

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Tacolcy Tuscany Cove I, LLC

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FHFC Case No.: 2016-040VW

**ORDER GRANTING WAIVER OF RULES 67-21.003 and 67-48.004,  
FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on October 28, 2016, pursuant to a Petition for Waiver of Rules 67-21.003 and 67-48.004 (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on October 13, 2016, from Tacolcy Economic Development Corporation (“Petitioner”). Notice of the Petition was published in Volume 42, Number 201, of the Florida Administrative Register. 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 was selected to receive \$2,524,999 in SAIL funds from Florida Housing under RFA 2014-103, to be used in conjunction with Multifamily Mortgage Revenue Bonds (MMRB) and non-competitive Housing Credits, to assist in the construction of a 160 unit low-income elderly housing development named “Tuscany Cove I” (the “Development”). Petitioner now seeks a waiver of the

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HOUSING FINANCE CORPORATION

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/DATL: 10-28-16

applicable provisions of the RFA, the Non-Competitive Application, and the Rule incorporating the Non-Competitive Application in order to allow for: (1) the conversion of the entity structure of Tacolcy from a limited liability company to a limited liability limited partnership (with no substantive change in ownership); (2) the change in the name of Tacolcy from “Tacolcy Tuscany Cove I, LLC” to “Tacolcy Tuscany Cove I, LLLP; and (3) a change of the “principal” of Tacolcy from Tacolcy Economic Development Corporation, Inc. (as sole and managing member in its application) to a wholly owned subsidiary thereof named Tacolcy Tuscany Cove I General Partner, LLC.

3. Rule 67-21.003, Fla. Admin. Code, provides:

(1) When submitting an Application, Applicants must utilize the Non-Competitive Application in effect at the time the Applicant submits the Application.

(a) The Non-Competitive Application Package or NCA (Rev. 11-14) is adopted and incorporated herein by reference and consists of the forms and instructions available, without charge, on the Corporation’s Website under the Multifamily Programs link labeled Apply for Funding or from <http://flrules.org/Gateway/reference.asp?No=Ref-04905>, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for MMRB only, Non-Competitive HC only, or both MMRB and Non-Competitive HC.

4. Section A.2a (1) of the Non-Competitive Application instructions provides (in part), as follows:

“The Applicant entity shall be the recipient of the Non-Competitive Housing Credits and may not change until after the Final Housing

Credit Allocation Agreement has been approved and the IRS Forms 8609 have been issued.”

5. Section A.2a (2) of the Non-Competitive Application instructions provides (in part) as follows:

“If applying for MMRB, with or without Non-Competitive Housing Credits, the Applicant entity shall be the borrowing entity and cannot be changed until after the loan closing. Replacement of the Applicant or a material change (33.3 percent 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 loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.”

6. Section 4A.2.d. of RFA 2014-103 provides as follows: “All applicants must provide a list, as Attachment 2 to Exhibit A, identifying the Principals for the Applicant.”

“Principals” is defined in Rule 67-48.002(93)(a)3., with respect to an Applicant that is a limited liability company, as “any manager or member of the Applicant limited liability company.”

7. Exhibit C to RFA 2014-103 provides, in Section 2:

The SAIL Applicant shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material change (33.3 percent 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 loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

8. As a SAIL Applicant, Rule 67-48.004(3) prohibits Petitioner from changing the name of the Applicant entity except with Board approval:

(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

(a) Name of Applicant entity; notwithstanding the foregoing, the name of the Applicant entity may be changed only by written request of an Applicant to Corporation staff and approval of the Board as follows:

1. After the Applicant has been invited to enter credit underwriting for the SAIL and HOME Programs, and

2. After the Carryover Allocation Agreement is in effect for the Competitive HC Program. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation.

9. As an Applicant for MMRB and non-competitive Housing Credits, Rule 67-21.003(8)(a) prohibits Petitioner from changing the name of the Applicant entity except with Board approval:

(8) 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 is deemed complete. These items are as follows:

(a) Name of Applicant entity; notwithstanding the foregoing, the name of the Applicant entity may be changed only by written request of an Applicant to Corporation staff and approval of the Board after the Applicant has been invited to credit underwriting. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of validity and consistency of Application documentation.

10. Under Section 120.542(2), Fla. Stat., and Chapter 28-104, Fla. Admin. Code, Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair, and unintended consequences in particular instances. Section 120.542(2) 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

The principles of fairness are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

11. The Board finds that granting these waivers would not have any impact on other participants in funding programs administered by Florida Housing nor allow Petitioner to gain an unfair advantage over other applicants. The Board further finds that granting these waivers would have no detrimental impact on Florida Housing or any of its programs.

12. Petitioner has demonstrated that it would suffer a substantial hardship if the waivers are not granted. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waivers are granted.

13. The Board finds that strict application of the above rules under these circumstances would cause substantial hardship to Petitioner. The Board further finds that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:**

Petitioner's request for waiver of Rule 67-21.003(1)(a), Fla. Admin. Code, request for name change under Rule 67-48.004(3)(a) and 67-21.003(8)(a), Fla. Admin. Code, and request to change the name and ownership structure of the SAIL borrowing entity in the Application for RFA 2014-103, is hereby **GRANTED**, so that Petitioner will be able to convert to a limited liability limited partnership, change the entity name, and change the entity's principle.

DONE and ORDERED this 26th day of October, 2016.

Florida Housing Finance Corporation

By: \_\_\_\_\_



Chairperson

**Copies furnished to:**

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**NOTICE OF RIGHT TO JUDICIAL REVIEW**

**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.**