

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

LAFAYETTE SQUARE, LTD.

Petitioner,

vs.

CASE NO.: _____

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**AMENDED PETITION FOR WAIVER OF SECTION 11 OF THE 2005 QUALIFIED
ALLOCATION PLAN**

Lafayette Square, Ltd. (the "Petitioner") hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's requirement that an applicant (such as the Petitioner) wait until the last calendar quarter of the year in which such applicant is otherwise required to place its project in service in order to return a housing credit allocation and obtain a reservation for a 2007 housing credit allocation. See Rule 67-48 (the "Rule") and Section 11 of the Corporation's 2005 Qualified Allocation Plan ("QAP"). This Amended Petition is intended to modify the original Petition dated June 28, 2006 filed with the Corporation, by adding a specific request for a 2007 housing credit allocation to replace the original 2005 housing credit allocation.

In support of its petition, the Petitioner states:

1. The address, telephone number, facsimile number and e-mail address of the Petitioner are:

Lafayette Square, Ltd.
C/o The Gatehouse Group, Inc.
120 Forbes Boulevard
Mansfield, Massachusetts 02048
(508) 337-2525
(508) 337-2543
plonskierm@gatehousemgt.com

2. The contact person, along with contact information and relationship, for the Petitioner's Application – Housing Credit (HC) Program (the "Application") is:

Mr. Marc S. Plonskier
The Gatehouse Group, Inc.
120 Forbes Boulevard
Mansfield, MA 02048
(508) 337-2525
(508) 337-2543
plonskierm@gatehousemgt.com
President, The Gatehouse Group, Inc., manager of Lafayette
Square, LLC (Petitioner's managing general partner)

3. The Petitioner timely submitted its Application in the 2005 cycle (Application #2005-063C) for the development named "Lafayette Square Apartments" (the "Development") on or before February 16, 2005.

4. The Petitioner's Application was submitted prior to the onset of two major events, each of which has created an unprecedented spike in the cost and availability of construction materials and labor:

a. The dramatic 38% rise in crude oil prices in the past year and 25% since December 2005. Increased oil prices on materials from PVC to carpeting, as well as gasoline, have contributed significantly to construction cost increases.

b. The 2005 Florida hurricane season was extremely destructive with three named hurricanes, including Dennis, Katrina and Wilma, each receiving a federal disaster designation. In Miami-Dade County alone, over 5,000 families were left homeless following Hurricane Wilma on October 24, 2005. According to a National Hurricane Center report dated January 12, 2006, Hurricane Wilma damage totaled over \$12,000,000,000, and has created shortages of labor and all essential materials, particularly in South Florida.

The effect of those two events has caused the construction costs for projects in South Florida to increase 20-35% in just the past 12 months. These increased costs measure in the millions of dollars, and have caused Petitioner to seek additional state and local funding to cover this shortfall. The Corporation has recognized the severity and urgency of this problem and has created a special Wilma Go-Zone SAIL Cycle (RFP 2006-04) for which initial awards were made in its June 9, 2006 Board of Directors Meeting. Miami-Dade County and other local governments are also attempting to address this serious funding problem.

5. However, Petitioner was unable, despite diligent efforts, to secure such additional funding necessary to cover development costs prior to July 1, 2006, the date by which construction must have commenced in order to complete construction by December 31, 2007 (the placed in service date required by Petitioner's Carryover Allocation Agreement dated December 21, 2005). Petitioner's fixed price construction contract dated May 18, 2006, provides for an 18 month construction period for the development of a 19-story high-rise building with adjacent structured parking garage. Accordingly, neither Petitioner nor its lenders, investors or the Corporation could reasonably expect

construction of the Development to be timely completed if construction commencement is delayed beyond July 1, 2006. Without firm commitments for the additional funding, Petitioner was unable to commence construction by July 1, 2006.

6. Under the provision of the Carryover Allocation Agreement executed by Petitioner dated December 21, 2005, the Petitioner has until December 31, 2007 to place the Development in service. See also Internal Revenue Code Section 42(h)(1)(E). The Internal Revenue Service has offered relief from the aforementioned "placed in service rule" due to natural disasters, as more fully set forth in *Revenue Procedure 95-28, 1995-25 I.R.B.* 7. Revenue Procedure 95-28 generally empowers state housing agencies (such as the Corporation) to extend the required "placed in service" date by one year in the event of a development located in a major disaster area. However, Section 5.02 of Revenue Procedure 95-28 provides that such relief is only available when an area is declared as a major disaster area after a development located therein receives its carryover allocation. Hurricane Wilma struck South Florida on October 24, 2005, within 60 days prior to the date the Development received its carryover allocation. As such, the Development is not technically eligible for the relief offered by Revenue Procedure 95-28 even though the delays encountered were clearly a result of the force and intensity of the storms and their impact on construction costs and availability of labor and materials.

7. Section 11 of the 2005 QAP provides as follows:

"Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which otherwise required to be placed in service (emphasis added), the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation via Certified Mail, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs."

8. The Petitioner has commenced pre-development activities with respect to the Development; however, at this time it is apparent that (due to the aforementioned delays and indirectly, to changed construction conditions after Hurricanes Katrina and Wilma) that it is unlikely the Development can be completed by December 31, 2007. More importantly, the tax credit investor for the Development is not willing to undertake

the full funding of the equity financing necessary to commence construction, in view of the risk that the Development may not be completed by December 31, 2007. The tax credit syndicator (and likely any other tax credit investor in the current marketplace) will not, faced with the aforementioned "placed in service" risk, permit the full funding to occur unless Petitioner first obtains an extension of the "placed in service" requirement.

9. Accordingly, Petitioner desires to obtain the relief provided for in Section 11 of the QAP. However, pursuant to such Section, such relief cannot be applied for until such time as an applicant has returned its Housing Credit allocation in the last calendar quarter of the year in which otherwise required to be placed in service. In the instant case, this would prevent the Petitioner from petitioning for relief under Section 11 of the QAP until October 2007. Furthermore, such relief would result in the Petitioner receiving 2008 housing credits, thereby preventing Petitioner from obtaining a commitment for housing credits until January 2007 at the earliest. In order to proceed with the development of the Development in 2006, the Petitioner desires to apply for the relief afforded by Section 11 of the QAP currently and also receive 2007 housing credits rather than 2008 housing credits; however, in order to do so, the Corporation must waive its requirement that such relief cannot be applied for until October 2007.

10. Consequently, a waiver of the requirement that such relief may not be applied for until October 2007 and approval of an allocation of 2007 housing credits is necessary in order for the Petitioner to apply for such relief and proceed with the development of the Development (presuming the relief is obtained once applied for).

11. The Act designates the Corporation as the State of Florida administrator for the State Housing Tax Credit Program to establish procedures necessary for the proper allocation of tax credits and to ensure the maximum use of available credits in order to encourage development of low-income housing and associated mixed-use projects in urban areas (the "Procedures"). See §§420.501, 420.5093, Fla. Stat. (2004). These Procedures are established in Rule Chapter 67, Florida Administrative Code. Accordingly, as set forth below, the Rules and the Universal Application Instructions subject to the Petitioner's waiver request are implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Procedures for the State Housing Tax Credit Program. *Id.*

12. The facts stated in paragraphs 4 through 11 above demonstrate the circumstances that justify the waiver, and permit the Petitioner to apply for the relief afforded by Section 11 of the QAP, in order to currently return its 2005 Housing Credit allocation and obtain a Housing Credit allocation from 2007. The requested waiver does not constitute an actual grant of the relief provided in Section 11 of the QAP; rather, the requested waiver merely permits the Petitioner to apply for such relief currently instead of waiting until October 2007.

13. The requested waiver to permit the Petitioner to currently apply for the relief afforded by Section 11 of the QAP and to receive 2007 housing credits will not adversely impact the Development or the Corporation. However, the denial of the requested waiver will create a substantial hardship for the Petitioner, because the tax

credit investor will not proceed forward with full funding until such time as such relief is granted. This substantial hardship which would result from strict compliance with Section 11 of the QAP is obvious; the Petitioner at that point would be unable to complete construction or obtain full funding on its debt and equity financing, with no assurance that such relief will subsequently be available. Failure to complete construction or obtain full funding on its debt and equity financing for the subject transaction would place the Petitioner in danger of failing to meet the foregoing "placed in service" deadline. Provisions of the foregoing relief would serve the purposes of Florida Statutes Section 420.5099(2), which provides that Respondent shall adopt procedures in order to encourage development of low-income housing in the state, taking into consideration the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

14. The waivers being sought are permanent in nature.

15. Should the Corporation require additional information, the Petitioner is available to answer any questions and to provide any additional information necessary for consideration of this petition.

WHEREFORE, the Petitioner respectfully requests that the Corporation:

- A. Consider this Petition in conjunction with the Petitioner's Application;
- B. Grant this Petition and all the relief requested herein;
- C. Waive the prohibition on returning Housing Credit allocations until the last calendar quarter of the year in which otherwise required to be placed in service, by allowing the Petitioner to return its Housing Credit allocation currently and request the Corporation to reserve allocation in an identical amount of 2007 housing credits, all as more fully provided in Section 11 of the QAP.
- D. Grant such further relief as may be deemed appropriate.

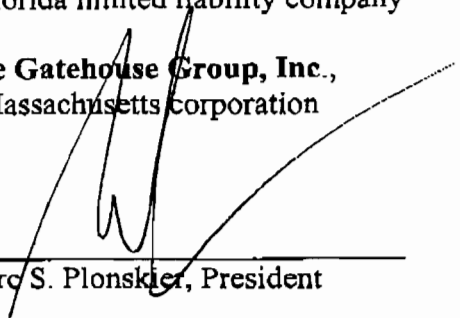
[Signature Page Follows]

Respectfully submitted,

LAFAYETTE SQUARE, LTD.
a Florida limited partnership

By: **Lafayette Square, LLC,**
a Florida limited liability company

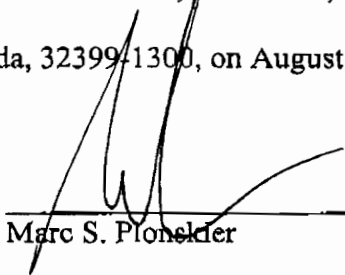
By: **The Gatehouse Group, Inc.,**
a Massachusetts corporation

By: 

Marc S. Plonskier, President

CERTIFICATE OF SERVICE

The Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, the Holland Building, Tallahassee, Florida, 32399-1300, on August 14, 2006.



Marc S. Pionel