

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: MALABAR COVE L.L.L.P.

FHFC Case No.: 2008-115VW

**ORDER GRANTING PETITION FOR WAIVER
OF RULE 67-48.0072(4)(c) FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on March 13, 2009, pursuant to a “Petition for Waiver from Florida Administrative Code Rule 67-48.0072(4)(c),” (the “Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on December 17, 2008, from Malabar Cove, L.L.L.P. (“the Petitioner”). On December 26, 2008, the Notice of the Petition was published in Volume 34, Number 52, 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”)

2. During the 2007 Universal Cycle, Florida Housing awarded an allocation of State Apartment Incentive Loan (“SAIL”), non-competitive Housing Credits (“HC”), and Multifamily Mortgage Revenue Bonds (“MMRB”) to Petitioner (under application #2007-197BS). Petitioner applied for the SAIL, competitive HC, and MMRB to finance the construction of Malabar Cove Phase I, a 76-unit development in Brevard County, Florida (the “Development”).

3. Rule 67-48.0072(4)(c), Fla. Admin. Code states in pertinent part:

(4) If the credit underwriting invitation is accepted:

(c) For SAIL and HOME Applicants and Applicant/s eligible for a supplemental loan, the loan(s) must close within 14 months of the issuance of the preliminary commitment. Applicants may request one (1) extension for up to 10 months. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation’s Board for consideration. The Board shall consider the facts and circumstances of each Applicant’s request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. The Corporation shall charge a non-refundable extension fee of 1 percent of each loan amount if the Board

(2) Variances 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 Rule requiring it to pay the one percent extension fee. Specifically, Petitioner received a preliminary commitment from Florida Housing on October 1, 2007 and an invitation to credit underwriting. Petitioner's loan closing deadline was December 1, 2008. Petitioner contends that notwithstanding that it requested an extension in writing to close its SAIL loan, it was at all times capable of closing its loan on or before December 1, 2008 and should not have to pay the extension fee. On December 12, 2008, the Board approved the final credit underwriting report for the Development.

6. The Board finds that strict application of the above Rules under these circumstances will give rise to substantial hardship or otherwise violate the principles of fairness. Petitioner demonstrated that the delay in presenting the underwriting report to the Board was due to the scheduling of the credit underwriters and review of competing applications. Granting this


IT IS THEREFORE ORDERED:

Petitioner's request for waivers of Rule 67-48.0072(4)(c) Fla. Admin. Code (2007) is hereby **GRANTED** to permit Petitioner to forego payment of the one percent extension fee for the Development.

DONE and ORDERED this 13th day of March, 2009.



Florida Housing Finance Corporation

By: 
Chairperson

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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