Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - EP/EO
Cincinnati, OH 45201

Date: MAY 02 2002

[redacted]

Employer Identification Number:
[redacted]

Person to Contact - I.D. Number:
[redacted]

Contact Telephone Numbers:
[redacted] Ext [redacted] Phone
[redacted] FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association within 90 days of the date of this letter. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice

Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[redacted]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

> A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

Steven T. Miller

Director, Exempt Organizations

Enclosures: 3

cc: [redacted]

Enclosure

[redacted]

Facts:

A review of your file shows you are a non-profit corporation in the [redacted] as of [redacted]. Your Articles of Incorporation state that your objective is to develop and manage affordable housing and engage in any activity incident thereto.

Your current Articles of Incorporation do not bear a proper dissolution provision required under section 501(c)(3). An Agreement to Amend signed on [redacted] states that you will include such required provision in your Articles of Incorporation. You also submitted a copy of the [redacted] proposed amendment to the Articles of Incorporation, which includes an additional purpose to support the housing mission of the [redacted] ([redacted]) and a proper dissolution. However, we have not received either amendment showing the filed date stamp from the State office.

The First Amended and Restated Limited Partnership Agreement executed on [redacted] (the "Partnership Agreement") of the [redacted] (the "Partnership") shows you own [redacted]% interest and [redacted] ([redacted]), [redacted] ([redacted]), and [redacted] ([redacted]) each own [redacted]% interest in the Partnership. The Partnership Agreement defines [redacted], [redacted], [redacted], and you as General Partners. Together [redacted], [redacted], and [redacted] own the majority of the general partnership interest, [redacted]%, and hold the majority vote of all general partners. [redacted] is the [redacted] with [redacted]% interest in the Partnership.

The Partnership Agreement states the sole purpose of the Partnership is to acquire, improve, hold, lease, operate, maintain, repair and manage the Development, and finance the foregoing activities through debt and/or equity, and otherwise deal with the Development. Development means the [redacted] dwelling unit residential housing development located in [redacted] buildings on [redacted], [redacted], [redacted].

Section 6.9 of the Partnership Agreement provides that the Partnership shall be under the exclusive management and control of the General Partners… However, it further states that during any time there is more than one general partner, all powers, duties, obligations of the General Partners hereunder, including any action, decision, consent, or approval, shall be exercised, discharged, taken, or made only as set forth Article VII.

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[redacted]

Sections 7.1 and 7.2 of Article VII name [redacted], [redacted], and [redacted] as the Managing General Partners. Section 7.2 provides that the Managing General Partners shall manage the affairs of the Partnership that arise in and are a part of the ordinary course of its business, and who shall oversee all tax and financial responsibilities. These two sections further state that all powers delegated to the Managing General Partners consistent with other provisions in this Agreement may be exercised by them notwithstanding any disagreement or protest by any remaining General Partner. [redacted], [redacted], and [redacted] are collectively referred to as the Managing General Partners.

Section 4.4 of the Partnership Agreement provides tax credit shortfall and recapture adjustments. Section 4.4(d) states that in the event the Partnership fails to pay the excess credit adjuster amount to the Limited Partner, then the General Partners and the Shareholder shall pay such excess amount to the Limited Partner. Shareholder means [redacted], a shareholder and the President of [redacted] (section 7.7). Section 4.4(e) states if the completion date, the construction loans, and the tax credits are not met as projected, the General Partners shall purchase the Limited Partner's interest.

Section 7.6(a) provides that the Managing General Partners unconditionally guarantee to the Limited Partner and to the Partnership the completion of construction of the Development and the satisfaction of all requirements of the Lender of the Permanent Loan.

Section 7.6(b) provides that the Managing General Partners unconditionally guarantee to the Limited Partner and to the Partnership the payment of all the Partnership's debt service, operating expenses, and reserve requirements.

Section 7.6(c) provides that the Managing General Partners will fulfill their guaranty obligations under (a) and (b) by making advances to the Partnership of all funds….

Your [redacted] statement states that you agree to comply with the requirement described in Revenue Procedure 96-32. However, there is no provision in the Partnership Agreement that specifically describes your individual role or authority as a General Partner. Your [redacted] letter states that you are not obligated to indemnify the Limited Partner under section 4.4 or any other sections in the Partnership Agreement excepting only when and if the development fee is reduced as a result of lower capital contributions being contributed to the project.

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[redacted]

Section 2.4(a) of the Partnership Agreement states that [redacted] is granted the right of first refusal to purchase the Development at the earlier of (a) the expiration of the compliance period or (b) the date the Partnership sells, assigns, or otherwise disposes of the Development. However, the Notice of Right of First Refusal shows you have the right of first refusal to purchase the Development after the compliance period.

The Partnership Agreement and the Development Services Agreement show that [redacted] ([redacted]) is the sole developer and is paid $[redacted]. [redacted], [redacted], and [redacted] are general partners of [redacted].

The Incentive Agreement shows [redacted] is also hired as the manager of the Partnership and is paid an annual incentive management fee in an amount equal to [redacted]% of the maximum amount of the Partnership's cash flow. The term of this agreement shall continue until the end of the Partnership unless the manager is no longer the General Partner of the Partnership. [redacted]'s duties as the Manager are monitoring the management and day-to-day operations of the Partnership and its assets; and investigating and making recommendations with respect to the selection of and conduct of relationship with consultants and technical advisors (including, without limitation, accountants, attorneys, corporate fiduciaries, escrow agents, depositaries, custodians, agents for collection, insurer, insurance agents and banks or other lenders), and persons acting in connection with the management and administration of the Partnership. Also, refer to sections 7.4 of the Partnership Agreement.

You submitted pages 1 and 2, and the signature page of the [redacted] Memorandum of Understanding (the "1997 Memorandum") entered into between [redacted] and you, which states that [redacted] receives [redacted]% of all fees payable to the General Partners. Your [redacted] letter states that you receive the remaining [redacted]% of the fees.

Your [redacted] letter states that your sole activity is not just to act as a General Partner but also to share the development fees, the incentive fees, and other fees with the Managing General Partners, which enable you to further your charitable purposes by developing more low-income housing projects in [redacted].

The [redacted] Memorandum not only mentions [redacted] ([redacted]") in which you will also own [redacted]% and [redacted] will own [redacted]% of the general partner interest but indicates that [redacted] and [redacted] agree to allow you to create an entity to

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[redacted]

serve as general partner. When asked about the second partnership, [redacted] your [redacted] letter states that such partnership has not been formed as of [redacted] and most likely will never be formed.

The [redacted] Memorandum also states that the [redacted] agrees to make a charitable contribution to you for $[redacted] for day care services; however, the [redacted] Restatement and Confirmation Agreement states that the Partnership is the donor of a $[redacted] contribution and the donee is the [redacted]. The Donation Agreement between [redacted] and the Partnership provides the same commitment as shown in the [redacted] Restated and Confirmation Agreement.

The [redacted] Memorandum states that you will be hired to provide property management services for the Partnership. However, the agreement entered into between [redacted] and the Partnership shows that the [redacted] is the Property Management Agent. [redacted] is paid [redacted]% of actual income collected and an incentive management fee of [redacted]% of actual income collected for any monthly period in which occupancy exceeds [redacted]%.

The [redacted] Service Agreement betwee.. [redacted] and the Partnership states as an inducement for [redacted] to provide social services to residents, the Partnership is willing to admit you, an affiliate of [redacted], as a general partner; and [redacted] is willing to provide said services to the tenants in return for said general partnership interest. The social services include but not limited to recreational facilities, Head Start, day care, and educational programs.

Your Form 1023, Part II, question 2, states your sources of support in the order of size are development fees, management fees, donation, and investment earnings. Form 1023, Part IV Financial Date shows that your support from [redacted] to [redacted] was from investment and fees only, and your expenses consisted of a one-time commission to one of your directors, professional fees, filing fees, and losses from the Partnership.

Although your Articles of Incorporation, Bylaws, and Form 1023 do not mention any relationship you have with [redacted], your [redacted] letter states that [redacted] and you share the same board members and that the two entities were actively involved in the formation of the Partnership. You also state that [redacted] materially participates in the day-to-day operation; therefore, it can be argued that you run the daily operation because [redacted] and you have the same governing board. You state that the courts have ruled that in the production of low-income housing there will be collaboration between exempt entities and for-profit investors.

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[redacted]

Your [redacted] letter states that the term of a limited partnership that specifies the conditions for receipt of limited partner equity funds for the development of low-income housing projects are similar to the terms of a lender's loan agreement for debt financing. Your letter also states that in reality, any lender providing funds to a tax-exempt borrower has as much or more control over the project and the borrower than the limited partner of a tax credit partnership.

Law:

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1) of the Regulations provides, in part, that an organization may be exempt under section 501(c)(3) of the Code if it is organized for charitable purposes. However, it is not organized or operated exclusively for a charitable purpose unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of designated individuals.

Section 1.501(c)(3)-1(d)(2) of the Regulations defines the term "charitable" in its generally accepted legal sense and it is not limited by the separate enumeration of exempt purposes in section

[redacted]

501(c)(3) of the Code. The term includes relief of the poor and distressed.

Application of Law:

In Redlands Surgical Services, v. Commissioner, 113 T.C. 47 (1999), the Tax Court holds that a non-profit wholly owned subsidiary of Redlands Health Systems (a section 501(c)(3) organization) operates for impermissible private benefit when it cedes effective control over partnership operations to private parties. The organization's sole activity is participating as co-general partner with a for-profit corporation in a partnership that owns and operates an ambulatory surgery center. An affiliate of the for-profit partner is the manager of the surgical center. It receives a 6% management fee under the management agreement.

After a thorough analysis of the all of the operating agreements entered into by the petitioner, the Court reached the following conclusions:

> "Based on all of the facts and circumstances, we hold that petitioner has not established that it operates exclusively for exempt purposes within the meaning of section 501(c)(3). In reaching this holding, we do not view any one factor as crucial, but we have considered these factors in their totality: The lack of any express or implied obligation of the for-profit interests involved in petitioner's sole activity to put charitable objectives ahead of non charitable objectives, petitioner's lack of voting control over the General Partnership; petitioner's lack of other formal or informal control sufficient to insure furtherance of charitable purposes; the long-term contract giving SCA Management control over day-to-day operations as well as a profit-maximizing incentive; and the market advantages and competitive benefits secured by the SCA affiliates as the result of this arrangement with petitioner. Taken in their totality, these factors compel the conclusion that by ceding effective control over its operations to for-profit parties, petitioner impermissibly serves private interests".

In Housing Pioneers, Inc. v. Commissioner, T.C.M. 1993-120, aff'd 58 F. 3d 401 (9th Cir. 1995), the Court holds that the organization, which participates in a limited partnership as a co-general partner, is precluded from exemption where investors privately benefit from

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[redacted]

the arrangement. The opinion notes that the Plumstead case, cited below, does not apply because it differs factually.

In Plumstead Theatre Society, Inc. v. Commissioner, 74 T.C. 1324 (1980). 675 F.2d 244 (9th Cir. 1982), the Court holds that an organization's participation as a general partner in a limited partnership will not adversely affect its tax-exempt status under section 501(c)(3) of the Code. Important to the holding is that (a) the transaction is at arm's length, (b) the general partner is not obligated to return capital to the investors out of its own funds, and (c) the limited partners have no control over the way the organization managed its affairs.

In Moline Properties, Inc. v. Commissioner, 319 U.S. 436, 438 (1943), the court holds that for federal income tax purposes, a parent corporation and its subsidiary are separate taxable entities so long as the purposes for which the subsidiary is incorporated are the equivalent of business activities or the subsidiary subsequently carries on business activities.

In Britt v. United States, 431 F. 2d 227, 234 (5th Cir. 1970), the court emphasizes that where a corporation is organized with the bona fide intention that it will have some real and substantial business function, its existence may not generally be disregarded for tax purposes.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), the court holds that the benefits derived from the contract with a medical partnership composed of seven physicians constitute sufficient private benefit to preclude exemption. The court points out that although the non-profit hospital has an independent board of directors, the contract gives the physicians control over care of the hospital's patients and the stream of income generated by the patients while also guaranteeing the physicians thousands of dollars in payment for various supervisory activities.

In Leon A. Beeghly v. Commissioner, 35 T.C. 490 (1960), the Court holds that a charitable trust is not entitled to exemption where it engages in transactions which benefit private individuals even though the transactions are also beneficial to the trust.

In Westward Ho v. Commissioner, TCM 1992-192 (1992), the court holds an organization created by three restaurant owners to provide funds to "indigent and antisocial persons" to enable them to leave Burlington, Vermont, does not qualify for exemption even though it provides direct "assistance" to members of a charitable class. The

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[redacted]

Tax Court concludes that the organization's true purpose is to provide its creators with a more desirable business environment by removing disruptive homeless persons from the area.

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), several for-profit est organizations exert significant indirect control over est of Hawaii, a non-profit entity, through contractual arrangements. The Tax Court concludes that the for-profits are able to use the non-profit as an "instrument" to further their for-profit purposes. Neither the fact that the for-profits lack structural control over the organization nor the fact that amounts paid to the for-profit organizations under the contracts are reasonable affected the court's conclusion that est of Hawaii does not qualify as an organization described in section 501(c)(3) of the Code.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), an organization conducts an educational program for professional political campaign workers. It furnishes classrooms, materials, and qualified instructors. Admission is through a competitive application process. The Tax Court concludes that the true purpose of the admittedly educational activity is to benefit private interests (Republican candidates) by providing them with trained campaign workers. The Court states:

> "Secondary benefits which advance a substantial purpose cannot be construed as incidental to the organization's exempt purpose. Indeed, such a construction would cloud the focus of the operational test, which probes to ascertain the purpose towards which an organization's activities are directed and not the nature of the activities themselves."

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 283 (1945) the Supreme Court holds that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Revenue Procedure 96-32, 1996-1 C.B. 717 provides published guidance on the qualification under section 501(c)(3) for organizations engaged in low-income housing. This Revenue Procedure provides that an organization will be considered to relieve the poor and distressed if it establishes that 75 percent of the units are occupied by residents that qualify as low-income and that either (a) 20 percent of the units are occupied by very low-income residents or (b) 40 percent of the units are occupied by residents that do not exceed 120 percent of the area's very low-income limit.

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[redacted]

In Revenue Ruling 98-15, 1998-1 C.B. 718, Situation 2, describes that the LLC enters into a long-term agreement with a wholly owned subsidiary of the for-profit member to provide the day-to-day management services to the LLC. It is essentially a perpetual contract in that it is renewable for additional five-year periods at the discretion at the discretion of the manager. The lack of structural control is worsened by the contractual control vested in the for-profit or its affiliate. The perpetual duration of the management arrangement makes the arrangement in essence a non-arm's length contract by virtue of ceding control over renewals to the for-profit. Such organization does not qualify for exemption because the control over hospital operations has substantially shifted to the for-profit party.

Revenue Rulings 85-1 and 85-2, 1985-1 C.B. 177, 178, set out a two-part test for determining whether an organization's activities are lessening the burdens of the government. First, it is necessary to determine whether the government unit considered the activities of the organization to be its burden. The second part of the test is whether these activities actually lessen the burdens of the government. However, engaging in an activity sometimes under taken by the government or an expression of approval by the government is insufficient to establish a burden of the government. Whether the organization is actually lessening the burdens of the government is determined by considered all relevant facts and circumstances.

Discussion:

Section 501(c)(3) of the Code sets forth two main tests for qualification for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). You are considered meeting the organizational test because you have agreed to amend the Articles of Incorporation to include the proper language under section 501(c)(3). You must, however, also satisfy the operational test. The key requirement is that an organization be operated exclusively for one or more exempt purposes. An organization is not operated exclusively to further exempt purposes unless it serves a public rather than a private interest.

Historically, the Service did not recognize general partners in limited partnerships as exempt from federal income tax under section 501(c)(3) because the inherent conflict with operating for the benefit

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[redacted]

of investors and operating exclusively for charitable purposes. Following the case of Plumstead, the Service loosened its approach to the exemption of organizations acting as general partners in limited partnerships. Our guidelines require that we scrutinize the relationships of the partners to assure that the exempt general partner can operate exclusively for charitable purposes.

Our concerns are not just on the Limited Partner but also on the Managing General Partners and their affiliate, [redacted]. Our concerns are based on the grounds that the Partnership into which you have entered: (1) does not place charitable objectives ahead of profit objectives; (2) is subject to control by the for-profit partners, and (3) has a substantial purpose of obtain development fee, incentive management fee, tax credits, and other benefits for the for-profit partners and their affiliates.

One problem with the Partnership Agreement is the lack of any obligation of the for-profit partners to place any charitable purpose of the Partnership ahead of their commercial objectives, which is a key factor in Redlands and Rev. Rul. 98-15. The Partnership Agreement is silent with respect to any charitable purpose. As discussed below, the Partnership Agreement is instead designed to maximize and protect the economic interests of the GBM, the Managing General Partners, and the Limited Partner.

We do not agree with your analysis that a partnership agreement is not different from a loan document. Housing Pioneers, Redland, and Rev. Rul. 98-15 indicate that where a charity's primary activity is conducted through a partnership, then the charity must control the partnership to ensure that operations are conducted in furtherance of charitable purposes. See also Plumstead.

The affairs of the Partnership are managed by the Managing General Partners who are also the three general partners of [redacted]. [redacted] is not just a main developer but also the manager of the Partnership. The Partnership is controlled by the for-profit partners who have no obligations to put the charitable motive over the economic incentive.

This Development is your sole housing program at this time. The Partnership gives the Managing General Partners and [redacted] considerable control over its affairs. As a non-managing general partner and a minority general partner, you have no voice in the affairs of the Partnership to assure that it will carry out a charitable housing program. If you cede control over your sole housing project to for-profit partners having an independent economic interest in the same activity and having no obligation to put charitable purposes ahead of

[redacted]

profit-making objectives, you cannot assure that the Partnership will in fact be operated in furtherance of charitable purposes. Considering the structure of the Partnership, we find that you lack the requisite control over the Partnership required under Redlands, Housing Pioneers, and Rev. Rul. 98-15. The for-profit partners to whom you have yielded control have economic goals strikingly different from and often in conflict with the charitable goal of providing low-income housing.

In Plumstead, no partners have control over the exempt general partner in the management of the affairs of the partnership. Although Plumstead may permit a charitable organization's operation as a general partner in limited partnerships when specified conditions exist, Housing Pioneers makes it clear that, when an organization fails one or more of the conditions of Plumstead, such organization cannot rely on that case to establish its qualification for exemption.

Since the three for-profit general partners own the majority of the general partnership interest and are the Managing General Partners, they have control over qualification and substantive operation of the Partnership. Such controls retained by the Managing General Partners are inherently intrusive to your sole housing project and thus to your operation. Although you agree to comply with Rev. Proc. 96-32, the Partnership Agreement and other documents provide no evidence that you have sufficient control over the operation of the Partnership to assure that its housing program is charitable and in compliance with the safe harbor.

You state that [redacted] and you were actively involved in the formation of the Partnership. You also state that [redacted] materially participates in the day-to-day operation; therefore, you argurably run the daily operation because [redacted] and you have the same governing board. It is important to note that the Property Management Agent manages the property, and the Managing General Partners manage the affairs of the Partnership. You may not claim that you materially participate in the operation of the Partnership because as the Property Management Agent, [redacted] does not manage the Partnership. The Managing General Partners and the Property Management Agent play two different roles.

As discussed in Moline and Britt, the activities of [redacted] cannot ordinarily be attributed to you, an affiliate, because [redacted] and you are two separate entities and each conducts its own activities. Although [redacted] is the Property Management Agent, it does not eliminate the private benefits to the for-profit parties inherent now and in the future. Furthermore, the property management service is not an

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[redacted]

exempt activity described in section 501(c)(3) but a commercial activity.

Although you do not unconditionally guarantee the tax credit shortfalls and recaptures, development cost overruns, and operating deficits, your [redacted] letter states that your share of the development fees will decrease as a result of lower capital contributions being contributed to the Development. As discussed in the Partnership Agreement specifically section 4.4 that the capital contributions of the Limited Partner will be reduced due to tax credit shortfalls and recaptures. Therefore, your share of the development fee is in fact used to subsidize any tax credit shortfalls and recaptures.

You state that your sole activity is not to act as a General Partner in the Partnership, but also to receive development fee and other fees payable to the General Partners. The development activity is not an activity in furtherance of an exempt purpose. As a co-developer, you are not actually providing the low-income housing. Rather, such development is simply a commercial activity. Thus, you have the primary commercial purpose of operating an unrelated trade or business prohibited under section 1.501(c)(3)-1(e) of the regulations.

You allow the Managing General Partners and [redacted] to take advantage of Development Services Agreement, the perpetual Incentive Fee Agreement, and any other agreements. Moreover, the Redlands court holds that the incentive compensation arrangements such as the incentive management fee that you share with [redacted] provide incentives to maximize profits at the expense of charitable objectives. In addition, when the Limited Partner invests in the Partnership, its capital is at risk and it is uncertain that the Limited Partner will get a return on the investment. By guaranteeing a return on investment as described in sections 4.4, 7.6, etc., the Limited Partner's risk is removed and its speculation is paid off as projected. Your operation results in substantial private benefits to [redacted], the Managing General Partners, and the Limited Partner that are not incidental to the operation of a charitable organization.

Despite the close relationship with [redacted] and its involvement in the Development, the housing provided through the Partnership is not a charitable activity under section 501(c)(3) for lessening the burdens of government under Rev. Ruls. 85-1 and 85-2 because of the substantial private benefits provided to [redacted], and the Limited Partner.

Like in Harding Hospital, Leon A. Beeghly, Westward Ho, est of Hawaii,

[redacted]

and American Campaign, you cannot confer substantial benefit on interested persons and still serve public purposes within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. As discussed in Better Business Bureau, if an organization is not operated exclusively for public purposes, exemption may be precluded. This is applicable even if the Development meets the safe harbor guideline in Rev. Proc. 96-32.

Conclusion:

Under the facts presented, we conclude that you are not operated exclusively for charitable purposes, but substantially for the purpose of benefiting private interests.

Accordingly, based on all the facts and circumstances, we conclude that you do not qualify for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Code. Your activities are indistinguishable from similar activities of an ordinary commercial enterprise. You have not demonstrated that you are operated exclusively for exempt purposes.