

**Building Affordable
Housing Using Tax
Credits, Not-for Profits and PHA's**

**New York State Public Housing
Authority Directors Association
Conference**

Wednesday, May 20, 2009

By: Bruce L. Levine, President

Bruce@3ddevelopment.com



3d Development Group, LLC
4549 Main Street, Suite 100
Amherst, NY 14226
(716) 839-0549 Phone
(716) 839-0668 Fax

Low Income Housing Tax Credits

- ❑ The Low Income Housing Tax Credit is a credit or reduction in federal tax liability.
- ❑ It is allocated by DHCR in a competitive process.
- ❑ It is awarded to developers of rental housing who accept restrictions on the rents and the income of the occupants.
- ❑ The credit provides a tax benefit for 10 years but requires a 15 year compliance period.
- ❑ The tax credits generate equity from investors who enter into partnership arrangements with developers.
- ❑ The equity is what is used to develop a housing project, either alone, with conventional financing, or State or Federal grants and/or loans.

Sample Development Budget

<u>SOURCE AND USE OF FUNDS</u>	<u>Perm Res</u>		<u>Perm Res</u>
DEVELOPMENT			
<u>Sources of Funds</u>			
Mortgage Loan	1,844,704	Real Estate Tax	5,000
Mortgage Loan	-	Construction Interest	120,254
Low Income Housing Tax Credit	4,609,144	Bank Fee	-
State Low Income Housing Credit	-	Bank Inspection Fees	6,957
Other Financing CDBG	-	Market Study	6,500
Other Grants FHLB NY	-	Appraisal	5,500
Construction / Bridge Loan	-	Other:	-
Developer Loan	-	Developer Fee	769,145
Total Sources of Funds	6,253,848	Sub-Total Soft Costs	1,247,845
		Total Depreciable Cost	5,885,649
<u>Uses of Funds</u>			
<u>Depreciable Costs</u>		<u>Other Cost</u>	
Site Work	776,142	Land Acquisition	167,000
Construction	2,904,655	Real Estate Tax Escrow	-
Other: Playground	-	Non-Basis Eligible Construction Interest	97,446
General Requirements 6.00%	220,848	Permanent Financing Fees	-
General Overhead 4.00%	147,232	Permanent Lender Legal	-
Builders Profit 9.50%	368,080	LIHTC Allocation Fee	43,317
Construction Contingency 4.00%	220,848	Other:	-
Subtotal Construction	4,637,804	Operating Reserve	-
<u>Soft Costs</u>		Replacement Reserve	-
Architect	170,000	Other: Working Capital	60,437
Engineering (site)	18,551	Other:	-
Engineering (environmental)	16,232	Other:	-
Engineering (storm water)	-	Total Other Cost	368,200
Survey	9,000	TOTAL USE OF FUNDS	6,253,849
Soil Borings	9,700	Surplus (Deficit)	(0)
Archaeological	4,125		
Legal (land use)	-		
Legal (financing)	30,000		
Legal (const. lender)	6,000		
Title & Recording	40,130		
Cost Cert & accounting	4,500		
Builders Risk Insurance	26,250		

Sample Tax Credit Calculation

<u>ALLOCATION</u>			<u>LIHC Adjustment</u>
Total Basis		5,885,649	
Adjustments		-	
Adjusted Basis		5,885,649	
Bonus Factor (DDA/QCT)	30.00%	1,765,695	
Eligible Basis		7,651,344	
Low Income Use Percentage		1.00	
Qualified Basis		7,651,344	7,651,344
LIHTC Present Value Factor		0.0900	0.09
ANNUAL CREDIT		688,621	688,621
<u>INVESTOR CONTRIBUTION</u>			
Total Annual Credit		688,621	688,621
Maximum Credit Allocable		100%	100%
Annual Credit		688,621	688,621
LIHTC Period (years)		10	10
Total LIHTC		6,886,209	6,886,209
Investor Share of LIHTC		0.9990	0.9990
Investor LIHTC		6,879,323	6,879,323
Estimated Investor Price		0.67	0.67
TOTAL EQUITY CONTRIBUTION		4,609,146	4,609,146

Structure of a Deal

Private Developer Joint Venture:

- ❑ Best in situations where the NFP does not have the expertise, staff or financial strength to sponsor a project on their own.
- ❑ Private developer to make guarantees and provide working capital.
- ❑ NFP assumes a minority ownership role but receives valuable experience.
- ❑ NFP earns a portion of developer fee. Generally it is a small sum but varies according to the degree of involvement.
- ❑ NFP may be able to negotiate a management contract and a right-of-first-refusal to purchase the project at the end of the tax credit compliance period.
- ❑ Income earned is unrestricted.

Structure of a Deal

Fee Based Private Developer:

- ❑ Best suited for a NFP with sufficient financial resources but not the staff or expertise to develop a project alone.
- ❑ Private developer works for a percentage of the developer fee.
- ❑ The project is 100% owned by the NFP.
- ❑ May be eligible for NFP funding set-aside.
- ❑ The NFP is responsible for all development expenses and guarantees.
- ❑ Management of the property is by the NFP or an affiliate.
- ❑ Income earned is unrestricted.

Structure of a Deal

NFP as Developer / Owner:

- ❑ The PHA affiliate acts as owner/developer.
- ❑ Must have full range of development experience.
- ❑ Financial statement should support development and operating guarantees.
- ❑ May be eligible for NFP funding set-aside.
- ❑ Income earned is unrestricted.
- ❑ Management of the property is by the NFP or an affiliate.

JOINT VENTURE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2007, by and between _____ Development Corporation, a New York not-for-profit corporation having its principal office at _____, New York _____ (“DC”); and 3D Development Group, LLC, a New York limited liability company with offices at 4549 Main Street, Suite 100, Amherst, New York 14226 (“3DDG”);

WHEREAS, DC, 3DDG desire to form a joint venture to develop, acquire, renovate, maintain, own, and operate a 24-unit affordable rental housing project for low-income senior citizens located in the Village of _____, Town of _____, County of _____, State of New York (the “Project”); and

WHEREAS, DC and 3DDG each have experience in developing affordable housing for low-income persons and each possess certain necessary skills and resources to develop the Project; and

WHEREAS, DC and 3DDG desire to set forth their respective responsibilities for development, ownership, management, and operation of the Project;

NOW, THEREFORE, in consideration of the premises herein contained, the parties agree as follows:

1. 3DDG and _____ Redevelopment Corporation, a wholly-owned business subsidiary of DC (“RC”) intend to form a limited partnership to be known as Partners, L. P. (the “Partnership”) to carry out the acquisition, construction, management, maintenance, operation and ownership of the Project.
2. DC intends to form a subsidiary corporation to be known as _____ Housing Development Fund Corp. (HDFC) to act as a co-General Partner of the Partnership.
3. 3DDG shall act as a co-general partner of the Partnership and have a 50.00% interest in the General Partner interest in the Partnership. RC shall act as a co-general partner of the Partnership and have a 50.00% interest in the General Partner interest in the Partnership. HDFC shall act as a co-general partner of the Partnership and have a .01% interest in the General Partner interest in the Partnership. 3DDG RC and HDFC are also referred to herein as the “General Partners.” The General Partners shall be primarily responsible for the development, management, and operation of the Project.
4. The General Partner interest in the Partnership shall be a .01% ownership interest in the Partnership. The remaining 99.99% interest shall be sold through a private offering to low-income housing tax credit investors who will act as the Limited Partner of the Partnership.

5. The Project shall be operated in accordance with the federal low-income housing tax credit requirements, and the requirements of the USDA Rural Housing Service. Development of the Project will be financed by a construction loan, assumption of existing financing from USDA Rural Housing Service, additional permanent financing, and tax credit equity.
6. 3DDG shall act as Developer of the Project in developing, obtaining financing, and managing the construction phase of the Project.
7. The General Partners have jointly selected DC to act as Managing Agent of the Project (“Managing Agent”) to assist them in rent-up and operation of the Project. The Partnership and DC will enter into a Management Agreement that specifies the responsibilities of the Managing Agent.
8. The Partnership shall give DC, a right of first refusal to purchase the Project to commence upon the end of the tax credit compliance period and to continue for a period of two years thereafter. DC is organized for the primary purpose of providing affordable housing and related services to low income persons, is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code (the “Code”), and is a “qualified non-profit organization” as defined in Section 42(h)(5) of the Code. DC shall maintain its status as a “qualified non-profit organization” as so defined throughout the tax credit compliance period.
9. DC shall participate on a regular, continuous, and substantial basis in the development and operation of the Project in the following manner:
 - a. DC shall devote such time and effort as may be necessary to assist the Partnership in the development and operation of the Project.
 - b. DC shall assist the co-Developers in determining the design aspects of the Project, the contractor and construction contract, and architect and engineering services.
 - c. DC shall assist the Partnership in working with the local municipalities, local agencies, neighborhood groups, organizations, abutters and other parties interested in the Project.
 - d. DC shall act as Managing Agent to ensure that the Project is developed and operated as a low-income housing project in accordance with Section 42 of the Code.
 - e. DC shall act as Managing Agent in the initial rent-up and overall management of the Project, and in monitoring compliance with rent levels, income certifications and other low-income housing requirements.

f. DC shall assist in obtaining building permits and use permits.

10. 3DDG shall participate as Developer in the development of the Project in the following manner:

- a. 3DDG shall prepare and submit all funding and financing applications necessary develop, construct, and operate the Project, including USDA Rural Housing Service, NYS Low Income Housing Tax Credits, construction financing, equity investing, and rental assistance.
- b. 3DDG shall prepare a detailed development budget covering the cost of renovations.
- c. 3DDG shall oversee preparation of plans and specifications and identify and approve the scope of work for all site improvements, including roads, and utilities.
- d. 3DDG agrees to provide all funds required for necessary and reasonable expenses including option fees, market studies, mortgage commitment fees, survey, soil borings, application fees and other pre-development costs, and may make money advances on behalf of the Project.
- e. 3DDG will coordinate the construction and permanent loan closings and tax credit syndication for the Partnership.
- f. 3DDG will act as agent of the Partnership in meeting the 10% Test, defined as 10% of the total reasonably expected basis in the Project as of the State Agency deadline set by the Allocation of tax credits.
- g. 3DDG shall be the tax credit partner, responsible for tax credit monitoring and reporting.

11. The Partnership shall reimburse 3DDG for any and all expenses incurred by them with respect to the Project, including any expenses used by Partnership in meeting the 10% Test, regardless of whether such expenses were incurred before or after the formation of the Partnership and before or after the signing of the Restated and Amended Agreement of Limited Partnership.

12. 3DDG shall be the sole Guarantors of payment and performance, construction completion, operating deficits, and tax credit adjusters.

13. 3DDG shall indemnify and hold harmless DC from

any and all claims as a result of liability for violation of environmental laws or the presence of environmental hazards in, on, or under the Project.

- 14. DC shall receive the sum of \$ _____ of the Developer's fee and 3DDG shall receive the balance of the Developer's fee for actual services rendered. It is contemplated that 20% of the Developer's fee shall be disbursed from the initial equity installment payment. From that portion of the developer's fee, 3DDG shall be reimbursed for payment of any and all unmortgagable costs, including the packaging fee, and fees and costs advanced; and the balance of that portion of the developer's fee shall be distributed to DC and 3DDG pro-rata as consideration for development services actually performed. The balance of the developer's fee shall be paid to DC and 3DDG pro-rata as set forth in the equity investor limited partnership agreement.
- 15. Cash contributions by and distributions to the General Partners shall be allocated in accordance with their respective interests.
- 16. This Agreement shall inure to the benefit of and constitute a binding obligation upon the parties hereto and their respective successors and assigns.
- 17. This Agreement contains the entire understanding between the parties and supersedes any prior understandings or agreements among them.
- 18. This Agreement may not be modified or amended without the written consent of all parties.
- 19. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of e day and year first above written.

WITNESS:

3D Development Group, LLC
By: _____
Bruce L. Levine
President

Development Corporation
By: _____

Evaluating a Project

New Construction

- ❑ Is there an unmet demand in your service area?
- ❑ Does the construction of new housing fulfill a goal of the local comprehensive plan?
- ❑ Is there a suitable site?
- ❑ Does development of the site serve a dual purpose? (for example: remediating contaminated land)
- ❑ Would the project be supported by the local government?
- ❑ Can the rents be supported or is rental assistance available?

Evaluating a Project

Rehabilitation

- ❑ Is there a vacant or dilapidated structure important to the community that can be used for housing?
- ❑ Does the housing or the rehabilitation of the structure fulfill a goal of the local comprehensive plan?
- ❑ Can the building be classified as historic?
- ❑ Would the project be supported by the local government?
- ❑ Can the rents be supported or is rental assistance available?

Community Driven Approach to New Development

- ❑ In a Joint Venture, the Developer will seek assistance from the NFP concerning local relations and support.
- ❑ In cases where the NFP is the owner, support from local government can minimize risk and strengthen the project.
- ❑ For example:
- ❑ “Development of this project is specifically noted in the City of Geneva Master Plan and Local Waterfront Revitalization Program, adopted - March 1998, which calls on the City to “Consider high density senior and special population housing. Encourage the development of appropriate housing to meet the demands for senior citizens and special persons”

Community Driven Approach to New Development

To facilitate this project, the City has taken extraordinary steps including:

- 1) entered into an agreement to sell city owned land for the project;
- 2) amended the zoning law to permit multi-family housing;
- 3) completed site plan approval so the project would be construction ready;
- 3) approved a Payment in Lieu of Tax Agreement;
- 4) approved a grant of \$18,000 to make infrastructure improvements that will benefit the neighborhood as well as the project;
- 5) reprogrammed \$30,000 of HUD/CDBG funds toward the site work
- 5) contributed thousands of dollars worth of in-kind services to complete the environmental investigation of the property;
- 6) partnered in a strategy to address environmental concerns.

Timing/Reimbursement of Costs

- ❑ In a Joint Venture, the developer may have completed the background work and is seeking a partner prior to submitting an application for funding. In this case it might be just 6-12 months until funding is known and construction begins.
- ❑ If the partnership is established early in the process, or the NFP is the owner/developer, predevelopment activities generally take six months but can be substantially longer in cases of difficult sites or redevelopment of existing structures.
- ❑ For a “vanilla” project, assume 3-4 years from when the project is conceived to when it is considered construction complete and operationally complete.
- ❑ At closing of the construction loan, most predevelopment costs will be reimbursed. Developer Fee will not be realized until the close of permanent financing at the earliest. Most profit will be paid once the project is fully operational and meets investor benchmarks.

Keys to Success

- ❑ If you joint venture, know your partner. The easiest way to check references is to look at an existing portfolio and contact those partners. DHCR can tell you if the developer is in good standing.
- ❑ If you serve as the owner or owner/developer, focus on the development team. If you retain a developer, see the previous point. The architect, contractor and attorney should all have experience with housing and the programs from which you seek funding assistance.
- ❑ Management must be proficient in tax credits. All staff should be trained. I recommend Spectrum Seminars but there are others.
- ❑ The syndicator you select will be with you for as long as you own the project. While price is important, review the terms carefully.