

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING  
FINANCE CORPORATION

Madison Manor, Ltd.,  
a Florida limited partnership

Petitioner,

vs.

APPLICATION NO. 2005-085C

CASE NO. 2007-0211W

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

**PETITION FOR WAIVER FROM RULES 67-48.002(28) , 67-48.004(14) and (15)**

Madison Manor, Ltd., a Florida limited partnership (“Petitioner”), hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver from Rules 67-48.002(28) , 67-48.004(14) and (15), Florida Administrative Code (2005) This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

**THE PETITIONER**

1. The address, telephone number and facsimile number of the Petitioner is:

Madison Manor, Ltd.  
615 Crescent Executive Court, 120  
Lake Mary, Florida 32746  
(407) 741-8500

2. Petitioner successfully applied for financing from the Housing Tax Credit (“HC”) program in the 2005 Universal Application Cycle – Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; Home Investment Partnership (HOME) Rental Program and Housing Credit (HC) Program (the “Universal Cycle”) that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s application number is 2005-085C (the “Application”). Petitioner applied for an

allocation of tax credits to finance a portion of the costs to develop a multifamily rental apartment complex in Duval County, Florida, to be known as Madison Manor Apartments (the “Development”). The Application for which Petitioner received a preliminary award of financing from the Corporation was for a 160-unit “Garden Apartments” complex. The Construction of the Development is complete as of the date of this Petition.

**THE RULES FROM WHICH WAIVER IS SOUGHT**

3. Petitioner requests a waiver from Rule 67-48.002(28), 67-48.004(14) and (15), Florida Administrative Code. More specifically, Petitioner is seeking a waiver from what is designated as the “Application and Selection Procedures for Development”, subsections (14) and (15) of Rule 67-48.004 and the definition of “Developer” as set forth in subsection (28) of Rule 67-48.002.

**STATUTES IMPLEMENTED BY THE RULES**

5. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act,<sup>1</sup> the statute that created the HC Program. See §420.5093, Florida Statutes.

**PETITIONER REQUESTS A WAIVER FROM  
THE RULES FOR THE FOLLOWING REASONS**

6. Petitioner requests a waiver of Rules 67-48.002(28), 67-48.004(14) and (15), restricting the ability to change one of the Developer entities prior to the completion of construction of the Development. Petitioner is also seeking a waiver allowing Jonathan Wolf to withdraw as a member and shareholder of Madison Manor, LLC, which is one of the Applicant’s

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

General Partners.<sup>2</sup> Finally, Petitioner is also seeking a waiver allowing it to change the Development Type listed in the Application from “Garden Apartments” to “Mid-Rise with Elevator (a building comprised of 4 stories).”

7. Rule 67-48.002(28) defines “Developer” as follows:

. . . means any individual, association, corporation, joint venturer or partnership which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable housing as required in the Application.

8. Rule 67-48.004(14) provides, in relevant part, as follows:

(14) 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. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(b) Name of each Developer, including each co-Developers;

\* \* \*

(g) Development Category

\* \* \*

9. Rule 67-48.004(15) provides:

(15)(A) A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at any time the Board determines that the Applicant’s Development or Development Team is no longer the Development or Development Team described in the Application, and the changes

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<sup>2</sup> Vestcor Development Corporation, Inc. has a 25% Developer interest. Vestcor Partners XXVII, LLC has a 25% interest Madison Manor, LLC, the general partner of the Applicant/Petitioner Madison Manor, Ltd. This Petition does not affect Vestcor’s ownership interest.

made are prejudicial to the Development or to the market to be served by the Development.

**DEVELOPER ENTITY**

10. With respect to the Developer entity, Petitioner is seeking the waiver so that it may change one of the Developer entities from Wendover Madison, LLC to SW Florida, LLC. This change is necessitated as a result of a change in the membership and ownership structure of Wendover Madison, LLC. As reflected in Exhibit 9 to the Application, Wendover Madison LLC is comprised of three members: Todd L. Borck, Jonathan L. Wolf and Patrick E. Law. The shareholders of Wendover Madison, LLC are: Todd L. Borck and Nancy L. Borck, as Tenants by the Entireties (33.333% ownership interest); Jonathan L. Wolf and Nancy B. Wolf, as Tenants by the Entireties (33.333% ownership interest); and Patrick E. Law (33.333% ownership interest). (Exhibit 9 to the Application is attached hereto as Exhibit "A")

11. SW Florida, LLC is comprised of two members: Todd L. Borck, and Patrick E. Law. The shareholders of SW Florida, LLC are: Todd L. Borck and Nancy L. Borck, as Tenants by the Entireties (50% ownership interest); and Patrick E. Law (50.00% ownership interest).

12. Petitioner requests this waiver to accommodate changes to the structure of the Developer entity for business planning purposes. The proposed changes reflect the withdrawal of Jonathan Wolf as a member of the Developer Entity and also reflect the withdrawal of Jonathan and Nancy Wolf as shareholders in Developer Entity. In spite of these changes to the corporate structure, the members and shareholders of the proposed Developer Entity possess the requisite experience and expertise to complete the development.

**GENERAL PARTNER ENTITY**

13. With respect to the General Partner, Petitioner is seeking a waiver so that it may amend the membership and ownership structure of Madison Manor, LLC. As reflected in

Exhibit 9 to the Application, Madison Manor, LLC is comprised of three members: Todd L. Borck, Jonathan L. Wolf and Patrick E. Law. The shareholders of Madison Manor, LLC are Todd L. Borck and Nancy L. Borck, as Tenants by the Entireties (33.333% ownership interest); Jonathan L. Wolf and Nancy B. Wolf, as Tenants by the Entireties (33.333% ownership interest); and Patrick E. Law (33.333% ownership interest).

14. The membership structure of Madison Manor, LLC, as amended, will be as follows: Todd L. Borck, and Patrick E. Law. The shareholders of Madison Manor, LLC will be: Todd L. Borck and Nancy L. Borck, as Tenants by the Entireties (50.00% ownership interest); and Patrick E. Law (50.00% ownership interest).

15. Petitioner requests this waiver to accommodate changes to the structure of the General Partner of the Applicant for business planning purposes. The proposed changes reflect the withdrawal of Jonathan Wolf as a member of Madison Manor, LLC and also reflect the withdrawal of Jonathan and Nancy Wolf as shareholders in Madison Manor, LLC. In spite of these changes to the corporate structure, the members and shareholders of the proposed General Partner of the Applicant possess the requisite experience and expertise to complete the development.

16. More specifically, these changes will not adversely impact the Development because the member of the Developer and General Partner entities, as amended, continue to have the requisite expertise and experience of Todd Borck and Patrick Law to successfully develop and complete the Development. Madison Manor, Ltd. can rely upon and benefit from their expertise, services, resources and support. Accordingly, the continuity, progress and quality of the Development will not be disrupted.

17. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rule if strict application of the rule will lead to unreasonable, unfair and unintended consequences in particular instances. Unless the rule is waived to allow the change in Developer and General Partner of the Applicant, certain unreasonable, unfair and unintended consequences will result. Specifically, Todd Borck and Patrick Law are engaged in certain business planning strategies to protect their interests. One of the actions in furtherance of these planning strategies is the creation of a new developer entity to develop future affordable housing projects. The new developer entity would replace Wendover Madison, LLC, which has served as the developer entity on other affordable housing transactions. If the Corporation were to deny Petitioner's request to allow SW Florida, LLC to replace Wendover Madison, LLC as the Developer for the Development, the result would preclude Mr. Borck and Mr. Law from affecting certain business planning strategies, which is an unreasonable, unfair and an unintended consequence of the Rule. The amendment to the structure of the General Partner of the Applicant is likewise needed in order for Mr. Borck and Mr. Law to accomplish certain business planning strategies.

**DEVELOPMENT TYPE**

18. Petitioner is also seeking a waiver allowing it to change the Development Category listed in the Application from "Garden Apartments" to "Mid-Rise with Elevator (a building comprised of 4 stories)."

19. This Development is designated as an Elderly Development. During the site planning process, it became apparent that a "Garden Apartment" building footprint would require more units on each of the three floors. Given the placement of the elevator and other amenities for this Development, a number of Elderly tenants would be required to walk further

distances in order to access these services if the structure were developed as a Garden Apartment Development rather than as a Mid-Rise Development.

20. The Application's scoring and funding would not have been affected had the Applicant selected the Mid-Rise category when is submitted its original Application.

21. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rule if strict application of the rule will lead to unreasonable, unfair and unintended consequences in particular instances. Unless the rule is waived to allow the for the requested change, the Applicant may not be entitled to receive an allocation of Tax Credits

**WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

22. Petitioner believes that a waiver of these rules will serve the purposes of the statute, which is implemented by the rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the Housing Tax Credit Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver requesting and permitting Petitioner to change its Developer and General Partner as requested in this Petition, and to permit a change in the Development Category, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

**TYPE OF WAIVER**

23. The waiver being sought is permanent in nature.

24. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

**ACTION REQUESTED**

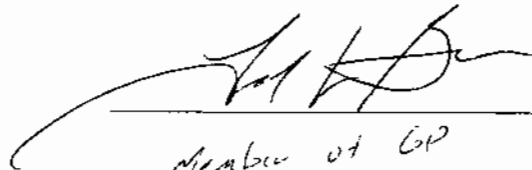
25. Petitioner requests the following:

a. That the Corporation grant the Petitioner a permanent waiver from Rule 67-48.002(28) , 67-48.004(14) and (15) such that the Corporation allow a change in the Developer and General Partner entity as set forth in this Petition.

b. That the Corporation grant the Petitioner a permanent waiver from Rule 67-48.004(14) such that the Corporation allow Petitioner to change the Development Category from Garden Apartments to Mid-Rise with Elevator (a building comprised of 4 stories).

26. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 8<sup>th</sup> day of May, 2007.

  
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Member of GP



**EXHIBIT 9**  
**LIST OF GENERAL & LIMITED PARTNERS FOR APPLICANT ENTITY**  
**AND DEVELOPER ENTITY**  
**INCLUDES OFFICERS, MEMBERS, DIRECTORS AND SHAREHOLDERS**

|  |                                       | OWNERSHIP INTEREST. |
|--|---------------------------------------|---------------------|
| <b>APPLICANT ENTITY:</b>   | MADISON MANOR, LTD.                   |                     |
| <b>GENERAL PARTNER:</b>  | MADISON MANOR, LLC                    | .0075%              |
|  | VESTCOR PARTNERS XXVII, LLC           | .0025%              |
| <b>INITIAL LIMITED PARTNER*:</b>   | TODD L. BORCK                         | <u>99.9900%</u>     |
|  |                                       | 100%                |
| <hr/>  |                                       |                     |
| <b>GENERAL PARTNER:</b>  | MADISON MANOR, LLC.                   | 75%                 |
| <b>MEMBERS OF MADISON MANOR, LLC (GENERAL PARTNER)</b>                       |                                       |                     |
| JONATHAN L. WOLF   | MEMBER                                |                     |
| TODD L. BORCK  | MEMBER                                |                     |
| PATRICK E. LAW   | MEMBER                                |                     |
| <b>SHAREHOLDERS OF MADISON MANOR, LLC</b>                                    |                                       |                     |
| JONATHAN L. WOLF AND NANCY B. WOLF, AS TENANTS BY THE ENTIRETIES             |                                       | 33.333%             |
| TODD L. BORCK AND NANCY L. BORCK, AS TENANTS BY THE ENTIRETIES               |                                       | 33.333%             |
| PATRICK E. LAW   |                                       | <u>33.333%</u>      |
|  |                                       | 100%                |
| <hr/>  |                                       |                     |
| <b>GENERAL PARTNER:</b>  | VESTCOR PARTNERS XXVII, LLC           | 25%                 |
| <b>MEMBERS/SHAREHOLDERS OF VESTCOR PARTNERS XXVII, LLC (GENERAL PARTNER)</b> |                                       |                     |
| JOHN D. ROOD, TRUSTEE, JAMIE A. ROOD IRREVOCABLE GST TRUST<br>2/19/01        | MEMBER                                | 90%                 |
| JOHN D. ROOD, TRUSTEE, JOHN D. ROOD REVOCABLE TRUST 1/26/88                  | MEMBER                                | <u>10%</u>          |
|  |                                       | 100%                |
| <hr/>  |                                       |                     |
| <b>DEVELOPER:</b>  | WENDOVER MADISON, LLC                 | 75%                 |
| <b>MEMBERS OF WENDOVER MADISON, LLC (DEVELOPER)</b>                          |                                       |                     |
| TODD L. BORCK  | MEMBER                                |                     |
| JONATHAN L. WOLF   | MEMBER                                |                     |
| PATRICK E. LAW   | MEMBER                                |                     |
| <b>SHAREHOLDERS OF WENDOVER MADISON, LLC</b>                                 |                                       |                     |
| JONATHAN L. WOLF AND NANCY B. WOLF, AS TENANTS BY THE ENTIRETIES             |                                       | 33.333%             |
| TODD L. BORCK AND NANCY L. BORCK, AS TENANTS BY THE ENTIRETIES               |                                       | 33.333%             |
| PATRICK E. LAW   |                                       | <u>33.333%</u>      |
|  |                                       | 100%                |
| <hr/>  |                                       |                     |
| <b>DEVELOPER:</b>  | VESTCOR DEVELOPMENT CORPORATION, INC. | 25%                 |
| <b>OFFICERS &amp; DIRECTORS OF VESTCOR DEVELOPMENT CORPORATION, INC.</b>     |                                       |                     |
| MARK T. FARRELL  | DIRECTOR                              |                     |
| STEPHEN A. FRICK   | PRESIDENT                             |                     |
| WILL MORGAN  | VICE PRESIDENT/SECRETARY/TREASURER    |                     |
| <b>SHAREHOLDER OF VESTCOR DEVELOPMENT CORPORATION, INC.</b>                  |                                       |                     |
| THE JOHN D. ROOD 2004<br>TRUST DATED 11/16/2004                              | JAMIE A. ROOD, TRUSTEE                | 100%                |

\* THE INITIAL LIMITED PARTNER'S INTEREST WILL BE SOLD AT CLOSING.