

MEMORANDUM

TO: Board of Commissioners of the Housing and Community Services Agency of Lane County (HACSA)

PRESENTED BY: James R. McCoy, Development Director (HACSA)
Larry A. Abel, Acting Executive Director (HACSA)

AGENDA ITEM TITLE: ORDER / In the Matter of Authorizing the Acting Executive Director to Create a Limited Liability Company ("HACSA Partner LLC") for the Purpose of Assuming the 99% Interest of the Oregon Equity Fund in the Walnut Park Limited Partnership.

AGENDA DATE: July 22, 2009

I. PROPOSED MOTION:

IT IS MOVED:

1. THAT THE ACTING EXECUTIVE DIRECTOR IS AUTHORIZED AND DIRECTED TO CAUSE TO BE FORMED A SINGLE-MEMBER LIMITED LIABILITY COMPANY PURSUANT TO OREGON LAW WHICH SHALL BE MANAGED BY HACSA AS THE SOLE MEMBER; AND
2. THAT THE ACTING EXECUTIVE DIRECTOR IS AUTHORIZED TO CAUSE HACSA TO MAKE A CONTRIBUTION OF CAPITAL TO THE LIMITED LIABILITY COMPANY WITH HACSA FUNDS NOT TO EXCEED \$100; AND
3. THAT THE ACTING EXECUTIVE DIRECTOR IS AUTHORIZED AND DIRECTED TO ENTER INTO SUCH AGREEMENTS AND AMENDMENTS TO EXISTING AGREEMENTS ON BEHALF OF HACSA AND THE LIMITED LIABILITY COMPANY AS ARE REASONABLY NECESSARY TO EFFECT THE WITHDRAWAL OF THE OREGON EQUITY FUND LIMITED PARTNERSHIP ("INVESTOR PARTNER") FROM THE WALNUT PARK PARTNERSHIP AND THE ACQUISITION BY THE LIMITED LIABILITY COMPANY OF THE LIMITED PARTNERSHIP INTERESTS OF THE INVESTOR PARTNER IN THE PARTNERSHIP FOR AN AMOUNT NOT TO EXCEED ONE DOLLAR OR SUCH OTHER NOMINAL SUM AS THE

ACTING EXECUTIVE DIRECTOR SHALL DETERMINE IN HIS DISCRETION (SUCH DETERMINATION TO BE CONCLUSIVELY EVIDENCED BY THE ACTING EXECUTIVE DIRECTOR'S SIGNATURE ON THE DOCUMENT); AND

4. THAT THE ACTING EXECUTIVE DIRECTOR IS AUTHORIZED AND DIRECTED TO TAKE SUCH FURTHER ACTIONS AND TO EXECUTE, DELIVER AND CAUSE TO BE PERFORMED SUCH FURTHER AGREEMENTS, CERTIFICATES, INDEMNIFICATIONS AND OTHER DOCUMENTS AS MAY BE NECESSARY TO EFFECT THE FOREGOING RESOLUTIONS.

5. THAT, TO THE EXTENT ANY OF THE ACTIONS AUTHORIZED IN THE FOREGOING RESOLUTIONS HAVE PREVIOUSLY BEEN UNDERTAKEN, SUCH ACTIONS ARE HEREBY RATIFIED AND AFFIRMED.

II. AGENDA ITEM/SUMMARY:

Board action is required to authorize HACSA's formation of a limited liability company and the acquisition of the equity investor's Limited Partnership interest in the Walnut Park Limited Partnership.

III. BACKGROUND:

A. Introduction / Analysis

In November 1993, the Walnut Park Limited Partnership was created in order to use Low-income Housing Tax Credits (LIHTC) awarded by the State to finance the development of the Walnut Park Duplexes. Offering 32 multi-family units (16 two-bedroom; 16 three-bedroom), Walnut Park was HACSA's second development using the LIHTC program.

Created under the Tax Reform Act of 1986, the LIHTC program provides tax credits for owners and investors in low-income rental housing. An annual tax credit amount is provided for a project each year for 10 years. Low-income housing is created by the tax credit when the developer of a project "sells" the tax credits to an investor or investors who contribute equity to the development in exchange for an ownership position which enables them to use the tax credits and other possible tax and economic benefits arising out of the project. These equity contributions reduce the amount of other financing needed to develop the project.

The Partnership Agreement negotiated to sell the tax credits for Walnut Park contemplated that the Limited Partner would – at the end of the required 15 year compliance period – relinquish its interest to HACSA or a HACSA controlled entity. The 15 year compliance period ends in December 2009 and the Limited Partner has requested that HACSA prepare to effectuate the transfer.

The HACSA Board recently authorized a similar transfer from the investor entity at Richardson Bridge Apartments, HACSA's first LIHTC project. This transaction, however, will differ slightly. For Richardson Bridge, the permanent loan and the 15-year partnership compliance period ended at approximately the same time. As a consequence, it was possible to transfer the partnership interest directly to HACSA, thus dissolving the partnership.

For Walnut Park, the permanent loan continues for another 15 years and is at a favorable interest rate. In order to allow this loan to stay in place, HACSA must first create a limited liability company (wherein HACSA is the sole member) and have the investor transfer their interest to the LLC. The partnership then consists of HACSA and "HACSA Partner LLC," remaining in place and thus leaving the term loan undisturbed.

B. Recommendation

HACSA staff recommends approval of the proposed motion. Mr. Doug Blomgren at Bateman Seidel has served as HACSA's legal counsel on LIHTC-related matters and has worked with the LP Investors to establish the wording of this motion. He also prepared the draft organizational documents for the limited liability company (attached).

C. Timing

Upon approval of the Order, the Acting Executive Director will execute the appropriate documents.

D. Attachments

Draft Articles of Organization – HACSA Partner LLC
Draft Operating Agreement of HACSA Partner LLC

IN THE BOARD OF COMMISSIONERS OF THE
HOUSING AND COMMUNITY SERVICES AGENCY
OF LANE COUNTY, OREGON

ORDER

In the Matter of Authorizing the Acting Executive Director to Create a Limited Liability Company ("HACSA Partner LLC") for the Purpose of Assuming the 99% Interest of the Oregon Equity Fund in the Walnut Park Limited Partnership.

WHEREAS the Housing Authority and Community Services Agency of Lane County ("HACSA") is general partner of Walnut Park Limited Partnership (the "Partnership"); and

WHEREAS, the Partnership is the owner of an affordable housing development located in Eugene (the "Project"); and

WHEREAS, Oregon Equity Fund Limited Partnership is the sole limited partner (the "Investor Partner") of the Partnership and wishes to transfer its limited partnership interest; and

WHEREAS, HACSA has determined that acquisition of the Investor Partner's interest will further the purposes of HACSA by preserving housing for low-income persons; and

WHEREAS, to permit the Partnership to remain in existence and to remain the borrower on the current financing for the Project, it is necessary that HACSA establish a limited liability company to serve as the replacement limited partner; and

WHEREAS, ORS 456.120(20) specifically authorizes HACSA to form limited liability companies and to form, manage and operate partnerships in order to further the purpose of the housing authority;

NOW IT IS THEREFORE ORDERED THAT:

1. That the Acting Executive Director is authorized and directed to cause to be formed a single-member limited liability company pursuant to Oregon law which shall be managed by HACSA as the sole member; and
2. That the Acting Executive Director is authorized to cause HACSA to make a contribution of capital to the limited liability company with funds of HACSA not to exceed \$100; and
3. That the Acting Executive Director is authorized and directed to enter into such agreements and amendments to existing agreements on behalf of HACSA and the limited liability company as are reasonably necessary to effect the withdrawal of the Oregon Equity Fund Limited Partnership ("Investor Partner") from the Walnut Park Partnership and the acquisition by the limited liability company of the limited partnership interests of the Investor Partner in the partnership for an amount not to exceed one dollar or such other nominal sum as the Acting Executive Director shall determine in his discretion (such determination to be conclusively evidenced by the Acting Executive Director's signature on the document); and
4. That the Acting Executive Director is authorized and directed to take such further actions and to execute, deliver and cause to be performed such further agreements, certificates, indemnifications and other documents as may be necessary to effect the foregoing resolutions.

5. That, to the extent any of the actions authorized in the foregoing resolutions have previously been undertaken, such actions are hereby ratified and affirmed.

DATED this _____ day of _____, 2009

Chair, HACSA Board of Commissioners

APPROVED AS TO FORM
Date 7/13/09 _____

OFFICE OF LEGAL COUNSEL

5. That, to the extent any of the actions authorized in the foregoing resolutions have previously been undertaken, such actions are hereby ratified and affirmed.

DATED this _____ day of _____, 2009

Chair, HACSA Board of Commissioners

APPROVED AS TO FORM
Date 7/13/09 _____
JIL
OFFICE OF LEGAL COUNSEL



Phone: (503) 986-2200
Fax: (503) 378-4381

Articles of Organization—Limited Liability Company

Secretary of State
Corporation Division
255 Capitol St. NE, Suite 151
Salem, OR 97310-1327
FilingInOregon.com

REGISTRY NUMBER: _____

For office use only

In accordance with Oregon Revised Statute 192.410-192.490, all information on this form is publicly available, including addresses.

We must release this information to all parties upon request and it will be posted on our website.

For office use only

Please Type or Print Legibly in Black Ink. Attach Additional Sheet if Necessary.

1) NAME OF LIMITED LIABILITY COMPANY (Must contain the words "Limited Liability Company" or the abbreviations "LLC" or "L.L.C.")

HACSA PARTNER LLC

2) DURATION (Please check one.)

Latest date upon which the Limited Liability Company is to dissolve is _____

Duration shall be perpetual.

3) NAME OF THE PERSON WHO WILL ACCEPT LEGAL SERVICE FOR THIS BUSINESS (INITIAL REGISTERED AGENT)

4) REGISTERED AGENT'S PUBLICLY AVAILABLE ADDRESS (Must be an Oregon Street Address, which is identical to the registered agent's business office.)

177 Day Island Rd, Eugene, OR

5) ADDRESS WHERE THE DIVISION MAY MAIL NOTICES

177 Day Island Rd, Eugene, OR
97401

6) NAME AND ADDRESS OF EACH PERSON WHO IS FORMING THIS BUSINESS (ORGANIZER)

Housing Authority and Community

Services Agency of Lane County

177 Day Island Road

Eugene, OR 97401

7) IF THIS LIMITED LIABILITY COMPANY IS NOT MEMBER MANAGED, CHECK ONE BOX BELOW.

This limited liability company is managed by a single manager.

This limited liability company is managed by multiple manager(s).

8) IF RENDERING A LICENSED PROFESSIONAL SERVICE OR SERVICES, DESCRIBE THE SERVICE(S) BEING RENDERED.

9) OPTIONAL PROVISIONS (Attach a separate sheet if necessary.)

(OPTIONAL) LIST MEMBERS AND/OR MANAGERS NAMES AND ADDRESSES

10) OWNERS (MEMBERS) (Names and Street address)

Housing Authority and Community

Services Agency of Lane County

177 Day Island Rd, Eugene, OR

11) MANAGERS (MANAGERS) (Names and Street address)

12) EXECUTION/SIGNATURE OF EACH PERSON WHO IS FORMING THIS BUSINESS (ORGANIZER) (The title for each signer must be "Organizer.")

By my signature, I declare as an authorized authority, that this filing has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete. Making false statements in this document is against the law and may be penalized by fines, imprisonment or both.

Signature

Printed Name

Title

Douglas Blomgren

Organizer
Organizer
Organizer
Organizer

FEES	
Required Processing Fee	\$50
Confirmation Copy (Optional)	\$5
Processing Fees are nonrefundable.	
Please make check payable to "Corporation Division."	
NOTE: Fees may be paid with VISA or MasterCard. The card number and expiration date should be submitted on a separate sheet for your protection.	

13) CONTACT NAME (To resolve questions with this filing.)

Douglas Blomgren

DAYTIME PHONE NUMBER (Include area code.)

503 972 9925

**OPERATING AGREEMENT
OF
HACSA PARTNER LLC**

This OPERATING AGREEMENT of HACSA PARTNER LLC ("Agreement") is made and entered into effective as of July __, 2009, by the Housing Authority and Community Services Agency of Lane County, Oregon, a housing authority established under ORS 456.

SECTION 1. THE LIMITED LIABILITY COMPANY

1.1 **Formation.** The name of the limited liability company is HACSA Partner LLC (the "Company"). The execution and filing of the Articles of Organization of HACSA Partner LLC (the "Articles") created the Company under the Oregon Limited Liability Company Act (the "Act"). The Member hereby organizes the Company, on the terms and conditions set forth in this Agreement and pursuant to the Act. The rights and obligations of the Company and its Member shall be as provided in the Act, except as otherwise expressly provided in this Agreement.

1.2 **Purpose.** The company shall further the purposes of the Member as contemplated by ORS 456.120(20) or its successor statute by, among other things and without limitation, serving as a limited partner in partnerships in which the Member is a general partner or serving as a member of limited liability companies of which the Member is a member, which partnerships and companies are organized for the purposes of developing, acquiring, constructing, rehabilitating, operating, managing and/or leasing multi-family residential developments intended to serve, predominantly, low income persons.

1.3 **Duration.** The Articles set forth the life of the Company.

1.4 **Registered Office and Agent.** The registered office of the Company shall be located in the State of Oregon at the location designated in the Articles or at such other location as may be selected by the Member on the filing of any notices required by law. The initial registered agent shall be the person or entity designated as such in the Articles. The registered agent shall have a business office identical with such registered office.

1.5 **Defects as to Formalities.** A failure to observe any formalities or requirements of this Agreement, the Articles or the Act shall not be grounds for imposing personal liability on the Member for liabilities or obligations of the Company.

SECTION 2. NAME, ADDRESS, MEMBERSHIP INTEREST, AND CAPITAL CONTRIBUTION OF MEMBER

2.1 **Names, Address and Membership Interest.** The name, address, initial capital contribution and membership interest of the Member are as follows:

Name and Address	Initial Contribution (agreed value and property Contributed)	Membership Interest
Housing Authority and Community Services Agency of Lane County 177 Day Island Road Eugene, OR 97401	\$100	100%

2.2 **Initial Contribution.** The Member shall contribute the consideration described in Section 2.1 upon the Member's signing of this Agreement. The value of the Member's initial contribution shall be as set forth in Section 2.1.

SECTION 3. MEMBER LIABILITY

The Member's liability shall be limited as set forth in this Agreement, the Act and other applicable law. The Member shall not be personally liable for any debts or losses of the Company, except as required by law or by this Section 3. If the Member rightfully receives the return, in whole or in part, of the Member's capital contribution to the Company, the Member is nevertheless liable to the Company only to the extent now or hereafter provided by the Act. If the Member receives a distribution by the Company that is in violation of Section 63.229 of the Act (i.e., made when the Company is unable to pay its debts as they become due in the ordinary course of business or made when the Company's liabilities exceed its assets (after giving effect to the distribution)) and if the Member knew, or should have known, that such distribution was at the time in violation of Section 63.229 of the Act, the Member is liable to the Company for a period of two (2) years after such distribution for the amount of the distribution.

SECTION 4. ACTIONS OF MEMBER

All determinations, approvals and actions with respect to the affairs of the Company shall be made by vote of the Member. Any such determination, approval or action required or permitted to be taken by the Member shall be approved if the Member votes in favor thereof, which vote may, at the Member's option, be documented by written consent or other written instrument. A record shall be maintained of the major determinations, approvals or actions of the Member with respect to the affairs of the Company, and shall be kept with the other books and records of the Company.

SECTION 5. MANAGEMENT

5.1 **Management.** The management of the business and affairs of the Company and its property shall be vested in the Member. Provided, however, the Member may designate from time to time an Operating Officer or other officer, to serve at the pleasure of the Member and to perform such functions and have such authority as may be specified by an action of the Member made in accordance with Section 4.1 of this Agreement.

5.2 **Books and Records.** Full and complete books and records, including those specified in Section 63.771 of the Act, shall be maintained by the Company at all times.

SECTION 6. DISTRIBUTIONS

6.1 **Net Cash From Operations.** To the extent net cash from operations is available (as determined by the Member), and subject to Section 6.2, the Company shall distribute to the Member net cash from operations in such amounts and at such intervals as are determined by the Member.

6.2 **Net Cash from Capital Events.** To the extent net cash is available from the destruction, sale or other disposition of some or all of the Company's property, or from any refinancing or any other capital event, the Company shall distribute to the Member net cash from such event in an amount determined by the Member

6.3 **Limitations on Distributions.** Notwithstanding anything contained in this Agreement or the Articles to the contrary, no distribution shall be made to the Member in violation of the Act (including Section 63.229).

SECTION 7. INDEMNITY

The Company shall indemnify the Member and shall make advances for expenses, to the maximum extent permitted under the Act; provided, however, that this provision shall not eliminate or limit the Member's liability for:

- (a) Any breach of the Member's duty of loyalty to the Company as described in this Agreement;
- (b) Acts or omissions not in good faith that involve intentional misconduct or a knowing violation of law;
- (c) Any unlawful distribution under the Act; or
- (d) Any transaction from which the Member derives an improper personal benefit.

SECTION 8. DISSOLUTION AND WINDING UP

8.1 **Dissolution Events.** The Company shall dissolve and commence winding up and liquidating on the first to occur of any of the following ("Dissolution Event(s)"):

8.1.1 The vote of the Member to dissolve the Company;

8.1.2 The sale or other disposition (other than lease) of all or substantially all of the Company's property, unless the Member elects to continue the Company following the sale or disposition; or

8.1.3 Any other event under Section 63.621 of the Act for which the Act does not permit elimination in the Articles or in this Agreement.

The foregoing events shall be the exclusive events that shall cause the dissolution and winding up of the Company.

8.2 **Winding Up.** Upon the occurrence of a Dissolution Event, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors and Member, and the Member shall not take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. To the extent not inconsistent with the foregoing, all obligations in this Agreement shall continue in full force and effect until such time as the Company property has been distributed pursuant to this Section 8.2. The Member shall (1) be responsible for overseeing the winding up and dissolution of the Company, (2) take full account of the Company's liabilities and assets, (3) cause the Company property to be liquidated as promptly as is consistent with obtaining the fair value thereof, and (4) cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as determined by the Member, subject to requirements of the Act or other applicable law.

8.3 **Notice of Dissolution.** If a Dissolution Event occurs and the Company is dissolved and liquidated, the Company shall, within thirty (30) days thereafter, provide written notice thereof to the Member and to all other parties with whom the Company regularly conducts business (as determined in the discretion of the Member) and shall comply with the notice and publication provisions of ORS 63.641 and ORS 63.644.

SECTION 9. GENERAL CONTRACT PROVISIONS

9.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Oregon.

9.2 **Savings Clause.** If any provision of this Agreement shall be held to be invalid and unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected hereby.

9.3 **No Third Party Beneficiaries.** The provisions of this Agreement are intended solely for the benefit of the Member and shall create no rights enforceable by any third party,

including creditors of the Company, except as otherwise required by the Act or other applicable law.

IN WITNESS WHEREOF, the Member has executed this Agreement effective the date set forth above.

Housing Authority and Community Services
Agency of Lane County

By: _____
Larry A. Abel, Acting Executive Director