

CITY OF COOS BAY CITY COUNCIL
Agenda Staff Report

| MEETING DATE | AGENDA ITEM NUMBER |
|---------------------|---------------------------|
| January 5, 2016 | |

TO: Mayor Shoji and City Councilors

FROM: Rodger Craddock, City Manager

ISSUE : Removing City's Lien on the Park West Apartment Property

BACKGROUND:

In September 1992, the City of Coos Bay purchased the property at 1055 Anderson Avenue in part for the development of an affordable housing complex by what is now known as Oregon Coast Community Action (OCCA). In addition, the City applied for and received Community Development Block Grant (CDBG) funds for site improvements.

As part of the conditions placed on the City through the acceptance of the CDBG funds, the City was required to condition the transfer of the site to (OCCA). Based on a 1993 memorandum to the Council from the City Attorney at the time, one of the CDBG stipulations required the City to require OCCA to maintain the multi-family housing project as affordable low-income house for a period of 50 years. Both the City and OCCA agreed to the requirement which was secured by a second deed of trust (lien) on the property when the property was conveyed to OCCA in 1993.

On December 7, 2015, the City received the attached letter from OCCA's Executive Director Michael Lehman asking the City to consider removing the lien which is complicating their desire to refinance the loan. Both the City Attorney and I have reviewed the available 20 plus year old documents, and we were unable to find any specific information on the "50 year requirement." Based on current relevant federal regulations involving the use of CDBG funds, the requirement to maintain the use for which the funds were granted is only five (5) years. Subsequently, I contacted CDBG Regional Coordinator Becky Bryant who confirmed the City had meet the requirements of the grant and could remove the lien if they choose to do so.

ADVANTAGES:

Removal of the lien will allow OCCA to proceed with refinancing their outstanding debt on the property without needing the City to approve subordinate on that lien to allow for new financing.

DISADVANTAGES:

None identified.

BUDGET:

There is a minimal cost to remove the lien.

RECOMMENDATION:

If it pleases the Council, approve the removal of the City's lien on the OCCA property located at 1055 Anderson Avenue.

ATTACHMENTS:

- Letter from OCCA dated December 7, 2015
- City Attorney's memorandum and agreement with Community Action; Conveyance of Property dated September 30, 1993



Oregon Coast Community Action

Feed • House • Warm • Educate

December 7, 2015

RECEIVED
DEC 10 2015
City of Coos Bay

Roger Craddock
City Manager
City of Coos Bay
500 Central Avenue
Coos Bay, Oregon 97420

Re: Park West Apartment Building/10th and Anderson

Dear Roger,

As a follow-up on our recent conversation, I would like to formally request that the City consider removing their lien on the property or, at a minimum agreeing to subordinate it to a refinancing loan we are pursuing.

By way of history, at least as much of it as I know, the project was built in about 1993-94 on property that was donated to Southwestern Community Action Agency (the prior name for ORCCA) by the City of Coos Bay. The construction was financed with a variety of non-profit and governmental loans/grants. As part of that arrangement there was a second Deed of Trust, securing the City's interest in the property being used for low income families for a period of fifty (50) years. In 2004 the property was refinanced with Sterling (now Banner) Bank and the City executed a document agreeing that the Second Deed of Trust would be secondary to the new loan with Sterling.

In addition, there were other restrictions on the property restricting the use to low income housing with Oregon Housing and Community Services, HUD and others entities. Frankly, after twenty plus years of operation it is sometimes difficult to ascertain which restrictions still legally exist. From ORCCA's perspective, we do not worry too much as our mission has not changed -we look at Park West as transitional housing for low to moderate income residents. We have few problems at the complex and, from what I know, few local complaints or police calls.

One downside is that as the apartment ages it requires more maintenance. An example is that this past year we discovered the wing running along 10th street was sinking (about eight inches from Anderson to far end of the wing). We have spent about \$200,000 to raise and stabilize that section. We are in the process of refinancing the structure with Umpqua

Bank to recoup the cost of that improvement. As part of that process we discovered the City of Coos Bay lien as it has impacted our ability to refinance.

In the best of worlds the City of Coos Bay would simply remove that lien on the property freeing it up for refinancing. As I indicated to you, it does not appear that lien is in place to satisfy any state or federal low income housing regulation. ORCCA would be happy to execute a "hold harmless/indemnification document" to the benefit of the City of Coos Bay should there be some issue we are unaware of. If the City is not comfortable removing that restriction, we would ask that you again agree to subordinate that lien to any new financing we obtain.

Sincerely,



Michael Lehman

Michael Lehman
Executive Director
MRL/bm

Mlehman@orrca.us

M E M O R A N D U M

TO: Mayor and Council
FROM: City Attorney
DATE: September 30, 1993
RE: **MEMORANDUM OF AGREEMENT WITH COMMUNITY ACTION; CONVEYANCE OF PROPERTY**

BACKGROUND:

In September, 1992, the City of Coos Bay purchased the Tenth and Anderson site from Blossom Gulch properties. Part of that site was to be developed for affordable rental housing (apartments) for Community Action.

The City had applied for and received community development block grant funds for site improvements. The project funded by that grant has now been completed.

As part of the conditions placed on the City and Community Action through acceptance of the community block grant monies, the City is required to condition the transfer of this site to Community Action. Among other things, the State is requiring that the City require that CAP maintain the multi-family housing project as affordable for low-income families for a period of fifty (50) years. CAP will be required to provide the City with annual reports; Community Action may sell the property at any time so long as the purchaser agrees to the same conditions; the City has no further financial obligations regarding the property. I have prepared a Memorandum of Agreement which satisfies the conditions required by the State Economic Development Department.

Financing for the project is through Western Bank. Consequently, Western Bank will receive a first Deed of Trust on the property once it has been transferred by the City to Community Action. The obligation to maintain the project as affordable housing will be secured by a second Deed of Trust.

An additional document has been prepared by the attorney for Western Bank, seeking the agreement of the City that the City's agreement with Community Action will be **subordinate** to the loan made by Western Bank for construction of the project.

ACTION REQUESTED:

Approval of (1) execution of the deed conveying title to the property, conditioned on the Memorandum of Agreement and Second Deed of Trust being signed by Community Action; (2) execution of the Memorandum of Agreement; (3) execution of the subordination agreement with Western Bank.

These documents will conclude the process with Community Action.

and that the latter is the Recorder for the City of Coos Bay, of Coos County, Oregon, a municipal corporation, and political subdivision of the State of Oregon, and that the seal affixed to the foregoing instrument is the seal of said municipal corporation, and that said instrument was signed and sealed on behalf of said municipal corporation by authority of its governing body, and each of them acknowledged the said instrument to be their voluntary act and deed. Before me this _____ day of _____, 1993.

Notary Public for Oregon
My Commission Expires: _____

BECHTOLD & LAIRD, P.C.
ATTORNEYS AT LAW
P. O. BOX 3295
650 NEWMARK AVENUE
COOS BAY, OREGON 97420
(503) 858-3245

MEMORANDUM OF AGREEMENT

THIS AGREEMENT made and entered into by and between **SOUTHWESTERN OREGON COMMUNITY ACTION COMMITTEE**, an Oregon non-profit corporation, hereinafter referred to as "**SWOCAC**," and **CITY OF COOS BAY**, a municipal corporation, hereinafter referred to as "**City**."

In consideration of the mutual obligations contained in this Memorandum, the parties agree as follows:

(1) **SWOCAC** agrees to provide the **City** with the following information and to accept the following limits to the **City's** obligations:

(a) **SWOCAC** is developing a 22-unit multi-family housing project ("**Project**") which will remain affordable for low-income families for a period of 50 years.

(b) **SWOCAC** shall provide to the **City** an annual report of the **Project**. This report shall include maintenance records and a report of revenue/cash flow/vacancy rates. Should the **City** find any aspect of the maintenance, administration, or revenue reporting to be lacking in this annual report, the **City** shall have the right to bring such concerns to **SWOCAC**.

(c) **SWOCAC** shall hold harmless the **City** for any liability in the operation of the **Project**. **SWOCAC** shall

assume all financial responsibilities regarding the administration of the property.

(d) **City's** participation in the **Project** included the acquisition of the site and the construction of certain public and on-site improvements. The **City** shall have no further financial obligations regarding the property, nor will the **City** be liable for any taxes which may be levied against the property.

(2) **SWOCAC** may sell the **Project** only under the following conditions which are designed to assure that the **Project** shall remain affordable to low income families for a period not less than 50 years.

(a) Subject to the requirements of this Memorandum, **SWOCAC** may sell, transfer, or exchange the entire **Project** at any time, but **SWOCAC** shall obtain the agreement of any buyer or successor or other person acquiring the **Project** or any interest therein that such acquisition is subject to the requirements of this declaration. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the **Project** or any low-income portion of the **Project**. **SWOCAC** agrees that the **City** may void any sale, transfer, or exchange of the **Project** if the buyer or successor or other person fails to assume in writing the requirements of this Memorandum. **SWOCAC** agrees to notify the **City** in writing

prior to any sale, transfer, or exchange of the entire **Project** or any low income portion of the **Project**.

(b) **SWOCAC** shall not demolish any part of the **Project** or substantially subtract from any real or personal property of the **Project** or permit the use of any residential rental unit for any purpose other than rental housing during the term of this declaration unless required by law.

(c) **SWOCAC** will give the **City** or any authorized representative of the **City** access to and the right to examine all records, books, papers, or documents related to the **Project**.

(3) **SWOCAC** will grant the **City** and the Coos Bay-North Bend Water Board easements necessary for the maintenance and service of their respective utilities. The easements shall be granted without fee or charge.

(4) **SWOCAC** hereby agrees to comply with all relevant state and federal laws, regulations, policies, guidelines, and requirements with respect to its construction of the **Project** and the **Project's** subsequent operations. **SWOCAC** specifically covenants to adhere to the following requirements:

(a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulation issued pursuant thereto (24 CFR Part 2) which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be

otherwise subjected to discrimination under any programs or activity for which federal funds have been received. **SWOCAC** will immediately take any measures necessary to effectuate this assurance.

(b) Title VIII of the Civil Rights Act of 1968 (42 USC 3601-20), as amended, popularly known as the Fair Housing Act, which provides that the **Project** will be administered so as to affirmatively further fair housing.

(c) The Age Discrimination Act of 1975 (42 USC 6101 et seq.) which prohibits discrimination on the basis of age.

(d) Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) which prohibits discrimination with respect to an otherwise qualified handicapped individual and which includes the Uniform Federal Accessibility Standards ("UFAS"). The UFAS requires, in part, that a minimum of five percent of the dwelling units in new multi-family housing projects must be made accessible for individuals with mobility impairments; an additional two percent of such units or at least one, must be made accessible for persons with hearing or vision impairments.

(5) Except as hereinafter provided, the agreements contained in this Memorandum are effective as of October 6, 1993. The Memorandum shall remain in effect for 50 years after the first building which is part of the **Project** is placed in service.

(a) During the term of this Memorandum, all units shall be leased, rented, or made available to members of the general public who qualify as low-income tenants (or otherwise qualify for occupancy of the low-income units) under applicable election pertaining to the definition of low income as established for Coos County, Oregon, by the Oregon Economic Development Department or its successor organizations.

(b) In the event that at any time during the 30-year period of permanent financing loan (mortgage), **SWOCAC** shall default on the permanent financing loan (mortgage), **SWOCAC** shall bear full financial responsibility for said default.

(c) **SWOCAC** agrees that the transfer of the land from the **City** is being done specifically for the purpose of constructing a 22-unit low-income multi-family housing project. In the event that construction is halted or the project is not completed by the owner, **SWOCAC** shall be in default of its agreement with the **City**. **SWOCAC** shall bear full financial responsibility for said default.

(d) The construction will be considered complete upon issuance of a Certificate of Occupancy. **SWOCAC** agrees to inform the **City** of any significant delays that arise during the course of construction. The work, once begun, will be diligently pursued to completion. Any halt in construction for a period extending beyond 30 days, without satisfactory

explanation from SWOCAC, shall be a default on the part of SWOCAC.

(6) The obligations of SWOCAC under this Memorandum shall be secured by a trust deed on the Project. City agrees to subordinate the lien of its trust deed which secures the obligations of SWOCAC under this Agreement to the following:

(a) Trust deed in favor of securing a construction loan from Western Bank to SWOCAC in the approximate amount of \$400,000.00.

This Agreement is dated as of October 6, 1993.

SOUTHWESTERN OREGON COMMUNITY ACTION COMMITTEE

Signature

Title:

CITY OF COOS BAY

Jim Watson, City Manager

TRUST DEED, made this ... day of ... October, 19 93, between SOUTHWESTERN OREGON COMMUNITY ACTION COMMITTEE, Inc., an Oregon non-profit corporation, as Grantor, CITY OF COOS BAY, an Oregon municipal corporation, as Trustee, and ... as Beneficiary,

WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in Coos County, Oregon, described as:

All of Lots 1, 2, 3, 4, 13 and 14; the North 25 feet and the West 55 feet of Lot 12; the West 55 feet of Lot 11; the West 55 feet of the North 10 feet of Lot 10; and the North 10 feet of Lot 5; together with that portion of the vacated alley which would inure itself to said property by operation of law.

All in Block "M", Western Addition to Marshfield, City of Coos Bay, Coos County, Oregon.

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with the property.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of the obligations of the Grantor under the Memorandum of Agreement with Beneficiary date October 6, 1993

... Dollars, with interest thereon according to the terms of a promissory note of even date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable

The date of maturity of the debt secured by this instrument is the date, stated above, on which the third installment of the note becomes due and payable. obligation secured by this instrument is October 5, 2043.

To protect the security of this trust deed, grantor agrees:

- 1. To protect, preserve and maintain the property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of the property.
2. To complete or restore promptly and in good and habitable condition any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.
3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property; if the beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the beneficiary.
4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the property against loss or damage by fire and such other hazards as the beneficiary may from time to time require, in an amount not less than \$...
5. To keep the property free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against the property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipts therefor to beneficiary; should the grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by grantor, either by direct payment or by providing beneficiary with funds with which to make such payment, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property hereinbefore described, as well as the grantor, shall be bound to the same extent that they are bound for the payment of the obligation herein described, and all such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the beneficiary, render all sums secured by this trust deed immediately due and payable and constitute a breach of this trust deed.
6. To pay all costs, fees and expenses of this trust including the cost of title search as well as the other costs and expenses of the trustee incurred in connection with or in enforcing this obligation and trustee's and attorney's fees actually incurred.
7. To appear in and defend any action or proceeding purporting to affect the security rights or powers of beneficiary or trustee; and in any suit, action or proceeding in which the beneficiary or trustee may appear, including any suit for the foreclosure of this deed, to pay all costs and expenses, including evidence of title and the beneficiary's or trustee's attorney's fees; the amount of attorney's fees mentioned in this paragraph 7 in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, grantor further agrees to pay such sum as the appellate court shall adjudge reasonable as the beneficiary's or trustee's attorney's fees on such appeal.
8. In the event that any portion or all of the property shall be taken under the right of eminent domain or condemnation, beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking,

It is mutually agreed that:

8. In the event that any portion or all of the property shall be taken under the right of eminent domain or condemnation, beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking,

NOTE: The Trust Deed Act provides that the trustee hereunder must be either an attorney, who is an active member of the Oregon State Bar, a bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States, a title insurance company authorized to insure title to real property of this state, its subsidiaries, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 696.505 to 696.585.

TRUST DEED

SOUTHWESTERN OREGON COMMUNITY ACTION COMMITTEE, Inc. an Oregon non-profit corporation

Grantor CITY OF COOS BAY, an Oregon municipal corporation

Beneficiary

After Recording Return to (Name, Address, Zip):

CITY OF COOS BAY 500 Central Coos Bay, OR 97420

SPACE RESERVED FOR RECORDER'S USE

STATE OF OREGON, County of ... ss.

I certify that the within instrument was received for record on the ... day of ... 19 ... at ... o'clock ... M., and recorded in book/reel/volume No. ... on page ... and/or as fee/file/instrument/microfilm/reception No. ... Record of ... of said County.

Witness my hand and seal of County affixed.

By ... NAME ... Agenda Item #6

SUBORDINATION AGREEMENT

This Agreement made and entered into this _____ day of October, 1993, by and between The City of Coos Bay, a Municipal Corporation, hereinafter called "City" and WESTERN BANK, an Oregon banking corporation, hereinafter called "Bank".

The parties recite and declare that;

- (a) City is to become the holder of a beneficiary's interest in a deed of trust, herein called "City's Lien", which secures certain obligations of Southwestern Oregon Community Action Committee, Inc. (hereinafter called SWOCAC), under an agreement relating to the transfer by City to SWOCAC of the following real property:

All of Lots 1, 2, 3, 4, 14 and 13; the North 25 feet and the West 55 feet of Lot 12; the West 55 feet of Lot 11; the West 55 feet of the North 10 feet of Lot 10; and the North 10 feet of Lot 5; together with that portion of the vacated alley which would inure itself to said property by operation of law. All in Block "M", Western Addition to Marshfield, City of Coos Bay, Coos County, Oregon.

- (b) Bank is about to loan the sum of \$400,000 on the note of SWOCAC, secured by a trust deed on and covering the premises above described, to secure a construction loan, and a trust deed on the permanent financing loan to be made by Western Bank to SWOCAC in approximately one year.
- (c) To induce Bank to make the loans mentioned in paragraph (b), City has agreed to subordinate City's Lien to the liens to be taken by Bank.

For the reasons set forth above, and in consideration of the mutual covenants and promises of the parties hereto, City and Bank covenant and agree as follows:

- (1) City hereby covenants, consents and agrees with Bank that the aforesaid Trust Deed to be acquired by City and the City's Lien thereunder are and shall continue to be subject and subordinate to the lien of Trust Deeds to be made to Bank as aforesaid, and that Bank's liens in all respects shall be first, prior and superior to that of City.

- (2) In consideration of City so subordinating the Trust Deed to be acquired by City, the Bank shall make the aforesaid loans to SWOCAC.

- (3) The terms of the loans from Bank to SWOCAC are as follows:

- (a) Principal amount of each loan: Approximately \$400,000.
- (b) Interest rate: One percent in excess of the prime rate on the construction loan, and a flat rate of 10% on the permanent financing loan.
- (c) Maturity date: Approximately October 10, 1994, on the construction loan, and approximately October 10, 2024 on the permanent financing loan.

Bank may, at any time, and from time to time, without the consent of or notice to City, without incurring responsibility to City, and without impairing or releasing any of Bank's rights, or any of the obligations of City hereunder, change the manner, place or terms of payment or change or extend the time of payment of or renew or alter any of bank's liens referred to herein and may increase or otherwise change the interest rate thereon. In this connection, all provisions of Oregon Statutes relating to the priority of liens shall apply as if Bank's lien had been first recorded. Bank shall not increase the principal amount of any such lien without the written consent of City.

(4) Nothing herein contained shall be construed to change, alter or impair City's lien except as hereinabove expressly set forth.

(5) In construing this Subordination Agreement, and when the context so requires, the singular includes the plural; the masculine includes the feminine and the neuter, and all grammatical changes shall be supplied to cause this agreement to apply to corporations as well as individuals, where necessary. This agreement shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, City has caused this agreement to be executed by its duly authorized officers the day and year first above written.

CITY OF COOS BAY

By _____
Joanne Verger, Mayor

WESTERN BANK

By _____

