

RESOLUTION NO. 41

SERIES 1998

A RESOLUTION APPROVING A NON-BINDING AMENDED MEMORANDUM OF UNDERSTANDING WITH EAST WEST PARTNERS, INC.

WHEREAS, the Town entered into a Memorandum of Understanding dated February 27, 1997 with The Village at Breckenridge Acquisition Corp., Inc., East West Partners and Marriott Ownership Resorts, Inc. ("Original Memorandum of Understanding") concerning the development and submission of a revised or amended land use plan for Lots 1, 8, 9A-2, 9-B, 10A, 10B, and 13, The Village at Breckenridge Subdivision; and

WHEREAS, the Original Memorandum of Understanding was amended by that certain Amendment to Memorandum of Understanding dated as of August 12, 1997 ("Amendment"); and

WHEREAS, the Town has been approached by East West Partners, Inc., the current owner and/or contract purchaser of Lots 8, 9A-2, 9-B, 10A, and 10B, The Village at Breckenridge Subdivision, and requested to enter into a non-binding Amended Memorandum of Understanding related to the possible development of an amended or new land use plan for such lots; and

WHEREAS, a proposed non-binding Amended Memorandum of Understanding between the parties has been prepared, a copy of which is marked Exhibit "A", attached hereto and incorporated herein by reference ("Amended MOU"); and

WHEREAS, the Town Council of the Town of Breckenridge has reviewed the proposed Amended MOU, and is willing to enter into the proposed Amended MOU.

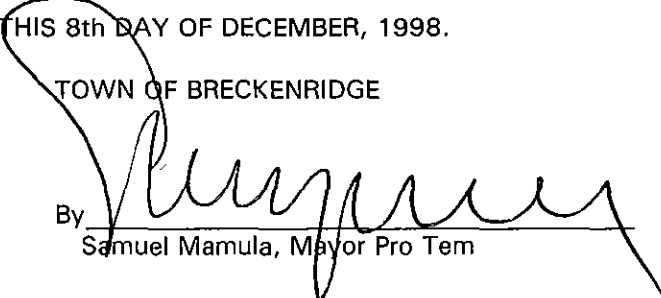
NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The proposed Amended Memorandum of Understanding with East West Partners, Inc. (Exhibit "A" hereto) is approved; and the Town Manager and Town Clerk are hereby authorized, empowered and directed to execute such document for and on behalf of the Town of Breckenridge.

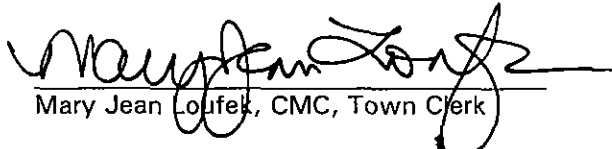
Section 2. This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 8th DAY OF DECEMBER, 1998.


TOWN OF BRECKENRIDGE

By 
Samuel Mamula, Mayor Pro Tem

ATTEST:


Mary Jean Loufek, CMC, Town Clerk

APPROVED IN FORM


Town Attorney

12/8/98
date

AMENDED
MEMORANDUM OF UNDERSTANDING

This Amended Memorandum of Understanding ("Amended Memorandum") is entered into as of the ____ day of _____, 1998 and is intended to set forth the understanding of the TOWN OF BRECKENRIDGE ("Town") and EAST WEST PARTNERS, INC. ("East West") with respect to a proposed amended or new land use plan ("Plan") for the phased development of the properties within The Village at Breckenridge Subdivision described in Exhibit A hereto ("Properties"), which Properties East West has under contract to purchase and for which Properties East West has the right to propose a Plan.

The Town and East West were two of the parties to a Memorandum of Understanding dated February 27, 1997 and an Amendment thereto dated August 12, 1997. Since the time of the Amendment, East West has entered into a contract with The Village at Breckenridge Acquisition Corp., Inc. (one of the other parties to the Memorandum and Amendment) for the purchase of Lots 10A and 10B, The Village at Breckenridge Subdivision and has entered into a contract with Marriott Ownership Resorts, Inc. (the only other party to the Memorandum and Amendment) for the purchase of Lots 8, 9A-2 and 9-B, The Village at Breckenridge Subdivision. Accordingly, the two other parties to the Memorandum and Amendment no longer are necessary parties to the understanding with the Town or to a Plan for the phased development of the Properties.

The parties stipulate and agree that this Amended Memorandum is not intended, nor shall it be construed or interpreted, to create a binding or legally enforceable agreement between the parties hereto. There shall be no legal or equitable remedies available to any party resulting from a breach or alleged breach of the terms of this Amended Memorandum. Instead, the purpose of this Amended Memorandum is merely to establish a framework for consideration by the Town of a Plan for the phased development of the Properties. Neither this Amended Memorandum, any statement made or documents prepared or submitted by the parties in connection with the negotiations leading up to the execution of this Amended Memorandum, nor any statements made or documents prepared or submitted by the parties in connection with the possible review of a Plan for the phased development of the Properties shall ever be admissible in any litigation or other judicial or administrative proceeding involving the current land use restrictions and/or current Master Plan governing the Properties.

Subject to the preceding paragraph, the parties agree that the history of the land use planning for the Properties and the applicability of Town Code provisions and development agreements continue to be sufficiently unclear that the Town and East West have determined that it would be better to cooperate in trying to arrive at a Plan for the development of the Properties than to engage in a time consuming and costly resolution of the various different positions concerning the applicability of the provisions of Town's Land Use Guidelines ("Guidelines") and Development Code ("Code") or the April 9, 1979 Planned Unit Development Agreement and the March 1, 1983 Master Plan Agreement, as amended by Amendment dated March 20, 1994 and Second Amendment dated April 10, 1986, ("Master Plan").

For historical perspective and to provide the range of allowable limits for the development of the Properties, the Town and East West acknowledge that, if the Guidelines, as currently in effect, applied to the Properties, the acceptable density, expressed in single-family equivalents ("SFEs"), would be as set forth in the column entitled "Land Use Guidelines" on Exhibit B and, if the Master Plan applied to the Properties, the maximum allowable density, expressed in SFEs, would be as set forth in the column entitled "Master Plan" on Exhibit B.

By acknowledging the allowable densities under the Master Plan, the Town is not agreeing that the Master Plan, or the densities provided therein for the Properties, apply to the Properties, and the Town reserves the right to assert that the applicable densities for the properties are those set forth in the Land Use Guidelines column on Exhibit B or such other densities as may be determined to apply to the Properties. By acknowledging the acceptable densities under the Guidelines, East West is not agreeing that the Guidelines or the densities provided therein for the Properties apply to the Properties, and East West reserves the right to assert that the applicable densities for the Properties are those set forth in the Master Plan column on Exhibit B or such other densities as may be determined to apply to the Properties. Nothing contained in this Amended Memorandum shall preclude either of the parties from hereafter taking any position with respect to the identity or interpretation of the land use restrictions which are applicable to the Properties, and each of the parties reserves all rights with respect thereto.

The foregoing reservations notwithstanding, East West intends to submit to the Town and the Town is willing to consider for evaluation and possible approval a Plan reflecting the following:
(1) density reduced from that allowed under the Master Plan but

greater than that provided for in the Guidelines; (2) heights of buildings reduced from those allowed under the Master Plan, but in some cases above the recommended height under the Guidelines; (3) parking sufficient to satisfy the recommendations of the Town's parking consultant, Fellsberg, Holt & Ullevig; (4) the inclusion of an agreement to comply with current Code provisions with respect to employee housing in lieu of Master Plan provisions on housing; (5) the realignment of roads, including the vacation of a portion of Columbine Road and all of Juniper Road and a new road connecting Columbine to Broken Lance Drive, generally in keeping with the Master Plan, and dedication of additional right-of-way to facilitate the Town's plans for the South Park Avenue intersection with South Main Street; and (6) dedication of a portion of the forested area at the intersection of Main Street and old Broken Lance Drive. The parties are prepared to work in good faith toward approval of such Plan. However, nothing in this Amended Memorandum shall be deemed to obligate the Town, its staff or the Town's Planning Commission to approve East West's Plan, nor shall anything contained in this Amended Memorandum be deemed to prevent the Town's staff from engaging in a responsible critical evaluation of the Plan. There shall be no legal or equitable remedy available to East West in the event of the denial or non-approval by the Town of the Plan submitted pursuant to this Amended Memorandum.

The Town and East West have agreed that, within ninety (90) days of the date hereof, East West will submit a Plan for the phased development of the Properties. The density (for purposes of review of such Plan pursuant to this Amended Memorandum) shall not be limited by the recommended density for the Land Use Districts within which the Properties are located and such recommended densities may be exceeded, provided, however, that the total density for the Properties is less than the total density provided for in the Master Plan as set forth on Exhibit "B". The heights of the buildings (for purposes of review of such Plan pursuant to this Amended Memorandum) shall not be limited by the recommended heights for the Land Use Districts within which the Properties are located and such recommended heights may be exceeded, provided that the heights for the buildings within the Properties are less than the heights provided for in the Master Plan. The parking (for purposes of review of such Plan pursuant to this Amended Memorandum) shall satisfy the recommendation of Fellsberg, Holt & Ullevig, which may be more than provided for in the Master Plan, but less than currently provided for in the Town of Breckenridge Off-Street Parking Ordinance. The road realignments shall not be required to be exactly as set forth in the Master Plan, provided that the road realignments are substantially similar to those provided for in the Master Plan and are acceptable to the Town as being compatible with

the recent rerouting by the Town of Broken Lance Drive to align with Boreas Pass Road.

East West understands and acknowledges that for the Town to approve the Plan with the parking as recommended by the Town's parking consultant would require a development agreement to be approved by the Town prior to or in connection with any approval of the Plan in accordance with Section 9-3-8(D) of the Town of Breckenridge Off-Street Parking Ordinance.

Notwithstanding anything contained herein to the contrary, but subject to the agreement of the parties with respect to the amount of density, heights, road realignment and off-street parking to be provided for in the Plan as set forth herein, it is agreed that the evaluation of the Plan by Department of Community Development staff, Planning Commission and Town Council will be made with reference and subject to all applicable Town Ordinances, including, all applicable relative and absolute policies of the Development Policies of the Code (9-1-19-1 through 43), except for (i) Policies 3 (Absolute) Density/Intensity and (Relative) Compliance With Density/Intensity Guidelines, (ii) Paragraph I(2) of Policy 39 (Absolute) Master Plan, (iii) Policy 6 (Relative) Building Height, (iv) Policy 18 (Absolute) Parking, and (v) the provisions of the Guidelines which otherwise would establish the recommended density or height for the Properties.

EAST WEST PARTNERS, INC.

TOWN OF BRECKENRIDGE

By: _____
Jack Wolfe, Vice President

By: _____
Gary Martinez, Town Manager

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk