer shall submit the certificate with respect to the first year of the Credit Period and such annual reports to the Secretary of the Treasury as required by Sections 42(1)(1) and (1)(2) of the Code and deliver a copy thereof to the Agency and to the Monitoring Agent, and shall submit such information to the Agency as the Agency may request in order for the Agency to comply with Section 42(1)(3) of the Code and for the Agency to monitor the Developer's compliance with Section 42 of the Code, the Agency's rules and regulations codified at Florida Administrative Code, Chapter 9I-33, and the provisions of the Agreement; and

(m) That, during the Extended Use Period, the Developer shall comply with the following commitments that were the basis of the Agency's competitive scoring and ranking of the Developer's application for Tax Credits in satisfaction of the Agency's responsibilities under Section 42(n) of the Code, and as required by the Agency's rules and regulations implementing such responsibilities, Florida Administrative Code, Rule 9I-33.010(1):

(i) Notwithstanding Section 3(a) below to the contrary, commencing with the issuance of the first certificate of occupancy for any building included in the Project, at least one-hundred percent (100%) of the occupied and completed Residential Rental Units included in the Project shall be occupied by and rented to Low-Income Tenants or held available for rental to Low-Income Tenants.

(ii) For purposes of complying with the requirements set forth in Section 2(m)(i) above, if the income of an individual or family resident in a Residential Rental Unit did not exceed the applicable income limit (adjusted for family size) at the commencement of such resident's occupancy, the income of such individual or family shall be treated as continuing to not exceed the applicable income limit as long as such Residential Rental Unit remains a Rent-Restricted Unit. The preceding

sentence shall cease to apply to any individual or family whose income, as of the most recent determination, exceed one hundred forty percent (140%) of the applicable income limit (adjusted for family size), if after such determination, but before the next income determination, any Residential Rental Unit of comparable or smaller size in the building is occupied by a new individual or family resident whose income exceeds the applicable income limit (adjusted for family size) for Low-Income Tenants.

(iii) The Developer shall obtain from each Low-Income Tenant and maintain on file an Income Certification pursuant to the requirements and procedures found in the Low-Income Rental Housing Tax Credit Compliance Manual immediately prior to the initial occupancy of a Residential Rental Unit in the Project by such tenant. The Developer shall also obtain, at least annually thereafter, and maintain on file an Income Certification from each Low-Income Tenant (and from each tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 2(m)(i) above) to determine whether the then current income of such tenants (or such tenants whose income is treated as continuing not to exceed the applicable income limit as provided in Section 2(m)(i) above) residing in the Project exceed the applicable income limits, adjusted for family size. In addition, the Developer shall require each Low-Income Tenant (or tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 2(m)(i) above) to notify the Developer of any material change of information in his, her or their, as the case may be, most recent Income Certification. The Income Certification shall be in the form and contain such information as may be required by the policies of the Agency, as the same may be, from time to time, amended by the Agency on the advice of Counsel. Photocopies of each such Income Certification shall be submitted to the Agency and the Monitoring Agent (i) on or before the tenth (10th) day of the calendar month following the calendar quarter during which the first Residential Rental Unit in the Project is first occupied, (ii) on or before the tenth (10th) day of each calendar month following each calendar quarter thereafter, and (iii) as requested by the Agency or the Monitoring Agent, which may be as often as may be necessary, in the opinion of the Agency or its Counsel, to comply with the provisions of this Agreement.

(iv) The Developer shall maintain complete and accurate records pertaining to the Residential Rental Units occupied by and rented to (or held available for rental to) Low-Income Tenants for at least six (6) years following the indicated date of each such record and shall permit any duly authorized representative of the Agency or the Monitoring Agent, to inspect the books and records of the Developer pertaining to the Income Certifications and income substantiation materials of Low-Income Tenants (and such tenants whose income is treated as continuing not to exceed the applicable income limit as provided in Section 2(m)(i) above) residing in the Project upon reasonable notice and at reasonable times.

(v) The Developer shall immediately notify the Agency and the Monitoring Agent if at any time the Residential Rental Units in the Project are not occupied or available for occupancy as provided in Section 2(m)(i) above.

Section 3. Low-Income Tenants; Low-Income Units. In order to satisfy the requirements of the Code, the Developer hereby represents, covenants and agrees that, during the Extended Use Period:

(a) Not later than the close of the first (1st) year of the Credit Period for each building included in the Project, at least forty percent (40%) of the occupied and completed Residential Rental Units included in the Project shall be both Rent-Restricted Units and rented to and occupied by Low-Income Tenants, and after the initial rental occupancy of such Residential Rental Units by Low-Income Tenants, at least forty percent (40%) of the completed Residential Rental Units in the Project at all times shall be both Rent-Restricted Units and rented to and occupied by (or held available for rental to, if previously rented to and occupied by a Low-Income Tenant) Low-Income Tenants as required by Section 42(g)(1) of the Code. For purposes of complying with the foregoing requirements, if (x) the income of an individual or family resident in a Rent-Restricted Unit did not exceed the applicable income limit (adjusted for family size) at the commencement of such resident's occupancy and (y) such unit continues to be a Rent-Restricted Unit, the income of such individual or family shall be treated as continuing to not exceed the applicable income limit. The preceding sentence shall cease to apply to any individual or family whose income, as of the most recent determination, exceeds one hundred forty percent (140%) of the applicable income limit (adjusted for family size) if, after such determination, but before the next income determination, any Residential Rental Unit of comparable or smaller size in the building is occupied by a new individual or family resident whose income exceeds the applicable income limit (adjusted for family size).

(b) During each taxable year in the Extended Use Period, the applicable fraction (as such term is defined in Section 42(c)(B) and is used in Section 42(h)(6) of Code) shall not be less than the smaller of: (i) the unit fraction or (ii) the floor space fraction (as such terms are defined in Sections 42(c) of the Code).

(c) The Developer shall not evict or terminate the tenancy of any tenant (including any tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) of any Low-Income Unit in the Project, other than for good cause, or increase the Gross Rent with respect to such Low-Income Units in excess of the amount allowable as Rent-Restricted Units.

(d) The Developer shall obtain from each Low-Income Tenant and maintain on file an Income Certification pursuant to

the requirements and procedures found in the Low-Income Rental Housing Tax Credit Compliance Manual immediately prior to the initial occupancy of a dwelling unit in the Project by such Low-Income Tenant. The Developer shall also obtain, at least annually thereafter, and maintain on file an Income Certification from each Low-Income Tenant (and from each tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) to determine whether the then current income of such Low-Income Tenant (or such tenants whose incomes are treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) residing in the Project exceed the applicable income limits, adjusted for family size. In addition, the Developer shall require each Low-Income Tenant (or tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) to notify the Developer of any material change of information in his, her or their, as the case may be, most recent Income Certification. The Income Certification shall be in the form and contain such information as may be required by the Code and the policies of the Agency, as the same may be from time to time amended by the Agency on the advice of Counsel, or in such other form and manner as may be required by applicable rules, rulings, procedures, official statements, regulations or policies now or hereafter promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to Tax Credits. Photocopies of each such Income Certification shall be submitted to the Agency and the Monitoring Agent (i) on or before the tenth (10th) day of the calendar month following the calendar quarter during which the first Residential Rental Unit in the Project is first occupied, (ii) on or before the tenth (10th) day of the calendar month following each calendar quarter thereafter, and (iii) as requested by the Agency or the Monitoring Agent, which may be as often as may be necessary, in the opinion of the Agency or its Counsel, to comply with the provisions of the Code. In addition to the foregoing, the Developer shall submit to the Agency (iv) Quarterly Status Reports, on Forms specified by the Agency, not later than ten (10) days after the beginning of each calendar quarter during the Compliance Period; and (v) Annual Reports, on Forms specified by the Agency, not later than August 1 of each year. For the purpose of this Section, a calendar quarter shall be deemed to commence on January 1, April 1, July 1 and October 1 of each year.

(e) The Developer shall maintain complete and accurate records pertaining to the Low-Income Units for at least six (6) years following the indicated date of each such record and shall permit any duly authorized representative of the Agency, the Monitoring Agent, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Developer pertaining to the Income Certifications and income substantiation materials of Low-Income Tenants (and such tenants whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) residing in the Project upon reasonable notice and at reasonable times.

(f) The Developer shall immediately notify the Agency and the Monitoring Agent if at any time the Residential Rental Units in the Project are not occupied or available for occupancy as provided in Section 3(a) above.

Section 4. Sale, Lease or Transfer of the Project or any Building.

(a) The Developer shall not enter into a sale, lease, exchange, assignment, conveyance, transfer or other disposition (collectively, a "Disposition") of the Project or any building in the Project: (i) unless such Disposition is of all of a building in the Project, and (ii) without prior written notice to the Secretary of the Treasury and to the Agency, and the compliance with all rules and regulations of the Department of the Treasury and the Agency applicable to such Disposition. The Developer shall notify the Agency in writing of the name and address of the person to whom any Disposition has been made within fourteen (14) days after the date thereof. It is hereby expressly stipulated and agreed that any Disposition of the Project or of any building in the Project by the Developer in violation of this Section 4 shall be null, void and without effect, shall cause a reversion of title to the transferor Developer, and shall be ineffective to relieve the Developer of its obligations under this Agreement. The Developer shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Agreement in any deed or other documents transferring any interest in the Project or in any building in the Project to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Agreement by any such transferee.

(b) The restrictions contained in Section 4(a) shall not be applicable to any of the following: (1) any transfer pursuant to or in lieu of a foreclosure or any exercise of remedies (including, without limitation, foreclosure) under any mortgage on the Project; provided, however, that neither the Developer nor any Related Person to the Developer shall acquire any interest in the Project during the remainder of the Extended Use Period; (2) any sale, transfer, assignment, encumbrance or addition of limited partnership interests in the Developer; (3) grants of utility-related easements and governmental easements, shown on the title policy approved by the Agency and any other easement and use agreements which may be consented to by the Agency and service-related leases or easements, such as laundry service leases or television cable easements, over portions of the Project; provided, however, the same are granted in the ordinary course of business in connection with the operation of the Project as contemplated by this Agreement; (4) leases of apartment units to tenants, including Low-Income Tenants, in accordance with this Agreement; (5) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof; (6) the placing of a subordinate mortgage lien, assignment of leases

and rents or security interests on or pertaining to the Project if made expressly subject and subordinate to this Agreement; or (7) any change in allocations or preferred return of capital, depreciation or losses or any final adjustment in capital accounts (all of which may be freely transferred or adjusted by Developer pursuant to Developer's partnership agreement).

Section 5. Project Within Agency's Jurisdiction. The Developer hereby represents and warrants that each building in the Project shall be located entirely within the limits of the County.

Section 6. Term of this Agreement.

(a) This Agreement shall become effective upon its execution and delivery, and shall remain in full force and effect until the expiration of the Extended Use Period or except as otherwise provided in this Section 6. Upon the termination of this Agreement, upon request of any party hereto, the Agency and the Developer or any successor party hereto shall execute a recordable document prepared by the Agency or its Counsel further evidencing such termination.

(b) The restrictions contained in Section 2 and Section 3 of this Agreement regarding the use and operation of the Project and of each building in the Project shall automatically terminate in the event of involuntary noncompliance caused by fire, seizure, requisition, foreclosure or transfer of title by deed in lieu of foreclosure to an entity other than the Developer or a Related Person of the Developer (except as may otherwise be determined by the Secretary of the Treasury), change in a federal law or an action of a federal authority after the date hereof which prevents compliance with the covenants expressed herein, or condemnation or similar event (as determined by the Agency upon the advice of Counsel). In such event, upon the request and at the expense of the Developer, the parties hereto shall execute an appropriate document in recordable form prepared by the Agency or its Counsel to evidence such automatic termination. This Section 6(b) shall not apply (and the restrictions contained in Sections 2 and 3 shall thereafter apply) to the Project in the event that, subsequent to any involuntary noncompliance as described in this Section 6(b) but prior to the expiration of the Extended Use Period, (x) a Related Person to the Developer obtains an ownership interest in the Project for tax purposes, or (y) the Secretary of the Treasury determines that such foreclosure or transfer of title by deed in lieu of foreclosure is part of an arrangement to terminate this Agreement.

(c) The restrictions contained in Section 2 and Section 3 of this Agreement regarding the use and operation of the Project and of each building in the Project shall terminate on the date that is (x) fifteen years after the last day of the Compliance Period applicable to the Project or such building(s) and (y) the last day of the one (1) year period beginning on the

date that the Developer submits a written request to the Agency to find a purchaser of the Developer's interest in the Project or such building(s) pursuant to the Agency's rules and regulations, Florida Administrative Code, Rule 9I-33.018, if during such one (1) year period, the Agency is unable to present to the Developer a qualified contract (within the meaning of Section 42(h)(6) of the Code) for the purchase of the Project or such building(s) by a person who will continue to operate the Project or such building(s) as a qualified low-income housing project or qualified low-income building(s), as the case may be.

(d) Notwithstanding the termination of the restrictions contained in Section 2 and Section 3 prior to the expiration of the Extended Use Period, the Developer (including any successor or assignee of the Developer) shall not, prior to the end of the three (3) year period following such termination:

- (i) evict or terminate the tenancy of any existing tenant (including any tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) of any Low-Income Unit, other than for good cause, or (ii) increase the Gross Rent with respect to such Low-Income Units in excess of the amounts allowable as Rent-Restricted Units.

(e) Notwithstanding any other provisions of this Agreement, this entire Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Agency and the Developer if there shall have been received an opinion of Counsel to the Agency that such termination is permitted under Section 42 of the Code.

**Section 7. Indemnification.** The Developer hereby covenants and agrees to indemnify and hold the State, the Agency and the Monitoring Agent, and their respective members, directors, officers, employees, attorneys, agents and representatives (any or all of the foregoing collectively referred to as the "Indemnified Persons") harmless from and against any and all losses, damages, judgments (including specifically punitive damage awards), arbitration awards, amounts paid in settlements, costs and expenses and liabilities of whatsoever nature or kind (including, but not limited to, reasonable attorneys' fees, whether or not suit is brought and whether incurred in connection with settlement negotiations, investigations of claims, at trial, on appeal, in bankruptcy or other creditors' proceedings or otherwise, expert witness fees and expenses and court costs) directly or indirectly resulting from, arising out of or in connection with any act or omission to act by the Developer or any of its partners, directors, officers, employees, attorneys or agents or other persons under direct contract to the Developer or acting on its behalf, resulting from, arising out of or relating to: (i) the granting of (or failure to grant) any low-income housing tax credits, (ii) the interpretation or enforcement of any provision of this Agreement (including but not limited to any action by any tenant to enforce the provisions hereof), (iii) any written statements or representations made or given by the Developer or by any partner,

director, officer, employee, attorney or agent of the Developer or by any person under direct contract to the Developer or acting on the Developer's behalf to any person to whom the Developer sells or offers to sell any interest in low-income housing tax credits, or (iv) the design, construction, installation, operation, use, occupancy, maintenance or ownership of the Project.

Each Indemnified Person will promptly, and after notice to such Indemnified Person (notice to the Indemnified Persons being serviced with respect to the filing of an illegal action, receipt of any claim in writing or similar form of actual notice) of any claim as to which he asserts a right to indemnification, notify the Developer of such claim. Each Indemnified Person will provide notice to the Developer promptly, but in no event later than seven (7) days following his receipts of a filing relating to a legal action or thirty (30) days following his receipt of any such other claim.

If any claim for indemnification by one or more Indemnified Persons arises out of a claim for monetary damages by a person other than the Indemnified Persons, the Developer shall undertake to conduct any proceedings or negotiations in connection therewith which are necessary to defend the Indemnified Persons and shall take all such steps or proceedings as the Developer in good faith deems necessary to settle or defeat any such claims, and to employ counsel to contest any such claims; provided, however, that the Developer shall reasonably consider the advice of the Indemnified Persons as to the defense of such claims, and the Indemnified Persons shall have the right to participate, at their own expense, in such defense, but control of such litigation and settlement shall remain with the Developer. The Indemnified Persons shall provide all reasonable cooperation in connection with any such defense by the Developer. Counsel (except as provided above) and auditor fees, filing fees and court fees of all proceedings, contests or lawsuits with respect to any such claim or asserted liability shall be borne by the Developer. If any such claim is made hereunder and the Developer does not undertake the defense thereof, the Indemnified Persons shall be entitled to control such litigation and settlement and shall be entitled to indemnity for all costs and expenses incurred in connection therewith pursuant to the terms of this Section 7. To the extent that the Developer undertakes the defense of such claim, the Indemnified Persons shall be entitled to indemnity hereunder only to the extent that such defense is unsuccessful as determined by a final judgment of a court of competent jurisdiction, or by written acknowledgment of the parties. The Developer reserves the right to appeal any judgment rendered.

Section 8. Reliance. The Agency and the Developer hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Developer's use of the Tax Credits. In performing their duties and obligations hereunder, the Agency

may rely upon statements and certificates of the Developer and Low-Income Tenants believed in good faith to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Developer pertaining to occupancy of the Project. No interlineation or manual alteration to the typed version of this Agreement shall be permitted unless initialed by all parties to the Agreement. In addition, the Agency may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by the Agency hereunder in good faith and in conformity with the opinion of such counsel. The Developer shall reimburse the Agency for reasonable attorneys' fees and expenses incurred in obtaining the opinion of such counsel. In performing its duties and obligations hereunder, the Developer may rely upon certificates of Low-Income Tenants reasonably believed to be genuine and to have been executed by the proper person or persons. The Developer may rely on the rules, regulations, guidelines and policies of the Agency, the Department of the Treasury, and upon reasonable interpretations of the same.

Section 9. Enforcement by the Agency and by Tenants.

If the Developer defaults in the performance of its obligations under this Agreement or breaches any covenant, agreement or warranty of the Developer set forth in this Agreement, and if such default or breach remains uncured for a period of sixty (60) days (or ninety (90) days for any default not caused by a violation of Section 2 or 3 hereof) after written notice thereof shall have been given by the Agency to the Developer (or for an extended period approved in writing by Agency Counsel (x) if such default or breach stated in such notice can be corrected, but not within such sixty (60) day (or ninety (90) day) period, and (y) if the Developer commences such correction within such sixty (60) day (or ninety (90) day) period and thereafter diligently pursues the same to completion within such extended period), then the Agency shall give notice of such default or breach to the Internal Revenue Service and may terminate all rights of the Developer under this Agreement, and the Agency may take whatever other action at law or in equity or otherwise, whether for specific performance of any covenant in this Agreement or such other remedy as may be deemed most effectual by the Agency to enforce the obligations of the Developer under this Agreement.

Notwithstanding any of the foregoing, the Agency shall have the right to seek specific performance of any of the covenants, agreements and requirements of this Agreement concerning the construction and operation of the Project and any person who satisfies the income limitations applicable to Low-Income Tenants hereunder (whether prospective, present or former occupants of any Residential Rental Unit in any building included in the Project, including any tenant whose income is treated as continuing not to exceed the applicable income limit as provided in Section 3(a) above) shall separately have the right to seek

specific performance and otherwise enforce the requirements of Section 3(b) and Section 3(c) with respect to such building that is part of the Project.

The Agency shall have the right to require the Developer to remove any Manager or Managing Agent who does not require compliance with this Agreement upon such Manager's or Managing Agent's being given thirty (30) days' written notice of a violation, and such right shall be expressly acknowledged in any contract between the Developer and any Manager or Managing Agent.

The Agency shall have the right to enforce this Agreement and require curing of defaults in shorter periods than specified above if Agency Counsel makes a reasonable determination that such shorter periods are necessary to comply with Section 42 of the Code.

Section 10. Recording and Filing; Covenants to Run with the Land.

(a) Upon execution and delivery by the parties hereto, the Developer shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the official public records of the County in such manner and in such other places as the Agency may reasonably request and shall pay all fees and charges incurred in connection therewith.

(b) This Agreement and the covenants herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Developer and the Agency and their respective successors and assigns during the term of this Agreement.

(c) Upon reasonable notice, if there has been no event of default under this Agreement, the Agency shall furnish to the Developer a statement in writing certifying that the Agreement is not in default.

Section 11. Amendments Required by the Code. To the extent that Section 42 of the Code or any amendments thereto and any final or temporary Treasury Regulations or Revenue Rulings thereunder shall impose requirements upon the ownership or operation of the Project more or less restrictive than those imposed by this Agreement, the Developer and the Agency agree that this Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements or to impose less restrictive requirements, as appropriate; provided, however, this Section 11 shall not affect requirements of this Agreement imposed by State law or agreed to by the Developer that were the basis of the Agency's competitively scoring and ranking the Developer's application (including any modifications or supplements thereto) for Tax Credits. The Developer and the Agency shall execute, deliver and, if applicable, file of record any and all documents and instruments necessary in the reasonable

opinion of Counsel to the Agency to be in compliance with the provisions of Section 42 and all other provisions of the Code and Florida law relating to Tax Credits.

Section 12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Section 13. Notice. Any notice required to be given hereunder shall be given by personal delivery, by registered or certified U.S. Mail or by expedited delivery service at the address as specified below or at such other addresses as may be specified by notice to the other parties hereto, and any such notice shall be deemed received on the date of delivery, if by personal delivery or expedited delivery service, or upon actual receipt if sent by registered or certified U.S. Mail:

Agency: FLORIDA HOUSING FINANCE AGENCY  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329  
Attn: Susan J. Leigh  
Executive Director

Developer: MAYFAIR ASSOCIATES, LTD.  
3030 Hartley Road, Suite 100  
Jacksonville, Florida 32257  
Attn: Mark T. Farrell

Section 14. Severability. If any provision of this Agreement shall be held by any court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed omitted from this Agreement and the validity, legality and enforceability of the remaining portions of this Agreement shall remain in full force and effect, but such holding shall not affect the validity, legality or enforceability of such provision under other, dissimilar facts or circumstances.

Section 15. Multiple Counterparts. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

Section 16. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties and their successors and assigns, but this provision shall not be construed to permit assignment by the Developer without the written consent of the Agency.

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SIGNATURE PAGE FOR  
EXTENDED LOW-INCOME HOUSING AGREEMENT

IN WITNESS WHEREOF, the Agency and the Developer have executed this Agreement as of the date first written above.

WITNESSES:

FLORIDA HOUSING FINANCE AGENCY, a state agency and instrumentality and a public body corporate and politic duly existing under the laws of the State of Florida

Angela Marie Wiggins  
ANGELA MARIE WIGGINS  
Linda M. Hawthorne  
Linda M. Hawthorne

By: [Signature]  
Susan J. Leigh  
Executive Director and Secretary

(SEAL)

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was executed and acknowledged before me this 7<sup>th</sup> day of NOVEMBER, 1994 by Susan J. Leigh as Executive Director and Secretary of the FLORIDA HOUSING FINANCE AGENCY, a state agency and instrumentality and a public body corporate and politic duly existing under the laws of the State of Florida, on behalf of said Agency. She is personally known to me and did not take an oath or affirmation.



GRETA M. VORES  
MY COMMISSION # CC352081 EXPIRES  
March 31, 1998  
BONDED THRU TROY FAIR INSURANCE, INC.

Greta M. Vores  
Notary Public  
Printed Name: Greta M. Vores  
My Commission Expires:

SIGNATURE PAGE FOR  
EXTENDED LOW-INCOME HOUSING AGREEMENT

IN WITNESS WHEREOF, the Agency and the Developer have  
executed this Agreement as of the date first written above.

WITNESSES:

Mayfair Associates, Ltd.

Florida limited partnership, a

By: Mark T. Farrell

one of Its general partners of  
VFA-Mayfair, Inc.

By: Mark T. Farrell  
Vice President, Secretary,  
Title and Treasurer

Bernard E. Smith  
Laura E. Davis

By: \_\_\_\_\_  
one of \_\_\_\_\_ general partners of

By: \_\_\_\_\_  
Title

STATE OF Florida  
COUNTY OF Duval

The foregoing instrument was executed and acknowledged  
before me this 28th day of November, 1994 by  
Mark T. Farrell individually as one of Its  
general partners of Mayfair Associates, Ltd., a  
Florida limited partnership, on behalf of said partnership.  
He is personally known to me ~~or has produced~~  
~~as identification and did/did not~~ take an oath or  
affirmation.



KRISTEN K PACKARD  
My Commission CC341663  
Expires Jan. 13, 1998  
Bonded by HAI  
800-422-1655

Kristen K. Packard  
Notary Public.  
Printed Name: Kristen K. Packard  
My Commission Expires: Jan. 13, 1998

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was executed and acknowledged  
before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by  
\_\_\_\_\_ individually as one of \_\_\_\_\_  
general partners of \_\_\_\_\_, a  
\_\_\_\_\_ limited partnership, on behalf of said partnership.  
He is personally known to me or produced \_\_\_\_\_  
\_\_\_\_\_ as identification and did/did not take an oath or  
affirmation.

\_\_\_\_\_  
Notary Public  
Printed Name:  
My Commission Expires:

Book 7984 Pg 1165

EXHIBIT "A"

LEGAL DESCRIPTION

Attached.

2982-001-10439.01 (rev. 3-1-91)

EXHIBIT A

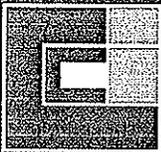
That certain piece, parcel or tract of land situate, lying and being in the City of Jacksonville, County of Duval, and State of Florida, known and described as:

A parcel of land situate and being in the City of Jacksonville, County of Duval, State of Florida, and being that certain tract or parcel of land, being a part of Blocks 1, 2, 4 and 5 of St. Nicholas, Schumacher and Haydens Subdivision, shown on map thereof recorded in Plat Book 1, page 21, of the former Public Records of Duval County, Florida, together with portions of streets adjoining said blocks which have been closed by City Ordinance BB16, all of which being more particularly described as:

Beginning at the Northwest corner of Lot 16, Block 1, of Mayfair Place, as shown on map thereof recorded in Plat Book 17, Page 29 of the current public records of Duval County, Florida, thence South  $80^{\circ}02'30''$  West, a distance of 25.0 feet to a point; thence South  $09^{\circ}57'30''$  East, and parallel and 25.0 feet distant from the westerly line of said Block One, of Mayfair Place, a distance of 757.62 feet to an intersection with the northerly right of way line of Beach Boulevard; thence along the same North  $61^{\circ}43'00''$  West, a distance of 578.35 feet to a point, said point being an intersection with the easterly right of way line of a certain drainage right of way; thence along the same North  $13^{\circ}14'00''$  East, a distance of 23.62 feet to a point; thence continuing along the same North  $12^{\circ}29'52''$  East, a distance of 289.34 feet to an intersection with the southerly line of Lot 4, Block 4 of said St. Nicholas, Schumacher and Haydens Subdivision; thence along the same North  $78^{\circ}23'37''$  East, a distance of 90.77 feet to the easterly line of said Block 4 of St. Nicholas, Schumacher and Haydens Subdivision; thence along the same North  $11^{\circ}13'23''$  West, a distance of 300 feet to a point; thence North  $78^{\circ}23'37''$  East, crossing Penn Avenue (formerly Elm Avenue) and along the northerly line of Lots 13 and 8, Block 2 of said St. Nicholas, Schumacher and Haydens Subdivision and a prolongation thereof, a distance of 275.36 feet to an intersection with a northerly prolongation of the westerly line of said Block 1, of Mayfair Place; thence South  $09^{\circ}57'30''$  East, a distance of 200.18 feet to the Point of Beginning; excepting therefrom that certain parcel or land described as beginning at the Northeast corner of aforesaid tract; thence South  $09^{\circ}57'30''$  East, 25.18 feet; thence South  $84^{\circ}57'00''$  West, 12.68 feet; thence North  $09^{\circ}57'30''$  West 10 feet, more or less to the waters of Millers Creek; thence Northwesterly along the same 104 feet, more or less to the northerly line of Block 2 of said St. Nicholas, Schumacher and Haydens Subdivision; thence North  $78^{\circ}23'37''$  East, 116 Feet, more or less to the Point of Beginning.

# 2008 Report of Duval, Clay, and Nassau Counties' Homeless Population

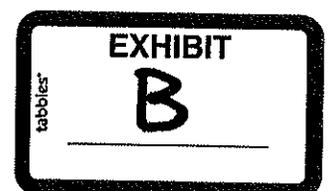
Prepared for the  
Emergency Services and Homeless Coalition of Jacksonville, Inc.



Northeast Florida Center for Community Initiatives  
Department of Sociology and Anthropology  
University of North Florida  
Jacksonville, FL

Tracy A. Milligan, Assistant Director  
Jeffry A. Will, Director and Professor of Sociology  
Tim Cheney, Assistant Director

May 2008





## II. THE 2008 HOMELESS COUNTS

### Annual Count

#### Totals

According to service providers, the estimated number of homeless individuals (adults and children) in Duval and Nassau Counties during 2007 was 18,393 (see Figure II-1).<sup>7</sup> This includes individuals served at emergency shelters, transitional housing, and, unlike the point-in-time count, permanent supportive housing. The count represents an increase of 7.7 percent from the previous annual count. Some service providers did not provide an annual count indicating the estimates are lower than the actual population served (see Appendix A for breakdown of numbers by service provider and year).

We see a tremendous increase in the number of homeless individuals when just Duval County is examined. In Duval County, 18,088 homeless individuals received services at least once during 2007. This represents a 9.8 percent increase from the previous annual count. Since 2000, when the annual count was first conducted, the homeless population has almost doubled, increasing by 92.4 percent. This is an incredible increase especially in comparison to the county's general population change during the same time period. Duval County's overall population increased from 782,691 in 2000 to an estimated 902,361 in 2007, an increase of 15.3 percent.<sup>8</sup>

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<sup>7</sup> Clay County did not report annual count data.

<sup>8</sup> Population data obtained from: Florida Department of Health. Office of Planning, Evaluation, and Data Analysis. <http://www.floridacharts.com/charts/PopQuery.aspx>



## Point-In-Time Count

### Totals

During the 2008 point-in-time count, it was estimated that individuals 2,821 (adults and children) were homeless in Duval, Clay, and Nassau Counties on January 28, 2008 (see Appendix A for a breakdown of the numbers by service providers for 2005, 2006-07, and 2008). This point-in-time count does not include those who reside in permanent supportive housing. As seen in Figure II-6, the 2008 point-in-time count was a slight increase of 2.8 percent from the previous point-in-time count.

The increase in the number counted can be the result of an actual increase in the number of homeless individuals and/or a combination of extenuating factors including the weather. The count is conducted in January because it is generally the coldest time of the year. This helps to ensure higher numbers at area shelters and therefore more accurate counts. The weather on the day of the count was indeed cold and, as a result, the emergency cold night shelter at the Beach was opened the night before the count and survey. The Downtown emergency cold night shelter accepted individuals the night of the count and survey.

The point-in-time count totals are also somewhat affected by the extent of the volunteer effort to walk the streets and the number of homeless persons who acquire services that day. The ESHC and the Coalition for the Homeless of Nassau County worked hard and diligently to coordinate the efforts of this year's count. A group of dedicated volunteers recruited and coordinated numerous volunteers to walk the respective counties. Duval County was divided into 13 zones and Nassau County was divided into four zones. Each zone had a Zone Commander who was responsible for recruiting volunteers for the evening. Police Officers from the Jacksonville Sheriff's Office and Jacksonville Beach provided valuable information in regards to the locations of camps and other areas frequented by homeless individuals.

Not surprising given the county populations, Duval County accounted for a vast majority of the total count. According to the data provided by United Way of Northeast Florida, there were an estimated 2,638 homeless individuals in Duval County (127 of which were from the Beaches), 72 homeless persons counted in Clay County, and 111 were accounted for in Nassau County.

While the total point-in-time count indicates a slight increase from the previous count, the total is very similar to last year when Nassau County numbers were not included. Indeed, Duval and Clay Counties had 30 fewer homeless individuals counted this year than last year. Furthermore, although Duval County has experienced a significant increase since 2000 when 1,726 homeless individuals were counted, more recent data illustrates a more stable trend. In examining the point-in-time data since 2003, one can see that the number of homeless counted has been relatively consistent, with the exception of 2004 where there were nearly 3,000 individuals enumerated.

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## The Florida Times-Union

November 10, 2008

# Homelessness: Numbers grow, resources don't

By **JOSH SALMAN**,  
*The Times-Union*

He was suffering from depression, started drinking and had two strokes.

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He moved to Jacksonville for a job interview but never got the job.

Now, even with a college degree, he's struggling to find work, sleeping under bridges and washing up in fast-food restaurants.

James Greene is 62 and homeless.

Now he's staying at the Clara White Mission downtown, but not long ago was one of many Duval County residents struggling to make it through the night.

"It's a rough life, not knowing where you're going to eat, sleep, shower or use the bathroom," Greene said. "I wouldn't wish it on my enemies."

The homeless population is rising in Jacksonville as affordable housing becomes scarcer and assistance options decrease, said Diane Gilbert, executive director of the Homeless Coalition of Jacksonville.

The last count done by the coalition, in January, found 18,088 homeless people in Duval County, a 6.6 percent rise from the previous annual count.

And since the first annual count was conducted in 2000, the number of homeless in Duval nearly has doubled, according to the report.

The largest area increases in homelessness are found downtown and at the Beaches.

"The biggest reason is a combination of the downturn in the economy and a reduction in support at the city, state and federal level," Gilbert said. "The amount of assistance just isn't available as in years past."

Among the problems confronting local homeless people:

- Florida allocated \$1.4 million in emergency assistance for the 2007 fiscal year, but that money was



spent by last October, so that more than 10,000 Florida families applying for assistance last year were turned away, according to a memorandum released by the homeless coalition.

- The coalition already has received 6,500 applications since the 2008 fiscal year began July 1, and it again ran out of money Sept. 26, Gilbert said.

- Every shelter in Duval County currently has a waiting list, and all of the low-income housing areas are full.

- The waiting list for Section 8/HUD housing in Duval County is more than two years, according to the homeless coalition.

- Operating funds for food banks are running dry.

The Second Harvest Food Bank in Jacksonville has seen a 32 percent increase in the number of residents seeking food assistance this year and a 40 percent dropoff in food donations, said Wayne Rieley, president of Lutheran Social Services, which runs the food bank.

Rieley attributes the increase to the slumping economy, the price of gas and the mortgage crisis.

"For the first time, people that you usually think of as working-class families are stopping by," he said. "A lot of people are facing foreclosures and living out of cars and with other family."

One of the reasons Jacksonville's homeless population is increasing is due to the city's location.

"It's much easier for someone to live on the street when it's 80 degrees rather than minus 8," Gilbert said.

Of those surveyed, 45 percent were homeless for the first time this year, and the number of Duval County homeless currently unsheltered also has increased to 8,161, the highest total since 2002.

The number of homeless residents reported in Nassau County was 305, up from 71 in 2007, making nearly 2 percent of Duval and Nassau County residents homeless during some point in the year.

In St. Johns County, the homeless coalition found 1,238 homeless residents in its last annual count, a 24 percent increase from the 997 reported in 2007.

"The number of homeless has just been steadily growing during the past few years," said Jean Harden, St. Johns Homeless Coalition board member. "With foreclosures, rent increases, taxes and layoffs, it's getting really bad. Our cupboards are bare. This is the first time in a long time we've simply run out of supplies."

Although there was no annual count for Clay County in 2008, Gilbert suspects it also is seeing an increase due to a slight raise in the homeless point-in-time count.

Some developers have offered solutions and many houses have been donated, but the homeless coalition is running into what Gilbert calls the "not in my backyard issue," or communities not wanting the problem too close to home.

"It's really unfortunate because each homeless person is an individual," she said. "The public persona is that they are dangerous panhandlers, but that's far from the real individuals that are homeless. Most of

the panhandlers in Jacksonville aren't homeless at all and are just trying to take advantage of the economic situation."

"It's is an indication you have a very serious problem."

josh.salman@jacksonville.com, (904) 359-4351

This story can be found on Jacksonville.com at [http://www.jacksonville.com/tu-online/stories/111008/met\\_354190478.shtml](http://www.jacksonville.com/tu-online/stories/111008/met_354190478.shtml).

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# Business Journal

Friday, November 21, 2008

## Florida affordable housing agency changes decision, costs developer \$3 million

Jacksonville Business Journal - by [Christian Conte](#) Staff Writer

JACKSONVILLE — A proposed affordable housing project on the Southside is the first in Florida to receive preliminary commitment and then later be denied funding by the **Florida Housing Finance Corp.**

**The Richman Group Inc.** got the commitment from the state agency in October 2007 for tax-exempt bonds, a State Apartment Incentive Loan and 4 percent tax credits. The funds would have covered most of the estimated \$22 million cost to build the 168-unit Pine Grove Apartments on Powers Avenue, said company Executive Vice President Todd Fabbri.

But late last month, after the credit underwriting was completed and the company spent about \$3 million to buy the property and start the permitting process, Fabbri was notified that the project would not receive the state funding — the first project to get preliminary approval and later be denied funding since Florida's affordable housing construction program began in the early 1980s.

"The units we were proposing to build meet the needs of the community," Fabbri said. "This is a very disappointing and unfortunate experience."

Florida Housing Finance Executive Director Steve Auger said the project was denied because after months of evaluating, the agency's board of directors determined that Duval County was oversaturated with affordable housing for those who earn 60 percent of the area median income. The agency determines oversaturation by the occupancy rate of the projects, which hovers in the mid-80 percent range in Duval County.

The Richman Group will not be refunded any of the money the company has already spent on the project, and retooling the project to include more units for lower-income families is not an option, Auger said.

But Auger said the Richman Group has received funding of between \$400 million and \$500 million on 7,500 units built over the years.

"We pay them a healthy development fee because this is a risky business," Auger said. "The risk doesn't always go your way."

Fabbri said developers often defer development fees to ensure the viability of projects.

"They've made some questionable decisions in the past approving projects that probably shouldn't have been," Fabbri said. "They're masking the mistake by denying our project."

John Rood, chairman of **The Vestcor Companies Inc.**, has been urging the agency to stop funding so many projects for those who earn 60 percent of the area median income for several years. Vestcor owns Leigh Meadows, an affordable housing project about five miles from the proposed Richman Group project. Leigh Meadows is having a difficult time filling its units.

In a letter to Auger dated Oct. 28, Rood specifically addressed the Richman Group project.

"If built, this property will certainly have a negative impact on a number of existing affordable communities, which are already struggling with low economic occupancies at rental rates significantly under maximum rents."

Rood has lowered the 60 percent area median income units at Leigh Meadows to 50 percent, but the change has not boosted the occupancy rate.

"We want to make sure we're not putting a new development in that would cannibalize an existing development," Auger said of the Richman Group's project.

The median household income in Duval County in 2007 was \$49,230, according to the U.S. Census Bureau. The lower the area median income, the more difficult it is for a developer to make a profit on the units. Therefore, most affordable housing projects have units in a range of area median incomes, from 80 percent to 20 percent.

In Duval County, 64 percent of the nearly 14,000 units funded by the Florida Housing Finance Corp. are for those who earn 60 percent of the area median income.

Since 2002, the state agency has been monitoring counties considered to be oversaturated with units in that income bracket. Duval County has been on the list, which now includes six, since then. Next year, the list may grow to 16 counties.



There are likely many reasons why the occupancy rate is low for units for those who earn 60 percent of the area median income, including the ability of those wage earners to buy a home with funding assistance from other state programs or to rent investment homes and condominiums that owners have not been able to sell. Those units, which are part of the shadow market, have been typically less expensive this year than traditional market-rate apartments.

Wight Greger, deputy director of the city of Jacksonville housing and neighborhoods department, said there is a need in Duval County for about 10,000 units for those earning 30 percent of the area median income, which equates to about a minimum wage earner. She wrote a letter of support for the Richman Group project, which included 17 units in that income bracket.

"We need to serve those with the lowest income," Greger said. "Jacksonville doesn't do a very good job providing for this income level."

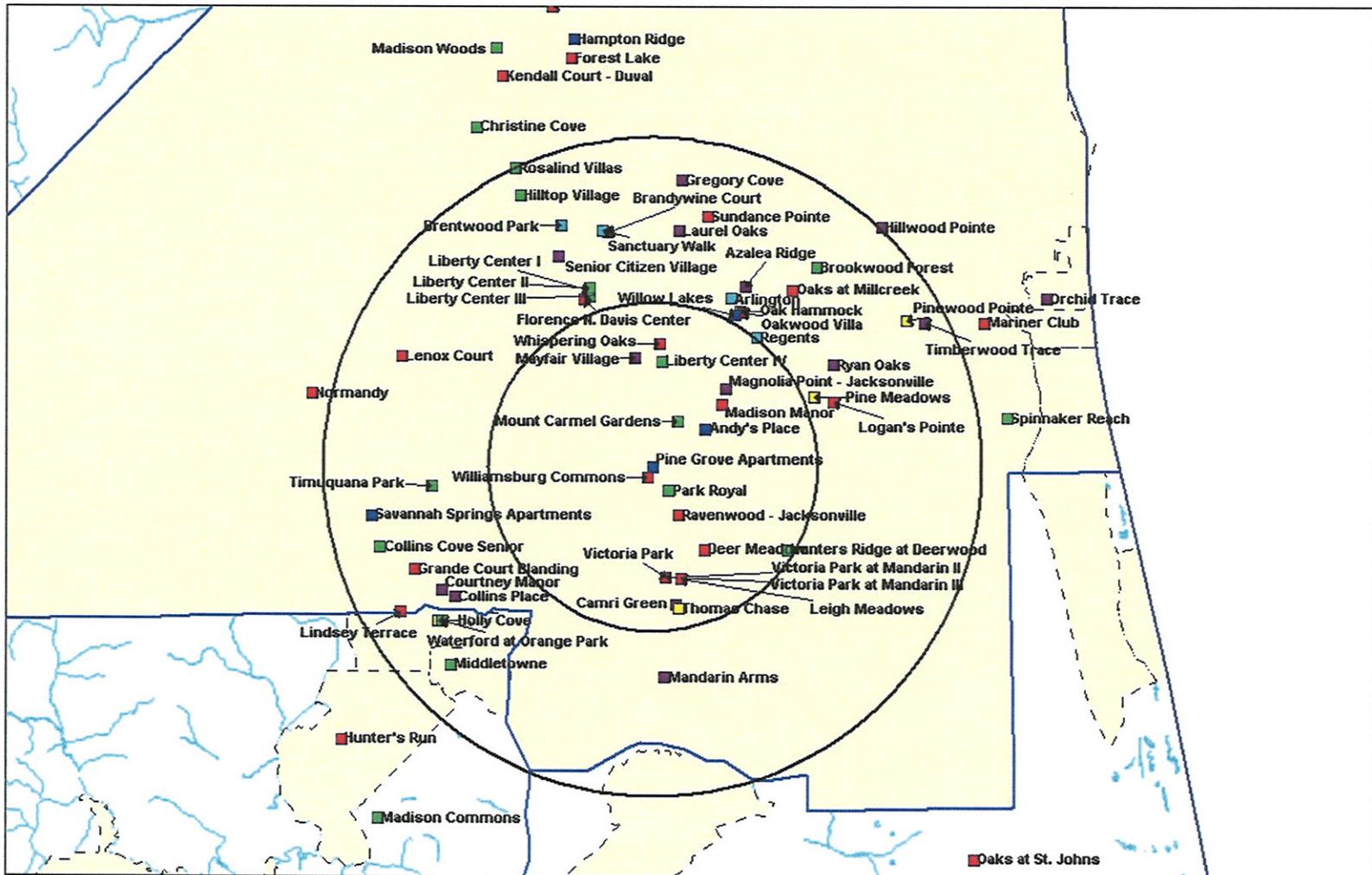
The Richman Group is considering its options for the Jacksonville property, which will likely include appealing the agency's decision. The agency is still reviewing other projects that have received preliminary commitment this year.

In the meantime, the Florida Housing Finance Corp.'s funds, which mostly come from documentary stamp taxes on real estate documents such as deeds, bonds, mortgages and liens, are also down. In 2002, the agency provided funding for a total of 81 projects throughout Florida; in 2008, it has had funding for only 46 projects. To offset the decline in funding, the agency has received funds from the state Legislature to pay developers to lower the area median income levels on some units.

"Developers are our partners on this," Auger said. "The state can't do this without them."

*cconte@bizjournals.com | 265-2227*

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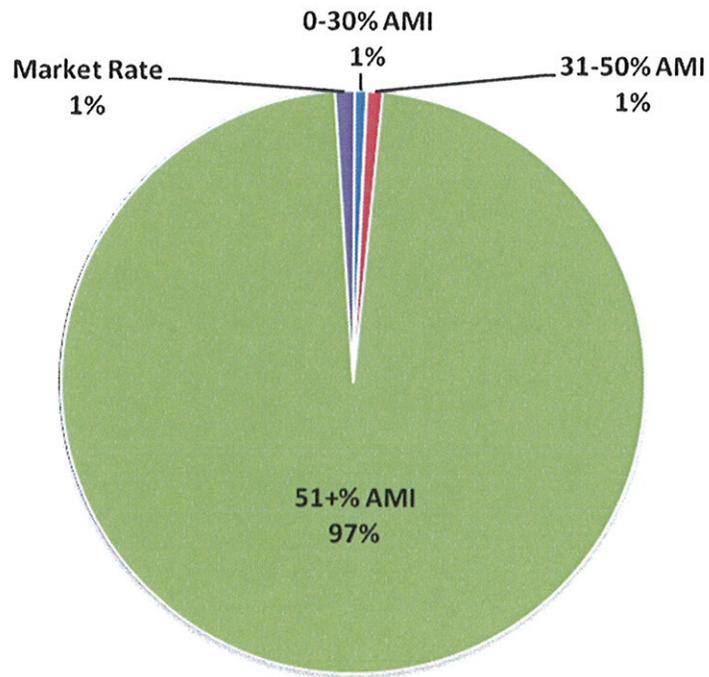


Duval County  
 2009 Location A Draft  
 December 2007 to May 2008

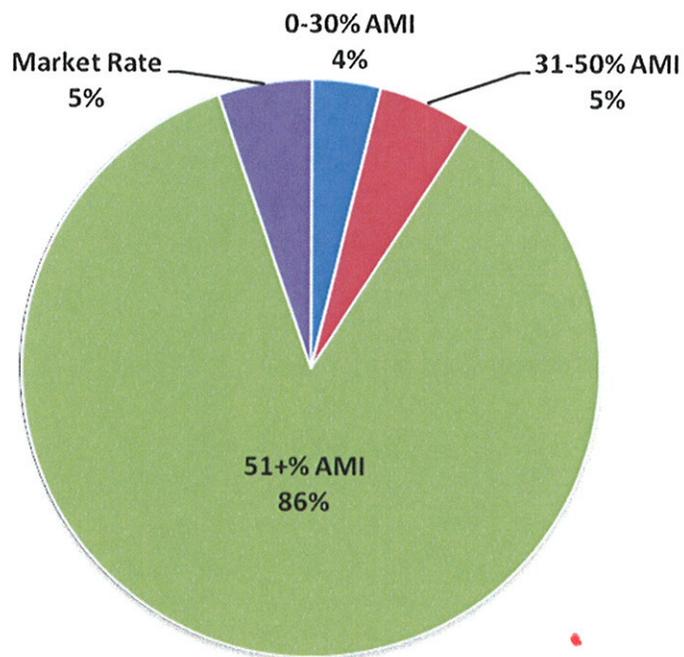
2009 Location A Draft

- 93% to 100% Occupancy
- 90% to 93% Occupancy
- Less than 90% Occupancy
- In Lease-Up
- Under Construction
- Insufficient Information

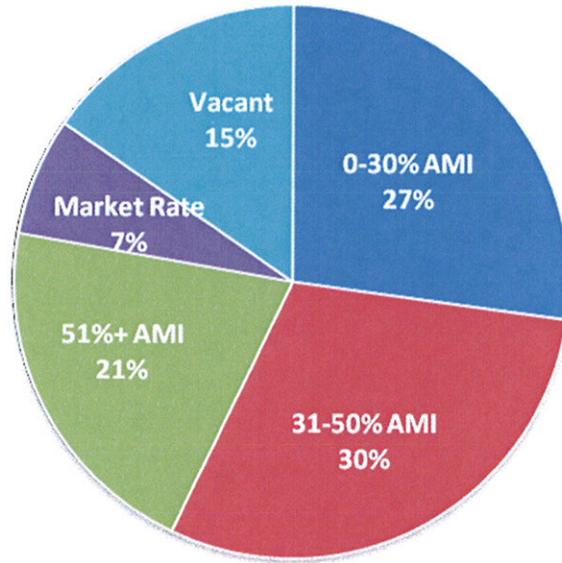
### Duval 5 Mile Ring Number of Units Targeted to Each Income Category



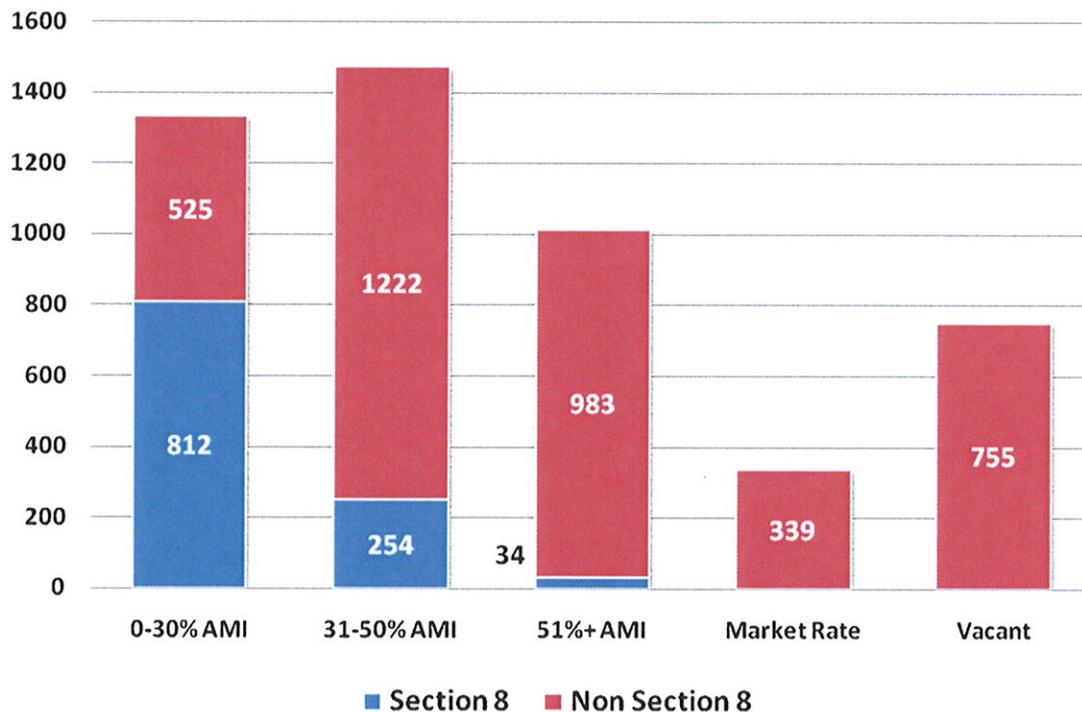
### Duval 10 Mile Ring Number of Units Targeted to Each Income Category



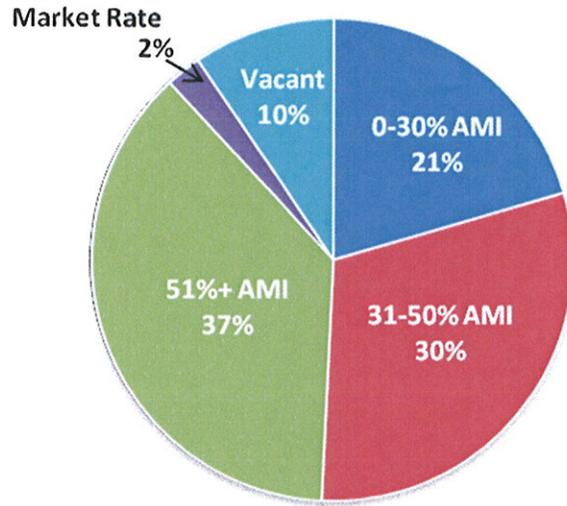
## Duval 10 Mile Ring Actual Household Incomes in Florida Housing Properties



## Duval 10 Mile Ring Actual Household Incomes In Florida Housing Properties (Including Section 8 Voucher Holders)



## Duval 5 Mile Ring Actual Household Incomes in Florida Housing Properties



## Duval Five Mile Ring Number of Households by Income In Florida Housing Properties (Including Section 8 Voucher Holders)

