

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

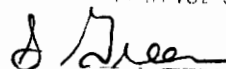
In re: TALLMAN PINES ASSOCIATES, LTD.

Case No. 2007-012VW

**ORDER GRANTING PETITION FOR VARIANCE
OF PART II.A.2.A.(1) OF THE UNIVERSAL APPLICATION INSTRUCTIONS
INCORPORATED BY REFERENCE INTO RULE 67-48.004(1)(a);
ORDER DENYING PETITION OF
WAIVER OF 67-48.004(15), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on March 16, 2007, pursuant to a "Petition for Waiver of Rule 67-48.004(15) and for a Variance of Part II.A.2.a.(1) of the Universal Application to Change Ownership Structure for the Tallman Pines Associates Ltd. Development" (the "Petition"), filed by Tallman Pines Associates, Ltd. ("Petitioner") on February 14, 2007. Notice of the Petition was published in Volume 33, Number 08, 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:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. During the 2006 Universal Application Cycle Petitioner was awarded an allocation of Low Income Housing Tax Credits in the amount of \$2,435,000 for the construction of Tallman Pines Apartments, a 176-unit apartment development intended to serve the Family demographic, to be located in Broward County, Florida (the "Development").

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION


DATE: 3-19-07

3. Petitioner is a Florida Limited Partnership whose co-General Partners are McCan Communities, Inc., with a .0049% ownership; and TCG Tallman Pines, LLC, with a .0051% ownership. Petitioner's co-Developers are Tallman Pines Development, LLC and McCan Communities, Inc. Petitioner is seeking to change only one of its co-Developers.¹

4. Subsequent to filing its application and prior to its closing on the acquisition of the project, Petitioner learned that its tax credit investor, Institutional Tax Credit Fund LIV, L.P., would reduce its equity contribution to the Development unless Petitioner's ownership structure was modified to substitute a wholly-owned for-profit subsidiary, TP Homes and Communities, Inc., for its parent not-for-profit entity, McCan Communities, Inc. To reflect the structural changes required by its tax credit investor, Petitioner seeks to modify the ownership interest.

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

Variations 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.

6. Rule 67-48.004(1)(a), Florida Administrative Code (2006), adopts and incorporates by reference the Universal Application Instructions (the "Application Instructions").

Part II.A.2.a.(1) of the Application Instructions provides as follows:

"If applying for HC, the Applicant must be a limited partnership (including a limited liability limited partnership) or a limited liability company. The Applicant entity shall be the recipient of the Housing Credits and cannot be changed until after a Final Housing Credit Allocation has been issued. Replacement of the Applicant or a material change (33.3% or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to this time shall result in disqualification from receiving an allocation and shall be

¹ Counsel for Petitioner advised by letter dated February 20, 2007, that Petitioner was not seeking to replace McCan Communities, Inc. as one of its co-Developers.

deemed a material misrepresentation. Changes to the limited partner of a limited partnership will not result in disqualification.”

7. Rule 67-48.004(15), Fla. Admin. Code (2006), provides:

A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at any time the Board determines that the Applicant’s Development or Development Team is no longer the Development or Development Team described in the Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

8. Petitioner requests a variance of Part II.A.2a.(1) of the Universal Application Instructions, incorporated by reference in Rule 67-48.004(1)(a), Fla. Admin. Code, to the extent that the Rule and Instructions prohibit changing the Applicant’s General Partner prior to the issuance of the Final Housing Credit Allocation and to allow Petitioner to modify the ownership interest of Tallman Pines Associates, Ltd. by removing McCan Communities Inc.(.0049%), and replacing this entity with its wholly-owned for-profit subsidiary, TP Homes and Communities, Inc.

9. The granting of this request for waiver will serve the purpose of the underlying statute. Petitioner demonstrated that changing the ownership structure will not impact the Development. Further, the requested changes to the Petitioner’s ownership structure will enhance the likelihood that the Development will be timely and successfully completed and, in turn, will further Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida. The granting of this request for waiver will serve the purpose of the underlying statute by ensuring the maximum use of available credits in order to encourage development of low-income housing in the state.

10. Moreover, not granting this waiver will result in a substantial hardship to Petitioner. Petitioner demonstrated that its tax credit investor will reduce its equity contribution

unless there was a change in the ownership structure, thus impairing Petitioner's ability to proceed with the construction of the Development.

11. As Petitioner is not seeking to change one of its Co-Developers, there is no need to grant a waiver of Rule 67-48.004(15), Fla. Admin. Code (2006).

IT IS THEREFORE ORDERED:

The Petition for Variance of Part II.A.2.a.(1) of the Universal Application Instructions, incorporated by reference in Rule 67-48.004(1)(a), Florida Administrative Code, is hereby **GRANTED** to the extent necessary to allow Petitioner to modify the ownership interest of Tallman Pines Associates, Ltd. by removing McCan Communities, Inc.(.0049%), and replacing this entity with its wholly-owned for-profit subsidiary, TP Homes and Communities, Inc. The Petition for Waiver of Rule 67-48.004(15) Fla. Admin. Code, is hereby **DENIED**.

DONE and ORDERED this 16th day of March, 2007.

Florida Housing Finance Corporation

By: 
Chair



Copies furnished to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Jennifer Chester
Housing Credits Administrator
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

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

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

NOTICE OF RIGHTS

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.