

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: SEA GRAPE II, LTD.

FHFC Case No.: 2008-075VW

**ORDER GRANTING PETITION FOR WAIVER OF RULE
67-48.0075(7)(a)(1), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on September 26, 2008, pursuant to a "Petition for Waiver of Rule 67-48.0075(a)(1), Florida Administrative Code (2007)" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received a "Petition for Variance of Rule 67-21.008(I)(b), Florida Administrative Code and for Waiver of Rule 67-48.0075(a)(1), Florida Administrative Code (2007)" (the "Petition") on August 26, 2008, from SEA GRAPE II, LTD. ("Petitioner"). On September 5, 2008, the Notice of the Petition was published in Volume 34, Number 36, 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") of Florida Housing hereby finds:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Sherry Shea

DATE 9-26-08

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. During the 2007 Universal Cycle, Florida Housing awarded Petitioner (under application #2007-126CS) a State Apartment Incentive Loan (“SAIL”) loan, competitive Housing Credits and a Supplemental Loan for Extremely Low Income units to finance, in part, the construction of Sea Grape Apartments (the “Development”), a 28-unit apartment complex located in Monroe County, Florida.

3. Rule 67-48.0075(7)(a)1, Florida Administrative Code states in pertinent part:

(7) Supplemental loans will be subject to the credit underwriting provisions outlined in Rule 67-48.0072 and the loan provisions outlined below:

(a) The terms and conditions of the supplemental loan shall be as follows: (1) The supplemental loan shall be (i) based on each ELI Set-Aside threshold requirement in the Universal Application Instructions; and (ii) non-amortizing at 0 percent simple interest per annum over the life of the loan, with the principal forgivable provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 15 years.

4. Section 120.542(2), Florida Statutes provides in pertinent part:

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 Florida Housing to forgive a supplemental loan's principal balance when the awarded amount funds ELI Household units for at least 15 years. Petitioner demonstrated that it will suffer negative federal income tax consequences pertaining to forgivable loan without the waiver, as the IRS may consider this loan as "phantom" taxable income. Designation of this loan as forgivable, whether ultimately forgiven or not, may cause the IRS to consider this loan as "phantom" taxable income, or income that the IRS would tax, but for which Petitioner has not yet received a benefit.

6. Petitioner requests that the ELI loan be repaid at the end of the initial 15-year period, and that at the end of the initial 15-year period, Petitioner be given an automatic extension on the maturity date of the ELI loan to a date coterminous with senior financing if the units for which the ELI loan was awarded were targeted to ELI Households during the initial 15-year period.

7. Under these circumstances, strict application of the above Rule to this Petitioner would create a substantial hardship and violate the principles of fairness. Petitioner demonstrated that granting this relief does not provide Petitioner with an unfair advantage over other applicants. Granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary

and affordable housing to the citizens of Florida. The waiver of Rule 67-48.0075(a)(1), Florida Administrative Code, furthers this purpose.

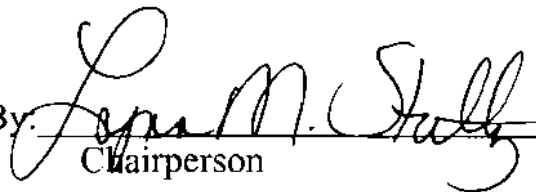
IT IS THEREFORE ORDERED:

The Petition for a waiver of Rule 67-48.0075(a)1, Florida Administrative Code (2007) is hereby **GRANTED** to permit Petitioner to forgo the automatic forgiveness a supplemental loan's principal balance receives when the awarded amount funds ELI Household units for at least 15 years. The ELI loan shall be repaid at the end of the initial 15-year period, and that at the end of the initial 15-year period, Petitioner shall be given an automatic extension on the maturity date of the ELI loan to a date coterminous with senior financing if the units for which the ELI loan was awarded were targeted to ELI Households during the initial 15-year period.

DONE and ORDERED this 26th day of September, 2008.

Florida Housing Finance Corporation



By: 
Chairperson

Copies furnished to:
Wellington H. Meffert II, Esq.
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Debbie Blinderman
Deputy Development Officer
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Brian J. McDonough, Esq.
Stearns, Weaver, Miller, Weissler
Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, FL 33130

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

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 CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.