Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508 - ROOM 7008
Cincinnati, OH 45201

Date: [redacted]

[redacted]

Employer Identification Number:
[redacted]

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

Contact Telephone Numbers:
[redacted] Phone
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. 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,

[redacted]

Director, Exempt Organizations
Rulings and Agreements

Enclosures: 3

Enclosure I

Facts

A review of your Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code and subsequent correspondence to the Service show that you are organized as a non-profit corporation in the State of [redacted]. Your Articles of Incorporation state that you are organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code. Your Articles also state that you are formed to provide affordable housing for low-income persons, where no adequate housing exists for such groups. Your Articles state that you will serve as a general partner in a limited partnership which owns and operates housing for the benefit of low-income persons who are in need of affordable, decent, safe and sanitary housing and related services.

You state that you were formed specifically to benefit and support [redacted] ("[redacted]"). [redacted] is a nonprofit housing development corporation, which is tax exempt under section 501(c)(3) of the Code. [redacted] formed and controls you. Your incorporator appointed all of your initial board of directors. All subsequent directors shall be appointed by the board of directors of [redacted].

Your budgets indicate that your only source of income is from "other income" and you receive approximately $[redacted] annually from this source. Approximately $[redacted] of your income is expensed annually for miscellaneous items such as office expenses and accounting.

[redacted] A [redacted] Limited Partnership ("the "Partnership") has completed construction of, and owns and operates, [redacted] units of rental housing for low-income seniors plus one manager's unit (the "Project"). The Project was completed in [redacted]. You submitted a copy of the Amended and Restated Agreement of Limited Partnership of [redacted], A [redacted] Limited Partnership (the "Agreement"). [redacted] is the General Partner and owns a [redacted]% interest in the Project. [redacted] is the Investment Limited Partner and owns a [redacted]% interest in the Project. [redacted] is the Special Limited Partner. You plan to substitute for [redacted] as the General Partner in the Partnership.

Section 1.5 of the Agreement states that the only purposes of the Partnership are to acquire, rehabilitate, construct, own, operate, maintain, manage, lease, sell, mortgage or otherwise dispose of the Project and to provide decent, safe, and affordable housing therein. The Project shall be operated in accordance with Section 42 of the Code and applicable Lender and Agency requirements.

The Agreement provides for the rights, duties and obligations of the parties. When you substitute for [redacted] you will be the sole General Partner. Section 6.1 states that the General Partner shall be responsible for the management of the Partnership business. However, certain provisions give control over some partnership operations to the Limited Partners and also provide guarantees or indemnification to the Limited Partners. As extracted from the Agreement, what follows is a listing of some of these provisions:

a) Section 3.5(c) of the Agreement provides, in general, that the Adjustment Amount shall first be applied to the Installment next due to be paid by the Investment Limited Partner, with any portion of such Adjustment Amount in excess of the amount of such Installment then being applied to the next succeeding Installment(s), provided that if no further Installments remain to be paid or if the Adjustment Amount shall exceed the sum of the amounts of the remaining Installments, then the General Partner shall immediately make a Capital Contribution to the Partnership in the amount of the entire Adjustment Amount or the balance of the Adjustment Amount, as the case may be (a "Credit Adjuster Advance"), and the entire Credit Adjuster Advance shall be immediately distributed to the Investment Limited Partner. In the alternative, if the Accountants determine that the Capital Contribution and distribution contemplated by the immediately preceding sentence would prevent the Investment Limited Partner from being allocated 99.99% of Tax Credits, then the General Partner shall pay the entire Credit Adjuster Advance directly to the Investment Limited Partner.

b) Section 3.5(d) of the Agreement provides, in general, that in the event the General Partner shall fail to make any payment required pursuant to Section 3.5 within 10 days after demand is made, then, the General Partner shall be obligated to cause the Partnership to utilize amounts (the "Applied Amounts") otherwise payable to the General Partner under other sections of the Agreement to meet the obligations of the General Partner pursuant to this Section 3.5, with such utilization of Applied Amounts constituting payment and satisfaction of the corresponding amounts payable to the General Partner under the other sections, with the proceeds thereof being applied to such obligations, and with the obligation of the Partnership to make such payments to the General Partner under other sections being deemed satisfied. It will be considered a material event of default under this Agreement if the General Partner fails to make any payment required under Section 3.5 within 10 days after demand is made by the Investment Limited Partner.

c) Article II of the Agreement states, by definition, that the selection of the Accountant must have the prior written approval of the Special Limited Partner.

d) Section 7.7(a)(i) states that the Investment Limited Partner and the Special Limited Partner shall have the right to remove the General Partner and elect a new General Partner if, among other things, the General Partner has materially violated any provision of the Agreement, or for any act or failure to act that results in recapture of more than 10% of the Tax Credits previously allocated to the Partners.

e) Section 6.9(b) states that the General Partner agrees that it will be liable to the Investment Limited Partner and the Special Limited Partner for any material costs, damages, loss of profits, diminution in the value of their Limited Partner interests or other losses of every nature and kind whatsoever, direct or indirect, realized or incurred by the Investment Limited Partner or the Special Limited Partner as a result of any material breach of the representations and warranties set forth in section 6.9. Section 6.9(a)(15) states that the General Partner shall maintain a net worth equal to at least $100,000.

With respect to section 3.5(c) you state that this provision does not put charitable assets at risk of benefiting the Limited Partner. You state that this is for the Limited Partner's protection. The Limited Partner has "purchased" tax credits and if they don't receive them then this allows the Limited Partner to have returned to them money that was paid for something they did not receive. You state that the only way that the Limited Partner would not get the tax credits is if the General Partner failed in its exempt purpose and broke the regulatory agreement by renting to non-qualified tenants. You state that the partnership agreement is similar to the financing agreement of a loan in that a loan agreement requires repayment of principal (credit adjuster) only when the interest (tax credits) is not paid.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable 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(a)(2) of the Regulations states that the term "exempt purpose or purposes" means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

(a) Limit the purposes of such organization to one or more exempt purposes; and

(b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iv) of the Regulations states in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

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)(ii) of the Regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Plumstead Theatre Society, Inc. v. Commissioner, 74 T.C. 1324 (1980) held that an organization's participation as a general partner in a limited partnership would not adversely affect its tax exempt status under section 501(c)(3) of the Code. In order to meet its funding obligations, the organization formed a limited partnership in which it served as general partner, with two individuals and a for-profit corporation as the limited partners. Important to the holding is that the limited partners had no control over the organization's operations, and that the general partner did not guarantee the limited partners' return of capital.

Housing Pioneers, Inc. v. Commissioner, T.C.M. 1993-120, aff'd 58 F. 3d 401 (9th Cir. 1995), involved a nonprofit organization that entered into partnerships as a 1% co-general partner of existing limited partnerships for the purpose of splitting with

the for-profit partners anticipated State property tax benefits accorded to "limited partnerships in which the managing general partner is an eligible nonprofit corporation." Under the management agreement, the organization's authority as co-general partner was narrowly circumscribed. The organization had no on-site management authority, no authority to screen or select tenants, and could describe only a vague charitable function of surveying tenant needs and ensuring that requirements for federal tax credits were met. The organization planned to conduct various charitable programs for tenants with its partnership income. The remaining tax savings realized by the partnership would be used to keep rents low. The Tax Court concluded that the organization did not qualify under section 501(c)(3) because it had a substantial non-exempt purpose and served private interests through its partnership activities.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), a non-profit hospital with an independent board of directors executed a contract with a medical partnership composed of seven physicians. The contract gave 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. The court held that the benefits derived from the contract constituted sufficient private benefit to preclude exemption.

In Redlands Surgical Services, v. Commissioner, 113 T.C. 47 (1999), the Tax Court held that a nonprofit wholly owned subsidiary of Redlands Health Systems (a section 501(c)(3) organization) operated for impermissible private benefit when it ceded effective control over partnership operations to private parties who had no requirement to operate exclusively for purposes described in section 501(c)(3). The organization's sole activity was participating as co-general partner with a for-profit corporation in a partnership that owned and operated an ambulatory surgery center. An affiliate of the for-profit partner was the manager of the surgical center. It received a 6% management fee under the management agreement. The court closely examined the structure of the relationships among the parties and stated:

> Clearly, there is something in common between the structure of the petitioner's sole activity and the nature of the petitioner's purpose in engaging in it. An organization's purposes may be inferred from its manner of operations; its "activities provide a useful indicia of the organization's purpose or purposes." Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), affd. T.C. Memo. 1990-84. The binding commitments that petitioner has entered into and that govern its participation in the partnerships are indicative of petitioner's purposes. To the extent that petitioner cedes control over its sole activity to for-profit parties having an independent economic interest in the same activity and having no obligation to put charitable purposes

> ahead of profit-making objectives, petitioner cannot be assured that the partnerships will in fact be operated in furtherance of charitable purposes. In such a circumstance, we are led to the conclusion that petitioner is not operated exclusively for charitable purposes...nothing in the General Partnership agreement, or in any of the other binding commitments relating to the operation of the Surgery Center, establishes any obligation that charitable purposes be put ahead of economic objectives in the Surgery Center's operations. The General Partnership agreement does not expressly state any mutually agreed-upon charitable purposes or objective of the partnership.

After a thorough analysis of 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 the 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 facts 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 Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179, the Supreme Court held 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, sets forth procedures for determining whether an organization that provides low-income housing will be considered charitable as described in section 501(c)(3) of the Code because it relieves the poor and distressed.
Section 7 provides that if an organization furthers a charitable purpose such as relieving the poor and distressed, it nevertheless may fail to qualify for exemption because private interests of individuals with a financial stake in the project are furthered.

Revenue Ruling 98-15, 1998-1 C.B. 718, considered whether, in two fact situations, a hospital organization continued to qualify under section 501(c)(3) of the Code where it formed an L.L.C. (treated as a

partnership for tax purposes) with a for-profit corporation and contributed its operating assets to the L.L.C., which then operated the hospital. The Service reasoned that the activities of a partnership are considered to be the activities of a nonprofit partner when evaluating whether the nonprofit is operated exclusively for 501(c)(3) purposes. A 501(c)(3) organization may form and participate in a partnership and meet the operational test if participation in the partnership furthers a charitable purpose, and the partnership arrangement permits the exempt organization to act exclusively in furtherance of its exempt purpose and only incidentally for the benefit of the for-profit partners. Similarly, a 501(c)(3) organization may enter into a management contract with a private party giving that party authority to conduct activities on behalf of the organization and direct the use of the organization's assets provided that the organization retains ultimate authority over the assets and activities being managed and the terms and conditions of the contract are reasonable, including reasonable compensation and a reasonable term. However, if a private party is allowed to control or use the non-profit organization's activities or assets for the benefit of the private party, and the benefit is not incidental to the accomplishment of exempt purposes, the organization will fail to be organized and operated exclusively for exempt purposes.

IRS Position

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). If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Your Articles of Incorporation meet the organizational test because it limits your purposes to one or more exempt purposes under section 501(c)(3). Also, the purposes listed in your Articles are not broader than the purposes specified in section 501(c)(3).

However, section 1.5 of the Agreement is not limited to exempt purposes under section 501(c)(3) of the Code. It states, in general, that the Project will provide decent, safe and affordable housing and will be operated in accordance with section 42 of the Code. You were twice asked to amend this provision (our letters dated [redacted] and [redacted] of the Agreement and you declined both times. You state that the Limited Partners are fully aware that a tax-exempt organization is the sole General Partner and will run things in accordance with their charitable purpose and restating this in the Agreement would be redundant.

The Partnership and its partners, as owners of a low-income housing tax credit project, are obligated to meet the requirements under section 42. The Partnership and the Limited Partners, however, are

not obligated to operate within the meaning of section 501(c)(3). The requirements to meet section 42 are not the same as the requirements to meet section 501(c)(3). Section 42 does not require that charitable purposes be met while section 501(c)(3) does require that charitable purposes be met. You are applying for tax exemption under section 501(c)(3), not section 42, therefore, because your activities are carried out through the Partnership, the purposes of the Partnership (as stated in the Agreement) must be in conformity with section 501(c)(3). Your purpose provision in the Agreement meets section 42; however, it does not meet the requirements under section 501(c)(3).

Typically the Service looks to an organization's organizing document (in your case, the Articles of Incorporation) as to whether an organization satisfies the organizational test. However, in your situation, you must also amend section 1.5 of the Agreement in order to satisfy the organizational test. You are a single purpose corporation and you will do nothing but serve as the General Partner in the Partnership. All of your activities are governed by the Agreement. Moreover, the Agreement allows for specific penalties if you do not follow the provisions of the Agreement. As was discussed above, the purpose clause of the Agreement (section 1.5) does not conform to the requirements of section 501(c)(3). Having a purpose clause in the Agreement that contradicts the purpose clause in your Articles of Incorporation significantly impairs or destroys the 501(c)(3) purpose expressed in your Articles of Incorporation. Thus, you do not meet the organizational test because you are not organized for exempt purposes.

You must 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. In other words, if an organization and/or individual privately benefits from your operation, then you are not considered operated exclusively for exempt purposes and are therefore not exempt.

Historically, the Service did not recognize general partners in limited partnerships as exempt from federal income tax under section 501(c)(3) because of the inherent conflict of operating for the benefit of investors and operating exclusively for charitable purposes. Following the Plumstead case, the Service modified its approach to the exemption of organizations acting as general partners in limited partnerships. The Service's guidelines require close scrutiny of the relationships of the partners to assure that the exempt general partner can operate exclusively for charitable purposes.

Under the facts presented, we conclude that you are not operated exclusively for charitable purposes, but substantially for the purpose of benefiting private interests. Our conclusion is 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 Limited Partners; and (3) has a substantial purpose to maximize and protect the economic interests of the Limited Partners.

Another problem with section 1.5 of the Agreement is the lack of any obligation of the for-profit investors to place any charitable purpose of the Partnership ahead of their investment and commercial objectives. This was a key factor in Redlands and Rev. Rul. 98-15. The Agreement must specifically state that charitable purposes take precedence over profit motives.

In regards to section 3.5 of the Agreement, you state that the tax credit adjuster can't be changed. You state that the tax credit adjuster does not place charitable assets at risk nor does it benefit the private investors.

Credit adjustment provisions may overly benefit private investors by placing charitable assets at risk to protect the investment of private investors. According to section 3.5(c), the Credit Adjuster Advance may be treated as a capital contribution. Treating the Credit Adjuster Advance as a capital contribution accurately reflects the transaction: the investor has an overpayment of capital returned by the Partnership and you make an additional capital contribution to cover the shortfall. This arrangement retains charitable assets for charity. Although charitable assets may be used to cover any shortfall, your increased capital contribution will be used to carry out your charitable purpose and will be returned to you upon dissolution since distribution is based on your capital account.

However, section 3.5(c) also states that if the capital contribution would prevent the Investment Limited Partner from being allocated [redacted]% of Tax Credits, etc., then the General Partner must pay the entire Credit Adjuster Advance directly to the Investment Limited Partner. This arrangement puts charitable assets at risk because these funds are then lost. In this case, the General Partner's assets will be used to protect the investment of the Investment Limited Partner. This demonstrates a non-charitable purpose of benefiting the Investment Limited Partner and will constitute a substantial non-exempt purpose, which will preclude exemption.

Essentially, under section 3.5 of the Agreement, the capital contributions of the Limited Partner will be reduced due to tax credit shortfalls and recaptures. Any payments required under section 3.5, if not paid by the General Partner, will be taken from amounts owed to the General Partner under other sections of the Agreement. Therefore, your share of other fees owed to you is in fact used to subsidize any tax credit shortfalls and recaptures. This demonstrates that the Agreement is designed to maximize and protect the economic interests of the Limited Partner.

Housing Pioneers, Redlands, 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.

You state in your response dated [redacted] that you are solely responsible for the operational activities of the Partnership. You also state in that response that by definition the Limited Partners are not allowed to participate in the daily operations of the Partnership. If one were to look solely at the partner designation, then one would conclude that the General Partner controlled the Partnership. However, a close examination of the Agreement reveals otherwise.

Although Section 6.1 of the Agreement provides that the General Partner is responsible for the management of the Partnership, the Agreement allows the Limited Partners to effectively assume managerial control over the Partnership (through the removal of the General Partner and selection of a replacement General Partner) upon a number of grounds, including if there is an act that results in a recapture of more than 10% of tax credits or the General Partner has materially violated any provision of the Agreement. Also, the failure of the General Partner to make any payment required under section 3.5 will be considered a material event of default and the Limited Partners may, as a result, remove the General Partner. You also may not select the Accountant without the prior written approval of the Special Limited Partner. Thus, any control you may have over the Partnership's operations as General Partner is limited. Considering the Agreement, 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, your charitable goal of providing low-income housing.

Moreover, you state in your response dated [redacted], "We doubt that we will be able to change the partnership agreement of this for profit entity." In that same response you state, "We will be glad to amend any of [redacted] documents to meet your requirements if so required but changing the partnership agreement we doubt will be possible." Clearly, you are not in a position to control the Partnership to assure its operations are conducted in furtherance of your charitable purposes. As ruled in Harding Hospital, even though you have an independent board of directors, the Agreement gives the Limited Partners control over the affairs of the Partnership.

You are supposedly the management of the Partnership; however, as stated above, the Agreement gives the Limited Partners considerable control over the operation of the Partnership. If you cede control over your sole activity to a for-profit party having an independent economic interest in the same activity and having no obligation to

put charitable purposes ahead of profit-making objectives, you cannot assure that the Partnership will in fact be operated in furtherance of charitable purposes. Like in Redlands, Housing Pioneers, Harding Hospital and Rev. Rul. 98-15, you confer an impermissible private benefit when you cede effective control over the Partnership's operations to private parties.

One of the representations and warranties that the General Partner makes is that they will maintain a net worth equal to at least $[redacted]. If the General Partner does not maintain this net worth, then the General Partner has committed a material breach and is liable to the Limited Partners for any material costs, damages, etc. You agree that this net worth clause is one that sounds good to the investor, but is never enforced. Regardless of whether or not it is enforced, it is a part of the Agreement and is for the protection of the Limited Partners.

You state that the partnership agreement is basically a loan agreement. We do not agree with your analysis that a partnership agreement is similar to a loan document. While there may be some similarities between a loan document and a partnership agreement, they are clearly very different. As was stated previously, Housing Pioneers, Redlands, and Rev. Rul. 98-15 all clearly 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.

When participation in a partnership is the only activity of a nonprofit organization, the partnership agreement effectively controls the operations of the nonprofit organization. Therefore, if the partnership exclusively engages in activities that further a charitable purpose, the nonprofit organization operates for charitable purposes. If more than an insubstantial amount of the partnership's activities do not further a charitable purpose, the nonprofit organization fails the operational test under section 1.501(c)(3)-1(1)(c)(1) and 1.501(c)(3)-1(d)(1) of the regulations.

The Partnership is structured largely with the design of protecting the financial interests of the Limited Partners to the detriment of your charitable interests. When an investor invests in a business, its capital is at risk, and it is uncertain that the investor will get a return on the investment. Because of the above-mentioned provisions in the Agreement, you operate to remove the risk of the Limited Partners and indemnify their speculation that their investment will pay-off as projected. Your operation results in substantial private benefit to the Limited Partners that is not incidental to the operation of a charitable organization. In summary, a substantial purpose of the Partnership's activities, as in Housing Pioneers, is the production and protection of the financial interests of the Limited Partners.

You do not meet the operational test because you are operated for the substantial purpose of benefiting the Limited Partners. The fact that your activities may further some truly charitable purposes (i.e. providing low-income housing) does not detract from the existence of the substantial non-exempt purpose of benefiting the Limited Partners. 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. Better Business Bureau of Washington, supra.

Section 7 of Rev. Proc. 96-32 states that an organization, which meets the safe harbor, can very well fail to meet the qualifications of section 501(c)(3) because private interests are furthered. We find that this is the case in your situation.

Under the facts presented, we conclude that you are not organized or operated exclusively for charitable purposes.

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. You have not demonstrated that you are organized and operated exclusively for exempt purposes.