

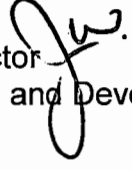


Interoffice Memorandum

AGENDA ITEM

April 30, 2020

TO: Mayor Jerry L. Demings
—AND—
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development
Services Department 

CONTACT PERSON: **Mitchell Glasser, Manager**
Housing and Community Development Division
(407) 836-5190

SUBJECT: May 19, 2020 – Consent Item
Subordination Agreement

FL Westgate, LP is the owner of Westgate Apartments, a 240-unit affordable rental community located at 6872 Alta Westgate Drive, Orlando, Florida. FL Westgate, LP is refinancing the project with Bellwether Enterprise Mortgage Investments, LLC and are requesting Orange County to subordinate its agreement to the new loan documents, which shall have priority over the County's Agreement dated September 30, 2005. The refinance of the existing mortgage will not alter the affordable housing restrictions originally placed on the property, which are in effect until October 6, 2021.

The County Attorney's Office and the Housing and Community Development Division have reviewed the subordination agreement.

ACTION REQUESTED: Approval and execution of Subordination Agreement Governmental Entity for Regulatory Agreement Regulatory Agreement Only/No Subordinate Debt by Orange County, Florida and FL Westgate, LP for the benefit of Bellwether Enterprise Mortgage Investments, LLC. District 6

JVW:MG:ER
Attachment

Prepared by, and after recording
return to:
Travis J. Shafer, Esq.
Krooth & Altman LLP
1850 M Street, NW
Suite 400
Washington, DC 20036

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY



OFFICE OF COMPTROLLER

**ORANGE
COUNTY
FLORIDA**

Phil Diamond, CPA
County Comptroller as
Clerk of the Board of County Commissioners
201 South Rosalind Avenue
Post Office Box 38
Orlando, FL 32802
Telephone: (407) 836-7300
Fax: (407) 836-5359

DATE: May 20, 2020

TO: Mitchell Glasser, Manager
Housing and Community Development Division, BCC

FROM: Katie Smith, Deputy Clerk *CAS for KS*
Comptroller Clerk of BCC

SUBJECT: Request for Execution of Document, Planning, Environmental and
Development Services Department Consent Item 3, File 20-708, May 19,
2020

Enclosed is the Subordination Agreement Governmental Entity (1 original) which was approved by the Board of County Commissioners (BCC) at its regular meeting held on May 19, 2020.

Please forward the document to all required parties for signature.

Email copies of the fully-executed documents to ClerkofBCC@occompt.com and copy terese.parsons@ocfl.net. Note: ClerkofBCC@occompt.com is used only for County staff submission of pending documents.

Please include in cover memo or subject line identification of the document by name, agenda item number, and date of BCC approval. Emailed copies must be in full-size PDF format. The document will be processed and filed for the record upon receipt.

If you are unable to return a copy of the fully-executed document before June 19, 2020, notify Katie Smith by email of the reason for the delay prior to that date.

If you have any questions, please do not hesitate to call.

ks:cas

Enclosure

dl: Jon Weiss, Director, Planning, Environmental and Development Services Department, BCC
[email]

Randy Singh, Deputy County Administrator, BCC [email]

Farling Betancourt, Administrative Assistant, Planning, Environmental and Development
Services Department, BCC [email]

Terese Parsons, Executive Assistant, County Administrator's Office, BCC [email]

Pending File

BCC Mtg. Date: May 19, 2020

**SUBORDINATION AGREEMENT GOVERNMENTAL ENTITY
FOR REGULATORY AGREEMENT
REGULATORY AGREEMENT ONLY/NO SUBORDINATE DEBT**

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT (this "**Agreement**") is effective as of the date of last execution below, by **ORANGE COUNTY, FLORIDA**, a political subdivision of the State of Florida ("**Governmental Entity**"), and **FL WESTGATE, LP**, a Georgia limited partnership ("**Borrower**"), for the benefit of **BELLWETHER ENTERPRISE MORTGAGE INVESTMENTS, LLC**, a Maryland limited liability company, its successors and assigns ("**Lender**").

RECITALS:

A. Simultaneously herewith Lender is making a loan to Borrower in the original principal amount of \$_____ ("**Loan**") pursuant to a Multifamily Loan and Security Agreement between Lender and Borrower (as supplemented or amended from time to time, the "**Loan Agreement**") and evidenced by a Multifamily Note by Borrower to Lender (as supplemented or amended from time to time, the "**Note**"). The Loan is to be secured by a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing that will be recorded among the records of Orange County, Florida ("**Official Records**") (as supplemented or amended from time to time, the "**Mortgage**") of certain improved real property located in Orlando, Orange County, Florida, as more particularly described on Exhibit A attached hereto ("**Property**"). The Loan Agreement, the Note and the Mortgage, together with all other documents executed with respect to the Loan, are hereinafter collectively referred to as the "**Loan Documents**".

B. In connection with the construction and development of the Property, Borrower is entered into a certain **MULTIFAMILY AFFORDABLE HOUSING DEVELOPER'S AGREEMENT FOR DISCOUNTS OF IMPACT FEES AND WASTEWATER CAPITAL CHARGES** dated as of September 20, 2005 ("**Regulatory Agreement**") in favor of the Governmental Entity, which was recorded September 22, 2005 in Book 08207 Page 4597 of the Official Records, pursuant to which the Property was subjected to certain restrictions by Governmental Entity.

C. As a condition to making the Loan, Lender requires that the lien of the Mortgage be superior to the lien of the Regulatory Agreement. Lender will not make the Loan unless Governmental Entity and Borrower agree to subordinate their rights and obligations under the Regulatory Agreement.

D. Borrower and Governmental Entity hereby agree to subordinate the Regulatory Agreement on and subject to the terms, conditions and requirements set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.

2. Subordination. The Governmental Entity hereby agrees that the Regulatory Agreement is and shall at all times continue to be, subordinate, subject and inferior to the rights of Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Regulatory Agreement are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief at any time in the event of a default under or breach of the terms of the Regulatory Agreement.

3. Financing, Encumbrance and Transfer Approval. Governmental Entity hereby approves and acknowledges the transfer of the Property to Borrower and the financing evidenced by the Mortgage. Governmental Entity further agrees that any transfer of the Property in connection with foreclosure of the Mortgage or a deed in lieu thereof shall not require Governmental Entity's consent but shall require notice to Governmental Entity and that the restrictive covenant on the Property remain in place until October 6, 2021 or that payment be made pursuant to the terms of Section 7 of the Regulatory Agreement.

4. Lender Notice of Default. In consideration of Governmental Entity's agreements contained in this Agreement, Lender agrees that in the event of any default by Borrower under the Loan Documents, Governmental Entity shall be entitled to receive a copy of any notice of default given by Lender to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entity pursuant to this Section 5 will affect the validity of any notice given by Lender to the Borrower.

5. Governmental Entity Notice of Default. Governmental Entity shall give Lender a concurrent copy of each material notice (including without limitation each notice of default) given by Governmental Entity under or with respect to the Regulatory Agreement, and agrees that Lender, at Lender's sole election, shall have the right (but not the obligation) to cure any default by Borrower under the Regulatory Agreement on its and/or Borrower's behalf. Governmental Entity hereby represents that, to the best of its knowledge, there is no current default under the Regulatory Agreement.

6. Governmental Entity's Rights. Except as set forth in Sections 2 and 7 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Regulatory Agreement; provided that, (A) the Regulatory Agreement may be released but it may not be modified, amended, changed or otherwise altered without the prior written consent of Lender so

long as the Loan is secured by the Property and (B) for so long as the Loan is secured by the Property, notwithstanding the terms of the Regulatory Agreement to the contrary, neither Borrower nor Governmental Entity will, without Lender's prior written consent, exercise or seek any right or remedy under the Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) the collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Lender; (iii) appointment of a receiver for the Property; (iv) the application of insurance or condemnation proceeds other than as approved by Lender pursuant to the Loan Documents; (v) the removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender's security for the Loan.

7. Foreclosure by Lender. In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, no consent shall be required from Governmental Entity.

8. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with regard to the subordination of the Regulatory Agreement to the lien or charge of the Loan Documents, and shall supersede and cancel any prior agreements with regard to this subject matter.

9. Binding Provisions. The covenants and agreements contained in this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

10. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

11. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

12. Notices. All notices required or permitted hereunder shall be deemed to have been received either (i) when delivered by hand and the party giving such notice has received a signed receipt thereof, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

If to Governmental Entity:

Orange County, Florida
Housing and Community Development Division
525 East South Street
Orlando, FL 32801
Attn: Manager

Orange County Utilities Division
9150 Curry Ford Road
Orlando, FL 32825
Attn: Utilities Service Coordinator

If to Lender:
Bellwether Enterprise Mortgage Investments, LLC
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044

If to Borrower:

13. Further Instruments. Each of the parties hereto will, whenever and as often as they shall be requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.

14. Valid Authorization. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

15. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which when taken together constitute one and the same instrument, binding on all of the parties. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE REGULATORY AGREEMENT BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE MORTGAGE.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year above written.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*

for Jerry L. Demings
Orange County Mayor

Date: MAY 19 2020

ATTEST:

Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

(SEAL)



Name: _____

Name: _____

FL WESTGATE, LP
a Georgia limited partnership

By: _____ (SEAL)
Name: _____
Title: _____

Address: _____

THE STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by _____ as _____ of FL Westgate, LP, a Georgia limited partnership, who is personally known to me, or who has provided _____ as identification.

Signature of Notary Public

Printed Name: _____

Notary Public for _____

My Commission Expires:_____

Name: _____

**BELLWETHER ENTERPRISE MORTGAGE
INVESTMENTS, LLC**
a Maryland limited liability company

Name: _____

Address: 11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044

THE STATE OF _____)
) ss.
COUNTY OF _____)

Signature of Notary Public

Printed Name: _____

Notary Public for _____

My Commission Expires: _____

EXHIBIT A
Legal Description

The land referred to herein below is situated in the County of ORANGE, State of Florida, and described as follows:

North 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 13, Township 22 South, Range 28 East, TOGETHER WITH Lots 50, 51 and 52, Willis R. Munger Subdivision as recorded in Plat Book E, Page 23, Public Records of Orange County, Florida.

Described as follows:

BEGINNING at the intersection of the North line of the North 1/4 of the Northwest 1/4 of the Southwest 1/4 and the Easterly right of way line of Hiawassee Road; thence on an assumed bearing of North 88°42'29" East, along the North line of said North 1/4, a distance of 282.28 feet to the Southwest corner of said Lot 50; thence North 00°06'50" West, along the West line of said Lot 50, a distance of 661.93 feet to the Northwest corner of said Lot 50; thence North 88°58'22" East, along the North line of said Lots 50, 51 and 52, a distance of 996.48 feet to the Northeast corner of said Lot 52; thence South 00°08'30" East, along the East line of said Lot 52 a distance of 636.93 feet; thence North 86°26'36" West, 278.60 feet; thence North 67°26'09" West, 265.00 feet; thence South 89°33'51" West, 132.83 feet; thence South 00°00'00" West, 91.38 feet; thence South 89°33'51" West, 154.22 feet; thence South 00°00'58" East, 164.08 feet; thence South 88°42'29" West, 468.92 feet to the Easterly right of way line of Hiawassee Road; thence North 00°07'30" West, along said right of way line, 100.02 feet to the POINT OF BEGINNING.

TOGETHER WITH ALL RIGHT, TITLE AND INTEREST IN AND TO THOSE CERTAIN BENEFICIAL EASEMENTS CONTAINED IN EASEMENT AGREEMENT EXECUTED BETWEEN HUBBARD CONSTRUCTION COMPANY, A FLORIDA CORPORATION, AND ALTA WESTGATE, LLC, A GEORGIA LIMITED LIABILITY COMPANY, DATED AUGUST 30, 2005 AND RECORDED SEPTEMBER 2, 2005 IN OFFICIAL RECORDS BOOK 8171, PAGE 1966, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.