

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2016-040VW
SAIL Application No. 2014-325S

TACOLCY TUSCANY COVE I, LLC

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OF RULE 67-48.004 AND RULE 67-21.003, AND
PROVISIONS OF RFA 2014-103 AND THE NON-COMPETITIVE APPLICATION,
FOR A CHANGE IN APPLICANT NAME AND STRUCTURE**

Petitioner, Tacolcy Tuscan Cove I, LLC, a Florida limited liability company (“Tacolcy”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver or variance of the Respondent’s prohibition on changes in an Applicant’s name and ownership structure until after loan closing, which is set forth in the Florida Housing’s Request for Applications No. 2014-103 (the “RFA”) and in Florida Housing’s Non-Competitive Application (“Non-Competitive Application”).

Florida Administrative Code Sections 67-48.004 and 67-21.003 (collectively, the “Rule”) further prohibits changes to an Applicant’s name (a) prior to receipt of an invitation to credit underwriting and (b) thereafter, only upon approval of the Board of Florida Housing. Tacolcy is seeking a waiver or variance with regard to the Rule, as well.

Tacolcy requests a waiver of the applicable provisions of the RFA, the Non-Competitive Application and the Rule in order to allow for (i) 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), (ii) the change in the name of Tacolcy from “Tacolcy Tuscan

Cove I, LLC” to “Tacolcy Tuscany Cove I, LLLP”, and (iii) 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.

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Tacolcy and its qualified representative for Tacolcy’s application submitted in response to the RFA and for the Non-Competitive Application (collectively, the “Application”) are:

Tacolcy Tuscany Cove I, LLC
Attention: Carol Gardner, President
675 NW 56th Street
Building C
Miami, FL 33127
Telephone: 305-757-3737
Facsimile: 305-757-5856
E-mail: cgardner@tedcmiami.org

2. The name, address, telephone and facsimile numbers, and e-mail address of Tacolcy’s attorney, for purposes of this Petition, are:

Gary J. Cohen, Esquire
Shutts & Bowen LLP
200 South Biscayne Boulevard
Suite 4100
Miami, Florida 33131
Telephone: 305-347-7308
Facsimile: 305-347-7808
E-mail: gcohen@shutts.com

B. THE DEVELOPMENT

3. Tacolcy timely submitted its Application, seeking a State Apartment Incentive Loan (“SAIL”) program loan in the amount of \$2,524,999 and an Extremely Low Income (“ELI”) loan in the amount of \$1,200,000 to assist in the financing and construction of a 160-unit residential development in Miami-Dade County, Florida, intended to serve elderly persons (the

“Development”), in response to the RFA and was assigned Application No. 2014-325S. Tacolcy filed a separate application for Corporation issued Multifamily Mortgage Revenue Bonds (“MMRB”) and Non-Competitive Housing Credits as required by the RFA. Tacolcy received an invitation to enter into credit underwriting from Florida Housing which was accepted by Tacolcy, and the final credit underwriting report was approved by Florida Housing at its September 16, 2016 meeting.

4. The SAIL and ELI funds allocated to Tacolcy, together with Corporation issued MMRB and equity generated by the Non-Competitive Housing Credits and other loan sources, will provide funds for the construction of the Development.

5. The requested waiver will enable Tacolcy, once converted to a limited liability limited partnership, to avail itself of the provisions of Section 196.1975, Florida Statutes, which allows for an exemption from real estate taxes in favor of affordable housing communities which are restricted to occupancy by persons age 62 and older and which have a 501(c) (3) corporation as the sole general partner. Section 196.1975, F.S., provides, in relevant part, as follows:

196.1975 Exemption for property used by nonprofit homes for the aged.— Nonprofit homes for the aged are exempt to the extent that they meet the following criteria:

(1) The applicant must be a corporation not for profit pursuant to chapter 617 or a Florida limited partnership, the sole general partner of which is a corporation not for profit pursuant to chapter 617, and the corporation not for profit must have been exempt as of January 1 of the year for which exemption from ad valorem property taxes is requested from federal income taxation by having qualified as an exempt charitable organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1954 or of the corresponding section of a subsequently enacted federal revenue act.

6. The requested waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in a substantial economic hardship to Tacolcy; (b) could result in a reduction of services to the residents of the Development; (c) could deprive Miami-

Dade County, Florida of essential affordable housing units in a timely manner and (d) would violate principles of fairness¹. § 120.542(2), Fla. Stat. (2015).

7. The waiver being sought is permanent in nature.

C. Rule from Which Relief is Requested and Statute Implemented by the Rule

8. Tacolcy realleges and incorporates Paragraphs 1 through 7 as though fully set forth herein.

9. Tacolcy requests a waiver of the provisions of the RFA, the Non-Competitive Application and the Rule, which provide, in relevant part, as follows:

RFA:

- a. Section 4A.2.d. of the RFA provides as follows: **“All applicants must provide a list, as Attachment 2 to Exhibit A, identifying the Principals for the Applicant.”**
- b. “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...”**.
- c. Exhibit C to the RFA provides, in Section 2. thereof, that **“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”**.

Non-Competitive Application:

- a. Section A.2.a.(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

¹ “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “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. Section 120.542(2), Florida Statutes.

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

b. Section A.2a.(2) 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.”

Therefore, without the relief requested to be granted pursuant to this Petition, Tacolcy, as the Applicant, cannot be changed prior to closing of the MMRB, SAIL and ELI loans and issuance of Forms 8609; the “Principal” identified as the sole and managing member of Tacolcy identified on Attachment 2 to the Application cannot be changed from a “managing member” to a “general partner” prior to closing and issuance of Forms 8609; and any material change in the ownership structure of Tacolcy cannot occur.

Rule: The Rule pertaining to SAIL and ELI provides as follows (see Section 67-48.004 (3) (a), F.A.C.):

(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.**

Rule: The Rule pertaining to Non-Competitive MMRB and Non-Competitive Housing Credits provides as follows (see Section 67-21.003(8)(a), F.A.C.):

(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 into 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.

Therefore, Board approval is required for the change in the name of Tacolcy which will occur as a consequence of the conversion of Tacolcy from a limited liability company to a limited liability limited partnership.

10. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the State Apartment Incentive Loan Program and that governs the allocation of federal low income housing tax credits. See Sections 420.5087 and 420.5099, F.S.

D. Justification for Petitioner's Requested Waiver

11. Tacolcy realleges and incorporates Paragraphs 1 through 10 as though fully set forth herein.

12. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., 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. Waivers shall be granted when (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2011).

13. In this instance, Tacolcy meets the standards for a waiver.

14. Tacolcy requests a waiver from the relevant restrictions in the RFA, the Non-Competitive Application and the Rule, in order to allow for:

(a) the conversion of the entity structure of Tacolcy from a limited liability company to a limited liability limited partnership (with no substantial change in ownership),

(b) the change in control of Tacolcy from a managing member (which is owned by a nonprofit corporation), to control of the converted entity by a general partner (which is a wholly owned limited liability company subsidiary of the same non-profit corporation), and

(c) the change in the name of Tacolcy from “Tacolcy Tuscany Cove I, LLC” to “Tacolcy Tuscany Cove I, LLLP”.

15. Tacolcy is a limited liability company comprised of a managing member, which is a non-profit corporation.

The current entity structure of Tacolcy is described in Attachment 2 to the Application, a copy of which is attached hereto as Exhibit “A” (the “Existing Tacolcy Structure”),

16. Tacolcy seeks to:

(a) convert its entity type from a limited liability company to a limited liability limited partnership;

(b) cause a wholly owned limited liability company subsidiary of its current managing member to become the sole general partner of Tacolcy following such conversion,

(c) cause the current member to become the sole limited partner following such conversion (to ultimately be replaced by the tax credit investor), and

(d) change its name to “Tacolcy Tuscany Cove I, LLLP”.

The proposed entity structure of Tacolcy following such conversion is described in Exhibit “B” attached hereto (the “Proposed Tacolcy Structure”).

17. The planned conversion and restructuring of Tacolcy will not adversely impact Tacolcy, Florida Housing or any other applicant seeking funds pursuant to the RFA. The same parties which currently (directly or indirectly) hold member interests in Tacolcy will continue to have ownership in the converted entity, in the same percentages as they had prior to the conversion. Under Florida law, when a limited liability company converts to a limited liability limited partnership, the resulting entity (the limited liability limited partnership) is the same legal entity that existed before the conversion. See Florida Statutes Section 620.2105(1) and (2), and Florida Statutes Section 605.1046(1).

18. The provisions of the RFA, the Non-Competitive Application and the Rule for which Tacolcy is seeking a waiver were intended to prevent third parties from entering the transaction after the application process. The RFA, the Non-Competitive Application and the Rule were designed to prevent the “flipping” of an application to a third party that would not have qualified for SAIL or ELI funds or non-competitive low income housing tax credits, if it were the Applicant in the first instance. In this instance, the same parties will continue to hold the same ownership interests in Tacolcy, with no new partners added, and no “flip” will have occurred. However, unless the waiver is granted, Tacolcy will be unable to claim the real estate tax exemption which is available to limited partnerships, but not to limited liability companies, under Section 196.1975, F.S. for elderly affordable housing. Both the tax credit investor and the Credit Underwriting Report issued on September 6, 2016 contemplate that the Development will be fully exempt from annual ad valorem real estate tax, due to its affordable elderly housing designation. However, as explained above, such ad valorem tax exemption is only available for affordable elderly housing owned and operated by a limited partnership; hence contained in this

petition. If this request is denied, the result will be undue hardship to Tacolcy and a hindrance to the financial viability of the Development.

19. If Tacolcy had been structured as a limited liability limited partnership matching the Proposed Tacolcy Structure described in Exhibit “B” attached hereto, at the time the Application was submitted, Florida Housing’s evaluation of the Application and its decision to extend an invitation to underwriting to Tacolcy would not have been adversely impacted.

20. If the relief sought pursuant to this Petition is not granted, Tacolcy will suffer substantial hardship. The consequences resulting from Tacolcy’s inability to avail itself of the real property tax exemption afforded to limited partnerships under Section 196.1975 will put a financial burden on the Development that will result in curtailed services and amenities for its residents, and may result in loss of the tax credit investor (and its equity contribution to the transaction).

E. Conclusion

21. Controlling statutes and Florida Housing’s Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when (a) the applicant subject to the rule demonstrates that strict application would create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. §120.542(2), Fla. Stat. (2011).

22. The requested waiver will not adversely impact Tacolcy, the Development, any other party that sought or received an allocation of SAIL or ELI funds under the RFA, or MMRB and non-competitive low income credits under the Non-Competitive Application, or Florida Housing.

23. A denial of the requested waiver could result in a substantial hardship for Tacolcy which would lose the opportunity to obtain favorable real estate tax treatment and will cause the loss of substantial services for residents of the Development.

24. Finally, by granting the requested waiver, 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 developers to further Florida Housing's purposes through construction of projects for senior residents in an economically viable manner. The specific goal of providing 160 units of affordable housing in Miami-Dade County, Florida will be achieved through the approval of the waivers requested in this Petition, with no detriment to any party. Granting of the requested waiver will serve the underlying purpose of Chapter 420, Part V, Florida Statutes by facilitating the development of multifamily housing that is affordable to elderly residents.

25. Should Florida Housing require additional information, Tacolcy is available to answer questions and to provide all information necessary for consideration of this Petition.


WHEREFORE, Petitioner, Tacolcy Tuscany Cove I, LLC, a Florida limited liability company, respectfully requests that Florida Housing Finance Corporation provide the following relief:

- A. Grant the Petition and all relief requested herein;
- B. Approve the conversion and restructuring of Tacolcy from the format described in Exhibit "A" attached hereto as the Existing Tacolcy Structure, to the format described in Exhibit "B" attached hereto as the Proposed Tacolcy Structure;
- C. Approve the change of the name of Tacolcy Tuscany Cove I, LLC to Tacolcy Tuscany Cove I, LLLP, a Florida limited liability limited partnership; and

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

Respectfully submitted,

SHUTTS & BOWEN LLP
Counsel for Tacolcy Tuscany Cove I, LLC
200 South Biscayne Boulevard, Suite 4100
Miami, Florida 33131
Tel: (305) 347-7308
Fax: (305) 347-7808
E-mail: gcohen@shutts.com

By:  _____
GARY J. COHEN, ESQ.

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, 680 Pepper Building, 111 W. Madison Street Tallahassee, Florida 32399-1400, this 17th day of October, 2016.

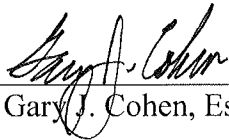
By:  _____
Gary J. Cohen, Esq.

Exhibit A
Principals of Applicant and Developers

Applicant:

Tacolcy Tuscany Cove I, LLC

- Sole and Managing Member – Tacolcy Economic Development Corporation, Inc. *(See attached list of Board of Directors and Officers).
- Upon syndication the Managing Member will have a .01% interest and the admitted Investor Member will have a 99.99% Member Interest.

Sole and Managing Member:

Tacolcy Economic Development Corporation, Inc. *(See attached list of Board of Directors and Officers).

***Tacolcy Economic Development Corporation, Inc.** is a 501(c)(3) organization and therefore has no shareholders.

Developers:

Tacolcy Economic Development Corporation, Inc. *(See attached list of Board of Directors and Officers).

***Tacolcy Economic Development Corporation, Inc.** is a 501(c)(3) organization and therefore has no shareholders.

TACOLCY ECONOMIC DEVELOPMENT CORPORATION

**675 N.W. 56th Street, Building C
Miami, Florida 33127
(305)757-3737 (305)757-5856**

BOARD OF DIRECTORS

**Moses Florence , Chairman
775 N.E. 79th Street, Suite F
Miami, Florida 33138
305.751.2192
305.751.7333 (fax)
*Property Appraiser***

**Cheryl Nemrod, Secretary
5821 N.W. 7th Avenue
Miami, FL 33127
786.454.0163
*Community Representative***

**Luce Lohier, Treasurer
3398 Lincoln Way
Cooper City, Florida 33026
305.671.7348
*Certified Public Accountant***

**Tangie White Jackson, Director
14561 S.W. 38th Avenue
Miami, Florida 33027-3792
305.606.2438
*Banker/Entrepreneur***

TEDC OFFICERS

**Carol Gardner, President, C.P.A.
Angela R. Kelly, Vice President
Heidi Rigby, Chief Financial Officer**

Exhibit B

PROPOSED TACOLCY STRUCTURE

Applicant

Tacolcy Tuscany Cove I, LLLP, a Florida limited liability limited partnership

General Partner: Tacolcy Tuscany Cove I General Partner, LLC, a Florida limited liability company

- Sole and Managing Member: Tacolcy Economic Development Corporation, Inc. * (See attached list of Board of Directors and Officers).
- Upon syndication the General Partner will have a .01% interest and the admitted Investor Limited Partner will have a 99.99% limited partner interest.

*Tacolcy Economic Development Corporation, Inc. is a 501(c)(3) organization and has no shareholders.

Limited Partner: Tacolcy Economic Development Corporation, Inc., * a Florida non-profit corporation (see attached list of Board of Directors and Officers).

Developers

Tacolcy Economic Development Corporation, Inc. *(See attached list of Board of Directors and Officers).

*Tacolcy Economic Development Corporation, Inc. is a 501(c)(3) organization and therefore has no shareholders.

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October 12, 2016

VIA FEDERAL EXPRESS NO. 7843 2395 7910

Ms. Kate Flemming, Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

VIA FEDERAL EXPRESS NO. 7843 2398 6387

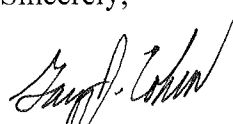
Joint Administrative Procedures Committee
Pepper Building, Room 680
111 West Madison Street
Tallahassee, Florida 32399-1400

Re: Tacoley Tuscan Cove I, LLC v FHFC
Petition for Waiver of Rule 67-48.004 and Rule 67-21.003, and Provisions of
RFA 2014-103 and The Non-Competitive Application, for a Change in Applicant
Name and Structure

Ladies and Gentlemen:

Enclosed please find a Petition for Waiver for the above-referenced matter. Thank you
for your attention to this matter.

Sincerely,



Gary J. Cohen

GJC/mar
Enclosure
cc: Hugh R. Brown, Esq.

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