

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

TACOLCY EDISON GARDENS, LLC

Petitioner,

FHFC Case No.: 2019-044VW

v.

APPLICATION NO. 2018-054S

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**PETITION FOR WAIVER OF RULE 67-48.0072(21)(B)**

Petitioner, Tacolcy Edison Gardens, LLC, a Florida limited liability company (the “Petitioner”) submits its Petition to Respondent, Florida Housing Finance Corporation (the “Corporation”), for a waiver of Rule 67-48.0072(21)(b), F.A.C. (the “Rule”) in effect at the time Petitioner submitted its application in response to the Corporation’s Request for Applications 2017-107 SAIL Financing for the Construction of Workforce Housing (the “RFA”), to allow Petitioner to extend the Firm Loan Commitment deadline for the State Apartment Incentive Loan (“SAIL”) funding allocated to Petitioner pursuant to the RFA. In support of this Petition for Rule Waiver of Rule 67-48.0072(21)(b), F.A.C. (the “Petition”), Petitioner states as follows:

**A. Petitioner and the Development.**

1. The name, address, telephone, and facsimile numbers for Petitioner and its

qualified representative are:

Tacolcy Edison Gardens, LLC  
675 NW 56<sup>th</sup> Street, Blg. C  
Miami, FL 33127  
Attention: Carol Gardner, President  
Telephone: (305) 757-3737  
Facsimile: (305) 757-5856  
Email: [cgardner@tedcmiami.org](mailto:cgardner@tedcmiami.org)

The name, address, telephone, and facsimile numbers of Petitioner's attorneys are:

Gary J. Cohen, Esq.  
Shutts & Bowen LLP  
200 S. Biscayne Blvd., Ste. 4100  
Miami, FL 33131  
Telephone: (305) 347-7308  
Facsimile: (305) 347-7808  
Email: [gcohen@shutts.com](mailto:gcohen@shutts.com)

2. Pursuant to the RFA, Petitioner timely submitted its application for SAIL funding.

See Application Number 2018-054S. Petitioner was preliminarily awarded Eight Million Five Hundred Thousand and No/00 Dollars (\$8,500,000.00) in SAIL funding under the RFA (the "SAIL Award"), and received an invitation to enter credit underwriting on March 23, 2018. The SAIL Award Firm Loan Commitment issuance deadline was December 23, 2018, which was nine (9) months from the invitation to enter credit underwriting.

3. On November 9, 2018, Petitioner requested an extension of the loan commitment issuance deadline in order to have additional time to finalize plans and specifications and complete the credit underwriting process. At the meeting of the Board of Directors of the Corporation (the "Board") on December 14, 2018, the Board granted the request to extend the loan commitment issuance deadline to June 23, 2019, subject to the payment of the required non-refundable extension fee of Eighty Five Thousand and No/00 Dollars (\$85,000.00.00) pursuant to the RFA. Petitioner paid the extension fee.

4. The SAIL Award is a critical part of the financing for the renovation of two existing apartment buildings (containing 100 units) and the new construction of a high rise 100 unit apartment building to be known as Edison Place, serving persons below eighty (80%) percent of area medium income (the "Development"). The Development will also be financed with tax-exempt bonds and proceeds from syndication of non-competitive 4% low income housing tax credits.

5. The SAIL Award Firm Loan Commitment will not be issued by the June 23, 2019 deadline. Petitioner has finalized its plans and specifications for the two buildings to be rehabilitated, and has submitted such plans to the City of Miami for permitting and to the general contractor for bidding. Petitioner expects to receive notice of permit availability for the two buildings to be rehabilitated in the third quarter of 2019.

6. Plans and specifications for the third building (new construction) were submitted to the City of Miami in March 2019, and Petitioner expects comments with respect thereto later this month. Petitioner expects to revise and finalize such plans and specifications and obtain permit availability in the fourth quarter of 2019 for the new construction building. As such, additional time is needed to complete permitting and credit underwriting for the SAIL Award. Accordingly, an extension of the SAIL Award Firm Loan commitment deadline is required.

**B. Rule from Which the Waiver is Sought.**

7. The relevant portion of the Rule for which this waiver is sought, provides as follows:

“(21) Information required by the Credit Underwriter shall be provided as follows:

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(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued within nine (9) months of the Applicant’s acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to achieve credit underwriting report approval and issuance of a firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. Applicants may request one (1) extension of up to six (6) months to secure a firm loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant’s request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial nine (9)

month deadline is approved. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.” Rule 67-48.0072(21)(b), F.A.C. (2017).

**C. Statute Implemented.**

8. The Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that created the SAIL program. See §§ 420.5087, Florida Statutes (2018).

9. Pursuant to Chapter 120.542(1), Florida Statutes, “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” Therefore, under Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Section 120.542(2) states:

“Variances 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. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the 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.

10. In this instance, Petitioner meets the standards for a waiver.

**D. Justification for Petitioner’s Requested Waiver**

11. Petitioner was previously granted a six (6)-month extension to secure a firm loan commitment of the SAIL Award, extending such deadline to June 23, 2019. In connection with

the previous extension, Petitioner paid an extension fee of Eighty Five Thousand and No/00 Dollars (\$85,000.00). A further extension of the deadline to secure a firm loan commitment may not be granted without a waiver of the Rule.

12. Petitioner is requesting an extension of the deadline to secure a loan commitment from June 23, 2019 to December 23, 2019, to have additional time to complete permitting and bidding for the Development.

13. Petitioner is also requesting that no further extension fee be imposed.

14. The requested waiver will not adversely affect Petitioner, the Development, any other party that applied to receive SAIL funding in the RFA or the Corporation. A denial of the Petition, however, would (a) result in substantial economic hardship to Petitioner, as it has incurred over Two Hundred Eight Five Thousand and No/00 Dollars (\$285,000.00) in costs to date toward ensuring that the Development proceeds to completion; (b) deprive Miami-Dade County of the provision of much needed workforce and affordable housing; and (c) violate principles of fairness. §120.542(2), F.S.

15. The requested waiver will ensure the availability of SAIL funding which will otherwise be lost as a consequence of the development delays described herein.

**E. Conclusion**

16. The facts set forth in Sections 11 through 15 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the delay in permitting and bidding of the proposed rehabilitation and new construction of the Development and the loss of a substantial sum of money should the transaction not go forward.

17. As demonstrated above, the requested waiver serves the purposes of Section 420.5087, Florida Statutes, and the Act, as a whole, because one of their primary goals is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low

income persons and households. Further, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

18. The waiver being sought is permanent in nature. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner respectfully requests that the Corporation:

- A. Grant this Petition and all the relief requested therein;
- B. Grant a waiver of the Rule to extend the deadline to secure a firm loan commitment from June 23, 2019 to December 23, 2019, and not require that an additional extension fee be imposed; and
- C. Award such further relief as may be deemed appropriate.

Respectfully submitted,

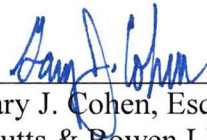


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## CERTIFICATE OF SERVICE

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 17<sup>th</sup> day of May, 2019.



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