

**THE AFFORDABLE HOUSING STUDY COMMISSION**  
*Dedicated to Promoting Affordable Housing in Florida Since 1986*

**READING MATERIALS**

**NONPROFIT/FOR PROFIT  
PARTNERSHIPS WORKGROUP**

**CONFERENCE CALL**

**December 9, 2008**

**Dial In: 888-808-6959**  
**Conference Code: 4884197**



## THE AFFORDABLE HOUSING STUDY COMMISSION

Nonprofit/For Profit Partnerships Workgroup  
Conference Call Agenda  
December 9, 2008

- |                   |   |
|-------------------|---|
| 10:00am – 10:10am | Convene Callers<br>(Public is asked to mute their phones until Public Comment section)  |
| 10:10am – 11:45am | Nonprofit/For Profit Partnerships <ul style="list-style-type: none"><li>• Defining the Problem: What Can Go Wrong in a Joint Venture?</li><li>• Identify Solutions to Strengthen Joint Ventures</li></ul> |
| 11:45am – 12:00pm | Public Comment  |
| 12:00pm – 12:15pm | Recap Discussion Points and Recommendations to Study Commission, if any   |

Adjourn at 12:15pm



## THE AFFORDABLE HOUSING STUDY COMMISSION

### MEMORANDUM

To: Nonprofit/For Profit Partnerships Workgroup

From: Odetta MacLeish-White

Date: December 5, 2008

RE: Summary of Partnership Report for December 9, 2008 Conference Call

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#### **Introduction**

This memo serves to summarize several of the key concepts and findings from Amy Chung's report, *Bridging Sectors: Partnerships Between Nonprofits and Private Developers*. Published in 2004, Ms. Chung's research explores multifamily rental affordable housing development partnerships including the attributes critical to them and the implicit and explicit drivers that influence each party's participation.

Within the partnership, the first point of agreement is usually the division of project responsibilities and economic benefits. This division may be different from one partnership to another but, in general, the for profit partner is responsible for financial packaging, providing equity and guarantees, and taking the lead on the construction phase of the development. For profit developers are more likely than nonprofits to have the deep pockets and assets to guarantee large development costs.

Nonprofit partners are typically responsible for political advocacy, marketing and serving as community liaison. Their established relationships with the community make them valuable in marketing and leasing the building post-development.

The decision to enter into a partnership is undertaken on a case by case basis and includes three key considerations:

- Do I partner?
- With whom do I partner?
- What is the partnership structure?

Ms. Chung is quick to point out that these decisions are rarely made in an isolated manner. Rather they are influenced by implicit and explicit factors.

#### **Partnership Drivers**

Ms. Chung's report outlines some of the key factors that drive the two parties in a joint venture partnership:

*1) Development knowledge and experience influence all aspects of the partnership decision making process.*

There is no substitute for direct experience and knowledge. Without it, nonprofits cannot make informed and advantageous decisions in the partnership structuring process. In the absence of direct experience and knowledge, nonprofit developers need access to third party experts such as

attorneys or intermediaries. An example of how lack of experience can put a nonprofit at a disadvantage is during negotiation of fees; many nonprofits make the mistake of valuing cash flow like development fees. They do not realize that some properties may not cash flow for years and settle for a smaller percentage or even none of the total development fee.

*2) Tapping into another organization's financial resources is an overwhelming reason for nonprofit and for profit developers to partner.*

Ms. Chung's research suggests that the critical reason for profits partner with nonprofits is to gain access to low-cost funds, such as grants and low interest loans. In urban areas, for profits also look to partnerships with nonprofits for access to land they could not otherwise purchase. For their part, nonprofits partner with for profits to gain access to funding for "soft" costs, such as taxes, professional fees and salaries, for which they rarely have ready cash.

*3) Partner choices are constrained by development goals, availability of partners and adherence to mission.*

According to Ms. Chung, there is a growing trend towards developing housing with supportive services, an area in which for profits have limited experience. They turn to nonprofits as a natural partner in developing and providing the needed services. Less experienced nonprofits tend to devalue their skill set as service providers and accept less advantageous partnership terms until, as their knowledge and expertise grow, they come to place a higher monetary value on their services.

Moreover, Ms. Chung's research suggests that both for profit and nonprofit developers are seeking partners that complement their goals: nonprofits seek quality affordable housing for a targeted population and for profits are seeking developments that return a profit to its owners. At the same time, profit motive is an important, if secondary, goal for nonprofits while for profit developers understand the need for a high quality product that is accepted by the larger community.

*4) For profit developers place significant value on their financial contributions and risks which, when combined with their negotiation skills, enable them to drive partnership structure and terms.*

For profit developers often believe their direct financial contributions are the most valuable, a perspective that shapes their negotiation for a larger share the development fee. In Ms. Chung's research, nearly half the for profit developers cited risk as the key condition driving the development fee breakdown and other partnership terms. For profit developers believe they incur greater risks than nonprofits because they are responsible for broad guarantees to investors.

On the other side of the table, nonprofits often believe they incur greater organizational risk in a joint venture because development deals can open their organizations to IRS compliance risks. Moreover, risk is a relative term. For profit developers' portfolios often include multiple properties and multiple revenue streams (development, construction and management fees). Nonprofits may be involved in only one property and it's success can affect their entire organization.

## **Negotiated Outcomes and Success**

Ms. Chung's research revealed that both nonprofits and for profits prioritize the allocation of net proceeds, and involvement and governance as two of the most important partnership outcomes.

*1) When nonprofit and for profit developers partner they usually split the development fee.*

There is a wide range of development fee split arrangements. Less experienced nonprofits tend to secure small flat fees, or development fee percentages of 10 percent of the total. More experienced nonprofits have moved on to negotiating anywhere from 33 percent to 66 percent of the development fee.

*2) Levels of involvement and oversight are critical negotiation terms.*

Both nonprofits and for profits are interested in staying involved in the development phase of a property in order to manage financial outcomes and the long term condition of the buildings. Nonprofits do not want to end up responsible for managing a building in poor physical condition while for profits are concerned with maintaining control of financial decisions to protect the large guarantees they have committed to investors.

## **Concluding Considerations**

A successful partnership between a for profit and nonprofit developer can lead to more joint ventures and a long-term relationship in which the two parties strategically consider how to more effectively compete for multifamily development resources. However, Ms. Chung's research states that few of her study participants had indeed tried to establish such a long term relationship.

For profit and nonprofit partnerships remain opportunistic, rather than being integrated into the on-going strategies of either organization. Despite this, communication and trust were cited as the two most important factors for partnership success. With differing priorities, goals and organizational cultures, it is imperative that nonprofits and for profits communicate their values and goals to each other early in the process. This builds trust, which keeps each party from second guessing and double checking the other's work.

# **Bridging Sectors: Partnerships Between Nonprofits and Private Developers**

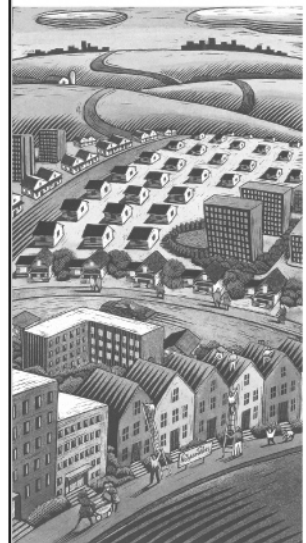
Amy Chung

Fellowship Program for Emerging Leaders in  
Community and Economic Development

**September 2004**



Joint Center for Housing Studies  
of Harvard University



### **NeighborWorks® America**

Neighborhood Reinvestment Corporation – now doing business as NeighborWorks® America – is a national nonprofit organization created by Congress in 1978 to provide financial support, technical assistance, and training for community-based revitalization efforts. The corporation supports a network of more than 230 NeighborWorks® organizations that build decent, affordable housing, strengthen communities and enhance economic support.

### **Joint Center for Housing Studies of Harvard University**

The Joint Center for Housing Studies analyzes the ways in which housing policy and practices are shaped by economic and demographic trends, and provides leaders in government, business and the nonprofit sector with knowledge and tools for formulating effective policies and strategies.

Established in 1959, the Joint Center is a collaborative unit affiliated with the Harvard Design School and the Kennedy School of Government at Harvard. The Center's programs of research, education and public outreach inform debate on critical housing issues and illuminate the role of housing in shaping communities. The Policy Advisory Board, a diverse group of business leaders in the housing sector, provides support and guidance for the Center and its activities. The Joint Center also receives input from its Faculty Committee, which draws on the expertise of a university-wide group of scholars.

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This paper was written with the support of NeighborWorks® America's Emerging Leaders in Community and Economic Development Fellowship, which provides opportunities for highly qualified professional students at Harvard University to research and publish applied analytical projects of interest to the community-development field.

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## **About the Author**

Amy Chung is a Master of Public Administration candidate at the John F. Kennedy School of Government and a Master of Business Administration candidate at the Kellogg School of Management. Prior to entering graduate school, she was a senior consultant at Cap Gemini Ernst & Young. Amy graduated with honors from Northwestern University in 1999 with a Bachelor of Arts in Economics and Urban Studies.

## **Abstract**

In recent years, partnerships between nonprofits and private developers to develop affordable housing have become a topic of increasing interest. Through a review of current literature and interviews with housing thought leaders, nonprofits, private developers, affordable housing capital sources and others, this paper seeks to explore multifamily rental housing development partnerships. More specifically, research identifies attributes critical to these partnerships, and the economic, social and political drivers to both partnerships and the subsequent negotiated partnership terms.

This paper concludes that there is a broad range of negotiated partnership terms between nonprofits and private developers. However, across all these relationships, both nonprofits and private developers prioritize two partnership terms: development fee profits, and degree of involvement and oversight. Further, research reveals while there are many different drivers shaping the decision to partner and subsequent partnership conditions, there are two key determinants: development experience and knowledge, and financial factors. Finally, while not all partnerships are beneficial, under the appropriate conditions, partnerships have the potential to not only build nonprofit capacity but also address some of our nation's affordable housing challenges.

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## **Executive Summary**

Nonprofits are playing an increasingly large role in the development of affordable housing. While some nonprofits have the financial resources and capacity to address affordable housing on their own, many are partnering with private developers to do so. However, there is little research surrounding these partnerships. More specifically, many nonprofits are unaware of how other nonprofits negotiate their partnerships and the resulting terms. Thus this research focuses on identifying the key attributes of partnerships between nonprofits and private developers. This research also intends to identify some drivers of both these partnerships and the negotiated partnership terms. The scope of this research is multifamily joint-venture partnerships between private developers and nonprofits.<sup>1</sup>

### **Key Findings**

Research reveals the partnership decision-making process generally involves three decisions:

- Do I partner?
- With whom do I partner?
- What is the partnership structure?

While these decisions are presented as individual, sequential choices, it is important to realize that partnering decisions are rarely made in such a systematic fashion. In fact, each decision influences the other, and in some cases, circumstances constrain these decisions.

Interviews reveal that partnerships between nonprofits and private developers and the forms they take are driven by both explicit and implicit factors. Further, financial conditions and development knowledge and expertise are two overwhelming drivers that influence all stages of the partnership decision-making process.

When nonprofits and private developers are considering whether or not to partner, they consider several key factors: development opportunity, financial capacity, and challenges. Of these, financial capacity is the reason most often cited by nonprofits and private developers to partner. Nonprofits partner for access to capital to fund “soft” development costs, while private developers partner for access to low-cost capital to fund “hard” development costs.

Nonprofits and private developers also consider several factors when selecting partners: development goals, partner availability and mission alignment. While these issues typically constrain a nonprofit or private developer’s selection of partners, both parties cite instances where they have found amenable partners.

When nonprofits and private developers are structuring partnership terms, interviews suggest that drivers of the terms are both explicit and implicit. In this stage, more than in any other stage, the differing perceptions and perspectives of nonprofits and private developers become heightened. Private developers’ prioritization of their financial contributions and risk, combined with their negotiation skills and leverage, often enable them to drive partnership structure and terms.

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<sup>1</sup> For a more extensive definition of multifamily joint-venture partnerships, see Section III, Research Scope.

Finally, while there are many different partnership terms for which nonprofits and private developers negotiate, interviews reveal that private developers and nonprofits prioritize development fees and involvement and oversight as two of the most important partnership considerations.

### **Concluding Reflections**

Nonprofit and private developer partnerships have the potential to benefit both parties and to address affordable housing, but can do so only under the right circumstances. Conditions such as appropriate selection of partners, degree of development knowledge, and understanding of circumstances and parties are critical. Since this paper only begins to explore an area with very little qualitative and quantitative research, the paper also presents some suggestions for future exploration. This paper concludes by offering some reflections to nonprofits and housing partnership third parties. Several key reflections will be shared here.

### **Nonprofit Considerations**

- Research reveals that there are socially motivated private developers who can offer nonprofits beneficial partnerships.
- Since financial considerations remain a key motivation for private developers, nonprofits need to understand how to translate their partnership value into tangible, financial terms.
- Partnership negotiations are driven by both implicit and explicit factors. If nonprofits do not understand these implicit drivers, they should seek help from others, such as experienced nonprofits and lawyers specializing in affordable housing.

### **Policymaker, Intermediary and Financing Agency Considerations**

- There is an asymmetry of information between nonprofits and private developers. Nonprofits often have limited development knowledge and expertise, and nonprofits and private developers do not understand each other's conditions and challenges. As such, there is a role for housing intermediaries and policymakers to bridge this information gap by aggregating partnership information and educating nonprofits and private developers.
- Since financial capacity is a significant reason nonprofits and private developers partner, policymakers should consider the role of capital in encouraging partnerships and private-sector involvement.

## **I. Introduction**

Over the last several decades, nonprofit organizations, ranging from community development corporations and tenant associations to housing development organizations, have become a driving force in addressing our nation's affordable-housing challenge. Government policy and changing conditions have both contributed to this increase in nonprofit involvement.

Historically much of new housing stock, even affordable housing, has been developed by private developers. The National Housing Act helped private developers address affordable rental housing needs with the support of various rent subsidies (e.g., project-based Section 8, and rent supplements) and mortgage insurance programs (e.g., Section 221(d)(3) and (4) and Section 236 of the National Housing Act). Many housing thought leaders and experienced practitioners estimate that 75 to 80 percent of all affordable housing is still developed by for-profit developers today.

However, by the 1980s these programs and other housing-production programs had become insufficient. Many nonprofits entered the housing arena to respond to both the decrease in the federal government's ability to provide affordable housing and worsening conditions in inner-city areas.<sup>2</sup> The introduction of the Low-Income Housing Tax Credit (LIHTC) program in 1986, which created a 10 percent minimum set-aside and sometimes awards points for nonprofit housing sponsors, further encouraged nonprofit involvement in housing.

In fact, data suggest that nonprofits are increasingly taking a role in affordable housing. The share of total nonprofit LIHTC sponsors rose from 19 percent in 1995 to 32 percent in 2001.<sup>3</sup> A survey from the National Congress for Community Economic Development of community development corporations (CDCs) involved in housing reports that in just three years, 1994 to 1997, CDCs developed 45 percent (245,000 units) of all the housing they have developed in their histories.<sup>4</sup> Data from state housing agencies that allocate LIHTCs also demonstrate the role of nonprofits in housing. Though individual state statutes require 10 to 15 percent of total LIHTCs be allocated to nonprofit development sponsors, many states allocated much more. Rhode Island and Ohio both reported allocating 100 percent of their LIHTCs to nonprofits in 2003.<sup>5</sup>

Further, practitioners and thought leaders provide anecdotal support for the presence of housing partnerships between nonprofits and private developers, perhaps explaining both the increase in nonprofit housing activity and the significant role of private developers in affordable housing. While nonprofits seeking to enter affordable-housing development have experience doing community development and economic development, they often have limited experience developing affordable housing. A well-known affordable-housing lawyer notes, "Historically there used to be the separateness of worlds, but in recent years there has been more partnering." In fact, interviews with state agencies that allocate LIHTCs confirm there are some partnerships between nonprofits and private developers captured in state nonprofit LIHTC allocation figures. Within Ohio's 100 percent nonprofit allocation, 45 percent of these credits were allocated to nonprofits who had partnered with private developers.

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<sup>2</sup> Hecht, 1999.

<sup>3</sup> HUD, Office of Policy Development and Research, 2003.

<sup>4</sup> NCCED, 1999.

<sup>5</sup> Provided by Barbara Thompson, National Council for State Housing Agencies, and corroborated with state tax program administrators; data for nonprofit tax credit allocations reported by states on 2003 Form 8610s.

Ideally partnerships between such parties not only add to each organization's individual capacity but also create new capacity for their alliance.<sup>6</sup> Harvard Business School Professor James Austin believes partnerships can bring this capacity in the form of benefits such as economies of scale and scope, revenues and business generation to the involved parties.<sup>7</sup> As competitiveness for federal housing funds has increased over the last decade, partnerships are a potential strategy for increasing capacity to compete for federal funds. In the first application cycle for California's 2004 LIHTC, 67 applications were submitted, requesting over \$63 million in federal credits and \$54 million in state credits, against available \$27 million in federal credits and \$31 million in state credits.<sup>8</sup> Further, as most of the unsuccessful applications would have resulted in "worthwhile additional or preserved affordable rental housing," it seems that application success is dependent on more than simply serving a need, but on serving the need most effectively or serving the greatest need. As such, partnerships could potentially enhance both organizations' ability to fulfill funding criteria such as "support from state and local officials or community groups" and "a track record in developing housing of the type and scale proposed."<sup>9</sup>

While partnerships between nonprofits and private developers are potentially a piece of the affordable housing solution, they require further exploration. Unfortunately this is an area of limited formal research; much of the knowledge and insight regarding partnerships stem from conventional wisdom. For example, many believe that private developers are not socially motivated. Others believe that these partnerships enable private developers to take advantage of nonprofits by taking all the profit, while transferring all the risk to the nonprofit. Further, some suggest that private developers partner with nonprofits to gain access to community and local political support. This paper endeavors to explore these and other conceptions, both exploring and clarifying popular thought.

This research specifically seeks to identify the key attributes to partnerships between nonprofits and private developers. It also seeks to understand the economic, social and political determinants leading to these partnerships and the subsequent negotiated partnerships agreements.<sup>10</sup> It is hoped that this paper can help nonprofit practitioners and policymakers understand key trends in partnerships between nonprofits and private developers, and provide insights useful in developing effective partnerships and policies.

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<sup>6</sup> Adapted from Stiefvater, 2001.

<sup>7</sup> Austin, 2000.

<sup>8</sup> California Tax Credit Allocation Committee, 2004.

<sup>9</sup> New York State Housing Finance Agency, 2001.

<sup>10</sup> Adapted from Austin, 2000.

## **II. Methodology**

The findings and insights presented in this paper draw from several research methods. First, existing literature was consulted to understand the current thinking regarding partnerships, both generally and housing-specific. This literature provided the foundation for the research and also helped develop the findings. Key information and ideas obtained from literature are cited throughout the paper. However, it should be noted that research regarding housing partnerships is limited. Second, 50 interviews were conducted with professionals involved in multifamily housing development throughout the United States. These included nonprofit executive directors and their development staff, private developers and their development staff, academics, industry thought leaders, independent consultants with multifamily housing experience, lawyers, state housing agencies, and other capital sources. Many of the nonprofits interviewed were members of the NeighborWorks® network and members of the Housing Partnership Network. Legal and partnership-agreement materials were also obtained from some of the interviewees. Findings draw heavily from these interviews. For confidentiality purposes, individual interviewee insights and quotes have been presented anonymously. Third, several public meetings were conducted in August 2004 during the NeighborWorks® Training Institute in Washington, DC. These included a policy briefing and discussion with housing thought leaders, a focus group with eight nonprofit leaders interested in partnerships between nonprofits and private developers, and a workshop discussing key research findings, open to all conference participants.

### III. Research Scope

This research focuses on partnerships between nonprofits and private developers who partner for multifamily rental housing development. HOPE VI projects, which primarily focus on public-housing developments, were not within the scope of this research. In addition, though not the intention of the study, many of the partnerships examined involved LIHTCs. However, many of the insights shared here can also be helpful to those considering HOPE VI and any other type of housing partnerships.

This research also addresses development partnerships. These partnerships must start during predevelopment stages and share predevelopment and development responsibilities (e.g., project planning, feasibility analysis, construction, etc.). To the extent that future management conditions shape partnerships and their attributes, they are noted. In addition, while nonprofits and private developers can form development partnerships with multiple parties at once, the discussion below will focus on two-party partnerships. This approach may miss the nuances of multiparty partnerships, but captures insights that can be relevant to nonprofits engaging in both two-party and multiparty partnerships.

Nonprofits can engage in a range of different relationships with private developers (see Figure 1 on next page). A nonprofit with less housing-development experience will often enter the housing field by serving as a contractor or advisor to a private developer, performing specific functions for a set fee. As the nonprofit increases in experience and capacity, it typically moves to take on a more significant role in the development relationship and form development joint ventures with private developers. At some point, these nonprofits will have the capacity to develop alone, and many will do so. Similarly, private developers with limited experience developing for specific neighborhoods or communities can also often move along this continuum. Contracted functions range from advising on tax-credit applications to performing community outreach.

This paper will focus specifically on joint-venture partnerships. These are the partnerships defined by common law “in which partners share with each other the profits and losses of the business undertaking in which they have invested.”<sup>11</sup> By engaging in these partnerships, both parties incur shared risks and benefits. These risks and benefits have not only financial elements, but also include social, political and reputation-related elements. While there is a degree of risk in any business venture relationship, contractual and advisory relationships have risks limited to financial investment and specific time periods. Parties in non-joint-venture agreements have cleaner and more standard options for legal recourse. Finally, the long-term success of a development is important but not critical to contractual and advisory partners.

#### **Development Process Overview**

The development process has three general phases: (1) feasibility, (2) acquisition and construction, and (3) project completion.

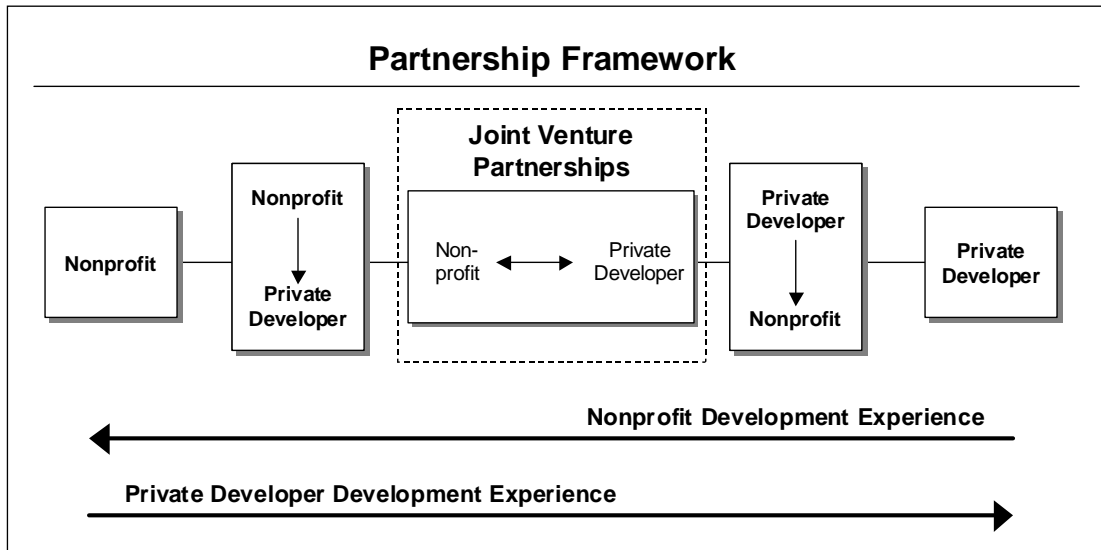
- Feasibility generally includes all the tasks and studies that must be completed to deem a project feasible.
- Acquisition and construction relates to all tasks associated with land acquisition and constructing or rehabilitating a property.
- Project completion refers to the activities associated with managing and operating the property following construction.

For more information on the development process, refer to *Developing Affordable Housing*, Bennett L. Hecht, 1999.

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<sup>11</sup> As defined by common law, found in [www.bambooweb.com/articles/p/a/Partnership.html](http://www.bambooweb.com/articles/p/a/Partnership.html).

Figure 1. Partnership Framework



Joint-venture partnerships between nonprofits and private developers are likely to be structured in two ways. Parties can either form a limited partnership, consisting of general and limited parties, or a limited liability corporation (LLC), with each party serving as a shareholder in the corporation.<sup>12</sup> (See the sidebar on the next page for details on partnership options.)

While there are a range of parties involved in these housing partnerships, the principle parties in this study are nonprofits and private developers and/or development companies. The other parties involved (e.g., government agencies, private and public capital sources), who are sometimes considered partners in development partnerships, were deemed third parties for the purposes of this research study. The research also recognizes the broad range of nonprofit and private-developer capacity and experience. Though not the intention of the study, the nonprofits interviewed were primarily CDCs with some housing development experience and/or large nonprofits whose sole activity was housing development (as opposed to CDCs). As such, their experience and insights may differ from those of smaller CDCs just entering the housing development arena. However, to address this sample bias, these nonprofits were often asked to compare and contrast their current perspectives and experiences with those of their past, and speak to the experiences of nonprofits with limited housing capacity. Further, the developers interviewed were considered among the more socially motivated. Though they do not represent the motivations of the development field as a whole, by interviewing a broad range of third parties involved in partnership deals, the research did capture some of the motivations of less socially oriented developers.

Finally, it is important to note that while there are a range of external factors influencing partnerships, these findings focus primarily on the motivations and determinants cited by interviewees. Multifamily rental development partnerships are also influenced by public policy, participating third parties, and geographic-specific conditions. As this research was not geographic-specific, each partnership differed based on policies, requirements and dynamics specific to its state and region. Further, there are many third parties who play a role in shaping and influencing partnerships. For example, there are a number of nontraditional private, nonprofit financing organizations (e.g., McAuley Institute, Low

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<sup>12</sup> Sanders, 1994

Income Housing Fund) that provide funds to nonprofits and partnerships.<sup>13</sup> In addition, housing intermediaries such as NeighborWorks® America help nonprofits build housing capacity with grants and technical support. Some state housing agencies even play a role in encouraging partnerships.<sup>14</sup> While public policy, third parties and geography do influence these partnerships, it was not the attempt of the research to capture all these factors. Research focused on key partnership determinants offered by interviewees. As many of these external issues differed on a case-by-case basis, research sought to identify overarching trends beyond these location-specific factors, to offer insights useful and applicable to nonprofits and policy-makers throughout the U.S.

### **Partnership Options**

Limited partnerships are the most common type of joint venture in affordable housing. In a limited partnership the general partner has operational responsibilities for the project, and is exposed to the most financial obligations and liability for the project.<sup>a</sup> The limited partner, while having no day-to-day role in the affairs of the project, can vote on major decisions and is protected from unlimited liability.<sup>b</sup> Both a nonprofit and private developer can assume either of these roles in a partnership.

If the joint-venture partners secure LIHTCs, then the partnership structure changes. In these cases, the tax-credit investor serves as the limited partner in the partnership, and receives 99 percent interest in the partnership's profits, losses, deductions and credits (including the LIHTC). The nonprofit and private developer then share the one-percent, general-partner interest and responsibilities. A nonprofit and private developer can either become co-general partners or split the general partnership interest unequally. However, in order to qualify for LIHTC nonprofit set-asides, many states require a nonprofit to serve as the lead general partner, with at least 51 percent of the one-percent partnership interest.<sup>c</sup>

Since the role of general partner exposes nonprofits and private developers to liability, these organizations can also establish a limited liability corporation. An LLC is a separate pass-through entity for the purpose of federal income taxation. In this model, involved parties serve as shareholders. All members have limited liability, regardless of their level of participation and management. Thus, in this case, nonprofit and private developers sharing the general partner role (who would otherwise be liable) are protected from unlimited risk.<sup>d</sup>

<sup>a</sup> Tierra Del Sol Housing Corporation, 2004.

<sup>b</sup> Sanders, 1994.

<sup>c</sup> *Ibid.*

<sup>d</sup> *Ibid.*

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<sup>13</sup> Hecht, 1999.

<sup>14</sup> Based on interviews with state housing agencies.

## IV. Partnership Structure Overview

Nonprofits and private developers engaging in joint-venture partnerships must first agree on the division of project responsibilities and economic benefits. While there are many issues to be negotiated, the most important terms are summarized below in Table 1. Further, given the particular conditions of a relationship, certain terms may be non-negotiable and/or predetermined.

*Table 1. Partnership Agreement Issues*

<b>Partnership Agreement Issues<sup>15</sup></b>	<b>Key Questions</b>
<b>Land Acquisition</b>	How will the acquisition of land be financed? How are any zoning and/or development approvals to be handled?
<b>Project Planning</b>	What are each party's anticipated predevelopment costs and sources of payment? What policies will be followed regarding contractor selection? How will professional fees be paid? Who will play what role in the feasibility analysis? To what extent will each partner participate in the design?
<b>Community Liaison</b>	What liaison roles will need to be filled at various stages? Who will be responsible? Who will speak on behalf of the development team?
<b>Political Advocacy</b>	What political advocacy will be needed and when? Who should attend meetings? Who will speak on behalf of the development team?
<b>Financial Packaging</b>	Who will develop the project budget and definite expense categories? Who will apply for which sources of funds on behalf of the project? Who will do the paperwork? Who will pay the application fees? What are the procedures regarding team review of applications prior to submission? Who will ensure that application deadlines are met?
<b>Equity and Guarantees</b>	Who will be responsible for what amounts?
<b>Construction Management</b>	Who will be responsible for costs estimates, bidders' lists, obtaining and reviewing bids, contractor selection criteria and construction management? What are the procedures for each of these tasks?
<b>Marketing</b>	Who will develop the procedures, timeframes and budgets?
<b>Allocation of Net Proceeds</b>	How will the development fee and ongoing cash flow be allocated among the various partners?
<b>Ownership</b>	How will the parties divide the general partner role? How will the parties divide ownership of the property after development? Will the nonprofit be given the right of first refusal? (If so, at what price?)
<b>Involvement and Oversight</b>	How will decisions be made? Who will be responsible for which decisions? How will disagreements be resolved? How will each party be held accountable?
<b>Conflict Resolution</b>	Who will be the built-in neutral party? What is the formal mediation/arbitration process? How will conflict resolution be built into the memorandum of understanding or partnership agreement?

<sup>15</sup> Based on material from the National Association of Home Builders, 1999; BRIDGE Housing, 2004; and interviews with nonprofits, private developers and lawyers.

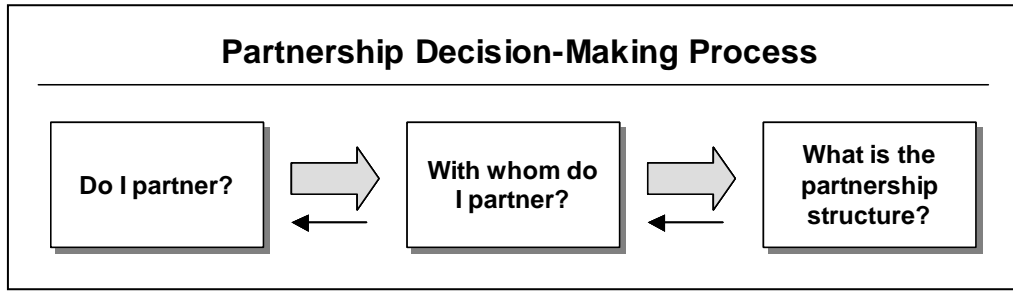
Though each partnership varies by the terms of the negotiated partnership agreement, there are certain responsibilities that generally fall to private developers and to nonprofits. Private developers are often responsible for financial packaging, equity and guarantees, and construction management. Based on their size and experience, most developers can more easily and effectively prepare financial packaging and tax-credit applications. Developers are also more likely to have the deep pockets and assets for which financing organizations look to guarantee large development costs. Finally, as development guarantees are contingent upon meeting development goals and timelines, and subsequently interim construction goals, private developers most often lead the construction phase of the development.

Nonprofits are typically responsible for political advocacy, marketing and serving as community liaison. As most nonprofits have strong ties to their communities, they are typically better positioned to manage local community politics; they have established relationships with city councils and other influential local organizations. These relationships, combined with their reputation and community ties, also make them the more ideal partner to both market and lease the building postdevelopment.

## V. Partnership Decision-Making Process

As each development's conditions and potential partners differ, developers and nonprofits typically evaluate partnership decisions on a case-by-case basis. Though not always explicitly expressed, these parties must consider a number of decisions before forming a legally binding partnership. At a general level these decisions are presented below in Figure 2.

*Figure 2. The Partnership Decision-Making Process*



While the partnership decision-making process is represented here sequentially, in reality partnership choices are rarely made in a sequential manner. In fact, some choices can be made simultaneously, and the potential partner options and structure can actually influence the initial partnership decision. Further, in other situations, circumstances may not only influence, but force decisions.

## **VI. Partnership Drivers**

Within the partnership decision-making process, there are a number of explicit and implicit factors driving private developers' and nonprofits' partnership decisions. As there are many drivers to each of these individual decisions, and drivers vary somewhat on a case-by-case basis, this paper will highlight key factors that were revealed in interviews influencing each of the partnership questions presented previously. Though these factors are presented individually here for discussion purposes, in reality, they are very interrelated. Finally, interviews reveal financial factors and development knowledge and experience as two overarching drivers to all steps of the partnering process.

### **1. Development knowledge and experience influence all aspects of the partnership decision-making process.**

Development knowledge and experience are critical factors influencing every stage of the partnership decision-making process. There is no substitute for this development knowledge and experience. Without an intimate understanding of the development process, key players and value exchange, nonprofits cannot make informed and advantageous decisions along the partnership decision-making process. A leading CDC's executive director believes that without this knowledge, nonprofits can structure seemingly fair partnerships, but unknowingly open themselves to risks: "You can structure the partnership as a 51-49 ownership, but the devil is in the details." It is also important to recognize the role of development knowledge and expertise in affecting each of the partnership drivers discussed below.

The experience of a leading CDC in the South best demonstrates the role of development experience and knowledge. This CDC has been involved in affordable housing and has been partnering with private developers since 1998. Today, it is heavily involved in the day-to-day management of these partnerships and typically splits the development fees 50-50. When the executive director speaks retrospectively about earlier partnerships, he believes they were fair because his organization gained everything for which they negotiated. However, with more experience and knowledge today, he realizes his organization could have gained more value for its contributions. In fact, if he could he would go back and restructure some of those deals. More specifically, he would negotiate for a larger share of the development fee and increase his organization's role in building management to potentially drive increased cash flow.

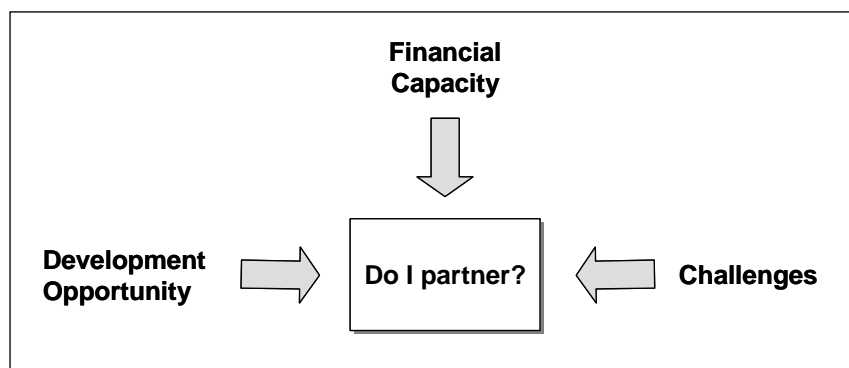
### **2. Tapping into another organization's financial resources is an overwhelming reason for nonprofits and private developers to partner.**

2a. Nonprofits and private developers consider three critical factors when considering whether to partner (see Figure 3, below).

Key partnership decision considerations include:

- Is there an opportunity to increase my development opportunities?
- Can I increase my financial capacity?
- Are there challenges, tangible or intangible, that would be difficult for me to address alone?

Figure 3. Key Partnership Decision Considerations



2b. Financial capacity is the key reason nonprofits and private developers partner.

*If I were to judge based on a pleasure/pain calculation, and they weren't bringing access to some of these public monies, I wouldn't do it.*

(Leading East Coast developer)

Responses from interviews suggest the critical reason private developers partner with nonprofits is to gain access to low-cost funds. Access to government grants and other sources of low-cost capital is critical to helping developers fund the “hard” costs associated with rehabilitating existing housing and constructing new housing. Recent rises in development costs, compounded with increased funding challenges, have forced developers to sew an even more intricate patchwork quilt of development funds. Without access via a nonprofit to low-cost capital, some developers would not be able to fund developments. In addition, by partnering with nonprofits, private developers gain access to nonprofit tax-credit set-asides and even qualify for nonprofit LIHTC points.

Nonprofits also partner with private developers for access to funds. However, nonprofits partner to garner private developer funds for “soft” costs. Soft costs are seed costs indirectly incurred by the sponsor to complete the development. They include costs such as taxes, professional fees and salaries.<sup>16</sup> Interviews with nonprofits reveal that many of these organizations do not have the financial reserves to fund these upfront costs and to hire staff to manage the predevelopment and development stages. To quote a CDC executive director, “We are often approaching a private developer to get staff and financial resources. Very often it’s for the front-end development. [We] usually need \$50,000 to \$100,000 on the front end before a deal closes on an 8-to-18 month timeframe.”

Private developers in urban areas partner for another indirect financial reason: access to land they could not otherwise purchase. Urban developers in areas such as New York City face a growing shortage of affordable, developable land and, subsequently, rising land costs. In recent years, New York City has begun aggressively foreclosing properties of owners who are negligent in paying their property taxes. This land has then been transferred to nonprofits through a much easier disposition process than to for-profits, sometimes at costs as low as

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<sup>16</sup> Hecht, 1999.

one dollar.<sup>17</sup> Since land is a key reason to partner, some urban developers investigate which nonprofits own or have access to land as the first step in the partnering process.

- 2c. Contrary to conventional wisdom, which suggests that nonprofits and private developers partner to increase development opportunity and address challenges, absent of financial capacity, private developers and nonprofits rarely partner.

In general, nonprofits and private developers look to partnerships as ways to increase their development opportunities. Partnerships often enable nonprofits to bolster their development capacity to more readily address affordable housing. A nationally known CDC that has developed over 1,000 units affordable housing has recently partnered with a private developer. This organization's executive director hopes this can help his organization develop multiple projects at once, thereby "not only producing, but producing more quickly." Similarly, private developers partner with nonprofits when it helps them develop in new geographic communities and/or for new populations. However, access to new opportunities is often not enough, as several interviewed nonprofits and developers cite development opportunities folding because of limited funds.

Finally, while conventional wisdom suggests that private developers partner with nonprofits for community support, most private developers do not partner with nonprofits solely for this reason.

*I have not heard a for-profit entity saying they would like to find a nonprofit partner because of the community.*

(Leading affordable housing lawyer)

This is best explained by private developers' perspectives and options: while private developers may recognize the need for community support and outreach, some believe they can achieve this support themselves or by hiring appropriate individuals to conduct "outreach" for them.

#### **Partnering To Increase Financial Capacity: CitiFront Apartments**

CitiFront Apartments is an example of a private developer partnering with a nonprofit for financial capacity. This property is being developed through a partnership between Salt Lake City Neighborhood Housing Services and Bridge Partners. Salt Lake City NHS has been revitalizing neighborhoods since 1977. Bridge is a recognized private developer in the western United States with over 6,000 multifamily units in its portfolio. CitiFront contains 155 residential rental units on four levels and 13,000 square feet of commercial/retail space on the ground level. Approximately 60 percent of the residential units are targeted as affordable housing under the federal low-income housing tax credit program. The owner of the property is CitiFront LLC. The managing general partner interest is divided two-thirds to Salt Lake NHS and one-third to Bridge. Salt Lake NHS is able to negotiate this two-thirds interest because Bridge approached it to lead the financing role; without NHS's strong development experience and community reputation, many tax-credit equity and finance sources would not have funded the development.

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<sup>17</sup> Interviews with Michael Wadman and Carrie Reich.

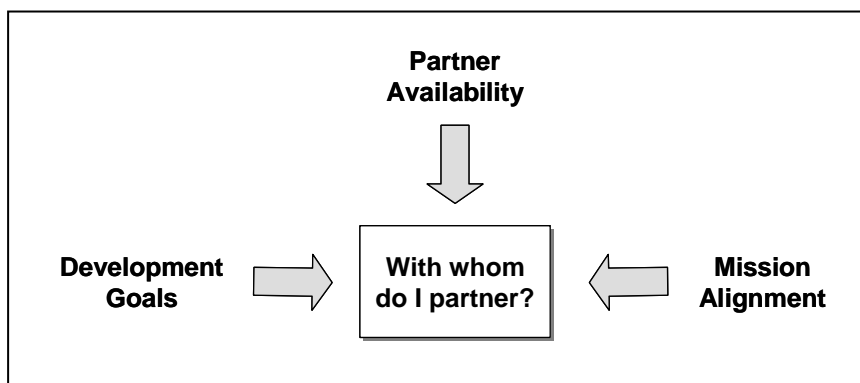
**3. Nonprofit and private developer partner choices are constrained by their development goals, availability of partners, and adherence to mission.**

3a. Nonprofits and private developers are constrained when selecting partners (see Figure 4).

Key partner selection considerations include:

- What type of development am I building? Can I address all the necessary development components?
- Who is available for partnership? How critical is partnership for this organization to the development's success?
- What is my organization's mission? Can the other organization form synergies with and/or complement my mission?

*Figure 4. Key Partner Selection Considerations*



3b. Sometimes the type of development compels the private developer to partner with specific types of nonprofits.

Interviews suggest a growing trend toward developing housing with supportive services. This includes housing for the formerly homeless and those with special needs (e.g., elderly or people living with AIDS). As this type of housing has become increasingly important, private developers interested in entering this arena have to either contract out to a nonprofit or partner with them. Since this is an area where private developers have limited skills, they must select parties with such capabilities. To quote an experienced affordable housing lawyer, “A lot of for-profits are starting to see that there are properties that don’t work without nonprofits.”

While interviews reveal housing with supportive services to be a driver to partnering with nonprofits, there are likely other types of special housing developments that may also drive private developers to seek nonprofits.

- 3c. The partner selection decision is also limited by availability of partners in a geographic area and awareness of available partners.

Private developers operating in low-income neighborhoods will most likely face significant resistance if they do not gain community support and acceptance. In many urban areas, a local CDC implicitly represents the neighborhood through its large grassroots constituency, and many private developers realize they cannot easily or successfully develop without this CDC's approval. Thus private developers are implicitly forced to work with this CDC. However, if the CDC cannot offer more than community support, many private developers look for alternative ways to form an alliance without offering the CDC the conditions reserved for nonprofits bringing capital and/or land to the table.

Since few developers dominate a geographic area, and some developers operate across multiple geographies, nonprofits do not face the same partnership restrictions private developers face. This raises the question of why nonprofits partner with private developers who do not offer them advantageous partnership conditions. Interviews with nonprofits reveal that private developers have offered them compensation as low as \$500 to 10 percent of the development fee. While more experienced developers will walk away from such deals, less experienced nonprofits often accept such conditions because they believe more advantageous partnership options are not available. Some of these less experienced nonprofits feel that achieving their missions requires accepting such conditions, but experienced nonprofits disagree: "There is an opportunity when someone wants to be fair to you; it's not an opportunity when someone wants to steal from you...Go down the street, another guy will help do a fair deal with you."

- 3d. Nonprofits and private developers both look for partners who can complement their missions.

Nonprofits and private developers both stress the importance of partnering with an organization that has a similar organizational mission and goals. Interviews reveal that nonprofits usually prioritize affordable-housing development first and financial returns second, while private developers prioritize these same goals in reverse order.

If nonprofits truly have an option when selecting their private developer partners, they look for socially motivated partners who respect their organization and its dedication to affordable housing. Methods nonprofits use to test private-developer social motivations include word-of-mouth references and the initial partnership discussion. One CDC goes as far as visiting a potential partner's portfolio developments, talking to its residents and staff, and even investigating its employee pay structure.

While nonprofits overwhelmingly cite quality affordable multifamily rental housing as their organization's mission, over half the nonprofits interviewed believe profit is a very important secondary mission — challenging conventional wisdom that suggests nonprofits do not care about profits. Profits can help nonprofits build their financial reserves and their capacity to fund their soft costs. Financial reserves can also help nonprofits fund staff and resources for future developments. Thus these nonprofits will seek partners who can develop such a capacity.

In contrast, private developers prioritize profits over affordable-housing development. Nonprofits and private developers both cite instances when profit motivation has led to private developers who specifically look to partner with nonprofits to gain tax credits, and

then take advantage of their social missions by not compensating them for the contributions to the deal.

*Most developers screw the nonprofit, use the nonprofit as a cosponsor, but don't pay them but \$10,000, and the developer walks off with half a million dollars. I had a guy offer me \$500. They think nonprofits are the pits and we are for the taking.*

(CDC executive director)

However, not all private developers look to take advantage of nonprofits. In fact, profit motivation has led many private developers to seek nonprofit partners who are also profit-oriented. One developer specifically cited looking for profit-motivated nonprofit partners, who can better understand their goals and actions to more easily work together.

Nonprofits and private developers have both found opportunities for mission alignment. Though research was biased toward socially motivated private developers and more experienced nonprofits, few nonprofits mentioned profit motivations being a problem with private-developer partnerships. In fact, interviews reveal that socially motivated developers are willing to contribute development profit surplus, or are interested in structuring a development creatively to improve quality and resident social services.

*We thought we would have to struggle or push more with for-profits for getting the public purpose we wanted in our deals. We thought they would push to cut quality of product to max their fees...but this has not been the case...We have been selective about the groups we work with and as long as the transaction is economically viable they don't object to us pushing the public purpose.*

(Nonprofit developer)

Though nonprofits and private developers have different missions, sometimes this translates into similar development philosophies. More experienced housing nonprofits such as a large California-based nonprofit have explicit development profitability thresholds; if they meet these thresholds, they are willing to contribute any financial surplus toward improving the development.

It is important to note the difficulty in assessing another organization's mission and goals. As these factors are often implicit, even with communication and due diligence these issues are not always fully understood.

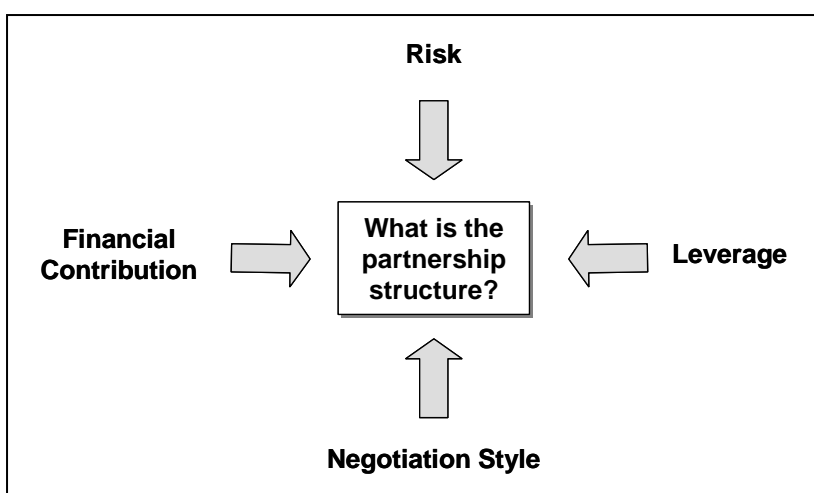
**4. Private developers place significant value on their financial contributions and risks. These perceptions, combined with negotiation skills and leverage, often enable private developers to drive partnership structure and terms.**

- 4a. The partnership structure is driven by many factors, including previous negotiations and outcomes. In this stage, the impacts of both explicit and implicit factors also become important. Implicit factors become increasingly important since private developers and nonprofits have differing perspectives regarding the value and risk of each party in the development. Key explicit factors include financial contribution and risk. Key implicit factors include leverage and negotiation style. (See Figure 5, below.)

Key partnership structure considerations include:

- What have I contributed to the partnership so far and will I contribute in the future? What does the other party contribute? What is the value of these contributions?
- How much financial and nonfinancial risk am I incurring?
- How much leverage do I have in this negotiation? Does the other party have leverage? If so, what kind and how much?
- How should I best negotiate for my preferences? How can I negotiate more effectively than the other party?

*Figure 5. Key Partnership Structure Considerations*



4b. Private developers often believe direct financial contributions are the most valuable.

Though nonprofits and private developers contribute both financially and nonfinancially to partnerships, interviews reveal that private developers weigh their own financial contributions most heavily.

As previously discussed, private developers typically contribute the upfront, “soft” capital that covers predevelopment costs. Many nonprofits do not have the financial reserves to provide this type of seed funding, but can provide access to low-cost development capital. Though these funds, in the form of grant money, government loans, and LIHTC equity, are critical to completing a development’s financing, and can be used alongside private capital investment, many private developers do not consider nonprofit access to low-cost funds equivalent to the direct financial contributions they may make. In fact, when private developers were asked what they wished nonprofits could contribute to partnerships, several said, “money.” Further, this perspective shapes private developers’ willingness to share development fees with nonprofits.

*I seriously doubt they are going to get financial participation in the deal if they don't have money in it. It's not good business.*

(Developer association officer)

In fact, interviews reveal partnerships where the nonprofit does not contribute its own capital, and typically garners less than 50 percent of the development fee. Exceptions are made for nonprofits that contribute land. An East Coast development firm will rarely partner with a nonprofit without access to capital and/or land, and if it does, it does so under remarkably different development fee arrangements. "Without access to financial resources, I think that there would be few instances where for-profits would approach nonprofits to be in a transaction to have some ownership interest and piece of the fee."

Further, the intangible capabilities that nonprofits and private developers contribute to partnerships are not as highly valued as capital. Private developers typically bring development expertise and efficiency to a deal, while nonprofits help address community concerns and facilitate a development's ability to pass city approvals. Since these contributions are service-oriented, both nonprofits and private developers believe they can perform the other party's functions, albeit perhaps not as efficiently. To quote an experienced affordable housing lawyer, "People tend to believe they can do the other's part. Nonprofits think they can develop, developers think they can do the community stuff. People are not going to give up a piece of the pie [e.g., developer fee]...for a service activity they think they can do themselves."

While the evidence presented suggests nonprofit contributions to partnerships are undervalued financially, it is important to offer some caveats to such a conclusion. In reality, it is difficult to place a value on the intangible benefits of a nonprofit partner; nonprofits differ significantly in their political access and community relations. As such, partnerships do present some risk to private developers. Interviews with private developers reveal situations where nonprofits did not have the community trust expected. Further, sometimes the presence of a nonprofit does not ease development, but instead more readily raises NIMBY concerns. As such, while evidence suggests that nonprofits contributions are undervalued in deal conditions, each development partnership is different and must be looked at on a case-by-case basis.

4c. Private developers prioritize their financial risks, while nonprofits prioritize their organizational risks.

Nearly half the private developers and third parties interviewed cited risk as a key condition driving the development fee breakdown and other partnership terms. Developers largely believe they incur greater risks than nonprofits because they are responsible for providing broad guarantees to investors in these mixed-finance transactions. An experienced affordable housing lawyer agrees: "The developer is putting up the guarantees and taking the risk, and they are getting the reward...I think that is where the lines are drawn." Further, developers also cite guarantee risk as critical to shaping partnership decision-making terms. One developer is willing to engage in 50-50 ownership and development fee splits with nonprofit joint-venture partners as long as his firm can make final decisions regarding financial terms when disputes occur.

In contrast, many of the interviewed nonprofits believe, regardless of the partnership terms, that development deals open their organizations to IRS compliance risks. Nonprofits

involving themselves in for-profit activities must take specific actions to protect their 501(c)(3) status. In order to protect a nonprofit's 501(c)(3) status, the IRS requires that the partnership documents be drafted to grant the nonprofit substantial control over operational decisions and the partnership's purpose be stated to provide an overriding charitable purpose for the partnership.<sup>18</sup> These IRS conditions lend themselves to broad interpretations, and so some nonprofits protect themselves by structuring agreements that force private developers to comply with specific regulations and give them the ability and access to supporting documents to do so themselves.

While it is true that developers face certain financial risks and nonprofits face IRS compliance challenges, some suggest this risk is inflated by both parties. The head of a national syndicator claims, "I understand what the for-profit developer is saying, but to be honest, most of these deals are standard. There is not a lot of risk in them from their perspective, they keep arguing...I understand the argument, but there isn't a lot of risk." Meanwhile, though some nonprofit interviewees underwent IRS audits, few interviewees could recall nonprofits losing their 501(c)(3) status because of development partnerships.

However, risk is relative. A future risk faced by both a private developer and a nonprofit cannot be equally valued. Private developer portfolios often include multiple, ongoing development projects and multiple revenue streams, balancing each individual development's potential risk. Nonprofits, especially those less experienced with development, are less likely to have these advantages. As such, development challenges present risks to a part of a developer's portfolio, while potentially impacting a nonprofit's entire organization. Further, community-based nonprofits are more likely to be hurt by a development's failure as their strength is partially derived from strong ties with the community and local government.

#### 4d. Nonprofits are less experienced negotiators.

As previous discussions regarding partnership contributions and risk demonstrate, nonprofits and private developers have differing perceptions regarding the other party in the partnership. As such, implicit drivers such as negotiation style can shape the partnership structure.

Negotiation style is heavily influenced by development experience and knowledge. Interviews reveal that negotiation capacity is rarely a concern for private developers. However, it is hard for less experienced nonprofits to understand their own value to the partnership and the value exchange that occurs within the partnership. As such, nonprofits can be doubly challenged by not knowing their advantages and how to negotiate accordingly.

More experienced nonprofits advise less experienced nonprofits to learn the value of their participation and place those expectations on the table first. Indeed some nonprofits have consulted these experienced nonprofits during partnership negotiation. Nonprofits that wait for developers to assess their value often garner less advantageous partnership terms.

*Show people what you have. You have to throw it out there. This is what my deal is; this is what it's worth. It's Bad Negotiation 101 if you walk in and ask people what you think it's worth. Put your expectations on the table.*

(CDC executive director)

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<sup>18</sup> Pepper Hamilton LLP, 2004.

Interviews reveal that nonprofits who originate a partnership deal often have more negotiation power than those that are approached by private developers. This is the result of the nonprofit having and knowing the benefits of its involvement, and conveying such to a private developer. The “sham” partnerships often discussed rarely result when nonprofits source the deal.

The relationship between negotiation style and nonprofit development experience is best illustrated by a seasoned East Coast nonprofit developer. When this organization started partnering with private developers, it generally secured 30 percent of the development fee. Today, it has its own pipeline of development deals and two general partnership models from which it rarely deviates. If a private developer approaches it to partner on one of its deals, the developer must accept the conditions presented in one of its partnership models. Further, this private developer must also be willing to take 50 percent or less of the development fee.

4e. Nonprofits have limited negotiation leverage.

Leverage is defined as one’s positional advantage or the power to act freely.<sup>19</sup> One’s leverage is the result of one’s actual advantage and the perception of that advantage based on the leverage of the other party.

Though leverage is largely based on perception, which is difficult to assess, interviews suggest that leverage underlies many of the previously discussed partnership structure drivers. As such, some insights about leverage will be presented here.

Again, interviews reveal nonprofit leverage is significantly hampered by limited development experience and knowledge. Though a nonprofit may be the critical party that drives a development deal, through its relationships with city government and ability to access low-costs funds, some do not understand their value to a development and do not exert this positional advantage to gain more advantageous partnership terms. Further, some nonprofits do not understand the conditions their private developer partner faces. As many private developers have large construction arms and/or managing companies, they have the opportunity to profit from later stages of the development process. Therefore, nonprofits that do not understand the larger profit pool their partners are dealing with, also do not understand the value of each concession their partner makes, and subsequently their own leverage.

Further, as one’s leverage is dependent on the perception of the other’s leverage, many private developers perceive their own leverage favorably over inexperienced nonprofits — a view often shared by the nonprofits themselves. Less socially motivated private developers can capitalize on this perceived positional advantage to push nonprofits toward their preferred partnership terms. Interviews reveal some less experienced nonprofits, not understanding their own leverage, make such concessions to achieve their larger goals of creating affordable housing.

Finally, as leverage partly results from an organization’s ability to walk away from a deal, nonprofits are often at a disadvantage. Private developers are less constrained to specific neighborhoods and geographies, while many CDCs only operate in their own communities. Thus these nonprofits are often less willing to relinquish a potential development in their community.

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<sup>19</sup> [www.dictionary.com](http://www.dictionary.com)

## VII. Negotiated Partnership Outcomes

As discussed in Section IV, there are a number of partnership terms for which nonprofits and private developers negotiate. However, as it is not possible for either party to negotiate its preference for every issue, nonprofits and private developers must prioritize partnership terms. Interviews reveal that both parties prioritize allocation of net proceeds and involvement and governance as two of the most important partnership considerations.

### 1. Nonprofits and private developers prioritize allocation of net proceeds — primarily development fees. In addition, there are a range of development fee splits between nonprofits and private developers.

Affordable housing development is structured in such a way that developers cannot profit in the same way they do with traditional market developments (due to limits such as capped increases in market rents and limited income annuities).<sup>20</sup> As a result, profit-oriented nonprofits and private developers focus on profiting from the next available source: the development fee.

When nonprofits and private developers partner, they usually split the development fee.<sup>21</sup> While many assume that nonprofits garner very little of the development fees, interviews with partnering nonprofits and private developers reveal a wide range of development fee splits, often differing between experienced and inexperienced nonprofits. Less experienced nonprofits do often secure small flat fees, or development fee percentages of only 10 percent of the total development fee. A now well-capitalized CDC recalls past partnerships in which it only garnered \$100 per unit. However, more experienced nonprofits gain anywhere from 33 percent to 66 percent of the development fee. One nonprofit never gives its private developer more than 49 percent of the fee and typically negotiates 60 percent or more of the fee for itself.

These experienced nonprofits view the development fee as a method to build their own capacity and financial reserves so that they may increase their role in affordable housing. One CDC partnered with a developer who was interested in helping the organization with its capital campaign, giving the nonprofit 66 percent of the development fee. Similarly, another CDC's executive director considers the development fee a way to gain fair value for his organization's work and have the financial flexibility to meet his organization's needs, saying, "I want to have the money to run my organization, pay my staff. If I want to give out awards [to my staff] then I don't want to have to go begging to the private developer."

Finally, interviews reveal that ongoing cash flow, another method to profit from development deals, is significantly less important. Like development fees, ongoing cash flows generated from building

#### Development Fee

The development fee is typically a percent of the total development costs, with various state and national financing sources (e.g., state housing agencies, city departments, syndicators) usually capping approval of development fee at 15 percent.<sup>a</sup> This fee pays nonprofits and developers for their development efforts and labor (activities include project planning, feasibility and financing).

Please refer to *Developing Affordable Housing*, Bennett L. Hecht, 1999 for a discussion on development activities and labor for which the development fee compensates developers and nonprofits.

<sup>a</sup> Hecht, 1999, and various interviews.

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<sup>20</sup> Interview with Tom Bozzuto.

<sup>21</sup> For a discussion regarding drivers to development fee percentages, refer to Section VI, Partnership Drivers.

management can also be split between partners. However, private developers know cash flow is unpredictable and only significant when properties are large enough to capitalize on economies of scale or when the organization has a large housing portfolio. Unfortunately, many nonprofits make the mistake of valuing cash flows like development fees.

*Nonprofits discover lots of times that you have no cash flow. Cash flow winds up going to different places. Sometimes cash flow is supposed to be \$100,000, but you only get \$15,000.*

(Leading CDC executive director)

This potential for loss of cash flow is best explained by cash flow priorities; only after fulfilling obligations to investors and covering property management issues can cash flow benefit the partners.

**2. Nonprofits and private developers prioritize involvement and oversight to manage financial outcomes and long-term building conditions.**

*We want to be responsible. We don't want to be a front; we don't want to just let the developers do all the work. We do the development work, we participate in all the meetings, and we sign all the draws.*

(CDC executive director)

Nonprofits and private developers have both cited the level of involvement and oversight as critical partnership negotiation terms. However, it is also important to note that less experienced nonprofits typically place a lower priority on involvement and oversight as they have limited understanding of the development process and the importance of these factors.

It is easy to assume that a simple 50-50 ownership structure will guarantee both parties' involvement and oversight during the development and later management stages. However, making every decision and conducting every activity jointly leads to inefficiency. Even 50-50 partners must agree on each party's role in leading certain tasks. In addition, the "fine print" of partnership agreements can significantly alter control under different circumstances. Private developers often include details in partnership agreements that allow them to exercise rights such as control of building management if certain conditions occur. Less experienced nonprofits may not realize the implications of such fine print until the building runs into operating problems and they do not have the control or access to documents to manage the situation.

Both nonprofits and private developers are interested in staying involved in a building's development in order to manage financial outcomes and long-term building conditions. Nonprofits and private developers, especially those who will own the property postdevelopment, seek involvement and oversight to control building construction quality and other factors leading to a building's ongoing operations and maintenance. In fact, many of the interviewed nonprofits mentioned that less experienced nonprofits who do not involve themselves in the development process risk owning a building in poor physical and financial condition.

*Nonprofits can do nothing, but are accountable for everything. [Since] you are accountable for the quality of development and ongoing maintenance costs, your cash flow can be killed if the thing is built poorly. So the nonprofit really has to have some role in the oversight of the development and management.*

(Leading CDC executive director)

Private developers and nonprofits also seek involvement and oversight to manage financial outcomes. Private developers are particularly concerned about giving up too much control to nonprofits, as they believe few have the capacity to develop as quickly and efficiently as private developers do; development speed and efficiency are generally tied to development returns. Moreover, private developers fear giving up control to nonprofits because the developers typically put up the development guarantees and thus are financially liable if the development undergoes delays and challenges. Similarly, nonprofits seek involvement to ensure that private developers are taking all actions they believe necessary for successful development.

Finally, as previously discussed, nonprofits fear risking their 501(c)(3) status, and thus seek involvement and oversight to ensure that the partnership follows all IRS compliance rules.<sup>22</sup>

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<sup>22</sup> Please see Section VI, part 4c for a discussion regarding nonprofit 501(c)(3) risk.

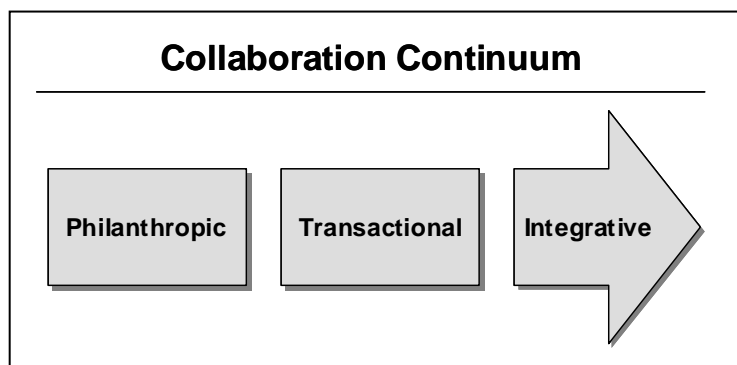
## VIII. Partnership Success

Nonprofits and private developers generally consider two factors when evaluating partnership success. First, the parties consider whether the partnership achieved the outcomes that were intended. Typical outcome measurements include whether the planned quantity and quality of affordable housing was created under budgeted time frames and costs, and whether the involved parties received promised returns. Parties also place importance on community acceptance and approval of the development. Though many developments do undergo some challenges, most nonprofits and private developers believe partnerships are successful from a development perspective.

Second, interviewed nonprofits and private developers also consider whether the actual partnership relationship was a success. While most interviewed parties believe they have engaged in successful partnership relations, these beliefs require further examination.

In James Austin's *Collaborative Challenge*, the author introduces a "Collaboration Continuum" for thinking about nonprofit and private-sector alliances (see Figure 6).

*Figure 6. The Collaboration Continuum*



In the Collaboration Continuum, "as the relationship moves from stage to stage (philanthropic to integrative), the level of engagement of the two partners moves from low to high. The importance of the relationship to each collaborator's mission shifts from peripheral to strategic. The magnitude and nature of the resources allocated to the relationship expand significantly. The scope of activities encompassed by the partnership broadens. The partners' interactions intensify, and the managerial complexity of the alliance increases. Finally, the strategic value of the collaboration escalates from modest to major."<sup>23</sup>

Thus one can imagine a successful partnership between a nonprofit and private developer leading to future partnerships and a more long-term relationship in which the two parties join together to strategically consider how to more effectively compete for multifamily development resources. However, the majority of interview results reveal that while nonprofits and private developers would consider partnering with the same organization again, few have done so. Additional partnerships with former partners are considered on a case-by-case basis. Therefore, many of these relationships remain opportunistically transactional versus integrative. Further, if these organizations partner again, it is most often because of the ease of re-partnering with a familiar organization and not for strategic reasons.

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<sup>23</sup> Adapted from Austin, 2001.

Finally, nonprofits and private developers both suggest that factors in the success of housing partnerships are similar to those for any collaboration across sectors.<sup>24</sup> The two most commonly cited critical factors for partnership success were communication and trust.

*Partnerships ultimately boil down to trust. Some developers we trust immensely and would partner there at any [point].*

(Leading CDC executive director)

*The most important thing in partnerships is a very explicit understanding of the other person's goals and motivations.*

(Nonprofit development officer)

Since these partnerships must manage differing priorities, goals and organizational cultures, communication of these issues and values becomes critical. With poor communication, the parties will have difficulty reaching the understanding required to address both parties' goals and concerns. Further, absent of trust, partners cannot gain the benefits of partnering; they will guard their actions and statements, second-guess their partner's decisions, and double-check their partner's work.

### **A Long-Term Partnership: Bozzuto Group and St. Paul CDC**

A few private developers and nonprofits have developed more integrative partnerships. One such example is the Bozzuto Group (Greenbelt, MD) and St. Paul Community Development Corporation (Prince George's County, MD). These two organizations have been working together for almost a decade. Their first development was St. Paul Senior Living at Capital Heights, which has 150 independent living apartments for active adults (62 and over) making less than 50 percent of the median income for the Washington-Baltimore MSA. In this partnership they split both the development fee and cash flow evenly, and both take active roles in the day-to-day management of activities. Since the completion of the development, the two organizations are partnering again to develop St. Paul Overlook, which comprises 121 units. The Bozzuto Group is St. Paul CDC's favorite developer; when it does not partner with the Bozzuto Group, it often contracts with Bozzuto to do its property management and construction.

This successful relationship is tied to both communication and trust. From the beginning both parties were very explicit about their goals, expectations and capabilities. Further, they trust and treat each other as equal partners. Finally, these organizations are successful because of their mission alignment. According to the St. Paul CDC executive director, "We had a meeting and we were searching for the right partner...and not that everything was perfect, but we had a close sense of who they were. They had a sense of who we were...we shared common goals and interests...all the same ideals about how you build stuff and doing it right the first time."

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<sup>24</sup> As this research only briefly explored partnership success factors, the discussion regarding this subject is limited. Please consult *The Collaboration Challenge* by James Austin for a more extensive discussion on successful alliances between nonprofits and for-profits.

## **IX. Concluding Reflections**

Partnerships between nonprofits and private developers take on many forms. Some have helped nonprofits build financial resources, development experience and capacity, and others have taken advantage of nonprofits. While these partnerships have the potential to not only create new affordable rental housing stock, but also benefit both parties, they can do so only under the right circumstances. Conditions such as appropriate selection of partners, degree of development knowledge and understanding of circumstances and the other party are critical. Through exploration of the key drivers to these partnerships, the important roles of development expertise and financial conditions become apparent. These findings have implications for nonprofits seeking financial returns and involvement in the day-to-day management of development partnerships. This research concludes by highlighting some important lessons learned for nonprofits and third parties in these housing partnerships.

### **1. Nonprofit Considerations**

- a. *While there are opportunistic developers who take advantage of nonprofits, there are many developers who can complement nonprofits' missions.*

Interviews reveal that private developers span the spectrum of those willing to “milk” nonprofits and those wishing to offer them fair conditions for their value in a partnership. Nonprofits should not feel limited to partnering with private developers who approach them, but instead look for socially motivated private developers. They should also conduct significant due diligence on a partner’s organization and portfolio to better understand the potential partner’s mission and goals before partnering. Finally, nonprofits should look to more experienced, larger nonprofits who could serve as beneficial partners.

- b. *Development experience and knowledge are critical.*

There is no substitute for development experience in shaping an advantageous partnership for both parties involved. Absent of development experience, nonprofits may not understand the value of what they bring to a partnership and negotiate accordingly. Further, nonprofits may not understand how small clauses in a partnership agreement can significantly affect an agreement’s financial and nonfinancial terms. While there is no substitute for development experience, there are a variety of parties available to help compensate for these weaknesses, including more experienced nonprofits, socially motivated development consultants, and housing intermediaries.

- c. *Private developers prioritize financial factors when developing partnership terms.*

Since private developers overwhelmingly consider financial contributions and risk to be the most critical factors driving partnership decisions and negotiated terms, nonprofits must understand this point of view. While nonprofits may not bring direct financial resources to the table, they often bring capabilities and contributions that can make or break development deals. Thus nonprofits should consider how to quantify or otherwise present these contributions so that private developers can more easily understand their value.

- d. *The implicit factors that shape partnerships can be made explicit.*

Interviews reveal that partnership terms are negotiated by weighing explicit, tangible contributions by both parties. However, interviews also suggest that implicit factors, such as negotiation style and leverage, are strong drivers underlying partnerships and the form they take. Thus knowing and understanding these implicit drivers become critical. If nonprofits do not know their positional advantage and negotiate accordingly, then they should consider using third parties to advocate on their behalf. Examples of helpful third parties include affordable housing lawyers and more experienced nonprofits.

- e. *Private developers and nonprofits view each other and development through different prisms.*

Interviews suggest that private developers and nonprofits most likely have preconceived notions about the other party. In addition, nonprofits and private developers often view the development process and the potential challenges and benefits the other party incurs differently. If nonprofits make the effort to understand these notions, they will be better prepared to negotiate with private developers, addressing and demystifying misconceptions as necessary.

- f. *Detailed partnership terms can be discussed early on.*

There are a range of partnership agreement issues upon which nonprofits and private developers need to agree. Nonprofits do not have to wait until the legally binding partnership agreement is drawn up before discussing the agreement. In fact, nonprofits and private developers should discuss their goals, motivations and concerns as early as possible to better understand each other and the ability of the partnership to achieve each party's intended outcome. Experienced nonprofits suggest that all major issues should be discussed early and that agreed-to terms should be captured in partnership MOUs.

## **2. Policymaker, Intermediary and Financing Agency Considerations**

- a. *Nonprofits are often at a disadvantage when negotiating for partnership terms.*

While truly beneficial partnerships do occur, there are still many situations where nonprofits have less leverage when negotiating with private developers. As such, there is potential to aid nonprofits in negotiations in several ways. First, policymakers could consider how to increase oversight over deals to ensure that each party is gaining fair value for its contributions. However, while less experienced nonprofits may appreciate this help, more experienced nonprofits may not welcome increased government involvement. Second, intermediaries could help by serving as advisors to less experienced nonprofits or provide these nonprofits with funds to hire experienced lawyers to advocate on their behalf. Finally, there is a role for policymakers and intermediaries to educate nonprofits about the development process.

- b. *Nonprofits and private developers do not always understand the other party's capabilities and challenges.*

Interviews suggest that nonprofits and private developers, even ones that partner frequently, do not necessarily understand the capabilities of the other party and typically undervalue the other party's contributions and risk in comparison to their own. In order for "fair" partnerships to occur, this asymmetry of information should be addressed. There is a potential role for housing intermediaries to begin keeping an inventory of partnerships and their key

attributes to share with nonprofits in partnership negotiations. Further, resources such as housing partnership case studies could also be useful to both parties.

- c. *Some private developers act like nonprofit developers; some nonprofit developers act like private developers.*

Research reveals a range of both nonprofits and private developers. Some private developers develop affordable multifamily housing purely with a profit motive, while other private developers act like nonprofit developers. In fact, some developers, lawyers and thought leaders believe that private developers develop affordable multifamily housing more effectively than nonprofits. Further, while there are some nonprofits with the scale, capacity and attitude of socially motivated private developers, there are many nonprofits with good intentions that simply do not have the capacity to effectively develop affordable housing.

There are currently many government policies focused on helping nonprofits involved in housing development. Since affordable housing can be addressed regardless of who the developer is, there is an opportunity to further capitalize on the presence of socially motivated private developers. Policymakers should consider helping all those who are addressing affordable housing, regardless of who they are.

- d. *Nonprofits range significantly in their degree of development experience and knowledge.*

Nonprofits differ vastly in their capacity to develop affordable housing. Thus policies have limited effects when implemented at a general level. Instead policymakers should understand these differences and their implications, and target policies accordingly. For example, nonprofits with limited experience could benefit from increased government involvement, while such government involvement could hamper an experienced nonprofit.

- e. *Financial incentives remain a reason for private developers to partner.*

Research suggests that private developers strongly consider financial conditions when considering partnering with nonprofits. As access to capital remains a large component to these partnerships, policymakers considering policies to encourage or support partnerships and/or private-sector involvement must understand this motivation. In addition, research should be conducted to better understand the role of government programs and low-cost capital in affordable housing production.

### **3. Private Developer Considerations**

While research was conducted for nonprofits and third parties involved in affordable housing partnerships, findings also result in some last thoughts for private developers. Since nonprofits differ in their capacity and experience, private developers should recognize these different types of nonprofits and appropriately select their nonprofit partners. A negative experience with one nonprofit should not prevent private developers from partnering again. Research reveals the opportunity for mutually beneficial partnerships between nonprofits and private developers. As such, private developers can learn from their socially motivated counterparts who have successfully engaged in multifamily affordable rental housing partnerships.

## **X. Areas for Future Research**

While this research endeavors to understand partnerships between nonprofits and private developers, it is only a small piece of the research required in this area. The topic of partnerships between nonprofits and private developers is an area sorely lacking in both quantitative and qualitative research. Perhaps the most important outcome of this research is further research questions. One critical area for future research is whether development partnerships are more effective and efficient at producing rental affordable housing. From such research, policymakers could begin understanding the value of nonprofits and for-profits in producing affordable housing, and shape policy accordingly.

Further, while research explores the drivers to partnerships cited by interviewees, there are a whole host of external factors and parties (e.g., government policy, geographic considerations, intermediaries) also influencing partnerships. Additional research could explore these drivers and differences in partnership outcomes given the presence of specific external factors.

Finally, it would be useful to refine this research in two ways. First, it would be helpful to understand how the perspectives offered here could apply to different types of affordable housing partnerships. Second, additional interviews with nonprofits and private developers could deepen understanding of the specific challenges faced by nonprofits of varying capacity and development expertise. More detailed research could help develop a framework to aid different types of nonprofits considering various affordable housing partnerships.

## **Appendix: Glossary of Selected Acronyms**

<b>CDC(s)</b>	Community Development Corporation(s)
<b>HOPE VI</b>	Also known as the Urban Revitalization Demonstration; Congress and HUD created the HOPE VI grant program in 1992 to provide a flexible source of support for investments in public-housing developments and for their residents. <sup>25</sup>
<b>IRS</b>	Internal Revenue Service
<b>LIHTC</b>	Low-Income Housing Tax Credit
<b>LLC</b>	Limited Liability Company
<b>MOU</b>	Memorandum of Understanding
<b>MSA</b>	Metropolitan Statistical Area
<b>NIMBY</b>	Not In My Back Yard
<b>NHS</b>	Neighborhood Housing Services (a nonprofit organization belonging to NeighborWorks <sup>®</sup> America's national NeighborWorks <sup>®</sup> network).
<b>501(c)(3)</b>	IRS section of the tax code that defines nonprofit, charitable (as broadly defined), tax-exempt organizations; includes public charities, private operating foundations and private nonoperating foundations. <sup>26</sup>

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<sup>25</sup> [www.huduser.org/publications/pubasst/hopevi.html](http://www.huduser.org/publications/pubasst/hopevi.html).

<sup>26</sup> [fdncenter.org/learn/faqs/html/501c3not.html](http://fdncenter.org/learn/faqs/html/501c3not.html).

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