

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MALABAR COVE, LLLP

FHFC Case No.: 2009-051VW

**ORDER GRANTING PETITION FOR WAIVER
OF RULE 67-48.010(8) FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on December 4, 2009, pursuant to a "Petition for Waiver from Florida Administrative Code Rule 67-48.010(8)" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on October 22, 2009, from Malabar Cove, LLLP ("the Petitioner"). On November 6, 2009, the Notice of the Petition was published in Volume 35, Number 44, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Nassif / DATE: 12/7/09

2. During the 2007 Universal Cycle, Malabar Cove, LLLP (“Petitioner”) applied for and was awarded \$4,000,000 in State Apartment Incentive Loan (SAIL) funding to finance the construction of Malabar Cove – Phase I (the “Development”) located in Brevard County, Florida.

3. Rule 67-48.010(8), Fla. Admin. Code (2007) provides, in pertinent part:

(8) The determination of Development Cash Flow, determination of payment priorities, and payment of interest on SAIL loans shall occur annually. Any payments of accrued and unpaid interest due annually on SAIL loans shall be deferred to the extent that Development Cash Flow is insufficient to make said payments pursuant to the payment priority schedule established in this rule chapter. If Development Cash Flow is under-reported and such report causes a deferral of SAIL interest, such under-reporting shall constitute an event of default on the SAIL loan. A penalty of 5 percent of any required payment shall be assessed.

4. Petitioner requests a waiver of the above Rule to permit the annual interest payment on this SAIL loan to be “hard pay”, without such payment of interest being contingent on available Development Cash Flow.

5. Petitioner’s tax-exempt (local) bond financing is cross-collateralized with adjacent developments owned by affiliates of Petitioner.

6. As a result of this cross-collateralization, Florida Housing required Petitioner to agree that the annual interest payment would be paid

notwithstanding Rule 67-48.010(8), Fla. Admin. Code (2007), which allows such interest payment to be deferred to the extent that Development Cash Flow is insufficient to make the interest payments pursuant to the payment priority schedule set forth in subsection (6) of the Rule.

7. Petitioner now requests a waiver of the Rule to meet the terms of the agreement reached by Petitioner and Florida Housing as a condition of closing the SAIL loan.

8. The requested change would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants.

9. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

10. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness, in that Florida Housing would not agree to close the SAIL loan under these circumstances a waiver of Rule 67-48-010(8), Fla. Admin. Code.

11. The Board also finds that permitting this change in Development serves the underlying purpose of the statute by permitting Petitioner to cross-collateralize with adjacent Developments owned by affiliates of Petitioner.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of Rule 67-48.010(8) Fla. Admin. Code (2007), to require the annual payment of SAIL loan interest without deferment of such payment of interest based on the amount of available Development Cash Flow is hereby **GRANTED**.

DONE and ORDERED this 4th day of December, 2009.

Florida Housing Finance Corporation



By:

Stuart Schrage
Chairperson

Copies furnished to:
Wellington H. Meffert II, Esq.
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Kevin Tatreau
Deputy Development Officer
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Kerey Carpenter, Esquire
AHG Group, LLC
1551 Sandspur Road
Maitland, Florida 32751

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.