

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

MAGNOLIA LANDING APARTMENTS, LTD.

Petitioner,

Vs.

Application NO. 2008-177C/2009-002C  
Case NO. \_\_\_\_\_

FLORIDA HOUSING FINANCE CORP.,

Respondent.

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AMENDED AND RESTATED  
PETITION FOR WAIVER FROM RULE 67-48.004(14), FLORIDA  
ADMINISTRATIVE CODE (2008)

MAGNOLIA LANDING APARTMENTS, LTD., (“Petitioner”), by and through its undersigned counsel, hereby amends and restates in its entirety, the petition dated and filed with the Clerk on January 28, 2009, and hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver from Rule 67-48.004(14), Florida Administrative Code (“FAC”). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104.002, Florida Administrative Code.

THE PETITIONER

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

Magnolia Landing Apartments, Ltd.  
c/o The Gatehouse Group, Inc.  
120 Forbes Blvd.  
Mansfield, MA 02048  
Attn: Marc S. Plonskier  
508-337-2525 (phone)  
508-337-2543 (facsimile)

2. Petitioner successfully applied for financing from the Housing Tax Credit (“HC”) program in the 2008 Universal Application Cycle that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s Application Number is 2008-177C (the “Application”). Petitioner applied for HC Funds to finance a portion of the costs to develop multi-family garden rental apartments in Miami-Dade County, Florida, to be known as Magnolia Landing (the “Development”).

### THE RULES FROM WHICH A WAIVER IS SOUGHT

3. Petitioner requests a waiver from 67-48.004(14), FAC 2008. Rule 67-48.004(14) states, as follows:

(14) Notwithstanding any other provisions 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 attempted changes to these items will not be accepted. Those items are as follows:

- (i) Total number of units;

### STATUTES IMPLEMENTED BY THE RULE

4. Among other sections of the Florida Housing Finance Corporation Act,<sup>1</sup> the Rule implements Section 420.5093, Florida Statutes, the Statute that created the HC Program.
5. The Corporation has authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, FAC 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 principals of fairness, 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

6. The provisions of the foregoing Rule prohibit a change in the total number of units and a change in the funding request amount. For the reasons set forth below, compliance with the foregoing provisions of the aforementioned Rule would give rise to substantial hardship to petitioner and would violate principles of fairness.
7. The Petitioner filed and submitted its Application based upon information stated in preliminary engineering and associated site reports (the "Preliminary

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<sup>1</sup> The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.55 of the Florida Statutes.

- Reports”) the Petitioner obtained in conjunction with its acquisition of the real property (“Property”) on which the Development will be constructed.
8. Based upon the Preliminary Reports when Petitioner submitted the Application the Petitioner anticipated that the Property would support one hundred and fifty six (156) residential units.
  9. After the Application Deadline and the approval of Petitioner’s Application, Petitioner obtained further detailed engineering and design reports (the “Further Reports”) for the Development.
  10. The Further Reports concluded that based upon the Petitioner’s site plan and design the Property could only support a maximum of one hundred and fifty (150) units rather than the one hundred and fifty six (156) units as Petitioner had originally contemplated in its Application.
  11. The application of the Rule in these circumstances will create a substantial hardship for the Petitioner who, if it must redesign the Development to produce an additional six (6) two-bedroom units, will not only incur significant economic and technological hardships (such as site redesign and re-engineering), but will also confront considerable time constraints resulting from such redesign and re-engineering processes, coupled with the review and approval process of the applicable local governments. The time constraints result in a further hardship on Petitioner because Petitioner received an award of HC, and thus must meet certain deadlines to place the buildings in service to receive the HC for the Development. Petitioner’s ability to meet those deadlines will be severely impeded if Petitioner must for through the redesign and approval process again, resulting in further delays and additional costs in commencing and completing the Development.
  12. Accordingly, if the Petitioner is not granted or if the Petitioner is unable to commence and complete the Development redesign, approval process, and construction within the considerable time constraints that it faces, the Petitioner may be unable to construct the Development resulting in a loss of affordable housing units that would otherwise be available to lower income tenants.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

13. In contrast, granting the requested waiver to the Rule will serve the purposes of the statute that the Rule implements. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was enacted to encourage private and public investment in housing for persons of low income. The Housing Tax Credit Program was created to stimulate creative private sector initiatives

to increase the supply of affordable housing. By granting this waiver and permitting Petitioner to make the requested Application change, the Corporation will permit the Development to be timely constructed and placed into service with one hundred and fifty (150) units. Consequently, a grant of the requested waiver will further the Corporation's efforts to fulfill its goal of increasing the supply of affordable housing through private investment.

14. In light of the considerable time that it takes to develop and construct multifamily rental housing, FHFC's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances. FHFC 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.
15. As explained above, the project changes requested by Petitioner would have no impact on the application's scoring, thus providing Petitioner with no advantage over its competitors.

#### TYPE OF WAIVER


16. Petitioner's requested waiver is permanent in nature.

#### ACTION REQUESTED

17. Petitioner requests that the Corporation grant the requested waiver from Rule 67-48.004(14), FAC, permitting Petitioner to revise its Application to state that the Total Number of Units in the Development is one hundred and fifty (150).
18. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

[Signature Page Follows]

Respectfully submitted this 9th day of February 2009.



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Marc S. Plonskier, President  
The Gatehouse Group, Inc.  
120 Forbes Boulevard  
Mansfield, MA 02048