

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

LIBERTY CENTER IV, LTD.,
a Florida limited partnership,

Petitioner,

Application No. 2003-077CS

vs.

Case No.: 2005-033VW

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

**PETITION FOR WAIVER FROM FLORIDA ADMINISTRATIVE
CODE RULE 67-48.002(111)**

Pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code ("FAC"), Liberty Center IV, Ltd.(the "Petitioner"), a Florida limited partnership, by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Petitioner") for a waiver from 67-48.0002(111) FAC. In support of this petition, the Petitioner states as follows:

AGENCY AFFECTED

1. The name and address of the agency affected is:

Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

THE PETITIONER

2. The address, telephone number and facsimile number of the Petitioner is:

Liberty Center IV, Ltd.
Art Museum Drive
Jacksonville, Florida
(904) 399-8963 (Telephone)
(904) 399-8965 (Facsimile)

3. The address, telephone number and facsimile number of the Petitioner's counsel is:

William L. Joel
Stoneburner Berry & Simmons, P.A.
841 Prudential Drive, Suite 1400
Jacksonville, Florida 32207
(904) 348-6861 (Telephone)
(904) 396-9001 (Facsimile)

THE RULE WITH RESPECT TO WHICH A WAIVER IS SOUGHT

4. The Petitioner seeks a variance from Rule 67-48.002 (111), as in effect for the 2003 Universal Application Cycle. Rule 67-48.002 (111) adopts the Universal Application Instructions (the "Instructions") and incorporates them by reference. Part II.A.2.b. of the Instructions provides:

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 funding and shall be deemed a material misrepresentation. Changes to the limited partner of a limited partnership will not result in disqualification.

If applying for MMRB, SAIL or HOME, the Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. 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 funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

5. Rule 67-48.002(111) implements the provisions of Florida Statutes §420.5099 which designates FHFC to establish and administer the Low Income Housing Tax Credit Program.

ACTION REQUESTED

6. The Petitioner requests that the FHFC grant a waiver and variance from the provisions of FAC Rule 67-48.002(111), as in effect and governing the 2003 Universal Application Cycle, to permit and approve a change of the general partner of the Petitioner, as set forth in the 2003 Universal Application (the "Application") filed by the Petitioner and approved by the FHFC. Part II.A.2.b. of the Instructions, as incorporated by the foregoing Rule, prohibits a material change in the ownership structure of an Applicant for Housing Credits or SAIL loan financing. For both purposes, a "material change" is defined to include a change of the general partner of the Applicant. For the reasons set forth below, compliance with the provisions of the foregoing Rule would cause substantial hardship to the Petitioner and would give rise to unreasonable, unfair and unintended consequences of the Rule.

FACTS

7. The Petitioner successfully applied for financing from the Housing Tax Credit ("HC") Program and SAIL loan financing in the 2003 Universal Application Cycle. The HC and SAIL loan financing were sought by the Petitioner in connection with the development of a 100-unit SRO affordable housing project located in Jacksonville,

Florida, and known as "Liberty Center IV Apartments" and "Liberty Studio Apartments" (the "Project").

8. The Petitioner is a Florida limited partnership. At the time the Petitioner filed the Application, the sole general partner of the Petitioner was Liberty Center for the Homeless, Inc., a Florida corporation not-for-profit, as was stated in the Application.

9. Subsequent to the filing and approval of the Petitioner's Application, the Petitioner's investment limited partner, Boston Capital Corporate Tax Credit Fund XXI, A Limited Partnership, required that the Petitioner form a new single-purpose entity, Liberty Center IV, Inc., a Florida corporation, and that Liberty Center IV, Inc. replace Liberty Center for the Homeless, Inc. as the sole general partner of the Petitioner. Such change took place by a filing with the Secretary of State of Florida of an amendment to the certificate of limited partnership of the Petitioner on May 24, 2004.

10. Through error and inadvertence, the Petitioner failed to obtain the prior approval of the FHFC of the substitution of General Partner.

11. The Petitioner completed the equity and loan closings regarding the Project, including the closing of the SAIL loan, on June 4, 2004. The Petitioner has also completed construction of the Project.

12. At the time of the closing of the SAIL loan, the FHFC did not object to the change of the general partner of the Petitioner, or require that the Petitioner obtain approval of the change.

13. The approval of the substitution of the general partner will not in any way negatively impact any person or party. The substitution of the general partner is a change in form and not substance. Liberty Center IV, Inc., the replacement general partner, is

wholly owned by the original general partner, Liberty Center for the Homeless, Inc. Each of the directors of Liberty Center IV, Inc. is a director of Liberty Center for the Homeless, Inc. Each of the officers of Liberty Center IV, Inc. is an officer of Liberty Center for the Homeless, Inc.

14. The denial of approval of the substitution of the general partner by the FHFC will have numerous negative impacts. Such denial would prevent the issuance of housing credits, creating undue hardship on the parties who purchased those housing credits through the syndication of the same by the investment limited partner. The denial would also give rise to an event of default under the terms of the partnership agreement of the Petitioner and may result in the divesting of the general partnership interest of the general partner.

15. The waiver of this Rule will serve the purposes of the statute which is implemented by the Rule. The Florida Housing Finance Corporation Act (FS §420.501, et seq.) and the Housing Tax Credit Program were created to encourage private sector investment to increase the supply affordable housing for persons of low income. By granting this waiver and ensuring that the Petitioner and the purchaser of the Housing Credits receive the intended and expected benefits of their investment, the FHFC will further promote this goal.

RELIEF REQUESTED

16. The Petitioner respectfully requests the following relief:

- a. That the FHFC grant a waiver of Rule 67-48.002(111) and Part II.A.2.b of the Instructions and approve the substitution of Liberty Center IV, Inc.

as the general partner of the petitioner, for purposes of both the issuance of Housing Credits and the SAIL loan.

- b. That the above-described waiver shall be permanent.
- c. That the FHFC grant any other relief that is necessary and proper.

Respectfully submitted this 13th day of September, 2005.



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AUTOMATIC COVER SHEET

DATE: SEP-13-2005 TUE 02:33 PM

TO:

FAX #: 18504146548

FROM: STONEBURNER BERRY&SIMMON

FAX #: 9043969001

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