

January 12, 2022

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

**Approval of a Subordination Agreement with Beneficial State Bank for re-financing HOME Loan with Wiedemann Park Apartments affordable housing project. The HOME Loan amount is \$350,000, funded in 1998/1999 through a Federal HOME Loan grant. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	12-10-1998, item IA1 HOME Loan Approval 12-30-1998, 1 <sup>st</sup> Subordination signed. 6-30-1999, Loan Amendment signed. 12-19-2013, 2 <sup>nd</sup> Subordination Agreement signed 1-10-2023 BCC Issues Briefing		
<b>Performance Clackamas</b>	1. Which indicator of success does this item affect? Affordable Housing – increased number		
<b>Counsel Review</b>	Yes: A. Naylor	<b>Procurement Review</b>	No - NA
<b>Contact Person</b>	Mark Sirois	<b>Contact Phone</b>	503-351-7240

**EXECUTIVE SUMMARY:** The Subordination Agreement re-finances construction loans to maintain 58 affordable housing units for low-income seniors in Wilsonville. In 1998, the County agreed to lend \$300,000 of HOME funds for the Wiedemann Park Apartments – 58 senior housing units. An Amendment increasing the loan to \$350,000 was signed on June 30, 1999. The affordable housing project had other loans to finance the full construction costs of these housing units.

The first Subordination Agreement was signed on December 30, 1998 when the original loans were approved.

A second Subordination Agreement was signed on December 19, 2013, when loans were refinanced.

This is the third Subordination Agreement. Beneficial State Bank is the primary lender, and Clackamas County is the secondary lender. Wiedemann Park Apartments is refinancing the principal loan, and the \$350,000 of HOME funds is the secondary loan. These loans are secured with liens on the property. This

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refinancing subordination agreement includes re-payment of a prior loan with Network for Oregon Affordable Housing, a co-signer on this agreement.

This Subordination Agreement and all prior HOME Loan Agreements, Amendments, and Subordination Agreements were reviewed and approved by County Counsel.

This Agreement refinances construction loans to maintain 58 units of affordable housing for low-income seniors in Wilsonville.

**RECOMMENDATION:** Staff recommends approval and signature of this HOME Loan Subordination Agreement.

Respectfully submitted,

*Rodney A. Cook*

Rodney A. Cook

Director

Health, Housing, and Human Services (H3S)

**Recording Requested by and  
When Recorded Return to:**

Michelle Bilderback  
Network for Oregon Affordable Housing  
1020 S.W. Taylor St., Suite 585  
Portland, OR 97205

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**SUBORDINATION OF AGREEMENTS**  
(Deed of Trust and Other Documents to Deed of Trust)

THIS SUBORDINATION AGREEMENT is made this \_\_\_\_th day of January 2023, between CLACKAMAS COUNTY, a political subdivision of the State of Oregon, through its Housing and Community Development Division (“CC”), and Beneficial State Bank, and its successors and assigns (“Lender”).

**RECITALS:**

**A.** Wiedemann Park Apartments Limited, an Oregon limited partnership ("Borrower") is the owner of a 58 unit multifamily housing development located in the City of Wilsonville, Clackamas County, Oregon, on that real property more particularly described on the attached Exhibit A, known as the Wiedemann Park Apartments (the “Property” or the “Project”).

**B.** Lender has agreed to provide a loan to Borrower in the principal amount of \$2,420,966.00 (the “Lender Loan”) as permanent financing for the Project, subject to certain terms and conditions, including receipt by Lender of this Subordination Agreement.

**C.** Pursuant to the Lender Loan, Lender is or will be the owner and holder of the Beneficiary's interest under a Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement, and Fixture Filing, encumbering the Property (the “Lender Deed of Trust”) by and between Borrower as Trustor, Old Republic Title Company of Oregon (the “Title Company”) as Trustee, and Lender as Beneficiary. A condition of the Lender Loan is that the Title Company insure the Lender Deed of Trust as a first lien on the Property.

**D.** The Lender Deed of Trust secures or will secure the repayment by Borrower of the Lender Loan and the performance of Borrower's obligations under a Promissory Note, and other security documents in favor of Lender (collectively, the “Lender Loan Documents”), and all advances or charges made or accruing under the Lender Deed of Trust and the other Lender Loan Documents, including any extensions or renewals thereof.

**E.** In connection with that certain \$350,000.00 HOME Program dollars provided for the Project by CC, Borrower and CC have entered into that certain Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing and First Modification thereto (“CC Trust Deed”), HOME Investment Partnership Program Declaration of Land Use Restrictive Covenants and Partial Release and Amendment thereto (“CC Declaration”), containing certain covenants, reservations, and restrictions on the use and/or operation of the Property. The CC Trust Deed was recorded against the Property December 18, 1998, re-recorded April 14, 2003 as Fee No. 2003-045936, and a First Modification thereto was recorded October 28, 2013 as Fee No. 2013-073843, Records of Clackamas County, Oregon and the CC Declaration was recorded December 30, 1998 as Recording Number 98-124692 and modified by a Partial Release and Amendment recorded July 2, 2003 as Recording Number 2003-854547, Records of Clackamas County, Oregon. The CC Trust Deed and the CC Declaration shall be collectively referred to herein as the (“CC Loan Documents”).

**F.** Lender would not make the Lender Loan to Borrower but for the subordination of the CC Loan Documents as provided in this Subordination Agreement.

#### **AGREEMENT:**

**NOW, THEREFORE,** the undersigned CC and Lender agree as follows:

**1. Subordination.** In consideration of benefits to CC from Lender making the Lender Loan to Borrower to enable Borrower to refinance the Property, the receipt and sufficiency of which consideration is hereby acknowledged, and to induce Lender to advance funds under the Lender Deed of Trust and the other Lender Loan Documents and to induce the Title Company to insure the Lender Deed of Trust as a first lien on the Property, CC does hereby acknowledge, agree, and affirm that the CC Loan Documents, and each of them, is unconditionally subordinate and subject to the lien of the Lender Deed of Trust and the other Lender Loan Documents, and to all advances, charges, and indebtedness of Borrower made or accruing under the Lender Deed of Trust and the other Lender Loan Documents, including any extensions or renewals thereof; and

**2. Subordination of Subrogation Rights.** Without limiting any other provision of this Subordination Agreement, CC agrees that if, by reason of payment by CC of real estate taxes or other monetary obligations of Borrower pursuant to the CC Trust Deed, or by reason of CC's exercise of any other right or remedy under any document executed in connection with the CC Loan (collectively, the “CC Loan Documents”), CC acquires by right of subrogation or otherwise a lien on the Property that but for this Section 2 would be senior to the lien of the Lender Deed of Trust, then in that event such lien of CC shall be subject and subordinate to the lien of the Lender Deed of Trust.

**3. Approval of Lender Loan Documents.** CC acknowledges and agrees that it has reviewed a copy of the Lender Deed of Trust and other Lender Loan Documents, has read and understands the Lender Deed of Trust and other Lender Loan Documents, and has approved the terms of the Lender Deed of Trust and the other Lender Loan Documents.

**4. Cross Default.** CC hereby agrees and acknowledges that a default by Borrower under the CC Loan Documents shall constitute a default under the Lender Loan Documents, in which case Lender shall have the right to exercise all rights or remedies under the Lender Loan Documents in the same manner as in the case of any other default thereunder.

**5. Conflict.** CC agrees that, in the event of any conflict or inconsistency between the terms of the Lender Loan Documents, the terms of the CC Loan Documents, and the terms of this Subordination Agreement, the terms of this Subordination Agreement shall govern and control: (i) the relative priority of the security interest of Lender and CC in the Property, (ii) the timing of the exercise of remedies by Lender and CC under the Lender Loan Documents and the CC Loan Documents, respectively, and (iii) all other rights and obligations that Lender and CC have agreed to pursuant to this Subordination Agreement.

**6. Modification of Lender Loan Documents.** Clackamas County hereby agrees that any agreement or arrangement in which Lender extends, reduces, or modifies any provisions of the Lender Loan Documents, including any provision requiring the payment of money, will not modify or affect in any way the subordination of the Clackamas County Trust Deed provided for in Section 1 above, or any other provision of this Subordination Agreement.

**7. Governmental Powers.** Nothing in this Agreement is intended, nor will it be construed to, in any way limit the exercise CC of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

**8. Enforcement of Affordability Covenants.** Nothing in this Agreement is intended, nor will it be construed to, in any way limit the exercise of CC of its rights of specific performance to enforce covenants of Borrower relating to income, rent, or affordability restrictions, which Subordinate Lender may enforce at any time

**9. Entire Agreement.** This Subordination Agreement contains the whole and only agreement between the parties with regard to the subordination of the CC Loan Documents to the lien of the Lender Deed of Trust and the other Lender Loan Documents, and shall supersede and cancel any prior agreements as to such, or any, subordination. CC has not relied on any inducements or assurances from Lender, Borrower, or anyone in executing this Subordination Agreement, other than as set forth herein.

**10. Binding on Successors.** CC, together with any successor to its respective rights, duties, and obligations, and any other party claiming rights under the CC Deed of Trust shall be bound by this Subordination Agreement.

**11. Severability.** If any provision of this Subordination Agreement or the application thereof to any entity, person, or circumstance shall be invalid or unenforceable to any extent, the remainder of this Subordination Agreement and the application of such provisions

to other entities, persons, or circumstances shall not be affected thereby, and shall be enforced to the greatest extent permitted by law.

**12. Multiple Counterparts.** This Subordination Agreement may be executed in one or more counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart. Any counterpart of this Subordination Agreement that has attached to it separate signature pages, which altogether contain the signatures of all parties, shall for all purposes be deemed a fully executed instrument.

**13. Governing Law.** The parties agree that the laws of the State of Oregon shall govern the performance and enforcement of this Subordination Agreement.

**14. Further Assurances.** The parties agree to execute and deliver such further documents, instruments, and other agreements as are necessary or convenient to carry out the terms and purposes of this Subordination Agreement.

**15. Intentionally Omitted.**

**16. Authority.** Each party hereby represents that all legal action necessary for the execution of this Subordination Agreement by such party has been duly taken and that the person(s) signing below on behalf of such party is duly authorized to execute this Subordination Agreement.

**IN WITNESS WHEREOF,** the parties have executed and delivered this Subordination Agreement on the date first written above.

Clackamas County, a political subdivision of the State of Oregon,  
through its Housing and Community Development Division

By: \_\_\_\_\_  
Tootie Smith, Board Chair

STATE OF OREGON            )  
  ) ss:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, by Tootie Smith Board Chair on behalf of Clackamas County

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:



**LENDER:**

Beneficial State Bank

By: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ on behalf of Network for Oregon Affordable Housing, an Oregon nonprofit public benefit corporation.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

STATE OF OREGON            )  
  ) ss:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ on behalf of Network for Oregon Affordable Housing, an Oregon nonprofit public benefit corporation.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: