

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

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MALABAR COVE, L.L.L.P.,  
Petitioner,

APPLICATION NO. 2007-197BS

vs.

FHFC CASE NO.: 2009-042VW

FLORIDA HOUSING FINANCE CORP.,  
Respondent

**PETITION FOR WAIVER FROM FLORIDA  
ADMINISTRATIVE CODE RULE 67-48.010(3)**

MALABAR COVE, L.L.L.P. ("Petitioner"), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation (the "FHFC") for a waiver of that portion of Rule 67-48.010(3), Florida Administrative Code ("FAC") which requires a loan under the State Apartment Incentive Loan ("SAIL") Program to be non-amortizing. This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

**THE PETITIONER**

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

Malabar Cove, L.L.L.P.  
c/o Atlantic Housing Partners  
329 North Park Avenue, Suite 300  
Winter Park, Florida 32789  
407-741-8500 (telephone)  
(407) 551-2353 (facsimile)

2. The address, telephone and facsimile number of Petitioner's attorney is:

Kerey Carpenter  
AHG Group, LLC  
1551 Sandspur Road  
Maitland, Florida 32751  
407-741-8534 (direct line)  
407-551-2353 (facsimile)

3. Petitioner successfully applied for financing from the SAIL Program in the 2007 Universal Application Cycle that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner's Application Number is 2007-197BS (the "Application"). Petitioner applied for SAIL funds to finance a portion of the costs to develop a multi-family rental apartment community in Brevard County, Florida, to be known as Malabar Cove Apartments (the "Development"). The Development was also financed with tax exempt bonds.

**THE RULES FROM WHICH A WAIVER IS SOUGHT**

4. Petitioner requests a waiver from Rule 67-48.010(3), as in effect for the 2007 Universal Application Cycle. Rule 67-48.010(3) provides in relevant part as follows:

(3) The loans shall be non-amortizing ...

\* \* \*

**STATUTES IMPLEMENTED BY THE RULE**

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act<sup>1</sup>, the statute that created the SAIL program. Section 420.5087, Florida Statutes.

6. FHFC has authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C. to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that application of the rule would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

### **FACTS DEMONSTRATING ENTITLEMENT TO WAIVER**

7. Petitioner's tax-exempt bond financing is cross-collateralized with adjacent developments owned by affiliates of Petitioner. The SAIL loan in the amount of \$4,000,000 closed on September 29, 2009. As a condition to closing the SAIL loan, FHFC required Petitioner to agree that the SAIL loan would be amortizing notwithstanding Rule 67-48.010(3) which requires that the SAIL loan to be non-amortizing.

8. In this case, strict application of Rule 67-48.010(3) will create a substantial hardship for Petitioner. FHFC approved the SAIL loan as an amortizing loan, and Petitioner is required by FHFC to obtain a waiver to allow its SAIL loan to amortize. The denial of this Petition would create a substantial hardship for Petitioner in that Petitioner would be unable to meet the requirement imposed by FHFC to obtain a waiver of the Rule. Further, approval of Petitioner's request would not affect the scoring of Petitioner's Application and would not give Petitioner an unfair advantage over other applicants.

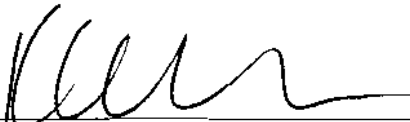
### **WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

9. FHFC approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5087, as well as the SAIL Program. The purpose of both the Statute and the program is to facilitate and stimulate the development of multi-family rental housing that is affordable to families of limited means.

**ACTION REQUESTED**

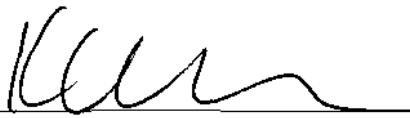
10. For the reasons set forth above, Petitioner requests a waiver from Rule 67-48.010(3) to allow the SAIL loan to amortize as required by FHFC.

Respectfully submitted this 19<sup>th</sup> day of October 2009.

  
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Kerey Carpenter  
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1551 Sandspur Road  
Maitland, Florida 32751  
407-741-8534 (direct)  
407-551-2353 (facsimile)  
[kcarpenter@ahg-group.com](mailto:kcarpenter@ahg-group.com)  
Florida Bar No. 963781  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that an original and one copy of the foregoing have been filed with Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.

  
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Kerey Carpenter