BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

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

Petitioner,		
NO.		APPLICATION NO. 2007-197BS
VS.		FHFC CASE NO.:
FLORIDA HOUSING FINANCE CORP.,		
Respondent.	/	

PETITION FOR WAIVER FROM FLORIDA ADMINISTRATIVE CODE RULE 67-48.004

MALABAR COVE, L.L.L.P. ("Petitioner"), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation ("Florida Housing") for a waiver from Rule 67-48.004, Florida Administrative Code ("FAC"). 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 407-741-8682 (telephone) (407) 643-2590 (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 a State Apartment Incentive Loan ("SAIL") in the 2007 Universal Application Cycle that Florida Housing administers pursuant to Chapter 67-48, Florida Administrative Code. Petitioner's Application Number is 2007-197BS (the "Application"). Petitioner applied for SAIL to finance a portion of the costs to develop a 76-unit multifamily rental apartment community in Brevard County, Florida, to be known as Malabar Cove – Phase I (the "Development").

THE RULES FROM WHICH A WAIVER IS SOUGHT

- 4. Petitioner requests a waiver from Rule 67-48.004(14), as in effect for the 2007 Universal Application Cycle. Rule 67-48.004(14) provides in relevant part as follows:
 - (14) 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;

STATUTES IMPLEMENTED BY THE RULE

- 5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the SAIL program. Section 420.5087, Florida Statutes.
- 6. Florida Housing 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 the application of the rule would (1) create a substantial hardship or violate principals of fairness,

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

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. The provisions of the foregoing Rule prohibit a change in the "Site for the Development". Petitioner is uncertain whether, under the scenario described below, the "Site for the Development" has in fact changed since it remains in the same location as described in the Application. However, in order to dispel any ambiguity with respect to this issue, Petitioner is submitting this Petition for Waiver. For the reasons set forth below, compliance with the provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.
- 8. In the Application, the Site for the Development was identified as "South side of Malabar Road NW, approximately ¾ mile west of the intersection of Malabar Road NW and Minton Road SE". Further, Exhibit A to the contract for the purchase of the site submitted with the Application identified the site as follows:

COMMENCE at the Northwest corner of Section 1, Township 29 South, Range 36 East, Brevard County, Florida; thence run South 00°05'02" East, along the West line of said Section, a distance of 41.00 feet; thence run North 89°33'57" East, parallel with the North line of Section 1, Township 29 South, Range 36 East, for a distance of 775.80 feet to POINT OF BEGINNING; thence continue North 89°33'57" East, for a distance of 378.27 feet; thence run South 00°05'02" East, for a distance of 938.35 feet; thence run South 89°54'58" West, for a distance of 108.50 feet; thence run North 00°05'02" West, for a distance of 19.29 feet; thence run North 90°00'00" West, for a distance of 30.05 feet; thence run South 00°00'00" East, for a distance of 9.29 feet; thence run North 90°00'00" West, for a distance of 49.17 feet; thence run South 00°00'00" West, for a distance of 168.96 feet; thence run North 90°00'00" West, for a distance of 84.69 feet; thence run South 00°00'00" East, for a distance of 109.91 feet; thence run South 38°25'53" West, for a distance of 47.47 feet; thence run South 00°33'52" East, for a distance of 62.13 feet; thence run South 89°26'08" West, for a distance of 76.39 feet; thence run North 00°05'02" West, for a distance of 1305.08 feet to POINT OF BEGINNING.

(Attached hereto as Exhibit 1)

- At the time the Application was submitted, the City of Palm Bay had 9. reviewed the zoning designation, but had not approved the final site plan as reflected on the 2007 Universal Cycle - Local Government Verification of Status of Site Plan Approval for Multifamily Developments Form submitted with the Application. (Attached hereto as Exhibit 2). Final site plan approval from the local government was not required by the rules governing the 2007 Universal Application Cycle. It is not uncommon for local governments to require changes in the preliminary site plans prior to approving the final site plans. The City of Palm Bay did, in fact, require site plan changes prior to approving the final site plan resulting in a minor shift in the location of two building to accommodate the size and location of the storm water retention area. As a result of the minor shift, the original boundary line between the two phases of Malabar Cove crossed over the two buildings. To address this issue, the boundary line between the two phases needs to be shifted as shown on the Boundary Survey attached hereto as Exhibit 3 and the Architectural Site Plan drawing attached hereto as Exhibit 4. The shift in 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 in either phase. See Exhibit 4. The change in the legal description of the Development site would have had no impact on the application's scoring, thus providing Petitioner with no advantage over its competitors.
- 11. In light of the considerable time that it takes to develop and construct multifamily rental housing, Florida Housing's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project. Florida Housing

routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed, the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the applicant to gain a possible advantage.

12. Florida Housing has recognized that the Development Site may change after applications have been submitted, and modified Rule 67-48.004(14) for the 2008 Universal Application Cycle to allow the Development Site to be increased or decreased, provided that "the Tie Breaker Measurement Point is on the site and the total proximity points awarded during scoring are not reduced." Rule 67-48.004(14)(e), F.A.C. (2008). As explained above, the Tie Breaker Measurement Point on each phase has not changed and the total proximity points awarded during scoring are not reduced.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

- 13. Florida Housing's approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5087. The purpose of both the Statute and the program is to facilitate and stimulate the development of multifamily rental housing that is affordable to families of limited means. If the requested waiver is granted, the SAIL allocation in question will be used to fund an affordable multifamily rental housing community for which there is a desperate need in the Palm Bay, Florida.
- 14. The violation of principles of fairness and imposition of a substantial hardship which would result from strict compliance with the provisions of FAC Rule 67-48.004(14), would be as follows. Unless the waiver is granted, Petitioner would not be able to utilize the SAIL funds for the development of Malabar Cove Phase I, a much needed affordable housing

community. The substantial hardship which would result from strict compliance with the foregoing Rule is obvious.

15. By granting a waiver and permitting Petitioner to revise the Site for the Development, Respondent would recognize the economic realities of developing and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent's purpose by providing affordable housing, through new construction, in an economical and efficient manner.

TYPE OF WAIVER

16. The waiver being sought is permanent in nature.

ACTION REQUESTED

17. Petitioner requests a waiver from Rule 67-48.004(14) to permit a change in the Site for the Development from the descriptions that were submitted in the Application to the Development site reflected on the boundary survey and legal description attached as Exhibit 3.

Respectfully submitted this ______ day of November, 2008.

Kerey Carpenter

AHG Group, LLC

1551 Sandspur Road

Maitland, Florida 32751

407-741-8534 (direct)

407-551-2353 (facsimile)

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 Petition for Waiver 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.

Kerey Carpenter

EXHIBIT A

COMMENCE at the Northwest corner of Section 1. Township 29 South, Range 36 East, Brevard County, Florida; thence run South 00'05'02" East, along the West line of said Section, a distance of 41.00 feet; thence run North 89'33'57" East, parallel with the North line of Section 1, Township 29 South, Range 36 East, for a distance of 775.80 feet to POINT OF BEGINNING; thence continue North 89'33'57" East, for a distance of 378.27 feet; thence run South 00°05'02" East, for a distance of 938.35 feet; thence run South 89'54'58" West, for a distance of 108.50 feet; thence run North 00'05'02" West, for a distance of 19.29 feet; thence run North 90'00'00" West, for a distance of 30.05 feet; thence run South 00'00'00" East, for a distance of 9.29 feet; thence run North 90'00'00" West, for a distance of 49.17 feet; thence run South 00'00'00" West, for a distance of 168.96 feet; thence run North 90'00'00" West, for a distance of 84.69 feet; thence run South 00°00'00" East, for a distance of 109.91 feet; thence run South 38'25'53" West, for a distance of 47.47 feet; thence run South 00°33′52" East, for a distance of 62.13 feet; thence run South 89°26'08" West, for a distance of 76.39 feet; thence run North 00°05'02" West, for a distance of 1305.08 feet to POINT OF BEGINNING.

Exhibit 26

2007 UNIVERSAL CYCLE - LOCAL GOVERNMENT VERIFICATION OF STATUS OF SITE PLAN APPROVAL FOR MULTIFAMILY DEVELOPMENTS

Name of Development: Malabar Cove • Phase I South side of Malabar Road NW, approximately 3/4 mile west of the intersection of Malabar
Development Location: Read NW and Minton Read SE, Palm Bay, Florida 32907
(At a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, closest designated intersection and city)
Zoning Designation: RM-15, Multiple FAMily
Mark the applicable statement:
The above-referenced Development is new construction or rehabilitation with new construction and the final site plan, in the zoning designation stated above, was approved by action of the
(Legalty Authorized Body*) Date (mm/dd/yyyy)
2. The above-referenced Development is new construction or rehabilitation with new construction and this jurisdiction provides either preliminary site plan approval or conceptual site plan
approval. The preliminary or conceptual site plan, in the zoning designation stated above, was approved by action of the
approved by action of the
The above-referenced Development is new construction or rehabilitation with new construction and requires site plan approval for the new construction work. However, this jurisdiction provides neither preliminary site plan approval nor conceptual site plan approval, nor is any other similar process provided prior to issuing final site plan approval. Although there is no preliminary or conceptual site plan approval process and the final site plan approval has not yet been issued, the site plan, in the zoning designation stated above, was reviewed by LAND DEVELOPMENT Div. on BLOOF CONDITIONAL USE by Charles (Legally Authorized Body*) Date (non/dilyyyy)
4. O The above-referenced Development, in the zoning designation stated above, is rehabilitation
without any new construction and does not require additional site plan approval or similar process.
* "Legally Authorized Body" is not an individual. Applicant must state the name of the City Council, County Commission, Board, Department, Division, etc., with authority over such matters.
CERTIFICATION
I certify that the City/Gounty of All North of City or County) Name of City or County)
to verify status of site plan approval as specified above and I further certify that the information stated above is true and correct.
- Vard Warkis
Signature Signature Print or Type Name ROWTH MANAgened Y RECTAL Print or Type Title
This certification must be signed by the applicable City's or County's Director of Planning and Zoning, chief appointed official (staff) responsible for determination of issues related to site plan approval, City Manager, or County Manager/Administrator/Coordinator. Signatures from local elected officials are not acceptable, nor are other signatories. If this certification is applicable to this Development and it is inappropriately signed, the Application will not be sligible for points. If this certification contains corrections or 'white-out', or if it is scanned, imaged, altered, or retyped, the Application will fail to meet threshold. The certification may be photocopied.

UA1016 (Rev. ____-07)

EGAL DESCRIPTION:

BOUNDARY SURVEY

MALABAR COVE, PHASE I

A parcel of land Iying in a portion of Section 1, Township 29 South, Ronge 36 East, Brevard County, Florida Being more particularly described as follows:

OCHABITICS at the thermet come of Seption 1, tennets (2) Seath, Borge & East, between an about 2000000 country and the section of the section 1 for a discusse of 1000 bit. On the country and the country are the country and the country are the section 1 for a discusse of 2014 25 thesi to a post on the white the of that country like the section of the country and described in Official Peace described section 1 for a discusse of 2014 25 thesi to a post on the West line of the discussion Republic Meace described sections of the section of the s

Containing 8.38 acres, more or less.

MALABAR COVE APARTMENTS, PHASE II

A parcel of land lying in a partion of Section 1, Township 29 South, Range 36 East, Brevard County, Florida Being more particularly described as follows:

COMMISSE of the Northwest corner of Section I. Termito (2) South Rorge & Gott, these can be confirmed and what corner of section I for a distance of 1000 helt three departing sold what line on North 8931557 Seat along a line postelle and South 4100 feet of the North line of Section I for a distance of 2010 helt can be section I for a distance of 2010 helt can be section I because the control of the North Section I because the section is the Section I because the section is seen to section the control of 2010 helt can be seen that the COMMISSE SECTION I because the section is seen to section the control of 2010 helt can be seen the section I because the section I because the section I because of 2010 helt can be seen the control of 2010 helt (several I have a departing and South her, or the North Section I because of 2010 helt (several I have a departing and South her and the North Section I because of 2010 helt three on the North Section I because of 2010 helt (several I have a departing a section I because of 2010 helt (several I have a departing a section I because of 2010 helt (several I have a departing a section I because of 2010 helt (several I have a departing a section I because of 2010 helt (several I have a departing a section I because of 2010 helt (several I have a departing a section I because of 2010 helt (several I have a departing a section I because of 2010 helt (several I have a departing a section I have a departing a section I because of 2010 helt (several I have a departing a section I have a departing a se

Containing 4.87 acres, mare or less.

ICHEDULE B - SECTION 2 (EXCEPTIONS):

(Commitment No. 2037-1949941-Phose I)

5. Subject to the CERTIFICATE establishing the Medicum—Jähnen Drodecige District as necoded in Official Records Block 2014, apper 2258, and Official Records Block 3014, page 2337, being a bisniest estament over the exhibict parcel, and not graphically atoms harvow. 10. Subjet to the ACCESS AND UILITY ELSEMENT ADREMENT between Southern Molator Cove, LLC., a broad institute commany, and was the cover of the country to the commany and was to the covered above 20.208 in Official Records Book 5837 Bogs 7445, affecting subject parcel and graphically shown hereon.

11. Subject to the FIRST AMENDMENT TO ACCESS AND UTILITY EXSEMBLY LAGREMENT baleson Southern Markey Come, LLC. or Bartala install disability company, and Mary Monts De Con cated March J. 2008 in Official Records Book 5847, Page 6871, affecting subject parcel and graphically shawn heleon.

(Commitment No. 2037-1949954--Phase II)

10. Subject to the CENTRIATES establishing the Mahaware-Birmon Divingle District os recorded in Official Records Book 2014, page 2328, and Official Records Book 3074, page 2337, being a blanket estement aver the subject parcel, and not graphically shown hereon.

11. Subject to the ACCESS AND UTILITY EXSTRENT ACREDENT between Southern Malabar Cove, L.C., a Florida. Intitled intellity commons, and Many Monts De Do addred January 11, 2008 in Official Records Book 58,37, Page 7445, affecting subject parcet and graphically shawn hereon.

~ **E** 97.32

> DENOTES SPEED LIMIT SIGN DENOTES MITERED END SECTION DENOTES SPOT ELEVATION

DENOTES DRAINAGE DIRECTION

12. Subject to the FRST AMECHDIENT TO ACCESS AND UTILITY EXSUBITY ACRESSES that between Southern Judioso Come, LLC. or Forder immediated liability company, and May Monts De Cod acled Narch 3, 2008 in Official Recards Book 5847, Page 6871, affecting subject parcel and draphically shawn hereon.



- LEGEND: DENOTES RECOVERED MONUMENT AS LABELED DENOTES SET %" IRON ROD AND CAP OR NAIL & DISK LB # 6723
- DENOTES SITE BENCHWARK
- DENOTES GUY POLE
- DENOTES PINE TREE DENOTES BORING

DENOTES BACKFLOW PREVENTER DENOTES STORM MANHOLE DENOTES SANITARY SEWER VALVE

7

- DENOTES BARB WIRE FENCE DENOTES CENTER LINE DENOTES OAK TREE
- DENOTES CONCRETE DENOTES ELECTIC BOX DENOTES EDGE OF ASPHALT PAVEMENT

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\$ ² \$ \$ \$ \$ \$ \$ **□ □ □ □ □ ◊ ◊ ⊚ ♥X X X X** DENOTES DRAINAGE STRUCTURE DENOTES OVERHEAD POWER

DENOTES WATER LINE DENOTES UNDERGROUND ELECTRIC DENOTES ELECTRICAL TRANSFORMER DENOTES CATCH BASIN DENOTES GUY WIRE & ANCHOR DENOTES WOOD POWER POLE DENOTES SANITARY MANHOLE

- DENTOES FORCE MAIN
- DENOTES EDGE OF CONCRETE MENOTES NATURAL GROUND

James L Rickman Registered Number: Florida Professional Surveyor and Mapper #5633

SHEIT 1 OF 2

- DENOTES TELEPHONE RISER
- DENOTES BACKFLOW PREVENTER

DENOTES REINFORCED CONCRETE DRAIN PIPE

Last date of field survey. March 25, 2008

Elevations shown hereon are based on the City of Parin Bay Bandamork 12-095 being a PK kail & Disk stamped "PBD" in south driveway over centerine of piec Lox 8, Bloock 668 of PDRT MAURIAK, on the westerly right-on-way ulayerod whereie, having an elevation of 25.95" (NoVo 1929)

Part Malabar Unit 19 Subdivision is zone RS-2, Single Fomily Residential.

The Subject Property and all adjaining properties, except Port Malabor Unit 19 Subdivision, lie within the RM-15- Multiple Family zoning district— (15 dwelling units per acre). bleator. Road is a powed, maintained road of unknown width. The Subject Property dauts Malator Road right of way withhout any gaps, gares or histuses. By witus of Special Marranty Deed recarded in Official Records Book. 5657, Page 2045.

DENOTES WATER VALVE

(the "Title immerty) entitle to Compare Multipays Compared. First instruction that income Compared to Management Compared Compared Investigation (Management Compared Compared Investigation (Management Compared Compared Investigation (Management Compared Comp SURVEYOR'S CERTIFICATE

SCALE BATE BATE PAGE 1,000 - 60 LB.1

FOR: ATLANTIC HOUSING

Petitioner's Exhibit

BOUNDARY SURVEY

SECTION 1, TOWNSHIP 29 SOUTH, RANGE 36 EAST

16 EAST PLANT STREET WINTER GARDEN, FLORIDA * 34787 (407) 854-5355/(407)854-5356 FAX COMPANY ALLEZ

There may be easuments and restrictions of record and/or private agreements not turnished to this surveyor or shown on this boundary survey that may affect property rights and/or land use rights of the subject property.

Boorings shawn hereon are assumed and based on the North line of the Northwest 1/4 of Section 1-29-35 being North 69:33/5/7 East

This Survey was performed for the sale and exclusive benefit of the entities listed hereon and shall not be relied upon by any other entity or individual whomsoever. Subject Property shown hereon is in Zones X, areas within the 500 year flood plain, and X, areas outside the 500 year flood plain, according to Flood Insurance Rate Map number 1200900585 E, map date April 3, 1989. There may be environmental issues and/or other matters regulated by various Departments of Federal, State or Local Governments affecting the subject properly not shown on this survey. Phases I and II are contiguous along common boundaries without gaps, gares or histuses, and taken as a whole, the parcels form one tract of land. This Survey are performed with the benefit of Title Commitments Number 07-09(8-Steins16000s, and 00-003-25 shell: effective date 01/12/2007 of 500 pm; and 14-505-16-007(9) and 14-505-16-007(9) effective date sharpy 11 2008, all sweet by Disopo filter insurance Company Revised por Title Commitment Number 2012-1993(9) and 2012/1994(9) effective date Luce 25, 2008 & 80.00 m; sweet by Title American Title Insurance Company. The property are described in the Begul describions of the little commitments. In the above property of described on the Lucey.

his Survey is not valid without the signature and original raised seal of a Florida licensed surveyor and mapper:

Underground utilities and improvements were not located, unless shown hereon.

OF MALABAR COVE



