

COMMUNITY DEVELOPMENT CORPORATIONS
AND PRIVATE DEVELOPERS IN PARTNERSHIP:
THE ROLES, RISKS, AND BENEFITS

by

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ABSTRACT

Community development corporations frequently become involved in partnerships with private developers while pursuing their housing development objectives. This thesis presents a general discussion of the constraints facing community developers, the reasons for entering joint ventures with a private developers, and the potential conflicts in such partnerships. Several examples of joint ventures in Massachusetts over the last decade are presented, emphasizing the different roles that community developers can take in the partnership, and the factors that influence that development role.

Recent changes in housing finance, including major reductions in operating subsidies and low-interest financing, make community housing development even more difficult than ever, and community developers are seeking new sources of subsidy and financing. The role of joint venture developments in this period of scarce subsidies is discussed through a detailed analysis of one project, Westland Avenue Apartments, which includes many innovative forms of finance and subsidy. The Westland Avenue joint venture has important implications for future community housing developments. The analysis of this and other projects are used to suggest a future joint venture strategy for community housing developers.

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CHAPTER I

INTRODUCTION

Since the early 1970's, non-profit community-based organizations have often formed partnerships with private, for-profit developers in order to complete community housing developments. The basic principle behind these joint ventures is that the community developer and the private developer have complementary resources, and the project to some extent requires the participation of both. As unlikely as these partnerships may seem -- since community organizations are often formed in opposition to private developers -- they are increasingly looked to as an attractive arrangement for fledgling community development groups without the resources to act as a sole developer, and necessary to make a project economically viable.

The term joint venture, is applied to a wide range of projects where there is community involvement along with a private developer. This report focuses on projects where a community developer actively participates in the development process with the private developer, and has an ownership interest as part of a limited partnership. Although this definition excludes many projects where community groups were very important as sponsors, it still encompasses a large number of diverse projects. The exact number of joint ventures is hard to determine, although one indication is the fact that, as of 1981, at least 19 such joint ventures had been financed by the Massachusetts Housing Finance Agency.¹

Despite this popularity, and several highly praised examples, the benefits to a community group in a joint venture are far from assured. Partnership status does not ensure major control over the project, or a

proportionate share in the proceeds resulting from equity syndication. Community developers will frequently have only minimal control over a few aspects of the development such as some design criteria and tenant selection, while the private developer retains control over all other decisions. Similarly, the private developer often receives 80 to 90 percent of the syndication proceeds. There are other joint ventures that are considered more successful, where the community developer retained control over much of the project and even received substantial economic benefits. The possibility for such a strong role for community developers makes joint ventures very attractive, yet the more frequent case where the private developer controls the project and its financial benefits also makes joint venturing an uncertain and risky undertaking.

The major problem which faces community developers in a joint venture is how to achieve the greatest amount of control and benefits from the project given their small financial assets and other resources. Although community developers have always faced financial difficulties, more recent cutbacks in housing subsidies are making community development efforts even more difficult and will dramatically effect the prospects for successful community-private joint ventures in the future. In the past decade, joint ventures relied heavily on deep housing subsidies such as Section 236 low interest financing and Section 8 rental assistance, and these programs for the most part provided ample profit to the private developer while producing low and moderate income housing. Community housing development is virtually at a standstill, and community developers are seeking new ways of producing even small amounts of subsidized housing. Frequently this will mean participation in a development that is privately financed and largely market-rate housing in an effort to win modest housing

goals such as low-priced condominiums or moderate rent units. Joint ventures of this type may be the only way for community developers to actively participate in housing development.

These difficult times for community developers are likely to see the re-emergence of an old dilemma, deciding the best role for community organizations in community housing development. During the 1960's, community groups began to actively participate in housing development, first as "sponsors" or advisors, and later as non-profit housing developers themselves. Tenant organizations wanting to control their own housing developments made the unusual transition into community developers with the promise of providing affordable housing of good quality. This was not done without considerable debate and internal conflict, however, since many people and organizations felt that their primary responsibility was to tenant organizing and that housing development would detract from that effort and create landlord-tenant conflicts within the organization.²

Indeed, few groups have maintained both tenant organizing and housing development activities. With relatively abundant subsidies, however, many community organizations were able to become successful developers, some of which are discussed later in this report. But the reduction in available subsidies, and the prospect of community developers participating in largely private, market-rate developments requires reconsideration of the proper role for a community development group. Does a community organization want to bear major responsibility for such a development?

This report ultimately tries to address how these housing development changes will affect community-private joint ventures, and the best strategies for community developers in such unusual and innovative projects. In earlier, fully subsidized projects, community developers sought to

maximize their control over the development while minimizing the role of the private developer. This was a good strategy when the end result was a 100 percent Section 8 project that the community developer could claim responsibility for. When producing mixed-income housing with fewer community benefits, however, maximizing the community developer's role is not only more difficult, it may be less desirable. In the absence of major subsidies, the community developer's role may approach community advocate, attempting to influence the character of the development and using the project to build the organization's strength.

This report is a comprehensive look at the roles available to community developers in joint ventures, including the degree to which they have retained control over the development and received financial benefits. In some cases, community groups have acted as the managing general partner with tremendous control, financial benefits, and responsibility for extra costs. Other groups have had less control over the project and varying degrees of financial benefits. These different roles are described through several examples of joint ventures in Massachusetts over the last decade. By analyzing these projects the report will be useful to other community developers in determining the best joint venture role that might be expected given its resources and the circumstances of the project.

The report also suggests a general strategy whereby community developers can achieve the most financial benefits from and control over partnerships with private developers. In the cases where the community developer had a major role in the project, the community developer established early control over planning, design, and financing for the project, and was able to bring substantial resources into these efforts via grants, contingency work, or their own assets. Yet, community developers in this

position still have difficulty maintaining control over construction and management, and struggle for their share of syndication proceeds. In addition, it is not always possible for community developers to take such an active, early role in a development, particularly newer groups with few assets and little "track record." By examining a variety of joint ventures, and suggesting strategies that will increase a community developer's resources and negotiating strength, it is hoped that this report will aid community developers in the future.

The second part of the report considers joint venture development amidst the present scarcity of housing subsidies and the consequent changes in financing. The analysis is based largely on a detailed case study of Westland Avenue Associates, a joint venture development that includes some of the financing techniques likely to occur in an era of scarce subsidies, such as multiple sources of financing, so-called "internal subsidies" and the creative use of syndication proceeds. The lessons of Westland Avenue Associates are generalized to suggest a joint venture strategy for community developers in similar projects in the future.

Chapters II and III provide an introduction to community developers in the housing development process, Chapter II focusing on the constraints that community developers face and the reasons for joint venturing with a private developer. Chapter III is a somewhat theoretical discussion of the goals of community developers in housing development, and the areas where those goals conflict with private developers' motives in a joint venture. Following this background, Chapter IV briefly describes four different joint ventures and the role of the community developers in those projects and other joint ventures in general. Chapter V presents the main factors which determine what role community developers take, and formulates

several elements of a joint venture strategy for community developers.

Chapter VI is a detailed look at the Westland Avenue joint venture, and an analysis of the major conflicts between the private developer and the Fenway Community Development Corporation. In some ways the Westland Avenue project illustrates the previous analysis of joint ventures, but it also has definite implications for future joint ventures where the partners are struggling to overcome the lack of development subsidies.

Drawing on the Westland Avenue case, and the earlier part of the report, Chapter VII concludes the report with a discussion of joint venture strategies in an era of scarce development subsidies.

CHAPTER II

CONSTRAINTS ON COMMUNITY DEVELOPERS

To begin understanding why community developers enter joint ventures, and what the critical elements of those partnerships are, it is important to understand certain aspects of the housing development process that have particular bearing on community developers. Community organizations acting as housing developers have several weaknesses compared to most private developers. Community developers are severely under capitalized, ie. they lack substantial financial resources including short-term cash and long-term financial assets, or "net worth". Many community development groups have no significant "track record" of development experience, and must rely on outside technical assistance to provide development skills. They are also frequently perceived as lacking long-term stability and have a reputation for sacrificing financial feasibility for program excesses.¹ These weaknesses become great disadvantages to CDC's doing housing development and as a consequence it is very difficult for community developers to complete a housing development without a private developer partner. Thus, joint ventures are most often struck because the best alternative -- acting as the sole developer -- is not available to the community development group.

The following is a brief discussion of the constraints facing community developers in housing development, and which often lead to joint ventures. As background the limited dividend sponsorship and equity syndication is explained, and then the major constraints are discussed in more detail.

Limited Dividend Sponsorship and Equity Syndication

Sponsorship form describes the legal entity that is responsible for a subsidized housing development and borrows funds for the project via a mortgage. The two predominant forms of sponsorship forms chosen by developers have been non-profit and limited dividend.² During the 1960's and until the early 1970's, community organizations were characterized by non-profit sponsorship, whereby the project would receive 100 percent financing through federal mortgage guarantees or state housing agencies.³ The non-profit sponsor -- would receive a development fee to cover most of its costs, and except for outside technical assistance would be the sole developer and owner of the project.⁴ By definition, the non-profit receives no cash benefits from ownership, and tax benefits are of no value because the organization is tax-exempt.

Starting in the early 1970's, community developers began using the limited dividend sponsorship form, previously only used by private developers, because it offered certain financial advantages over the non-profit form. Non-profit sponsorship contained no financial provision to cover rising construction costs and cost overruns, escalating operating expenses and vacancies.⁵ Non-profit developers, entering into their first development, often had no other financial assets to cover these costs, which in some cases led to foreclosure.⁶ Limited dividend sponsorship, for reasons discussed below, often provided some financial margin for absorbing unexpected costs and as a consequence has become very attractive to both non-profit and for-profit developers. Since the early 1970's, the vast majority of subsidized housing developments, and all of the joint ventures discussed here, have had limited dividend sponsors.

Differences between the two sponsorship forms are quite significant.

Limited dividend sponsors are for-profit developers whose return from revenues is limited to six percent of equity investment.⁷ Financing for limited dividend sponsors is also different. Only 90 percent financing is available for limited dividend sponsors, as opposed to 100 percent for non-profits. This is an exaggerated difference, however, since the limited dividend project costs include a 10 percent developers fee, referred to as Builder/Sponsor's Profit and Risk Allowance, or BSPRA, on top of materials, labor costs and other fees.⁸ Thus, the mortgage financing typically covers 98 percent of the actual development costs depending on acquisition costs, and the 10 percent developer's fee is "paper equity", not actually invested in the project. Figured this way, the difference in available financing between the two sponsorship forms is very small, except that the "paper equity" becomes very important for equity syndication, discussed below.

The most important difference between the sponsors is that limited dividend sponsors can benefit from housing subsidies built into the federal tax system, whereas non-profit sponsors cannot. Through a process referred to as equity syndication, limited dividend sponsors receive an extra source of capital which becomes profit, but is also available to cover construction cost overruns and operating deficits.⁹

Various provisions in the tax code allow the accelerated depreciation of real estate for tax purposes, which effectively shelters an investor's income from taxes. These provisions are particularly valuable for owners of low and moderate income rental housing. Section 167(k) of the Tax Act of 1969, for example, allows the total depreciation of rehabilitation expenses for low income housing over a five year period,¹⁰ and similar provisions exist for newly constructed low income rental housing.¹¹

The value of these provisions to limited dividend sponsors is that they can rely on these tax benefits for their profit -- provided they have sufficient income to shelter -- rather than income resulting from high rents or the future sale of the building. As long as the project is well managed and the housing subsidies keep it operationally stable, the owner will realize profits through tax benefits.¹²

If, however, the owner does not have a large income from other sources, the tax shelter is of no value. Non-profit sponsors, by definition have no taxable income so there can be no tax benefits resulting from the project. Limited dividend sponsors, on the other hand, can take advantage of equity syndication, where the developer sells ownership shares in the project to investors who receive the tax benefits. This is accomplished by forming a limited partnership, with investors as limited partners (so called because their liability is limited to the amount invested) having minimal control over the project. The developer receives the proceeds from selling the equity shares and becomes the general partner with full responsibility for completing and operating the project, and retains a small remaining ownership share.

The syndication proceeds are the private developer's profit and a cushion for absorbing unexpected expenses, or for the community developer, an opportunity to enhance the project further by investing the proceeds back into the building or management. Proceeds are typically about 25 percent of project costs. When the 10 percent "paper equity" is removed, the developer has actually financed 125 percent of costs.¹⁴ Compared to 100 percent financing for non-profit projects, limited dividend sponsorship is clearly preferable.

To illustrate the effect of equity syndication on a housing project's financing and the developer's profits, the following summarizes the equity syndication for Brightwood Housing Associates, a joint venture discussed in more detail later. The final project consists of 132 units, a mixture of rehabilitated buildings and new construction, with both subsidized and some market-rate units.¹⁵ A total mortgage of \$10.5 million was obtained, which was to cover nearly all of the expected project costs. The project was syndicated for a gross amount of \$2.5 million. From this amount, approximately \$400,000 was paid in fees to lawyers and a syndication broker for packaging and selling the equity shares to investors. Of the remaining \$2.1 million net syndication proceeds, another \$600,000 was used to pay construction cost overruns, leaving \$1.5 million for distribution to the community developer, Brightwood Development Corporation, and the private developer, the MB Group. The syndication proceeds are not all paid at once, but rather the investors make a series of payments over several years, five years in this case. Brightwood Development Corporation will receive nearly \$400,000 as its share of syndication, part of which has been used to pay expenses incurred during the development, and \$300,000 has already been committed to another housing rehabilitation project. (Brightwood Development Corp. has not actually received all of the payments, but was able to borrow funds using the syndication receivables as collateral.)

The Brightwood case illustrates the financial benefits of equity syndication, which is only available to limited dividend sponsors. Total project costs were approximately \$11.2 million including overruns, while mortgage and net syndication totalled \$12.6 million. Other similar examples of community developers benefitting from syndication will be detailed

later.

Despite the financial benefits afforded limited dividend sponsors, community developers still face several major constraints in their efforts at housing development, which have been categorized below into three areas: financial constraints; mortgage and subsidy requirements, and equity syndication requirements.

Financial Constraints

Cash and credit used to pay early development expenses are the first restraint on community developers, and often prevent them from initiating projects in the first place. These up-front costs will often amount to several hundred thousand dollars, including land and building acquisition, initial feasibility studies, preliminary architectural, engineering and legal fees. Up-front costs continue to rise as the project moves toward initial closing (final mortgage commitment and first release of construction loan funds) and while most of the costs are repayed as part of the mortgage, the developer must cover them until the start of construction. For instance, the Roxbury Action Program (RAP) in its development of Marcus Garvey Gardens had accumulated during a seven year period expenses of over \$400,000 for architectural and design fees, legal and application fees, and land acquisition, all of which was repayed at initial closing.¹⁶ Of those costs, \$225,000 was owed to the project's architects who had worked on a contingency basis since its inception. Lawyers and other consultants also worked on a contingency basis and RAP also accrued property tax debt to the City for the land, which lay unused for several years. Without these various forms of "bridge financing", RAP would have had to either abandon the project, or join forces with a private developer at a much earlier point in the development process.

Thus, one reason for joint venturing is to share these up-front costs with a private developer.

Larger developments will have larger up-front costs, which prevents community developers from attempting such projects. In the Brightwood development mentioned earlier, the Department of Housing and Urban Development (HUD) required a financing fee of 1.5 percent of the mortgage at the time of commitment (but well in advance of initial closing), or nearly \$160,000 plus an additional \$11,000 every three months until the project is completed.¹⁸ The financing fee, in this case, was the responsibility of the private developer, MB Group. Well established private developers have an important advantage in covering such large, but short-term, costs; they can frequently use bank credit rather than their own cash to provide the funds. This was in fact the case in the Brightwood joint venture.

Mortgage Financing and Subsidy Requirements

Even if up-front costs can somehow be financed, further requirements for obtaining mortgage financing and subsidy commitments may force a community developer to joint venture. The most important of these are net worth, credit and "working capital" requirements. The Massachusetts Housing Finance Agency (MHFA), which provided subsidized financing for several of the projects discussed here, serves as a good example. MHFA requires developers to meet "threshold requirements" in several areas including the "availability of sufficient financial resources to complete construction of the proposed development" and for limited dividend sponsors, a net worth requirement with "significant liquidity" of 15 to 20 percent of the mortgage amount.¹⁹ Mortgage security requirements, such as a four percent letter of credit and syndication guarantees are an

additional strain on non-profit resources.²⁰ Furthermore, the developer must have the appropriate housing experience and capacity to complete the project. "A new developer without sufficient experience, expertise of staff capacity is encouraged to strengthen his or her record by entering into a joint effort with a developer who has an established record of success..."²¹

Most community developers do not meet these threshold requirements. Few will have the financial assets and they are viewed as lacking experience and expertise; "it is a lot easier to do business with people who are experienced"²² remarked one MHFA loan officer, referring to his preference for private developers. According to a senior mortgage officer at MHFA, these threshold and security requirements were developed with the knowledge that they would force community developers to joint venture, and this was an intended effect of the policies.²³

Similarly, HUD frequently imposes net worth and working capital requirements on sponsors for mortgage and subsidy approval, and will judge a developer's capacity to complete a project based largely on financial resources, stability, and development history.²⁴

Requirements For Equity Syndication

Finally, community developers are restricted in their ability to syndicate their projects, stemming from both Internal Revenue Service (IRS) requirements and from the need to provide security to investors.

IRS requirements for limited partnerships, called Safe Harbor Rules,²⁵ must be met to prevent the partnership from being treated as a taxable corporation. The most difficult of these to meet for community developers is the net worth requirement, which requires the general partner's total net worth to equal 15 percent of syndication proceeds.²⁶ Thus, in the case of Brightwood Housing Associates, where capital contributions

by investors were \$2.5 million, the general partners needed a net worth of \$375,000. Community developers unable to show this net worth -- as was the case with Brightwood Development Corporation -- will have to joint venture with a private developer to provide the financial assets.

Community developers will also frequently need the private developer's reputation to secure equity syndication. Equity investors are usually located through brokers, or equity syndicators, rather than directly offering the partnership shares to potential buyers. Equity syndicators, and their investors, generally view non-profit community developers as lacking stability because of their volunteer board of directors and lack of profit incentives.²⁷ By adding a more experienced developer with a reputation and financial assets, the project is more easily sold to equity investors and for a larger sum of money.²⁸

In summary, community developers have difficulty as limited dividend sponsors largely because of their lack of financial resources and development experience. Joint venturing is frequently seen as a way to overcome these constraints since the private developer in the partnership can provide those resources which the community developer lacks: short-term cash and credit; developer expertise and reputation; and significant financial assets for net worth. Unfortunately, the options for community developers undertaking a housing development are slim. Non-profit sponsorship is virtually infeasible because of the lack of syndication proceeds, so that the only alternative to joint venturing is acting as the sole general partner, which due to the constraints discussed above is only available to the most experienced and well financed community development groups. For fledgling community developers without financial assets or experience, joint venturing is a necessity if the community developer is to participate

in the project in any capacity other than a passive advisor.

CHAPTER III
COMMUNITY AND PRIVATE DEVELOPERS:
CONFLICTING GOALS AND INTERESTS

Community-private partnerships are, in some ways, no different from most business joint ventures. The basic principle is that the partners have complementary resources and the participation of both is needed to complete the development. But a joint venture between a non-profit, community-based organization and a for-profit private developer is by no means a typical business relationship. The two partners have very different motivations in the development, and their goals are often in conflict. Where the private developer is primarily involved for the profit opportunities, the community developer usually has a more complicated set of social, political and financial goals for the project.

This chapter examines the goals of community developers in housing development, and their specific objectives in joint ventured projects. By also considering the objectives of private developers, it becomes clear where the two partners' interests are in conflict in a joint venture. This is an appropriate introduction to the following chapters because the differing goals and the resulting conflicts are behind most of the negotiating issues between the joint venture partners. The resolution or compromise of these issues is reflected in the role that the community developer takes in the partnership and ultimately in the housing development itself.

The Goals of Community Developers

Community development groups, either CDC's, tenant organizations, or civic groups, usually undertake housing development to further a variety of goals. These include not only housing goals, but also social, political and economic goals as well. As such, housing development programs are often a critical component in a broader community development strategy by community organizations. The following is a brief description of the major goals which, depending on the organization, most community housing developers are trying to achieve to some extent.

Housing goals: The most immediate goal is providing decent and affordable housing to community residents through the subsidized development of new construction or rehabilitated housing. This also includes physical improvement of the neighborhood such as renovating abandoned buildings and creating attractive public spaces.

Economic Development Goals: Housing developments are frequently used by community groups to achieve broader economic development goals by creating temporary and permanent jobs for community residents, creating work for local subcontractors and suppliers, and generally stimulating the local economy.¹

Organizational Goals: Successfully completing a housing development increases the credibility and political strength of a community organization. This is in addition to any income from the project which pays staff, helps cover overhead, and increases the organizations assets.

Community Participation Goals: Community housing developers are often attempting to affect the housing development process by promoting community input into design decisions, hiring issues during construction, and management operations.² Successfully creating a more open development

process may be a goal in itself.

How, then, do community developers expect to achieve these goals through a joint venture with a private developer? Basically, community developers enter joint ventures seeking two main objectives: Maintaining some control over the project's development and management, and receiving a share of the economic benefits that result from equity syndication.

The control objectives relate very directly to all of the community development goals mentioned above. Design control is important to ensure that the project meets the community group's own criteria such as height restrictions or providing large family units, both as an important area for community participation and to further the community developer's own physical development goals for the neighborhood. Control is also important to ensure that the housing development will remain as subsidized housing or some preferred income mix that is originally planned. Management control is important not only to ensure proper management, but also because the community developer will often have its own priorities regarding tenant selection and management. In one case discussed later, the community developer wanted management control explicitly to ensure that neighborhood residents would be given priority for renting units. Similarly, community developers may want guarantees for local hiring quotas or minority hiring quotas from the general contractor.

Maintaining project control also is important for the organization's own interest, since ownership and control add to the group's reputation and development "track record". The more control that the community developer has over the project, including planning and design, construction and management, the more likely it is to further the organization's

reputation and political strength in the community. Riverside/Cambridgeport Community Corporation, for example, achieved its first visible development through a joint venture. Similarly, the Fenway Community Development Corporation was virtually dormant prior to its involvement in Westland Avenue Associates. After completion of a highly visible project in the Fenway, the CDC is one of the stronger community groups in the neighborhood and has an increasing membership.³

Conversely, the Roxbury Action Program was severely criticised by some community leaders and the media because of its small ownership share in Marcus Garvey Gardens -- less than 1 percent -- and ultimately its lack of control.⁴ As an organization devoted to increasing the resources of Boston's Black community, retaining ownership and control over the project was very important, and after ownership was transferred primarily to a white construction firm and 'doctors in Florida', RAP was viewed as having sold out.⁵ While the value of ownership in this case is largely symbolic, and RAP's reply was that they voluntarily gave up ownership for the economic benefits, there is no doubt that RAP lost credibility because of the small amount of control that they were able to retain.

The financial benefits from joint ventures are also used to further community goals, and this is a major difference between syndicated developments that include community groups and those that do not. Whereas private developers use syndication proceeds as a profit margin to reward risks, community developers use the extra money to enhance the original project or stimulate other housing development.⁶ Community developers will frequently use proceeds to provide additional amenities to the project such as a day care program, recreation hall or better landscaping, to reduce the project's rents or improve operations. In one case discussed in

Chapter 4, syndication proceeds went to support an operating deficit.

Alternatively, a community developer can use the proceeds from a joint venture to increase the organization's net worth and financial stability, which enables it to initiate and develop other projects. This was the case with the Brightwood Development Corporation, mentioned earlier, which used \$300,000 in proceeds to start a 51 unit multi-family housing rehabilitation project.

Besides financial benefits, housing development also entails financial liability which community developers may share with their private partners. As with private developers, community developers will seek the greatest share of syndication proceeds possible, while minimizing its liability for construction cost overruns or operation deficits. With potential benefits as large as mentioned above, community developers are clearly not unconcerned with the financial feasibility of their housing developments, as they are sometimes characterized.

Private Developers: The Other Partner

As mentioned above, private developers are primarily interested in subsidized housing development because of the potential for large profits. There are two major sources of profits in limited dividend projects: syndication proceeds for the developer, and profits from construction overhead and fees for the general contractor.⁸ Thus, developers will want a large share of syndication to ensure their profit, particularly if the developer is not also the contractor. In many joint ventures, the developer and contractor are the same, which gives the developer an extra source of profit, and theoretically more flexibility in negotiating a share of syndication proceeds.

Private developers are equally concerned about control as community developers. From the private developer's perspective, control is necessary to design a project that is profitable, and minimize any losses that might result from cost overruns or operating deficits. The private developer is concerned that the non-profit community developer will have unrealistic objectives for the project, such as design amenities, minority hiring and providing social services at the expense of financial feasibility.⁹ Not confident that the community developer has the ability to properly control the development, the private developer will prefer complete control over design and construction, with the community developer possibly taking a role in operation management.¹⁰ In lieu of this situation, a private developer will try to keep the community developer out of day-to-day operations, and instead limit them to reviewing final drawings, approving major change orders, and agreeing on a management agent.¹¹ In this way, the developer hopes to avoid major delays due to constant interference by the community partner, with its slow decision making processes and non-financial priorities.

Maintaining some control over management is also important because of the continued potential for reduced profits. If the project is poorly managed and operates at a deficit, the developer will be responsible for some of that loss. In addition, final syndication payments are often contingent upon stable operations two or three years after construction completion. Poor operations may thus result in reduced or delayed syndication proceeds.

Along with maintaining control, private developers also want the community developer to take some liability for construction and operating costs. In some cases, private developers will want the community partner

to take liability for very specific construction costs for which the community developer is responsible. (This is clear in the Westland Avenue Associates case, discussed in Chapter VI). Similarly, if the community developer is responsible for management, the private developer may insist that it also take liability for operating deficits.

There is also the issue of community responsibility and reputation. Is it possible that some developers will be interested in joint venturing with a community group out of a sense of "responsible development?" Alternatively, do private developers feel that such a partnership will enhance their reputation as a "responsible developer", either to the community they build on, or to the government agencies they rely on for financing?

Community groups often seek developers that they regard as more community-minded than others, and a small group of developers, such as the Housing Economics/George Macomber team, and Ed Abrams, have formed several joint ventures with community groups. This is clearly due in part to their willingness to work with community groups, but it is not necessarily the result of a special interest in promoting such partnerships. Subsidized housing developments can be highly profitable to the contractor and developer, and because of the guaranteed rental income, are less risky than many market-rate developments. This is the main reason why these developers continue to produce subsidized housing developments, and suggests the main conflicts that exist. In the following chapter which describes four joint ventures in more detail, it will be important to observe how these conflicts arise in specific issues, and how they are resolved (or remain unresolved) through the role of the community developer in the partnership.

SUMMARY OF COMMUNITY AND PRIVATE DEVELOPER CONFLICTS

Community Developer

- Wants to maximize control to promote community participation in development process, and enhance the organization's development reputation.
- Wants to promote design criteria based on community priorities, with the objective of maximizing housing gains from the project.
- Wants management control to ensure and promote further community priorities regarding tenant selection, management, and resale.
- May want to include economic/employment objectives in construction, such as resident or minority hiring quotas.
- Wants to maximize the community developer's share of syndication proceeds.
- Wants private developer to cover up-front development costs, particularly larger amounts such as financing fees.
- Wants private developer to take liability for construction overruns and operating deficits, essentially guaranteeing its own syndication proceeds.

Private Developer

- Wants to minimize community participation to ensure profitability, and because of the potential for project delays as a result of community interference.
- Wants to limit community control of design, fearing unreasonable design objectives at the expense of financial criteria.
- Wants to limit community control over management, fearing unreasonable objectives and lack of organizational stability, particularly in first few years of operation.
- Usually opposed to hiring quotas because of the potential for increasing costs, causing delays, and union difficulties. (However, private developers differ widely on this issue)
- Wants to minimize the community developer's share of syndication proceeds.
- Wants to put as little cash at risk as possible, preferring the community developer to cover up-front costs.
- Wants to share liability with community developer, particularly for specific costs resulting from community design priorities.

CHAPTER IV

COMMUNITY DEVELOPER ROLES IN JOINT VENTURES

This chapter describes, largely through example, the various roles that community developers have taken in joint ventures with private developers. The first part of the chapter briefly describes four community-private joint ventures that collectively illustrate a wide range of roles and circumstances surrounding the projects.

Rehab I, a project by Inquilinos Boricas en Accion, is an example of a community developer in a managing general partner position, with the private developer having a minor role. 808 Memorial Drive is a joint venture where Riverside/Cambridgeport Community Corporation used its political strength to change the design and rent structure of a project started by a private developer. In Marcus Garvey Gardens, the Roxbury Action Program was facing financial collapse and ended up with little control over a project it had worked on for eight years. Brightwood Housing Associates is an example of a strong role for the community developer, Brightwood Development Corporation, but where the private developer is still the managing partner.

The second part of this chapter integrates these case illustrations into a more thorough analysis of joint venture roles, based on the community developer's partnership position, syndication benefits, and control over various phases of the project. This analysis is summarized into three general joint venture roles for community developers.

PART ONE: FOUR CASE ILLUSTRATIONS OF JOINT VENTURE ROLES

Inquilinos Boricas en Accion (IBA), Boston, Mass.¹

Inquilinos Boricas en Accion, or IBA, is one of the most successful community housing developers in the Boston area. Since 1971, it has completed five major housing projects, totalling nearly 600 units, a mixture of new construction and rehabilitation for both families and elderly residents. In all of its developments, IBA worked closely with Greater Boston Community Development, Inc., a non-profit organization that provides technical assistance to community housing sponsors. IBA's first project, Rehab I (later named Casas Borinquen I) was one of the first syndicated housing projects to include a community organization as the managing partner. It subsequently became a model for future EBA projects, and to some extent for other community developers.

IBA began as a predominantly Puerto Rican tenant organization -- then known as the Emergency Tenants Council, or ETC -- focusing on a group of deteriorated row houses and empty lots known as Parcel 19, an urban renewal parcel slated for demolition by the Boston Redevelopment Authority. By combining its own political and technical strength with other community and church organizations opposed to the existing urban renewal plans, IBA (then ETC) eventually won designated developer status for Parcel 19, which essentially is an option to purchase the land from the BRA. With the help of small grants and church support, and technical assistance from GBCD, the tenant group formulated its own development plan for rehabilitating the existing row houses. ETC's major goal for the project was to retain control over tenant selection and management to assure that existing residents would be the major occupants.

A strong development team was formed, including John Sherret, a local architect who had worked with community groups; Stanley Sidney, a builder who became the general contractor; and a prestigious Boston law firm. Plans were completed for 71 rehabbed units containing a mixture of bedroom sizes and four commercial spaces for neighborhood stores. GBCD and ETC submitted applications for Section 236 financing, mortgage insurance, and state and federal rent supplements. HUD gave the project a firm commitment in early 1971. A 121(A) agreement was reached with the City of Boston, whereby the project would pay approximately half the property taxes it would otherwise pay. With a land cost writedown from the Boston Redevelopment Authority, ETC purchased the properties and land also in early 1971.

At this point, the community developer made a decision that was very innovative at the time. The original plan had been to build housing as a non-profit sponsor, but GBCD recommended that ETC become a limited dividend sponsor instead. The resulting proceeds, GBCD argued, could be used to cover cost overruns and operating deficits and as seed money for other projects. The community group was hesitant to sell the majority of ownership in the project to wealthy investors after they had struggled for years to control the land. The limited dividend development would only be acceptable if ETC retained control of architecture and design, tenant selection and management, resale of the project, and received a large share of the syndication proceeds as well. To achieve this, ETC would have to become the managing general partner, that is, the partner controlling the development and operation of the project.

Despite the strong development team that ETC had assembled, it was not possible for the community organization to be the sole general

general partner. ETC had no "track record" of previous development, and investors considered it too risky for an inexperienced, non-profit organization to guarantee the construction and management. There were also HUD requirements for working capital, and IRS regulations requiring the general partner to have a net worth of at least 15 percent of the syndication proceeds. In this case, the general partner needed around \$50,000 in new worth, which ETC was unable to meet. An experienced developer was needed, who would act as a general partner lending his or her reputation and net worth, but leaving ETC as the managing general partner with most of the control over the project. ETC offered the general contractor, Stanley Sidney, \$30,000 and a 27 percent limited partnership share in the project in exchange for remaining as a general partner in the project and absorbing some of the liability and risks. In summary, ETC provided the developer designation and the land, the seed money for planning and development, and the net worth necessary to complete a limited partnership development.

Although Sidney originally wanted equal management control, ETC insisted on being the managing general partner, with Sidney taking a very minimal role in management. A management escrow account was set up, and after \$40,000 in deficits, decisions would be made equally by ETC and Sidney. This was seen as security for investors concerned about ETC's management ability. ETC also had most of the liability for development cost overruns, although Sidney had some as well. Both of the general partners had to approve any sale or refinancing of the project.

Total syndication proceeds for Rehab I were valued at \$350,000, although Sidney received a \$100,000 share as his payment. ETC received approximately \$200,000 in net proceeds, although some of its earlier expenses had to be paid from that amount. More important than these financial

benefits, ETC formed its own management firm, ETC Management, which was hired to oversee tenant selection, maintenance operations and rent collection. The syndication proceeds were partly used to provide amenities to the projects such as improved landscaping and social services.

Rehab I was only the beginning of IBA's history as a community developer. The "net worth partner" model was used in subsequent developments. In the recently completed Viviendas La Victoria II, IBA was the sole general partner providing the net worth and development reputation.

808 Memorial Drive; Cambridge, Mass.²

In early 1972, the Riverside/Cambridgeport Community Corporation (RCCC) was opposing a new housing development in its neighborhood. Zena Nemetz, an architect and recently a developer, had proposed a high rise apartment complex on the Charles River waterfront, which at the time was the site of several gas stations and repair garages. The project involved a complicated land assembly process using sale-leasebacks and the air rights above the garages, and required a zoning variance from the Cambridge Zoning Board of Appeals.

RCCC was actually a coalition of citizen groups in the two Cambridge neighborhoods, both stable, working-class areas with Riverside having a large Black population. Although the organization had only recently been formed, it was a strong political force in the neighborhoods and the City. The first president of RCCC, Sandra Graham, later became a City Councilor and State Representative. The proposed housing development on the riverfront touched on two issues that the community group was heavily involved in; increasing the supply of affordable housing and retaining public access

and views of the Charles River. Harvard University, which abutts the Riverside neighborhood, had recently expanded onto a large parcel of the riverfront to use the land for student dormitories, taking many homes in the process and greatly reducing the neighborhood's access to the river. With the memory of Harvard's latest encroachment still fresh in their minds, the neighborhood group was not going to allow a "luxury enclave" to become another barrier between themselves and the river. With the support of the Cambridge Planning Board, RCCC successfully stopped the zoning variance with the intent to permanently halt the development. Recognizing that the project could not continue without the approval of the neighborhood group and the Planning Board, Nemetz soon proposed to RCCC that they work together to arrive at an acceptable plan which could then be jointly submitted to the Zoning Board of Appeals. Seeing an opportunity for subsidized housing development, RCCC moved from a position of total opposition to the project to the formation of objectives for the development if it should proceed. RCCC wanted some subsidized housing that would be affordable to existing neighborhood residents and significant design changes to improve access to the river and lessen the visual impact of high rise buildings. A portion of the syndication profits would allow RCCC to work on other housing projects.

The community group was admittedly inexperienced in housing development and real estate negotiations. Although RCCC knew its bargaining position was strong, it had no idea how far the developer could be pushed before being forced to abandon the project. Peter Bruckner, a Cambridge architect and vice president of RCCC, and other RCCC members negotiated with Nemetz and with the developer's architects, changing the unit mix to include many three and four bedroom units. The parking garage was put

underground -- an important change for access and visual reasons -- and the orientation and massing of the building was changed, although the height stayed the same. Most participants agreed that the design was significantly improved. The Massachusetts Housing Finance Agency agreed to finance the project and provide subsidies. Seventy-six units would be low income and 136 moderate income out of the total 301 units.³

This new development proposal, with the support of RCCC, was approved by the Planning Board and received a variance from the Board of Zoning Appeals by the end of 1972. At the start of construction, RCCC received \$100,000, or ten percent of the net proceeds from equity syndication, as its share in the development and became a "sponsor limited partner", with some control over the choice of the management agent, but little liability for cost overruns.

Zena Nemetz had put tremendous effort into the land assembly, but in the end needed very little equity, since roughly 98 percent of the project was financed by MHFA. She received most of the syndication proceeds (which were higher because of the tax provisions for low income rentals) although she also absorbed some modest construction cost overruns. As important was the subsidized financing and secure rent contract from Section 236 rent supplements for many of the units. The market-rate luxury apartments, as originally planned, would have been a far more risky development.

Bruckner was initially fairly pleased with the results. RCCC had achieved a riverfront development that included low and moderate income housing. The design was improved, although the biggest problem of riverfront access was not solved. After construction began, it became impossible to build the garage underground due to soil conditions and it was built

above ground instead. Perhaps most important, RCCC received its first large influx of money, using its share of proceeds to develop another thirty unit subsidized housing project. RCCC was later criticised for the results of its joint venture. Why, other community activists ask, did the community developer not receive 50 percent of the syndication proceeds, since it clearly had the power to stop the development? Why did the project remain a high-rise when RCCC was originally opposed to that design?

Marcus Garvey Gardens; Roxbury, Mass.⁴

After completing two small housing rehabilitation projects in the Highland Park neighborhood, in 1972 the Roxbury Action Program (RAP) began planning its largest project to date -- the new construction of 140 units of elderly and family housing in John Elliot Square. Eventually named Marcus Garvey Gardens, after the famous Black leader and patriot, it was the key to RAP's goal of creating a "model Black community ... where all races and incomes could live but where the tone, character and leadership would be established by the Black majority."⁵ It was thus crucial that the Black organization retain control and ownership of the project. The initial plan was to syndicate ownership shares to limited partners with RAP becoming the sole general partner with management control and partial ownership. They had soon purchased the land for the development, and hired the Black-owned architecture firm of Stull Associates. A major goal of the project was to stimulate local Black economic development and enterprises, and a minority-owned construction firm became the general contractor.

By 1976, RAP was still struggling to obtain financing commitments, and the project was transferred to financing under the Massachusetts

Housing Finance Agency. During this period, RAP also accrued tremendous debts both from the Marcus Garvey Gardens and other operations totalling over \$500,000. RAP's only hope for repaying these debts was through the Marcus Garvey project, which placed increasing emphasis on the financial benefits of the project.

In 1977, RAP received a mortgage commitment from MHFA for a 125-unit development version of Marcus Garvey Gardens, conditional on RAP finding a financially strong and secure partner to act as a co-developer. This action by MHFA was prompted partly by RAP's growing instability but also by new requirements adopted by the agency for approval of sponsor/developers. RAP could not meet the new conditions and consequently sought a joint venture partner who would provide the needed financial assets but allow RAP to remain a co-general partner with equal control over the project. It would not be easy to find a partner willing to provide all the forthcoming financing, assume most of the risk, and share control with the community group.

The project was also in need of a new general contractor, and unable to find another minority contractor, RAP chose the Macomber Construction Company. In lieu of a minority contractor, RAP wanted assurances of 50 percent minority hiring and 30 percent minority subcontractors for the project, and eventually compromised at a 40 percent hiring quota.

RAP began negotiation with several potential general partners, including two minority firms. In all cases, the private developers insisted that RAP take a limited partner position, and also take responsibility for most construction overruns and operating deficits. Six months of negotiations were unsuccessful, as RAP watched its goal of Black community control over Marcus Garvey Gardens rapidly slip away.

By early 1979, RAP now had debts of over \$650,000 and urgently needed the mortgage closing and syndication proceeds to keep the organization from bankruptcy. RAP approached George Macomber, of Macomber Development, to be the general partner, as a last desperate attempt to save the project. As the builder and developer, RAP hoped that Macomber would be willing to use a share of syndication to cover construction costs above the MHFA mortgage. Macomber would also be motivated to control construction costs and reduce the length of construction period. Macomber, along with Robert Keuhn of Housing Economics, agreed to become the general partners for the development under the condition that RAP become a limited partner similar to the position offered in previous negotiations. The City of Boston was also preventing RAP from taking a general partner position. Because RAP had an outstanding property tax bill, the Boston Redevelopment Authority would not allow the necessary 121(A) agreement if RAP took a general partner position. Desiring to see the development proceed and pay its debt from proceeds, RAP accepted Macomber's limited partner offer. RAP's goal of Black control, symbolically at least, was lost.

RAP received, as a "development fee", a total of \$600,000 from syndication proceeds, which was in addition to its direct costs for the project -- such as architectural fees and land costs -- which were largely covered out of the mortgage. RAP was only liable for \$30,000 in construction cost overruns. In contrast, Macomber absorbed \$220,000 in actual construction costs above the mortgage amount. Originally, RAP and Macomber were both designated a management agent for the project, but RAP later dropped its own agent having determined that Macomber's was acceptable.

The final 161 unit, largely elderly project was completed in late 1980, more than eight years after initially conceived. Lloyd King, the

executive director of RAP since 1978 feels reasonably pleased with the project despite the loss of control. Because of RAP's instability, he concedes, it was probably best that its responsibility for completing the project was reduced. On the positive side, the minority hiring record for construction was 67 percent, and RAP has continued as "advisors" in tenant selection and management.

RAP was severely criticised in the media and much of the Black community for its lack of formal control and ownership in the final partnership. An editorial in The Boston Globe called the development part of a "white takeover" of the Highland Park area, and an example of white developers profiting from the Black community.⁶

Brightwood Housing Associates; Springfield, Mass.⁷

The Brightwood Development Corporation (BDC), a non-profit community development corporation in Springfield's North End had developed a considerable record of developments by 1979. Its for-profit predecessor, Brightwood Corporation, had completed several projects including a shopping center and super market, started a credit union, and rehabilitated several abandoned buildings with federal 312 loans and Community Development Block Grand funds. Yet Austin Miller, the executive director of BDC, felt that its latest project was too large and complicated for the small community developer to complete as a sole developer.

BDC, with the help of several present and former public officials and housing specialists in the Springfield area, had completed with unusual success the initial planning for a major housing rehabilitation and new construction project. The Brightwood project included 110 units of Section 8 housing in several buildings, and 76 market-rate units in 8

rehabilitated buildings. BDC had received a \$25,000 grant to obtain purchase options on sixty lots by December, 1979. Marvin Siflinger, director of the Boston HUD Area Office had given preliminary approval to Section 8 subsidies, and BDC had applied for Section 221(D)(4) mortgage insurance and a \$2.1 million Urban Development Action Grant, or UDAG. By assembling a very strong, comprehensive housing and commercial development proposal for the blighted neighborhood, BDC convinced the city administration to give full support to its various applications.

Despite these accomplishments, Miller and other housing experts involved in the planning felt that a private joint venture partner was needed, primarily because of the financial resources required to close the financing (cash and credit needs were estimated at close to \$1 million, including \$300,000 in up-front costs and GNMA "tandem" fees) but also because BDC had no experience in Section 8 projects, and a private developer with such experience would help the development. After a brief search, BDC began working with the MG Group, a Boston-based developer and property manager with substantial Section 8 experience, and formed Brightwood Housing Associates. BDC's main goal in the partnership was to establish a "50/50 decision making process,"⁸ where the partners would be equal co-developers in the project. Syndication proceeds were less important to BDC, and Miller was willing to forego a major share of proceeds for his goal of equal control. The partners agreed to a 75 - 25 percent split of net proceeds favoring the MB group, and operated from an understanding of 50/50 decision making. These agreements were not detailed in writing.

As part of the initial agreement, BDC was to cover all up-front costs except the GNMA fee and other closing costs which were MB's responsibility. To cover its costs, BDC received a \$135,000 loan from the

Massachusetts Community Development Finance Corporation. The partners worked together finalizing architectural plans and securing the financing and subsidies.

The first major conflict between the partners occurred when it came time to pay the GNMA commitment fee. MB Group decided not to pay the fee (which reserves the financing for the project) feeling that it would be available at a later date, for a larger mortgage, and MB would save monthly interest charges before initial closing. MB was hesitant to put its own financial resources at risk. Miller of BDC was concerned that the financing might not be available again and the project would be lost, but more importantly, he was disturbed that MB had made the decision on its own without including BDC in the decision and consultations with HUD. The 50/50 decision making, from BDC's perspective, had been broken.

As the project approached initial closing, Austin Miller realized that he and MB did not have the same understanding of their initial agreement regarding co-development. It was imperative to BDC to retain equal control through construction and management. MB, however, had understood the 50/50 process to end at initial closing, when MB would become the managing general partner with a lesser role for BDC. With 75 percent of the proceeds, MB also had a 75 percent of the liability, and with such large risks would not give equal control to a community group that might interfere with sound business judgement and financial decisions. Without a written agreement, there was no way of verifying either partner's position.

After tense negotiations, a compromise was eventually reached, where MB would be the managing general partner from construction until February, 1985, when BDC would become the managing partner and MB would revert to a limited partner position. During the earlier period, BDC

would have an equal voice on several decisions of importance to the community developer, including changes in the construction contract, changes in the management agent, and sale or refinancing. The total long-term control was extremely important to BDC.

Financing was secured, with a mortgage for \$10.5 million, \$1.5 greater than the earlier application. Total syndication was \$2.5 million, and net after fees and construction overruns was \$1.5 million, of which BDC received nearly \$400,000. Both the Section 8 and market-rate developments were completed and largely rented by November, 1982.

PART TWO: A GENERAL SUMMARY OF JOINT VENTURE ROLES FOR COMMUNITY DEVELOPERS

Partnership Position of the Community Developer

The legal position of the community developer in the limited partnership is a general indicator of its overall role in the joint venture. Besides specifying the community developer's legal control over various aspects of the project, the partnership position may also determine its liability for construction overruns and operating deficits, and its share of syndication proceeds. Along with these legal statements of the community developer's role, there is also considerable symbolic importance to being a general versus limited partner in the development.

Limited partnerships normally have two partnership classes: general partners, with management responsibility and corresponding liability, and investor limited partners who purchase equity shares and receive the benefits as owners described in Chapter 2, but have no management authority and only limited liability. In community-private joint ventures, a third class of partner is frequently created which suits the needs of the community developer, referred to as a "special" or "sponsor" limited partner. This third partnership form is useful when the community developer either does not want to be a general partner because of the liability for cost overruns, or cannot be a general partner because of resistance by the private developer or others. A special limited partner will allow the community developer certain rights over management (which investor limiteds cannot have) and receive a share of syndication proceeds without becoming a general partner, yet have limited liability similar to an investor limited partner.

The four joint ventures described above illustrate the main

partnership positions that community developers have taken in joint ventures; managing general partner; minor general partner; and special limited partner.

The managing general partner position allows the community developer almost complete control over the development and on going operation of the project. The private developer will still be a general partner, usually for net worth purposes, but with a relatively minor role in management. This is the strongest partnership position available to a community developer in a joint venture.

This position is best illustrated by "ETC Rehab I", where the Emergency Tenants Council was the managing general partner, and Stan Sidney took a nominal general partner position. Provided operation deficits did not exceed \$40,000, ETC retained virtually complete control over the project's management, tenant selection and future resale. ETC also carried a large amount of liability for cost overruns (up to the first \$100,000) and operating deficits (half of the first \$40,000).

In the minor general partner position, the community developer is still a general partner, but with limited control over certain decisions. The private developer is the managing general partner in this case, with the majority of control and responsibility for the project. Along with the community developer's lessened sphere of control is reduced liability for cost overruns.

Brightwood Housing Associates illustrates a community developer with a minor general partner position. Brightwood Development Corporation, (BDC) and the MB Group (MB) reached a partnership agreement whereby BDC must approve final drawings or specifications and any changes in the construction contract, any sale or refinancing of the project, and the renewal

of the management agent's contract.⁹ MB retained control over most of the partnership's business, including hiring decisions and payment of expenses.¹⁰ BDC and MB divided liability for overruns and deficits in the same proportion as syndication proceeds: 25 percent to BDC, and 75 percent to MB. The most interesting aspect of BDC's partnership agreement is that a side agreement specifies that the positions of the general partner, with the private developer having a minor role.

The special limited partner position as mentioned above, provides the community developer with control or veto power over only very few and specific decisions such as tenant selection or management agents, and is usually accompanied by minimal liability. In general, private developers prefer community developers as limited partners because it leaves the private developer, as the sole general partner, with complete control over most decisions.

Both Riverside/Cambridgeport Community Corporation (RCCC) and the Roxbury Action Program (RAP) took special limited partner positions in their respective joint ventures. In the original agreement with Macomber/Keuhn, RAP retained control over the project's management agent. It also had partial liability for extra costs due to construction delays, and any change orders required by MHFA.¹¹ In the end, however, RAP gave up its control over the management agent in exchange for further reduced liability to a maximum of \$30,000. The community group participated in tenant selection but remained in the partnership as an advisor only.

Westland Avenue Associates, a detailed case study in the second part of this report, is also an example of a special limited partner position where the community developer has limited control over specific decisions.

Syndication Benefits

The distribution of syndication proceeds, sometimes referred to as "partnership share", is also a general indication of the community developer's role in the joint venture. Community developers with a large partnership share (50 percent, for example) are more likely to also have a managing general partner position and the control that is associated with it. Conversely, a community developer with special limited partnership might be expected to have a smaller share of syndication proceeds. Marcus Garvey Gardens, however, is a clear exception to this rule since RAP received more than 50 percent of the proceeds but became a special limited partner with virtually no legal control.

When considering the distribution of proceeds to each partner, it is not really adequate to consider just the partnership share, ie. the percentage to each partner. Instead, several other aspects should be taken into account, including: development costs not included in mortgage financing, but deducted from syndication proceeds before distribution, (ie. reducing net syndication but not affecting relative distribution); development costs incurred by each partner which must be covered out of respective proceed shares, effectively reducing that partner's share; liability for construction cost overruns and operating deficits which may be deducted from syndication proceeds; and restrictions on the uses of net syndication proceeds by each partner, such as the creation of management reserve fund, or paying for improved landscaping, day care facilities, etc...

It is also important to realize that, whereas syndication proceeds are the community developer's only source of financial benefit, private developers will also profit from construction or management contracts,

if they also take that role in the development.

A wide range of syndication benefits is illustrated by the joint ventures described earlier:

- Inquilinos Borricas en Accion, in "ETC Rehab I" received nearly \$200,000 of the total \$350,000 gross equity syndication. Of this amount, \$20,000 went toward a management reserve to cover operating deficits, and IBA had liability for construction overruns up to half its net syndication share, or nearly \$100,000.

- The Roxbury Action Program received \$600,000 as a "developer's fee" for Marcus Garvey Gardens, over half of the net syndication proceeds with no restrictions other than \$30,000 liability for cost overruns. All other development expenses which RAP had incurred were paid from the MHFA mortgage.

- Brightwood Development Corporation received 25 percent of net syndication proceeds remaining after construction cost overruns. Thus, of the \$2.1 million net proceeds (after syndicator's fees), \$600,000 went toward cost overruns, and BDC received approximately \$400,000 of the remaining syndication.¹² Of these proceeds, \$70,000 was used to pay BDC's development costs not already covered by the mortgage.¹³

- Riverside/Cambridgeport Community Corporation received \$100,000 in syndication proceeds, or 10 percent of total proceeds. Although there were construction overruns and operating deficits on the project, RCCC was not liable and utilized the full amount in subsequent housing developments.

Design, Financing and Construction Control

Influencing the final project design and financing always is an important goal of the community developer since it is central to the goal of community participation and affordable housing development. In some cases, the community developer will complete, or nearly complete, the final design before the private developer is involved, such as IBA's project in the South End, and in Marcus Garvey Gardens in Roxbury. In these projects the community developer will want to retain some review over construction and design changes. IBA, as managing general partner, succeeded in having control over any changes during construction. RAP, as a special limited partner, did not.

In 808 Memorial Drive, RCCC succeeded in changing the projects financing and rental structure, but was unable to achieve some of its design objectives -- namely reducing the height of the building and putting the parking garage underground. In the Brightwood joint venture, an important concern of the community developer was to retain both the market-rate and the subsidized portion of the development, even though the market-rate project was more risky because of the uncertain revenues. Brightwood Development Corporation feared that its private partner would attempt to drop the more risky component, and this caused considerable friction between the two partners. In the end, both projects were financed and completed, due in part to BDC's insistence on adhering to the original development proposals.

Management and Long-term Control

Control over post-construction management, and sale or refinancing of the project is extremely important for some community developers.

Concerns usually focus around the issues of tenant selection for initial rent-up, selection and control over the management agent, the authority to fire the manager if determined unsatisfactory, and control over the eventual sale of the project.

Inquilinos Boricas en Accion, a former tenant organization, placed great emphasis on management control, and as the managing general partner in Rehab I was able to achieve all of its objectives by hiring its own management affiliate, ETC Management. Other joint ventures have not afforded such a great degree of management control to community developers. In the Brightwood project, the private developer has more direct control over the management operations and policies as managing general partner. After BDC becomes the managing general partner (following final syndication payments in February, 1986) it will have complete control over management, sale and refinancing of the project. This long-term control was BDC's greatest concern, whereas the private developer wanted to ensure the completion of syndication payments, and through this arrangement both partners were largely satisfied.

In both Marcus Garvey Gardens and 808 Memorial Drive, the community developers as special limited partners achieved very little control over management and resale although RAP did have some influence over tenant selection.¹⁴ In 808 Memorial Drive, the community developer actually had little interest in strongly controlling management, since the organization had only recently formed and was more concerned about continuing other developments.

It is worth noting that management decisions are not totally in the control of the joint venture partners, which to some extent reduces the importance of management control for the community developer. In

projects financed by MHFA, the agency must approve any major changes in management including rent levels and budgets, management agent, reserve funds, etc..¹⁵ Even if the community partner had no management authority, MHFA (or HUD, if applicable) would not allow rent increases to market rates on subsidized units. This, in fact, was a major reason why RAP was willing to cede management control to the private developer; RAP's director was willing to cede management control to the private developer; RAP's director was confident that MHFA's management policies would strongly reflect RAP's own concerns.¹⁶

Summary of Community Developer Roles

These variables present a rather thorough description of community developer roles in joint ventures, and the degrees of success community developers have had in achieving their goals of control and financial benefits. Based on the four joint ventures described earlier, it is apparent that a wide range of roles exists, and that each joint venture has many unique characteristics resulting from the community developer's goals, the private developer's interests in the project, the influence of financial institutions such as MHFA, and the characteristics of the housing project itself. It is possible, however, to make some generalizations about community roles in joint ventures, and how conflicts between the partners are resolved, based on these and other examples.

The Managing Partner Role¹⁷

This is the most powerful community developer role, and is largely described by the managing general partner position, such as taken by IBA in Rehab I. In this position, the community developer is almost completely responsible for the development and requires a private developer partner

only for the purposes of meeting net worth requirements and providing investor security for equity syndication. The community developer will have complete control over design and financing, and nearly complete control over management and the long-term future of the project. Syndication shares will typically be over 50 percent for the community developer, net all fees but with corresponding liability for overruns and operating deficits.

The private partner receives a fee for providing the net worth and sharing liability, but otherwise is very passive in the development. The conflict between the community developer and the private developer around control issues is largely resolved in this case because the community developer holds the bulk of control and liability while essentially purchasing the private developer's net worth qualifications.

The managing partner role for community developers is unfortunately not common, and appears to be even less so in recent years. Since in most cases the private developer must contribute some cash to the project (such as large finance fees) and accept some liability, they are reluctant to turn over so much control to the community partner. The circumstances resulting in such a strong community developer position are discussed further in Chapter V. It is worth noting, however, that there are other examples of community developers as managing general partners. One such joint venture is the United Front Homes development in New Bedford. The community group, United Front, had been designated the developer of an urban renewal parcel in the West End of New Bedford in 1972. With the help of development consultants, United Front organized the development team, including the architects, lawyer, and contractor, and worked closely with MHFA for financing and subsidies.¹⁸ After deciding to use a limited

dividend sponsorship they sought a "net worth partner" as part of the syndication package, and eventually formed a limited partnership with National Housing Partnerships, (a federally chartered corporation which specialized in partnerships with community organizations). United Front received the bulk of syndication proceeds and retained managing general partner status. It also carried a substantial amount of liability for the project and paid up-front expenses including closing costs, letters of credit, and any costs not covered by the mortgage loan.

The Community Support/Limited Partner Role¹⁹

The 808 Memorial Drive joint venture illustrates a minimal role for community developers in a joint venture. Riverside/Cambridgeport Community Corporation was able to substantially influence the project's design and financing in exchange for providing community support, but had very little involvement in ongoing development decisions and no management control. In the community support role, the community developer has input into certain decisions which affect the community, but no jurisdiction beyond those limited areas of control. The private developer protects his or her interests by retaining control over most decisions, and a correspondingly large share of syndication and liability. The community developer's syndication share is relatively small, such as RCC's 10 percent, and there may be no liability at all. The special limited partnership position formalizes the community developer's support role (ie. a partner in the development) but also its minimal control and share of syndication.

A more detailed example of the community support role is presented in Chapter VI. Fenway CDC joined Westland Avenue Associates, Frank Keefe being the principle developer, with the main purpose of providing community

support to the project. In the end, the community group used its community support role to extract certain goals from the development that would not have been achieved without its participation as a partner.

An important characteristic of this minimal role is that the project is typically initiated by the private developer rather than the community developer, as is the case in other joint ventures. As is discussed further in the following chapter, the community developer's role in initiating the project is extremely important in determining its ultimate role in the joint venture partnership.

Major Partner Roles

The managing general role is unattainable for most community developers, is often not acceptable from the community developer's view. What roles for community developers lie between these extremes, where a community developer can be a major partner in the development short of being the managing general? Unfortunately, while the strongest and weakest roles for community developers seem fairly well defined, the possibilities in between are numerous and not so easily classified.

Brightwood Housing Associates illustrates a major partner role, where the community developer has control over several key issues in the development but relinquishes day-to-day development activities to the private developer. BDC, while not the managing general partner, has an "equal voice" over critical decisions including construction changes, management hiring and firing, and sale or refinancing. Similarly, RAP had a major role in Marcus Garvey Gardens, including full responsibility for the development almost until initial closing, negotiating substantial minority hiring goals, and receiving over 50 percent of the syndication

proceeds, even though it ultimately had no management control. These two joint ventures, as well as others, suggest that community developers can have significant control over a project short of being the managing general partner.

One partnership concept that is attractive to community developers is co-development, ie. a co-general partnership position and a 50/50 decision making process. Unfortunately, co-development may not be a realistic joint venture model given the potential conflicts between the community and private developers. Both RAP and BDC sought co-general partner status with their private developers but with only minimal success. BDC and its partner operated on a co-developer understanding until the initial closing when the private developer made a major financial commitment and acquired liability. At that point, the developer insisted on the managing general position throughout the syndication period when its profits are most at risk. In Marcus Garvey Gardens, upon seeking a co-developer partner, RAP found that no private developers were willing to share control with the community organization during construction and management. Co-development implies that the community developer will have an equal voice in all major decisions would slow the development down, possibly raising construction costs where the private developer has liability, and jeopardizing the syndication proceeds. Brightwood Development Corporation and the MB Group were able to resolve this problem by giving BDC veto power over certain decisions, described above, and eventually full managing control.

CHAPTER V

FACTORS DETERMINING THE COMMUNITY DEVELOPER'S PARTNERSHIP ROLE

Drawing upon the four joint ventures described in Chapter 4, and the different community roles each represents, it is possible to define several key factors which determine a community developer's role in a joint venture. A fairly thorough set of factors is described below, although the categories are in some ways arbitrary and the factors are highly interdependent. The community developer's financial and development resources are strongly related to its role in initiating the project, which relates to its political strength, and so on. With this interdependence, it is difficult to isolate the effect of one particular factor, or to say that one factor was chiefly responsible for a community developer's position.

Furthermore, each joint venture has many unique characteristics, such as the effect of particular individuals on the negotiations, so that it is really not possible to describe the complete set of factors that determine a joint venture partnership. This complexity notwithstanding, a relationship between several common factors and the community developer's role can be established, even if clouded somewhat by the complexity of each joint venture.

Project Initiation

The community developer's role in initiating the project is perhaps the most important factor influencing its ultimate role in the partnership, if only because the initiating role so strongly affects other resources controlled by the community developer. Thus, joint ventures can be rather simplistically divided into two types according to the community organization's role in the early stages of the project.

Community initiated projects are usually conceived and brought initial planning and design by the community developer. At some later stage of development, the private developer is brought into the process for purposes of financing, syndication, construction and management. Most joint ventures are of this type, including all of IBA's projects, Brightwood Housing Associates and Marcus Garvey Gardens discussed in this report.

Privately initiated projects, in contrast, are usually conceived and initially planned by a private developer, and the community developer is brought in to provide community support for the project. The community developer may end up contributing other resources to the project (such as equity and staff time), but their participation is based primarily on political strength. 808 Memorial Drive is the best example of this type of joint venture, where RCCC became a partner in the development after initially organizing community opposition against it. Westland Avenue Associates, described in the second part of this report, is also a largely private initiated joint venture.

Both 808 Memorial Drive and Westland Avenue Associates suggest that community developers have a relatively minor role in privately initiated developments, basically corresponding to the community sponsor/limited partner with little control over construction and management, and

only a 10 percent syndication share. This is in contrast to major partner or managing partner roles taken by other community developers. If these two joint ventures are an accurate indication, a strong partnership position, including management control and a large syndication share, does not seem possible if the community developer did not have an important role in the projects conception and planning.

The major reason for this, clearly, is that community developers will usually have a weaker negotiating position in privately initiated projects because their strength results largely from political controls and the threat of community opposition, rather than control over land and preliminary designs. Furthermore, it could be argued that in privately initiated joint ventures, community developers do not have the opportunity to negotiate with more than one private developer, a strategy used rather successfully in several community initiated joint ventures.

Political Strength

The community development groups discussed here have differing levels of political strength, usually reflecting the level of support that the group has in the community it serves and its ability to organize that support around housing development issues in the area. Not necessarily related is the community organizations support with key political actors, such as city hall or HUD officials.

Political strength is used by community developers to obtain other resources crucial to housing development, such as site control or subsidy commitments. The Emergency Tenant's Council (later IBA) transformed a well organized Puerto Rican tenant group into a politically strong community developer able to influence the city's urban renewal plans.¹

The result was that ETC became the designated developer (including a land writedown) for a large parcel of land and buildings in the South End.² Without this first, critical step ETC could never have become the managing partner in Rehab I.

Community developers must also rely on political strength to substitute for other disadvantages in the development process. The value of a community developer's offer of community support is proportional to the organization's strength in the community. Again, 808 Memorial Drive is perhaps the best illustration of the value of political strength in a joint venture, where RCCC used its influence over the Cambridge Planning Board to gain control over the project. Another example is the Tent City Task Force. In its negotiations with a potential partner, TCTF listed among its contributions to the partnership: "Organization of community support for the project essential to approval of applications" for several sources of subsidy; and "communication of community support for the development and for the partnership before political and financial institutions including BRA, City of Boston, MHFA, HUD, etc."³ Unfortunately, Tent City Task Force's offer of community support was not particularly strong because of the political divisions within the South End community, (and perhaps its lack of support from City Hall) which severely detracted from its negotiating strength.

Organizational Stability

Organizational stability -- defined by a reasonably stable and devoted board of directors, dedicated staff, some financial assets and a previous development record -- is essential for a community developer seeking a major role in a joint development. Organizational stability is

particularly important in obtaining financial commitments and equity syndication. Finance agencies and syndicators will view reasonably stable and financially secure organizations much more favorably and are more likely to accept a stronger partnership position for such groups. Conversely, financing agents and syndicators will seek to limit the role of an organization they view as instable.

This factor is perhaps best illustrated by comparing Brightwood Development Corporation and the Roxbury Action Program and their respective joint venture roles. BDC successfully used its organizational stability and reputation, including a previous record in commercial and housing development and the affiliation of several public redevelopment and housing officials to obtain local political support and preliminary commitments on the UDAG and Section 8 subsidies. In contrast RAP's lack of stability -- and particularly its financial insolvency -- worked against it with both MHFA and negotiations with prospective private developer partners.

Resources Provided by Each Partner

The resources brought into the project by each partner has a very direct effect on their relative bargaining strength in the partnership. That is to say, community developers that can provide several important pieces in the development can take a stronger role in the project. These resources will typically include:

- control over land and/or buildings, including ownership, options to purchase, designated developer or acquisition writedown;
- financial resources invested in the project, including up-front costs for planning and design, engineering studies, financing fees, etc;
- preliminary financing and subsidy commitments, such as those obtained from MHFA for financing, or HUD for Section rent subsidy

allocations;

-development skills and reputatuon, including design and management skills, "connections" to obtain financing and subsidies, completing technical applications, obtaining local building approvals, and legal skills. Community developers frequently have technical assistance consultants which they contribute to the project.

Consider the differences in development resources provided by BDC, as a major partner in Brightwood Housing Associates, and RCCC as a community support partner in 808 Memorial Drive. BDC provided:⁴ purchase options for nearly sixty lots on which the development was planned, costing \$25,000; community and city political support for the project; a completed UDAG application and preliminary approval from HUD; preliminary approval for Section 8 subsidies and 221(d)(4) mortgage insurance; and a \$135,000 loan from the Massachusetts Community Development Finance Corporation (CDFC) for up-front development costs including architecture fees, application fees and permits. BDC's private partner, the MB Group, provided experience with large-scale Section 8 developments, paid GNMA finance and closing fees totalling nearly \$1 million in cash and credit requirements; provided net worth for the limited partnership and security for investors.

RCCC, by supporting the altered development proposal, provided the local permit approvals necessary to proceed.⁵ The community group also provided some development and architectural experience to the project, and helped secure MHFA financing. The private developer, Zena Nemetz, had purchased the land through a complicated site assembly process, provided complete architectural drawings and paid all up-front and closing fees.

Providing development resources such as land and financial assets are essential for a community developer to retain a strong partnership position. These resources affect the negotiating position of the Community

developer in two basic ways. First, it affects the degree to which the community developer must rely on the private developer's continued participation in the project. If all that is needed is to meet net worth and reputation requirements, the community developer can more easily shop around and negotiate for the best offer. The private developer's threat to leave the project is not as potent as when they have also secured the subsidies and financing. IBA, in several of its joint ventures, was able to negotiate such favorable positions largely because they were not depended on one particular private developer.

A developer will also expect the degree to which he or she controls the project and financial benefits to be in proportion to investment and liability in the project. Thus, private developers will seek to protect a substantial investment of time and money by limiting the powers of the community partner, and taking a greater proportion of syndication proceeds as well. If the community developer can contribute a larger share of development resources (and thus take greater risk), the private developer will be willing to accept a smaller syndication share. Similarly, the Tent City Task Force found that private developers would offer a lower syndication amount if the community group insisted on taking no liability for cost overruns.⁶

Influence of Outside Actors

Chapter II discussed the constraints placed on community developers by financial institutions, government agencies, and equity syndicators, referred to here as outside actors because they are not direct partners in the joint venture, yet their actions and attitudes may strongly influence the partnership, and in some cases government agencies or equity syndicators

will more directly influence the terms of the partnership.

Net worth, working capital, and development reputation requirements by government agencies are difficult for community developers to meet, and as discussed earlier, are a major reason for joint venturing with a private developer. Thus, the strictness of these requirements will partly determine the resources required from the private developer, and similarly affect their relative strength in the partnership. The adoption of net worth requirements by MHFA, for example, precipitated the need for a private developer in Marcus Garvey Gardens. Prior to 1977, and the development of many of these requirements, the project received a preliminary commitment from MHFA with RAP as the sole general partner. After some delays and resubmission of the mortgage application in 1977, it was approved under the condition that RAP co-venture with a financially strong partner, based largely on the 20 percent net worth requirement, and RAP's lack of large development experience.⁷

Faced with these requirements, the project was ultimately built with Macomber Construction as the general partner, providing the net worth and taking most of the risk, and RAP becoming a "nominal limited partner", with a very small role in the project after initial closing.⁸ This shift in developer status for RAP cannot be totally attributed to new MHFA requirements, since RAP was becoming increasingly instable as its debts grew, but the requirements were one barrier to RAP acting as a sole general partner.

Furthermore, these requirements are not rigidly set, and there is considerable discretion on the agency's part for determining eligibility for subsidy or financing commitments. Referring again to MHFA threshold requirements, the developer must demonstrate "sufficidnt experience" and

"sufficient financial resources" to complete the project, and the net worth requirement ranges from 15 to 20 percent; clearly leaving the agency some flexibility in applying their regulations.⁹ The importance of this flexibility for community developers is that agencies controlling the project's financing can influence the community developer's negotiating strength by their discretionary judgements of development capacity.

MHFA has also more directly influenced joint venture partnerships by stating the roles it expects to be taken by the respective partners. The mortgage officer for Marcus Garvey Gardens explained the basic reasoning: "MHFA is really lending to the pro developer. It is in (MHFA's) interest for (the private developer) to have control over the project."¹⁰ Thus, while MHFA considers it beneficial to have community support for a project, the preferred model is for the community group to have a limited partnership position with little control, and the private developer as managing general partner. This model is exemplified by Marcus Garvey Gardens with RAP and Macomber Development, and several other joint ventures financed by MHFA.

Equity syndicators have a similar preference against community developers being general partners. They are particularly concerned about leaving decision making power to instable groups that may not exist for the life of the partnership, forcing the partnership agreement to be rewritten with another general partner taking responsibility. Fearing that investors will pay less for the equity shares and that the project will be more difficult to syndicate, equity syndicators will typically offer lower net proceeds if the community developer takes a general partner position.¹¹ Thus, because of the syndicator's perceived increase in the project's risk, community developers may have to accept a lower syndication

payment if they become a general partner with significant control over the project.

The 808 Memorial Drive partnership illustrates the importance of outside actors in a privately initiated joint venture, since the support of the Cambridge Planning Board and the City Council was essential to RCCC's community support role. Similarly, Westland Avenue Associates also illustrates the impact of local and federal agencies on a community developer's role in a joint venture.

Negotiating Ability of the Partners and their Agents

This is perhaps the most difficult of the factors to isolate, yet it is clearly critical in the negotiations between community and private developers. Whereas the previous factors all focused on what each partner brings to the negotiations, or "what do I have and what can I offer", negotiating ability is "knowing what I can get and how to get it". Community developers may be at a disadvantage in this respect, particularly when dealing with a private developer with more experience in negotiating joint venture business agreements. Inexperienced negotiators may not be familiar with examples of strong community partner positions and not aware of the legal subtleties involved in limited partnerships, and as a result will have difficulty presenting the partnership position that best serves their interests. Private developers, usually with the benefit of experienced lawyers, will likely have very precise ideas of their desired partnership position.

One way for community developers to improve their negotiating skills is to hire experienced negotiating agents. In several of the projects discussed in this report, community organizations had assistance

from housing professionals in their negotiations with private developers. United Front Homes' negotiation with National Housing Partnerships were assisted by Jim Stockard, now a housing consultant to many community organizations. Greater Boston Community Development (GBCD) also acted as negotiating agent for many joint ventures, including most of IBA's projects in the South End.

Outside consultants can help by clarifying the community developer's role in the partnership and its objectives for the project. GBCD negotiates with the private developer with a very specific joint venture model in mind -- community developer as managing general partner, and private developer as a "net worth" partner -- and they are able to demonstrate several projects where this model has worked. GBCD will typically write the limited partnership agreement and package the syndication offering as well, further adding to their strength as a negotiator. IBA's managing general position cannot be totally attributed to GBCD's negotiating ability, because GBCD projects usually have a stronger negotiating position in the first place, by virtue of being community initiated projects with strong financial and organizational backing.

Another point emphasized by outside consultants is an orderly and well documented negotiation process. One problem frequently encountered in joint venture negotiation is misunderstanding's around unwritten or vaguely written agreements. In the Brightwood joint venture, for example, BDC and MB had an unwritten agreement regarding the community developer's status as a co-general partner. Austin Miller, of BDC understood the agreement to mean his organization would be a co-developer throughout the project, including construction and management. Steve Rioff, of MB, interpreted the co-developer status to last until closing, when MB would become

the managing general. Miller had agreed to a smaller share of syndication (25 percent, rather than the original 40 percent proposed) on the understanding that BDC would be a co-general partner indefinitely, and later found that he had traded away the financial benefits for unsatisfactory community control. There was no documentation of this agreement, and the different understandings caused tremendous conflict between the partners.

This is not to say that outside consultants are necessary for a community developer to have a strong negotiating position, but certain negotiating techniques are vital, including negotiating with several developers, where possible, to seek the best offer and the most compatible developer; clearly documenting agreements; clearly defining community goals for the project and the expected partnership positions, and knowing of precedents for that position.

Summary of Factors Determining Partnership Roles

Chapter IV presented three basic joint venture roles for community developers: as managing general partners, the community developer has primary responsibility and control over the project; as a major partner, the community developer has a principal role in planning the development and perhaps a role during management, but concedes much of the daily development and management control to the private developer; as a community support partner, the community developer has influence over the planning stage but has a minimal role beyond that point.

This chapter suggests that there are several common factors in all joint ventures which largely determine the community developer's role in the partnership, although the unique aspects of each must also be considered

The relationship between these factors and the joint venture roles can be summarized as follows.

Community Developers as Managing Partners

- Requires a strongly community initiated project, allowing the community developer to define the project and control critical development resources, particularly site control.
- Requires strong political support and a stable organizational base.
- Community Developer provides nearly all development resources except net worth and reputation, accepting a large share of liability as well.
- Key outside actors are highly supportive of community developer's managing position and objectives for the development.
- Often use outside consultants to provide technical assistance and act as negotiators, resulting in a well defined community role, and an orderly negotiating process.

Community Developers as Major Partners

- Community initiated project, allowing the community developer to define the project and control major development resources.
- Political and organizational strength varies. Strength in these areas will lead to a better position within this role (ie. Brightwood) and conversely, lack of support and stability will reduce the end partnership role (ie. Marcus Garvey Gardens).
- Community developer provides major part of the development resources, except larger financial needs and accepts little liability.
- Outside actors are generally supportive of the project but may influence partner roles by preventing a managing position for the community developer.
- Frequently lack a clear model of partnership roles and rely on unwritten agreements which result in ambiguous control by community developer and tension between partners.

Community Developer as Community Support Partner

- Privately initiated projects, where community developer is attempting to alter project largely through political resources.
- Political strength is a necessity and determines the community developer's strength within this role. Organizational stability is lacking, preventing the community developer from initiating its own projects.
- Community developer provides few resources other than political support. Also accepts little or no liability.
- Outside actors are critical to community developer's strength within the community support role.
- Also may lack a clear partnership model, similar to Major Partners.

Joint Venture Strategies for Community Developers

How can community developers strengthen their roles in joint venture developments? The approach usually taken by community developers is to develop the most advantageous negotiating position through political, organizational and financial resources; precisely those factors indicated by the previous analysis. This might include developing a strong organizational base, seeking grants for up-front development costs, and persuading public officials to support the community group's efforts. But unfortunately, most of the factors which influence a community developer's role are only partially, or even minimally in its control. Development resources are not always available through grants and loans, and public officials cannot always be persuaded. Some factors may be completely out of the community's control, as when the private developer already has site control. This strategy -- enhancing the community developer's resources -- though necessary, has its definite limitations.

Furthermore, the Brightwood and Marcus Garvey Gardens joint ventures are discouraging in that the community developers in both cases had site control and had committed substantial resources toward the development, but were unable to achieve the desired partnership role. How could these community developers have worked more effectively with the resources that they had?

Given their existing resources and the few aspects of the development process which they can influence, community developers need a strategy for entering into and negotiating in joint ventures. A joint venture strategy, the beginnings of which are described below, describes several decisions facing community developers in joint ventures that can be acted on early in the process, thereby improving the community developer's

negotiating strength in the partnership.

1. Timing the Joint Venture to Maximize Community Developer Resources

Community developers should focus, whenever possible, on initiating projects and completing most of the pre-development planning before seeking a joint venture partner. From the previous discussion it is clear that a strong initiating role is essential for community developers to have a major role in the partnership, primarily because initiating the project results in site control and other development resources. The best way to improve the community developer's negotiating position, therefore, is to complete pre-development work, including site acquisition, feasibility and design work, financing and subsidy commitments as the sole project developer. By doing so, the community developer establishes definite control over these resources, and can then negotiate with several private developers for a correspondingly strong partnership role and syndication share. In short, the community developer should delay the involvement of the private developer for as long as possible without jeopardizing the project.

This is essentially the approach taken by Greater Boston Community Development in the joint ventures for which it acted as a technical advisor. As IBA's Rehab I illustrates, GBCD tries to maintain the sole community developer until as close to initial closing as possible, and reduce dependence on the private developer's resources to net worth and reputation only.¹²

The obstacle to this development strategy, aside from cases where the community developer enters a privately initiated project, is the high up-front development costs often associated with larger projects.

Community developers usually rely on uncertain loans and grants to initiate projects and pay up-front costs, which becomes insufficient at some point in the development process. In the Brightwood joint venture, the GNMA financing fee of nearly \$160,000 was impossible for the community developer to cover.

Yet, the Brightwood project also illustrates a case where the private developer's involvement could have been delayed. Austin Miller, Director of Brightwood Development Corporation, felt that the large financial and net worth requirements were the major reason for seeking a joint venture partner for the project, although the developer's experience with Section 8 projects would also be valuable.¹³ The joint venture was formed in Spring, 1980, after initial planning work by BDC but before substantial pre-development work had been completed, including architectural and legal work and completing financing applications.¹⁴ The community developer ended up funding the bulk of these expenses through a loan, and the private developer's first major expense, the GNMA fee, was not required until more than a year later in April, 1981.¹⁵ During that period, the private developer had acquired a managing general partner role and 75 percent of net syndication proceeds. Had BDC felt confident enough to continue with pre-development activities alone -- and in this case HUD was not pressuring BDC to find an experienced partner¹⁶ -- the final partnership might have been quite different.

2. Deciding the Community Developer's Role in Advance

Before entering a joint venture, community developers should decide what partnership role is both desirable and possible, and clarify its specific objectives for the joint venture. When negotiating with a

private developer, as mentioned earlier, it is important to have an unambiguous position on the most crucial aspects of the joint venture and to specify that position as a condition on the partnership. The community developer should therefore consider each of the following areas. The details of each are described earlier in Chapter IV.

Partnership Position: Decide on the preferred position in the limited partnership, ie. managing general partner, another general partner position, or a special limited partner position, and the division of responsibilities that are to accompany that position.

Specific Areas of Control: Decide on the most crucial control issues for the community, such as unit design or ongoing management, and seek specific control over them. If a managing partner position is not possible, this is likely to be a good approach to achieving the greatest specific goals. The co-developer model, theoretically giving the community developer equal control over all decisions, has proven very difficult to achieve. Instead most community developers have maintained control over specific decisions of greatest concern.

Resources Contributed by Each Partner: Clarify the resources to be contributed by each partner, including financial, staff time and skill, developer reputation, and political support. Ideally, this can be determined before entering the joint venture so that the resources required from the private developer are clearly known in advance. In the joint venture agreement, it should be clear which partner is responsible for obtaining final commitments and permits, and covering future costs, etc.. Similarly, liability should be specified.

Distribution of Syndication Proceeds: A community developer should decide on its justifiable share of syndication proceeds. This can be

approached in several ways, and perhaps the least arbitrary method is to place a value on the respective resources provided by each partner. This involves putting a financial value on non-financial items, which is made somewhat easier by comparing them. For example, how valuable is community support necessary for public approvals in comparison with development reputation and net worth needed for syndication? Another approach is to have a specific sum in mind, perhaps an amount necessary to start another development or fund the organization for a year.

3. Creating A Definite Decision-making Role For The Community Developer

After the community developer has clarified its preferred role in the joint venture internally, it is important to make this role clear to the private developer through definite and written agreements. More concrete aspects of a partnership, such as the share of net proceeds to each partner, or the financial responsibilities of each partner, are more easily put into writing than decision-making roles. In the Brightwood case, financial responsibilities and syndication were well understood by both partners, but the ambiguity in BDC's decision role resulted in considerable losses from the community developer's point of view. In contrast, Rehab I created a very specific decision role for the private developer, so that his only control over the project would follow major operating deficits. Thus, it is extremely important for community developers to negotiate clear decision-making roles early in the partnership, to ensure that if conflicts arise at a later date there will be at least some basis for including the community developer in the resolution of that conflict.

4. Negotiating for Control AND Profits

Community developers have sometimes negotiated under the somewhat false assumption that private developers are willing to trade control for extra profits, and that the community developer can therefore offer the private developer a larger syndication share in exchange for more control to the community. The community developer, putting more value on the control than the proceeds, is willing to make this trade and assumes that the private developer will also. The joint ventures examined in this report, and the more general interests of private developers discussed in Chapter III, suggest that this is not really possible, and that more accurately, control, proceeds, and liability generally occur together. Retaining greater control results in a larger share of syndication and corresponding liability. To the private developer, control is necessary to protect his or her investment and to ensure the syndication proceeds. Private developers will be willing to share control only if their investment is substantially reduced -- through greater investment by the community developer -- or by reduced liability, but not simply by offering a larger syndication share which is put at risk by community control.

Quickly considering the joint venture roles illustrates this point. As a managing partner, the community developer has the greatest control, the largest share of syndication, and the most liability. As a community support partner, the community developer has the least control, the smallest share of syndication, and the least liability. Marcus Garvey Gardens appears to be an anomaly, but even in this case there was no tradeoff between control and profits. The Roxbury Action Program negotiated with several private developers, none of whom were willing to give

RAP a strong general partner position.¹⁷ RAP essentially sold the development package to the best offer, Macomber Development.

Community developers should be aware of the relationship between control, proceeds, and liability, and not attempt to "purchase" control with greater syndication proceeds. Instead, community developers should seek to reduce the private developer's involvement in the project -- both in terms of investment and control simultaneously -- and to negotiate for a major share of control AND profits.

CHAPTER VIWESTLAND AVENUE ASSOCIATES: THE EFFECT OF INNOVATIVE
FINANCING ON A JOINT VENTURE PARTNERSHIPIntroduction

Westland Avenue Associates is considerably different from the joint ventures mentioned thus far. Most important is the complicated and unusual financing structure of the project. The 97 unit apartment complex is heavily subsidized from a variety of federal and local programs, including low-interest financing, Section 8, and a \$2 million Urban Development Action Grant (UDAG). Yet, despite these heavy subsidies, the project is heavily dependent on the market-rate rental component. A whole set of development issues and conflicts between the community and private developer partners arise out of this complicated financing and the market-rate component. The most crucial issue from the community developer's point of view is how to extract community benefits from the project given the necessity of the market component. This is in contrast to other projects where many of the community benefits were more fixed, as in Marcus Garvey Gardens which had secured 100 percent Section 8 subsidies.

The Westland Avenue project takes place during a period when housing subsidies and financing were being reduced, and although the subsidies were not as scarce as they are today, the present difficulties of housing development were beginning to emerge. In the Notice of Fund Availability which the developers responded to, (a pool of Section 8 units for which HUD solicits proposals) only 200 Section 8 units were allocated to Massachusetts, and projects which relied solely on Section 8 guarantees

were not favored. Furthermore, the rent levels provided by Section 8 subsidies, so-called fair market rents, were frequently not large enough to support real project costs, as is the case in both the Brightwood and Westland Avenue projects which required UDAG writedowns of project costs. Westland Avenue is therefore particularly interesting because it is a joint venture which takes place within the context of shrinking subsidies, and the project's financing has very definite effects on the community-private partnership. Fenway Community Development Corporation was constantly faced with the dilemma of its involvement in a market-rate project that would contribute to displacement in the neighborhood. The private developer faces greater risk than a conventional Section 8 project. As is detailed in a later discussion, FCDC and the private developers had very different priorities for the allocation of subsidies and the management of the complicated rent structure. By looking closely at the Westland Avenue partnership, the effect of innovative financing techniques and the role of public agencies, it is possible to explore some of the implications of subsidy cutbacks on joint venture developments.

The role of the Fenway Community Development Corporation (FCDC) in Westland Avenue Associates is similar to the community support partner position, as taken by RCCC in 808 Memorial Drive. FCDC provided relatively few financial resources, but instead relied heavily on its ability to influence public officials who controlled the many subsidy allocations and approvals. Prior to Westland Avenue, FCDC had not completed a major development project, and the fledgling organization entered the partnership with a variety of goals, not the least of which was to enhance its reputation as a successful community developer. Other goals included providing family housing for low and moderate income households, ensuring a substantial

"moderate rent" component and reducing the secondary displacement effects of the project, and including a solar heated building as part of the design. These multiple goals were achieved to varying degrees, as is discussed in more detail later, but perhaps the greatest disappointment to FCDC members was the high degree of conflict that arose between themselves and their private developer partners. In the disagreements around the use of subsidies and rent structure, FCDC quickly took a tenant advocacy position which caused a division between the community and private developers. The conflicts were difficult for all those involved, and ultimately detrimental to FCDC's reputation as a developer. In examining the Westland Avenue joint venture, it will be important to consider which conflicts could be avoided and how, or alternatively, which conflicts seem unavoidable and likely to occur in future partnerships.

A description of the Westland Avenue joint venture follows, presenting in roughly chronological order the evolution of the project, the context in which the partners were operating, and the negotiations and conflicts between the partners. After this is a more thorough analysis of the case, the partnership's conflicts, and FCDC's role in the joint venture. The concluding section explores some ways that FCDC might have taken a stronger role in the development, and the implication of Westland Avenue on future community-private joint ventures.

Westland Avenue Associates

Background and Formation of Westland Ave Associates

The Fenway is a residential neighborhood which has undergone tremendous changes in the last several decades. Like many Boston neighborhoods, the Fenway's housing stock has been gradually deteriorating since World War II¹. Residential housing in the Fenway is almost entirely composed of large, row-house apartment buildings, and the population is overwhelmingly renters. As long-time residents moved from the Fenway and institutions such as Northeastern University began expanding, the housing stock rapidly declined.

While urban renewal caused a net loss of units between 1960 and 1970, the schools enrollments expanded dramatically. Speculative landlords subdivided family-sized units to take advantage of the influx of students needing only studio or one-bedroom apartments. With the Fenway population tending toward a more transient tenancy some landlords began 'milking' their properties, collecting rents while letting the building fall into disrepair.²

But starting in the early 1970's, after the student population leveled off and vacant housing units became frequent, the Fenway developed a particularly acute problem - arson. Westland Avenue, in the heart of the Fenway was among the hardest hit. Between 1973 and 1977, thirty buildings were completely burned on Westland Avenue and the adjacent Symphony Road.³ Five people were killed in fires on Westland Avenue, and the street became a symbol of the Fenway's arson problem.

The fires rekindled several community organizations which already existed in the Fenway from previous battles against urban renewal and institutional expansion. The Symphony Tenants Organizing Project, (STOP) in an attempt to end the fires, began researching the ownership patterns of the burned buildings.⁴ Their efforts culminated in the indictment of 33 persons connected to an arson-for-profit ring, and the passage of State

anti-arson legislation in July, 1978.⁵

After the fires ceased, the Fenway was left with a large number of burned abandoned and boarded-up buildings. Some were rebuilt as subsidized housing units, almost all of which are one-bedroom units for the elderly.⁶ A very small number of units were renovated as private rental or cooperative units, and some buildings remain abandoned today. Until 1980, seven burned buildings on Westland Avenue were the most visible reminders of the Fenway fires.

By the end of 1979, however, Fenway organizations no longer feared displacement from market forces, or "gentrification". The wave of condominium conversions in the Back Bay was already spreading into the Fenway. Copley Place, a huge commercial and retail development planned on a site adjacent to the Fenway was expected to greatly increase the demand for Fenway housing. As rents continued to rise and vacancies decreased, community organizations such as STOP and FCDC began considering ways to return vacant buildings to the housing stock without promoting further gentrification.⁷ Their efforts became focused on the Westland Avenue buildings because of their visibility and the likelihood that their development would set the tone for future developments in the Fenway.⁸

The Fenway CDC had been relatively dormant for several years until its renewed interest in Westland Avenue. Formed in 1973, it was instrumental in the subsidized renovation of six buildings in 1974, previously slated for demolition by their owner.⁹ After that most of its members efforts went into arson prevention work. In early 1979, FCDC members actively pursued the development of two vacant buildings on Westland Ave., numbers 65/67 and 83. Mathew Thall was particularly active and was later named FCDC President. FCDC secured a six month option to purchase the

buildings and applied for a HUD Solar Demonstration Grant. They also began negotiations with HUD officials and City officials for development subsidies. Andrew Olins of the Mayor's Office of Housing agreed to support a 100 percent Section 8 project for the buildings if FCDC could secure the subsidies. The BRA gave the fledgling project qualified support, and the HUD regional administrator gave a preliminary commitment to assist the project, although Section 8 subsidies were becoming increasingly scarce.¹⁰ FCDC received a \$5,000 Solar design grant and engaged Darlene Powers to complete preliminary drawings. A \$50,000 solar construction grant was awarded in November, 1979, contingent upon FCDC purchasing the property and obtaining financing. By this time, however, the CDC's purchase option had expired. They soon discovered that another developer had secured an option on 65/67 and 83 Westland Avenue, as well as all of the other vacant buildings on the street, a total of ten addresses and seven buildings.

Westland Avenue had not just attracted the attention of Fenway community organizations, but of private developers as well. The buildings had been optioned by Mario Nicosia, President of the Nicosia Development Company which had renovated many properties near the Fenway and Back Bay as luxury townhouse condominiums.¹¹ His partners were to be the planning and development firm of Harrington, Keefe, and Shork (HKS). Frank Keefe, president of HKS, had been the Director of the Massachusetts Office of State Planning under Governor Michael Dukakis.

From the outset, Keefe's plan was to develop mixed income rental housing in all of the vacant buildings, thus significantly improving the neighborhood but setting a precedent for redevelopment without displacement.¹² The HUD area office had recently released a Notice of Fund Availability

(NOFA) for Section 8 rental subsidies, giving priority to mixed income projects with less than 20 percent of the units having Section 8 assistance. Included in the subsidy would be GNMA "Tandem" financing, whereby the Government National Mortgage Association provided a subsidized mortgage, reducing the annual interest rate to 7.5 percent. Keefe's original plan was for 117 units, a mixture of one- and two-bedroom units with 18 one-bedroom and 4 two-bedroom units having Section 8 assistance. Rents on the remaining units would be kept low by subsidized financing available to Section 8 projects. Keefe felt that this proposal would compete well for the Section 8 funds, and meet the City's mixed income housing objectives for the Fenway.

Keefe soon discovered that several community groups in the Fenway -- FCDC in particular -- had been arranging financing and attempting to purchase three of the Westland Ave. buildings. Keefe knew that community support would improve his chances for Section 8 subsidies, since HUD had already been contacted by community groups and preferred to stay out of developer-community conflicts. Community support would also help obtain the necessary City support for the project, including a 121A agreement. He did not anticipate any opposition, however, since he "basically had a good project" that fit many of the community groups' objectives.¹³

But Frank Keefe also "believed in participation by community groups" in development projects.¹⁴ As the Director of the Massachusetts of State Planning, he strongly supported the participation process in the nearby Copley Place development, and had a reputatuon for promoting developments that responded to local community needs. Without consulting Mario Nicosia, Keefe proposed to Fenway CDC that they join Westland Avenue Associates, (the development entity then composed of Nicosia and HKS) contributing

their \$50,000 solar grant to the partnership and receiving a five percent share of syndication proceeds. HKS would receive 20 percent and Nicosia 75 percent of the proceeds. Nicosia was the sole general partner with HKS and Fenway as limited partners.

The FCDC board considered the partnership offer, and the project as Keefe had originally planned, and determined that it was unacceptable for several reasons. FCDC was highly committed to providing family-sized units (3 and 4 bedroom) in the Fenway that would be affordable to low income people. Their original plans for 65/67 and 83 Westland Avenue included 100 percent Section 8 subsidies, with many 3 and 4 bedroom units. Keefe's plan included deep subsidies for mainly one-bedroom units, and FCDC was concerned that any larger units would be unaffordable to even moderate income families. FCDC members also wanted to ensure that the Solar building remained in the project plans, and that their architect, Darlene Powers of Crowley/powers Associates was retained.

Still, Keefe's desire to provide moderate income rents without 100 percent Section 8 subsidy was also appealing to FCDC. After brief negotiations -- where Frank Keefe represented Westland Avenue Associates and Mat Thall represented the FCDC -- an initial agreement was reached and quickly signed. (See Appendix A)

The agreement provided for an increase in Section 8 units from 22 to 30 out of 107 total units, of which 12 would be 3 bedroom units and 8 two-bedroom units, which FCDC regarded as a "bottom line" on subsidized family units. The solar building would be included in the design, with Crowley/Powers as a subcontractor to Keefe's architects, and FCDC would bring the solar grant as its financial contribution to the partnership.

The responsibilities of the three developers in this unusual

partnership were understood as follows. Nicosia Development Co. supplied the financial backing for the project; HKS were to package the development and secure the subsidies and financing; and FCDC would work with the community to assure that the diverse Fenway organizations supported or at least did not object to the project.

FCDC established a multitude of goals for the project and for its involvement in the partnership. The most important goals were providing a significant number of subsidized family units, ensuring at least 30 percent Section 8 units, maintaining non-Section 8 rents at a moderate level, and including the solar design with subsidized family housing in the project. The community group also wanted some control over selecting the management agent, and input into the overall project design. Equally as important as these goals, FCDC hoped its involvement in a major development would enhance its reputation and strengthen the neighborhood, and increase its visibility to the city administration and BRA officials which would lead to further projects for the community group. A share of syndication proceeds was also important. Privately, FCDC members entered the partnership with hesitation. They would now become associated with a major development including "moderate" rents not yet determined, and FCDC's role in the development and management was not certain. Nicosia was a condominium developer, whose activities on St. Botolph Street many Fenway organizations had opposed, and they did not trust his ultimate intentions. In addition, FCDC feared that a total rehabilitation of the Westland Avenue buildings was too much investment at time, and would have a major secondary displacement effect by too rapidly removing the blight and causing a suddenly escalating real estate market.¹⁵ Frank Keefe, however, had optimistically projected costs that could be supported at below market rents

and, as Thall said, "the numbers looked reasonable."

Project Financing and the Rent Moderation Program

At this point, project costs had not been finalized, and rents could not be specified. The Fenway negotiating team (consisting of Thall and three other FCDC Board members) wanted more specific estimates of the non-Section 8 rents, a substantial number of which were to have moderate rents, and as cost estimates rose, it became doubtful that the CDC's objectives for moderate rents could be achieved under the present financing scheme. In late December, Keefe proposed that the partnership apply for a \$1.5 million Urban Development Action Grant (UDAG) to cover mounting construction costs and create a rent moderation fund, set up as an investment with the interest being used to lower rents on certain units. The UDAG is actually applied for by the Boston Redevelopment Authority (BRA) and granted to the city, but HKS prepared and submitted the application. Keefe was confident that the UDAG would be secured, since HKS had submitted six successful applications on behalf of clients previously.¹⁶

The financing for Westland Avenue Apartments was becoming quite complicated, including multiple federal and local subsidies, and a three-tier rent structure. The details of each program changed, but the basic elements are as follows:

- o The UDAG, originally \$1.5 million and later raised to \$2 million, was to be used to support construction costs and to fund the rent moderation program. Since the UDAG is actually granted to the City, it must be loaned to Westland Ave. Associates, who then invest the funds and obtain annual interest. Part of that interest is used to repay the City for the UDAG over a 40 year period. Another portion is used to repay permanent

debt service on the HUD mortgage, which cannot be supported by collected rents. The remaining interest on the UDAG is added to the rent moderation fund, which lowers rents on some units. After raising the UDAG to \$2 million, \$225,000 was used directly by WAA to cover closing costs and financing fees, essentially reducing cash input by the general partners. Illustration VI-1 shows the UDAG cash flow, although the specific amounts changed as the project progressed.

- Section 8 rental assistance for 30 units allows eligible households to pay 25 percent of their income toward rent. HUD pays the difference between that figure and a fair market rent (also determined by HUD) to the owner.

- Permanent financing would be provided through the GNMA tandem program, only available to projects with Section 8 allocations. The federal government pays the difference between the below-market rate of 7.5 percent and the cost of funds to GNMA, then around 12 percent.¹⁷ Section 221(D)(4) federal mortgage insurance, whereby if the developers default on their loans HUD will continue the loan payments, is required for the GNMA tandem financing.

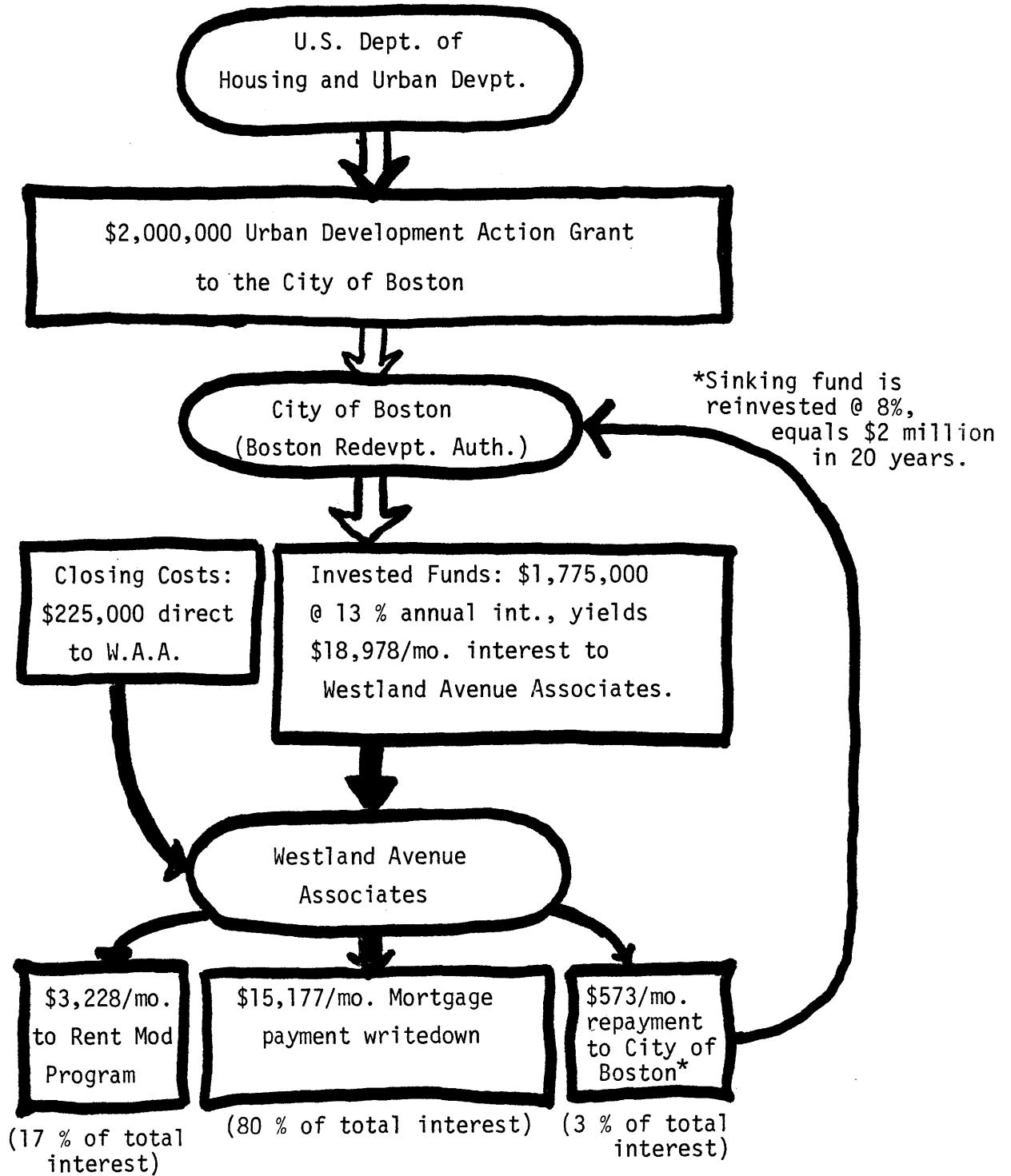
- The City of Boston must provide a 121A tax agreement which sets the property tax rate at a percent of gross rental income, rather than fluctuating with the tax assessment. Keefe eventually negotiated an average 12 percent tax rate for all of the units which was considered quite favorable.

- In addition to these subsidies, the Westland Avenue Associates partners proposed to use 20 percent of the net syndication proceeds as an additional rent moderation pool (later reduced to 15 percent), considered a very innovative use of equity syndication money. Three quarters of this

amount, or 15 percent of net syndication, was to come from the managing general partner Mario Nicosia, and the remaining quarter, or 5 percent of proceeds, from HKS. Thus, as originally proposed in the first UDAG application, a rent moderation fund of \$1,243,000 would be created out of \$975,000 in UDAG funds, and \$268,000 in syndication proceeds.¹⁸ This fund was expected to generate "over \$120,000 per year -- enough to reduce the rents of 32 market units by \$300 per month."¹⁹ Illustration VI-2 shows the rent moderation fund as it was eventually formed, the total amounts being considerably different.

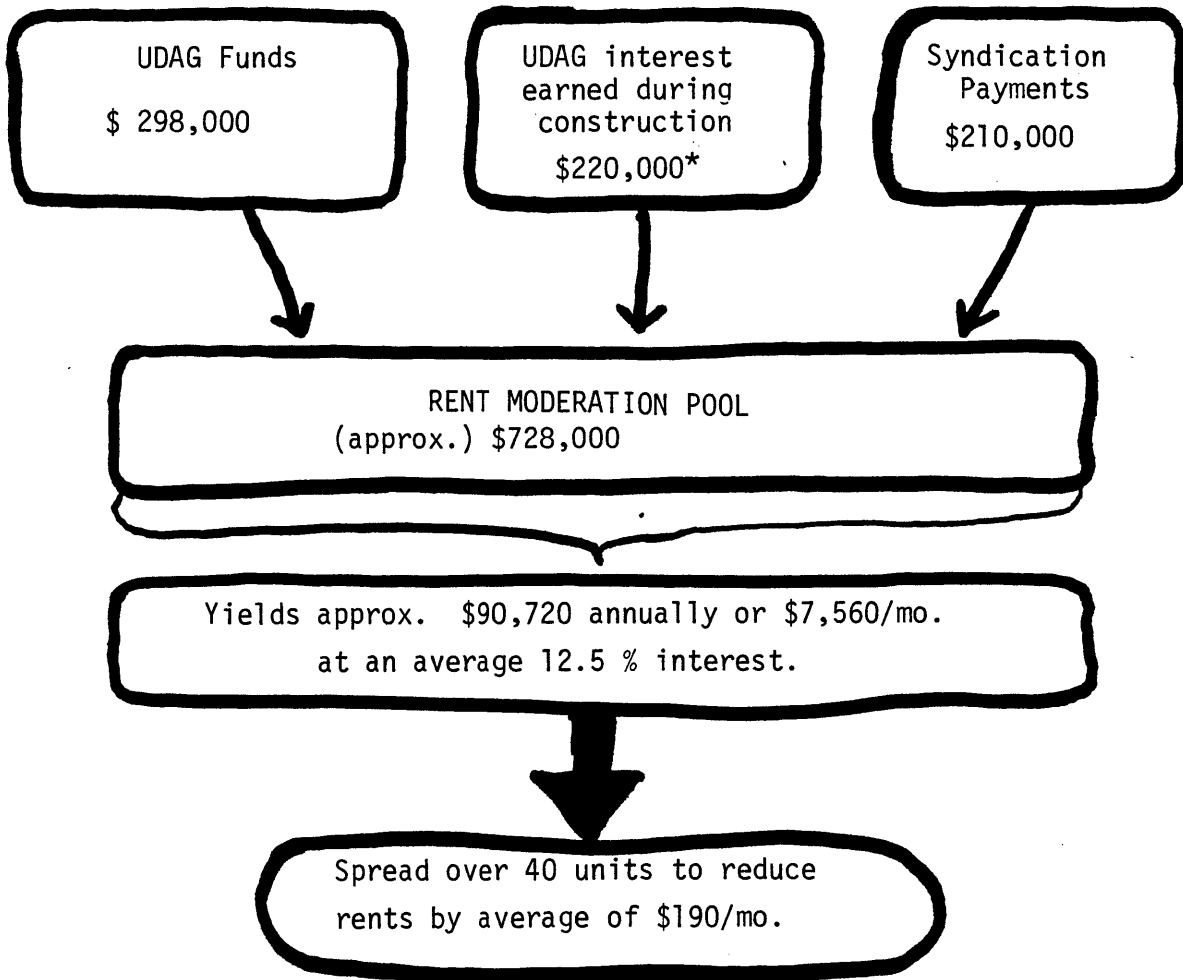
Illustration 1

Flow of UDAG Funds from HUD and City of Boston to Westland Avenue Associates and Returning to City.



Based on "Westland Avenue Housing Rehabilitation Project", Bubriski, et. al, and "Sources of Subsidy and Beneficiaries", FCDC files.

Illustration 2.
Sources of Rent Moderation Fund



*Approximate amount. May be larger due to further construction delays.

Source: "Sources of Subsidy and Beneficiaries", FCDC files.

Project Changes and the Beginning of Conflict

After submitting the UDAG application, the partners had to rapidly secure the financing and subsidy commitments before June of 1980, when the UDAG was scheduled for release. Mortgage insurance and Section 8 applications would have to be completed, a tax agreement reached with the City, and construction financing secured. During this period, the project design went through several changes, as did the Westland Avenue Associates partnership. The number of units was changed several times and eventually reduced to 101, (later reduced further to 97). The original architects, Skidmore, Owings and Merrill, were never able to achieve the twelve large units in their designs. Construction cost estimates also rose during this period and as a consequence the share of UDAG funds available for rent moderation was reduced. In early May, HUD informed the partnership that there were no Section 8 funds available for their project from the NOFA pool which Keefe had applied for. Other sources of Section 8 funds did exist, but for nearly two months it was uncertain whether the project would have any low income units.

With each of these changes, FCDC became increasingly concerned with achieving its goals for the project. Moderate rent levels appeared unattainable under the present financing scheme, and without Section 8 subsidies there would be no low income units. FCDC wanted more assurances on rent moderation levels and greater control over the UDAG funds which supply the moderation pool, and told Keefe that it would not provide more public endorsements until the rent moderation and Section 8 issues were resolved.²⁰

In late may, the Managing General Partner of Westland Avenue Associates, Mario Nicosia, pulled out of the project. He had become unsure of the financial benefits of the project, and was particularly uncomfortable with the participation by FCDC, and their desire for control over tenant selection and management.²¹ Macomber and Byron Gilcrest of Macomber Development Associates quickly became the new managing general partners. Macomber agreed to be the managing general -- and the general contractor -- but under several conditions: that HKS become a general partner as well, sharing liability with Macomber Development; that Boston Architectural Team (BAT) become the project architects, since they had more residential renovation experience than Skidmore, Owings and Merrill, and had worked with Macomber before; that no cash be required from Macomber for the project; and that the solar building be excluded from the project because of the potential for high cost overruns.

As part of the partnership reshuffling, Macomber Development was to receive 51 percent of syndication proceeds. HKS would receive 39 percent of the proceeds, with 10 percent or one-quarter of their proceeds going toward the fund, and FCDC's share was doubled to 10 percent, half of which would go into the rent moderation fund. As a result, the total percentage of net syndication going toward rent moderation was reduced from 20 to 15 percent, since Macomber Development was not to contribute any proceeds to the fund. Both Macomber and HKS also insisted in FCDC retaining its limited partner status, despite the community group's desire to become a general partner. Keefe and Macomber also felt that the project would be difficult to syndicate and the proceeds reduced if FCDC became a general partner.²²

Fenway CDC Attempts to Increase Its Control

On one point the partners were all able to agree; the need for a larger UDAG. Keefe soon submitted a request to increase the UDAG funds from \$1.5 million to \$2.6 million, which was to increase the amount available for rent moderation, cover nearly all of the partners' cash requirements, and some increased construction costs. Other issues still greatly divided the partners. Macomber and HKS wanted to drop the solar building which they contended was responsible for \$170,000 in extra costs not covered by the mortgage.²³ FCDC continually defended the solar design as a major goal and necessary for the community group's participation. Section 8 allocation was still uncertain, as was the size and use of the rent moderation fund. In addition, FCDC felt increasingly excluded from major decision making that was affecting the project. The general partner changes had all been negotiated without FCDC's knowledge or involvement, and in most cases FCDC was only informed after the decisions had been made. As a limited partner, FCDC's participation in these decisions, such as the change in architect, was not specifically required.

Unable to reach an acceptable solution to these problems through negotiation with the other partners, FCDC attempted to influence HUD officials involved in the UDAG increase, and thus exert pressure on Keefe and Macomber to better meet their demands. Thall detailed the community group's concerns to Robert Embry, the HUD official in charge of the UDAG, and requested that certain conditions be placed on the UDAG which ensured an adequate rent moderation program. The letter defined what FCDC considered acceptable moderate rents (based on incomes ranging from 110 to 150 percent of Section 8 limits) and a minimum number of 45 moderated rent units. An excerpt from Thall's letter to Embry showing these requested

conditions is included in Appendix B. The total moderation fund needed was estimated at \$95,616 per year, or 10 percent annual interest on nearly \$1 million.

Fenway CDC also pursued another avenue to strengthen their negotiating position. They applied for a HUD Neighborhood Self-help Development Grant of \$120,000 to increase its equity in the project, pay legal and architectural consultants, office expenses and staff time, and add to the rent moderation fund. FCDC believed that providing another \$40,000 toward working capital requirements of the partnership would assure it general partnership status, and raise its partnership share.²⁴ Neither of these efforts came to fruition. Although an increased UDAG was approved for \$2 million, HUD officials did not include any of FCDC's requested conditions. The Self-help Grant was not approved.

The Joint Venture Agreement

Section 8 subsidies for 30 units were eventually secured from the Metropolitan Area Planning Council, and two final steps remained to complete the financing for Westland Avenue Apartments. A 121(A) tax agreement had to be negotiated with the BRA, and a joint venture and limited partnership agreement had to be reached between HKS, Macomber Development and FCDC. HUD was requiring the agreements before making tandem financing and Section 8 commitments. Vocal opposition by FCDC or any other community organization would seriously jeopardize the 121(A) agreement, as the BRA preferred to avoid controversy in these agreements.

As Keefe negotiated with the BRA for a favorable 121(A) agreement, he was also negotiating with FCDC for a joint venture agreement, knowing that it was imperative that there be no community opposition voiced at the 121(A) hearing. As the late September initial closing approached,

FCDC at least implicitly connected its support of the tax agreement with the conditions of the joint venture agreement.

The negotiations continued down to the wire, and the joint venture agreement was signed on September 22, 1980, four days before closing. The agreement had several provisions. It established "Rent Moderation Program Goals", and allowed changes in the program if they are consistent with the established goals. The solar design would not be removed from the project without FCDC's consent. FCDC is established as a sponsor limited partner, with responsibility for up to \$45,000 in overruns of the project. Consent by FCDC is required for sale or re-financing, and it must approve any changes in the management agreement. All three partners can fire the management agent, and must agree on a new management agent.

The Rent Moderation Program Goals, included as an appendix to the joint venture agreement, has three basic provisions:

- "Up to 40 apartments in the Project will be rented at moderate rent levels," through interest earned on investments from UDAG funds and syndication proceeds.
- Moderate rents will be set at levels affordable at 110 to 150 percent of Section 8 income limits, similar to earlier FCDC proposals (see Appendix B).
- Units of 3 or more bedrooms will receive preference for rent moderation funds, with a minimum of six receiving moderate rent levels. A minimum of ten large family and 17 two bedroom units will have Section 8 subsidies.

By the time the joint venture agreement was reached, serious lack of trust had developed between the general partners and Fenway CDC, and their respective negotiators, Frank Keefe and Mat Thall. FCDC was

still concerned that the project would contribute to gentrification pressures in the neighborhood, and unsure as to whether the rent moderation program would be carried out in an acceptable way. The rent moderation program had been reduced from the originally proposed \$1.2 million to an ambiguous amount around \$500,000. From FCDC's perspective, the general partners were continually covering project cost increases due to poor initial estimates by drawing from the rent fund and sacrificing the moderate rent goals of the project. Frank Keefe felt that FCDC had continually increased its demands and had been unwilling to compromise as the project evolved and the economics of the costs and revenues changed.

The final project design was for 97 units, at a total development cost of \$6.9 million (including BSPRA). Syndication proceeds were to be distributed as follows:

\$1,800,000	Gross Syndication Proceeds
<u>400,000</u>	Syndication/Brokerage fees to FBTG
1,400,000	Net Syndication to Partners
714,000 (51%)	Macomber/Gilcrest
546,000 (39%)	Harrington, Keefe, and Shork
<u>140,000 (10%)</u>	Fenway CDC
(210,000) (15%)	Contributed to Rent Moderation Fund from HKS, and FCDC.
406,000	Net to Harrington, Keefe, and Shork (546,000 - 140,000)
70,000	Net to Fenway CDC (140,000 - 70,000)

Construction Overruns and Subsidy Changes

It soon became apparent that the project would experience considerable construction cost overruns, (estimated in February, 1981 at nearly \$500,000), and the general partners were anticipating "cash calls", where they must contribute cash to cover construction costs not

paid out of the construction loan. The first building would be rented up in late May, and the general partners and the management agent began to solidify the rent levels and marketing strategy.

In January the general partners presented an altered proposal for the allocation of Section 8 units and the use of rent moderation funds. Keefe and Byron Gilcrest (of Macomber Development) felt that major problems existed in the previous plan because many smaller apartments in the back of the buildings were designated as market rate units, and their marketability was in doubt.

Their proposal was to shift Section 8 subsidies onto the smaller, less marketable units so that the larger units could obtain premium rents, above those allowed under Section 8 guidelines, of over \$900 per month for 3-bedroom units. Under this plan, only four large family units would receive Section 8 subsidy. FCDC objected to the plan and formulated an alternative plan that dealt with the marketing issues but also retained the group's major goals. In addition to the desire to keep Section 8 subsidies for large units, FCDC objected to raising market rents on moderation program became much less effective. The Fenway CDC negotiators proposed that ten 3- and 4- bedroom units receive Section 8 subsidies, that market rents remain at similar levels as originally proposed, and that moderate rent levels also remain within the guidelines set in the Rent Moderation Program Goals.

The partners also disagreed on the amount of rent moderation funds available. The major source of rent moderation funds --UDAG funds remaining after paying debt service --was controlled by the general partners, and after construction cost overruns the amount available for rent moderation became in doubt. Keefe and Gilcrest estimated annual rent moderation funds

at \$48,830. FCDC, by retaining a larger fund from the UDAG at a higher interest rate, estimated the rent moderation fund at more than \$73,000.²⁵

The general partners and FCDC were in total disagreement on how to deal with these issues and the tensions and mistrust between them increased. The community group's only leverage at this point was with the BRA and HUD officials. The BRA controlled the UDAG funds in dispute and must approve any changes in their use, including the rent moderation program. FCDC wanted the BRA to place requirements on the rent moderation program that met the community group's criteria on the amount and distribution of the funds. The BRA's response--to FCDC's disappointment--was to not become involved.

HUD had to approve the Section 8 unit changes and the developer's request for a 5% increase in the subsidy amount, and the HUD area office was requiring the signature of both FCDC, and, the general partners to the new allocation plan, but refused to take any mediating role between the openly feuding partners. As rent-up for the first building approached, the partners grew no closer to agreement, and the management agent intended on renting according to the general partner's plan.

In an effort to exert pressure on the general partners, Fenway CDC decided to take the dispute into the public realm. Letters were sent to Senators Kennedy and Tsongas, explaining the conflicts and what FCDC considered misuse of public funds. In May, an article appeared in the Fenway News with the caption "As Construction Nears Completion, Developers Hike Rents On Westland Avenue." The article read, in part:

"FCDC has charged that the developers have broken repeated promises to the Fenway community, commitments about affordable rents and family housing that were made in writing in the various applications for subsidies for the project. The developers state that they regret that there will not be as

much affordable housing as they were committed to, but they must be conservative about rents and subsidies during the first year of the project."²⁵

Tensions between the partners increased as Frank Keefe regarded these actions to be public attacks on his reputation. The FCDC members, knowing that both Keefe and Macomber were very sensitive to their public reputation were counting on the negative publicity to pressure them to compromise.²⁷

With additional pressure from HUD to keep large units on Section 8 subsidies, a compromise was finally reached on the allocation of low and moderate rents. Seven large family units would remain on Section 8 subsidies, and four on rent moderation. The amount of rent moderation funds was agreed to, yielding over \$73,000 annually to be spread over 40 units.²⁸ Ironically, construction delays resulted in more UDAG interest accruing to the rent moderation fund than expected, and the annual amount will be over \$90,000 with a principle of approximately \$730,000.²⁹

After construction was completed in February, 1982, the project had accumulated over \$600,000 in cost overruns.³⁰ Based on the income from higher market tents, the general partners applied for a mortgage increase from HUD for \$412,000, to a total of \$6,730,000.³¹ \$100,000 of the overruns had already been covered through UDAG interest during construction. Total project costs had risen to nearly \$7.5 million.

After the general partners announced their intention to apply for the mortgage increase, FCDC considered attempting to block the increase as a way of extracting guarantees against future rent increases. However, FCDC members decided against this tactic, feeling that the tension and animosity, which had abated, should not be revived and that there

would be little benefit to the subsidy programs from blocking the mortgage increase. FCDC agreed not to intervene in the application, but instead, FCDC members decided to put their efforts into a more tested method of keeping rents down in the Fenway -- organizing the tenants of Westland Avenue Apartments.

AN ANALYSIS OF THE WESTLAND AVENUE JOINT VENTURE

The Fenway Community Development Corporation's many goals were met to varying degrees. Probably the biggest success was in the solar building design, which was retained and finally built, and includes some subsidized units. It is now operating successfully as a mixed-income, solar heated building. FCDC did have to compromise on some of its other major housing goals. The "bottom line" of twelve subsidized large family units was eventually reduced to ten, and the effects of the rent moderation program have fallen short of its initial expectations. Moderated rent levels will be rising over time and not be affordable to moderate income people by FCDC's standards. This is not to say that the community developer did not have a significant impact, since without FCDC's involvement the project would have been quite different. The solar building would not have been built. It is possible that, after losing the initial Section 8 allocations, Keefe would not have pursued further Section 8 subsidies and the project would be without low income units. Furthermore, without FCDC's persistence the rent moderation program would have been greatly reduced or eliminated, with the UDAG funds instead providing further general construction subsidy. Keefe himself has said that the community group's involvement caused the developers to "challenge some assumptions", and that "a better project resulted."³² Still, many FCDC members feel that renovating the Westland Avenue buildings will have a secondary displacement effect that will be detrimental to the neighborhood and the organization's goals. This internal conflict was perhaps unavoidable by virtue of FCDC's participation in a large, visible rehabilitation project in an area with increasing market pressures, but the

group would have felt more successful had FCDC gained more control over the project and achieved more of its housing objectives.

FCDC also achieved moderate success on its organizational objectives. As a result of the Westland Avenue project, it has become a well known community organization with an active and revitalized membership and board of directors. FCDC has also forged a stronger, more positive relationship with state agencies and HUD, and recently received a small stat grant for operating and staff expenses.. In addition, due to its strong stance on housing issues, FCDC is still viewed as promoting community ⁱⁿterests above its own development activities and has maintained its credibility as a community representative on housing issues in the neighborhood. FCDC's net syndication proceeds, while only a small percentage of the total, have sustained the organization for more than a year.

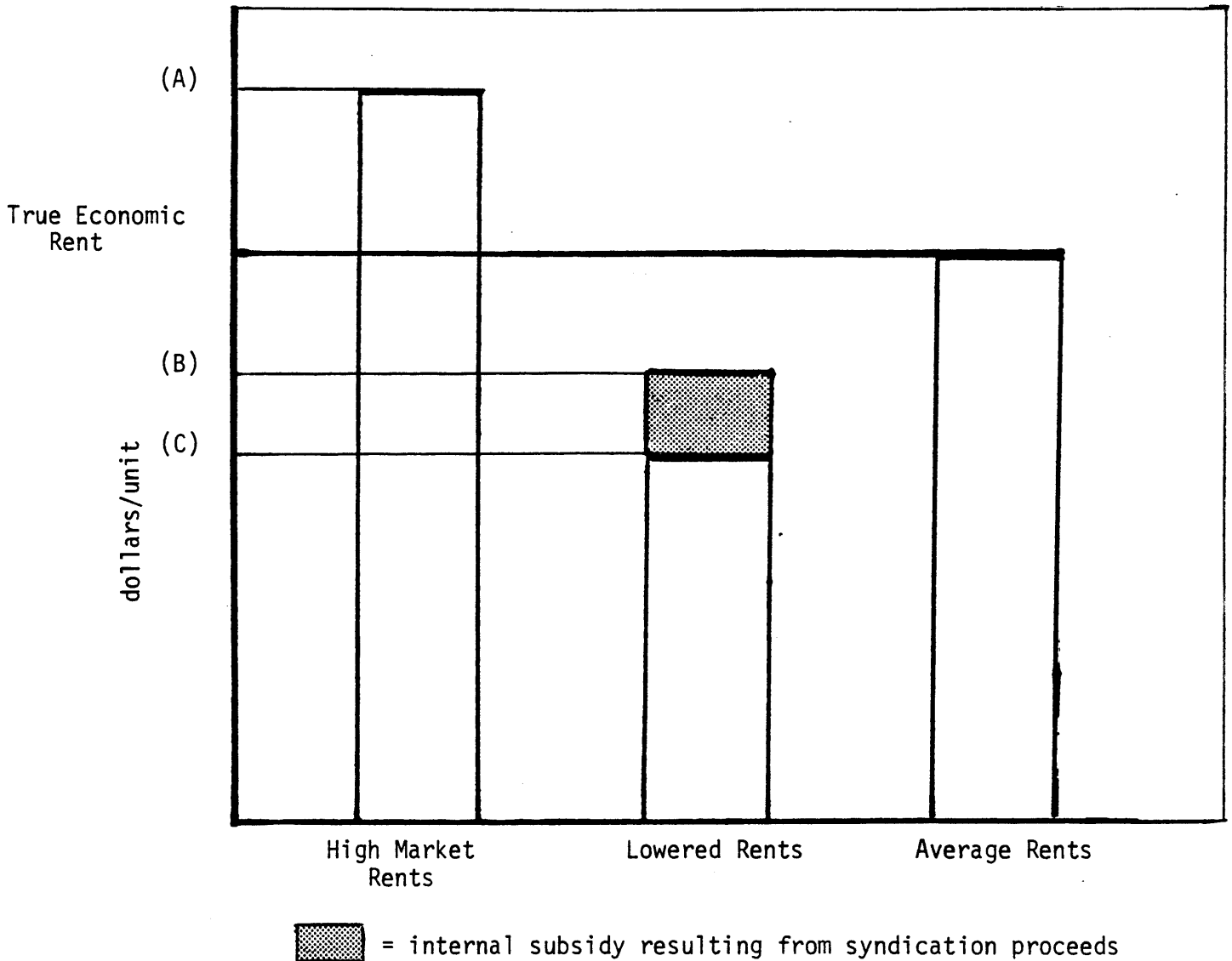
Still, there have been some disappointments in FCDC's role in the partnership. The community organization did not achieve general partner status, as it had originally hoped, and did not have direct control over major decisions. A more major decision making role would have increased FCDC's visibility in the project and improved its reputation as a developer. The partnership is also a failure, for both the community and private developers, in that their working relationship completely dissolved due to conflicts over design and subsidy issues. For the community organization, this level of conflict may have a detrimental effect in the long run. FCDC may now have a bad reputation with potential development partners as a result of the Westland Avenue conflicts, which will make future joint venture developments very difficult for the community organization.

Could the conflicts between the partners have been avoided, given the unusual financing of the project? Why was FCDC unable to take a more major position in the partnership, and what could have changed that position? Finally, what does the Westland Avenue partnership suggest for similar joint ventures in the future that may be facing similar financial circumstances, and how similar or different is Westland Avenue from the joint ventures described earlier in Chapters IV and V ?

Project Financing and the Partnership's Conflicts

The Westland Avenue partnership had conflicts common to other joint ventures, such as design issues, distribution of proceeds, and control over management and refinancing, but the complicated and unusual financing -- including a market rent component and the rent moderation fund -- created special problems between FCDC and its for-profit partners.

The most important difference between Westland Avenue Apartments and other projects studied is that Westland Avenue is highly dependent on a market-rate housing component as well as the various subsidy programs. The financing and subsidy package for the project is an attempt to address the problems of housing finance by using multiple external subsidies, such as low interest financing and Section 8 subsidies, and adding an "internal subsidy" to make the project feasible. "Internal subsidy" here refers to the use of high market rents on some units, and a portion of syndication proceeds to lower the rents on other units. Illustrations 3 and 4 demonstrate the internal subsidy concept and as it is applied to Westland Avenue's financing. The internal subsidy is actually only a small part of the total subsidies for the project. Without the general subsidy, rents averaging approximately \$1,150 per month per unit would be needed to

Illustration 3, Pure Internal Rent Subsidy

In this case, the true economic rent (rent/unit necessary to support the project) is achieved through rent skewing, where rents above economic rent allow lower rents on other units. Use of syndication proceeds can be used to further reduce rents. This example is only possible if market rents can be higher than economic rents. In the above case, High Market Rents are at (A) dollars/unit, and the surplus is used to reduce Lowered Rents to (B). Syndicator proceeds further reduce rents in Lowered Rent units to (C). The average revenue is at True Economic Rent.



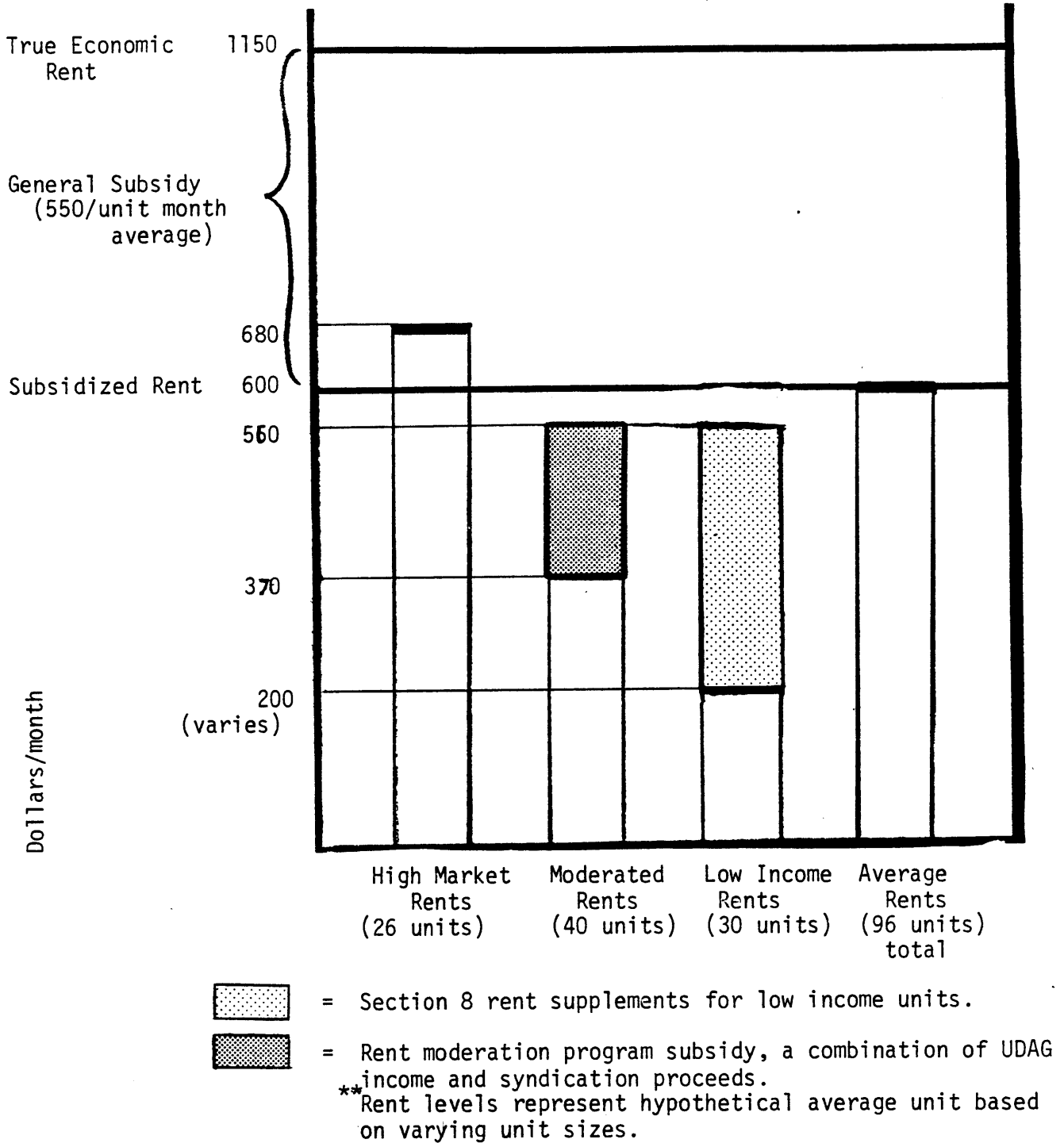
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Illustration 4, Westland Avenue External and Internal Subsidy Mechanisms



In this case, the general subsidy reduces the average rent necessary for project feasibility. For Westland Avenue Apartments, A UDAG "writedown", GNMA financing and 121(A) agreement reduced the necessary average rent by approximately \$550/month per unit. The rent moderation program (internal and external subsidies) further reduced moderate rents by \$190/month. Other units were deeply subsidized through Section 8 allowances.

support renovation and operating costs. Assuming that the present market rents of \$500 to \$925 per month are the highest obtainable in the Fenway, the project would clearly not be feasible without the GNMA financing, UDAG writedown, and local tax agreement.

The internal subsidies and rent moderation program are actually minor in comparison to these outside subsidies, reducing less than half of the units' rent by an average of \$190 per month, of which only \$50 per month results from syndication proceeds. Despite the three-tiered rent structure, there is no formal rent skewing mechanism for the project. The high market rents account for approximately \$1,700 per month in additional revenue above the Section 8 fair-market rents (\$750 per month for a 4-bedroom unit, as opposed to \$925).³³ FCDC advocated formally using some of this income to lower moderate rents, but instead it was used to obtain the mortgage increase. Without the additional market income, it is possible that additional UDAG interest would have gone toward debt service rather than rent moderation, but this is not certain. FCDC hopes that a rent skewing mechanism can eventually be set up to reduce the inflation of moderated rents. Under the current arrangement, rents on moderated units will rise by 8 percent annually along with Section 8 unit rents.

The UDAG funds, rent moderation program, and "internal subsidy" allowed a more flexible allocation of subsidies than normally exists for sponsors of Section 8 housing, and the final distribution of those funds had a direct effect on both the private developer's profits from the project and the community developer's objectives. FCDC quickly found itself taking a strong tenant advocacy position as the internal subsidy and rent level issues added a further layer of conflict where the community and

private developer's had very opposing interests. The UDAG funds, for example, could be allocated toward either construction subsidy or the rent moderation program, and it was in the general partner's interest to allocate the funds toward construction costs, and cost overruns in particular. FCDC, however, wanted the funds directed toward the rent moderation program and suggested that the other partners use their syndication proceeds to cover cost overruns. FCDC argued that the developers should absorb more of the costs themselves, rather than raising market rents or reducing moderation funds.

As the project economics changed and the subsidy and rent programs became more specific, the private developer's main concern was keeping the project financially stable and at least reasonably profitable, and allocated funds and subsidies accordingly. Frank Keefe was very hesitant to make definite commitments regarding ultimate rent levels or subsidy distributions, knowing that the costs were not firm, and regarded any such commitments as secondary to basic financial priorities. FCDC, on the other hand, had a "bottom line" on its goals for the project, which include the creation of a substantial number of large family units at least twelve affordable to low income families, approximately half of the units at what the group considered truly moderate rent levels, ie. affordable to moderate income people, and completing the solar building as part of the project. Without these goals, none of which were financial, FCDC would not support the project.

These conflicts came to a head during construction, when the general partners proposed removing Section 8 subsidies from large family units, and using the shrinking rent moderation fund to provide shallow subsidy for 40 units. Shifting Section 8 subsidies from large units to

smaller units was advantageous to the private developers because of the higher market rents they felt the larger units could draw. For mixed-income projects, HUD sets Section 8 rent levels at 100 percent of "fair market rents" based on local averages, which in this case were set at \$718 per month for a 3-bedroom unit and \$750 per month for a 4-bedroom unit.³⁴ Keefe and the managing agent felt that several of the large units were the most marketable in the project, because of their size and location, and could be rented at over \$900 per month for both 3- and 4-bedroom units. The increased revenues would allow the partners to apply for a mortgage increase to cover project cost overruns, leaving a greater share of syndication proceeds for the general partners. To the community organization, removing the large family Section 8 units flew in the face of its most important goal -- providing low income family housing in the Fenway. Adding to this dispute, the partners also had conflicting interests in how the rent moderation funds should be applied. FCDC preferred to target the funds toward fewer units, reducing the tenants share of the rent to a level affordable to people with incomes just above Section 8 limits. Income eligibility criteria would then be applied in tenant selection, so that the moderated units were rented to moderate income people. The private developers proposed shallower subsidies for more units, essentially making them more marketable and reducing vacancy rates, with more flexible income eligibility criteria.

Conflicts such as these do not exist in joint ventures where subsidy levels are more completely prescribed. Marcus Garvey Gardens, for example, was 100 percent Section 9 subsidized with MHFA financing. A portion of Macomber's syndication proceeds was used to cover construction costs, but this was understood beforehand. The level of subsidy was not

in dispute.

In the Brightwood joint venture, which also included a market-rate component with a UDAG writedown, the rent levels were not in dispute. Brightwood Development Corporation was not as concerned about the displacement effects of the market rate units and was not trying to create additional subsidized units through an internal subsidy. Thus, both the private and community developer had the same basic objectives for the market-rate housing -- a financially stable and well run project. Even in 808 Memorial Drive, where Riverside/Cambridgport Community Corporation changed the project from all luxury rentals to a mixed income project, disputes between the community and private developers did not focus on the details of the subsidy mechanism. After deciding to use MHFA financing, a fairly standard income and subsidy mix was applied which, at that time, reduced the market risks and allowed substantial profits to the developer from syndication. Instead, the conflicts between RCCC and Nemetz were focused on design issues.

Is the heightened level of conflict in the Westland Avenue joint venture inherent in the internal subsidy and market rent issues, and can future joint ventures with similar financing mechanisms expect these conflicts? Certainly some of the conflicts can be attributed to FCDC's strong tenant advocacy stance which some community developers might not be willing to take. FCDC is linked to Fenway tenant organizations through its board members, and Fenway neighborhood organizations (and activists) have a history of conflict-oriented negotiations as a result of urban renewal, institutional expansion and anti-arson struggles. It is also important that both principle negotiators were relatively inexperienced in business negotiations of this type. Westland Avenue Apartments was Frank Keefe's first major real estate development, and he essentially

acted as the project manager. Similarly, Mat Thall was a Planner for the Cambridge Housing Authority, but had no private development experience of this scale. These factors notwithstanding, joint venture projects which include internal subsidies and market risks will have more conflicting interest between the community and private partners than previous projects completely supported by external subsidies. It follows that community developers in joint ventures may be increasingly forced into a tenant advocacy role, which suggests that the polarization that occurred in Westland Avenue Associates could easily be repeated.

The greater amount of uncertainty associated with such innovative financing also presents problems likely to result in conflicts. Since the development process is not as predictable as under more tested Section 8 financing, it is more difficult to anticipate costs and rent levels, unit mix, and final design early in the process, and the partners must be continually working toward resolving these issues as the project's financing takes shape. Because of the financial uncertainties, private developers will be more reluctant to make commitments of the type that FCDC sought, ie. a minimum number of subsidized family units, rent levels, and design criteria (such as the solar building). The community developer, on the other hand, is concerned about preserving its own housing gains and will try to set minimum goals for the project, while still negotiating for other gains as financing proceeds. Initial agreements are thus difficult to reach and conflicts result from the changing project finances.

The Initial Agreement and FCDC's Role in the Partnership

The initial agreement signed by the partners, and their consensus of intent to produce a mixed income project with a substantial proportion of moderate rent units was of no use in resolving the conflicts around the subsidy programs and the solar building. The premises of the agreement quickly changed and, while the partners had delegated responsibilities to some extent, they had not delegated control over specific aspects of the project. The community developer, as a weaker partner in the joint venture, found itself with no formal control over any aspect of the project as the conflicts increased.

The agreement was to participate in a project, then 107 units at a cost of roughly \$6 million with financing and rents still uncertain. The partners had also agreed to complementary responsibilities. Nicosia, (and later Macomber) provided financial backing, HKS secured the subsidies and financing, and FCDC provided community support. What the agreement did not do was specify each partner's authority should the partners disagree. This meant that each partner's control resulted from their relative importance to the project, and their control over daily development activities. Consequently, FCDC had the most ambiguous control, with no control over daily activities, and the rather uncertain importance of community support.

The unit mix changed, the financing and rent structure changed, and FCDC no longer supported the project. When FCDC threatened to withdraw support, as its only source of leverage, the other partners regarded this as breaking an agreement to support the project. From FCDC's perspective, the other partners had broken the agreement by changing the project without including FCDC in the decision process, and disregarding the objectives of

the project as FCDC understood them.

This problem for FCDC is in some ways similar to the Brightwood joint venture, where the initial agreement between the community and private developers was very specific regarding financial contributions, development responsibilities and financial benefits, but very ambiguous around the issue of control, particularly after initial closing. Brightwood Development Corporation was in a much stronger position than FCDC regarding its ability to stop the project, and negotiated control over several key issues in the development and management. Still, as discussed earlier in Chapter V, BDC's ultimate control and financial benefits were reduced because of the ambiguous agreement with MB Group.

How might control have been less ambiguously delegated early in the Westland Avenue partnership, particularly when developers are unwilling to make commitments before financing is certain? A more detailed agreement was clearly needed before the partnership pursued financing commitments and finalized architectural work. The joint venture agreement, as unsatisfactory as it was in specifying FCDC's decision making power, was only signed days before initial closing. Had an earlier agreement delegated specific rights and controls to FCDC, its decision-making authority might have been increased. FCDC might have sought control over the rent moderation program, for example, as its role in management, an extremely important goal for the community developer and a major conflict in the partnership. In exchange, FCDC would have taken greater liability for operating deficits on moderated units.

There are some clear disadvantages to this approach as well, since FCDC would not want to lose control over other aspects of the development before financing and design issues had been resolved. Gaining

specific controls may also have required FCDC to have more demonstrated political influence than it actually had. In this case, ambiguity might have worked to the community developer's advantage.

The Solar Building

Another conflict between the partners running throughout the development period was the solar building. On several occasions the private developers wanted to drop the solar design, or the whole building from the project but FCDC insisted on its inclusion in the final plan. This conflict, while perhaps not as unique to Westland Avenue, is very indicative of the difficulty that undercapitalized community developers have in joint ventures, and their attempts to leverage multiple goals out of housing developments.

For FCDC, the solar building served several purposes. It was designed to demonstrate the feasibility of passive solar heating in the city, and several FCDC members were ardent solar enthusiasts, but also to demonstrate that solar design is feasible in a building that includes families and low and moderate income people. Thus, it was important that the solar design not only be retained, but also include large family and subsidized units. The solar building was also FCDC's major contribution to the project, both in terms of equity through the \$50,000 grant, and in physical design. The solar design symbolized FCDC's involvement in the partnership and in the neighborhood. It is perhaps this symbolic value as much as the other benefits of the solar building that prompted FCDC to threaten withdrawal from the partnership when the architects announced an alternate, non-solar design for the building. Thall claimed that FCDC would "sink the project" if the solar design was not kept.

Why were the private developers so opposed to the solar design? At first, Keefe and Nicosia were concerned about extra costs due to the design which could not be supported by the mortgage, but the alternate design indicated a difference of only \$70,000, most of which would be covered by the solar grant. After Macomber Development became the managing general partner, however, and recosted the solar building, they again became concerned that the design would have cost overruns in the vicinity of \$170,000. The additional problem was the relatively high acquisition price for the building, (\$200,000 for the solar and one other building) and Keefe wanted to drop the two buildings from the project completely.

Interestingly, the solar building also illustrates a classic disadvantage of undercapitalized community organizations as developers. FCDC had a purchase option on 65/67 and 83 Westland Avenue for \$125,000 (65/67 had the solar design) and was negotiating with the owner for a renewed option at a lower price.³⁵ The BRA had appraised the buildings at \$75,000, and FCDC "did not want arsonists to profit from its activities."³⁶ FCDC and several other Fenway organizations had a Community Development Block Grant sufficient to purchase the building, but other financing was uncertain and the grant would go farther at a lower purchase price. When Nicosia and HKS approached the owner for an option after FCDC's had expired, the purchase price had risen to \$200,000. Fenway CDC thus lost its site control over its project because of its limited ability to compete with a well capitalized developer, and the slower decision making process involved in public financing of community development organizations. Early in the partnership, FCDC offered to purchase the solar building shells for \$125,000, using its Block Grant funds. The private developers declined the offer, preferring to retain control over the buildings despite the higher costs.

The Source of FCDC's Negotiating Strength

The factors which influence a community developer's negotiating strength, discussed in Chapter V, are very applicable to FCDC in Westland Avenue Associates. Similar to 808 Memorial Drive, FCDC acted as a community support partner and contributed very few financial or other development resources to the partnership. The \$50,000 solar grant contributed by FCDC, which Thall refers to as equity, is largely negated by the extra costs incurred by the solar design, and the fact that the UDAG covered most of the cash requirements of the general partners. Instead of financial resources, FCDC attempted to use its political resources to affect the partnership, and its negotiating strength relied almost exclusively on its ability, real or perceived, to influence public officials who control subsidy allocation and approvals. This results from FCDC's delegated role in the partnership of "delivering the community" and its unspecified decision making role, as discussed earlier.

Frank Keefe and Mat Thall disagree as to whether Fenway CDC or other community groups could have (or would have) stopped the Westland Avenue project. Keefe claims that the project met the objectives of FenPac, then the strongest community group in the Fenway, and would have been supported by FenPac and other community groups even if FCDC were not included as a partner. Thall points out that several Fenway organizations are represented on the FCDC board of directors, and that the chairperson of FenPac was an FCDC member and part of the Westland Avenue negotiating team. Without FCDC's support, claims Thall, the project "would have faced a severely divided community at best," and possibly concerted opposition.

It is doubtful that FCDC could have completely halted the project in the sense that RCCC had "veto power" over 808 Memorial Drive. Fenway community groups are not strongly supported by the BRA, whereas RCCC enjoyed the support of the Cambridge Planning Board and the Community Development Department. It is also apparent that Frank Keefe's experience in Massachusetts government and his connections to both local and HUD officials were instrumental in obtaining subsidies and approvals for the project. If FCDC were to oppose the Westland Avenue project, it would have been working against Keefe's (and Macomber's) reputation and support in various levels of government.

Despite its lack of political strength and financial assets, FCDC was able to substantially influence the partnership, largely through local and federal officials. Because of the many subsidies and approvals required, public officials have an important and active role in the project. The BRA, for example, placed several conditions on the UDAG loan to Westland Avenue Associates, including some control over the rent moderation program and annual approval of rent levels, even though these controls have not met FCDC's standards.³⁷ FCDC relied on some degree of support from the BRA when the joint venture agreement was negotiated simultaneously with the local property tax agreement. FCDC's only bargaining tool at that point was its alleged ability to jeopardize the 121(A) agreement if the community chose to object at the public hearing. Similarly, FCDC convinced Marvin Siflinger of HUD to support its position on retaining large family Section 8 units. Without Siflinger's support on this issue, the subsidies would have been shifted to smaller units.

Support by these public agencies for FCDC itself was actually not very strong at all. In fact, much of the community organizing activity

had been directed against the City, the Mayor, and the BRA, and Fenway organizations were seen as antagonists to the existing administration. The BRA distrusted FCDC, which had actively opposed the Copley Place project, and was concerned that the organization would oppose the BRA's decisions regarding the UDAG and 121(A) agreements for Westland Avenue. The source of FCDC's limited support from these agencies, then, was its ability to create a controversy around the project, and that both the BRA and HUD preferred to avoid an image of neighborhood opposition to publicly funded projects. But how far did this antagonist-based support go? FCDC was not able to persuade the BRA or HUD to place more stringent control on the rent moderation fund or intervene in the negotiations. From FCDC's perspective, the BRA is still taking too passive a role in the development by approving a second year rent moderation program that has further rent hikes on moderated units.

It is also important that FCDC had begun development efforts on two buildings before they were optioned by Nicosia, and obtained preliminary commitments of support from HUD and the BRA. Westland Avenue is thus not so easily classified as privately or community initiated, since the developers were in competition for the sites and the subsidy to develop them. FCDC was able to successfully convert its preliminary subsidy commitments into "political capital" to support its position in the partnership.

In summary, FCDC's use of community support and the threat of opposition as negotiating strength yielded mixed results. On several occasions, key public officials did not indicate strong enough support for FCDC to give it the necessary leverage in the partnership. Persistence on the community group's part, however, and the eventual use of public forums, did result in some gains for FCDC.

FCDC's Partnership Position

FCDC has a special limited partnership position in Westland Aoenue Associates, similar to RAP in Marcus Garvey Associates and the position that RCCC once held in 808 Memorial Drive, and while in some ways the limited partner position benefitted FCDC in its tenant advocacy role, it also made it very difficult for the community group to exert any influence over major partnership decisions. The two most important features of this partnership position are that FCDC's control over the project is limited to the provisions of the joint venture agreement (which has proven minimal in controlling the rent moderation fund), and there is virtually no liability for construction or operating deficits on the CDC's part. (Although there were cost overruns in the solar building, they were not separated from other building costs and FCDC was never called on for cash distributions.)³⁸ The lack of liability has certain advantages for FCDC, as its syndication share is essentially guaranteed. It also further divorces the interests of FCDC and the general partners and to some extent allowed the community group to adopt a strong advocacy position. Without liability for overruns and deficits, pressuring the general partners to absorb these costs had no impact on FCDC's syndication proceeds.

In retrospect, Frank Keefe feels that this was a major error because it divided the partnership, and that the community partners should share the risks as well as the benefits.³⁹ Mat Thall agrees. FCDC would have preferred a general partner position, and was willing to accept liability in exchange for greater control and a larger syndication share. A general partnership position -- and the corresponding liability -- would have changed FCDC's negotiating strategy. The organization would have

supported the mortgage increase to HUD, for example, si
it would have reduced its own losses from construction overruns. More
important, claims Thall, "the character of the conflict would not
have been as public."⁴⁰

The Fenway Community Development Corporation would have benefit-
ted greatly from a general partner position in the development, primarily
because as a limited partner in the community support role, FCDC was unable
to influence the partnership in any way other than through the threat
of withdrawing community support. While FCDC was able to extract certain
gains because of its diligence, a general partner position, similar to
that of the Brightwood Development Corporation in its joint venture, would
have afforded FCDC with more clearly delineated control over the
development.

The greatest disadvantage to FCDC's limited partner was that it
was excluded from major decisions of the general partners. FCDC's role
was to respond to decisions that had already been made in private by
HKS and Nicosia, or HKS and Macomber Development. For example, FCDC was
at one point asked to approve a completed architectural plan which had
to be submitted to HUD almost immediately. With no time to complete
another more suitable plan, FCDC had to settle for promises of later
revisions. Similarly, rent-up and marketing plans were completed with
the management agent shortly before their implementation, with little
opportunity for FCDC to respond. More recently, FCDC has requested
that the BRA require FCDC's comments on annual rent moderation plans,
which the managing general partner would otherwise submit without
consulting FCDC. Had FCDC been in a general partner position and been a
more major partner in the development, it would have been more directly

involved rather than struggling for a strong response voice.

A second advantage to a general partner position is that, as a major partner, FCDC's reputation as a community developer would have been greatly improved, and finally, it would expect an increased share of syndication proceeds as a general partner, as is clear from the experience of other community developers in joint ventures. Net syndication proceeds to FCDC, after contributing to rent moderation and paying expenses, will be approximately \$50,000. Enough, perhaps to pay salary and office expenses but not enough to cover pre-development costs for another project, or contribute to the organization's net worth.

But could FCDC have been a general partner given the existing circumstances? Probably not, and for several reasons. From the private developer's perspective, FCDC did not enter the partnership with enough resources to warrant general partner status. Macomber and Keefe provided the buildings, working capital, net worth and even the subsidies. FCDC could offer only community support, and even Thall's efforts to increase FCDC's equity contribution (through the Self-help grant) would have been insignificant since the UDAG covered most of the general partner's cash requirements. Since FCDC had no net worth, sharing liability would have been of little benefit to the partnership unless it also had a correspondingly larger syndication share..

Furthermore, early in the development process, FCDC established itself as having conflicting goals and interests with the general partners. This only increased Keefe's resistance to giving the community group a general partner position, since he felt that FCDC was already exerting too much control in its present position. Macomber had already shown his preference for community groups as limited partners, as in Marcus Garvey

Associates with RAP, even when the community developer provides substantial resources. Finally, as Keefe noted, a general partner position for FCDC would have met great resistance from the project's syndicator, Boston Financial Technology Group.

Increasing Control and Reducing Conflict With Limited Resources

To summarize the above analysis, the Westland Avenue joint venture experienced major conflicts between the partners and in the end the community developer found it had only an indirect involvement in decisions, largely through confrontational tactics. This has to be considered with the relatively few financial resources brought into the project by the community group, but from FCDC's perspective, the Westland Avenue partnership would have been more successful if it had more direct involvement in major decisions. This would have furthered both its housing objectives and organizational goals. FCDC members would also have preferred a better relationship with their partners, with fewer conflicts and the detrimental results.

FCDC's experience, and evidence from other joint ventures suggests that a major partner role is only possible when the community developer has a very strong initiating role and brings substantial financial resources into the project, as in the Brightwood and IBA joint ventures. This suggests that FCDC would have needed options on most of the Westland Avenue buildings, at least preliminary subsidy commitments, and substantial assets to cover up-front costs if it were to have been a general partner and exerted more control over the project. At the time, this would have been impossible for FCDC because of its limited financial assets, organizational history, and minimal support from the city administration. FCDC

might have greatly increased its partnership position if it had retained its purchase options on two of the Westland Avenue buildings, but unfortunately it could not.

FCDC's position without these purchase options or other major financial contribution to the partnership, however, is not atypical of a small community group without a development track record. Thus, the critical question is how FCDC, or any other similar community developer could have strengthened its position without the purchase options or other major resources? What other factors could have been affected and what negotiating strategy adopted to increase FCDC's role in the partnership and also reduce the conflicts? This analysis addressed these questions in several ways, perhaps the most important being the need to establish a firm, ongoing decision role for the community group as the development proceeds. As with earlier joint ventures, the sooner a community developer can contribute or control development resources the better. Support from public agencies, such as HUD and the BRA is also critical, and community groups must work toward increasing the importance of community support in the eyes of public officials. These factors may not significantly reduce the conflicts between the partners, however, since the partners would still have fundamental disagreements on major issues such as the use of UDAG funds and the market rent levels. With these issues greatly affecting each partner's objectives for the project, the private developer's financial criteria and FCDC's housing goals, it is doubtful that the conflicts could have been avoided.

Westland Avenue Associates presents some differences from earlier joint ventures because of its unusual financing structure, and the concluding chapter explores the implications of such innovative financing

on future joint ventures and community development strategies. Some of the recommendations correspond to the joint venture strategy outlined at the end of Chapter V, such as narrowing the community group's goals, and establishing early control over resources, but a further attempt is made to suggest how community developers can increase their negotiating strength in joint ventures without the benefits of deep development subsidies.

CHAPTER VII

JOINT VENTURE STRATEGIES IN AN ERA OF SCARCE SUBSIDIES

Changes for Community Housing Developers and Joint Venture Developments

Community housing development is entering an era of scarce subsidies, temporarily at least, as major federal programs are reduced or eliminated. With the end of the Section 8 rental program, the United States is without a major federal subsidized housing production program. Community developers have relied very heavily on federal subsidies for their developments, and likewise community private joint ventures. Low interest financing was provided first through the Section 236 program, and later through programs such as the GNMA "tandem" used in the Brightwood and Westland Avenue projects. The "tandem" program no longer exists. Even financing by the Massachusetts Housing Finance Agency has been severely curtailed, since the agency can only finance projects with at least 25 percent of the units at rents affordable to low-income residents.¹ Without operating subsidies, such as Section 8, this is a difficult requirement for developers to meet. Community housing development is thus in a period of turmoil and transition, where developers, including community groups and for-profit developers, are seeking new ways of packaging innovative financing and shallow subsidies to produce modest community housing goals. An example is the pending Massachusetts legislation that would allow MHFA to finance condominium developments, with a portion of the units purchased as state public housing.²

In addition to the curtailments of these subsidies, community developers face other losses in their development resources that severely

hinder their housing and community development activities. Urban renewal parcels were an important resource for community developers in the early 1970's, as IBA's use of Parcel 19 illustrates. Gaining designated developer status was one way for community developers to overcome their competitive disadvantage, without capital resources, in gaining site control over prime development parcels. For the most part, this resource is no longer available. The few urban land parcels that are in public control -- surplus schools and abandoned buildings, for example -- often have a very competitive disposition process, particularly if the parcel is financially desirable. In many cases, local administrations are looking to these buildings as a vehicle for private investment rather than community housing objectives.

Community developers also rely heavily on federal and state grants for their own operating funds, and to pay pre-development and planning costs. These funds are also being reduced or spread more thinly as the cost of operating and development planning rises and the need for these funds increases. The Community Enterprise Economic Development program (or CEED), for example, uses state and federal money to fund core staff for CDC's, usually on specific projects or programs. State funding has increased over the last two years, but not enough to compensate for the cuts in federal funding to the program.

The sum of these changes for community developers is that, while the financing of community development is changing, community developers are facing financial and other resource constraints that are even greater than in the past, making their role in future development even more difficult and uncertain. Joint ventures between private and community developers will also be affected by these changes, primarily because of the

changing finance structure and the implications of those changes on the community-private relationship, but also because of the fewer development resources available to community organizations.

Westland Avenue is generally considered an innovative project in terms of financing and rent structure. As housing and subsidies are reduced and more thinly spread, projects that are only partially dependent on external subsidies and include a strong market-rate component will become more common. Syndication proceeds will be used to make marginally feasible projects more secure. Internal subsidies may be used to increase the community housing gains from shallow subsidies only covering a few units. If this is true, and fully subsidized projects are no longer possible, then community developers will find themselves more frequently involved in market housing developments in an attempt to extract or preserve relatively modest housing goals from them. This is essentially the role of Fenway Community Development Corporation in Westland Avenue Associates. Furthermore, FCDC's position of contributing relatively few financial resources to the partnership may also reflect a more frequent position of community developers in joint ventures in the future.

Lessons From Westland Avenue and Future Joint Venture Strategies

The Westland Avenue joint venture can be distinguished from earlier partnerships by the importance of conflicts around financing, by the increasing role of public officials and community support, and by the different community development objectives in the face of scarce subsidies.

Many of the conclusions from Westland Avenue relate directly to the unusual financing structure and to the community developer's role in the partnership as a result of that financing. Most important is the

Community-Private Developer Conflicts

During Resource Scarcity

Community Developer

- Fewer subsidies leads to greater competition for those that exist. The community developer wants control over remaining subsidies to ensure maximum community benefits will result, but is concerned about participating in a largely private development.
- To justify its participation, community developer is seeking early commitments on housing goals such as rent levels or number of subsidized units.
- Uncertain financing results in unpredictable development process necessitating project changes. Community developer wants changes to be based primarily on preserving community housing goals.
- To increase its negotiating strength, community developer wants increased participation by government agencies and active intervention on behalf of the community group's position within the partnership.
- Community developer is hoping to enhance its development reputation through a strong decision role and visible impact on project.

Private Developer

- Private developer wants remaining subsidies to make private investment more feasible, but is concerned about community and government involvement in the project creating excessive requirements.
- Private developer is unwilling to make such commitments because of the uncertain financial position, insufficient subsidies, and desire to retain development options.
- Private developer wants project changes to be based primarily on financial criteria to ensure viability of private investment and return on that investment.
- Private developer prefers passive government role, similar to earlier subsidized projects, to reduce interference and hasten development.
- Private developer needs visible community support, but wants a minimal decision role for the community partner.

fact that the need for stretching public subsidies through internal subsidy mechanisms, the creative use of syndication, and a three-tier rent structure creates more inherent conflicts between the private developer's financial priorities and the community developer's goals for the project. This was the case, for example, in the disputes over the use of UDAG funds to reduce rents or cover construction overruns. Not only do these conflicting interests contribute to the confrontational tone of the partnership, but private developers are increasingly unwilling to yield control over decisions that will impact the project finances in the absence of 100 percent subsidized rents and finances. Thus, future joint ventures that have similar financing characteristics will also have these conflicting interests, making it more difficult for the community developer to gain control over decisions crucial to its development goals. The previous page summarizes the community-private developer conflicts under these newer development conditions with fewer subsidies. The chart should be compared to the earlier summary on page 27 to emphasize the changed relationship between the joint venture partners.

The increased competition for financing and operating subsidies was beginning to emerge in the Westland Avenue project, and this had several effects. First, the scarcity of subsidies puts more importance on subsidy commitments as a development resource and gives the joint venture partner with those commitments even greater leverage. Westland Avenue, however, also illustrates the increased importance of community support as a criterion for allocating subsidies, and thus as a development resource with increasing leverage as well. As public officials are forced to rank a greater number of proposals for fewer subsidies, disposition of surplus schools or distribution of CDBG funds, for example,

community support in the form of a partner in the development team will be increasingly valuable. FCDC was able to use this strategy with only limited success, for the many reasons discussed in Chapter VI, but it is likely that community developers in future joint ventures will find their community support role carrying more weight in the partnership. For this form of leverage to occur, however, it is imperative that community developers have a strong influence over public officials who allocate subsidies and public approvals. Westland Avenue Associates illustrates the consequences of only moderate political support or influence on the community developer's part.

It is also clear that FCDC's objectives for the project were greatly affected by limited subsidies. The maximum number of low-income units was only thirty, less than half being family units, and the moderate rent tier was uncertain. These are relatively minor gains compared to 115 Section 8 units in Marcus Garvey Gardens, and over 200 subsidized units in 808 Memorial Drive. The solar building was a victory for FCDC, but the community development effects are uncertain. Community development groups are likely to face internal conflicts around participation in a project with so few direct community gains. In FCDC's case, members were not comfortable being a partner in a project which they saw as contributing to displacement pressures, and although this conflict was never resolved, FCDC's participation was justified by the premise of achieving some housing gains (a mixed-income solar building and subsidized family units) and the importance of the project in building the organization's reputation as a community developer. Thus, community developers in joint ventures such as Westland Avenue will have to accept development that may be opposed to its objectives, such as luxury rentals

or condominiums or high-priced offices, in order to achieve relatively modest objectives and build organizational strength.

FCDC initially became involved in the project feeling that the community development gains would be substantial enough to warrant its support, however in the end the community group reverted to activities more resembling community and tenant organizing, suggesting that the gains were not substantial enough and that political organizing was perceived as being ultimately more productive.

An alternative strategy to joint venturing was fairly clear, as FCDC could have remained independent of Westland Avenue Associates, and along with other community groups could have pressured the developers to include Section 8 family units, moderate rents, etc., with the threat of community opposition to the UDAG and the 121(A) tax agreement. Whether this would have yielded more results is not clear, but from FCDC's point of view there were several disadvantages to this approach. It would not have contributed to the organization's development record as a joint venture did, nor would FCDC have taken such a position of leadership among Fenway community organizations. FCDC would not have received any syndication proceeds without the partnership position, and it is also doubtful that the solar design could have been included. As a partner, FCDC had access to business records that increased its negotiating effectiveness, another benefit of joint venturing. For FCDC, these were quite compelling reasons to join Westland Avenue Associates, rather than remain as an outside organization.

FCDC's participation essentially renews an older debate around the appropriate role of community groups in housing development, as mentioned in the introduction. During the 1970's, arguments against

community housing development corporations were largely overshadowed by the relative abundance of subsidies and the successful efforts of many community developers such as those mentioned in Chapter IV. But in a period of shrinking community resources, community developers cannot so easily achieve their major development goals, and the older debate is increasingly relevant. Should the community group's efforts be directed at negotiating with private developers and public officials for gains that will at most have a minimal effect on the overall problems, or should efforts be spent instead on community and tenant organizing to increase the community's political strength and thus its share of development resources? It can be argued that community groups cannot pursue both of these activities simultaneously, and that political organizing activity is more crucial particularly during periods of scarce subsidies.³

This further raises the issue around the most advantageous position for community developers in future joint ventures, since FCDC's limited partnership position, including no liability for operating deficits and construction overruns, was very conducive to its tenant advocacy position while still affording it some of the advantages mentioned above. In previous joint ventures, it was taken for granted that the community developer desired the greatest control and responsibility for the project, with the ideal role being the sole developer. In projects that are primarily private market developments, it may be desirable for the community developer to maintain somewhat opposing interests to the private developer while trying to extract limited community development gains from the project such as a percentage of low income rental units. In this case, a limited partner position may be more appropriate despite the disadvantages. As both the Westland Avenue and 808 Memorial Drive joint ventures illustrate, a limited partner

position can be quite consistent with an antagonistic relationship between the community and private developer, although the community developer cannot expect to have as major a decision making role in the project as it would as a general partner.

The Westland Avenue joint venture reinforces many of the conclusions from the first part of this report, and suggests that the most important strategies for community developers outlined in Chapter V are still relevant to joint ventures with significantly different financing structures. Site control is still extremely important, and community developers should still seek to initiate their own projects as the first step toward controlling critical resources. Defining in advance a clear decision-making role for the community developer is also important, although somewhat complicated by the uncertain financing. The problem is that this development strategy will be increasingly difficult for community developers as their traditional resources -- operating and development grants, and site control over public parcels -- become less available. To respond to the changing finance and subsidy picture, community developers must consider a somewhat broader joint venture strategy which includes not only the major points arrived at from earlier projects, but also incorporates the changes resulting from scarce subsidies and innovative financing. The following is an attempt to bring the lessons from Westland Avenue and previous joint ventures together into a joint venture strategy for the future.

1. Defining and Limiting Goals

Community development groups frequently try to achieve many different goals from one project, as mentioned early in this report.

With the reduced availability of development subsidies, community developers' goals will clearly have to be scaled down to realistically correspond to the project under consideration. With a multitude of goals, together being very difficult to achieve, there is a risk of increasing conflicts with the private partner. In Westland Avenue, had FCDC concentrated on the few major housing goals of the project and its organization building objectives, a smoother negotiating process would have resulted. Instead, FCDC's multiple goals included as diverse and unrelated areas as providing local employment, demonstrating solar heat, and reducing displacement pressures, and the introduction of these issues into the negotiations gave the impression that the community group's demands were unending and impossible to fully meet. In the end, FCDC was forced to abandon its more peripheral objectives, including local employment, control over resale, and general partnership status after they had caused considerable conflict and proved non-negotiable. If the community group's goals for the project were more limited and defined from the beginning, some of the conflicts would have been avoided. This is not to suggest that local employment or resale control are not important goals for community developers, but that a single, complicated joint venture cannot accommodate all of an organization's diverse objectives.

Community developers entering joint ventures similar to Westland Avenue will have to make difficult decisions regarding the project objectives that have the greatest priority, can really be achieved, and will be most beneficial to the organization's future. There should also be a sense of which goals will be abandoned should finance changes dictate, and which goals represent a "bottom line", below which participation in the project is no longer valuable.

2. Partnership Position and Development Role

Along with deciding on goals in advance, community groups should carefully consider the most advantageous partnership position when participating in developments that include only modest community goals. Although a general partner position and a major development role has usually been desirable, Westland Avenue illustrates both the advantages and disadvantages of a limited partner position for the community developer. Internal conflicts between a community developer's ultimate goals and market-rate rental or condominium development may result in a limited partner position being preferable to a general partner. A limited partner position allows some distance between the project and the organization, while the minimal liability allows the community group to use its organizing activities as a way of strengthening its control without conflicting with its own financial interests. Still, it is clear that FCDC paid a high price for its limited position by not being directly involved in major decisions.

3. Establishing an Early Position in the Project Through Resource Contribution or Control

As in previous joint ventures, it is still imperative that community developers establish an early role in the development project and the partnership. Where possible, it is still advantageous to initiate projects, and seek control over resources at an early stage. If FCDC had maintained site control (through purchase options on two buildings) its negotiating position would have been greatly improved. FCDC's later attempts to provide cash equity were fruitless, partly because it came to late in the partnership to be a valuable offer to the general partners.

Providing some financial resources to the project is still an important form of influence, even if the contribution is modest compared to large subsidies or loan commitments of previous joint ventures. Small development loans, CDBG funds, or developer designation will be more valuable than ever. Maintaining funding for pre-development costs and staffing is thus crucial for community groups to take an active role in development projects. In Massachusetts, these funds come from a variety of sources. The CEED program, already mentioned, funds core staff for CDC's, but has had major federal cutbacks. Two important state programs are the Community Economic Development Assistance Corporation (CEDAC) and the Community Development Finance Corporation (CDFC). CEDAC provides technical assistance to community developers, such as architectural work, legal assistance, or other related development activities. CDFC provides short-term funds for community developers to cover upfront costs, usually backed by a guaranteed repayment from a permanent mortgage or syndication. This requirement will unfortunately prevent CDFC funds from being used at an early, more risky point in the development. Other sources of financial support of this type include the Local Initiatives Support Corporation (LISC) which is privately funded, and interest-free loans from the Episcopal City Mission fund. Community developers are highly dependent on these sources for their initiation of projects and participation in joint ventures, and community groups should actively pursue such funding for projects in the planning stages, and support increased state and federal funding for programs such as CEED.

4. Establish a Definite Role in the Decision Process

It is clearly important for community developer's to establish a firm, unambiguous role in decision made within the partnership. This is well illustrated by the Westland Avenue joint venture, as well as projects described earlier. The difficulty which arises in Westland Avenue, and is likely to re-occur, is the increasing need to maintain flexibility in the community developer's positions and have a strong voice in ongoing decisions and unforeseen circumstances that result from the uncertain financing situation. Ambiguity around control issues prevented direct involvement by FCDC as conflicts arose, which could be partially remedied by a more clarified decision role for the community developer, however, FCDC also used ambiguity to its advantage as financing changed and new negotiating issues arose. The purpose of a definite decision-making role, then, should be to set a strong precedent in early decisions so the community developer can also take a role in later decisions. Essentially, this requires a role in the decision process, rather than only over specified decisions. This would be the case, for example, if FCDC were directly involved in early unit design and Section 8 allocations, rather than responding to proposals by the architects and private developers, and then continued to take a direct role in future decisions.

5. Increasing the Value of Community Support and Expanding the Community Support Role

Community developers should concentrate on increasing the value, and in fact the necessity, of demonstrated community support as a criterion for subsidy allocations and local government approvals. By doing so, an important remaining resource to community developers that has the potential

to be increased can be used to its fullest extent. Critical to this strategy is the role of public officials in joint venture developments, and community developers must act early in the process to gain the support of these people for their position in the partnership. A "tripartite" relationship should be formed, with the community developer, private developer, and government agencies all taking an active role in the development. In the Westland Avenue development, the BRA and HUD were relatively passive in decisions and disputes between the partners. By actively supporting the community developer's efforts, government agencies can reinforce any public funds in the project and leverage greater community benefits. In return, community developers can offer their participation to facilitate neighborhood input in the development and eventually to ensure that programs are adequately carried out.

Community developers must also broaden the so-called community support role to contain more elements of a major partner role similar to the Brightwood Development Corporation in its joint venture. If community support can become a more valuable contribution to the partnership, then community developers should expect a role similar to that expected if they had contributed major subsidies or equity. In short, precedents must be set so that the community support partner is more of an equal to the private developer in the joint venture. These last few points fall heavily on the importance of increasing the political strength of community organizations, since that is the principle way that community support becomes a valuable asset. In this way, organizing efforts by community groups are clearly important to that group's development efforts, and will have an effect on its joint venture negotiations.

As a final note, it is important that this joint venture strategy will have impacts beyond the current development circumstances. Making community support a more important element in a development package will aid community development efforts at some later date, when housing production subsidies may be more available, as well as during the present subsidy shortage. Similarly, expanding the community support role to include more control will also set valuable precedents for future developments. Another consideration, and perhaps the most compelling argument for community developers entering joint ventures even when the benefits are small, is that even minor participation in housing developments during this period of little development activity will help community developers to survive and continue operating in the future, when development subsidies will hopefully be more available.

Harrington
 December 11, 1979

Mathew Thall
 Fenway Community Development Corporation
 100 Bank Street
 Boston, MA

Mat:

I would like to invite the Fenway Community Development Corporation to join Westland Avenue Associates in a partnership to rehabilitate ten vacant buildings for a mix of private and subsidized housing.

Both the Nicosia Development Company and Harrington, Keefe & Work, Inc., the existing members of Westland Avenue Associates, support the participation of a grass-roots community organization as a means of making this project both stronger and more sensitive to the needs of the neighborhood.

The FCDC would receive 20% of the syndication proceeds that would go to HKS, Inc., or 5% of the project's total syndication proceeds.

The partnership will make every attempt to allocate this amount to FCDC from the first two annual payments from investors.

FCDC will contribute its \$50,000 solar grant for 65 and 67 Westland Avenue to the partnership for use in these buildings.

The project's architect, Skidmore, Owings and Merrill, Inc., has agreed to use Crowley/Powers Associates as a subcontractor for the solar portion of the design work on 65 and 67 Westland Avenue.

In order to address your concerns about current neighborhood housing needs, we have revised the subsidized portion of the total unit project to include 12 three bedroom units and 8 two bedroom units as well as 10 of the 18 one bedroom units we originally proposed.

Though we wanted to remain beneath the 20% target HUD has set for subsidized units, we acknowledge your desires for more subsidized units by increasing the percentage of subsidized units to 30%. We still feel, however, that providing private market units in the Fenway is a legitimate, alternative means of reducing

Mr. Mathew Thall
Fenway Community Development Corporation

December 11, 1979
Page Two

displacement pressures, especially since these are now all vacant buildings. Therefore, because of the limited availability of Section 8 subsidies, we still are willing to proceed with the project if only 20% of the units can be subsidized, rather than abandon the project altogether.

Overall, this proposal is exciting and fits very nicely the priorities set by HUD, with its inclusion of non-elderly subsidized units and its significant share of private market units.

Though I cannot make any commitments for the managing partner in this joint venture, Mario Nicosia of NDC, it appears that an advisory role in tenant selection for the subsidized units can be arranged.

I believe this describes our conversations to date.

This is not a legal agreement as yet. We have to convert the informal agreements, including a role for FCDC in management issues, among the partners into a firm legal agreement by the end of January 1980.

Nor is the design and unit mix at all final. Reviews by HUD and critical re-evaluations internally by the partnership may necessitate changes.

We look forward to a successful endeavor on Westland Avenue of which we can all be very proud.

Best wishes.

Sincerely,

HARRINGTON, KEEFE & SCHORK, INC.

Frank T. Keefe, President

As agreed to by:

FENWAY COMMUNITY DEVELOPMENT CORPORATION

B-1
 Appendix B: FCDC Proposed Moderate Rents, June 1980¹⁴⁰
PROPOSED MODERATE RENTS

1980 Section 8 Income Limits	Projected 1982 Section 8 Limits *	RENTS		
		110% of Limit	125% of Limit	150% of Limit
<u>Studio</u>				
1 person \$10,850	\$12,422	\$285	\$323	\$389
<u>1 BR</u>				
1 person \$10,850				
2 person \$12,400				
Average \$11,625	\$13,309	\$305	\$346	\$413
<u>2 BR</u>				
2 person \$12,400				
3 person \$13,950				
4 person \$15,500				
Average \$13,950	\$14,926	\$342	\$389	\$467
<u>3 BR</u>				
3 person \$13,950				
4 person \$15,500				
5 person \$16,500				
6 person \$17,450				
Average \$15,850	\$18,147	\$416	\$472	\$567

* * * * *

	Market Rent	SUBSIDY PER UNIT		
		110% of Limit	125% of Limit	150% of Limit
Studio	\$345/\$397	\$60/\$112	\$22/\$74	0/\$8
1 BR	\$443/\$495	\$138/\$192	\$97/\$151	\$30/\$84
2 BR	\$609/Average	\$267	\$220	\$142
3 BR	\$707	\$291	\$235	\$140

* 1981 Limits = 1980 Limits X 1.07

1982 Limits = 1981 Limits X 1.07

PROPOSED DISTRIBUTION OF RENT MODERATION SUBSIDIES

<u>UNIT SIZE</u>	<u>110% OF SECTION 8</u>	<u>125% OF SECTION 8</u>	<u>150% OF SECTION 8</u>
Studio	5		
1 Bedroom		12	5
2 Bedroom	10	9	
3 Bedroom	2	2	

Amount of subsidy required:

\$ 7,968/month

\$95,616/year

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5. See GAO Report to Congress, Section 236 Rental Housing: An Evaluation With Lessons for the Future, January 1978, p. 19.
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1. Urban Planning Aid, Inc., Community Housing Development Corporations; the Empty Promise, Cambridge, Mass., 1973
2. Patrick E. Clancy, et al., "The Role of Non-Profit Organizations in the Housing Process" (Report to the U.S. Department of Housing and Urban Development, June 1973, p. 4.
3. The RCCC joint venture is discussed in more detail in Chapter IV and the Fenway CDC project in Chapter's VI and VII.
4. Marcus Garvey Gardens is discussed in more detail in Chapter IV.

5. Hunt C. Davis and Stewart E. Perry, Marcus Garvey Gardens, A Case in Community Based Property Development, Institute for New Enterprise Development, Cambridge, Mass., 1981, p. 25.
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11. B~~u~~briski, p. 34.
12. Interview with Frank Keefe, president of Harrington, Keefe & Shork Associates, Boston, Mass., 22, November, 1982.
13. Ibid.
14. Ibid.
15. Based on Thall interview.
16. B~~u~~briski, p. 33.
17. Ibid. p. 42.
18. Westland Avenue Associates, Urban Development Action Grant Application ,
19. Ibid. p. 5.
20. Mathew Thall, letter to Frank Keefe, 6 March 1980, from files of FCDC.
21. Keefe interview.
22. Ibid.

23. Ibid.
24. FCDC "Self Help Application", pp. 21.
25. Mathew Thall, Letter to Byron Gilcrest, Macomber Development Corporation, from files of FCDC, February 1981.
26. "As Construction Nears Completion, Developers Hike Rents on Westland Avenue," Fenway News, 20 May 1981, p. 1.
27. Thall Interview.
28. Westland Avenue Associates, mortgage increase application, files of FCDC, June 1982.
29. "Sources of Subsidy and Beneficiaries", from files of FCDC.
30. Thall interview.
31. WAA, mortgage increase application.
32. Keefe, class presentation, MIT Cambridge, 2 December 1982.
33. These figures are estimated from "Sources of Subsidy and Beneficiaries", FCDC files, and WAA, mortgage increase application, FCDC files.
34. WAA, mortgage increase application.
35. Thall interview.
36. ibid.
37. Ibid.
38. Keefe interview.
39. ibid., and Frank Keefe, "Lessons from Westland Avenue," Alliance Letter, (July-August) 1982, p. 12.
40. Thall interview.
41. The amount requested in the self help grant application to go toward equity in this project, FCDC, Self Help Application, p. 21.

CHAPTER VII

1. Statutory requirements, as stated in Massachusetts Housing Finance Agency, Policy and Operating Procedures Handbook, January 1982, p. 1.
2. State of Massachusetts omnibus housing bill (pending legislation).
3. See Urban Planning Aid, Inc., Community Development Corporations, the Empty Promise, Cambridge, Mass., 1973, which very eloquently espouses this point of view.

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