Responsible Partnerships Between For-profits and Nonprofits

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## Types of Partnerships & Joint Ventures

<table>
<thead>
<tr>
<th>Nonprofit</th>
<th>For-profit</th>
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<tbody>
<tr>
<td>General Partner</td>
<td>Limited Partner</td>
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<tr>
<td>Co-General Partner</td>
<td>Co-GP; Limited Partner</td>
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<tr>
<td>LLC Managing Member</td>
<td>LLC Member</td>
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<tr>
<td>LLC Member</td>
<td>LLC Managing Member</td>
</tr>
<tr>
<td>Principal</td>
<td>Contractor (e.g., fee developer)</td>
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</tbody>
</table>
The main issue is the inherent conflict:

- **Nonprofit** –
  
guided by charitable purpose with prohibition against private benefit

- **For-profit** –
  
operates exclusively for private benefit (profit)
MAKING PARTNERSHIPS WORK

Responsible Partnerships Between For-Profits and Non-Profits

Presented By:
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NRP Overview

- Industry leading experience and development of over 200 affordable housing developments throughout the United States since 1994.

- NRP has an experienced staff of professionals skilled in planning, development, finance, construction and management.
NRP Overview

- 65% of NRP developments completed in partnership with non-profit entities.

- Over 4,000 elderly units, 4,000 single family homes and 7,000 multifamily apartments units throughout the United States.
NRP Overview

- Experienced in wide geographic range from Michigan to Florida and North Carolina to Texas.
Reasons to Joint Venture

- Non-profit set aside for housing tax credits.
- Non-profit knowledge of local politics, soft money availability and approval process.
- Financial strength of the non-profit may be insufficient and lenders/investors may require a financially strong partner to provide appropriate project guarantees.
Reasons to Joint Venture

• For either acquisitions or new development, for-profits may provide “risk capital”.

• Skills, experience and capacity.
Reasons to Joint Venture

• Non-profits may have access to soft money; i.e. City/County/State HOME Funds, PLP program, CRA loans, FHLB, AHP and tax abatement.
Reasons to Joint Venture

• Non-profit may not have in-house development experience.

• Non-profit better understands needs of the neighborhood and market.

• Experience with tenant population.
Selecting the Right Partner

- Honesty, integrity, reputation and chemistry.
- Development expertise.
Selecting the Right Partner

- Financial resources including relationships with lenders and syndicators.
- Housing experience.
- Long-term expectations; i.e. strategic plan.
Selecting the Right For-Profit

- Technical expertise in securing tax credit allocations.

- Reputation for “getting the job done” on time and on budget.
Selecting the Right For-Profit

- Development services capability.
- Financial resources – up front “risk capital”.
- Construction experience and cost control.
Issues Concerning Properly Structuring Relationship

- Fair financial relationship between non-profit and for-profit will ensure long-term success of relationship.
Issues Concerning Properly Structuring Relationship

- Developer Agreement
  - Fee sharing
  - Cash Flow sharing
  - Project reporting/asset management
  - Clearly identify roles and responsibilities
  - Risk, guarantees
  - Residual split
SCENARIO #1

- Nonprofit is a 70% General Partner in development.
- Nonprofit receives 50% of developer fee.
- Nonprofit provides 50% of all risk capital.
- Nonprofit owns the project site.
SCENARIO #1

- Nonprofit provides 50% of all guarantees required under Limited Partnership Agreement including Operating Deficit Guarantee.

- Nonprofit shares in cash flow from project on a 50% (FP) / 50% (NP) basis.

- NRP is general contractor.
SCENARIO #2

- Nonprofit receives 30% of developer fee.
- Nonprofit is a 51% General Partner in development.
- Nonprofit provides 30% of all risk capital.
- Nonprofit does not own the project site but has excellent relationship with municipality and is designated a CHDO.
SCENARIO #2

- Nonprofit provides 30% of all guarantees required under Limited Partnership Agreement including Operating Deficit Guarantee.

- Nonprofit shares in cash flow from project on a 70% (FP) / 30% (NP) basis.

- NRP is general contractor.
SCENARIO #3

- Nonprofit is a 20% General Partner in development.
- Nonprofit receives 20% of developer fee.
- Nonprofit provides 0% of all risk capital.
- Nonprofit does not own the project site and is not a designated CHDO but has strong reputation with local municipality.
SCENARIO #3

- Nonprofit provides 20% of all guarantees required under Limited Partnership Agreement including Operating Deficit Guarantee.

- Nonprofit shares in cash flow from project on a 80% (FP) / 20% (NP) basis.

- NRP is general contractor.
Our Products
Our Products
Our Products
Our Products
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Our Products
Basic Principles
Basic Principles

A. Primacy of Charitable Purpose

- 501(c)(3) entities must have a charitable purpose.

- Relieving the poor and distressed by providing safe, decent affordable housing is a charitable purpose.

- Rev-Proc 96-32 provides a safe harbor for charitable entities to meet, (e.g. 20% at 50% area median income (ami) or 40% at 60% ami and 75% at 80% ami overall).

- Need to make sure the charitable purpose is met as part of the Partnership.
Basic Principles

B. Private Benefit and Private Inurement
Basic Principles

Translation:

It is better to receive than to give.
Basic Principles

B. Private Benefit and Private Inurement

It is better to receive than to give.

- Inurement - officers, directors, substantial contributors.

- Benefit - third party partners, developers, etc.

- Need to make sure the Partnership does not confer a Private Benefit on the other partners.
Basic Principles

C. Specific Directives: Low-Income Housing Tax Credit ("LIHTC")

- Rules of non-profit set-aside (IRC 42(h)(5))

- Memorandum for Manager, EO Determinations (Choi Memo)

Basic Principles

c. Specific Directives: LIHTC

- Tax rules for nonprofit set-aside
- Ownership (IRC 42(h)(5)(B))
- Material Participation (IRC 469(h) and IRS 8823 Guide, Chap. 22)
Basic Principles

C. Specific Directives: LIHTC

- Memorandum for Manager, EO Determinations
- (Choi Memo)
Basic Principles

C. Specific Directives: State

- Florida Housing Finance Corporation ("FHFC") recently instituted the “Priority 1” concept which emphasizes For-Profit/Non-Profit partnerships.

- Non-Profit has to own at least 51% of the General Partner interest.

- Non-Profit has to receive at least 25% of the developer fee.

- Non-Profit articles must provide for fostering of affordable housing.

- True Sustainability: A New Model to Aid Nonprofits in Developing Self-Sustaining Revenue Streams (GuideStar)
Basic Principles

C. Specific Directives – Ad Valorem Exemption

- Florida Statute 196.1978 – requires the non-profit to be the sole general partner.

- Question: How much for how long?
S.B. 360

- The City of Weston, Florida, et al. vs. The Honorable Charlie Crist, et al. (Leon County Circuit Court)

- Plaintiffs, a coalition of local governments, seek declaratory and injunctive relief, challenging Senate Bill 360 as containing more than one subject and constituting an unfunded mandate on local governments.
Basic Principles

C. Specific Directives - HOME funding

- CHDO Set-Aside for Home Funds requires CHDO to have “effective project control” (CFR 92.300(a)(1)).

- Decision-making authority (e.g. Managing Member)
Basic Principles

D. The Other Side – For-Profit partner requirements.

- Restrictions on withdrawing from the partnership
- Obligation for the non-profit to assist in finding a new substitute.
- Ability to remove the non-profit partner if it loses its (c)(3) status.
- Consent rights on various issues which the non-profit otherwise has control over as the 51% general partner.
The Business Aspects of Partnering – the Nonprofit View

- Have competent legal representation all along the way.

- Memorialize your arrangement early
  - Start with IRS requirements
  - Define the decision-making process including veto power, if any.
• Describe the method of communication and frequency of meetings

• Define the roles of each party. Don’t forget “material participation”.

• Allocate responsibility for costs/expenses.

• Define the compensation split and the timing of payment.

• Include provisions whereby a partner can exit.
When the partners decide to proceed on a project, go to formal contract.

Have competent legal representation all along the way.
Examples

- Forest Edge
  - ONIC – GP
  - Enterprise (ESIC) – LP syndicator
- City View
  - Bank of America – managing co-GP
  - ONIC co-GP
  - ESIC – LP syndicator
2010 Project

- ONIC – GP
- TBA – LP syndicator
- NRP Group – Fee developer; general contractor
Resources

- Joint Ventures with For-Profit Developers. A Guide for Community Development Corporations (by LISC)
  www.lisc.org/content/publications/detail/4957/

- CHDO Survivor Kit, pp. 13-17, 58-60
  www.nacced.org/chdokit.pdf

- IRS Memo on LIHTC JV’s

- IRS Guide for Completing Form 8823, Chapter 22 on material participation by nonprofits

- Info. on IRS Rev. Rul 2004-51 re Ancillary Joint Ventures