

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application No. 2006-065C

MORRIS COURT II, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(14)(e) TO MODIFY
THE SITE OF THE MORRIS COURT II DEVELOPMENT**

Petitioner Morris Court II, Ltd., a Florida limited partnership ("Morris Court"), petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of restrictions on changing a development's site. *See* Rule 67-48.004(14)(e), F.A.C. (2006) (the "Rule").

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Morris Court requests a waiver of the Rule to allow a modification of its development's site.

A. THE PETITIONER

2. The name, address, and telephone and facsimile numbers for Morris Court and its qualified representative are:

Morris Court II, Ltd.
c/o Liz Wong
2937 S.W. 27th Avenue, Suite 200
Miami, Florida 33133
Telephone: 305-476-8118
Facsimile: 305-476-1557

3. The name, address, telephone and facsimile numbers, and e-mail addresses of Morris Court's attorneys, for purposes of this Petition, are:

Brian J. McDonough, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: 305-789-3200
Facsimile: 305-789-3395
E-mail: bmcdonough@swmwas.com

Mimi L. Sall, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF &
SITTERSON, P.A.
200 East Las Olas Blvd., Suite 2100
Fort Lauderdale, Florida 33301
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E-mail: msall@swmwas.com

4. Pursuant to the 2006 Universal Cycle, Morris Court submitted its 2006 Universal Application ("Universal Application") for Housing Credits under the Low Income Housing Tax Credit program.¹ See Application No. 2006-065C.

5. Florida Housing has issued its Preliminary Allocation of Housing Credits reserved in the amount of \$1.1 million, and it is anticipated that there will be a Final Housing Credit Allocation granted to Morris Court in accordance with Florida Housing's final allocation procedures.

6. Equity raised from Housing Credits will be used for the development of Morris Court II, a new 74-unit apartment development (the "Development") intended to serve very-low and low-income individuals and families in Pensacola, Escambia County, Florida.

7. The requested Rule waiver will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Morris Court; (b) could deprive Escambia County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

¹The Universal Application Package has been adopted and incorporated into Chapter 67-48 by Rule 67-48.004(1)(a), F.A.C. (2006).

8. The waiver being sought is permanent in nature.

B. Rule from Which Relief is Requested and Statute Implemented by the Rule

9. Morris Court requests a waiver of Rule 67-48.004(14) which identifies non-curable matters in a Universal Application as follows:

Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline ... Those items are as follows: . . .

(e) Site for the Development;

10. The applicable Rule for which the waiver is requested is implementing Florida Housing Finance Corporation Act's statute that created the Housing Credits Program. § 420.5099, Fla. Stat. (2006).² The Act designates Florida Housing as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits. §§ 420.5099(1) and (2), Fla. Stat. (2006). Accordingly, the Rule that is the subject of Morris Court's waiver request is implementing, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2006).

C. Justification for Morris Court's Request to Modify Its Development's Site

11. When Morris Court submitted its Universal Application, the Development was intended to be developed within a 14-acre parcel(s) located at 1351 North K Street, Pensacola,

²The Florida Housing Finance Corporation Act (the "Act") is set forth in Sections 420.501 through 420.516 of the Florida Statutes. *See also* Rule 67-40.020(1), F.A.C.

Florida. *See* Universal Application at Part III.A.2., and the legal description appended to the Universal Application as Exhibit 27A, A-1, and A-2.

12. Based on subsequent negotiations and circumstances, Morris Court has determined that the Development can be constructed on approximately 7.9 acres within the original 14-acre parcel(s), and thereby save construction costs and expense, including those associated with additional site and infrastructure preparation.

13. The location of the Development will not be changed, and its Tie-Breaker Measurement Point ("TBMP"), identified in Exhibit 25 to Morris Court's Universal Application, remains within the Development's legal description, as modified. *See* Affidavit and Certification of Kenneth C. Jackson attached hereto as Exhibit A, and the revised legal description attached hereto as Exhibit B.

14. Additionally, because the Development's TBMP remains the same, the 7.5 Proximity Tie-Breaker Points awarded to Morris Court would not have changed.

15. The requested modification of the Development site would not have impacted the scoring of Morris Court's Universal Application, and would not have provided Morris Court with an unfair advantage over other applicants. Morris Court is simply using a portion of the original site with the TBMPA remaining within the Development's modified legal description.

16. The requested waiver will not prejudice the Development or the affordable housing market to be served by the Development, and may result in a savings of construction and development costs.

D. Conclusion

17. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 74 affordable housing units will be available in Escambia County, Florida.

18. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant. Florida Housing generally approves such waivers when it would not affect the scoring of an application or otherwise allow an applicant to obtain a possible unfair competitive advantage.

19. The requested waiver serves the purposes of Section 420.5099, Florida Statutes (2006), and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

§ 420.5099(2), Fla. Stat. (2006).

20. 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 Act through new construction in an economical and efficient manner.

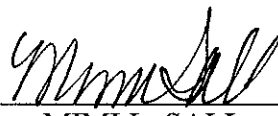
21. Should Florida Housing require additional information, Morris Court is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.004(14)(e) to Modify the Site of the Morris Court II Development.

WHEREFORE, Petitioner Morris Court II, Ltd., respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

- A. Waive the prohibition on changing a development's site location after submission of the Universal Application;
- B. Allow the Morris Court II Development to be developed on the site identified in Exhibit A to this Petition; and
- C. Award such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Morris Court II, Ltd.
200 East Las Olas Boulevard, Suite 2100
Fort Lauderdale, Florida 33301
Tel: (954) 462-9575
Fax: (954) 462-9567
E-mail: msall@swmwas.com

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 North 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 24th day of August, 2007.

By: Mimi L. Sall
Mimi L. Sall

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Affidavit and Certification of [Surveyor's Name]

Before me, the undersigned authority, personally appeared Kenneth C. Jackson, who being duly sworn, states that he personally knows the following facts and that the same are true and accurate.

My name is Kenneth C. Jackson. I am licensed by the State of Florida as a Professional Surveyor. My license number is 4549. I am the vice president of Sea Diversified Inc.. I am submitting this Affidavit and Certification on behalf of Morris Court II, Ltd. (the "Applicant"), and I am not related to the Applicant or any Principals or Financial Beneficiaries of the Applicant.

I prepared the Surveyor Certification and Sketch of Point Qualifiers "Tie-Breaker" Measurement Point attached as Exhibit 25 to the Applicant's Universal Application No. 2006-063C, for the development known as Morris Court II (the "Development").

I have reviewed a site sketch prepared by Pittman, Glaze and Associates and accompanying legal description prepared by Pittman, Glaze and Associates ("Revised Site Sketch"). A copy of the Revised Site Sketch, with accompanying legal description, is attached hereto as Exhibit 1. My review of the Revised Site Sketch confirms that the Tie-Breaker Measurement Point identified in Exhibit 25 remains within the legal description of the Revised Site Sketch.

Under penalties of perjury, I declare that these statements are true and correct.


Kenneth C. Jackson, P.S.M.

Aug. 21, 2007
Dated

STATE OF FLORIDA
COUNTY OF Calhoun

Sworn to and subscribed before me this 21 day of August, 2007, by Kenneth Jackson who is personally known to me or has produced as identification.

WITNESS my hand and official seal, this 21 day of August, 2007.

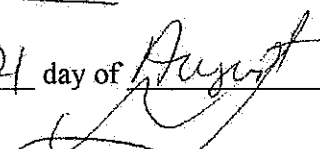

Notary Public Teresa Martinez
State of Florida Commission # FD376724
My Commission Expires DEC 05, 2008
Bonded thru Atlantic Bonding Co., Inc.

Exhibit A

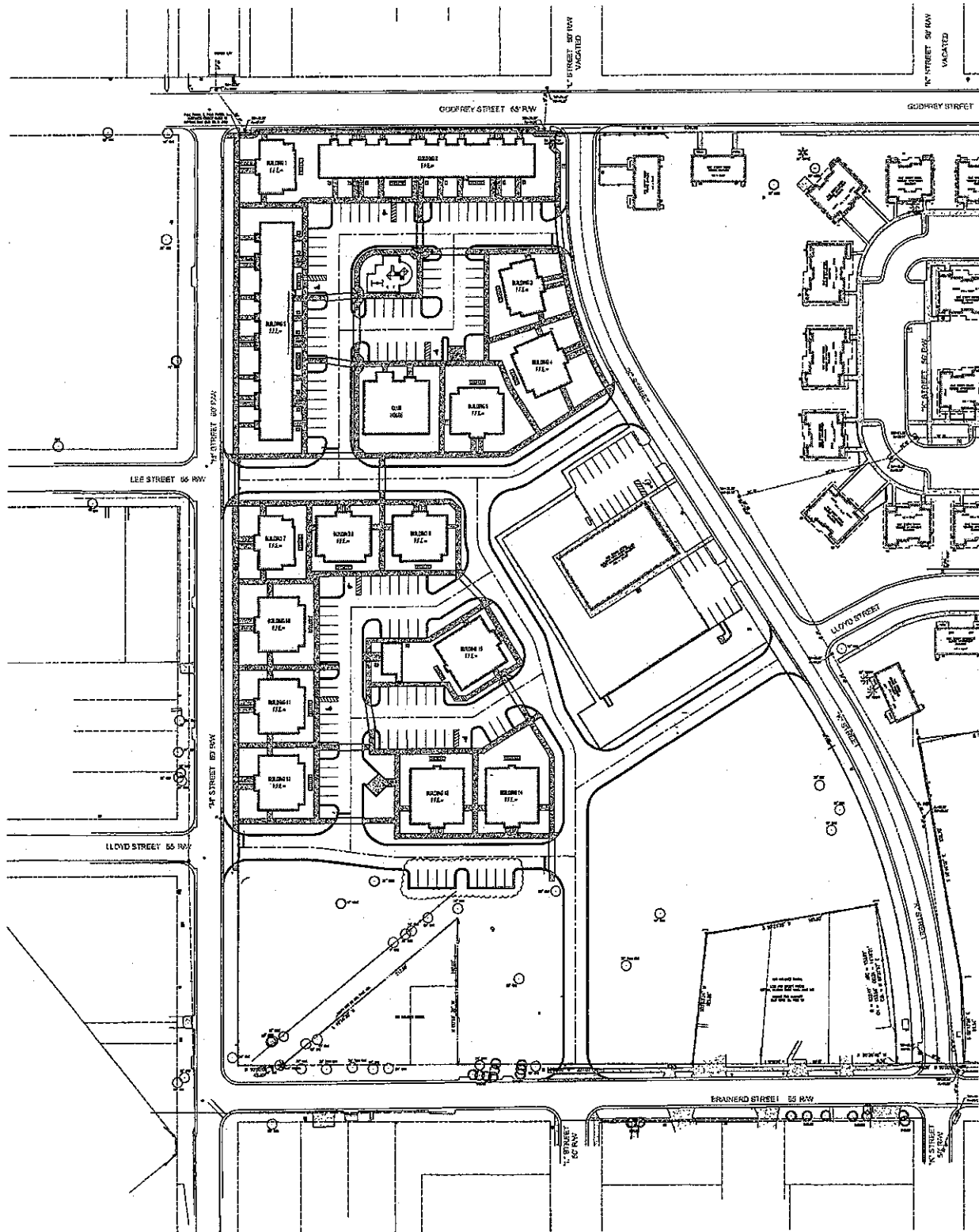


Exhibit 1

All lying and being in Sections 24 and 30, Township 2 South, Range 30 West, Escambia County, Florida. Containing 7.99 acres, more or less.

SHEET	1	LB No. TOTAL NOT VALID UNLESS PRINTED WITH INCORPORATED SEAL AND SIGNED BY SURVEYOR
	OF 1	
SCALE		1" = 50'
FILE NO.		25148
JOB NO.		55106-01
FB	PG	
FB	PG	
Drawn by		PKJ

All lying and being in Sections 29 and 30, Township 2 South, Range 30 West, Escambia County, Florida. Containing 7.94 acres, more or less.

SHEET	1	OF	1	LB No. TOTAL NOT VALID UNLESS IMPRINTED WITH THIS DESIGN SEAL AND SIGNED BY THE INSPECTOR
SCALE _____ 1" = 50' FILE NO. _____ C-5743 JOB NO. _____ 53108-01 FB _____ PG _____ FB _____ PG _____		Drawn by _____ PHJ		

Exhibit B