

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2004-011

LAKESIDE COMMONS, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

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FLORIDA HOUSING FINANCE CORPORATION

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**PETITIONER LAKESIDE COMMONS, LTD.'S PETITION FOR  
WAIVER OF RULE 67-48.002(111) TO CHANGE GENERAL PARTNER**

Petitioner Lakeside Commons, Ltd., a Florida limited partnership ("Lakeside Commons") petitions Respondent Florida Housing Finance Corporation ("Corporation") for a waiver of restrictions on changing an applicant's general partner before a Final Housing Credit Allocation has been issued. In support of its Petition, Lakeside Commons states:

1. Pursuant to Section 120.542, Fla. Stat.(2001) and Rules 28-104.001 through 28-104.006, F.A.C., Lakeside Commons requests a waiver of Rule 67-48.002(111), F.A.C. ("the Rule"), as applied to Universal Application Instruction, Part II.2.a(1) ("Instruction 2.a(1)"), to change the general partner of Lakeside Commons from Lakeside Commons, Inc. ("Lakeside Inc.") to Lakeside Commons LLC ("Lakeside LLC"). The requested change will not adversely effect the development of the Lakeside Commons Apartments ("the Project"), but a denial of this request would result in substantial economic hardship to Lakeside Commons.

2. Petitioner's name, address, telephone and facsimile numbers are:

Lakeside Commons, Ltd.  
c/o Lakeside Commons, Inc.  
Its sole General Partner  
Attention: Francisco Rojo, Vice President  
1666 Kennedy Causeway  
Suite 505  
North Bay Village, Florida 33141  
Telephone: 305-538-9552, ext. 103  
Facsimile: 305-538-9553

3. The name, address, telephone and facsimile numbers of Lakeside Commons' qualified representative are:

Lakeside Commons, Inc.  
Francisco Rojo, Vice President  
1666 Kennedy Causeway  
Suite 505  
North Bay Village, Florida 33141  
Telephone 305-538-9552, ext. 103  
Facsimile: 305-538-9553

4. Rule 67-48.002(111) sets forth the applicable rule which is the subject of this Petition. Rule 67-48.002(111) provides:

"Universal Application Package"... means the forms and instructions, obtained from the Corporation ... which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME and/or HC Program(s). The Universal Application Package is adopted and incorporated herein by reference...

5. Instruction 2.a(1) of the Universal Application Package provides that:

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 of 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.

6. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act,<sup>1</sup> the statute that created the HC Program. See § 420.5099, Fla Stat. (2001). The purpose of the HC Program is to encourage the development of low income housing.

7. Lakeside Commons requests a waiver of Instruction 2.a(1)'s restriction against changing its general partner before the issuance of its Final Housing Credit Allocation. Specifically, Lakeside Commons petitions for the waiver so it may change its general partner from Lakeside Inc. to Lakeside LLC. The requested change is a consequent of corporate tax laws preventing the current corporate general partner from passing through losses to the shareholders of the general partner of Lakeside Commons. Changing the general partner to a limited liability company allows the allocation of losses to the limited liability company's members. Consequently, the requested change will not adversely effect the Project, but a denial of this request would result in substantial economic hardship to Lakeside Commons and the shareholders of its current general partner, Lakeside Inc.

8. The following facts demonstrate the economic hardship and other circumstances which justify a waiver of restriction against changing general partners before the issuance of its Final Housing Credit Allocation:

a. Lakeside Commons is obtaining financing for the construction of the Project;

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<sup>1</sup>The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes. (the "Act"). See also Rule 67-40.020(1), F.A.C. ("Act" means the Florida Housing Finance Corporation Act, section 420.501 through 420.516 of the Florida Statutes").

- b. In connection with its financing of the Project, Lakeside Commons applied for a portion of its construction financing from the Corporation through the HC program. In its HC Application, Lakeside Commons identified Lakeside Inc., as its general partner.
- c. The Corporation has notified Lakeside Commons that it was being provided with a Preliminary Allocation of Housing Credits. Consequently, there will be a Final Housing Credit Allocation in accordance with the Corporation's usual final allocation procedures;
- d. It has become apparent that during the construction phase of the Project, there may be losses that are allocable to Lakeside Commons' general partner Lakeside Inc.;
- e. As a corporation, however, Lakeside Commons' general partner Lakeside Inc. is unable to pass through the losses to its shareholders. As an applicant for very-low-income affordable housing the inability to pass through losses to shareholders results in substantial and unavoidable economic hardship;
- f. Lakeside Commons' proposed new general partner Lakeside LLC is allowed to allocate losses to its members;
- g. Robert Saland and Francisco Rojo are the sole shareholders and Principals, as defined in Rule 67-48.002(82), F.A.C., of Lakeside Inc. and Lakeside LLC, the entity proposed by Lakeside Commons as its general partner, in lieu of Lakeside Inc.
- h. Thus, there will be no change in the ultimate principals of Applicant Lakeside Commons or of the beneficial ownership of the general partner interest of Lakeside Commons;
- i. The proposed General Partner can rely upon and benefit from the identical expertise, experience, services, resources and support personnel available to Lakeside Commons, Inc. Accordingly, the continuity, progress and quality of the Project will not be disrupted or otherwise effected by the change in General Partners;
- j. The change of general partner is requested solely to avoid unanticipated, negative tax consequences; and
- k. The requested Rule waiver will not adversely impact completion of the Development. However, a denial of the requested waiver will

result in substantial economic hardship to the shareholders of Lakeside, Inc. and subsequently to the Project's owner, Lakeside Commons.

9. A waiver of the Rule and Instruction 2.a(1)'s restriction on changing general partners would serve the purposes of Section 420.5087, and the Act as a whole, because one of their primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to very-low-income persons and households. By granting a waiver, and permitting Lakeside Commons to change its general partner before the issuance of its Final Housing Credit Allocation, the Corporation would recognize the economic realities of developing affordable rental housing. This recognition would promote participation by owners such as Lakeside Commons in meeting the purpose of the Act by providing affordable housing, in an economical and efficient manner. Neither owners, such as Lakeside Commons, nor general partners would be placed in the untenable and unavoidable position of having obligations for taxes resulting from the inability to allocate losses to shareholders.

10. The waiver being sought is permanent in nature.

11. Should the Corporation have questions or require any additional information, Lakeside Commons is available to provide any additional information necessary for consideration of this Petition.

WHEREFORE, Petitioner Lakeside Commons, Ltd. respectfully requests that:

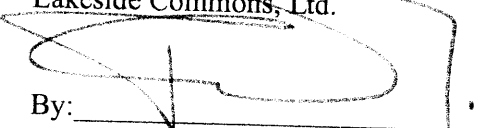
- A. The Corporation grant the Petition and all the relief requested therein;
- B. Waive Rule 67-48.002(111)'s restriction adopted from Universal Application Instruction 2.a(1) against changing general partners before the issuance of Final Housing Credit

Allocations and permit Lakeside Commons to change its general partner from Lakeside Commons, Inc. to Lakeside Commons, LLC; and

C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

Lakeside Commons, Inc.  
Qualified Representative for  
Lakeside Commons, Ltd.

By:   
Francisco Rojo, Vice President

**CERTIFICATE OF SERVICE**

The Original Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, on May \_\_, 2004.