

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. \_\_\_\_\_

RELIANCE-CYPRESS GROVE ASSOCIATES, LTD.  
a Florida Limited Partnership,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**PETITIONER RELIANCE-CYPRESS GROVE'S PETITION FOR WAIVER  
OF RULE 67-48.004(14)(a) AND PART II. A.2., OF THE GENERAL  
INSTRUCTIONS FOR A CHANGE IN THE APPLICANT'S OWNERSHIP  
STRUCTURE AND TO CHANGE THE NAMES OF APPLICANT AND ITS  
GENERAL PARTNER**

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Petitioner Reliance-Cypress Grove Associates, Ltd., a Florida limited partnership ("Applicant" or "Reliance-Cypress Grove"), petitions Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of the Corporation's prohibition on changes of an applicant's ownership structure and of an applicant's and that of its general partner. *See* Rule 67-48.004(14)(a), F.A.C. (the "Rule"); and Part II, A.2.(a)(2), Universal Application Instructions - Multifamily Mortgage Revenue Bonds Program ("Universal Instructions"). In support of its Petition, Reliance-Cypress Grove states:

1. Reliance-Cypress Grove entered into a contract to purchase an 814-unit apartment rental complex (the "Development" or "Project") located in Lauderhill, Broward County, Florida. Intending to acquire and rehabilitate the Project, in part, using proceeds from the State Apartment

Incentive Loan Program ("SAIL"), Applicant timely submitted its Universal Application in the 2004 cycle for \$2,000,000, in SAIL loan proceeds.

2. At that time, it was envisioned that the Project would be acquired and substantially renovated by Applicant through the use of tax exempt bond financing SAIL loan proceeds and equity raised by the sale of tax credits to a tax credit investor. The tax credits would be available to the Project by virtue of the form of financing being obtained by Applicant---tax exempt bonds to be issued by the Broward County Housing Finance Authority.

3. Subsequent to the filing of its application and prior to its closing on the September 2004 acquisition of the Project, Applicant was advised that its tax credit investor would not proceed with its approximately \$15,000,000 investment in the Project unless Applicant's ownership structure was modified by substituting a non-related member for the sole member of Applicant's general partner, as identified in the Universal Application. To reflect the changes in the ownership structure required by its tax credit investor and to provide further comfort to its tax credit investor relative to the related party rule, Applicant also seeks to change its name as well as the name of its general partner, as identified in the Universal Application.

4. Consequently, a waiver of the applicable Rules and Universal Instruction is necessary to (a) replace the sole member of the general partner with Housing Preservation Trust, Inc., a Florida not for profit corporation that is applying for 501(c)(4) status; and (b) change the names of Applicant from Reliance-Cypress Grove Associates, Ltd. to HPT-Cypress Grove Associates, Ltd. ("HPT Associates") and its general partner from Reliance-Cypress Grove, LLC to HPT-Cypress Grove, LLC.

5. Reliance Housing Services, LLC (the "Developer") will remain as the Project's developer.

6. The requested waiver to change Applicant's ownership structure and the names of Applicant and its general partner will not adversely impact the Project because the Developer has the requisite expertise and experience to successfully rehabilitate, operate, maintain and manage affordable rental housing projects. However, the denial of the requested waiver will create a substantial hardship for Reliance-Cypress Grove by frustrating the purpose of the SAIL program because a portion of the planned renovations to the Project could not proceed and thereby adversely impacting the Project.

7. The name, address, telephone and facsimile numbers of the Petitioner are:

Reliance-Cypress Grove Associates, Ltd.  
Attention: Deborah Dozier Blinderman  
516 N.E. 13<sup>th</sup> Street  
Fort Lauderdale, Florida 33304  
Telephone: 954-927-4545  
Facsimile: 954-764-7860  
E-mail: dblinderman@reliancehousing.org

The name, address, telephone and facsimile numbers of the Applicant's attorneys are:

Brian J. McDonough, Esquire  
Mimi L. Sall, Esquire  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
Suite 2200  
Museum Tower  
150 West Flagler Street  
Miami, Florida 33130  
Telephone: 305 - 789-3200  
Facsimile: 305 - 789-3395  
E-mail: bmcdonough@swmwas.com

8. The Florida Housing Finance Corporation Act<sup>1</sup> designates the Corporation as the State of Florida administrator for the SAIL program to establish application procedures for mortgage loans to provide housing affordable to very-low-income persons (the "Procedures"). §§420.501, 420.507 and 420.5087, Fla. Stat. (2001). These Procedures are established in Rule Chapter 67, Florida Administrative Code. Accordingly, as set forth below, the Rules subject to Reliance-Cypress Grove's waiver request are implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Procedures for the SAIL program. *Id.*

9. The prohibition on changing an applicant's name is found in Rule 67-48.004(14)(a).

10. The prohibition on changing an applicant's ownership structure is not found in either Chapter 420, Florida Statutes, or in the administrative rules governing the Corporation. Instead, the limitation is found in the Universal Instruction which provides that when an applicant is:

[A]pplying for MMRB, SAIL or HOME, Applicant shall be the borrowing entity and ***cannot be changed until after loan closing. Replacement of Applicant or a material change*** (33.3% or more of Applicant, a General Partner of Applicant, or a member of Applicant) in the ownership structure of the named Applicant prior to this time shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval. (Emphasis added).

Part II, A.2,(a)(2), Universal Application Instructions.

11. Under Rule 67-48.002(111), F.A.C., the Universal Instruction that is the basis for the requested change of the ownership's structure is adopted and incorporated into the administrative rules governing the Corporation as follows:

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<sup>1</sup>The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes (the "Act"). See also Rule 67-40.020(1), F.A.C. ("Act" means the Florida Housing Finance Corporation Act, section 420.501 through 420.516 of the Florida Statutes").

the forms and *instructions* obtained from the Corporation at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the ...Program.... ***The Universal Application Package is adopted and incorporated herein by reference, effective on the date of the latest amendment to the rule chapter.*** (Emphasis added).

As a result, the prohibition on changing an applicant's ownership structure through the replacement of a member of the general partner is expressly incorporated into the Corporation's administrative rules.

12. Applicant's requested waivers are required so that its Project qualifies for critical financing necessary to finance the rehabilitation of the Project needed for low income families in Broward County, Florida. The following facts demonstrate the circumstances that justify the Rule waivers for this SAIL application:

- a. When the Universal Application was submitted, the Applicant's anticipated tax credit investor and the Applicant believed the structure of the entity, set forth in the Universal Application, was acceptable for all parties concerned;
- b. In the Universal Application, the structure of the Applicant provided for Reliance-Cypress Grove, LLC to act as the general partner of the Applicant, with Reliance Housing Foundation, Inc. ("RHF"), a qualified non-profit as defined in Section 42 of the Code, as its sole member. Reliance Housing Services, LLC, whose sole member is RHF, is identified in the Application as the Project's Developer;
- c. As the acquisition of the Project proceeded, the tax credit investor and its counsel expressed concern over the relationship between the Project's prior owner, Reliance-Sandalgrove, LLC, and the Applicant. Reliance-Sandalgrove, LLC was owned 100% by RHF who was its sole member. It was anticipated that RHF would own .01% of the Applicant by virtue of its general partner ownership interest in the Applicant. However, it was contemplated, as in many tax credit transactions, that RHF, as the general partner or otherwise, would receive significantly more than .01% of various items of partnership income. Under the related party rules of the Internal Revenue Code (Sections 42 and 707) ("Related Party Rule"), the property for which an acquisition credit is being claimed, the Project in this case, can not have been acquired by the Applicant from an entity that continues to have more than a 10% interest in the capital or profits of the Applicant.

- d. Because RHF owned all of the selling entity and could have an interest in excess of 10% in certain partnership items of the Applicant, counsel for the tax credit investor advised that the Related Party Rule presented a problem that, if not remedied to its satisfaction, would preclude the tax credit investor from investing in the Project.
- e. To resolve the related party issue and ensure the viability of acquisition credits on an approximate \$34,000,000 acquisition, the tax credit investor has required the Applicant to change its ownership structure by replacing its general partner's sole member with HPT. To reflect the change in the Applicant's ownership structure, the names of the Applicant and its general partner would be changed to HPT-Cypress Grove Associates, Ltd. HPT-Cypress Grove, LLC, respectively;
- f. RHF continues to manage and develop the Project through its affiliate, Reliance Housing Services, LLC.
- g. The Applicant recognizes that the replacement of RHF as the sole member of its general partner results in a change of more than 33.3% of the ownership of the general partner of the Applicant. Unfortunately, the only available solution to the related party issue that allowed the Applicant to acquire the Project and remain eligible for acquisition tax credits to protect the viability of the Project has now created the necessity for Rule waivers from the Corporation.
- h. The replacement of RHF's interest in the Applicant's general partner did not result in any economic benefit to the Applicant, i.e., no consideration was either paid or promised in the future. In fact, RHF suffered an economic loss on a mid to long term basis by giving up the stream of cash flow payable to the Project's general partner;
- i. The new member, HPT, a Florida not for profit corporation, has applied to receive its 501(c)(4) designation, and the Applicant agrees that the award of the SAIL loan would be contingent on HPT obtaining such status;
- j. The change in the Applicant's ownership structure was necessitated by requirements imposed by its tax credit investor. The Applicant did not actively seek such change. However, the failure to make the change required by the tax credit investor would have caused the proposed transaction to terminate as the Applicant could not obtain a confirming opinion that the acquisition credits, from which was raised approximately \$12,000,000 of the approximately \$15,000,000 in tax credit equity, would not be subject to recapture if reviewed by the IRS; and
- k. By granting the requested Rule waivers, the Applicant will be able to proceed with the rehabilitation of the Project in an efficient, economical manner. As a result, 814 affordable residential housing units will be improved and remain available for low-income families in Lauderhill, Florida.

13. As demonstrated above, the requested Rule and Universal Instruction waivers serve the purposes of Section 420.5087 and the Act, as a whole, because one of their primary goals 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.”

14. Further, by granting the requested Rule and Universal Instruction waivers, the Corporation would recognize principles of fundamental fairness in the development of such affordable rental housing. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act by taking advantage of existing resources, i.e., older rental apartment complexes, rehabilitating the housing units and providing desperately needed affordable housing.

15. The requested waivers will not adversely impact the Project or the Corporation.

16. The waivers being sought are permanent in nature.

Should the Corporation require additional information, Reliance-Cypress Grove is available to answer any questions and to provide any additional information necessary for consideration of this Petition.

**WHEREFORE**, Petitioner Reliance-Cypress Grove Associates, Ltd., respectfully requests that the Corporation:

A. Consider this Petition in conjunction with Reliance-Cypress Grove Associates, Ltd.’s Uniform Application for the Corporation’s State Apartment Incentive Loan Program;

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

C. Waive the prohibition on changing the Applicant's structure by allowing the replacement of the sole member of its general partner with Housing Preservation Trust, Inc.;

D. Waive the prohibition on changing the name of an applicant and its general partner by allowing the Applicant to change its name to HPT-Cypress Grove Associates, Ltd., and to change its general partner name to HPT-Cypress Grove, LLC; and

D. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

Reliance-Cypress Grove Associates, Ltd., a Florida limited partnership

By: Reliance-Cypress Grove, LLC, a Florida limited liability company, its general partner

By: Eugene E. Serra  
Eugene E. Serra, Manager

**CERTIFICATE OF SERVICE**

The Original Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 N. 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, on November 2, 2007.

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Eugene E. Serra  
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