STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO.: 2024-025VW
APPLICATION NO.: 2006-356HR

MORRIS COURT III, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

RECEIVED
APR 25 2024 9:20 AM
FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67ER06-232(3)(a) AND THE RRLP SET-ASIDE REQUIREMENTS

Morris Court III, Ltd., a Florida limited partnership (the "Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67ER06-32(3)(a) Florida Administrative Code ("F.A.C.") (the "Rule") dated July 5, 2006, which requires a minimum set-aside requirement of at least 15% of total units held for extremely low-income ("ELI") households for a period of 20 years (the "ELI Minimum Set-Aside Requirement") to allow Petitioner to convert its ELI household units to serve families at or below 60% of the area median income ("AMI") and extend the 50-year-set-aside term to 55 years, for reasons set forth below. This Petition is filed pursuant to Section 120.542, Florida Statues, and Chapter 28-104, Florida Administrative Code. In support, the Petitioner states as follows:

A. THE PETITIONER

1. The mailing address, telephone number and email of the Petitioner is as follows:

Morris Court III, Ltd.
Attn: Abe Singh
1920 West Garden Street
Pensacola, FL 32501
(850) 438-8561
execdir@areahousing.org

2. The mailing address, telephone number and email of the Petitioner's legal counsel is as follows:

Bernice Saxon, Esq.
Saxon Gilmore & Carraway, P.A.
201 E. Kennedy Blvd., Suite 600
Tampa, Florida 33602
Telephone: (813) 314.4500
Email:bsaxon@saxongilmore.com

3. On June 7, 2007 the Petitioner entered into that certain HHRP Loan Agreement (the "HHRP Loan") for Morris Court III Rental Development with the City of Pensacola (the "City"), a municipality chartered in the State of Florida and Escambia County, a political subdivision of the State of Florida (the "County") to finance the construction of a 50-unit multifamily senior development to be known as Morris Court III located in Escambia County, Florida (the "Development"). In accordance with the HHRP Loan, the Petitioner was required to set aside eight (8) units for Extremely Low Income ("ELI") Tenants. Eight (8) units were set aside to serve tenants at or below thirty percent (30%) or less AMI for the Extended Use Period as defined in the HHRP Loan. If this Petition is granted, the City has agreed to waive the 30% or less AMI of eight (8) units for ELI Tenants as required in the HHRP loan.

4. On January 18, 2008, the Petitioner entered into that Mortgage and Security Agreement (RRLP 2006-356HR) with the Corporation, in the original principal amount of $4,286,269 (consisting of a base loan in the principal amount of $3,766,269 and a supplemental

loan in the principal amount of $520,000) (the "RRLP Loan"), to finance the construction of the Development. In accordance with the RRLP Loan application and the Rule, the Petitioner was required to set aside fifteen percent (15%) of the units for ELI households. Eight (8) units were set aside to serve tenants at or below thirty-five percent (35%) or less AMI for the first 20 years of the 50-year set-aside term. After 20 years, the ELI household units may convert to serve families at or below 60% AMI. The Development is currently in year fifteen (15) of the required twenty (20) year term.

5. The Development has been struggling financially for the past five (5) years. Petitioner requested and was granted a forbearance of the RRLP loan, as it is in first position and requires annual interest payments. Petitioner is currently facing issues with meeting its debt service payment requirements under the existing development loans as well as meeting the operational costs and needs for the property. In order to assist in alleviating this issue, and aid in the overall financial difficulties, Petitioner is currently requesting relief from the 20-year term in order to convert the set-aside ELI units now to serve tenants at or below sixty percent (60%) AMI and agreeing to extend the 50-year-set-aside term to 55 years. This request is necessary to regain and maintain the financial feasibility of the Development and avoid escalation of the current financial insufficiencies the Development is facing due to the lower rents.

B. WAIVER IS PERMANENT

6. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver of Rule 67ER06-32(3)(a), F.A.C. (2006), which provides as follows:

Rule 67ER06-32(3)(a)

"(3) The RRLP Minimum Set-Aside Requirements are:

(a) At least 15 percent of the total units must be held for ELI Households for a period of 20 years. Following the 20-year ELI affordability period, the ELI Set-Aside will then convert to serve families at or below 60 percent of the area median income . . ."

D. JUSTIFICATION FOR PETITIONER'S REQUESTED WAIVER

8. Petitioner is seeking relief of the ELI Minimum Set-Aside Requirement to allow Petitioner to convert the set aside units early in order to ensure the Development has the opportunity to recover from current financial issues. The Development is currently facing issues with maintaining sufficient cash flow to enable the Development to operate. The current ELI Minimum Set-Aside Requirement is placing a strain on its ability to operate the Development and make the required interest payments on the RRLP Loan. Allowing for these ELI units to convert to serve families at or below 60% AMI, will directly assist with the financial burdens the Petitioner is facing and allow the Petitioner to make its required interest payments on the RRLP Loan.

9. Under Section 120.542(1), Fla. Stat., the Corporation has the power and authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. A waiver 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[1] or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. See § 120.542(2), Fla. Stat.

[1] "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, "principles of fairness" are violated when the 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. *See* Fla. Stat. § 120.542.

10. Strict adherence to the Rule will impose a substantial hardship on Petitioner because the Project will face extreme financial difficulties and potentially not be able to make its required debt services payments, unless the ELI Minimum Set-Aside Requirement is waived, and the units are allowed to convert to serving families at or below 60% AMI. Escambia County is in dire need of affordable housing and the proposed conversion of the ELI Household units to 60% AMI units would ensure that the Development will continue to be successfully operated in a manner consistent with the requirements and purpose of the RRLP. The conversion of the ELI Household units to 60% AMI units will, over time, allow the Development to be more financially stable, make its interest payments, and will allow the Petitioner to continue renting 50 much needed affordable senior units in Escambia County.

11. Further, a waiver of the Rule will serve the underlying purposes of Section 420.5087 and the Act, because one of the goals is for the proceeds of Corporation financing to be used to facilitate the availability of decent, safe and sanitary housing in the State of Florida. The Act (Section 420.501, et seq.) was passed to create inducements and opportunities for private and public investment in rental housing to increase the supply of affordable housing for low-income persons and households. Denial of the waiver would deprive Escambia County of essential affordable housing units. By granting this Petition, the Corporation would recognize the goal by facilitating the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households, particularly through Petitioner by continuing to rent much needed affordable housing units in Escambia County, Florida.

12. The requested waiver will not adversely affect Petitioner, any other party that applied to receive funding in the RFA, or the Corporation as stated above.

E. ACTION REQUESTED

13. For the reasons set forth herein, the Petitioner respectfully requests the Corporation (i) grant the requested waiver of the ELI set-aside affordability period and allow Petitioner to convert the Development to 100% of units to serve tenants at or below 60% AMI for a 55-year-set-aside term; (ii) grant this Petition and all the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

Monica A. Mercer

Monica A. Mercer, Esq.
Fla. Bar No. 65407
201 E. Kennedy Blvd, Suite 600
Tampa, Florida 33602
Telephone: (813) 314-4500
Email: mmercer@saxongilmore.com
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
Email: corporationclerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Email: joint.admin.procedures@leg.state.fl.us

This 25 day of April, 2024.

By: Monica A. Mercer
Monica A. Mercer, Esq.
Fla. Bar No. 65407