

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: TACOLCY TUSCANY
COVE I, LLC.

FHFC Case No.: 2016-034VW

**ORDER GRANTING WAIVER OF RULES 67-21.013 and
67-48.0072(4)(c), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on August 5, 2016, pursuant to a Petition for Waiver of Rules 67-21.013 and 67-48.0072(4)(c) ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on July 21, 2016, from Tacolcy Tuscany Cove I, LLC ("Petitioner"). Notice of the Petition was published in Volume 42, Number 142, 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 assist in the construction of a 160 unit low-income elderly housing development named "Tuscany Cove I" (the "Development"). Petitioner also obtained \$17,950,000 in Multifamily Mortgage

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATL: 8-5-16

Revenue Bonds¹ (MMRB) for this development. Petitioner now seeks a waiver to allow the purchase of non-credit enhanced revenue bonds by an entity that does not meet the definition of a Qualified Institutional Buyer, and to extend the SAIL loan closing date.

3. Rule 67-21.013, Fla. Admin. Code, allows a non-credit enhanced revenue bond to be sold only to a Qualified Institutional Buyer (QIB), as defined in Rule 67-21.002(88), F.A.C.² The rule also requires that the purchaser of such bonds provide an investment letter.

67-21.013 Non-Credit Enhanced Multifamily Mortgage Revenue Bonds.

Any issuance of non-Credit Enhanced revenue Bonds shall be sold only to a Qualified Institutional Buyer. . . . 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.

¹ The particular form of indebtedness here is a note. However, the rule to be waived uses the term “bonds,” which is defined in Section 420.503(4), F.S., to include any note issued by the Corporation.

² QIBs are sometimes referred to as sophisticated investors that are capable of understanding and managing the risks associated with a non-credit enhanced bond.

4. Petitioner is funding its Development using, among other things, a Freddie Mac Tax Exempt Multifamily Revenue Note (Bond) under its Tax Exempt Loan (TEL) Program. Federal law requires Freddie Mac to purchase the bonds through an intermediary, which in this case is Walker & Dunlop, LLC (“W&D”). W&D, however, does not meet the definition of a Qualified Institutional Buyer in Rule 67-21.002(88), Fla. Admin. Code. Petitioner seeks a waiver that will allow it to use the services of W&D in order to facilitate the note/bond portion of the financing for these Developments. The notes/bonds will ultimately be sold to Freddie Mac (which is a QIB) in accordance with an executed commitment letter between W&D and Freddie Mac. Unless the waiver is granted, Petitioner will be required to find alternate financing, and funding for the Development will be jeopardized.

5. Rule 67-48.0072(4)(c), Fla. Admin. Code, provides:

(c) For SAIL, EHCL, and HOME Applicants, the loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to 12 months. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. . . . In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated.

6. Petitioner was invited to credit underwriting on August 14, 2014, and received a 12-month extension until August 14, 2016. Petitioner has been unable to

close the SAIL loan and does not anticipate being able to close it by August 14. Petitioner therefore seeks an extension of the SAIL loan closing date until December 31, 2016.

7. Under Section 120.542(1), 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.

8. The Board finds that granting the waivers would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants. The Board further finds that granting the waivers would have no detrimental impact on Florida Housing or any of its programs.

9. 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.

10. 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 67-21.013, Fla. Admin. Code, is hereby **GRANTED**, so that Petitioner will be able to use the services of W&D to purchase the non-credit enhanced revenue bonds as part of the TEL Program and so that W&D will not be required to submit an investment letter.

Petitioner’s request for waiver of Rule 67-48.0072(4)(c) Fla. Admin. Code, is hereby **GRANTED**, so that the SAIL loan closing deadline may be extended from August 14, 2016 until December 31, 2016.

DONE and ORDERED this 5th day of August, 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.