

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2016-034VW

TACOLCY TUSCANY COVE I, LLC,

Petitioner

vs.

FHFC APPLICATION: 2014-325S  
REQUEST FOR APPLICATIONS: 2014-103

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent

**PETITION FOR WAIVER OF RULES 67-21.013 AND 67-48.0072(4)(c)  
FOR A CHANGE TO ALLOW THE PURCHASE OF BONDS BY A FREDDIE MAC  
MULTIFAMILY TARGETED AFFORDABLE HOUSING LENDER AND  
SELLER/SERVICER PRIOR TO A SALE TO FREDDIE MAC AND EXTENSION OF  
SAIL LOAN CLOSING DATE**

Petitioner Tacolcy Tuscan Cove I, LLC, a Florida limited liability company (“Tacolcy”) submits its Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver or variance of Florida Housing's requirement that “Any issuance of non-Credit Enhanced revenue Bonds<sup>1</sup> shall be sold only to a Qualified Institutional Buyer”, and that “an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds....to the effect that, among other things, such purchaser is a Qualified Institutional Buyer”. See Rule 67-21.013, Florida Administrative Code. Freddie Mac is a Qualified Institutional Buyer under the Rule.<sup>2</sup> However, Freddie Mac’s charter does not allow Freddie Mac to purchase Bonds directly from the issuer, but instead requires that Freddie Mac purchase Bonds from a Freddie Mac Multifamily Targeted Affordable Housing Lender and

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<sup>1</sup> The obligation in this case is a note. The definition of “Bond” in Rule 67-21.002(13), Florida Administrative Code, incorporates the definition of Bond in Section 420.503, Florida Statutes, as amended, which specifically includes notes.

<sup>2</sup> The definition of “Qualified Institutional Buyer” is set forth in Exhibit “A” attached to this Petition.

Seller/Service (a "TAHL"), approved and designated under the Freddie Mac Tax-Exempt Loan Program (the "TEL Program"), pursuant to a written commitment executed by Freddie Mac and accepted by the TAHL.

Tacolcy also seeks a waiver or variance of Rule 67-48.0072(4)(c) pertaining to the required closing date for the SAIL loan.

In support of its Petition, Tacolcy states:

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers, and email address for Tacolcy and its qualified representative for Tacolcy's application (the "Application") in response to RFA 2014-103 -- Financing for Affordable Multifamily Housing Developments with SAIL Funding to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the "RFA") are:

Tacolcy Tuscany Cove I, LLC  
675 NW 56<sup>th</sup> Street, Building C  
Miami, Florida 33132  
Attention: Carol Gardner, President  
Telephone: (305) 757-3737  
Facsimile: (305) 757-5856  
E-Mail: [cgardner@tedcmiami.org](mailto:cgardner@tedcmiami.org)

2. The name, address, telephone and facsimile numbers for Tacolcy's attorney are:

Gary J. Cohen, Esq.  
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](mailto:gcohen@shutts.com)

**B. THE DEVELOPMENT AND ITS FINANCING**

3. Tacolcy timely submitted its Application in response to the RFA for the development named “Tuscany Cove I” (the “Development”). See Application No. 2014-325S. The application originally included an alternative debt structure but Tacolcy is now pursuing a Freddie Mac financing plan under its TEL Program. In simple terms, a “Project Loan” to provide funds to Tacolcy to build its multifamily affordable Development will be funded from a loan (the “Funding Loan”) incurred by Florida Housing pursuant to a Funding Loan Agreement among JP Morgan Chase Bank, N.A., as the construction lender, Florida Housing and a fiscal agent. The Funding Loan to Florida Housing is funded by the sale of the Bonds to JP Morgan Chase Bank, N.A., as the construction lender (the “Construction Lender”). Florida Housing, in turn, loans the proceeds of the Funding Loan to the Borrower as the Project Loan. At completion of construction, the Funding Loan (and the associated Bonds) will be sold/assigned to Walker & Dunlop, LLC (“W&D”), an approved TAHL. Pursuant to a written commitment of Freddie Mac and accepted by W&D at the time of the making of the loans and the issuance of the Bonds, W&D will immediately thereafter sell/assign the Funding Loan and Bonds to Freddie Mac.

4. On August 14, 2014, Tacolcy was invited to Credit Underwriting for the Development. The Freddie Mac TEL Program financing term sheet was submitted to the credit underwriter in March 2016. As the various parties to the financing began loan commitment and document production, it became apparent that Freddie Mac is not permitted by its federal regulatory provisions to purchase the Bonds directly, but rather will have to purchase the Bonds only after W&D, as the Multifamily Seller/Service, has acquired the Bonds. W&D, as the TAHL in this instance, is not a Qualified Institutional Buyer, as defined under Rule 67-

21,002(88)<sup>3</sup>. However, Freddie Mac, the ultimate owner of the Bonds, is a Qualified Institutional Buyer under the Rule. Pursuant to Freddie Mac's charter, Freddie Mac may not purchase the Bonds directly<sup>4</sup>. This financing structure therefore requires that a Rule Waiver be approved to allow the “interim” purchase by W&D (which is not a Qualified Institutional Buyer) prior to the committed sale of the Bonds to Freddie Mac. Accordingly, Tacolcy hereby petitions Florida Housing for a waiver of its requirement that privately placed (i.e. non-credit enhanced) Bonds must be purchased by Qualified Institutional Buyers, since the initial buyer of the Bonds is a TAHL, under the TEL Program and has accepted a signed commitment from Freddie Mac to purchase the Bonds for resale to Freddie Mac.

5. Under Rule 67-48.0072(4)(c), the SAIL loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one extension of up to 12 months. In the event the SAIL loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment (as applicable) for this SAIL loan will be deemed void and the funds will be de-obligated. Tacolcy was previously granted a 12 month extension closing deadline, extending such deadline to August 14, 2016. A further extension of the closing deadline may not be granted without a waiver of Rule 67-48.0072(4)(c).

6. Tacolcy has, since the submission of its application, expended a great deal of time and effort to procure additional subordinate debt from Miami-Dade County and the City of Miami, in order to cover increased costs in connection with the construction of Tuscan Cove I. At this time, Tacolcy has secured all necessary financing sources and anticipates a December

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<sup>3</sup> The definition of “Qualified Institutional Buyer” is set forth in Exhibit “A” attached to this Petition.

<sup>4</sup> Section 305(a)(5) of the Federal Home Loan Mortgage Act, Public Law No. 91-351, 84 Stat. 450, approved July 24, 1970 and codified at 12 U.S.C. s. 1451 et seq.

2016 closing. A draft credit underwriting report is anticipated to be submitted by the beginning of August to FHFC, and will go before the FHFC Board of Directors for approval at its September meeting for final approval of the SAIL loan. Tacolcy Economic Development Corporation, Inc. (the principal of Tacolcy) has expended a significant amount of money on predevelopment costs and is committed to closing Tuscan Cove I in December 2016 with FHFC as the bond issuer.

7. Tacolcy is requesting an extension of the SAIL loan closing date from August 14, 2016 to December 31, 2016, for the reasons set forth above. Tacolcy believes there are no further impediments to closing the financing by such time. The increases in development cost were and are outside of Tacolcy's control, which resulted in delay in closing due to the necessity of securing additional subordinate debt to cover such cost increases. Due to such delays, Tacolcy will not be able to meet the August 14, 2016 closing date for the SAIL loan.

8. The requested rule 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 deprive Miami-Dade County of desperately needed affordable housing units, and (c) would violate principles of Fairness<sup>5</sup>. Section 120.542(2), Fla. Stat. (2015).

9. The waiver being sought is permanent in nature.

**C. RULES FROM WHICH WAIVER IS SOUGHT**

10. Tacolcy requests a waiver from Rule 67-21.013. Specifically, Tacolcy is requesting a waiver of its requirement that privately placed (i.e., non-credit enhanced) Bonds

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<sup>5</sup> 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.

must be purchased by Qualified Institutional Buyers, when the “interim” buyer is a TAHL under the TEL Program and has accepted a signed commitment from Freddie Mac to purchase the Bonds for resale to Freddie Mac.

11. Rule 67-21.013 provides, in relevant part, as follows:

**Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer. Such non-Credit Enhanced revenue Bonds may only be utilized for financings where the Applicant has demonstrated that the issuance produces a substantial benefit to the Development not otherwise available from Credit Enhancement structures. The analysis of the substantial benefit must be provided in a format acceptable to the Corporation and shall include the initial issuer cost of issuance, underwriter's discount or structuring agent fee, annual debt service, total debt service and any other factors necessary and appropriate to demonstrate that the issuance produces a substantial benefit to the Development. This analysis must be provided both prior to the review of the method of Bond sale conducted by the Corporation's IRMA, and again prior to the pricing of the Bonds, showing any changes affecting the original estimated substantial benefit. The Corporation shall engage the Investment Banker or structuring agent with respect to such Bonds. The Corporation, in its discretion, will allow only an underwriting discount or a structuring agent fee, but not both. Unless such Bonds are rated in one of the four highest rating categories by a nationally recognized rating service, such Bonds shall not be held in a full book-entry system (but may be Depository Trust Company (DTC)-Eligible)) and shall comply with at least one of the following criteria:**

...  
**(2) The Bonds shall be issued in minimum denominations of \$250,000 (subject to reduction by means of redemption) and an investment letter satisfactory to the Corporation and its counsel shall be obtained from each initial purchaser of the Bonds (including any purchaser purchasing such Bonds in an immediate resale from an underwriter), but shall not be required of subsequent purchasers of the Bonds, to the effect that, among other things, such purchaser is a Qualified Institutional Buyer, is purchasing such Bonds for its own account and not for immediate resale to a purchaser other**

**than a Qualified Institutional Buyer, and has made an independent investment decision as a sophisticated or institutional investor; ...**

Rule 67-21.013, F.A.C.

12. Rule 67-48.0072(4)(c) sets forth the required timeline for closing upon SAIL financing. The loan must close within 12 month from the date of invitation to enter credit underwriting, with Applicant able to request one extension up to 12 months. In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment for SAIL funds will be deemed void and the funds will be deemed de-obligated. As discussed herein, Tacolcy is requesting an additional extension of the SAIL loan date from August 14, 2016 to December 31, 2016, which request requires waiver of the foregoing Rule.

**D. STATUTES IMPLEMENTED BY THE RULE**

13. The foregoing Rules are implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that grants Florida Housing the power to issue revenue bonds and that created the SAIL loan program. See Sections 420.509 and 420.5087, Florida Statutes.

**E. PETITIONER REQUESTS A WAIVER FROM THE RULES FOR THE FOLLOWING REASONS**

14. Tacolcy requests a waiver from Rule 67-21.013, Florida Administrative Code. Tacolcy is seeking a waiver from the Rule in order to obtain permanent financing from Freddie Mac, which is not permitted by its charter to purchase the Bonds directly, but rather, must purchase the Bonds from W&D, a TAHL, which will acquire the Bonds for a brief period of time prior to sale to Freddie Mac. Tacolcy also requests a waiver from Rule 67-48.0072(4)(c), Florida Administrative Code, in order to have sufficient time to close on all the debt and equity financing

- f. W&D will acquire the Funding Loan and immediately assign it to Freddie Mac. W&D's ownership of the Funding Loan will be brief. Freddie Mac, the ultimate owner of the Funding Loan and the Bonds is a Qualified Institutional Buyer under the Rule.
- g. There are no points associated with this aspect of the Application. Nor does this change adversely impact any other applicant in the RFA.
- h. Tacolcy has encountered unexpected increases in construction costs since the submission of its Application, and has been diligently pursuing (and has procured) additional subordinate financing from Miami-Dade County and the City of Miami in order to cover such increased costs.

16. If the waiver requested herein is not granted, Tacolcy will suffer a substantial and unnecessary economic and operational hardship. A commitment for permanent financing for the Development is required in order to close on the Bonds and all other debt as well as equity sources, and without Freddie Mac's commitment to purchase the Funding Loan from W&D (and FHFC's SAIL financing), closing on the Development will fail to occur. W&D has already performed a complete underwriting analysis of the Development and its feasibility, at substantial cost to Tacolcy. The economics of the Development cannot support the engagement of a new TAHL, to perform new underwriting; further the Development's schedule for closing and construction could not accommodate the resulting delay and inevitable associated costs.

17. A waiver of the Rule's requirements pertaining to Qualified Institutional Buyers and the SAIL loan closing date would serve the purposes of Sections 420.509 and 420.5087, F.S., and the Act as a whole, because one of the Act's primary purposes is to facilitate the



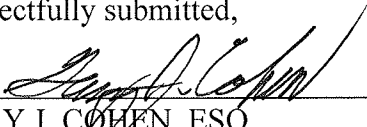
18. availability of decent, safe and sanitary housing in the State of Florida to households of limited means.

19. Should Florida Housing require additional information, a representative of Tacolcy is available to answer questions and to provide all information necessary for consideration of this Petition. Tacolcy requests the following:

F. **ACTION REQUESTED.** Tacolcy requests the following:

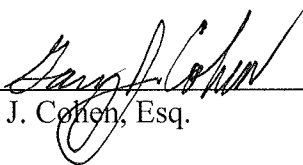
- a. That Florida Housing (i) grant Tacolcy a waiver from Rule 67-21.013, Florida Administrative Code, allowing Walker and Dunlop, LLC, an approved Freddie Mac Multifamily Targeted Affordable Housing Lender and Seller/Service, to purchase the Funding Loan and Bonds prior to resale to Freddie Mac, which is a Qualified Institutional Buyer, and (ii) waive the requirement that the investor letter provided by the initial purchaser of the Bonds state that such purchaser is a Qualified Institutional Buyer;
- b. That Florida Housing waive the requirement that the SAIL loan close by August 14, 2016 and grant an extension of such closing date through December 31, 2016;
- c. That Florida Housing grant the Petition and all the relief requested therein; and
- d. That Florida Housing grant such further relief as may be deemed appropriate.

Respectfully submitted,

  
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GARY J. COHEN, ESQ.  
Shutts & Bowen LLP  
200 South Biscayne Boulevard, Suite 4100  
Miami, Florida 33131  
(305) 347-7308  
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 21<sup>st</sup> day of July, 2016.

  
\_\_\_\_\_  
Gary J. Cohen, Esq.

**EXHIBIT "A"**

**DEFINITION OF QUALIFIED INSTITUTIONAL BUYER**

(88) "Qualified Institutional Buyer" is sometimes called a "sophisticated investor" and specifically includes the following:

(a) Any of the following entities, acting for its own account or the accounts of other Qualified Institutional Buyers that, in the aggregate, own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity:

1. Any insurance company as defined in section 2(13) of the Securities Act of 1933;
2. Any investment company registered under the Investment Company Act of 1940 or any business development company as defined in section 80a-2(a)(48) of that Act;
3. Any Small Business investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business investment Act of 1958;
4. Any plan established and maintained by a state or state agency or any of its political subdivisions, on behalf of their employees;
5. Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;
6. Trust funds of various types, except for trust funds that include participants' individual retirement accounts or H.R. 10 plans;
7. Any business development company as defined in section 80b-2(a)(22) of the Investment Advisors Act of 1940;
8. Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (except a bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities Act of 1933, or a foreign bank or savings and loan or similar institution), partnership, Massachusetts or similar business trust, or any investment adviser registered under the Investment Advisors Act.

(b) Any dealer registered under section 15 of the Securities Exchange Act of 1934, acting on its own behalf or on the behalf of other Qualified Institutional Buyers who in the aggregate own and invest at least \$10 million of securities of issuers not affiliated with the dealer not including securities held pending public offering).

(c) Any dealer registered under section 15 of the Securities Exchange Act of 1934 acting in a riskless principal transaction on behalf of a Qualified Institutional Buyer.

(d) Any investment company registered under the Investment Company Act that is part of a family of investment companies that together own at least \$100 million in securities of issuers, other than companies with which the investment company or family of investment companies is affiliated,

(e) Any entity, all of whose equity owners are Qualified Institutional Buyers.

(f) Any bank or savings and loan defined in section 3(a)(2) or 3(a)(5)(A) of the Securities Act of 1933 or foreign bank or savings and loan or similar institution that, in aggregate with the other Qualified Institutional Buyers, owns and invests in at least \$100 million in securities of affiliates that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated during the 16 to 18 months prior to the sale.



**Exhibit B**  
13 of 13  
GARY J. COHEN  
PARTNER  
Shutts & Bowen LLP  
200 South Biscayne Boulevard  
Suite 4100  
Miami, Florida 33131  
DIRECT (305) 347-7308  
FAX (305) 347-7808  
EMAIL gcohen@shutts.com

July 20, 2016

**VIA FEDERAL EXPRESS NO. 7836 2480 6168**

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

**VIA FEDERAL EXPRESS NO. 7836 2484 5132**

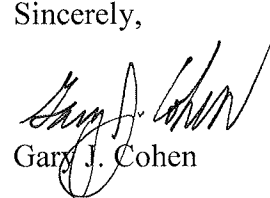
Joint Administrative Procedures Committee  
Pepper Building, Room 680  
111 West Madison Street  
Tallahassee, Florida 32399-1400

Re: Petition for Waiver of Rules 67-21.013 and 67-48.0072(4)(C) for a Change to Allow the Purchase of Bonds by a Freddie Mac Multifamily Targeted Affordable Housing Lender and Seller/Service Prior to a Sale to Freddie Mac and Extension of Sail Loan Closing Date

**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

MIADOCs 13349758 1 Z9900.0111