

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: Tallman Pines Associates II, Ltd.

Case No. 2007-026VW

**ORDER GRANTING PETITION FOR WAIVER OF PART II.A.2.c.(1) OF
THE 2006 RRLP APPLICATION INSTRUCTIONS AND PART II.A.2.a.(2)
OF THE 2006 UNIVERSAL APPLICATION INSTRUCTIONS**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on September 21, 2007, pursuant to a "Petition for Waivers [sic] of Part II.A.2.c.1 of the 2006 Rental Recovery Loan Program Application Instructions and Part II.A.2.a.(2) of the 2006 Universal Application Instructions for a change in Petitioner's Ownership Structure" (the "Petition"), filed by Tallman Pines Associates II, Ltd. ("Petitioner") on July 18, 2007. Notice of the Petition was published in Volume 33, Number 30, 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.

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...OUSING FINANCE CORPORATION

Sherry Green /DATE: 9-21-07

2. During the 2006 Supplemental Cycle, Petitioner applied for and was awarded Multifamily Mortgage Revenue Bonds (“MMRB”) and 2006 Rental Recovery Loan Program (“RRLP”) funds to finance the construction of Tallman Pines II in Broward County, Florida (the “Development”).

3. The RRLP Application Instructions at Part II.A.2.c.(1)¹, provides in pertinent part:

...The Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. 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 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.

4. The MMRB Application Instruction at Part II.A.2.a.(2)², provides in pertinent part:

If applying for MMRB, SAIL, or HOME, the Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or 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 funding and shall be

¹ Rule 67ER06-15(1)(a), F.A.C. (2006) adopts and fully incorporates as rules the RRLP Application Package, including the Application Instructions. In its Petition, Petitioner incorrectly cites to Rule 67ER06-21(1)(a) as incorporating the Application Package. The correct rule is 67ER06-15(1)(a), but this is obviously what Petitioner intended.

² Rule 67-21.003(1)(a), F.A.C. (2006), adopts and fully incorporates as rules the Universal Application Package, including the Application Instructions.

deemed a material misrepresentation. Changes after loan closing require Board approval.

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. McCan Communities, Inc. (“McCan”) is a General Partner of the Applicant entity with a 49% ownership interest. U.S.A. Institutional Tax Credit Fund LIV, L.P. (the “Limited Partner”) requests that McCan’s ownership interest in the Applicant entity be transferred to a wholly-owned, for-profit subsidiary in order to avoid negative tax consequences to the Limited Partner. Petitioner avers that these tax consequences to the Limited Partner would adversely affect the Development by reducing the equity contribution by the Limited Partner.
7. The Board finds that Petitioner has demonstrated that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness. Petitioner has further demonstrated that permitting this change in Development would also serve the underlying purpose of the statute.

IT IS THEREFORE ORDERED:

The “Petition for Waivers of Part II.A.2.c.1 of the 2006 Rental Recovery Loan Program Application Instructions and Part II.A.2.a.(2) of the 2006 Universal Application Instructions for a change in Petitioner’s Ownership Structure” is hereby **GRANTED** to permit Petitioner’s General Partner, McCan Communities, Inc., to transfer its ownership interest of 49% in the Applicant entity to TP Homes and Communities, Inc., its wholly-owned subsidiary. All other relief requested in the Petition is denied.

DONE and ORDERED this 21st day of September, 2007.

Florida Housing Finance Corporation

By: *Lynn M. Stultz*
Chair



Copies furnished to:

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Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
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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.