Partnerships for Housing Preservation Toolkit

California Community Land Trust Network
Perpetual Home Affordability-Stewardship-Community Control

LEGAL AID FOUNDATION OF LOS ANGELES
Justice • Equity • Hope

About This Toolkit

September 2023

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Thank you to Enterprise Community Partners for supporting the creation of this toolkit

Enterprise

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Legal Disclaimer

This toolkit is not a substitute for professional legal advice from an attorney. It is not intended to provide you with specific legal advice regarding your situation, but rather to give you general information about partner agreements involving Community Land Trusts ,Community Development Corporations, and other affordable housing development entities. If you have specific questions about your organization and circumstances, including drafting legal documents, you should consult an attorney.

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How to use this Toolkit

For small community-based affordable housing developers, partnering with a more experienced organization can be the key to winning funding and land dispositions, building internal capacity, and scaling up impact in the community.

It can also bring challenges such as ensuring an equitable partnership, navigating different organizational cultures, and maintaining clear lines of communication. This toolkit is geared towards community-based organizations, such as Community Land Trusts and Community Development Corporations, as an introduction and how-to guide for navigating the initial steps, and subsequent formation process, for partnerships (aka Joint Ventures, "JVs") with more experienced development collaborators.

Based on 13 interviews, review of source documents, and various existing resources on JVs, this toolkit is intended to be a high-level introduction to JV — with a focus on affordable housing preservation projects — and exploration of some of the specific considerations for Junior Partners approaching a JV. These considerations are intended as a starting point for subsequent, deeper inquiry. This toolkit also contains examples of legal documents and an overview of available tools for organizations looking to form development partnerships.

Legal Disclaimer: This toolkit is not providing legal advice. It is highly recommended that organizations consult with an attorney while crafting a partnership, especially when drafting or adapting any of the legal documents provided here.

Key Terminology

Community Development Corporation (CDC)

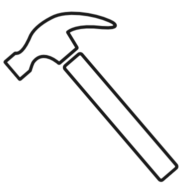
A type of placed-based non-profit organization that engages in community development activities (which may include housing and economic development activities) primarily within an identified geographic area of operation.

Community Land Trust (CLT)

A non-profit organization whose primary mission is to provide and steward land and properties for the benefit of its low to moderate income community members through the use of a 99 year ground lease that ensures permanent affordability.

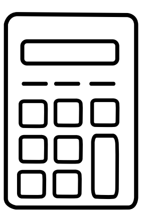
Joint Venture (JV)

A joint venture is created when two or more companies or organizations formally partner to share resources, experience and other assets for specific business endeavors–in this case, real estate and community development projects.



Junior Partner

Typically smaller organizations seeking to gain experience and credibility by partnering with more established firms. The Junior Partner's role in the JV is typically to bring key relationships and/or specialized knowledge or expertise to the project. In JVs, a Junior Partner typically contributes a smaller portion of the capital and has a lesser degree of control over the project than the Senior Partner.



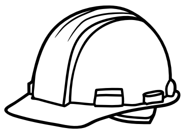
Low-Income Housing Tax Credit

A program within the U.S. Treasury Department that provides tax credits for investing in the construction or renovation of affordable housing.

Memorandum of Understanding (MOU)

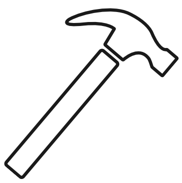
A formal agreement signed by both parties that outlines the terms of their partnership and provides the basis for their project agreements.

Key Terminology



Preservation

In the context of affordable housing, this refers to the range of strategies aimed at maintaining the habitability and/or affordability of existing housing for lower-income residents.



Senior Partner

A Senior Partner in a JV typically is an entity that holds a position of leadership and decision-making authority within the partnership. This partner typically has a significant amount of experience and expertise in the real estate industry, and is typically responsible for guiding the direction of the JV.

See also p. 33 of *"Joint Ventures with For Profit Developers: A Guide for Community Development Corporations," LISC and Organizational Development Initiative, 2006*, for a more LIHTC-specific glossary. Refer to the Resources & Tools section at the end of the toolkit for links to all referenced documents.

Ownership Structures for Preservation Joint Ventures (JVs)

Sugar Pine Village rises in South Lake Tahoe - a partnership between Saint Joseph Community Land Trust and Related California

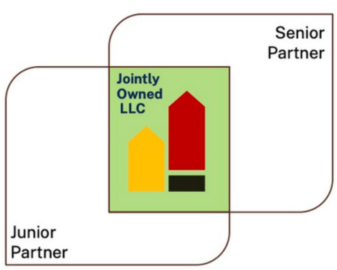
Ownership Structures for Preservation Joint Ventures (JVs)

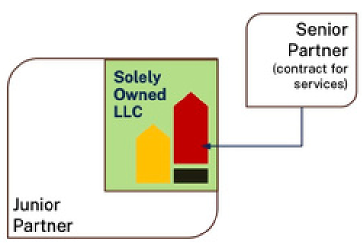
The type of entity, structure of ownership interests, and contractual relationships for any given joint venture sit along a spectrum of commitment for the partners. The most committed and interdependent form consists of joint ownership interests in the legal entity that owns the project, while the least committed is where one partner has full ownership of the project while contracting for development services with the other partner.

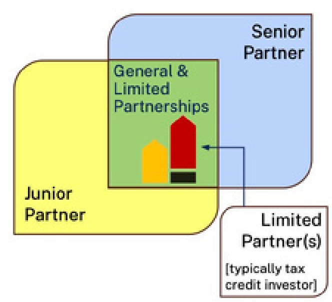
In preservation JVs there are really two predominant structures. One option is the joint ownership of the project, generally via a jointly owned LLC while the other is sole ownership of the project by one party coupled with a development services agreement with the other partner. A third category of structures — Limited & General partnerships — is less commonly used for preservation projects, but touched upon below.

Let's explore the common features of these three types of structures with considerations for each.

[1]







1) Joint ownership of the project, generally via a jointly owned LLC

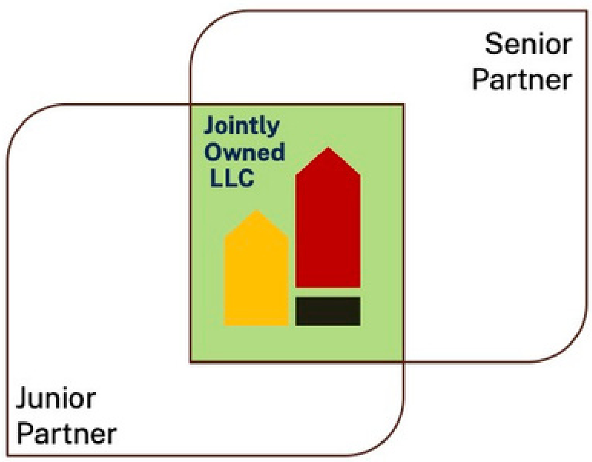
2) Sole ownership of the project by one party coupled with a development services agreement with the other partner.

3) Limited & General partnerships

1 See p. 11 of *"Joint Ventures with For Profit Developers: A Guide for Community Development Corporations". LISC and Organizational Development Initiative. 2006* for additional information about types of legal entities & their pros/cons

Joint Project Ownership via jointly-owned Limited Liability Company (LLC)

The LLC is the most commonly used entity for real estate development projects because it combines beneficial features of both corporations and partnerships: there is limited liability for both managing and limited members (like corporations) and, like a partnership, it is not directly taxed. An LLC is governed by an Operating Agreement between its members. Members can split ownership 50-50 or skew ownership towards one member who would typically be considered the “managing member” while the organization with a smaller stake would typically be the “limited member”.



Why organizations pursue Joint Project Ownership:

- A flexible management structure is permitted: Management may (1) rest in the hands of all members, (2) be centralized in the hands of one member, (3) be delegated to a manager who is not a member, or (4) be delegated to a Board of Managers. This creates flexibility in the management role that a junior partner can assume.
- No need to have a general partner: There is no need to form a corporate general partner and to capitalize that corporation in order to preserve the limited liability of the members as is necessary with an LP (Limited Partnership). One caveat: an undercapitalized LLC (meaning it lacks sufficient capital to conduct normal business operations and pay creditors) may lose its limited liability through a legal challenge by creditors (known as "piercing the corporate veil").

- Staffing Capacity: A joint LLC with an experienced senior partner can help a relatively inexperienced or low-capacity junior partner meet the requirements of lenders, as well as provide a structure for the junior partner to increase knowledge and skills by learning from the senior partner. Many junior partners cited this as a key incentive.

- Incentives to experienced partners: In cases where a Junior Partner is looking to woo a senior partner to a project, joint ownership can serve as an incentive for more experienced developers to collaborate and possibly to help build the capacity of the junior partner.

Potential additional incentives include: an exit after the initial term, furthering their mission by increasing capacity in the field, increased portfolio, and in the case of some funding programs, there are also incentive fees.

- Incentives to junior partners: A well structured partnership can increase the junior partner's capacity (through training/learning) and visibility with funders and lenders--both of which dramatically strengthen its ability to carry out future projects. Another key benefit is the sharing of financial risk.

Potential Challenges for Joint Ownership Projects:

- Requires mission alignment: Some differences in values — such as how resident selection is conducted, or how community input factors into the design process — can turn into significant roadblocks or conflicts. Successful partnerships are characterized by a thorough vetting process, self-assessments, and negotiation process (see 'Getting into a JV' and 'Negotiation' sections below).

- Neither organization has sole decision-making authority: Shared decision-making authority is a double-edged sword: If there is major conflict around key decisions, the whole project can be jeopardized, or be delayed while mediation, arbitration, or litigation progresses to resolve it.

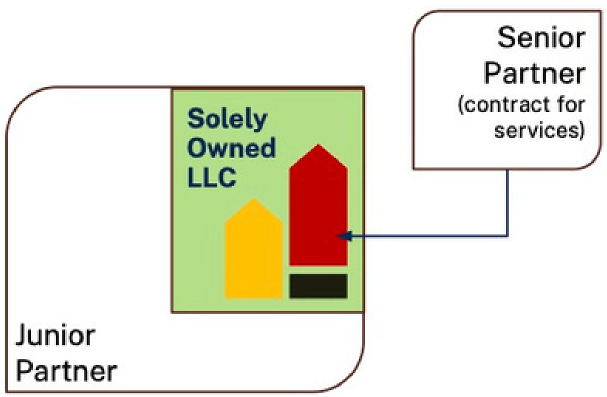
- Requires strong and ongoing communication between partners: Similarly, the project can be jeopardized or delayed if communication becomes strained or irregular, which can happen if there is a clash of personalities, or an organization is understaffed or lacks a mutual understanding of how/when communications need to happen.

Example of lack of mission alignment as impediment

One CLT reported being unable to finalize a JV with a local Habitat for Humanity for a small scattered site project. There was a 'clash' of organizational values and culture, but ultimately, the CLT and Habitat affiliate couldn't come to terms regarding the CLT's level of stewardship control: the Habitat affiliate wanted buyers to come through their sweat-equity program, whereas the CLT wanted to use its own selection criteria. While this partnership didn't bear fruit, other CLTs and Habitat affiliates have forged successful partnerships.

Junior Partner as Sole LLC Owner with Development Services Agreement

An alternative to having the development partner assume an ownership position in the LLC is entering into a contract for services, through a document called a Development Services Agreement. The Junior Partner's LLC owns the property and contracts with the Senior Partner[2] as needed for services (e.g. as an owner's rep for construction/rehab activities). This model may be more suitable for a Junior Partner that already has the internal capacity to manage the ownership aspects of an acquisition/rehab project, or where acquisition or funding is tied to the Junior Partner's sole ownership. This model may also be more suitable for a partnership that has a more limited scope or a shorter timeline.



Why organizations pursue Development Services Agreements:

- Simplifying Ownership: When the Junior Partner plans to retain sole ownership of the property, or to eventually transition to resident-ownership, this structure simplifies the "Senior Partner's" exit from the project, and forgoes the expense and effort of an extra transfer of the property.
- Simpler Relationship Between Orgs: This arrangement is less involved than joint ownership and thus can be better suited to situations where the needed scope and/or complexity of development services is smaller/simpler, or when there is just a single property involved.
- Requires Less Mission Alignment: This model may be more suitable when the Partners lack mission alignment or sufficient trust for joint ownership.

[2] "Senior Partner" may be misleading in this context, given the limited relationship (viz ownership, control and risk), but we are using the term here just for consistency's sake in describing the parties.

Potential Challenges with Development Services Agreement Approach:

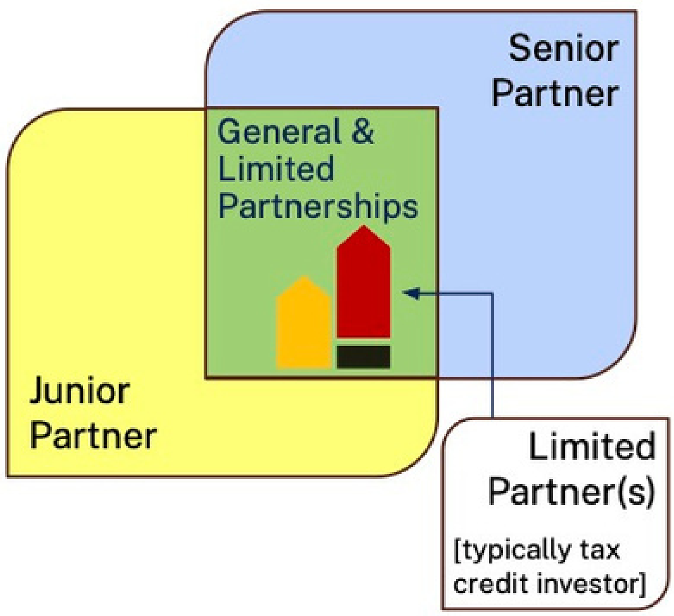
- Less Human and Financial Capital: With the Senior Partner in a service-provision role they do not bring equity to the project and are less likely to be involved in identifying and securing sources of capital, which then falls to the Junior Partner in this arrangement. Similarly, the Senior Partner may be less compelled, or able, to devote extra staff to the project if an urgent matter requires an ‘all hands on deck’ response.

- Risk is all on the Junior Partner: If there are development problems or delays, the Senior Partner/developer has much less incentive to stay in the deal when it does not have capital at risk. The Junior Partner could be stuck holding the proverbial bag and must bear the risk of loss by itself. This risk includes potential future construction defect issues, which is exacerbated by non-ownership projects due to their shorter liability periods (than ownership construction projects).

- Less Conducive to Capacity Building for Junior Partner: Since the Senior Partner is more of a paid consultant than co-owner, it is less common for them to take on a mentoring role for the Junior Partner (though not unheard of).

Limited and General Partnerships

Common in LIHTC projects and projects between for-profits and non-profits, Limited and General Partnerships are a common way for entities to divide ownership unequally i.e. for one entity to have a larger stake than the other. In General Partnerships, risk and liability are shared equally between partners. In Limited Partnerships, the “limited partner” carries less liability and operating responsibilities and is typically just providing capital to the project.



- A Limited Partnership is more typical in LIHTC projects, with the tax credit investor in the role of ‘limited partner’, and the developer in the role of General Partner. In LIHTC Joint Ventures, the role of General Partner can be shared by the Senior Partner (as the Managing General Partner) and the Junior Partner (as a Co-General Partner).
- These structures are rare in smaller (1 - 50 unit) affordable housing preservation projects that do not use LIHTC because they provide less protection from liability than an LLC.

Sidebar

Ownership Structure Options for Community Land Trusts (CLTs)

When a CLT is one of the partners in a JV, there are special considerations about who will own what in the short and long term. Depending on its capacity and needs — and often external factors such as funding sources — a CLT may be co-owner in the project from the beginning, may assume ownership after development, or may be the sole owner throughout. Similarly, the non-CLT development partner's engagement may be structured in a number of different ways to accommodate their interests, capacities, and project funding.

CLT as Sole Owner:
Has been used in several of the smaller preservation projects (non-LIHTC), coupled with a development services agreement with the Senior Partner.

CLT & CDC as Joint-owners:
Each partner enters & exits at different points depending on various factors, but the most relevant juncture for CLTs is at project completion and final disposition:

- If the project is intended to convert to resident ownership, the CLT will typically split title and take ownership of the land while the improvements are transferred to residents/homebuyers (either condo owners, a cooperative, or single family homeowner) at project completion. For LIHTC projects, that typically cannot happen until the expiration of the 15 year compliance period.
- In other scenarios (typically LIHTC operated as long-term rental), both partners retain ownership through the JV entity, with revenues and responsibilities shared between them.
- In still other cases, the Senior Partner takes title to the improvements, and the CLT to the land, with a CLT land lease.

Turnkey Projects:
Less common are situations where the CLT is not in any ownership role during project acquisition & development, but rather takes title at project completion. This typically takes one of two paths: one where the developer has an institutional relationship with the CLT (e.g. has set up the CLT to become the permanent steward of projects) or where the CLT facilitates the sale of homeownership units to qualified buyers (such as condos, cooperatives, and single family homes) and only takes title to the land under each unit at initial sale to each qualified homebuyer.

Getting into a Preservation Partnership – an Overview

Members of the LA CLT Coalition whose members undertook development partnerships with CDCs in 2021-22

Getting into a Preservation Partnership – an Overview

The steps and sequence for forming a preservation JV varies significantly from partnership to partnership, even project to project between the same partners. The following is an outline of the typical steps that an organization will take when considering a JV. Most of the following steps are iterative, meaning, you might complete part of the step, need to move on to a subsequent step, only to come back to more fully flesh out, or even revise, that prior process.

Step 1) Self-Assessment

Starting with self-assessment allows an organization to pursue a partnership with clarity and internal consensus on what it is looking to achieve in a project and collaboration. Junior Partners interviewed for this toolkit stressed that entering into a partnership without first establishing that clarity can lend itself to bad partnership dynamics and poor implementation.

The core of the self-assessment is to:

- Assess what your organization does best/brings to the table (its 'value-add'),
- Identify where your organization wants to build capacity, and
- Identify the roles/tasks your organization wants to have its JV partner do.

This process is also iterative: it will make sense for the organization's staff/board to make a first pass at this self-assessment; then to revisit this process once/if the organization constitutes an advisory board; and again during negotiations with the JV partner. Each of the tools in the Resources and Tools section has a different flavor (more fully explained below), but they can be used to help orient your organization to the likely roles and responsibilities that the JV will require, and thus act as a starting point for discussion and self-assessment. See the "Initial Self-Assessments & Roles/Responsibilities" section of the Resources and Tools at the end of this toolkit.

Self Assessment in Action

One CLT completed an internal 'Division of Responsibility' matrix (see "Division of Responsibilities Matrix – Development Processes") within several broad categories (Predevelopment, Financing, Tax credit/other public financing, Design and Construction, and Post construction). This matrix formed the basis for the JV's MOU, as well as informed the CLT's board about their own capacity needs, and their strengths.

Common Grassroots Community Developer 'Value Adds' to consider in the Self-Assessment step:

- Advocacy around policy issues and moving entitlements forward (at planning commission meetings, organizing public support, mitigation of NIMBY opposition).
- Fundraising efforts that combine other strategies like AHSC (Affordable Housing and Sustainable Communities) and climate justice funding. Grassroots advocacy is particularly valuable in neighborhood-level funding programs, such as with Transformative Climate Communities grants.
- Many grassroots community developers, including CLTs and some CDCs, have their origins in anti-displacement efforts and are increasingly looked to for leadership amidst the growing interest in preservation.

One CLT's support from their community was critical to a public land disposition project coming together. The CLT's staff relationships and long history with the public entity (land owner) gave the CLT a competitive edge in responding to a RFP. The Senior Partner brought extensive development experience but needed the trusted local partner to be part of a successful bid.

Opening of Roland Curtis Gardens. A project of TRUST South LA and Abode Housing in Los Angeles.

Step 2) Finding and Selecting a JV Partner

This process is highly specific (and varied) to your local context, mission/values, and the particular realities of the project in question. In some cases, it will be obvious to a Junior Partner who the potential development partners are in their community: maybe they've partnered before or have long standing relationships with key staff; maybe there are only a few developers in the region. But in other cases, when there are multiple options, organizations will want to carefully consider who they want as a partner. Here are some examples of how other Junior Partner organizations have approached finding and selecting their partners:

Request For Qualifications (RFQ): RFQs can be a good way to publicize your efforts and get information on potential partners that you aren't very familiar with. Often when a Junior Partner has a soft commitment (or a high likelihood) for securing a site from a public or other institutional entity, they can use an RFQ process to find a development partner. Until you have a tangible project on the horizon, it may be difficult to get developers interested in a RFQ.

Create a set of guiding principles: A proven strategy for evaluating potential partners is to identify key goals for a partnership and then judge potential candidates based on them. Additionally, this can be a useful tool to both develop internal clarity on what your organization is looking for in a JV agreement and to communicate your needs and priorities to potential partners (whether as part of a RFQ or by sharing the guiding principles as part of initial discussions).

Putting Principles to Work

One CLT, CLAM, published a set of 'guiding principles' [see *CLAM's Guiding Principles for Coast Guard Site Redevelopment & Related Community Engagement* in the Resources & Tools, Finding a JV Partner section below] for a proposed project as part of its RFQ process for finding a JV partner. In shopping the RFQ out to different bidders, they could see how the bidders 'showed up' to the work—but selection of the JV partner ultimately came down to business decisions (compensation, final property management process).

Step 2) Finding and Selecting a JV Partner (continued)

'Curated' venues/working groups for match-making: such as the LA Acquisition/Rehab Working Group (see sidebar at the end of this section)

Convene an advisory committee: An effective advisory committee is a well-rounded and committed group of individuals that include community-based leaders and board members, supplemented with seasoned finance and real estate professionals. The committee is charged with providing input to the partner selection and negotiation process. Members must be committed to the organization and be equipped to work collaboratively. When assembling an advisory committee, consider making their engagement commitment that is doable, timebound, clear, and based on the particular needs of the project at hand. Committees serve during the lead up/launch of a project and commonly disband thereafter, allowing the organization's leadership and board to run with the implementation and monitoring from there.

High-level criteria for evaluating a prospective partner should include:

- Do organizational missions and/or values align?
- Does each party bring/add value to the relationship in a way that is appropriate to, or commensurate with, their role?
- Does the communication (style, mode, frequency) meet your needs?
- How long does each organization want or need to be in the partnership?
- Is it important that the Senior Partner helps the Junior Partner build capacity?
- Does the Senior Partner have the capacity (or ability to add capacity) for the JV project?

Before and after: *Stuart St. Apartments in Berkeley, a partnership between Bay Area CLT and McGee Ave Baptist Church*

Step 3) Negotiating the Partnership

For non-profits that have never partnered on an affordable housing project, it can be hard to identify the key ingredients of a successful partnership when vetting partners. Several Junior Partners have identified the following elements as key for successful Joint Ventures:

- Commit to a shared statement of project goals.
- Learn about and build trust in each partner's expertise.
- Explicitly state expectations and assumptions.
- Regularly communicate along clearly understood lines of authority.
- Designate decision-makers on both sides who are prepared to respond quickly and decisively.
- Plan for shared decision-making, compromise and conflict resolution.
- Plan for emergencies and an end to the relationship.
- Make sure that both partners are compensated for their efforts but are flexible on what form compensation takes, whether it's development fees, outside grant support, capacity building, or on-going fees from operating revenues (e.g. asset management, land lease or other fees).

See the "Negotiation Process Best Practices" section below for a full discussion.

Creating an MOU: This is a common way to establish a shared understanding of the key elements of the collaboration. The MOU will create the certainty both partners need to move ahead with the project, and typically forms the foundation for subsequent legal documents of the JV (e.g. LLC operating agreement, or Development Services Agreement). In developing the MOU, the partners will want to:

- Define the roles and responsibilities between the partners.
- Define how ownership of the project will be structured both in the short and long run.
- Determine how developer fees and other forms of compensation will be divided.
- Determine the time horizon of the partnership.
- Determine who will be in charge of the long term stewardship of the property including property management, asset management, and resident engagement.

Step 4) Formalizing the Joint Venture

There are likely to be multiple iterations of formal documents as the project progresses, but the following is a discussion of the most common documents, and how they might come into play:

Document	How To Use It
Memorandum of Understanding (MOU)	The document that typically spells out the roles and responsibilities of the partners, allocation of compensation, and goals for the ownership structure (both during the development phase and at final disposition). Most often it is non-binding, yet forms the basis for subsequent binding documents.
Exclusive Negotiating Agreement (ENA)	Typically comes into play when a public agency owns the site to be developed and the developer will need to expend significant resources as a precursor to negotiating the acquisition. The ENA grants the developer a guarantee that it has exclusive rights to negotiate a development deal with the public agency after expending considerable time and resources in the pre-development phase.
Disposition & Development Agreement (DDA)	Most commonly is the agreement between the developer/partnership and a public agency (which owns the site/property to be developed) typically covering the terms of disposition and development rights.
Request for Qualifications (RFQ)	For selecting a partner when a particular project is more definite (such as a site that is already owned by one partner, or owned by a public agency which is intended for development) than a site which is on the open market.
Development Services Agreement (DSA)	Will be used when the Junior partner in the JV takes full ownership of the site/property, and ‘hires’ the Senior Partner to do the project development.

Step 4) Formalizing the Joint Venture (continued)

Document	How To Use It
LLC Operating Agreement	An LLC operating agreement for a JV partnership typically incorporates the details of the previously negotiated MOU, spelling out the ownership split, compensation split, and division of roles and responsibilities. It should also spell out any agreements around capacity building and training between the partners. It is not uncommon for an MOU to function as the go-to document 'governing' the partnership well into the process, and then be replaced by an LLC operating agreement once there is a critical milestone, such as formally entering into contract for acquisition of the property.
MOU Addendum	Can be used when a partnership decides to embark on subsequent projects together, and wish to maintain most of the terms of the original MOU. This could also be used when significant changes to the partnership agreements need to be documented mid-project.
Joint Venture Partnership Agreement (JVPA) Or Memorandum of Agreement (MOA)	Both JVPAs & MOAs are more formal agreements, and are binding. JVPAs often include operating agreements. Formal, binding agreements such as these bring the joint venture more into the realm of binding contracts. Organizations will need to investigate and draft these type of binding agreements with the guidance of attorneys.

Additional key considerations to include in governing JV documents are addressed below in the 'Negotiation Process Best Practices' section. Also see Sample Joint Venture Activities and Legal Documents in the Resources & Tools section below for a chart showing a particular example of the sequence and function of various JV activities and each activity's corresponding legal documents.

Step 4) Formalizing the Joint Venture (continued)

When JV formation and Pre-Development Overlap:

Due to the site-specific nature of preservation projects, partners may find themselves at various stages of the pre-development process when forming a joint venture. Any work already begun (e.g. due diligence or obtaining site control) will need to be factored into JV negotiations.

Careful consideration should be taken in valuing these early efforts, such as grass-roots campaign efforts resulting in a planning victory, soft commitments for project subsidy, or early negotiation efforts with a property owner which have resulted in tentative terms for acquisition or a *de facto* exclusive negotiating agreement.

Construction, Disposition, and Beyond:

With the JV in place, the parties can move ahead with securing financing, implementing construction, leasing out or selling units, and transitioning to the final ownership structure. Then there's the work of property and asset management and supporting residents. The collaboration established during predevelopment doesn't disappear for these phases of the project but rather evolves over time, and while these phases of a project are beyond the scope of this toolkit, there are numerous resources on sustaining partnerships and stewarding properties after development (including a few in the 'Resources and Tools' sections below).

The Los Angeles Acquisition/Rehab Working Group – Case Study of a 'Curated' venue/working group for match-making

With $14 million of public funding, the 2021 LA County Partnership Program (CLT Pilot) required partnerships between CLTs and CDCs to implement the acquisition and rehab of market-rate properties across Los Angeles County. An organized 'match-making' process was carried out which provides an informative case study in how preservation partnerships can form. The process consisted of two main phases:

1) **Table setting:** Enterprise Community Partners supported an Acq/Rehab working group made up of CLTs and CDCs active in LA County. Enterprise staff polled both CDC and CLT groups on their interest in working together, and led an iterative process to determine the best pairings based on values, mission, strategic alignment and geographic focus

2) **Relationship building** was accomplished through weekly working group meetings in which CDCs got a better understanding of the CLT model and CLTs learned about the development process.

Beverly Vermont CLT and Brilliant Corners collaboration project in LA

Issues/Challenges in the 'Match-making' process:

- Many CDCs felt that they did not have enough capacity given the small financial return on the development projects. Some CDC partners expressed doubt that this would become an on-going area of focus for their organizations.
- Within some organizations, key staff 'champions' were required to move JVs forward.
- When the CLTs started talking about community ownership they ran up against some skepticism amongst the CDCs.

LA Acq/Rehab Working Group 'Wins'

Despite all the above challenges, the overarching factor that kept the CDC partners engaged was their desire to advance impactful projects, and their commitment to the anti-displacement goals of the work.

Many of the CLTs for their part have increased their capacity (in terms of expertise and knowledge-base) as well as visibility in the development landscape.

Ultimately, this process produced five partnerships that successfully acquired eight buildings and 43 units of housing. The partnerships took different forms: some using the jointly-owned LLC model while others utilized Development Services Agreements.

JV Negotiation Process Best Practices

168 Sickles in San Francisco, a 12-unit complex acquired and renovated in 2021 through a JV between SFHDC and MEDA

JV Negotiation Process Best Practices

Practitioners interviewed for this toolkit offered a number of suggestions for the process of developing partnership agreements that position a project for success. Some were based on successful strategies they had employed while others were lessons learned from collaborations that could have been built on stronger foundations.

Honest assessment of each organization's skill sets and roles:
Smaller organizations often have assets with tangible value beyond land and development experience, such as strong community connections, political capital, and relationships with local service providers. To create a strong and equitable partnership, the Junior Partner needs to identify these assets and require that they are valued in the partnership structure.

Ensure each partner can deliver:
While developing a JV, both parties need to ensure that they can deliver on the responsibilities they are assigned, which may mean increasing staffing capacity for grant writing and project management, among other things. Furthermore, each party needs to scrutinize their collaborator's ability to deliver on their promises — checking references and previous projects is an important part of that due diligence.

Joint Venture Documents Should be Clear and Thorough:
Junior Partners interviewed for this toolkit emphasized the need to clearly define roles and responsibilities in the partnership documents, starting with a bird's eye view of who does what and then getting as specific as possible.

Key questions to answer and include are:

- How will the parties communicate, and who is empowered to communicate decisions from each side? In order to effectively manage the relationship, the parties need to meet/communicate regularly. Spelling out the how/who/when of communications will help the parties closely monitor project status, updates, challenges, and questions.

Strong Communication: One CLT has kept up a closely co-managed process and vision with their JV partner, including weekly project management calls. All their communications with project consultants, funders, public entity, etc. are done jointly. "It has been really helpful to have a well-defined MOU (regarding compensation, roles, responsibilities), and has led to a strong working relationship."

JV Negotiation Process Best Practices

- Who will be responsible for executing different action items?
- How will decisions be made? What decisions can be made by one party without consulting the other? What decisions require consultation? What decisions must be made together?
- What is the timeframe for each step of the process? Define the critical path items and spell out the sequence of development milestones and timelines.
- How and when will the parties exit when the deal is done? What, if any, is the buy-out price? For CLT projects, what types and levels of stewardship will be involved?
- Who pays for what when things go wrong? And what is the maximum cap on such payments?
- What are each partner's exit strategies if things go wrong?
- Non-profit partners (in partnership with for-profit developers) should make sure their downside is protected, in other words not taking any real estate risk (particularly since there is inherently no 'upside' potential).
- Build conflict resolution mechanisms into the agreements: Arbitration and mediation are common conflict resolution methods that can be built into the agreements so that disputes can be dealt with effectively if they arise.

Consider and Allocate All Forms of Costs and Revenues:

Based on the amount of effort and risk each partner is taking on, careful thought needs to be given to the allocation of pre-development costs, obligation for debt, capital contributions, percent interest, cash flows and developer fees.

Costs:

- Sometimes the Junior Partner has done the earliest (and thus, riskiest) portion of the pre-development work and fundraising. The value of this work and of the risk taken should be factored into allocations of costs borne by each party.
- Losses and/or additional capital contributions should match the allocation of distributions (e.g. % wise).
- In order to avoid excessive private benefit (especially in partnerships with a for-profit developer), a non-profit should resist issuing a reserve against operating losses, a return of capital or fees payable to for-profit partners, or indemnification for losses.

Revenues:

- There are many different ways to split developer fees in these partnerships. Sometimes it is 50-50. In one case the Senior Partner retained 100% of the developer fee while they also trained staff at the Junior Partner in project management. *In one project, a Junior Partner vetted three different potential partners, who all proposed different splits (50/50, 40/60 and even 30/70, Junior/Senior partner split).*

JV Negotiation Process Best Practices

Revenues continued:

- When non-profits and private developers partner, the split of the development fee often depends on the experience level of the non-profit. Less experienced non-profits often secure small flat fees, or only 10% of the total development fee. However, more experienced non-profits garner anywhere from 33% to 66%. These experienced non-profits view the development fee as a method to build their own capacity and financial reserves.

→ *One CDC partnered with a private developer who was interested in helping the organization with its capital campaign, giving the non-profit 66% of the development fee.*

→ *One non-profit never gives its private developer more than 49% of the fee and typically negotiates 60% or more of the fee for itself.*

- Developer fees on small preservation projects might be too small to be worth splitting—not substantial enough to value the time, or cover the costs, of either party. In these cases, Junior partners interviewed for this toolkit suggested seeking technical assistance grants to complement developer fees.

- Other sources of potential revenues for the Junior Partner include relocation consultant fees, tenant training/engagement fees, asset and/or property management fees.

→ *See "Community Land Trusts for Sustainably Affordable Rental Housing Redevelopment: A Case Study of Rolland Curtis Gardens in Los Angeles" for one example*

- Finally, Junior Partners should take care to not over-value ongoing cash flows (as a trade-off for giving up more of the developer fee). Often cash flows from small affordable housing buildings are unpredictable and marginal. Some non-profits have made the mistake of valuing cash flows on par with development fees.

JV Negotiation Process Best Practices

Legal representation

Each party should seriously consider having an attorney to, at minimum, help with clearly articulating and documenting:

1. The goals of the project
2. Allocations of responsibilities, expenses and revenues
3. Any reporting requirements over time, and
4. Enforcement, conflict resolution and default provisions.

Enforcement Mechanisms, Guarantees and Default Provisions:

- Build in rights of intervention (e.g. the right to remove the managing partner for violations of the operating agreement) for non-managing partners. Also build in the right to consent on decisions.

- Build in mechanisms for enforcing the charitable and/or social welfare goals of the project. For example, there could be incentive-based distributions dependent on achieving goals, and if the goals are not achieved, then requiring documented good-faith efforts.

- It is critical to plan for worst-case scenarios and the remedies for resolving them. Default provisions provide leverage for enforcing terms of the governing documents. Sometimes just the threat of them can be enough to get a project back on track.

See p. 8 of "Joint Ventures with For Profit Developers: A Guide for Community Development Corporations". LISC and Organizational Development Initiative. 2006 for additional guidance

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The Coast Guard Project in Poinrt Reyes Station, a partnership between Eden Housing and the Community Land Trust Association of West Marin (CLAM)

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Sample Legal Documents

The included sample legal documents are meant for informational purposes only. They have been anonymized so that the original parties are removed, but they are not meant for filling in the blanks. As discussed in the short blurbs below, the partners involved in these agreements chose them for their specific situations, relationships, funding, locations, responsibilities, experiences, and a variety of other considerations. Consultation with an attorney and the involved parties should be undertaken before signing any partnership agreements.

MOU Sample Model #1: Joint Ownership Structure	This MOU is a sample agreement between a CLT and a CDC, where the CLT was the junior partner and the CDC was the senior partner. LLCs would be created for each project and jointly owned and operated. During projects, the CDC would be the managing partner, but at completion of construction, the CDC would exit and allow the CLT or tenant organization to take over completely. The CLT and CDC staff worked collaboratively to create a chart accounting for the breakdown of responsibilities, including those that would be affected by certain phases or funding.
MOU Sample Model #2: Junior Partner as Sole Owner	This MOU is a sample agreement between a CLT and a CDC, where the CLT was the junior partner and the CDC was the senior partner. The CDC was working with the CLT here on an advisory basis. The CLT was to create an LLC for each property and then add the CDC as a partner, but only for the duration of the construction of the project. The MOU also accounted for a conversion to cooperative ownership if the tenants choose that.
MOU Sample Model #2 Addendum	This was an addendum to the original MOU to add an additional property/project address to the understanding of the first MOU.
LLC Operating Agreement Sample	This document is the agreement that the CLT in Sample #2 used to form the LLC for their initial project.
Sample Joint Venture Activities and Legal Documents	Sample Joint Venture Activities and Legal Documents have some examples and an overview of legal documents (particular types needed at particular junctures in a large JV with a public entity as the land owner).

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Initial Self-Assessments & Roles/Responsibilities

Document	Description
Acquisition/Rehab - Roles Responsibilities Matrix	Good overview, with particular emphasis on anti-displacement projects. Rather than being an actual form (for assigning roles), it can be a useful tool to help flesh out–for both Junior and Senior Partners–the particular strengths that community-based organizations bring to Joint Ventures.
Division of Responsibilities and Developer Fee Split - CRCD Partnership Matrix	Organized into categories/functions of various tasks and roles, rather than along a sequence of the development process.
Division of Responsibility Matrix- Development Processes	Organized by the sequence of the development process (e.g. predevelopment, financing, construction, post-construction).
Hybrid Comprehensive Partnership Matrix - Detailed	A bit of a hybrid (major categories organized by sequence; line items organized by specific tasks and deal considerations); has more fields for details and breakout of the roles, % split, associated costs & other notes (in hidden columns). 5 different projects modeled.

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Finding a JV Partner

Document	Description
Toolkit to Establish a Local Acquisition Rehab Program – LA Acq/Rehab Working Group	Created by Keegan McChesney, is a high-level outline of how the LA Acq/Rehab working group was created, and eventually leveraged policy changes and subsidy sources to great success. Also contains links to several excellent resources.
CLAM's Guiding Principles for Coast Guard Site Redevelopment & Related Community Engagement	Set of guiding principles created by the Junior Partner for a particular redevelopment project, including high-level outline for negotiating a JV. This document was created prior to, and published with, an RFQ for selection of the JV partner.
Assembling Capacity to Select and Negotiate a Joint Venture	A brief overview of how/why to form an advisory committee to guide selection of a JV partner, along with a proposed timeline for committee activities.
Sample List – Developer's Authorities & Responsibilities	List of responsibilities and authorities for a developer (in a DSA, or even an MOU), which could be a useful checklist for those with limited experience doing construction or project management.

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Additional Readings Part 1

Document	Notes and Useful Sections
Preventing Tenant Displacement through Community Ownership Pathways: The LA County CLT Partnership Program. Lesar. Oct 2022	Case studies/metrics of JV projects, overview & process of constituting the LA Acq/Rehab working group, racial equity goals/analysis, take-away findings/insights of the pilot (geared towards policy-makers).
Joint Ventures with For Profit Developers: A Guide for Community Development Corporations. Local Initiatives Support Corporation and Organizational Development Initiative. 2006.	• Organizational & Management Options p. 11 contains a good overview of the types of entities & ownership structures and their pros & cons. • Appendix B – Joint Venture Agreement Planning Tool, and • Appendix C – Quick & Dirty JV Strategy Checklist
Joint Ventures for Housing Organizations. Enterprise Community Partners. 2018	• Appendix A: Worksheets (p. 27) - Preliminary assessment, Partnership & Negotiation points, and Division of Responsibilities. • Eleven case studies, with a good high-level overview of deal terms and structures etc. (p. 9)
Community Land Trusts for Sustainably Affordable Rental Housing Redevelopment: A Case Study of Rolland Curtis Gardens in Los Angeles. HUD. 2022	An in depth case study of the project, a JV between T.R.U.S.T. South LA and Abode Communities.

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Additional Readings Part 2

Document	Description
Joint Venturing for Nonprofits: the Benefits, the Common Pitfalls and How to Navigate Them. Local Initiatives Support Corporation	A good succinct article about entering into JVs
Joint Venture Partnerships for Supportive Housing Development	
New Era of Supportive Housing in New York: A Resource Guide for Nonprofit Housing Sponsors. Corporation for Supportive Housing. 2017. Corporation for Supportive Housing	• p. 14 – Organizational Self-Assessment; • p. 15 – Questionnaire; • p. 16- Managing Development Risk
Bridging Sectors: Partnerships Between Nonprofits and Private Developers. Chung, Amy. 2004. Joint Center for Housing Studies of Harvard University and NeighborWorks America	
Structuring a Strategic Alliance. Lawyers Alliance for New York. 2017. Lawyers Alliance for New York.	