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 and the Development

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.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: 305-789-3200
Facsimile: 305-789-3395
E-mail: bmcdonough@swmwas.com

Mimi L. Sall, Esquire
STEARNS WEAVER MILLER
WEISSLER ALHADEFF & SITTERSON, P.A.
200 East Las Olas Blvd., Suite 2100
Fort Lauderdale, Florida 33301
Telephone: 954-462-9575
Facsimile: 954-462-9524
E-mail: msall@swmwas.com

4. Pursuant to the 2007 Universal Cycle, Sea Grape II was a successful applicant under its 2007 Universal Application ("Universal Application") 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.

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

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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)(c). 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.

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 HIC 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. 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. As a result, on September 26, 2007, Sea Grape II submitted a Petition for Rule Waiver to change the Development’s legal description by, in essence, separating and carving out its legal description from the entire two-phase project’s description (“Phase I”). See Case No. 2007-058VW. On October 26, 2007, Florida Housing granted this Petition.

14. As currently situated, the Sea Grape II Development’s site is directly south of the site for the Phase I site.

15. During the process of finalizing the site plan and commencing the permitting process, Sea Grape II determined that as a consequence of the location of a large, concrete utility pole situated immediately east of the Development’s proposed entranceway, the original plan would not satisfy certain sight-line requirements. To remedy this issue, an easement from the
adjoining property owner would be required to widen the Development’s driveway. Although the adjoining property owner was unwilling to provide the easement, he offered to “swap” a portion of his property for a portion of Sea Grape II Development site.

16. As a result of the “swap,” however, the Development site would be bifurcated, with one building for the Development located on a site directly north of Phase I and the remaining residential building located on a portion of the originally-approved site for the Development that is directly south of the Phase I site.

17. The purpose of this Petition, therefore, is to change the Development’s site location by substituting the neighboring property for a portion of the currently-approved Sea Grape II site. Although a portion of the Development’s site would be changed, 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 Affidavit and Certification of Surveyor attached hereto as Exhibit A, and the revised legal description attached hereto as Exhibit B.³

18. 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.

³ As the Development would consist of “Scattered Sites,” i.e. two sites divided by the Phase I site, Sea Grape will comply with Universal Application Instruction, Part III.A.2.b., upon the granting of this Petition.
19. The requested change to the Development’s site location 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

20. 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:

   - 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

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 ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.


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 sites 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 & SITTEPSON, P.A.
Counsel for Sea Grape II, Ltd.
200 East Las Olas Boulevard, Suite 2100
Fort Lauderdale, Florida 33301
Tel: (954) 462-9575
Fax: (954) 462-9567
E-mail: mсли@swmwas.com

By: [Signature]

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 [23] day of July, 2008.

By: [Signature]

Mimi L. Sall
Affidavit and Certification of Kenneth C. Jackson

Before me, the undersigned authority, personally appeared Ken Jackson, who being duly sworn, states that he personally knows the following facts and that the same are true and accurate.

My name Kenneth C. Jackson, and I am licensed by the State of Florida as a Professional Surveyor. My license number is 4549. I am the vice president of Sea Diversified, Inc. I am submitting this Affidavit and Certification on behalf of Sea Grape II, Ltd. (the “Applicant”), and I am not related to the Applicant or any Principals or Financial Beneficiaries of the Applicant.

On or about _______, 2008, I reviewed the Surveyor Certification and Sketches of Point Qualifies “Tie-Breach” Measurement Point provided as Exhibit 25 to Applicant’s Universal Application No. 2006-126CS. These documents are attached to this Affidavit as Composite Exhibit 1. I also reviewed the revised legal description as prepared by Frederick H. Hildebrandt. The revised legal description is attached as Exhibit 2.

The field work conducted by me on _________, 2008, confirmed that the Tie-Breaker Measurement Point identified in Exhibit 25 remains within 100 feet of a residential building to be constructed as part of the Development on the property described in the revised legal description.

Under penalties of perjury, I declare that these statements are true and correct.

Kenneth C. Jackson, P.S.M.

STATE OF FLORIDA
COUNTY OF _______________

Sworn to and subscribed before me this ___ day of ____________, 2008, by __________________ who is personally known to me or has produced ________________ as identification.

WITNESS my hand and official seal, this ___ day of ____________, 2008.

Notary Public
State of ___________________________
My Commission Expires: _______________________
**307 UNIVERSAL CYCLE • SURVEYOR CERTIFICATION**

**Name of Development:** Sea Grape II  
**Development Location:** 7,800 ft South of Overseas Hwy, between 79th St. Ocean and 79th St. Ocean, Marathon, FL 33050

(All persons, provide the address shown by the United States Postal Service, including the address number, street name, and city of the address. No post office box is acceptable, provide the city name, town designated name and county)

*If the Development consists of Scattered Sites, the Development Location shall be the site where the first Boundary Measurement Point is located.*

The undersigned Florida licensed surveyor confirms that the method used to determine the following latitudes and longitudes coordinates conforms to Rule 610.175, F.A.C.

### Latitude and Longitude

<table>
<thead>
<tr>
<th>N</th>
<th>24 Degrees</th>
<th>02.3 Seconds</th>
<th>W</th>
<th>81 Degrees</th>
<th>03 Minutes</th>
<th>48.6 Seconds</th>
</tr>
</thead>
</table>

If the Development consists of Scattered Sites, as a part of the boundary of each site located within 0.5 mile of the Tr-Surveyor Measurement Point: **[X]** Yes or **[ ]** No (Must check one)  
If Development consists of Scattered Sites: **[X]** Yes or **[ ]** No (Must check one)

To determine the property of all eligible services to the proposed Development's Tr-Surveyor Measurement Points:

### Latitude and Longitude

<table>
<thead>
<tr>
<th>N</th>
<th>24 Degrees</th>
<th>42 Minutes</th>
<th>W</th>
<th>81 Degrees</th>
</tr>
</thead>
</table>

### Location of Local Public Bus Stop or Metro Rail Stop

<table>
<thead>
<tr>
<th>Location of Local Public Bus Stop or Metro Rail Stop</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
</table>

### Grocery Store
- **Name:** Winn Dixie  
- **Address:** 5855 Overseas Hwy, Marathon, FL 33050

### Police Station
- **Name:** Marathon Police Station  
- **Address:** 150 Sambucus Beach Road, Marathon, FL 33050

### Medical Facility
- **Name:** Marathon Medical Center  
- **Address:** 5525 Overseas Highway, Marathon, FL 33050

### Pharmacy
- **Name:** CVS Pharmacy  
- **Address:** 5525 Overseas Highway, Marathon, FL 33050

**CERTIFICATION - Under penalty of perjury, I declare that the foregoing statements is true and correct.**

**[Signature]**  
**[Print or Name of Signer]**

**[Signature]**  
**[Print or Name of Signer]**

This certification may not be signed by the Applicant, by any related parties of the Applicant, or by any Principals or Financial Beneficiaries of the Applicant. If the certification is inaccurately signed, the Application will not be reviewed for proximity to prohibited points. If this certification contains corrections or "white-out", or if it is excised, altered, or required, the Application will not be reviewed. The developer points and will fail to meet threshold. The application will still be eligible for automatic points. The certification may be photographed.
SKETCH OF POINT QUALIFIERS
"TIE-BREAKER" MEASUREMENT POINT
Marathon, Florida

1/800 FEET SOUTH OF OCEAN HIGHWAY,
BETWEEN 10TH STREET OCEAN AND 72nd STREET OCEAN
MARATHON, FL 33050

U.S. Hwy. 1
Overseas Highway

Public Latitude East
Lat. N24°42'36.2"
Long. W84°20'54.3".

Distance:
7MP 64 ft
3.75 ft.

Variation from True to Magnetic North is 44° West.

<table>
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<th>Retail Stores</th>
<th>CVS Pharmacy</th>
<th>Winn Dixie</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>#5575</td>
<td>#5585</td>
</tr>
</tbody>
</table>

WGS 84 - INDICATES WORLD GEODETIC SYSTEM 1984
TBP - INDICATES TIE BREAKER MEASUREMENT POINT

THIS IS NOT A SURVEY.

SEA DIVERSIFIED INCORPORATED
SURVEYING AND ENGINEERING APPLICATIONS
1200 NW 15th Ave., Suite 3, Deerfield Beach, Florida 33442

SCALE: 1" = 50' OR larger

PREPARED FOR
CARLISLE DEVELOPMENT GROUP
3950 SW 27th Ave., Suite 200
COCONUT GROVE, FL 33133

REVISED:

DATE: MAR. 25, 2007
PROJ. NO.: 07-1062
SHEET NO.: 1 OF 1
SKETCH OF POINT QUALIFIERS
"TIE-BREAKER" MEASUREMENT POINT
Marathon, Florida

4-800 FEET SOUTH OF OVERSEAS HIGHWAY,
BETWEEN 40th STREET OCEAN AND 72nd STREET OCEAN
MARATHON, FL 33050

Sombrero Beach Road

Marathon High School
Main Office

Public school
Main Entrance (under construction)
Lat. N24°42'14.5"
Long. W81°04'41.5"
Distance to
"TM" - 1.32 miles
6,833.8 feet or 1.29 miles

THIS IS NOT A SURVEY.

SITE
SEA CRANE II
LOCATION
SKETCH

NOT TO SCALE

MAR. 25, 2007
07-1052
1 OF 1

SEA DIVERSIFIED INCORPORATED
SURVEYING AND ENGINEERING APPLICATIONS
400 NW 34th Ave., Suite 1, Delray Beach, Florida 33445

PREPARED FOR
CARLISLE DEVELOPMENT GROUP
950 SW 27th Ave., Suite 200
COCONUT GROVE, FL 33133

REVISED:

- WGS 84 INDICATES WGS 84 GEODETIC SYSTEM
- "TM" INDICATES TIE BREAKER MEASUREMENT POINT
- VARIATION FROM TRUE TO MAGNETIC NORTH IS 10° WEST

SMH, BY:

CHK, BY:

PROJECT NO.: 07-1052
SHEET NO.: 1 OF 1
SKETCH OF POINT QUALIFIERS
"TIE-BREAKER" MEASUREMENT POINT
Marathon, Florida
-1/800 FEET SOUTH OF OVERSEAS HIGHWAY,
BETWEEN 11th STREET OCEAN AND 12th STREET OCEAN
MARATHON, FL 33050

U.S. Hwy. 1
Overseas Highway

Only Public Entrance
41° N 24' 42.56" N
83° W 07' 04.85" W
Distance to
"1MP" - 0.66 miles
3,589.3 feet

Retail Stores

CVS
Pharmacy

*5635

Winn Dixie

*5685

WGS 94 - INDICATES WORLD GEODETIC SYSTEM 1994
"TBP" INDICATES TIE-BREAKER MEASUREMENT POINT
VARIATION FROM TRUE TO MAGNETIC NORTH IS 4° 17' 7" W.

THIS IS NOT A SURVEY.

SFA DIVERSIFIED INCORPORATED
SURVEYING AND ENGINEERING APPLICATION
1200 NW 17th Ave, Suite 1, Dania Beach, FL 33004

SCALE:

1" = 100 FT

OWN. BY:

CHK. BY:

PROJ. NO.: 07-1082

DATE: MAR. 25, 2007

SHEET NO.: 1 OF 1

PREPARED FOR
CARLISLE DEVELOPMENT GROUP
2950 SW 27th Ave, Suite 200
COCONUT GROVE, FL 33139

EDITED BY:

REVISED:

SITE

SKETCH

LOCATION

SEA GRAPES II
Legal Description: Top Phase II
A parcel of land in Section 11, Township 68 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 Southeastern right of way line of U.S. Highway 1; thence South along the said East line of Section 11 for 280.00 feet; thence East for 231.55 feet; thence South for 153.98 feet; thence East for 20.00 feet; thence North for 336.48 feet to the Southeastern Right-of-Way line of U.S. Highway No. 1; thence N 67° 11' 00" E along said Southwestern Right-of-Way line of U.S. Highway No. 1 for 271.95 feet back to the Point of Beginning. Containing 61890 s.f. or 1.42 acres, more or less.

Legal Description: Bottom Phase II
A parcel of land in Section 11, Township 68 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 Southeastern Right-of-Way line of U.S. Highway 1; thence South along the said East line of Section 11 for 509.00 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 24.61 feet; thence East for 91.25 feet back to the Point of Beginning. Containing 19707 s.f. or 0.45 acres, more or less.

EXHIBIT 2
Legal Description: Yee Phase II
A parcel of land in Section 11, Township 06 South, Range 32 East, Key West, Monroe County, Florida, more particularly described as follows:

Begin at the intersection of the East line of said Section 11 and the Southwesterly right-of-way line of U.S. Highway 1; thence South along the said East line of Section 11 for 500.00 feet; thence West for 231.55 feet; thence North for 140.00 feet; thence East for 70.23 feet; thence South for 24.41 feet; thence East for 94.25 feet back to the Point of Beginning.

Containing 3009.76 acres, or 1.28 acres, more or less.

AND

20' Strip
A strip of land in Section 11, Township 06 South, Range 32 East, Key West, Monroe County, Florida, more particularly described as follows:

Commencing at the intersection of the East line of said Section 11 and the Southwesterly Right-of-Way line of U.S. Highway 1; thence South 67°31'00" West, along said Southwesterly Right-of-Way line, for 250.00 feet to the Point of Beginning; thence South, parallel to said East line of Section 11, for 344.02 feet; thence West for 20.00 feet; thence North for 356.02 feet, to said Southwesterly Right-of-Way line; thence North 67°31'00" East along said Southwesterly Right-of-Way line for 21.09 feet back to the Point of Beginning.

Containing an area of 0.911.366 square foot (0.156 acres more or less).

Legal Description: Yee Phase III
A parcel of land in Section 11, Township 06 South, Range 32 East, Key West, Monroe County, Florida, more particularly described as follows:

Commencing at the intersection of the East line of said Section 11 and the Southwesterly right-of-way line of U.S. Highway 1; thence South along the said East line of Section 11 for 500.00 feet to the Point of Beginning; thence West for 231.55 feet; thence North for 140.00 feet; thence East for 70.23 feet; thence South for 24.41 feet; thence East for 94.25 feet back to the Point of Beginning.

Containing 1970.75 acres, or 0.45 acres, more or less.
Legal Description: Phase I

A parcel of land in Section 11, Township 66 South, Range 37 East, Key West, Monroe County, Florida, more particularly described as follows: Commence at the intersection of the East line of said Section 11 and the Southwesterly right-of-way line of U.S. Highway 1; thence South along the said East line of Section 11 for 205.00 feet; thence East for 231.55 feet; thence South for 192.86 feet; thence East for 20.00 feet; thence North for 236.48 feet to the Southwesterly Right-of-Way line of U.S. Highway No. 1; thence N 87°1′00″ E along the said Southwesterly Right-of-Way line of U.S. Highway No. 1 for 874.04 feet back to the Point of Beginning. Containing 16,187 acres, more or less.

Legal Description: Phase II

A parcel of land in Section 11, Township 66 South, Range 37 East, Key West, Monroe County, Florida, more particularly described as follows: Commence at the intersection of the East line of said Section 11 and the Southeasterly right-of-way line of U.S. Highway 1; thence East for 231.55 feet; thence South for 192.86 feet; thence East for 20.00 feet; thence North for 236.48 feet to the Southeasterly Right-of-Way line of U.S. Highway No. 1; thence N 87°1′00″ E along the said Southeasterly Right-of-Way line of U.S. Highway No. 1 for 874.04 feet back to the Point of Beginning. Containing 16,187 acres, more or less.