

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: WAKULLA TRACE APARTMENTS, LTD.

FHFC Case No. : 2005-056VW

ORDER GRANTING WAIVER OF RULES 67-48.004(1)(a), 67-48.004(14) AND 67-48.004(15), FLORIDA ADMINISTRATIVE CODE

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on January 20, 2006, pursuant to a Petition for Waiver of Rules 67-48.004(1)(a), 67-48.004(14) and 67-48.004(15), Florida Administrative Code, (the "Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on December 14, 2005, from Wakulla Trace Apartments, Ltd., ("Petitioner"). On December 23, 2005, the Notice of the Petition was published in Volume 31, Number 51, of the Florida Administrative Weekly. Florida Housing did not receive any 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. During the 2005 Universal Cycle, Florida Housing awarded an allocation of \$227,999 in low-income housing tax credits to Wakulla Trace Apartments, Ltd. ("Petitioner"), to fund the construction of a 34-unit elderly garden apartment development located in Wakulla County, Florida.
3. Rule 67-48.004(1)(a), Florida Administrative Code, states in pertinent part:

The Universal Application Package or UA1016 (Rev. 2-05) consists of the forms and instructions ... [t]he Universal Application Package is adopted and incorporated herein by reference, effective February 7, 2005.

By virtue of the rule above, the Universal Application Instructions are rules. The particular provisions of the Instructions for which Petitioner requests a waiver state, in pertinent part:

Part II. Applicant and Development Team

A.2a(1) If applying for HC, the Applicant must be a limited partnership (including a limited liability limited partnership) or a limited liability company. The Applicant entity shall be the recipient of the Housing Credits and cannot be changed until after a Final Housing Credit Allocation has been issued. Replacement of the Applicant or a material change (33.3% 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 this time shall result in disqualification from receiving an allocation and shall be deemed a material misrepresentation. Changes to the limited partner of a limited partnership will not result in disqualification.

* * *

B.1. The identity of the Developer(s) listed in this Application may not change until the construction or Rehabilitation/Substantial Rehabilitation of the Development is complete.

4. Rule 67-48.004(14), Florida Administrative Code, states in pertinent part:

(14) 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 Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

* * *

(b) Identity of each Developer, including all co-Developers;

5. Rule 67-48.004(15), Florida Administrative Code, states in pertinent part:

A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at any time the Board determines that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the

changes made are prejudicial to the Development or to the market to be served by the Development.

6. Section 120.542(2), Florida Statutes 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.

7. Petitioner requests a waiver of the above Rules and incorporated provisions of the Application Instructions to permit the replacement, prior to the completion of construction, of the sole member of its General Partner. Petitioner proposes to replace the current General Partner, Wakulla County Senior Citizens Council, Inc., a Florida non-profit corporation, with Wakulla Senior Council, LLC, a Florida limited liability company (for profit), which is a current limited partner of Petitioner. Petitioner's other limited partner, Judd K. Roth and Kiss and Company, Inc. (also Developers), will be replaced by the tax credit investor, Fifth Third Community Development Corporation. The for-profit applicant entity (Petitioner) would otherwise remain the same – Wakulla Senior Council, LLP, the proposed new General Partner, will remain wholly owned by the current general partner, Wakulla Senior Citizens Council, Inc.

8. Petitioner requests the approval of this change to avoid certain tax liabilities to the non-profit entity, to meet anticipated tax benefit delivery schedule of Fifth Third, and to maintain the current credit pricing on the tax credit transaction. Petitioner states that it will suffer substantial financial hardship if the current credit pricing is not preserved.

9. Additionally, Petitioner requests approval of a change in Developer prior to completion of construction, though the personalities involved will remain the same. Petitioner intends to combine two of the three current Developers into a single entity – Kiss Roth LLP, from current Developers Kiss and Company, Inc., and Judd K. Roth. Petitioner states it is

performing this rearrangement for administrative purposes and will have no adverse effect on the Development, as the resulting entity will retain the same expertise and experience to successfully complete the Development, and on which their tax credit application was scored.

10. The granting of this waiver request would serve the purpose of the underlying statute, as the Wakulla Trace Apartments development will further Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the elderly citizens of Wakulla County, Florida.

11. Moreover, not granting this waiver will result in a substantial hardship to Petitioner, in that Petitioner will be unable to avoid potential tax liabilities to the non-profit entity, may be unable to meet anticipated tax benefit delivery schedule of Fifth Third, and as a result will be unable to maintain the current credit pricing on the tax credit transaction.

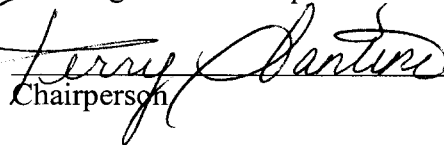
IT IS THEREFORE ORDERED:

The Petition for Waiver of Rules 67-48.004(1)(a), 67-48.004(14) and 67-48.004(15), Florida Administrative Code, Florida Administrative Code, is hereby **GRANTED**, to permit the substitution of Wakulla Senior Council, LLP, as general partner of Petitioner, and to permit the combination of two existing Developers, Kiss and Company, Inc., and Judd K. Roth, into the single entity Kiss Roth, LLP. All other relief, if any, requested in the Petition is hereby Denied.

DONE and ORDERED this 20th day of January, 2006.

Florida Housing Finance Corporation

By:


Chairperson

Copies furnished to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Vicki Robinson
Deputy Development Officer
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Maureen McCarthy Daughton, Esq.
Broad and Cassel
Suite 400
215 South Monroe Street (32301)
Post Office Drawer 11300
Tallahassee, Florida 32302

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIL L. KING, JR., BOULEVARD, TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.