

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: HPT-CYPRESS GROVE
ASSOCIATES, LTD.,

Case No. 2006-002VW

**ORDER GRANTING PETITION FOR WAIVER
OF RULE 67-48.004(14)(d), 67-48.002(111), FLORIDA ADMINISTRATIVE CODE,
AND PART II.A.2(b) OF THE 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 April 21, 2006, pursuant to Petitioner HPT-Cypress Grove's Petition for Waiver of Rule 67-48.004(14)(d) and Part II.A.2(b) of the Universal Application Instructions to Change Status from Non-Profit to For-Profit Entity (the "Petition"), filed by HPT-Cypress Grove Associates, Ltd., ("Petitioner") on February 15, 2006. Notice of the Petition was published in Volume 32, 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. Petitioner is the sole general member of a General Partner of a Florida Limited Partnership and is the developer of an acquisition and rehabilitation of an 814-unit multifamily apartment project in Lauderhill, Broward County, Florida

3. Petitioner applied for SAIL funding in the 2004 Universal Cycle, intending to use that loan, along with tax-exempt bonds issued by Broward County and equity generated by the sale of tax credits associated with the bonds.

4. Subsequent to filing its application and prior to its closing on the acquisition of the project, Petitioner learned that its tax credit investor would not proceed with its investment of approximately \$15,000,000, unless Petitioner's ownership structure was modified to substitute a non-related party for the sole member of Petitioner's General Partner, General Partner, Reliance-Cypress Grove, LLC. To reflect the structural changes required by its tax credit investor, Petitioner sought to change its name as well as the name of its General Partner.

5. On December 6, 2004, the Board approved Petitioner's requests for waivers and allowed Petitioner to a) change its name from Reliance-Cypress Grove Associates, Ltd. to HPT-Cypress Grove Associates, Ltd. b) change the name of its General Partner from Reliance-Cypress Grove, LLC to HPT-Cypress Grove, LLC and c) change in the sole member of the Petitioner's General Partner from Reliance Housing Foundation, Inc. to Housing Preservation Trust, Inc."

6. Subsequently, Petitioner has applied for 501(c)(4) status with the Internal Revenue Service ("IRS"). To date, Petitioner has not received notification by the IRS that it has obtained non-profit status. Petitioner has been advised by the IRS that it may take a minimum of six months before it receives notification that it has obtained non-profit status.

7. Petitioner has completed credit underwriting, its credit underwriting report has been approved, and with the exception of obtaining non-profit status, all conditions for the SAIL loan closing have been satisfied. Petitioner requests a waiver to allow a modification of its status from non-profit to a for-profit entity and allow it to close on its SAIL loan.

8. 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.

9. Rule 67-48.004(14)(d), Fla. Admin. Code, provides:

(14) 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. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(d) Applicant applying as a Non-Profit or for-profit organization;

10. The Universal Application Instructions (“Instructions”) are part of the Universal Application Package, which is adopted by Rule 67-48.002(111), Florida Administrative Code, thus a deviation from the Instructions requires a variance or waiver of the rule.

11. Part II. A. 2(b), of the Universal Application Instructions provides:

If the Applicant applies as a Non-Profit entity it must remain a Non-Profit entity. The Non-Profit entity understands and acknowledges that it is the Non-Profit entity’s responsibility to contractually ensure that it substantially and materially participates in the management and operation of the Development throughout the Compliance Period and the Extended Use Period. If the Applicant is applying as a Non-Profit entity, failure to include the attorney opinion letter behind a tab labeled “Exhibit 4” and the IRS determination letter behind a tab labeled “Exhibit 5” will result in disqualification as a Non-Profit entity and rejection of the Application.

12. Petitioner seeks a waiver of Rule 67-48.004(14)(d), Fla. Admin. Code, and Part II. A. 2(b), of the Universal Application Instructions, which is incorporated in Rule 67-48.002(111), Fla. Admin. Code, to the extent that the Rule and Instructions prohibit changing the Applicant’s status.

13. The purpose of the underlying statute will be served by granting this waiver, in that granting this waiver request will further Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida. Petitioner demonstrated that there was no advantage in applying for funds as a non-profit in the 2004 Universal Application and a for-profit designation would not have altered its score. Further, Petitioner has pursued its designation with the IRS in good faith and continues to seek its 501(c)(4) designation.

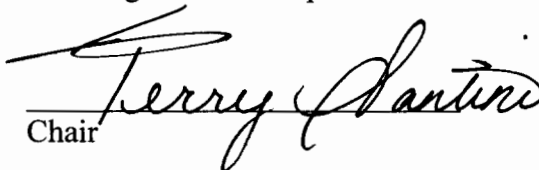
14. Moreover, not granting this waiver will result in a substantial hardship to Petitioner, in that loss of the tax credit investor and the SAIL loan will halt the rehabilitation of this development, and will deprive the residents of Broward County of 814 units of badly needed affordable rental housing.

IT IS THEREFORE ORDERED:

The Petition for Waiver of Rules 67-48.004(14)(d), 67-48.002(111), Florida Administrative Code, and Part II.A.2.(b) of the Universal Application Instructions, is hereby GRANTED to the extent necessary to require Petitioner remain a Non-Profit entity, and modify Petitioner's Application for SAIL funding in the 2004 Universal Application to reflect a change in Petitioner's status from a Non-Profit to for-profit entity.

DONE and ORDERED this 21st day of April, 2006.

Florida Housing Finance Corporation

By: 
Chair

Copies furnished to:

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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 FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIL L. KING, JR., BOULEVARD, TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.