

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

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

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vs.

APPLICATION NO: 2007-197BS

FLORIDA HOUSING FINANCE CORP.,  
Respondent

FHFC CASE NO.: 2009-051VW

**PETITION FOR WAIVER FROM FLORIDA  
ADMINISTRATIVE CODE RULE 67-48.010(8)**

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(8), Florida Administrative Code ("F.A.C."), which allows accrued and unpaid interest payments due annually on the State Apartment Incentive Loan ("SAIL") Program loans to be deferred to the extent "Development Cash flow" as defined under Rule 67-48.002(30), F.A.C., is insufficient and as such, require that the annual interest payment of the SAIL loan to be "hard pay" without such payment of interest being contingent on available Development Cash Flow. 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 – Phase I (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(8), F.A.C., as in effect for the 2007 Universal Application Cycle. Rule 67-48.010(8), F.A.C., provides as follows:

(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

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**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.

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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.

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.

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

7. Petitioner's tax-exempt bond financing is cross-collateralized with an adjacent development 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 annual interest payment on the SAIL loan would be paid notwithstanding Rule 67-48.010(8), F.A.C., 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 Rule 67-48.010(6), F.A.C.

8. In this case, strict application of Rule 67-48.010(8), F.A.C. will create a substantial hardship for Petitioner. FHFC approved the SAIL loan without the ability to defer the annual interest payment pursuant to Rule 67-48.010(8), F.A.C., and Petitioner is required by FHFC to obtain a waiver to require the annual payment of interest without it being able to defer such payment of interest pursuant to Rule 67-48.010(8), F.A.C., based on the available Development Cash Flow. 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

the SAIL loan. 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(6), F.A.C., to require the annual payment SAIL loan interest without it being able to defer such payment of interest based on the amount of available Development Cash Flow.

Respectfully submitted this 21<sup>st</sup> day of October 2009.

  
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Kerey Carpenter  
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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