

**BEFORE THE FLORIDA HOUSING FINANCE CORPORATION**

MALABAR COVE II, LTD.  
Petitioner,

vs.

APPLICATION NO. 2008-242S

FLORIDA HOUSING FINANCE CORP.  
Respondent.

FHFC CASE NO: 2011-003VW

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FLORIDA HOUSING FINANCE CORPORATION

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

MALABAR COVE II, LTD. ("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. This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, F.A.C.

**THE PETITIONER**

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

Malabar Cove II, Ltd.  
700 West Morse Boulevard, Suite 220  
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 2008 Universal Application Cycle that the FHFC administers pursuant to Chapter 67-48, F.A.C. The Petitioner's Application Number is 2008-242S (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 II (the "Development"). The Development was also financed with tax exempt bonds.

**THE RULE 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 2008 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 payment 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.

**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 principles of fairness, and (2) the purpose

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

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 the Petitioner. The SAIL loan in the amount of \$2,000,000 is scheduled to close on or before March 25, 2011. As a condition to closing the SAIL loan, FHFC requires Petitioner to agree that the annual interest payment on the SAIL loan will 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's approval of the SAIL loan will include a condition denying Petitioner the ability to defer the annual interest payment pursuant to Rule 67-48.010(8), F.A.C. Petitioner is required by FHFC to obtain a waiver in order to comply with this SAIL loan approval condition. 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, the approval of this Petition will not affect the scoring of Petitioner's Application and will not give Petitioner an unfair advantage over other applicants.

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

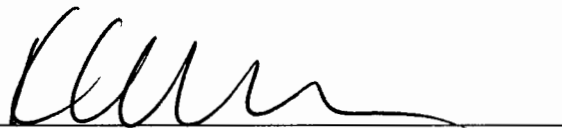
9. FHFC approval of this Petition will serve the purpose of the underlying Florida Statute, Section 420.5087, as well as the SAIL Program. The purpose of both the Statute and the program is to facilitate and stimulate the development of multi-family rental housing that is affordable to families of limited means. Petitioner will be unable to achieve this goal without

approval of this Petition as Petitioner cannot comply with the condition of the SAIL loan and Rule 67-48.010(8), F.A.C. at the same time.

**ACTION REQUESTED**

10. For the reasons set forth above, Petitioner requests a wavier from Rule 67-48.010(8), F.A.C., in order to require the annual payment of SAIL loan interest without Petitioner being able to defer such payment of interest based on the amount of available Development Cash Flow.

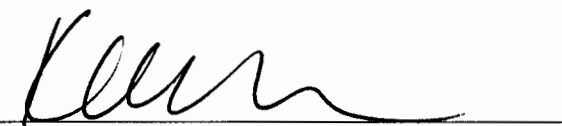
Respectfully submitted this 16<sup>th</sup> day of February, 2011.



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Florida Bar No. 963781f  
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that an original and one copy of the foregoing has been filed with the 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.



Kerey Carpenter