

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2007-0121W  
Application No. 2006-068C

TALLMAN PINES ASSOCIATES, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**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**

Petitioner Tallman Pines Associates, Ltd., a Florida limited partnership (“Tallman Pines”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the restriction on changing an applicant’s ownership structure. *See* Rule 67-48.004(15), F.A.C. (2006), and Part II.A.2.a.(1), Universal Application Instructions (collectively the “Rules”).

1. Pursuant to Section 120.542, Fla. Stat. (2006), and Rules 28-104.001 through 28-104.006, F.A.C. (2006), Tallman Pines requests a waiver and variance of the Rules to replace the co-general partner, McCan Communities, Inc. (“McCan”) with its wholly owned subsidiary, TP Homes and Communities, Inc. (“TP Homes”);

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

Tallman Pines Associates, Ltd.  
c/o TCG Tallman Pines, LLC  
Attention: Ken Naylor  
2937 S.W. 27<sup>th</sup> 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 of Tallman Pines's attorney, for purposes of this Petition, are:

Brian J. McDonough, Esquire  
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street  
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4. Pursuant to the 2006 Combined Rental Cycle Program, Tallman Pines submitted its 2006 Universal Application ("Universal Application") for Housing Credits under the Low Income Housing Tax Credit program ("Housing Credit Program").<sup>1</sup> See Application No. 2006-068C.

5. Equity raised from Housing Credits will be used for the development of 176 low-income tax credit units for Tallman Pines's development known as Tallman Pines Apartments (the "Development").

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

6. Florida Housing has issued its Preliminary Allocation of Housing Credits (“Preliminary Allocation”) reserved in the amount of \$2,435,000 and it is anticipated that there will be a Final Housing Credit Allocation granted to Tallman Pines in accordance with Florida Housing’s final allocation procedures.

7. If the requested Rule waiver and variance is granted by Florida Housing the beneficial ownership of the general partners listed in the Tallman Pines application would not change.

8. The requested Rule waiver and variance will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Tallman Pines; (b) could deprive Broward County of essential, affordable housing units in a timely manner; and (c) would violate principles of fairness. § 120.542(2), Fla. Stat. (2006).

9. The waiver and variance being sought are permanent in nature.

**A. Rules from Which Relief is Requested and Statute Implemented by the Rules**

10. In the absence of a rule waiver, Rule 67-48.004(15) mandates that:

A Development will be withdrawn from funding and any outstanding commitments for funds of 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 (emphasis added).

11. Instruction Part II. A.2.a.(1) of the Universal Application further provides that:

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

12. As demonstrated below, the requested waiver and variance serves the purposes of Section 420.5099 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 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).

**B. Justification for Tallman Pines's Requested Change of a Co-General Partner.**

13. In its Universal Application, Tallman Pines identified its two general partners as (a) McCan, with a 49% general partner ownership interest in Tallman Pines, and (b) TCG Tallman Pines, LLC, with a 51% general partner ownership interest.<sup>2</sup> See Universal Application, at Exhibit 9, a copy of which is attached as Exhibit A.

14. As identified in its Universal Application, the 100% owner of McCan is the Broward County Housing Authority.

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<sup>2</sup>No change is requested in the structure of Co-General Partner TCG Tallman Pines, LLC.

15. Subsequent to the filing of the Universal Application, the limited partner investor in Tallman Pines, U.S.A. Institutional Tax Credit Fund LIV, L.P., (the “Investor”) requested that McCan’s ownership interest in Tallman Pines be transferred by it to a wholly-owned for profit subsidiary. The reason for such request was that the holding of the general partnership interest in Tallman Pines directly by McCan would cause negative tax consequences to the Investor and would result in its having to reduce its equity contribution contemplated to be made by it to Tallman Pines. That would have adversely affected the Development. As a result, a waiver of the Rules is necessary to change the co-general partner of Tallman Pines from McCan to its wholly-owned subsidiary entity, TP Homes, in order to avoid this adverse consequence.

16. The requested waiver and variance will not prejudice the Development or the affordable housing market to be served by the Development.

**C. Conclusion**

17. The requested waiver and variance will not adversely impact the Development or Florida Housing. The requested relief will ensure that 176 affordable housing units will be available in Broward County, Florida.

18. 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.

19. Finally, by granting the requested waiver and variance, 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

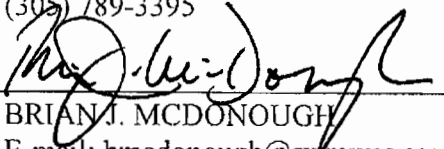
entities in meeting the purpose of the Act, through new construction, in an economical and efficient manner.

20. Should Florida Housing require additional information, Tallman Pines is available to answer questions and to provide all information necessary for consideration of its 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.

WHEREFORE, Petitioner Tallman Pines Associates, Ltd., respectfully requests that the Florida Housing Finance Corporation grant the Petition and provide the following relief:

- A. Waive the prohibition on changing an Applicant's ownership structure before issuance of a Final Housing Credit Allocation, and allow the change of the ownership structure of Tallman Pines by permitting McCan to be replaced as a co-general partner of Tallman Pines by its wholly owned subsidiary, TP Homes and Communities, Inc.;
- B. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
Counsel for Tallman Pines Associates, Ltd.  
150 West Flagler Street, 22<sup>nd</sup> Floor  
Miami, Florida 33130  
Tel: (305) 789-3350  
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By:   
BRIAN J. MCDONOUGH  
E-mail: [bmcdonough@swmwas.com](mailto:bmcdonough@swmwas.com)

**EXHIBIT 9**  
**Tallman Pines Apartments**

<b>Applicant Entity:</b>	<b>Tallman Pines Associates, Ltd.</b> A Florida limited partnership
<b>Managing General Partner: (ownership .0051 %):</b>	<b>TCG Tallman Pines, LLC (For-Profit)</b> A Florida limited liability company
<b>Members:</b>	Lloyd J. Boggio, Manager – ownership 80% The Sagra, LLC – ownership 20%
<b>Officers:</b>	Lloyd J. Boggio, President/Secretary Bruce Greer, Vice President/Treasurer
<b>Directors/Shareholders:</b>	N/A
<b>General Partner (ownership .0049%):</b>	<b>McCan Communities, Inc. (Not For-Profit)</b> A Florida corporation Broward County Housing Authority – ownership 100%
<b>Officers/Directors:</b>	Kevin Cregan, Executive Director Jim McKinley Parnell Joyce Ann Deibert Barbara Miller
<b>Shareholders:</b>	N/A
<b>Limited Partner (ownership 99.99%):</b>	Lloyd J. Boggio &/or assigns
<b>Co-Developer:</b>	<b>Tallman Pines Development, LLC</b>
<b>Sole Member (100% ownership):</b>	<b>Carlisle Development Group, LLC</b> A Florida limited liability company
<b>Members:</b>	Lloyd J. Boggio, Manager – ownership 80% Bruce Greer – ownership 20%
<b>Officers:</b>	Lloyd J. Boggio, President/Secretary Bruce Greer, Vice President/Treasurer
<b>Directors/Shareholders:</b>	N/A

**EXHIBIT 9**  
**Tallman Pines Apartments**

<b>Co-Developer:</b>	<b>McCan Communities, Inc. (Not For Profit)</b> A Florida corporation Broward County Housing Authority – ownership 100%
<b>Officers/Directors:</b>	Kevin Cregan, Executive Director Jim McKinley Parnell Joyce Ann Deibert Barbara Miller
<b>Shareholders:</b>	N/A



**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 14<sup>th</sup> day of February, 2007.

By:   
Brian J. McDonough

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