

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. _____
Application No. 2006-077CS

SEA GRAPE APARTMENTS, 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 APARTMENTS DEVELOPMENT**

Petitioner Sea Grape Apartments, Ltd., a Florida limited partnership ("SGA"), 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. (2006) (the "Rule").

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), SGA requests a waiver of the Rule to allow for a change of its development's site.

A. THE PETITIONER

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

Sea Grape Apartments, Ltd.
c/o TCG Sea Grape, LLC
Attention: Ken Naylor
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 SGA'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 2006 Universal Cycle, SGA submitted a successful 2006 Universal Application ("Universal Application")¹ for a \$4 million loan 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 Apartments, a new 56-unit multi-building apartment development (the "Development") intended to serve very-low and low income individuals and/or families in Marathon, Monroe County, Florida. See Application No. 2006-077CS.

5. In its Universal Application, SGA also applied for 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 \$1,435,000, and it is anticipated that there will be a Final Housing Credit Allocation granted to SGA in accordance with Florida Housing's final allocation procedures.

¹The Universal Application Package has been adopted and incorporated into Chapter 67-48 by Rule 67-48.004(1)(a), F.A.C. (2006).

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 SGA; (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. (2006).

8. The waiver being sought is permanent in nature.

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

9. SGA requests a waiver of Rule 67-48.004(14). As applied to applications for Housing Credits and SAIL loans, the Rule identifies non-curable matters as follows:

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. (2006).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. §§ 420.5099(1) and (2), Fla. Stat. (2006). Accordingly, the Rule that is the subject of SGA's waiver request is implementing, among other sections of the Act, the statutory authorization for Florida

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. (2006).

Housing's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2006).

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. (2006).

C. Justification for SGA's Request to Change Its Development's Site

12. SGA's Development is the first phase of a two-phase project for the development of affordable housing in Monroe County, Florida.³

13. However, when SGA submitted its Universal Application, the legal description encompassed the site locations for both SGA's Development, and the second phase of the development project.

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 SGA's Universal Application, remains within the Development's modified legal description. *See* Affidavit and Certification of Surveyor Ken Jackson attached hereto as Exhibit A, and the revised legal description attached hereto as Exhibit B.

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

³ Sea Grape II, Ltd., the applicant for the second phase, submitted its request for SAIL funds and HCs during the 2007 Universal Application Cycle. *See* Application No. 2007-126CS.

16. The requested change to the Development's legal description would not have impacted the scoring of SGA's Universal Application, and would not have provided SGA 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 savings of construction and development costs.

D. Conclusion

18. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 56 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 (2006), 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 SGA notes that 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.

§ 420.5099(2), Fla. Stat. (2006).

21. The requested waiver also serves the purposes of Section 420.5087, Florida Statutes (2006), 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, SGA 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 Apartments Development.

WHEREFORE, Petitioner Sea Grape Apartments, 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 the Sea Grape Apartments to be developed on the site identified in Exhibit B to this Petition; and

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

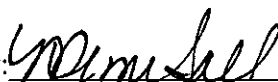
Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Counsel for Sea Grape Apartments, Ltd.
200 East Las Olas Boulevard, Suite 2100
Fort Lauderdale, Florida 33301
Tel: (954) 462-9575
Fax: (954) 462-9567
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 24th day of August, 2007.

By: 
Mimi L. Sall

Affidavit and Certification of Ken Jackson

Before me, the undersigned authority, personally appeared Kenneth C. 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 Apartments, Ltd. (the "Applicant"), and I am not related to the Applicant or any Principals or Financial Beneficiaries of the Applicant.

On or about August 17, 2007, I prepared a site sketch ("Revised Site Sketch") for the development known as Sea Grape Apartments (the "Development"). The Revised Site Sketch was prepared based on field work that I conducted and supervised on August 19, 2007, and a revised legal description as prepared by Fred Hildebrand. The Revised Site Sketch and legal are attached hereto as Exhibits 1 and 2.

In preparing the Revised Site Sketch, I also reviewed the Surveyor Certification and Sketch of Point Qualifiers "Tie-Breaker" Measurement Point attached as Exhibit 25 to Applicant's Universal Application No. 2006-077CS. The field work that conducted on August 19, 2007, confirmed that the Tie-Breaker Measurement Point identified in Exhibit 25 remains within the legal description of the Revised Site Sketch.

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

Kenneth C. Jackson
Kenneth C. Jackson, P.S.M.

Aug 21, 2007
Dated

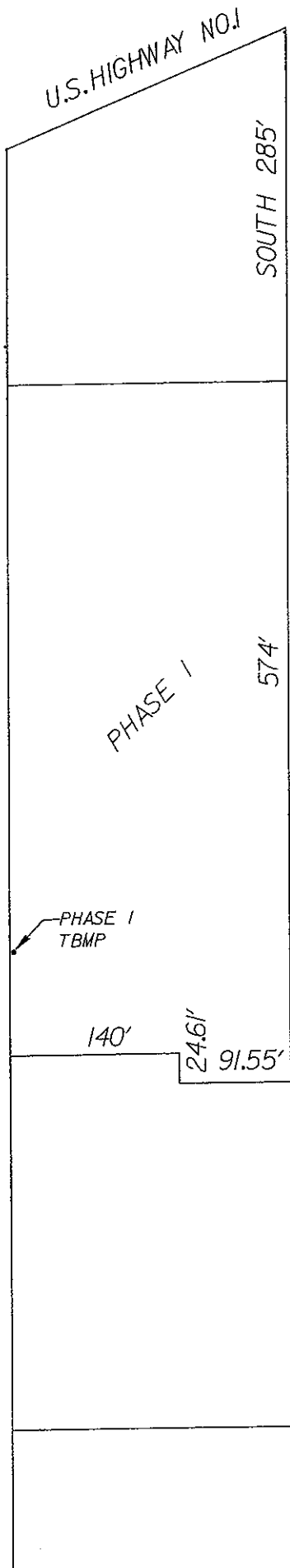
STATE OF FLORIDA
COUNTY OF *Palm Beach*

Sworn to and subscribed before me this *21* day of *Aug*, 2007, by *Kenneth Jackson* who is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal, this *21* day of *August*, 2007.

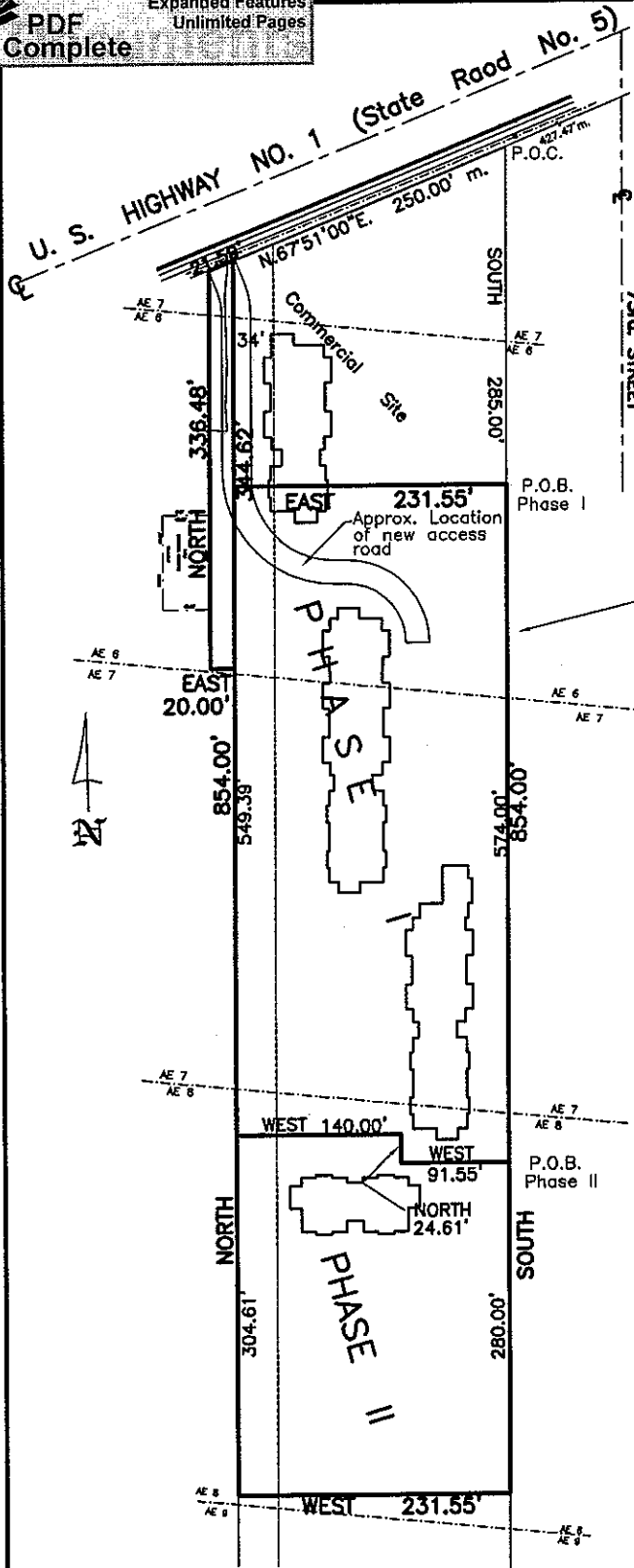
Teresa Martinez
NOTARY PUBLIC STATE OF FLORIDA
Notary Public *Teresa Martinez*
State of _____ Commission # *DD876724*
My Commission Expires: *DEC 05, 2008*
Bonded Through Atlantic Bonding Co., Inc.

Exhibit A



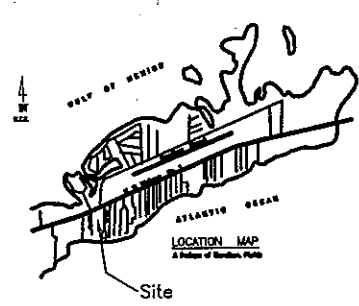
POB EXHIBIT C

Exhibit A



Phase I:
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 Southeasterly right of way line of U.S. Highway 1; thence South along the said East line of Section 11 for 285.00 feet to the Point of Beginning; thence continue South for 574.00 feet; thence West for 91.55 feet; thence North for 24.61 feet; thence West for 140.00 feet; thence North for 549.39 feet; thence East for 231.55 feet to the Point of Beginning;
Containing 129463 s.f. or 2.97 acres, more or less.

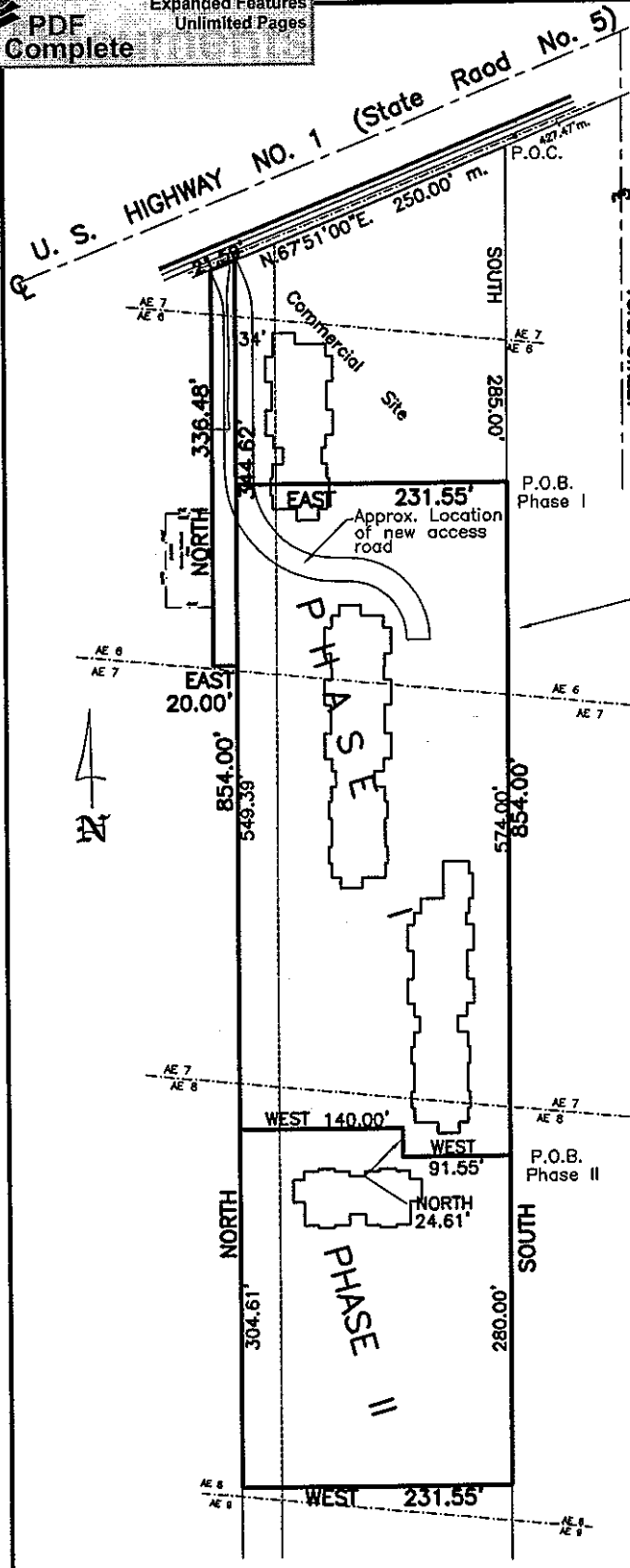
East Line of Amended plat of MARATHON SHORES,
West Line Section 12, Township .66 South, Range 32 East



SeaGrape Ltd., a Florida Limited Partnership U.S. Highway No. 1, Marathon, Florida			
Sketch to accompany Legal Description Phase I & II			Dwn No.: 06-409
Scale: 1"=120'	Ref.	Flood panel No. 1379 K	Dwn. By: F.H.H.
Date: 7/28/06		Flood Zone: AE	Flood Elev.
REVISIONS AND/OR ADDITIONS			
6/26/07: New access road			
8/10/07: Add'l buildings, move sewage, add 20' strip			
f:\dwg\marathon\seagrape phase 1 and 2			

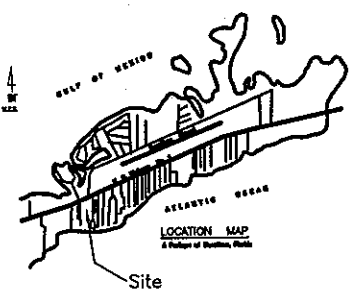
FREDERICK H. HILDEBRANDT
ENGINEER PLANNER SURVEYOR

3152 Northside Drive
Suite 201
Key West, Fl. 33040
(305) 293-0466
Fax. (305) 293-0237
fhildeb1@bellsouth.net



Phase I:
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 Southeasterly right of way line of U.S. Highway 1; thence South along the said East line of Section 11 for 285.00 feet to the Point of Beginning; thence contine South for 574.00 feet; thence West for 91.55 feet; thence North for 24.61 feet; thence West for 140.00 feet; thence North for 549.39 feet; thence East for 231.55 feet to the Point of Beginning;
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East Line of Amended plot of MARATHON SHORES, West Line Section 12, Township .66 South, Range 32 East



SeaGrape Ltd., a Florida Limited Partnership U.S. Highway No. 1, Marathon, Florida			
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Exhibit B