

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In re: Malabar Cove, L.L.L.P.

FHFC Case No.: 2008-105VW  
Application No.: 2007-197BS

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**ORDER GRANTING PETITION FOR WAIVER OF RULE 67-48.004(14)(e),  
F.A.C.**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on December 12, 2008, pursuant to a "Petition for Waiver from Florida Administrative Code Rule 67-48.004(14)(e)" (the "Petition"), filed by Malabar Cove, L.L.L.P. ("Petitioner") on November 7, 2008. Notice of the Petition was published in Volume 34, Number 37, 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.
2. During the 2007 Universal Application Cycle, Florida Housing awarded Petitioner an allocation of State Apartment Incentive Loan ("SAIL") to finance, in

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HOUSING FINANCE CORPORATION

*Della Farrell* / DATE: 12-15-08

part, the construction of Malabar Cove – Phase I (the “Development”) in Palm Bay, Brevard County, Florida.

3. Rule 67-48.004(14)(e), Florida Administrative Code (2007), provides in pertinent part:

Notwithstanding any other provision of these Rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempt to make changes to these items will not be accepted. Those items are as follows:

(e) Site for the Development;

4. 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.

5. Petitioner requests a waiver of the above provision, as the legal description of the Development is no longer identical to one submitted with Petitioner’s application for funding in the 2007 Universal Cycle.

6. As grounds for its request for a waiver, Petitioner states that subsequent to the submission of the Development’s legal description, as part of Petitioner’s

application verifying the status of site plan approval, the city of Palm Bay required site plan changes. These changes, which resulted in a change in the location of two buildings, were necessary to accommodate the size and location of a storm water retention area. Consequently, the boundary line between Malabar Cove Phase I and Malabar Cove Phase II needed to be moved to accommodate the relocated buildings.

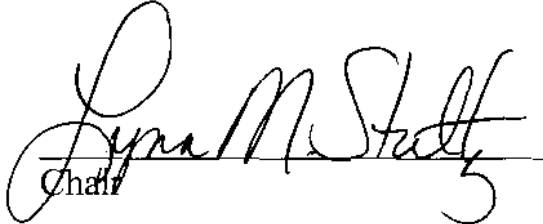
7. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness. Petitioner has demonstrated that moving the boundary line has no adverse affect on the Development and does not impact the unit mix, the committed amenities, or the Tie Breaker Measurement Point (“TBMP”) in either phase. Accordingly, Petitioner would receive no unfair advantage over the other applicants. Without the waiver, Petitioner cannot complete construction of the Development. Permitting this change in Development would also serve the underlying purpose of the statute.

**IT IS THEREFORE ORDERED:**

The Petition for Waiver of Rule 67-48.004(14)(e), F.A.C., is hereby **GRANTED**, to allow Petitioner to change the site plan for the purpose of complying with the city’s need of placing a storm retention area on the land.

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

Florida Housing Finance Corporation

By:   
Chair

**Copies furnished to:**

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## **NOTICE OF RIGHTS**

**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.**