

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application No. 2007-126CS

SEA GRAPE II, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004(14)(e) TO CHANGE
THE SITE OF THE SEA GRAPE II DEVELOPMENT**

Petitioner Sea Grape II, Ltd., a Florida limited partnership ("Sea Grape II"), petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of restrictions on changing a development's site. *See* Rule 67-48.004(14)(e), F.A.C. (2007) (the "Rule").

1. Pursuant to Section 120.542, Fla. Stat. (2007), and Rules 28-104.001 through 28-104.006, F.A.C. (2007), Sea Grape II requests a waiver of the Rule to allow for a change of its development site.

A. THE PETITIONER

2. The name, address, and telephone and facsimile numbers for Sea Grape II and its qualified representative are:

Sea Grape II, Ltd.
c/o CDG Sea Grape II, LLC
Attention: Liz Wong
2937 S.W. 27th Avenue, Suite 200
Miami, Florida 33133
Telephone: 305-476-8118
Facsimile: 305-476-1557

3. The name, address, telephone and facsimile numbers, and e-mail addresses of Sea Grape II's attorneys, for purposes of this Petition, are:

Brian J. McDonough, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.
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4. Pursuant to the 2007 Universal Cycle, Sea Grape II was a successful applicant under its 2007 Universal Application ("Universal Application")¹ for a loan of up to \$2,215,555 (which includes the Supplemental Loan amount of \$255,000) under the State Apartment Incentive Loan ("SAIL") Program. The SAIL funds will be used to finance a portion of the costs for the development of Sea Grape II, a new 28-unit multi-building apartment development (the "Development") intended to serve low income individuals and/or families in Marathon, Monroe County, Florida. *See* Application No. 2007-126CS.

5. In its Universal Application, Sea Grape II also applied for housing tax credits ("Housing Credits") under the Low Income Housing Tax Credit program, with the equity raised from Housing Credits also being used for the Development.

6. Florida Housing has issued its Preliminary Allocation of Housing Credits reserved in the amount of up to \$700,000, and it is anticipated that there will be a Final Housing Credit

¹The Universal Application Package has been adopted and incorporated into Chapter 67-48 by Rule 67-48.004(1)(a), F.A.C. (2007).

Allocation granted to Sea Grape II in accordance with Florida Housing's final allocation procedures.

7. The requested Rule waiver will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Sea Grape II; (b) could deprive Monroe County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2007).

8. The waiver being sought is permanent in nature.

B. Rule from Which Relief is Requested and Statute Implemented by the Rule

9. Sea Grape II requests a waiver of Rule 67-48.004(14)(e). As applied to applications for Housing Credits and SAIL loans, the Rule identifies certain non-curable matters and includes the following:

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 ... Those items are as follows:

(e) Site for the Development;

10. The applicable Rule for which the waiver is requested is implementing Florida Housing Finance Corporation Act's statute that created the Housing Credits Program. § 420.5099, Fla. Stat. (2007).² The Act designates Florida Housing as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits. §§

²The Florida Housing Finance Corporation Act (the "Act") is set forth in Sections 420.501 through 420.516 of the Florida Statutes. *See also* Rule 67-40.020(1), F.A.C. (2007).

420.5099(1) and (2), Fla. Stat. (2007). Accordingly, the Rule that is the subject of Sea Grape II's waiver request is implementing, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2007).

11. The requested waiver also implements Section 420.5087's mandate empowering Florida Housing with "the power to underwrite and make state apartment incentive loans or loan guarantees to sponsors." § 420.5087(2), Fla. Stat. (2007).

C. Justification for Sea Grape II's Request to Change Its Development's Site

12. Sea Grape II's Development is the second phase of a two-phase project for affordable housing in Monroe County, Florida.

13. However, when Sea Grape II submitted its Universal Application, the legal description encompassed the site location for Sea Grape II's Development, and a portion of the site location for Sea Grape Apartments, the first phase of the development project.³

14. The purpose of this Petition, therefore, is to change only the Development's legal description by, in essence, separating and carving out its legal description from the entire two-phase project's description. The location of the Development will not be changed, and its Tie-Breaker Measurement Point ("TBMP"), identified in Exhibit 25 to Sea Grape II's Universal Application, remains within the Development's modified legal description. *See* Amended Surveyor Certification attached hereto as Exhibit A, and the revised legal description attached hereto as Exhibit B.

³ On August 21, 2007, Sea Grape Apartments, Ltd., filed its Petition for Waiver of Rule 67-48.004(14)(e) to Change the Site of the Sea Grape Apartments Development. This Petition should be considered by the Board on its September 21, 2007 Agenda. *See* Application No. 2006-077CS.

15. Additionally, because the Development's TBMP remains the same, the 7.25 Proximity Tie-Breaker Points awarded to Sea Grape II would not have changed.

16. The requested change to the Development's legal description would not have impacted the scoring of Sea Grape II's Universal Application, and would not have provided Sea Grape II with an unfair advantage over other applicants.⁴

17. The requested waiver will not prejudice the Development or the affordable housing market to be served by the Development, and may result in a saving of construction and development costs.

D. Conclusion

18. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 28 affordable housing units will be available in Monroe County, Florida.

19. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief for changed circumstances that arise through no fault of an applicant. Florida Housing generally approves such waivers when it would not affect the scoring of an application or otherwise allow an applicant to obtain a possible unfair competitive advantage.

20. The requested waiver serves the purposes of Section 420.5099, Florida Statutes (2007), and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

⁴ Sea Grape II notes that for the 2007 Universal Cycle, it was the only Applicant seeking funding for affordable housing development in the Florida Keys.

the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

§ 420.5099(2), Fla. Stat. (2007).

21. The requested waiver also serves the purposes of Section 420.5087, Florida Statutes (2007), and the Act, as a whole, because the purpose of the SAIL Program is to provide “first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons,” including those persons residing in Monroe County, Florida.

22. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act through new construction in an economical and efficient manner.

23. Should Florida Housing require additional information, Sea Grape II is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.004(14)(e) to Change the Site of the Sea Grape II Development.

WHEREFORE, Petitioner Sea Grape II, Ltd., respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

A. Waive the prohibition on changing a development’s site location after submission of the Universal Application;

B. Allow Sea Grape II’s Development to be developed on the site identified in Exhibit B to this Petition; and

C. Award such further relief as may be deemed appropriate.


Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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E-mail: msall@swmwas.com

By: 
MIMI L. SALL

CERTIFICATE OF SERVICE

The original Petition is being served by overnight delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 25th day of September, 2007.

By: 
Mimi L. Sall

2007 UNIVERSAL CYCLE - SURVEYOR CERTIFICATION

Name of Development: Sea Grille II

Development Location #: ± 81001 South of Overseas Hwy between 70th St Ocean and 72nd St Ocean, Marathon, FL 33050

(As 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, checker (as framed intersection and city)

* If the Development consists of Scattered Sites, the Development Location stated above must reflect the site where the Tie-Breaker Measurement Point is located.

The undersigned Florida licensed surveyor confirms that the method used to determine the following latitude and longitude coordinates conforms to Rule 61G17-4, F.A.C.

State the Tie-Breaker Measurement Point. The Tie-Breaker Measurement Point means a single point selected by the Applicant on the proposed Development site that is located within the feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on one of the Scattered Sites which comprise the Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. In addition, the Tie-Breaker Measurement Point must be located on the site with the most units if any of the Scattered Sites has more than 4 units.

If the Development consists of Scattered Sites, is a part of the boundary of each site located within 1/2 mile of the Tie-Breaker Measurement Point? Yes or No (Just check one. If Development consists of Scattered Sites.)

(If the word "part" is used, it is readily apparent from the proximity of the non-contiguous parts of the real property, chain of title, or other information available to the Corporation that the non-contiguous parts of the divided parts of the real property are part of a common or related scheme of development. (See Rules 67A-402 and 67A-21.002, F.A.C.))

To be eligible for proximity tie-breaker points, Degrees and Minutes must be stated as whole numbers and Seconds must be truncated after 1 decimal place. The Corporation will utilize Street Atlas USA 2007, published by Delorme, to determine the proximity of an eligible service to the proposed Development's Tie-Breaker Measurement Point.

Elevation of Closest Public Bus Stop or Metro- Rail Stop	N _____ Degrees	Latitude		W _____ Degrees	Minutes	Longitude	
		Seconds (truncated after 1 decimal place)	Seconds (truncated after 1 decimal place)				

State the name, address and latitude and longitude coordinates of the closest service(s) on the chart below. (The latitude and longitude coordinates for each service must represent a point that is on the doorway threshold of an entrance that provides direct public access to the building where the service is located. If there is no entrance public entrance to the service, then a point should be used that is at the exterior entrance door way threshold that is the closest walking distance to the doorway threshold of the interior public entrance to the service.)

Name	Address	N _____ Degrees	Latitude		W _____ Degrees	Minutes	Longitude	
			Seconds (truncated after 1 decimal place)	Seconds (truncated after 1 decimal place)				
General Store	WINDMILL Address - 5585 Overseas Hwy Marathon, FL 33050	N 24	42	56.7	W 81	04	24.6	
Public School	Marathon High School Address - 350 Sorobano Beach Road Marathon, FL 33050	N 24	42	14.5	W 81	04	41.1	
Medical Facility	CVS Pharmacy Address - 5575 Overseas Hwy Hwy - II 33050	N 24	42	56.4	W 81	04	26.1	

If the Corporation discovers that there are any false statements made in this certification, the Corporation will forward a copy to the State of Florida Department of Business and Professional Regulation for investigation.

CHEMICAL ATION - Under penalties of perjury, I declare that the foregoing statement is true and correct.

Name of Surveyor: Sea Diversified Inc. Address: 1200 NW17th, Suite 3

Name of Signature: [Signature] Date (month/year): 09/20/2007

Name of Signature: Kenneth C. Jackson Date (month/year): 09/20/2007

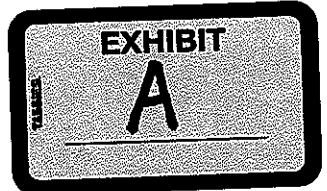
Print or Type Name of Signature: Kenneth C. Jackson

Print or Type Title of Signature: Vice President

Florida License Number: 5672434920 Address: Delray Beach, FL 33445

Telephone Number (including area code): _____

This certification may not be signed by any related parties of the Applicant, or by any Principals or Financial Beneficiaries of the Applicant. If the certification is inappropriately signed, the Application will not receive proximity tie-breaker points. If this certification contains corrections or "white-out", or if it is scanned, imaged, altered, or reyped, the Application will not receive proximity tie-breaker points and will fail to meet threshold. The Application may still be eligible for automatic points. The certification may be photocopied.



Legal Description: Top Phase II

A parcel of land in Section 11, Township 66 South, Range 32 East, Key Vaca, Monroe County, Florida, more particularly described as follows:

Begin at the intersection of the East line of said Section 11 and the Southeastery right of way line of U.S. Highway 1; thence South along the said East line of Section 11 for 285.00 feet; thence West for 231.55 feet; thence North for 190.74 feet to the Southeastery Right-of-Way line of U.S. Highway No. 1; thence N 67°51'00" E along the said Southeastery Right-of-Way line of U.S. Highway No. 1 for 250.00 feet back to the Point of Beginning.
Containing 55079 s.f. or 1.26 acres, more or less.

AND

20' Strip

A Strip of land in Section 11, Township 66 South, Range 32 East, Key Vaca, Monroe County, Florida, more particularly described as follows:

Commencing at the intersection of the East Line of said Section 11 and the Southeastery Right-of-Way Line of U.S. Highway No. 1; thence South 67°51'00" West, along said Southeastery Right-of-Way Line, for 250.00 feet, to the Point of Beginning; thence South, parallel to said East line of Section 11, for 344.62 feet; thence West for 20.00 feet; thence North for 336.48 feet, to said Southeastery Right-of-Way Line; thence North 67°51'00" East along said Southeastery Right-of-Way Line for 21.59 feet, back to the Point of Beginning.
Containing an area of 6,811.30± square feet (0.156 acres more or less).

Legal Description: Bottom Phase II

A parcel of land in Section 11, Township 66 South, Range 32 East, Key Vaca, Monroe County, Florida, more particularly described as follows:

Commence at the intersection of the East line of said Section 11 and the Southeastery right of way line of U.S. Highway 1; thence South along the said East line of Section 11 for 859.00 feet to the Point of Beginning; thence continue South along the said East line of Section 11 for 70.23 feet; thence West for 231.55 feet; thence North for 94.84 feet; thence East for 140.00 feet; thence South for 24.61 feet; thence East for 91.55 feet back to the Point of Beginning.
Containing 19707 s.f. or 0.45 acres, more or less.

