



Town of Breckenridge
Housing and Child Care Committee Agenda
Tuesday, August 25, 2015 (SPECIAL MEETING)
Town Hall 2nd level conference room
150 Ski Hill Road

2:00pm - 3:00pm

Discuss opportunities, projects and policies related to affordable housing and childcare in Breckenridge.

Agenda:

- Proposed Lincoln Park Changes
 - Modification to 2006 Annexation Agreement in regard to market unit release rate relative to 80% AMI units
 - Modification to 2010 Annexation Agreement in regard to subordination caps for vertical financing
- Misc. Housing Project Updates (Pinewood 2, CR 450, Dennison Placer)
- Update on Child Care Tuition Assistance Program/Application
- Next Meeting: September 8, 2015

For further information, please contact Laurie Best, 970-547-3112.

**The Housing / Childcare Committee meets on the second Tuesday of each month from 2pm – 3pm in the Town Hall 2nd Level Conference Room. Agendas will vary each week according to current projects. Three or more Town Council members may be in attendance at this meeting.*

MEMO

FROM: Laurie Best-Community Development
TO: Housing/Child Care Committee
RE: Proposed Changes to Wellington Annexation Agreements
DATE: August 20, 2015 (for August 25th meeting)

Staff has received a request for modification to the Wellington Neighborhood Annexation Agreements and is asking the Committee for feedback. There are two specific requests as described below.

Market Unit Release:

The original Wellington Neighborhood Annexation agreement was executed in 1999 and authorized the construction of the first phase of the neighborhood, which included 98 deed restricted units and 24 market units. The release rate for the market units was one market unit released for every three deed restricted units sold.

In 2006 a modification to the original annexation agreement authorized the second/final phase of the neighborhood to include 128 additional deed restricted units and 32 additional market units priced as follows:

15	80% AMI units
48	100% AMI units
57	120% AMI units
8	150% AMI units
32	Market units

The same release rate for the market units was included (1:3) with the exception that only 16 market units can be released before all of the 80% AMI units are completed/sold. The 17 market unit will not be released until all of the 80% units are completed. This was a trigger to insure the 80% units would be constructed. The 16th market unit was completed and sold in late 2014.

At this time there are 15 80% units, 30 100% units, 17 120% units, and 16 additional market rate units yet to be completed and these are all planned for Lincoln Park. The applicant is requesting a modification to the annexation agreement to eliminate the current market unit cap and specifically to allow market units to be constructed and released at a ratio of 1 market unit for every 3 80% AMI units. The applicant indicates that the proceeds from the market rate units are necessary to fund a \$40,000 subsidy required for each of the 80% AMI units.

Vertical Subordination:

In 2010 the Council agreed to modify the annexation agreement to assist with new underwriting guidelines. The Council agreed to subordinate the deed restriction as required by the lenders for vertical and horizontal financing. But, since the subordination puts the deed restriction at risk in the event of foreclosure, the Council limited the risk by establishing specific caps for the subordinations.

The applicant is requesting that the caps be modified for the 80% AMI units, specifically that a new subsection (3b-iv) be added to pg 3 of the 2010 annexation agreement.

(iv) Notwithstanding, with respect to vertical financing of homes with Purchase Price affordable to Under 80% AMI, a) the aggregate principal amount of such Vertical Financing is less than \$3,600,000; b) there are not more than 15 such homes subject to the subordination agreement at any given time with seventy-five percent (75%) of such Homes having contracts with non-refundable earnest money; and c) the Owner has provided the Town an MAI appraisal confirming that the principal amount of the loan is not more than loan than 100% of the appraised deed restricted, completed value of such Homes.

The applicant indicates that this change will enable him to accelerate the construction of the 80% AMI units.

Summary

Staffs primary objective is to insure the construction/sale of the 80% AMI units occurs as soon as possible. As interest rates rise, units become less affordable so the best opportunity for these buyers is while rates are still relatively low. Staff has advised the applicant that we will need to review a construction schedule to get a better idea of the impact of these changes and that our recommendation is a release rate no greater than 1 market rate unit for every 6 80% AMI units. The applicant intends to attend the Committee meeting on August 25th and present the case his requests. If the Committee and Council are supportive of changes we will have the Town Attorney prepare a resolution to be scheduled at a subsequent meeting.

BRYNN GREY

BRYNN GREY PARTNERS LTD

PO Box 4626, Breckenridge, CO 80424
www.brynngrey.com We create place.

August 21, 2015

Housing Committee
Breckenridge Town Council
Town of Breckenridge
laurieb@townofbreckenridge.com

Re: Homes Affordable to Households Earning Under 80% AMI ("80% AMI Homes")
Speeding Up Construction

Dear Housing Committee,

The purpose of this letter is to follow-up on Town Council's inquiry regarding the timing of construction of the 80% AMI Homes.

The Second Amendment to the Annexation Agreement provides that the Town will subordinate its deed restriction to vertical construction financing so long as: a) the aggregate amount of vertical financing in less than \$2,000,000, b) not more than eight homes are subject to the subordination agreement at any given time, and c) the principal amount of the loan is not more than 80% of the appraised deed restricted value.

The Problem

This provision has worked well over the years; however, **applying today to the 80% AMI Homes creates two challenges**. Specifically:

First, we lose approximately \$40,000 on each 80% AMI Home. This loss is intended to be covered by the sale of market homes which have an average profit of \$80,000 per home. The Second Amendment drafted in 2006 provides that **all** 15 80% AMI Homes need to be completed **before any** market homes are released. Thus, before a single market home is sold, we would incur – and need to finance – an approximate \$600,000 loss. If one was certain that demand for market homes would continue for the next several years (an optimistic absorption rate would be selling 6 market homes a year – one every other month), that would be one thing. However, that is a bet no one is willing to make (especially as uncertainty again roils the stock market).

Second, only eight homes can be subordinated at any given time and the subordination amount is limited to 80% of deed restricted completed value. This works fine on the single family homes; however, as our cost to build the under 80% homes is approximately \$40,000 more on each home than the sales price, this 80% ratio does not allow us to borrow enough to build the home.

The Solution

Two things could speed up delivery of the 80% AMI Homes without increase of risk or cost to the Town.

First, allow the release of one market home for every three 80% home sold

The formula of 15 to 1 — completing 15 homes affordable to households earning under 80% AMI before release of a single one of the 16 remaining market units — was a “plug number” given little thought as we both knew it would be years before this happened. As it turned out, this formula was agreed to in 2006 and here we are eight years later attempting to implement it.

A review of the various annexation agreements and amendments offers precedent for a change to the 3 to 1 release ratio: 1999 Annexation Agreement, Page 4 (top), Paragraph: 3.5 Restrictions on Residential Units “... however, that up to 24 SFEs may be released from the Restrictive Covenant when the Owner had completed and sold 72 Units within the price ranges set forth in Exhibit C entitled Affordability Benchmarks, with such releases to occur at the rate of one Unit released per three Units completed and sold within the price ranges set forth in Exhibit C ...”

2006 Amendment to Annexation Agreement, Page 3, Paragraph: 3.5 Restrictions on Residential Units “...releases of up to 32 of the Units from the Phase II Covenant at the rate of 1 Unit available for release per 3 Units completed and sold with the price ranges provided for and determined in accordance with Exhibit A, provided that all of the Units available for sale in the under 80% AMI Category must be sold before the 17th Unit may be released from the Phase II Covenant.”

Second, amend the Second Amendment to the Annexation Agreement by adding the following paragraph (iv):

(iv) Notwithstanding, with respect to vertical financing of homes with Purchase Price affordable to Under 80% AMI, a) the aggregate principal amount of such Vertical Financing is less than \$3,600,000; b) there are not more than 15 such homes subject to the subordination agreement at any give time with seventy-five percent (75%) of such Homes having contracts with non-refundable earnest money; and c) the Owner has provided the Town an MAI appraisal confirming that the principal amount of the loan is not more than loan than 100% of the appraised deed restricted, completed value of such Homes.

This would raise the amount of the under 80% unit subordination to 100% of the loan (which is \$40,000 less than the cost to build) and increase the amount to be subordinated so that 12 units can be launched immediately (subject to construction timing), three more launched after the first three are sold with all 15 being completed by summer 2016.

Town Risk

With respect to the Town's risk from increasing the subordination amount:

- The subordination amount would be approximately \$40,000 (\$600,000 in the aggregate) less than the cost of construction;
- The underlying construction financing would be guaranteed by the developer and personally guaranteed by me; and
- In no event would the Town suffer financial loss.

With these two changes, and assuming we can break ground before the end of August, we could implement the following 80% AMI Home start schedule:

- **six in the third quarter 2015,**
- **six in the fourth quarter 2015 and**
- **three in the first quarter 2016.**

We look forward to your thoughts.

Thank you.

Very truly yours,

LINCOLN PARK AT THE WELLINGTON NEIGHBORHOOD



David O'Neil
2015.08.21 15:24:17
-06'00'

David G. O'Neil



Cheri Brunvand-Summit County Recorder 3/22/2006 9:23 DF:

**AMENDMENT
TO
ANNEXATION AGREEMENT**

This Amendment to Annexation Agreement ("Amendment") is made and entered into as of the 28th day of February, 2006, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation, ("Town") and BRYNN GREY V, LLC, a Colorado limited liability company, ("Owner") to amend the Annexation Agreement dated August 24, 1999 and recorded in the Summit County, Colorado real estate records on October 18, 1999 at Reception No. 608041 (the "Annexation Agreement").

WHEREAS, development of the 122 separate residential Units in accordance with the terms of the Annexation Agreement is nearing completion; and

WHEREAS, Owner and Town entered into a Memorandum of Understanding dated February 22, 2005 providing basic terms for the development of Lots 1, 2, 3 and 4, Block 6, The Wellington Neighborhood, according to the Preliminary Plat thereof recorded in the Summit County, Colorado real estate records on October 18, 1999 at Reception No. 608047 ("Block 6") and Tract E-2, Block 5, The Wellington Neighborhood, according to A Resubdivision Plat thereof recorded in the Summit County, Colorado real estate records on January 5, 2005 at Reception No. 779084 ("Tract E-2") (Block 6 and Tract E-2 together are referred to herein as the "Phase II Property"); and

WHEREAS, the Annexation Agreement included restrictions on the development of Block 6 and contained other provisions concerning Block 6, and those restrictions and provisions require amendment in order to allow for the development of the Phase II Property in accordance with the pending master plan and subdivision applications for the Phase II Property; and

WHEREAS, Owner and Town are concerned about providing sidewalks and other pedestrian pathways to improve access and safety for pedestrians along Wellington Road and Reiling Road, including that portion of Reiling Road outside of Town but within the residential neighborhood known as French Creek, and, in that regard, the Town has committed to install sidewalks and other pathways along Wellington Road and French Gulch Road to Wellington Neighborhood Phase I and along Reiling Road from its intersection with Wellington Road/French Gulch Road to its intersection with Huron Road (County Road 450) (the "Sidewalk and Pathway Improvements") and Owner has agreed to contribute \$140,000 toward such Sidewalk and Pathway Improvements, approximately \$65,000 of which is intended to be applied toward that portion of the Sidewalk and Pathway Improvements within French Creek neighborhood; and

WHEREAS, the Town has expressed a concern about land for a possible additional childcare facility, and the Owner has agreed that those portions of the Phase II Property generally identified on Exhibit C hereto as "Open Space, Daycare or Other Mutually Acceptable Uses, To Be Dedicated to Town in Final Filing" should be dedicated to the Town for the uses provided in paragraph 6.2 of this Amendment; and

WHEREAS, the Town has determined that it would be in the best interest of the public health, safety and welfare of its citizens to amend the Annexation Agreement; and

WHEREAS, Owner and Town have come to agreement on the terms and conditions of an amendment to the Annexation Agreement, all as more fully set forth hereafter.

NOW, THEREFORE, in consideration of the recitals, promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS.** Except as specifically modified by this Amendment, all other terms and conditions of the Annexation Agreement shall remain in full force and effect, and all capitalized terms used herein shall have the same meaning as provided in the Annexation Agreement unless otherwise defined herein.

2. **DEVELOPMENT.** The development of the Phase II Property shall conform in all respects with the Applicable Town Ordinances, except as may otherwise be provided by the master plan for the Phase II Property approved by the Town by issuance of Development Permit No.2005042 and any amendment thereto (the "Phase II Master Plan"). If there is any conflict between either this Amendment, the Land Use Guidelines for Land Use District 16 or the Phase II Master Plan and the Applicable Town Ordinances, then, to the extent of such conflict, this Amendment, the Land Use Guidelines for Land Use District 16 or the Phase II Master Plan, shall control over the Applicable Town Ordinances.

3. **PROPOSED USE OF AND RESTRICTIONS ON THE PHASE II PROPERTY.**

3.1 **Land Use District.** The Phase II Property is located within the Town's Land Use District 16 and, in connection with approval of this Amendment, the Town has adopted or will adopt an amendment to Land Use District 16 to allow for the development of the Phase II Property generally as contemplated by the pending master plan application for the Phase II Property. Nothing in this Amendment shall limit the lawful power and authority of the Town to amend the Land Use Guidelines for Land Use District 16.

3.2 **Density.** The Town of Breckenridge Land Use District Guidelines for Land Use District 16 provide or will provide that the Phase II Property will have such density as is provided in the Phase II Master Plan.

3.3 **General Plan of Development.** Town and Owner agree that the Phase II Property will be developed generally in accordance with the Phase II Master Plan and the subdivision approval required to be finally approved for this Amendment to be effective, and any amendments thereto, although both parties acknowledge that additional planning, evaluation, engineering and design will be necessary before final plans for roads, utilities and other public improvements can be prepared and a subdivision plan approved.

3.4 **Minimum Unit Sizes.** The terms and conditions of subparagraph 3.4 of the Annexation Agreement shall remain in full force and effect without change.

3.5 **Restrictions on Residential Units.** At the time of subdivision, Owner shall record the Wellington Neighborhood Phase II Employee Housing Restrictive Covenant and Agreement (the "Phase II Covenant"), which shall be senior to all monetary liens and encumbrances on the Phase II Property and which shall be in generally the same form as the Employee Housing Restrictive Covenant and Agreement dated October 14, 1999 and recorded October 18, 1999 at Reception No. 608049 of the Summit County, Colorado records, and shall include provisions addressing the following, as well as such other terms and conditions as are mutually acceptable to Owner and Town: income qualification for purchasers of Units priced at under 100% of the AMI, as such term is defined in Exhibit A hereto; limitations on increases in the price of each residential Unit for improvements made to such Unit within 5 years of the date of the initial sale by the developer of such Unit to 10%; limitations on the amount allowed to be added to the resale price of a Unit for a real estate sales commission to 3%, which amount is not to compound; and releases of up to 32 of the Units from the Phase II Covenant at the rate of 1 Unit available for release per 3 Units completed and sold within the price ranges provided for and determined in accordance with Exhibit A, provided that all 15 of the Units available for sale in the under 80% AMI category must be sold before the 17th Unit may be released from the Phase II Covenant.

3.6 **Absolute Price Limitations.** Notwithstanding the terms of the Phase II Covenant, Owner agrees that 128 Units shall be sold initially for prices not to exceed those provided for in and determined in accordance with Exhibit B entitled Absolute Requirements. In order to insure that such 128 Units are sold in accordance with the price limitations set forth in Exhibit B, prior to transfer of title any of the Units subject to the Phase II Covenant, a certificate shall be obtained from the Town verifying the amount of the 80%, 100%, 120% and 150% purchase prices and the number of Units remaining available for sale in the under 80% AMI, under 100% AMI, under 120% AMI and under 150% AMI categories. The sale of any of the Units subject to and not released from the Phase II Covenant for a price in excess of the price limitations set forth in Exhibit B shall be null and void and may be set aside by the Town and, in addition, shall entitle the Town to withhold the issuance of the additional certificates required prior to the sale of Units subject to the Phase II Covenant until such time as Owner has returned the amount received in excess of the 80%, 100%, 120% and 150% purchase price amounts to a buyer having paid in excess of the allowed amount for a Unit or otherwise resolved the violation of this subparagraph with the Town to the Town's reasonable satisfaction.

4. **RIGHT OF REDEMPTION AND OPTION.** The right of redemption and option provided for in Paragraph 4 of the Annexation Agreement and all other terms and conditions of Paragraph 4 of the Annexation Agreement are hereby terminated and of no further force or effect.

5. **UTILITY SERVICE AND PUBLIC IMPROVEMENTS.**

5.1 **Extensions and Improvements.** The terms and conditions of Paragraph 5 of the Annexation Agreement shall remain in full force and effect, except that the extensions and improvements shall be those constructed by Owner in connection with the subdivision of the Phase II Property.

5.2 **Sidewalk Contribution.** The Owner shall pay the Town a total of \$140,000 toward the Sidewalk and Pathway Improvements, which amount shall be paid in two installments of \$47,000 each and a third installment of \$46,000. The first installment of \$47,000 shall be due and payable, without interest, prior to the recording of the first subdivision plat creating separately saleable lots on which Units may be constructed; the second installment of \$47,000 shall be due and payable, with interest thereon at the rate of 4% simple interest from the date of the recording of the first subdivision plat through the date of payment, prior to the recording of the second subdivision plat creating separately saleable lots on which Units may be constructed; and the third installment of \$46,000 shall be due and payable, with interest thereon at the rate of 4% simple interest from the date of the recording of the first subdivision plat through the date of payment, prior to the recording of the third subdivision plat creating separately saleable lots on which Units may be constructed, provided, that all such installments shall be paid within 3 years of the date of approval by the Town of a permit for the first subdivision plat to be filed. Owner's contribution of the \$140,000, in part, is in lieu of a renegotiation of the Public Improvements Extension Agreement dated May 23, 2000 and recorded in the Summit County, Colorado real estate records on February 27, 2001 at Reception No. 646161, which renegotiation the Town suggested might be appropriate to take into account the additional Units to be constructed on the Phase II Property, and the Town and Owner now agree that said Public Improvements Extension Agreement shall not be subject to renegotiation.

5.3 **French Creek Easement.** Owner shall grant an easement to the Town over those portions of French Creek as are located within the Phase II Property to provide the Town with a drainage easement for French Creek, which easement shall allow for, among other things, the Town to obtain access and to have the ability to improve water quality and riparian habitat and shall be in a form and contain such terms and conditions as are mutually acceptable to the Town Attorney and Owner's attorney. In addition, Owner shall cooperate with the Town in obtaining a similar easement over those portions of French Creek as have been previously platted as private open space under the control of Wellington Neighborhood Association, if the Town requests such easement from said Association.

6. DEDICATIONS.

6.1 **Prior Dedications.** The public and private dedications required by the Annexation Agreement were sufficient for the entirety of the annexed property, which included all of the Phase II Property, and all such dedications have been made.

6.2 **Future Dedication.** The general area of the Phase II Property identified on Exhibit C as "Open Space, Daycare or Other Mutually Acceptable Uses, To Be Dedicated to Town in Final Filing" shall be dedicated by Owner to the Town at or prior to the time of the filing of the last subdivision creating saleable lots on which Units are to be constructed, and such dedication shall provide for the property dedicated to the Town to be used only for open space (as defined by the Town) or for a childcare or daycare facility. Any other use of the dedicated property shall require the agreement of the Owner or, if the Owner no longer owns any of the Phase II Property, the agreement of the Wellington Neighborhood Association. The actual area to be dedicated shall be determined through the process of applications for and approval of subdivisions to create separately saleable lots on which Units may be constructed, and the actual area may also change through applications for and

approval of amendments to the Phase II Master Plan. Further, if requested by the Town, Owner agrees to cooperate in processing a mutually acceptable amendment to the Phase II Master Plan to provide for an alternative location for a childcare or a daycare facility on a portion of the Phase II Property for which a development permit authorizing subdivision has not been issued, provided that the total number of Units provided for in the Phase II Master Plan is not reduced and the area of the Phase II Property identified on Exhibit C as "Open Space, Daycare or Other Mutually Acceptable Uses, To Be Dedicated to Town in Final Filing" may be used to accommodate Units displaced by such amendment.

7. **WATER CHARGES AND SEWER PLANT INVESTMENT FEES.** The terms and conditions of Paragraph 7 of the Annexation Agreement shall remain in full force and effect with respect to the Phase II Property, except that the reference to Section 12-2-21-3)(D) in the Annexation Agreement is hereby changed to Section 12-4-9(A)(3). In addition, the Town shall be responsible for providing, including making all payments necessary, all plant investment fees required by the Breckenridge Sanitation District in connection with the construction of 15 Units priced at under 80% of AMI.

8. **ANNEXATION SURCHARGES.** No Annexation Surcharge shall be required to be paid with respect to the 128 Units which are to be subject to the Phase II Covenant (160 total Units less the 32 Units authorized to be released from the Phase II Covenant). Annexation Surcharges in an amount equal to the then current amount charged by the Town for a water plant investment fee, for each of the 32 Units authorized to be released from the Phase II Covenant, shall be due and payable prior issuance of a building permit for such Unit.

9. **OTHER TOWN CHARGES.** The terms and conditions of Paragraph 9 of the Annexation Agreement shall remain in full force and effect, except that the reference therein to the Restrictive Covenant shall be amended to include not only the Restrictive Covenant, but also the Phase II Restrictive Covenant.

10. **AMENDMENT CONTINGENCIES.** Town and Owner agree that the effectiveness of this Amendment is contingent upon the occurrence of all of the following events, and this Amendment shall be effective on the date on which the last of the following events occurs:

(a) Final adoption by the Town of an ordinance amending Land Use District 16 to allow for the development of the Phase II Property in accordance with the Phase II Master Plan.

(b) Final approval by the Town of the Phase II Master Plan by issuance of Development Permit No. 2005042 and a development agreement extending the vested rights period with respect thereto; and

(c) Final approval by the Town of the subdivision application filed by Owner for the Phase II Property by issuance of a permit by the Town,

provided, however, that if all of the foregoing events have not occurred on or before one year from the date hereof, then this Amendment shall be null and void and of no further force or effect.

11. **MISCELLANEOUS.** The terms and conditions of Paragraph 11 of the Annexation Agreement shall remain in full force and effect except that all references to Agreement shall be read to include this Amendment and except as follows:

(a) 11.1 of the Annexation Agreement has been satisfied and shall not be applicable to this Amendment;

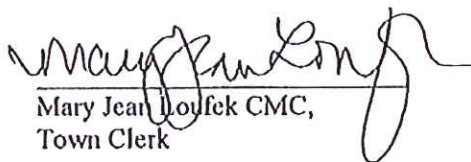
(b) With respect to 11.11 of the Annexation Agreement, Exhibits A and B, inclusive, which are attached to this Amendment, are incorporated herein by reference;

(c) With respect to 11.13, the recipient of copies of notices to Owner as set forth in the Annexation Agreement shall be deleted and replaced with Stephen C. West, West Brown, Huntley & Thompson, P.C., P.O. Box 588, Breckenridge, Colorado 80424.

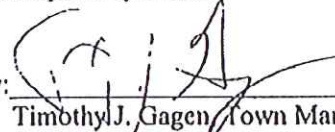
12. **DENSITY.** Within sixty (60) days after the last of the contingencies in paragraph 10 above is satisfied, the Town shall provide the density necessary for the 32 Units allowed to be released from the Phase II Covenant by transfer of density from property owned by the Town, and the Town and the Owner shall enter into and record a density transfer agreement and covenant substantially similar in form to the Density Transfer Agreement and Covenant dated October 14, 1999 and recorded October 18, 1999 at Reception No. 608043 of the Summit County, Colorado records.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

ATTEST:


Mary Jean Loufek CMC,
Town Clerk

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: 
Timothy J. Gagen, Town Manager

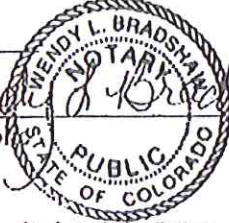
BRYNN GREY V, LLC, a
Colorado limited liability company

By: 
David G. O'Neil, Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 17 day of MARCH, 2006 by Timothy J. Gagen Town Manager, and Mary Jean Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.
My commission expires: 10/12/09

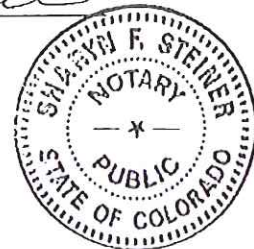
Wendy L. Bradshaw
Notary Public

My Commission Expires
OCTOBER 12, 2009

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 17th day of March 2006 by David G. O'Neil as Manager of Brynn Grey V, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.
My commission expires: _____

Shayvi F. Steiner
Notary Public



My commission expires:
May 04, 2006

EXHIBIT A Affordability Benchmarks

<u>Building Type</u>	<u>Purchase Price Affordable to Under 80% AMI</u>	<u>Purchase Price Affordable to Under 100% AMI</u>	<u>Purchase Price Affordable to Under 120% AMI</u>	<u>Purchase Price Affordable to Under 150% AMI</u>	<u>Total</u>
Small Lot Single Family			57	8	65
Double House		48			48
Quad/Town House	15				15
Total	15	48	57	8	128

Purchase Price Affordability calculated as follows:

Then current Area Median Income for four person household determined by the US Dept. of Housing and Urban Development for Summit County for the Federal fiscal year of Oct. 1-Sept. 30, or successor index, or if no successor index, such other generally accepted index selected by the Town, ("AMI") \$ _____

Multiplied by applicable AMI percentage (80%, 100%, 120% or 150%) \$ _____

Divided by number of months in year (12) \$ _____

Times 30% (amount available for housing cost) \$ _____

Less \$250 (amount for taxes, insurance, HOA fees and private mortgage insurance) \$ _____

Subtotal (amount available for Mortgage Payment) \$ _____

Mortgage Amortization Calculation (from Amortization Table or calculator)

Amortization 30 years
 Interest Rate then current 30 yr. fixed rate or 7%, whichever is lower *

Mortgage Payment calculated above
Equals Mortgage Amount \$ _____

Divided by .95 (Mortgage Amount plus 5% downpayment) equals Affordable Purchase Price \$ _____

* Wall Street Journal national index, Western Region, or successor index, or if no successor index, such other generally accepted index selected by the Town.

EXHIBIT B Absolute Requirements

	Purchase Price Affordable to Under 80% <u>AMI</u>	Purchase Price Affordable to Under 100% <u>AMI</u>	Purchase Price Affordable to Under 120% <u>AMI</u>	Purchase Price Affordable to Under 150% <u>AMI</u>	<u>Total</u>
Number of Units	15	48	57	8	128

Purchase Price Affordability calculated as follows:

Then current Area Median Income for four person household determined by the US Dept. of Housing and Urban Development for Summit County for the Federal fiscal year of Oct. 1-Sept. 30, or successor index, or if no successor index, such other generally accepted index selected by the Town, ("AMI") \$ _____

Multiplied by applicable AMI percentage (80%, 100%, 120% or 150%) \$ _____

Divided by number of months in year (12) \$ _____

Times 30% (amount available for housing cost) \$ _____

Less \$250 (amount for taxes, insurance, HOA fees and private mortgage insurance) \$ _____

Subtotal (amount available for Mortgage Payment) \$ _____

Mortgage Amortization Calculation (from Amortization Table or calculator)

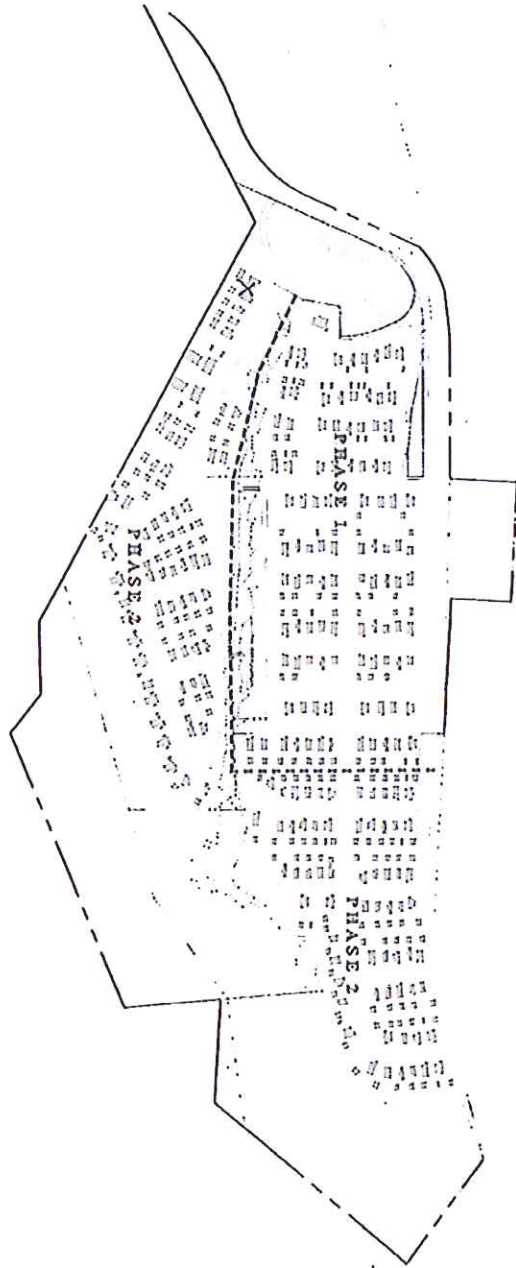
Amortization	30 years
Interest Rate	then current 30 yr. fixed rate or 7%, whichever is lower *
Mortgage Payment	calculated above

Equals Mortgage Amount \$ _____

Divided by .95 (Mortgage Amount plus 5% downpayment) equals Affordable Purchase Price \$ _____

* Wall Street Journal national index, Western Region, or successor index, or if no successor index, such other generally accepted index selected by the Town.

MASTER PLAN
 FOR THE
WELLINGTON NEIGHBORHOOD PHASE II
 TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO
 FEBRUARY 7, 2006



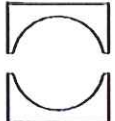
OPEN SPACE PLAN

DEVELOPED AREA
PRIVATE OPEN SPACE
EXISTING PUBLIC OPEN SPACE
OPEN SPACE, DAY CARE OR OTHER NATURALLY ACCESSED OPEN SPACE TO BE DEDICATED TO TOWN IN FINAL PLANNING

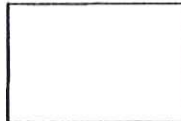


SHEET
5 OF 5

1	ISSUE/DATE
2	PRELIMINARY
3	REVISED
4	REVISED
5	REVISED
6	REVISED
7	REVISED



WELLINGTON NEIGHBORHOOD
PHASE II
 BRECKENRIDGE, COLORADO





OFFICE OF THE CLERK & RECORDER

**Cheri Brunvand
County Clerk & Recorder**

970-453-3470
fax 970-453-3540
Post Office Box 1538
208 East Lincoln Avenue
Breckenridge, CO 80424

Summit County Clerk & Recorder
Reception #: 0
05/03/2006 14:34 Receipt #: 384916

For: TOWN OF BRECKENRIDGE

P.O. BOX 168
BRECKENRIDGE CO 80424--000

Amt Due: \$11.25 COPIES
Tended: \$11.25 CHARGE
Amt Paid: \$11.25

Thank You and Have a Nice Day!



954419

Kathleen Heel - Summit County Recorder

11 Pages
12/28/2010 11.03 AM
DF: \$0.00

SECOND AMENDMENT
TO
ANNEXATION AGREEMENT

This Second Amendment to Annexation Agreement ("Second Amendment") is made and entered into as of the 23rd day of November, 2010, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town"), and UNION MILL, INC. a Colorado corporation ("Owner"), to amend the Annexation Agreement dated August 24, 1999 and recorded in the Summit County, Colorado real estate records on October 18, 1999 at Reception No. 608041 (the "Annexation Agreement") as same was amended by the Amendment to Annexation Agreement dated February 28, 2006 and recorded in Summit County, Colorado real estate records on March 22, 2006 at Reception No 817872 (the "First Amendment").

WHEREAS, development of the Wellington Neighborhood is proceeding in accordance with the original neighborhood vision created by Town Council in 1999 and consistent with the terms and conditions of the Annexation Agreement and First Amendment; and

WHEREAS, the Town and the Owner are concerned that changes to the affordable housing market have decreased demand for attached units in the under 100% AMI category while demand for single family homes has remained constant;

WHEREAS, there are currently 19 buildings comprising 38 attached units ("Double Houses") remaining to be built;

WHEREAS, the Town and the Owner are concerned that changes to the capital markets and bank financing requirements have significantly decreased the availability of construction financing necessary to complete the neighborhood;

WHEREAS, the Town and the Owner are concerned that failure to complete the neighborhood in a timely manner will depress residents' property values and represent a setback to the Town's affordable housing goals;

WHEREAS, the Town has determined that it would be in the best interest of the public health, safety and welfare of its citizens to alter the unit mix so as to better meet the Town's affordable housing demand and to encourage completion of the Wellington Neighborhood in a timely manner consistent with its current development standards and design patterns;

WHEREAS, the Owner and the Town have come to agreement on the terms and conditions of this Second Amendment, which terms and conditions the Owner and the Town believe will better meet the Town's affordable housing demand and facilitate completion of the Wellington Neighborhood in a timely manner consistent with the Wellington Neighborhood's current development standards and design patterns.

NOW, THEREFORE, in consideration of the recitals, promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

-
1. **DEFINITIONS.** All capitalized terms used in this Second Amendment shall have the same meaning as provided in the Annexation Agreement and First Amendment, unless otherwise defined in this Second Amendment. The following terms shall have the following meanings:

Horizontal Financing. Bank or private equity debt financing for the design, permitting and physical construction of infrastructure and lots;

Project. The improvements to be constructed on Block 9, Wellington 2, according to the plat thereof recorded in the Summit County, Colorado real estate records on July 24, 2009 at Reception No. 918908, and Lots 1, 2, and 4, Block 6, Wellington Neighborhood, according to the plat recorded in the Summit County, Colorado real estate records on October 18, 1999 at Reception No. 608047;

Restrictive Covenant. The Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement recorded in the Summit County, Colorado real estate records on September 22, 2006 at Reception No. 833733;

Small Lot Single Family Unit. A residence no smaller than 1,172 gross square feet and no larger than 2,000 gross square feet, unless a smaller residence is authorized by the Town in accordance with Section 3.4 of the Annexation Agreement; and

Vertical Financing. Bank or private equity debt financing for the design, permitting and physical construction of homes ("Homes").

2. **SMALL SINGLE FAMILY HOMES MAY BE SUBSTITUTED FOR ATTACHED UNITS.** So long as there is no increase in density, the Developer may substitute two (2) Small Lot Single Family Units for any Double House, provided that such Small Lot Single Family Units as are substituted for Double Houses will:

a) be sold initially for prices affordable to under 100% AMI, but for any period of time when the 30 year fixed interest rates go above 6%¹, up to sixty-one percent (61%) of the then-remaining Small Lot Single Family Units that may be created by substitution for Double Houses can be sold initially for prices affordable to under 110% AMI so long as a minimum of 15 of the 38 Small Lot Single Family Units are sold initially for prices affordable to under 100% AMI; and

b) be subject to income qualification with purchasers allowed to qualify at AMI income levels ten percent (10%) higher than the AMI limit on the price, or at such income level as Town's staff, on a case by case basis, may allow.

3. **RESTRICTIVE COVENANTS SUBORDINATED TO HORIZONTAL AND VERTICAL FINANCING.** The Town agrees to subordinate its interests under the

¹ According to the Wall Street Journal national index, or successor index, or if no successor index, such other generally accepted index selected by the Town.

Restrictive Covenant to deed(s) of trust to pay the costs of design, permitting, marketing and physical construction necessary to complete the Project, subject to the following conditions:

a) with respect to the Horizontal Financing:

- (i) the aggregate principal amount of Horizontal Financing is less than \$1,500,000²; and
- (ii) the Owner has provided the Town an MAI appraisal confirming that the principal amount of the loan is not more than 65% of the appraised deed restricted, completed value of the Project.

b) with respect to the Vertical Financing:

- (i) the aggregate principal amount of Vertical Financing is less than \$2,000,000³;
- (ii) there are not more than eight Homes subject to the subordination agreement at any given time, with seventy five percent (75%) of such Homes having contracts with non-refundable earnest money; and
- (iii) the Owner has provided the Town an MAI appraisal confirming that the principal amount of the loan is not more than 80% of the appraised deed restricted, completed value of the Homes.

Such subordination shall be in substantially the form and subject to the terms of the Deed of Trust Subordination Agreements attached hereto as Exhibits A and B, and incorporated herein by reference.

4. **CONSENSUAL LIEN; RIGHT TO REDEEM.** For the purpose of securing Owner's performance under the Restrictive Covenant, and creating in favor of the Town a right to redeem in accordance with Part 3 of Article 38 of Title 38, C.R.S., Developer hereby grants to Town a consensual lien on Block 9, Wellington 2, according to the plat thereof recorded in the Summit County, Colorado real estate records on July 24, 2009 at Reception No. 918908, and Lots 1, 2, and 4, Block 6 Wellington Neighborhood according to the plat recorded in the Summit County, Colorado real estate records on October 18, 1999 at Reception No. 608047. Such lien shall not have a lien amount. The lien granted by this Section 4 shall be subject to the Deed of Trust Subordination Agreements (Exhibits "A" and "B" hereto) to the same extent as the Restrictive Covenant.

5. **EFFECT OF AMENDMENT.** Except as amended by this Second Amendment, the Annexation Agreement, as amended by the First Amendment, shall continue in full force and effect.

²Commencing with the date of this Second Amendment, the maximum loan amount shall be increased annually by an amount equal to the increase in the Denver Consumer Price Index, All Items.

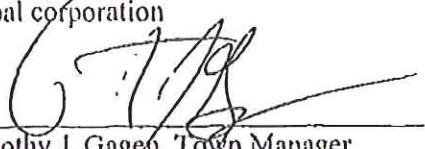
³Commencing with the date of this Second Amendment, the maximum loan amount shall be increased annually by an amount equal to the increase in the Denver Consumer Price Index, All Items.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date first written above.

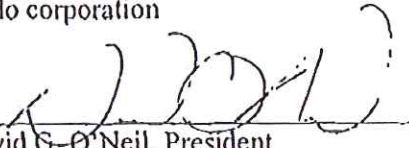
TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

ATTEST:


Mary Jean Loufek, CMC,
Town Clerk

By: 
Timothy J. Gagen, Town Manager



UNION MILL, INC. a
Colorado corporation

By: 
David G. O'Neil, President

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 27th day of December, 2010 by Timothy J. Gagen, Town Manager, and Mary Jean Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.
My commission expires: 3-26-2012.



Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 21st day of December, 2010 by David G. O'Neil, President of Union Mill, Inc., a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: _____

Jessica Laguardia
Notary Public



Exhibit A

**HORIZONTAL FINANCING
DEED OF TRUST SUBORDINATION AGREEMENT**

This Deed of Trust Subordination Agreement (the "Agreement") dated as of _____, 2010, is made by and among UNION MILL, Inc., a Colorado corporation (the "Developer"), TOWN OF BRECKENRIDGE, a Colorado municipal corporation (the "Town") and _____ (the "Lender").

RECITALS

WHEREAS, Developer is constructing affordable housing on the real property described as follows (the "Property");

WHEREAS, the Property is subject to the terms, covenants and conditions of that certain Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement recorded in the Summit County, Colorado real estate records on September 22, 2006 at Reception No.833733 (the "Restrictive Covenant");

WHEREAS, the Town has agreed to subordinate its rights and interests provided for in the Restrictive Covenant to a deed of trust securing payment of a loan to Developer to pay the costs of design, permitting and physical construction necessary to complete the infrastructure improvements to the Property; and

WHEREAS, Developer desires to obtain a loan from Lender in the original principal amount of \$ _____ for the purpose of design, permitting and physical construction of infrastructure and lots; and

WHEREAS, Lender requires that the loan from Lender to Developer be evidenced by a Promissory Note in the principal amount of \$ _____ and be secured by a Deed of Trust, as well as by a security agreement and financing statement, creating interests in the Property that are prior to the Restrictive Covenant, which Note and security documents describing the Property and in favor of Lender together will be hereafter referred to as the "Loan Documents"; and

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and promises of the parties, all of which constitute good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town, Developer and Lender covenant and agree as follows:

1. As an inducement to Lender to grant the loan described in the Loan Documents to Developer, the Town and the Developer hereby subordinate the Restrictive Covenant and all of

Exhibit "A"

the Town's interests therein to the Loan Documents in favor of Lender that are being recorded in the real property records of Summit County, Colorado contemporaneously with the recording of this Agreement. The Town and the Developer further agree that all liens and security provided for in the Loan Documents in favor of the Lender shall be and are in all respects a lien and security interest prior and superior to the lien of the Restrictive Covenant, and that the Restrictive Covenant shall be junior and subordinate to the lien and security interest created by the Loan Documents in favor of Lender.

2. The Town and the Developer hereby acknowledge prior receipt of copies of the Loan Documents, all of which are hereby approved by both the Town and Developer.

3. This Agreement shall inure to the benefit of Lender, its successors and assigns, and shall be binding on the Town and the Developer and their respective successors and assigns.

4. This Agreement may be executed in counterparts which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

By: _____
Timothy J. Gagen, Town Manager

UNION MILL, INC. a
Colorado corporation

By: _____
David G. O'Neil, President

Exhibit "A"

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by Timothy J. Gagen, Town Manager, and Mary Jean Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.
My commission expires: _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by David G. O'Neil, President of Union Mill, Inc., a Colorado corporation.

WITNESS my hand and official seal.
My commission expires: _____.

Notary Public

Exhibit "A"

Exhibit B

**VERTICAL FINANCING
DEED OF TRUST SUBORDINATION AGREEMENT**

This Deed of Trust Subordination Agreement (the "Agreement") dated as of _____, 2010, is made by and among POPLAR WELLINGTON, Inc., a Colorado corporation (the "Developer"), TOWN OF BRECKENRIDGE, a Colorado municipal corporation (the "Town") and _____ (the "Lender").

RECITALS

WHEREAS, Developer is constructing affordable housing on the real property described as follows (the "Property");

WHEREAS, the Property is subject to the terms, covenants and conditions of that certain Phase II Wellington Neighborhood Employee Housing Restrictive Covenant and Agreement recorded in the Summit County, Colorado real estate records on September 22, 2006 at Reception No. 833733 (the "Restrictive Covenant");

WHEREAS, the Town has agreed to subordinate its rights and interests provided for in the Restrictive Covenant to a deed of trust securing payment of a loan to Developer to pay the costs of design, permitting and physical construction necessary to complete homes to be built on the Property; and

WHEREAS, Developer desires to obtain a loan from Lender in the original principal amount of \$ _____ for the purpose of design, permitting and physical construction of homes; and

WHEREAS, Lender requires that the loan from Lender to Developer be evidenced by a Promissory Note in the principal amount of \$ _____ and be secured by a Deed of Trust, as well as by a security agreement and financing statement, creating interests in the Property that are prior to the Restrictive Covenant, which Note and security documents describing the Property and in favor of Lender together will be hereafter referred to as the "Loan Documents"; and

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and promises of the parties, all of which constitute good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town, Developer and Lender covenant and agree as follows:

1. As an inducement to Lender to grant the loan described in the Loan Documents to Developer, the Town and the Developer hereby subordinate the Restrictive Covenant and all of the Town's interests therein to the Loan Documents in favor of Lender that are being recorded in the real property records of Summit County, Colorado contemporaneously with the recording of

Exhibit "B"

this Agreement. The Town and the Developer further agree that all liens and security provided for in the Loan Documents in favor of the Lender shall be and are in all respects a lien and security interest prior and superior to the lien of the Restrictive Covenant, and that the Restrictive Covenant shall be junior and subordinate to the lien and security interest created by the Loan Documents in favor of Lender.

2. The Town and the Developer hereby acknowledge prior receipt of copies of the Loan Documents, all of which are hereby approved by both the Town and Developer.

3. This Agreement shall inure to the benefit of Lender, its successors and assigns, and shall be binding on the Town and the Developer and their respective successors and assigns.

4. This Agreement may be executed in counterparts which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

By: _____
Timothy J. Gagen, Town Manager

UNION MILL, INC. a
Colorado corporation

By: _____
David G. O'Neil, President

Exhibit "B"

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by Timothy J. Gagen, Town Manager, and Mary Jean Loufek, CMC, Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

WITNESS my hand and official seal.
My commission expires: _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by David G. O'Neil, President of Union Mill, Inc., a Colorado corporation.

WITNESS my hand and official seal.
My commission expires: _____.

Notary Public

Exhibit "B"