

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2008-075VW
Application No. 2007-126CS

SEA GRAPE II, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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FLORIDA HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.0075(7)(a)(1)

Sea Grape II, Ltd. ("Sea Grape II"), a Florida limited liability company, petitions Florida Housing Finance Corporation ("Florida Housing") for a waiver of principal forgiveness for supplemental loans for ELI residential rental units under Rule 67-48.0075(7)(a)(1), Florida Administrative Code (2007) (the "Rule"). Upon approval of the petition as to principal forgiveness, Sea Grape II will request the Florida Housing underwriter to approve loan documentation providing that upon the initial 15-year loan maturity, the supplemental loan's maturity date will be automatically extended an additional 35 years, for a total term of 50 years, if the units for which the Supplemental Loan was awarded have remained as set aside units, targeted for occupancy by ELI Households during the initial 15-year term.

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 modify and delete the automatic forgiveness term for supplemental loans awarded during the 2007 Universal Application Cycle.

A. The Petitioner and the Development

1. The address, telephone and facsimile number of Sea Grape II is:

Sea Grape II, Ltd.
2790 SW 27th Avenue, Suite 200
Miami, FL 33133
Telephone: 305-476-8118
Facsimile: 305-476-1557

2. The address, telephone and facsimile number of Sea Grape II's counsel is:

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Patricia K. Green, Esquire
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3. During the 2007 Universal Application Cycle, Sea Grape II submitted its Universal Application (the "Application") for housing tax credits ("Housing Credits") under the Low Income Housing Tax Credit program ("HC Program"). Florida Housing has made a preliminary allocation of Housing Credits in the amount of \$700,000 and has made a preliminary commitment for a loan under the State Apartment Incentive Loan Program ("SAIL Program") comprised of a base loan ("SAIL Loan") in the amount of \$1,960,000 and a supplemental loan ("Supplemental Loan") in the amount of \$255,000. Supplemental Loans are available to applicants agreeing to set aside a specified percentage of apartment units to extremely low-income persons ("ELI Households").

4. The Housing Credits, SAIL Loan and Supplemental Loan will be used for the financing and development of Phase II of Sea Grape Apartments, a new 28-unit rental development in Monroe County, Florida (the "Development"). The Development is intended to

serve the Family demographic in the Florida Keys, including extremely low and low income households.

5. The requested waiver will not adversely affect the Development, would not have affected consideration by Florida Housing of Sea Grape II's Application, and would not have altered the scoring by Florida Housing that qualified Sea Grape II for Housing Credits, a SAIL Loan and a Supplemental Loan. Nor would the requested waiver have provided Sea Grape II with an unfair competitive advantage over other applicants.

6. The requested waiver will ensure the financial feasibility of the Development and its ability to provide desperately needed affordable housing in Monroe County, Florida.

7. 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. The Rule from which Relief is Requested and the Statute Implementing the Rules

9. Sea Grape II requests a waiver of Rule 67-48.0075(7)(a)(1) that provides:

The supplemental loan shall be (i) based on each ELI Set-Aside unit above the minimum ELI Set-Aside threshold requirement in the Universal Application instructions; and (ii) non-amortizing at 0% simple interest per annum over the life of the loan, with the principal forgivable provided the units *for which supplemental loan amount is awarded are targeted to ELI Households for at least 15 years.* (Emphasis added).

10. The Florida Housing Finance Corporation Act (the "Act")¹ 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, the Corporation is

¹The 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.

responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). §§ 420.5099(1) and (2), Fla. Stat. (2007). The Allocation Procedures were established in Rule Chapter 67, Florida Administrative Code. Accordingly, the Rule subject to Sea Grape II’s waiver request implements, among other sections of the Act, the statutory authorization for Florida Housing’s establishment of Allocation Procedures for the HC Program and for issuance of Supplemental Loans. §§ 420.5099(1) and (2), Fla. Stat. (2007).

C. Justification for Sea Grape II’s Requested Waiver

11. Florida Housing has the authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principles of fairness², and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2007).

As a consequence of potential negative federal income tax ramifications for forgivable loans, Sea Grape II requests a waiver of the ELI Rule’s requirement for the automatic forgiveness of the principal balance of Supplemental Loans provided the units for which the Supplemental Loan amount is awarded are targeted to ELI Households for at least 15 years.

² “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “Principles of Fairness” are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Rule Section 120.542(2), Florida Statutes (2007).

12. The designation of the Supplemental Loan as forgivable may, whether forgiven or not, cause the Internal Revenue Service to consider the Supplemental Loan as "phantom" taxable income as of its closing date, and Sea Grape II may be subject to taxes on the Supplemental Loan even though it has not yet received the benefit of the Supplemental Loan being forgiven. In addition, the designation of the Supplemental Loan as forgivable may, whether forgiven or not, cause the full amount of the Supplemental Loan to be deducted from the Development's eligible basis, thereby reducing the amount of tax credit equity available to construct the Development, and a corresponding substantial economic hardship.

13. Therefore, the automatic forgiveness terms should be deleted, and in lieu thereof, Sea Grape II will request that Florida Housing's underwriter approve loan documentation providing that upon the initial 15-year loan maturity, the Supplemental Loan's maturity date will be automatically extended an additional 35 years, for a total loan term of 50 years, if the units for which the Supplemental Loan was awarded have remained as set aside units, targeted for occupancy by ELI Households during the initial 15-year term.

D. Conclusion

14. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2007).

15. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 28 affordable housing units will be available for families and

individuals in Monroe County, Florida.

16. However, a denial of the requested waiver would result in a substantial hardship for Sea Grape II. More significantly, Sea Grape II could be denied the ability to deliver decent, safe, and affordable housing units to a market in desperate need of extremely low and low income housing.

17. 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 Florida Housing Finance Corporation Act,³ through new construction, in an economical and efficient manner.

18. Should Florida Housing require additional information, Sea Grape II is available to answer questions and provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.0075(7)(a)(1).

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

A. Grant the Petition and all the relief requested herein;

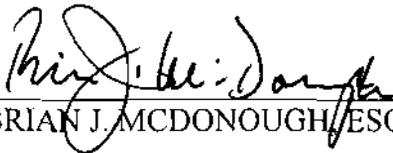
B. Waive Rule 67-48.0075(7)(a)(1)'s requirement for the automatic forgiveness of the principal balance of Supplemental Loans. In lieu thereof, Sea Grape II will request that Florida Housing's underwriter approve loan documentation providing that upon the initial 15-year loan maturity, the Supplemental Loan's maturity date will be extended an additional 35 years, for a total loan term of 50 years; and

C. Grant such other and further relief deemed appropriate.

³ See §§ 420.501 through 420.516, Fla. Stat. (2007).

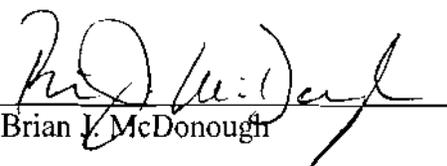
Respectfully submitted,

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By: 
BRIAN J. MCDONOUGH, ESQUIRE

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 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 25 day of August, 2008.

By: 
Brian J. McDonough