



REQUEST FOR CITY COUNCIL ACTION

Meeting Date: October 20, 2020

ORIGINATING DEPARTMENT:	PRESENTED BY:
Community Development	Glen Van Nimwegen, Director

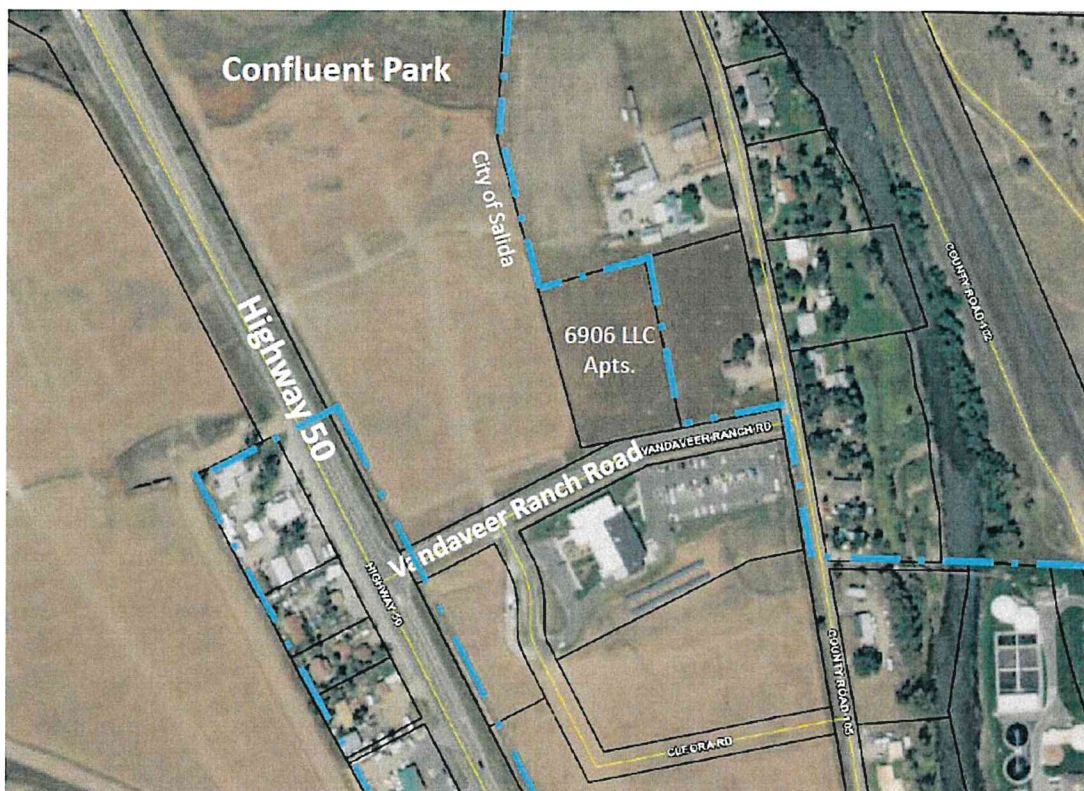
ITEM:

Resolution 2020-36 – Approval of the Inclusionary Housing Restrictive Covenant and Development Agreement for the 6906 LLC Apartments

BACKGROUND:

The history of the approvals for the 32 unit 6906 LLC Apartments was as follows

Proposed Action	Planning Commission Recommendation	City Council First Reading	City Council Final Action
Annexation Ordinance 2019-15	10-28-2019	11-05-2019	11-19-2019
Annexation Agreement Resolution 2019-59	10-28-2019		11-19-2019
Zoning Ordinance 2019-16	10-28-2019	11-05-2019	11-19-2019
Development Plan Resolution 2019-60	10-28-2019		11-19-2019
Affordable Housing Agreement Resolution 2020-36	n/a	n/a	TONIGHT





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Applicants: 6906 LLC is Joe and Paige Judd.

Agreement: The agreement will act as a covenant on the property assuring four of the units will be affordable for households earning 80% or less of Chaffee County's Area Median Income (AMI) in perpetuity. The agreement also provides for monitoring the leases yearly to ensure the provisions are met. Initially this will be done by staff but the responsibility should transition to the multi-jurisdictional housing authority.

In paragraph 4 there is language to clarify what it means to be income qualified. Based on another agreement the City has with the owner/developers, we have allowed two wage earners residing within an affordable unit to each earn up to 80% AMI. This will allow more opportunities for two-earner households for affordable rents. Section 16-13-70 of the Salida Municipal Code allows the Council flexibility in setting affordable rents.

According to CHFA's 2020 Tables, rent that is affordable at 80% AMI is

1 Bedroom Unit	\$1,071 per month
2 Bedroom Unit	\$1,284 per month

STAFF RECOMMENDATION:

Staff recommends approval of the Affordable Housing Agreement for the 6906 LLC Apartments.

SUGGESTED MOTION:

A Council person should make a motion to "approve Resolution 2020-36 approving the Inclusionary Housing Restrictive Covenant and Development Agreement for the 6906 LLC Apartments."

Attachments

Resolution 2020-36

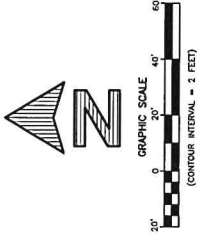
Affordable Housing Agreement

6906 LLC Site Plan

6906 VANDAVEER RANCH RD

SKETCH PLAN

SALIDA, CO
AUGUST, 2019



BUILDING TYPES				
MARK	SIZE (LXW. FT)	SIZE (AREA, SF)	BEDROOMS	DWELLING UNITS PROVIDED
A	14x54	756	2	18
B	14x36	504	1	14

CODE REQUIREMENTS				
TYPE	QTY REQ	QTY PROVIDED	UNITS	CODE SECTION
LOT SIZE	4,000	87,505	50 FT	TABLE 16-F
PARKING	32	43	SPACES	16-2-50 & 16-13-50
MIN. LANDSCAPE AREA	36,887	32	50 FT	TABLE 16-F
TREES	32.8	33	50 FT	TABLE 16-F
MAX. LANDSCAPE UNCOVERED PARKING	<21,889	15,088	50 FT	TABLE 16-F
AFFORDABLE UNITS	12,505	4 (10.5%)	UNITS (A)	16-12-20(a) & 16-13-50
MARKET RATE UNITS	28 (97.5%)		UNITS (B)	

PREPARED BY:
CRABTREE GROUP INC.
ENGINEERING SHAFT GROWTH

OWNER:
6906 VANDAVEER RANCH RD
SALIDA, CO 81201
PH: 719.338.1111

SURVEYOR:
HENDERSON SURVEYING
SALIDA, CO 81201
PH: 719.338.1111
CONTACT: MIKE HENDERSON

PROJECT NO. 19023 SHEET 1 OF 1



**CITY OF SALIDA, COLORADO
RESOLUTION NO. 36
(Series 2020)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO
APPROVING THE INCLUSIONARY HOUSING RESTRICTIVE COVENANT AND
DEVELOPMENT AGREEMENT FOR THE 6906 LLC APARTMENTS**

WHEREAS, the property owners, 6906 LLC (“Developer”) are owners of two acres (“Property”) which was annexed by the City of Salida subject to an annexation agreement, which approved by the City Council on November 19, 2019 and is recorded at Reception No. 459146 at the Chaffee County Recorder’s Office; and

WHEREAS, the property was zoned R-3, High Density Residential by Ordinance No. 2019-16 approved by Council on November 19, 2019; and

WHEREAS, the City Council approved the zoning of the property to High Density Residential (R-3) on November 19, 2019 by Ordinance No. 2019-16; and

WHEREAS, the City Council approved the development plan for the 6906 Apartments on November 19, 2019 by Resolution 2019-61, the development plan consisting of 32 apartments; and

WHEREAS, pursuant to Sections 16-2-60 of the Land Use Code, and according to the provisions of the 6906 LLC Annexation Agreement, the City and the Developer wish to enter into this Agreement to set forth their understanding concerning the terms and conditions for the provision for affordable leases for Chaffee County workforce for the Property (“Agreement”); and

WHEREAS, staff shall be permitted to correct immaterial errors, typos and inconsistencies in the Agreement as approved by the Mayor.

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Salida that:

The Inclusionary Housing Restrictive Covenant and Development Agreement for the 6906 LLC Apartments is hereby approved.

RESOLVED, APPROVED AND ADOPTED on this 20th day of October, 2020.

CITY OF SALIDA, COLORADO

Mayor PT Wood

(SEAL)

ATTEST:

City Clerk/Deputy City Clerk

**INCLUSIONARY HOUSING RESTRICTIVE COVENANT AND DEVELOPMENT
AGREEMENT
6906 LLC Apartments**

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2020, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city (hereinafter "City"), and 6906 LLC, a Colorado limited liability corporation (hereinafter "Owner"), and collectively hereinafter referred to as the "Parties."

WITNESSETH:

WHEREAS, the Salida City Council has identified affordable housing as a pressing issue in the City and the surrounding areas; and

WHEREAS, 6906 LLC is the Owner of approximately two acres of certain real property located in the City of Salida, Colorado, described as Lot 2 of Triple T Ranch Minor Subdivision as recorded in the office of Chaffee County Recorder's Office at Reception No. 423912, and shall be hereinafter referred to as the "Property"; and

WHEREAS, the Salida City Council approved the "Annexation Agreement" for the Property on November 19, 2019 as recorded in the office of the Chaffee County Recorder at Reception No. 459146; and

WHEREAS, the City Council approved the zoning of the property to High Density Residential (R-3) on November 19, 2019 by Ordinance No. 2019-16; and

WHEREAS, the City Council approved the development plan for the 6906 Apartments on November 19, 2019 by Resolution 2019-61, the development plan consisting of 32 apartments; and

WHEREAS, Owner will be developing the Property into thirty-two (32) apartments as approved by the City Council on November 19, 2019 by Resolution 2019-61; and

WHEREAS, Paragraph 5.4.2 of the Annexation Agreement states the development shall meet the inclusionary housing requirements of Article XIII of Chapter 16 of the Salida Municipal Code; and

WHEREAS, Article XIII of Chapter 16 of the Salida Municipal Code requires applicants creating such residential developments to enter into an inclusionary housing development agreement with the City.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein the sufficiency of which is acknowledged and confessed, the Parties hereto agree, promise and covenant as follows:

1. Recitals. The foregoing recitals are incorporated herein as material representations and acknowledgments of the Parties.

2. Purposes. The purpose of this Agreement is to set forth the terms and conditions to be met by the Owner to satisfy the obligations of the owner/developer of the Property regarding affordable or inclusionary housing, as required in Article XIII of Chapter 16 of the Salida Municipal Code, and as agreed upon in Paragraph 5.5.2 of the Annexation Agreement. All terms and conditions contained herein are in addition to all requirements of the Salida Municipal Code, and state and federal statutes, and are not intended to supersede any requirements contained therein, except where specifically provided in this Agreement. Any reference to "Owner" shall mean and include the current owner of the Property, and/or any subsequent owner(s) of the Property, or any successors, grantees and assignees of the owner or subsequent owner of the Property.

3. Development. Owner will construct thirty-two (32) one and two bedroom apartments on the Property. The construction shall meet Salida building codes in place at the time of submission for the building permit.

4. Upon obtaining the certificate of occupancy for the Development, or for at least four residential units, Owner volunteers and agrees to permanently rent four (4) units on the Property at a monthly rate of no more than the applicable maximum rents stated and published by the Colorado Housing and Finance Authority (CHFA) for households earning 80% or less of the Area Median Income (AMI) in Chaffee County, in perpetuity from the date of this Agreement, to individuals who work within Chaffee County. These four (4) units will be rented to households who are income qualified; which will be based upon either one (1) adult who earns 80% or less of the AMI in Chaffee County based on the most recently published Colorado Housing and Finance Authority (CHFA) maximum rent tables for one and two bedroom units, as applicable, in Chaffee County, or two (2) adults, neither of whom earns more than 80% of the AMI in Chaffee County. Rent Limits and AMI income numbers shall always be based on the applicable and most recently published CHFA maximum rent tables for one bedroom and/or two bedroom units in Chaffee County.

5. Owner will provide the City, or a housing authority serving Chaffee County, on an annual basis, copies of the leases for the four (4) affordable rental units to verify the rental rates, employment and income qualifications meet the standard of paragraph 4 above.

6. Owner agrees to design, construct, integrate and maintain the affordable units in a comparable manner to the other market rate units, as required by Salida Municipal Code section 16-13-20.

7. Owner agrees to engage in good faith marketing and public advertisement efforts of the affordable units each time an affordable dwelling unit is rented such that members of the public who are qualified to rent such units have a fair chance to become informed of the availability of such units.

8. Section 16-13-50 of the Salida Municipal Code allows developments that are providing 100% of affordable units to benefit from revised parking, density and dimensional standards. Though the approved development plan for 6906 Vandaveer Ranch Road does not utilize the revised standards, subsequent additions or revisions to the development may utilize the revised standards defined herein.

9. Owner understands and agrees that if they, or their successors, grantees, assignees or subsequent owners, fail to, at any time, rent any of the four (4) affordable rental housing units on the Property pursuant to all of the standards outlined in paragraph 4 of this Agreement the Owner shall pay to the City the in-lieu fees that are in effect at the time. It is agreed that the sum constituting the difference specified above is liquidated damages, and not a penalty, which amount the Parties agree is fair and reasonable and, said payment is the City's only remedy for Owner's failure to perform the obligations of this Agreement.

ADDITIONAL COVENANTS:

10. Jurisdiction and Venue. The District Court of the County of Chaffee, State of Colorado, shall have exclusive jurisdiction to resolve any dispute that may arise between the Parties to this Agreement.

11. Waiver. Any waiver by the City of one or more terms of this Agreement will not constitute, and is not to be construed as constituting, a waiver of other terms. A waiver of any provision of this Agreement in any one instance will constitute, and is not to be construed as constituting, a waiver of such provision in other instances.

12. Owner's Representations and Warranties. The Owner hereby represents and warrants to the City that the following are true and correct as of the date of the Owner's execution of this Agreement and will be true and correct as of the Effective Date:

12.1 Authority. This Agreement has been duly authorized and executed by the Owner as a legal, valid, and binding obligation of the Owner, and is enforceable as to the Owner in accordance with its terms.

12.2 Authorized signatory. The person executing this Agreement on behalf of the Owner is duly authorized and empowered to execute and deliver this Agreement.

13. City's Representations and Warranties. The City hereby represents and warrants to the Owner that the following are true and correct as of the date of the City's execution of this Agreement and will be true and correct as of the Effective Date:

13.1 Authority. Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of the City, and is enforceable as to the City in accordance with its terms.

13.2 Authorized signatory. The person executing this Agreement on behalf of the City is duly authorized and empowered to execute this Agreement on behalf of the City.

14. Modifications. This Agreement may be modified only by a subsequent written agreement executed by both or all Parties.

15. Survival. The City's and the Owner's representations, covenants, warranties, and obligations set forth herein are enforceable at law or in equity.

16. Severability. The terms of this Agreement are not severable. If a court of competent jurisdiction finds any provision hereof to be invalid or unenforceable, the court shall reform this Agreement in order to carry out the original intent of the Parties, including ensuring that four (4) residential units remain permanently affordable as provided for in this Agreement. If reformation is not possible, the court shall find this Agreement to be null and void.

17. Recording; Agreement Binds the Property. This Agreement shall be recorded with the Clerk and Recorder of Chaffee County, Colorado, at the Owner's expense; shall run with title to the land and as a burden thereon; and shall obligate, be binding upon and shall inure to the benefit of the Parties hereto and upon and to their respective successors, grantees and assigns. The Owner shall be released from further obligation hereunder in the event of sale of the Property or portions thereof with respect to that portion of the Property conveyed; provided however, that any successor, grantee or assignee of the Owner, or any subsequent owner of the Property shall be bound hereby, and this document shall have been recorded and, except as otherwise provided herein, serve as a non-dischargeable covenant running with and burdening the land described further herein as the Property, as the burdened property, as an easement in gross for the benefit of the City. Any reference herein to the Owner shall be deemed to include any purchaser, successor-in-interest or assign of the Owner as to all or any part of the Property. The Owner shall notify the City in writing within fifteen (15) days after any sale, transfer, foreclosure, or assignment, giving name and address of transferee, assignee or buyer. Owner agrees not to convey, transfer or sell the Property until the Property is developed, and certificates of occupancy for all thirty two (32) residential units have been obtained. This Agreement does not confer any right or benefit to any third party, except as expressly set forth herein.

18. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, confers or is intended to confer any rights or remedies whatsoever upon any person or entity other than the City, a housing authority serving Chaffee County, the Owner, and the Owner's successor(s).

19. No Waiver of Immunity. Nothing in this Agreement, express or implied, waives or is intended to waive the City's immunity under Colorado State law, including without limitation the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -120.

20. Joint Drafting. The Parties acknowledge that this Agreement represents the negotiated terms, conditions, and covenants of the Parties, and that the Party responsible for drafting any such term, condition, or covenant is not to be prejudiced by any presumption, canon of construction, implication, or rule requiring construction or interpretation against the Party drafting the same.

21. Subject to Annual Appropriation. Any financial obligation of the City arising under this Agreement and payable after the current fiscal year is contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council in its discretion.

22. Exhibits. All schedules, exhibits, and addenda attached to this Agreement and referred to herein are to be deemed to be incorporated into this Agreement and made a part hereof for all purposes.

23. Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

24. Deed Restriction. This Agreement is hereby the deed restriction, covenant or declaration of restrictions as required and defined by Section 16-13-20 (e) of the Salida Municipal Code. Subsequent amendments to the Salida Municipal Code shall not affect the effect of this Agreement.

WHEREFORE, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.

CITY OF SALIDA, COLORADO

By: _____
P.T. Wood, Mayor

ATTEST:

City Clerk / Deputy City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

Acknowledged, subscribed, and sworn to before me this ____ day of _____, 2020 by P.T. Wood, as Mayor, and by Erin Kelley, as City Clerk, on behalf of the City of Salida, Colorado.

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

Notary Public

OWNER: 6906 LLC

By: _____
Joe Judd

Its _____

Acknowledged, subscribed, and sworn to before me this ____ day of _____, 2020 by _____, as _____; and _____, as _____ on behalf of 6906 LLC.

Its _____

Acknowledged, subscribed, and sworn to before me this ____ day of _____, 2020 by _____, as _____; and _____, as _____ on behalf of 6906 LLC.