

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. \_\_\_\_\_  
Application Nos. 2006-352HR (2006 RRLP)  
2006A-221B (2006 Supplemental MMRB)

TALLMAN PINES ASSOCIATES II, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**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**

Petitioner Tallman Pines Associates II, Ltd., a Florida limited partnership ("Tallman II"), petitions Respondent Florida Housing Finance Corporation ("Florida Housing") for a waiver of the restriction on changing an Applicant's ownership structure after submission of its Applications under the 2006 Rental Recovery Loan Program ("RRLP"), and the 2006 Multifamily Mortgage Revenue Bond Program ("MMRB"). *See* Part II.A.2.c.(1) of the Instructions for the 2006 Rental Recovery Loan Program Application ("RRLP Rule"), and Part II.A.2.a.(2) of the Instructions for the 2006 Universal Application (the "MMRB Rule") (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 II requests a waiver of the Rules to replace one co-general partner, McCan Communities, Inc. ("McCan"), with McCan's wholly owned subsidiary, TP Homes and Communities, Inc. ("TP Homes").

A. **FACTS COMMON TO REQUESTED RULE WAIVERS**

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

Tallman Pines Associates II, Ltd.  
c/o TCG Tallman Pines II, 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 II's attorney, for purposes of this Petition, are:

Brian J. McDonough, Esquire  
STEARNS WEAVER MILLER  
WEISSLER ALHADEFF & SITTERSON, P.A.  
150 West Flagler Street, Suite 2200  
Miami, Florida 33130  
Telephone: 305-789-3200  
Facsimile: 305-789-3395  
E-mail: [bmcdonough@swmwas.com](mailto:bmcdonough@swmwas.com)

Mimi L. Sall, Esquire  
STEARNS WEAVER MILLER  
WEISSLER ALHADEFF &  
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200 East Las Olas Blvd., Suite 2100  
Fort Lauderdale, Florida 33301  
Telephone: 954-462-9575  
Facsimile: 954-462-9524  
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4. During the 2006 Rental Recovery Loan Program ("RRLP") cycle, Tallman II was awarded a total commitment of up to \$5.8 million in RRLP financing, subject to final approval of the credit underwriter, towards construction costs of Tallman Pines II, a new 24-unit apartment development (the "Development") intended to serve very-low and low-income families in Deerfield Beach, Broward County, Florida.

5. Tallman II received the 2006 RRLP loan commitment because Broward County was designated as one of the Florida counties impacted by the 2004 and 2005 hurricane seasons, and

2006 RRLP financing was made available to assist affordable housing developments in their hurricane recovery efforts.

6. During the 2006 MMRB Application Cycle, Tallman II applied for tax-exempt MMRBs and Housing Credits (non-competitive 4% with Tax-Exempt Bonds), and received a preliminary reservation of a State Bond Allocation of up to \$4.5 million, subject to final approval of the credit underwriter.

7. If the requested Rule waivers are granted by Florida Housing, the beneficial ownership of Tallman II's general partners, as identified in the RRLP and MMRB Applications, would not change.

8. The requested Rule waivers will not adversely affect the Development. However, a denial of this Petition (a) would result in substantial economic hardship to Tallman II; (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 waivers being sought are permanent in nature.

**B. RRLP RULE FROM WHICH RELIEF IS REQUESTED AND STATUTE IMPLEMENTED BY THE RULE**

10. Tallman II realleges and incorporates Paragraphs 1 through 9 as though fully set forth herein.

11. Tallman II requests a waiver of the RRLP Rule restricting an Applicant's ability to change its ownership structure.<sup>1</sup> The RRLP Rule provides as follows:

...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 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.

RRLP Application Instructions at Part II. A.2.c.(1).

12. The RRLP Rule is implementing, among other things, Section 31, Chapter 2006-69, L.O.F., by establishing procedures under which Florida Housing shall:

Administer the Application process, determine loan amounts, make and service mortgage loans for the construction or Rehabilitation/Substantial Rehabilitation of affordable rental units utilizing [RRLP] funds.

67ER06-25(1), F.A.C. (2006).

13. The RRLP Rule is further implementing the enactment of Florida's response to housing disasters resulting from the 2004 and 2005 hurricane seasons. § 420.55, Fla. Stat. (2006).

14. Specifically, "[t]he Florida Housing Finance Corporation is authorized to provide funds to eligible entities for affordable housing recovery in those areas of the state which sustained

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<sup>1</sup>Rule 67ER06-27(1)(a), F.A.C. (2006), adopts the "RRLP Application Package" and its contents, including, without limitation, the RRLP Application Instructions.

housing damage due to hurricanes during 2004 and 2005.” Florida Housing adopted emergency rules pursuant to § 120.54, Fla. Stat. (2006), and the Legislature found “that emergency rules adopted pursuant to this section meet the health, safety, and welfare requirement of s. 120.54(4).” In addition, the Legislature determined that:

such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to assist those areas of the state that sustained housing damage due to hurricanes during 2004 and 2005.

§ 420.55, Fla. Stat. (2006).

**C. MMRB/HC RULE FROM WHICH RELIEF IS REQUESTED AND STATUTE IMPLEMENTED BY THE RULE**

15. Tallman II realleges and incorporates Paragraphs 1 through 9 as though fully set forth herein.

16. Tallman II requests a waiver of the MMRB Rule<sup>2</sup> that similarly restricts the Applicant’s ability to change its ownership structure. The MMRB Rule provides as follows:

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 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 funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

MMRB Application Instruction at Part II.A. 2.a.(2).

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<sup>2</sup>Rule 67-21.003(1)(a), F.A.C. (2006), adopts and incorporates the Instructions from the Universal Application Package.

17. The MMRB Rule implements sections 420.502, 420.507, 420.508, and 420.509, Florida Statutes, which empower Florida Housing to issue revenue bonds for the purpose of funding the development of affordable housing for low-income individuals and families.

**D. JUSTIFICATION FOR TALLMAN II'S REQUESTED CHANGE OF CO-GENERAL PARTNER**

18. In its RRLP and MMRB Applications, Tallman II identified its two general partners as (a) McCan, with a 49% general partner ownership interest in Tallman II, and (b) TCG Tallman II, LLC, with a 51% general partner ownership interest.<sup>3</sup>

19. Broward County Housing Authority is the 100% owner of McCan.

20. Subsequent to the filing of its RRLP and MMRB Applications, Tallman II's limited partner investor, U.S.A. Institutional Tax Credit Fund LIV, L.P., (the "Investor") requested that McCan's ownership interest in Tallman II be transferred by McCan to a wholly-owned for-profit subsidiary. The reason for such request was that McCan's holding of a general partnership interest in Tallman II would cause negative tax consequences to the Investor and adversely affect the Development because Investor would reduce the equity contribution contemplated to be made to Tallman II. In order to avoid this adverse consequence, Rule waivers are necessary to change a co-general partner of Tallman II from McCan to TP Homes.

21. The requested waivers would not have provided Tallman II with an unfair advantage in the scoring of its RRLP or MMRB Application, and will not prejudice the Development or the affordable housing market to be served by the Development.

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<sup>3</sup>No change is requested in the structure of Co-General Partner TCG Tallman Pines, LLC.

**E     CONCLUSION**

22.     The requested waivers will not adversely impact the Development or Florida Housing, and will ensure that 24 affordable housing units will be available in Broward County, Florida.

23.     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.

24.     Finally, by granting the requested waivers, 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.

25.     Should Florida Housing require additional information, Tallman II is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver 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.

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

- A.     Grant the Petition and all the relief requested herein;
- B.     Waive Part II.A.2.c.(1) of the 2006 RRLP Instructions that restricts changes to the Applicant's ownership structure, and allow the change of Tallman II's ownership structure by

permitting McCan to be replaced as a co-general partner of Tallman II by its wholly owned subsidiary, TP Homes and Communities, Inc.;

C. Waive Part II.A.2.a.(1) of the 2006 MMRB Instructions that restricts changes to the Applicant's ownership structure, and allow the change of Tallman II's ownership structure by permitting McCan to be replaced as a co-general partner of Tallman II by its wholly owned subsidiary, TP Homes and Communities, Inc.; and

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

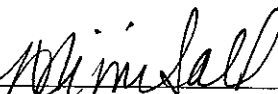
Respectfully submitted,

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ALHADEFF & SITTERSON, P.A.  
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By:   
MIMI L. SALL

#### 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 17th day of July, 2007.

By:   
Mimi L. Sall