

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MALABAR COVE II, LTD.

FHFC Case No.: 2008-106VW
Application No.: 2008-242S

**ORDER GRANTING PETITION FOR WAIVER
OF RULE 67-48.0075(7)(a)(1)
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 12, 2008, pursuant to a "Petition for Waiver of Rule 67-48.0075(7)(a)(1)" (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on November 7, 2008, from **MALABAR COVE II, LTD.** ("Petitioner"). On November 21, 2008, Notice of the Petition was published in Volume 34, Number 47, 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 Harris DATE: 12-15-08

2. During the 2008 Universal Cycle, Florida Housing awarded an allocation of State Apartment Incentive Loan (“SAIL”) and supplemental loan funds to Petitioner (under application #2008-242S). Petitioner applied for SAIL to finance, in part, a Development known as Malabar Cove – Phase II, a 72-unit development in Palm Bay, Brevard County, Florida (the “Development”).

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

(2) Variances 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.

4. R. 67-48.0075(7)(a)(1), Fla. Admin. Code states:

(1) The supplemental loan shall be (i) based on each ELI Set-Aside unit above the minimum ELI Set-Aside threshold requirement in the Universal Application instructions; and (ii) non-amortizing at 0 percent simple interest per annum over the life of the loan, with the principal forgivable provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 15 years.

5. Petitioner requests a waiver of the above rule requiring Florida Housing to forgive a supplemental loan’s principal balance when the awarded amount funds Extremely Low Income (“ELI”) Household units for at least 15 years. In addition, Petitioner requests an extension on the

maturity date at the end of the initial 15-year period, to a date coterminous with senior financing.

6. Denying this waiver, whether or not the loan is ultimately forgiven, will likely result in unanticipated federal income tax ramifications for the project. Designating this loan as forgivable will likely cause the IRS to consider this loan as taxable income even though Petitioner has received no benefit. Further, designating the ELI Loan as forgivable may result in deduction of the full amount of the loan from eligible basis, thereby reducing the Development's net tax credit.

7. Since approval will not affect Application scoring, Petitioner derives no unfair advantage over other applicants.

8. The Board finds that strict application of the above Rule under these circumstances will give rise to substantial hardship or otherwise violate the principles of fairness. Under the circumstances described in the Petition, granting these requests furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida. The waiver of R. 67-48.0075(7)(a)(1), Fla. Admin. Code furthers this purpose.

IT IS THEREFORE ORDERED:

Petitioner's request for waiver of R. 67-48.0075(7)(a)(1), Fla. Admin. Code is hereby GRANTED to allow Petitioner to forgo the automatic forgiveness of the supplemental ELI principal loan balance, and to allow Petitioner to extend the maturity date at the end of the initial 15-year term, to a date coterminous with senior financing. Any other relief requested in the Petition is denied.

DONE and ORDERED this 12th day of December, 2008.

Florida Housing Finance Corporation

By 
Chairperson



Copies furnished to:
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.