

The Benefits of Using Community Land Trusts with Low Income Housing Tax Credits



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REPORT SUMMARY

This report explores the benefits of using community land trusts with Low-Income Housing Tax Credits (LIHTC). In Denver, as in many cities across the country, the affordable housing shortage has been a pervasive and accelerating problem for decades as the stock of affordable housing has failed to keep pace with growth. Although written before the coronavirus pandemic, the developments described in this report become even more urgent as the demand increases. The permanent affordable housing they provide is even more vital and in-demand than at any time in recent memory.

The Federal Low-Income Housing Tax Credits program helps combat displacement of residents with increasing housing costs by providing financial incentives for large businesses to invest in creating affordable housing in areas where demand has outstripped supply. Since 1986, more than 3.2 million affordable housing units have been produced nationally, using LIHTC; 70,623 of those units have been in Colorado.

Through strong partnerships, forward-thinking, and successful land acquisition, ULC has successfully promoted the development of affordable housing throughout the Metro Denver region. ULC strategically uses 99-year ground leases, a key component of Community Land Trusts, to preserve prime pieces of land in neighborhoods facing the pressures of gentrification, ensuring the availability of those parcels for the lasting benefit of low-income people in a booming real estate market. Its ground leases also provide ULC with a legal mechanism for ensuring the permanent affordability of its place-based investments in multi-family rental housing and nonprofit facilities.

Two of ULC's newest developments illustrate the successful outcome resulting in combining low-income tax credits and CLT ground leases: Walnut Lofts, a 66-unit permanently affordable development across the street from the 38th and Blake Street Station and Sheridan Station, 133 units of permanently affordable housing, which also sits adjacent to the light rail station. How these two deals came together, the partnerships required, and the benefits these strategies are the topics of this report.

Future ULC developments that use LIHTC and ground leases will also take advantage of Income Averaging. A companion report will be released in early 2021 and will detail ULC developments utilizing this provision.



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INTRODUCTION

In Denver, as in many cities across the country, the affordable housing shortage has been a pervasive and accelerating problem for decades. As the population in Denver has boomed and the city has gentrified, the problem has become particularly acute. The stock of affordable housing has failed to keep pace with growth. Large tent cities filled with people experiencing homelessness provide stark evidence of the challenge.

As Denver-based nonprofit, Urban Land Conservancy, works to develop a stock of permanently affordable housing, the very human face of the crisis hits home. As new developments come online, demand far exceeds supply. ULC staff hears stories of single mothers with three children who double up in a one-bedroom apartment with family or friends. It's impossible to afford a two-bedroom apartment, which in March rented for an average of \$1,765 per month in Denver with a job paying \$14 an hour.

Fortunately, as increasing housing costs continue to displace many local residents, one national affordable rental housing program can help prevent displacement and support a wide range of households from those on fixed income to those earning \$78,500 per year. Federal Low-Income Housing Tax Credits (LIHTC) have been the most pervasive method of developing affordable rental housing across the country since being passed into law in 1986 as part of Section 42 of the IRS tax code.

LIHTCs provide financial incentives for large businesses to invest in the creation of affordable housing, an area where, historically, demand has outstripped supply. Since 1986, more than 3.2 million affordable housing units have been created, nationally, using LIHTC; 70,623 of those units have been in Colorado.

Since 2011, Urban Land Conservancy has partnered on nine LIHTC developments to create nearly 1,300 permanently affordable apartments. These apartments are all part of transit-oriented developments—located near rail and high frequency bus stations—where land costs, and therefore rents, have risen rapidly over the past decade. ULC's investment in these communities means that low- and moderate-income individuals and families can remain in neighborhoods that otherwise would have become too expensive for them.

ULC's success in promoting the development of affordable housing stems from a number of factors. The organization has been forward-thinking in its land acquisition strategy, buying parcels or existing developments at reasonable prices and ahead of the Denver real estate curve.

Equally important have been the strong partnerships ULC has forged with community organizations, financial institutions, governmental entities, and housing developers. ULC and its partners have made good use of federal and state tax credits to make affordable housing developments financially viable.

COMMUNITY LAND TRUSTS AND LIHTC

ULC uses the Community Land Trust (CLT) model, in many cases, to eliminate the cost of land acquisition for developers. In exchange, ULC retains ownership of the land and enters into renewable 99-year ground leases with developers who then own and operate the building. The developers make affordable annual lease payments to ULC and an up front payment for development rights. It amounts to a win-win: By maintaining nonprofit ownership of the land, ULC guarantees that the development will remain a community benefit in perpetuity, and developers are able to build high-quality affordable housing that is financially viable.

The combination of CLT ground leases and Low Income Housing Tax Credits provide an undeniable community benefit, according to Jaime G. Gomez, Chief Operating Officer and Deputy Executive Director of the Colorado Housing Finance Authority (CHFA).

"Sustainable affordable housing options are essential to establishing strong and vibrant communities. Land trusts are powerful tools that can be leveraged with the LIHTCs to make a significant impact that results in housing stability for families across the country," Gomez said.

"CLTs extend the affordability and, therefore, the stability of housing options well into the future, which benefits the surrounding community and streamlines preservation efforts over the life of the development. Additionally, by reducing ever-increasing land expenses, a CLT lowers a LIHTC development's overall costs. ULC's strategic use of the CLT combined with LIHTC will have a lasting impact on affordable housing access for many Coloradans."

Two of ULC's newest developments illustrate how the LIHTC program and ULC's CLT work together to create well-located affordable housing communities. One is the Walnut Street Lofts, a 66-unit permanently affordable development

across the street from the 38th and Blake Station on the "A" rail line to Denver International Airport. Located where Globeville, Five Points, and Cole neighborhoods meet, Walnut Street Lofts provides housing for people who otherwise would be priced out of the area.

The second is Sheridan Station Apartments, located in the Villa Park neighborhood in west Denver, close to the Lakewood boundary. Sheridan Station, which will open in early 2021, sits adjacent to the light rail station of the same name on the Regional Transportation District's "W" line. It's also next to the Jody Apartments, where ULC executed its first ground lease in partnership with NEWSED, a community development corporation of long-standing. Sheridan Station will feature 133 units of permanently affordable housing.

How these two deals came together, the partnerships required, and the benefits that a combination of LIHTCs and CLT provides are the topics of this report. A companion report, which will be provided at a later date, will explore how the addition of income averaging for developments, a feature of the 2017 tax law, further supports housing development at even deeper and broader levels of affordability in Denver.



MORE ABOUT LIHTC

Since 1986, Low-Income Housing Tax Credits (LIHTCs) have been the primary vehicle driving the development of affordable housing across the United States. In essence, the program allows developers to form partnerships with large financial institutions, obtain tax credits through a competitive process, and finance large portions of affordable housing developments by exchanging the tax credits for equity—hard dollars—from the developer's institutional partner. This makes developments affordable by reducing the percentage financed by debt.

In their early days, the LIHTCs were slow to catch on and obtaining them for a development wasn't as competitive as is the case today. "Anyone could get credits in the early days. In fact, it was hard to get investors," said Dan Morgan, whose Denver-based firm, Daniel G. Morgan and Associates, has helped nonprofits and developers apply for tax credits for more than 30 years. "Originally, the credits were designed for individual investors, but as time went on, you got more experienced and higher quality developers. As a result, financial institutions, after a few years, realized this was a very secure investment and jumped in."

As with most governmental programs, the LIHTC program is complex and nuanced, with several arcane rules and regulations that make a succinct explanation difficult. Generally, though, there are two separate federal LIHTC programs.

One, highly competitive program offers 9 percent credits annually over a 10-year period. This means an investor could claim, as a tax credit each year, roughly 9 percent of the "qualified basis" cost of the development—qualified basis being determined by how many of the units and percentage of the floor space are dedicated

to low-income residents. In many cases, over 10 years, the investment yields close to a 100 percent return in offsetting tax credits.

There are also less competitive 4 percent tax credits. Developers who partially finance their affordable housing with tax-exempt bonds are ineligible for the 9 percent credits, but can readily obtain 4 percent credits. In Colorado, CHFA also allocates a state credit to augment the federal 4 percent credits, making this program very attractive for investors.

The program has been so successful that today it is hard to imagine an affordable rental housing development getting out of the ground without LIHTC being an integral piece of the financing puzzle.

Peter Levavi, senior vice president of Brinshore, a national developer of affordable housing, describes LIHTC:

"In its first 10 years, people didn't understand the program. Investors didn't understand it, lenders didn't understand it, developers didn't understand it. Low Income Housing Tax Credits were mostly used by your corner nonprofit church to rehab an abandoned building. Over the past 30 years, everything has matured to the point where people now understand to the last six decimal points what it's worth and how it works.

"It's the only game in town to build low-income rental housing in America right now. If you're going to be building non-luxury rental housing, you will be using Low-Income Housing Tax Credits. Developers started small, in one neighborhood, in one city, in one state. Now all of us have gone nationwide, and we are all competing against each other."

MORE ABOUT COMMUNITY LAND TRUST GROUND LEASES



ULC strategically uses 99-year ground leases, a key component of community land trusts, to preserve prime pieces of land in neighborhoods facing the pressures of gentrification, ensuring the availability of those lands for the lasting benefit of low-income people in a booming real estate market. Its ground leases also provide ULC with a legal mechanism for ensuring the permanent affordability of its place-based investments in multi-family rental housing and nonprofit facilities.

ULC is not a typical community land trust. Many CLTs across the country are formed to work in a single neighborhood and/or with a sole focus on homeownership. That's not the case with the ULC, which has acquired and developed multiple properties across the Denver metro area and has not directly done affordable homeownership development. All of the housing on its land are multi-family rental apartments.

The following two examples—Walnut Street Lofts and Sheridan Station Apartments will illustrate how tax credits and ground leases combine to spur affordable housing developments along transit corridors in Denver.





WALNUT STREET LOFTS

Walnut Street Lofts is a five-story, 66-unit affordable housing development of one-, two-, and three-bedroom units that opened summer, 2020 less than a block from the 38th and Blake Station on the 'A' rail line between downtown's Union Station and Denver International Airport.

Back in 2011, there were clear signs that what is now called the River North (RiNo) neighborhood was poised for a surge of development that would radically change the face of what had been a primarily non-residential area dominated by light industry and warehouses. But the full scope of the area's rebirth (and gentrification) was hard to envision back then.

Today, RiNo is deep into its transformation, which, given the massive redevelopment of the National Western Complex to its north, seems likely to continue despite the economic devastation wrought by the COVID-19 pandemic.

Fortunately, ULC had the foresight to scout the area for affordable properties before

the boom was in full force. A local bank had foreclosed on the 1.6-acre site at 38th and Blake, and ULC quickly moved to buy the property on the border of Globeville, Five Points, and Cole neighborhoods.

"It was literally in the default (foreclosure) pile at the bank," said Mark Marshall, ULC's Vice President of Real Estate. "We recognized that it was along the rail line to the airport (which opened in 2016), and we knew a station was being built somewhere close by but we didn't, at that time, know exactly where. As luck would have it, they ended up right on our doorstep."

The parcel was occupied by what Marshall described as "outdated small industry"—an auto body shop and a dry-cleaning plant that required environmental remediation. ULC closed on the parcel in November 2011 using the Denver Regional Transit-Oriented Development Fund and paying just \$27 per square foot, or \$1.7 million. Today, land in the area is selling for \$200 per square foot or more in some cases. That makes the parcel worth at least \$12.5 million today.

ULC organized community meetings and design charrettes after acquiring the property and also solicited proposals from several developers. A variety of ideas poured in, some for developments that mixed commercial space, office buildings, and both market-rate and affordable housing. But the one that appealed most strongly to ULC and the community came from Troy Gladwell, founder of Medici Consulting Group, to dedicate the entire parcel to affordable housing.

It would be several years before Medici succeeded in securing the Low-Income Housing Tax Credits that would make the Walnut Lofts development possible. So, rather than allow the land to lie fallow, in 2017, ULC decided to put the parcel to constructive community use. Beloved Community Village, operated by Colorado Village Collaborative, an alternative housing project that offers housing to people



Tiny Home Village Family at site Wanut St. Lofts experiencing homelessness, was looking for a temporary location for the first Colorado tiny home village to serve as temporary shelter for people experiencing homelessness. The 38th and Blake parcel seemed an ideal location.

The Village originally consisted of 11 sleeping units, a shared bathing facility, and a community gathering space. Beloved Community leased the land for \$1 per month until the Village moved to its new location in Globeville in 2019. A 2018 study by the Barton Institute at the University of Denver found that the village increased the life stability of previously unhoused people and had no negative impact on the surrounding neighborhood.

By 2017, Medici had applied to Colorado Housing and Finance Authority (CHFA) and been turned down twice for tax credits. The first rejection, for 9 percent federal credits, came "because CHFA wanted us to make some adjustments to the mix of units," said Gladwell, Medici's founder.

The second rejection, for a mix of 4 percent federal and state credits, occurred because the devastating northern Colorado floods of

September 2013 meant the lion's share of tax credits the following couple of years went to rebuilding projects in Larimer and Weld counties, Gladwell said.

Fortunately, the third time was the charm. In 2017, Medici was awarded 9 percent tax credits, and the project was a go. Wells Fargo became the principal investor, with additional funds from the Denver Office of Economic Development, the Denver Housing Authority, and Colorado Division of Housing. CHFA provided a permanent first mortgage, as well as a low-interest loan and grant from its Capital Magnet Fund, and ULC provided about \$200,000 to complete the deal's financing.

ULC and Medici entered into a partnership, under which ULC retained ownership of the land, entering into a renewable 99-year ground lease with Medici.

Because the City and County of Denver have funds invested in the development, they require

that the property remain affordable for 60 years. And CHFA, as the disburser of the tax credits, also required that the development retain its affordability for 40 years. ULC's ground lease represents the strongest layer of affordability protection for the valuable piece of land for 198 years.

Determining the configuration of the development took time and some intensive negotiating. ULC wanted as many of the development's units as possible to be two- and three-bedrooms, because affordable units between 30 and 60 percent of Area Median Income that are suitable for families are in short supply everywhere, especially in booming neighborhoods like RiNo. Building as many affordable units as possible on the site was also a high priority.

The City adopted a density overlay incentive area around the 38th and Blake Street station in September 2016, allowing for taller buildings than the zoning code specified if developers agreed to include affordable housing units in

their projects. ULC and other affordable housing advocates pushed hard for a formula requiring additional stories to include about 20 percent affordable units, Marshall said. Ultimately, though, the City adopted a complex formula that required only about 10 percent affordable units for those additional floors, or 5 percent for a project overall.

"It was disappointing to have the ability to create substantially more affordable housing and then to give so much of it up. It was a missed opportunity," Marshall said.

Medici's Walnut Street Lofts broke ground in March 2019 and opened up in the summer of 2020 during the pandemic. Of the five-story's 66 units, 10 percent are reserved for people with federal housing vouchers, making up to 30 percent of the area median income. Another 40 percent are restricted to those making up to 50 percent of AMI, while the remaining half of the units are leased to those making up to 60 percent AMI. That's equivalent to between \$30,000 and \$60,000 of annual income for a family of four. The tax credits awarded to the deal amount to \$11.7 million in equity, or \$177,881 per unit, according to Gladwell.

Walnut Street Lofts makes it possible for families who would otherwise be forced out of the area by gentrification to remain in the community. "We know there is a lot of displacement of families and individuals and businesses happening in this area," Marshall said. "What we accomplish by being more proactive with developments like Walnut Street Lofts is helping people who live in the community to benefit from all the new development rather than become victims of it."

At the Walnut Street Loft's groundbreaking ceremony on March 21, 2019, Denver Mayor Michael Hancock extolled the virtues of affordable housing projects that include 99-year ground leases. "It's about the fact that this building will be standing when we're all long and gone, and our great-great-grandchildren will wonder who the people behind this affordable housing were," Hancock said.

Walnut Street Lofts at a Glance

Units: 66 - 1, 2, and 3 Bedrooms

Stories: Five

Location: Five Points

Eligibility:

10% Federal Housing Voucher (Up to 30% AMI)

40 % Up to 50% AMI

50% Up to 60% AMI

Land: 1.6 acres owned by ULC

Land Value at Purchase: In 2011 at \$27 per sq. ft. or \$1.7M

Land Value Today: \$200 per sq. ft. or \$12.5M

Developer: Medici Communities

Investors:

Wells Fargo

Denver Economic Development & Opportunity

Denver Housing Authority

Colorado Division of Housing

Groundbreaking: March 2019

Opening: Summer 2020

Tax Credits: \$11.7M in equity or \$177,881 per unit



Groundbreaking for Walnut Street Lofts in March 2019



SHERIDAN STATION APARTMENTS

Deals involving Low-Income Housing Tax Credits are not easy to assemble. But some are more challenging than others. Sheridan Station Apartments, an eight-story building on the Denver-Lakewood border featuring 133 affordable units, certainly fits into that “more challenging” category.

“There are, I believe, seven different institutional layers of financing, along with ULC’s 99-year ground lease to make it permanently affordable housing,” said George Thorn, founder and CEO of Mile High Development, one of the development partners on the deal. “That’s what it took to get it done. We had to build up all the layers of the cake.”

There’s no single answer as to why the Sheridan Station deal was so difficult to assemble. But the deep connections and tenacity of Thorn and ULC and the national know-how of Chicago-based Brinshore Development, the other development partner, helped the project cross the finish line. How Sheridan Station Apartments ultimately became a reality offers a good lesson in what it can take to assemble LIHTC deals.

“The story of this deal is cobbling together many, many sources of financing,” said Peter Levavi, Brinshore’s senior vice president. “It makes your head spin. I like to keep it at four. I try not to make it this complicated.” He credited Thorn’s “genius” with pulling the deal together.

ULC acquired the 0.6-acre site, adjacent to the RTD Sheridan Station light rail stop, in 2014. It’s located on West 11th Avenue, just west of Sheridan Boulevard, a 12-minute light rail ride to Union Station. Originally, RTD intended to place a water detention pond on the parcel. But, Thorn said ULC told the transit agency that this was a viable development site and persuaded them to place the pond in another location near the station.

As with many LIHTC deals, it took a while to assemble—in this case five years from land acquisition to groundbreaking. Thorn’s Mile High Development was awarded \$1.3 million worth of 4 percent federal tax credits in 2017 and an additional \$1 million in state credits to make the deal work. But that still left a large funding gap on the \$41 million affordable housing community.

Thorn said he worked with ULC for a few years before receiving the tax credits to figure out other ways to hold down costs as much as possible. When ULC bought the land parcel, it purchased a twin piece of land directly across Ames Street. The original idea was to build two five-story wood frame buildings, one on either side of Ames Street, but as Mile High Development started

looking at costs, Thorn came to realize that two buildings, requiring four elevators and four stairwells, was too expensive for the deal to work financially. “So we bit the bullet and decided to do it all in one eight-story steel frame building on the west side of Ames,” he said.

Having made the decision to build a single building, the development team faced a conundrum about parking. There wasn’t room on the site for nearly enough parking to accommodate residents of 133 units—in fact Sheridan Station Apartments has only 11 covered spots. Underground parking would have been prohibitively expensive, making the deal unworkable.

The adjacent RTD light rail station, however, includes a large parking garage that has been underutilized. After a “lot of back and forth,” Thorn said, RTD agreed to lease the entire top level of the garage—about 130 spaces—to the development for resident parking. That saved \$2 million in construction costs.

Figuring out how to finance the deal was the other challenging piece of the puzzle. This was where what Levavi described as Thorn’s “genius” came into play. Thorn has been a developer in Denver for more than 50 years. He knows all the players and all the different places where pots of funding, large and small, might be found.

“Everyone we could find who would consider doing a piece of financing on an affordable housing project jumped in,” Thorn said.

That included a tax-exempt note from NorthMarq, a \$1.2 million second mortgage loan from CHFA, an almost \$2 million cash flow loan from Denver’s Office of Economic Development at 1 percent interest, and \$1.33 million cash flow loan at 1 percent interest from the Colorado Division of Housing. US Bank acted as the tax credit investor.

According to Levavi, the most complicated part of the deal involved the Denver Housing Authority. Sheridan Station Apartments received a real



estate tax exemption from DHA in exchange for a small ownership stake in the development. Developers made a Payment in Lieu of Taxes to DHA to receive the tax exemption. “That helped reduce operating expenses to make this deal viable,” Levavi said.

Thirteen of the apartments are rented to people earning 30 percent or less of Area Median Income. Those units are Section 8 project-based voucher units rented to low-income women who have been victims of domestic violence. Eight of the vouchers for these units come from DHA. The remaining 120 units are rented to people earning up to 60 percent or less of AMI.

Thorn said he sees a few reasons why the Sheridan Station Apartments deal took a while and was so complicated to assemble. First, he said, a \$41 million, 133-unit development is large by affordable housing standards. “Most tax credit deals are in the 60 to 70 unit range, costing closer to \$16 to \$18 million,” he said.

Second, while ULC’s 99-year ground lease undoubtedly provides a long-term benefit to the community and helps make the deal more affordable, it is also viewed with some hesitancy by big institutional lenders. “Places like US Bank typically would rather see the developer own the land,” he said.

Levavi, whose company, Brinshore, works with housing authorities across the country redeveloping public housing, said a typical Brinshore deal involves a 99-year ground lease at \$1 per year. Sheridan Station Apartments was more complicated because ULC had to purchase the land for the development and needed to recoup that investment. That means the annual ground lease payments starts at \$16,000, adjustable every five years.

“If Brinshore were a development company looking to cash out and make a lot of money, this would be an issue. But we are on the same side of the table as ULC, trying to make the same thing happen—long-term affordable housing,” Levavi said.

Ultimately, the tax credits awarded in this deal amounted to about \$16 million in equity, or close to \$120,000 per unit.

The groundbreaking for Sheridan Station Apartments took place in May of 2019, and should be ready for occupancy in early 2021. Amenities include an outdoor plaza, media room, fitness center, on-site leasing office, and bike storage. A large community rooftop serves as a gathering space with sweeping views of the mountains and downtown Denver.



Groundbreaking for Sheridan Station, May 2019

Sheridan Station Apartments at a Glance

Units: 133 - 1, 2, and 3 Bedrooms

Stories: Eight

Location: Denver/Lakewood

Eligibility:

13 units - Federal Housing Voucher (Up to 30% AMI) for women who’ve experienced domestic violence

120 units - Up to 60% AMI

Land: 0.6 acres owned by ULC

Developers: Mile High Development & Brinshore Development

Investors:

NorthMarq

US Bank

Denver Economic Development & Opportunity

Colorado Housing and Finance Authority

Denver Housing Authority

Colorado Division of Housing

Opening: January 2021

Tax Credits: \$16M in equity or \$120,000 per unit

WHAT’S NEXT

Future ULC developments that use Low Income Housing Tax Credits and ground leases will also be able to take advantage of Income Averaging which was part of the Tax Reform and Jobs Act passed in December 2017. A companion report coming in early 2021 will detail ULC developments using this provision.

In a nutshell, though, Income Averaging allows LIHTC developments more flexibility in income ranges for residents of those affordable housing communities. Instead of all affordable units having to go to people earning 60 percent or less of AMI, under the new law, some affordable units can go to people earning up to 80 percent of AMI, as long as the development-wide average income of residents of affordable units remains at or below 60 percent.

This allows LIHTC developments to meet a broader range of households currently being priced out of market rate rentals. Further, developers can rent some units to people with income as low as 20 percent of AMI without needing to use federal housing vouchers, which are in increasingly short supply.



URBAN LAND CONSERVANCY



Mural at Walnut Street Lofts

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