

RESOLUTION NO. 21

SERIES 1997

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONSENT AND AGREEMENT TO RECORDING OF LAND USE RESTRICTION AGREEMENT RE: PINWOOD VILLAGE APARTMENTS

WHEREAS, the Town of Breckenridge has heretofore entered into a long-term lease agreement with Breckenridge Village Apartments, LLC, a Colorado limited liability company, whereby the Town leased to Breckenridge Village Apartments, LLC, certain Town-owned real property for the construction and operation of an affordable housing project known as the "Pinewood Village Apartments" ("Project"); and

WHEREAS, Breckenridge Village Apartments, LLC has applied to the Colorado Housing and Finance Authority ("Authority") for an allocation of low-income housing credits with respect to the Project pursuant to Section 42 of the Internal Revenue Code of 1986, as amended ("Code"); and

WHEREAS, Section 42(h)(6) of the Code provides that tax credits are not allowed unless an "extended low-income housing commitment" is in effect with respect to the Project in the form of an agreement between the Authority and the owner of the Project (here, Breckenridge Village Apartments, LLC) ("the "Land Use Restriction Agreement") which is recorded as a restrictive covenant against and running with the land on which the Project is located; and

WHEREAS, to assure the survival of the limitations described in Section 42(h)(6)(e)(ii) of the Code, the Authority requires, as a condition to its execution of the Land Use Restriction Agreement, that the Town, as the owner of the real property upon which the Project is located and as the Landlord of the Lease with Breckenridge Village Apartments, LLC, consent to the recording of the Land Use Restriction Agreement, and acknowledge and agree to the priority of the provision of Section 42(h)(6)(e)(ii) of the Code; and

WHEREAS, the Authority has prepared for the Town's consideration and execution a "Consent And Agreement To Land Use Restriction Agreement" ("Consent"), a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, the Town Council has reviewed the proposed Consent and finds and determines that it is necessary and appropriate for the Council to authorize the Town Manager to execute such Consent for and on behalf of the Town of Breckenridge.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The "Consent And Agreement To Land Use Restriction Agreement" with the Colorado Housing and Finance Authority (Exhibit "A" hereto) concerning the Pinewood Village Apartments is approved; and the Town Manager is hereby authorized, empowered and directed to execute such document for and on behalf of the Town of Breckenridge.

Section 2. This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 8TH DAY OF JULY, 1997.


TOWN OF BRECKENRIDGE

ATTEST:

  
Mary Jean Loufek, CMC, Town Clerk

By   
Stephen C. West, Mayor

APPROVED IN FORM

  
Town Attorney

7/8/97  
date

EXHIBIT "A"  
TO  
RESOLUTION NO.21, SERIES 1997  
CONSENT AND AGREEMENT TO RECORDING OF  
LAND USE RESTRICTION AGREEMENT

The Town of Breckenridge (the "Landlord") provides to the Colorado Housing and Finance Authority (the "Authority") this consent to the recording of a Land Use Restriction Agreement with respect to the real property described in Exhibit "A" attached hereto (the "Land").

**RECITALS**

1. Breckenridge Village Apartments LLC is the owner ("Owner") of the multifamily rental housing project located on the Land and has applied to the Authority for an allocation of low-income housing credits ("Credits") with respect to the Project pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "Code").

2. The Landlord is the landlord of that certain Lease with the Owner dated June 14, 1995 and recorded July 21, 1995 under Reception No. 495017 ("Lease"). The Lease was amended by that certain Amendment to Lease dated November 20, 1995 and recorded January 9, 1996 under Reception No. 507077; by that certain Second Amendment to Lease dated February 28, 1996 and recorded May 1, 1996 under Reception No. 514232; and by that certain Third Amendment to Lease dated June 3, 1996 and recorded June 28, 1996 under Reception No. 518117. All references to recorded documents refer to the records of the Clerk and Recorder of Summit County, Colorado.

3. Section 42(h)(6) provides that Credits are not allowed unless an "extended low-income housing commitment" is in effect with respect to the Project in the form of an agreement between the Authority and the Owner (the "Land Use Restriction Agreement") which is recorded as a restrictive covenant against and running with the Land.

4. Although the Land Use Restriction Agreement terminates in the event of foreclosure, Section 42(h)(6)(e)(ii) of the Code requires that certain limitations as to termination of tenancies and rent increases survive such foreclosure for a period of three years.

5. To assure the survival of the limitations described in said Section 42(h)(6)(e)(ii), the Authority requires, as a condition to its execution of the Land Use Restriction Agreement, that the holders of all security interests in the Land recorded prior to the recording of the Land Use Restriction Agreement consent to such recording and acknowledge and agree to the priority of the provisions of Section 42(h)(6)(e)(ii).

CONSENT AND AGREEMENT

Landlord hereby consents to the recording of the Land Use Restriction Agreement as a restrictive covenant encumbering and running with the Land, and acknowledges and agrees that those provisions of the Land Use Restriction Agreement which set forth the requirements of Section 42(h)(6)(e)(ii) of the code are superior to Landlord's security interest and shall continue in full force and effect for a period of three (3) years following the date of acquisition of the Project by foreclosure (or instrument in lieu of foreclosure).

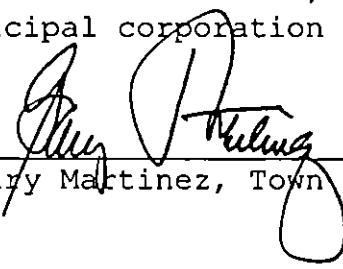
IN WITNESS WHEREOF, Landlord has caused this Consent and Agreement to be executed by its duly authorized officers this 6TH day of AUGUST, 1997.

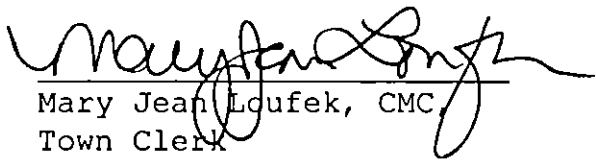
LANDLORD:

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

(SEAL)

ATTEST:

By  \_\_\_\_\_  
Gary Martinez, Town Manager

  
Mary Jean Ldufek, CMC,  
Town Clerk

Brk25\Brk-Vil.Cnt

7/31/97