

RESOLUTION NO. 1314

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF GOLDEN AUTHORIZING THE EXECUTION OF AN
AGREEMENT TO ACCOMMODATE RE-FINANCING
OF THE CANYON GATE SENIOR APARTMENTS**

WHEREAS, the City has entered into a long-term land lease with the Jefferson County Housing Authority with respect to property known as the "Canyon Gate Senior Apartments); and

WHEREAS, the Jefferson County Housing Authority is in the process of re-financing improvements on that property and has requested that the City cooperate with respect to such re-finance; and

WHEREAS, to accommodate the re-finance, the Jefferson County Housing Authority's bank has requested that the City enter into a "Estoppel, Subordination and Consent to Collateral Assignment" the form of which is attached to this resolution as Exhibit A; and

WHEREAS, City Council wishes to accommodate the re-financing of the property as requested and wishes to authorize the city manager to execute the agreement on behalf of the City.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:


The "Estoppel, Subordination and Consent to Collateral Assignment" agreement, in the form substantially attached hereto as Exhibit A is approved, subject to the city attorney's review of the Deed of Trust and associated documents referenced in paragraph 3 of the Agreement. The city manager is authorized to execute the "Estoppel, Subordination and Consent to Collateral Assignment" Agreement on behalf of the City.

Adopted the 8th day of August 2002.



Charles Baroch
Mayor

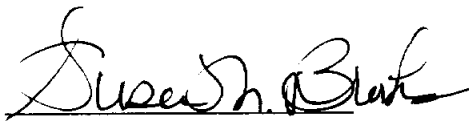
ATTEST:



Susan M. Brooks
City Clerk

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 8th day of August A.D., 2002.

(SEAL)

ATTEST: 
Susan M. Brooks, City Clerk of
The City of Golden, Colorado

APPROVED AS TO FORM:

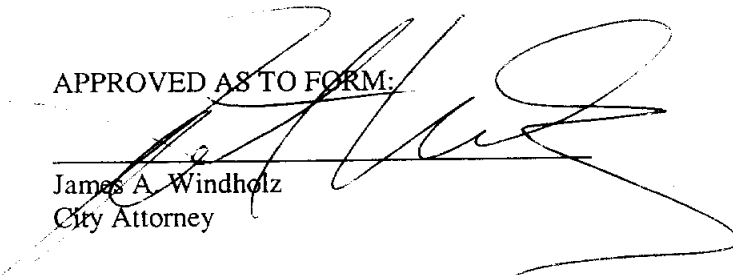

James A. Windholz
City Attorney

EXHIBIT A

**ESTOPPEL, SUBORDINATION AND
CONSENT TO COLLATERAL ASSIGNMENT
(Canyon Gate Apartments)**

THIS ESTOPPEL, SUBORDINATION AND CONSENT TO COLLATERAL ASSIGNMENT ("Agreement") is entered into as of _____, 2002, by the **CITY OF GOLDEN** ("Ground Lessor") and **U.S. BANK NATIONAL ASSOCIATION** ("Bank") with respect to the land located at 1411 8th Street, City of Golden, Colorado, as more particularly described on the attached Exhibit A (the "Property").

RECITALS

WHEREAS, Jefferson County Housing Authority ("Borrower" or "Tenant") has applied to the Bank for a loan in the amount of \$2,200,000.00 (the "Loan") to refinance the Property; and

WHEREAS, the Ground Lessor and Tenant entered into that certain Ground Lease dated October 20, 1981, recorded November 2, 1981, at Reception No. 81080070 of the Office of Clerk and Recorder, Jefferson County, Colorado ("Official Records"), as amended by an Addendum to Ground Lease executed November 30, 1981, and recorded December 31, 1981, as Reception No. 81094427 in the Office records, and further amended by an Addendum to Ground Lease executed December 23, 1982 and recorded January 12, 1983, as Reception No. 83003420 in the Official Records (collectively, the "Ground Lease") regarding the Property; and

WHEREAS, as a condition precedent to the closing of the Loan, the Bank requires execution of this Agreement with regard to the Ground Lease as set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Ground Lessor and Bank hereby agree as follows:

1. Defined Terms. All capitalized terms shall have the same meaning as set forth in the Ground Lease, unless otherwise specifically provided herein.

2. Estoppel. The Ground Lessor agrees that the following representations are true as of the date hereof:

(a) The Ground Lessor is the current "Lessor" under the Ground Lease.

(b) The Ground Lease contains the full and complete agreement of Ground Lessor and Tenant with respect to the subject matter thereof. No other understandings (oral or written) exist between Ground Lessor and Tenant with respect thereto. The Ground Lease is currently in full force and effect.

(c) Ground Lessor hereby acknowledges and agrees that the affirmation by Ground Lessor of its continuing direct and primary responsibility for the obligations of Ground Lessor are intended for the benefit of Bank, as well as the Tenant, and Ground Lessor acknowledges and agrees that the representation, agreements, and accounts of the Ground Lessor in this Agreement shall be binding on Ground Lessor.

(d) Rent in the amount of \$85,813.00 has been paid in full. No further rent is due for the remainder of the term of the Ground Lease.

(e) There is no default under the Ground Lease, and there exists no condition, event, fact, or occurrence which, by service of notice or passage of time, or both, if uncured, would constitute a default on the part of Tenant.

(f) Ground Lessor has not granted any mortgages, liens, leases, options, first refusal rights, or deeds of trust which are superior to the Ground Lease.

(g) Ground Lessor has not consented to and has no knowledge or notice of and has made no superior assignment of the Ground Lease.

(h) The term of the Ground Lease expires on October 21, 2057.

3. Consent to Collateral Assignment. The Ground Lessor hereby consents to the present assignment of Tenant's right, title and interest in the Ground Lease to Bank as security for repayment of the Loan, provided that Bank shall have no liability under the Ground Lease unless and until Bank takes possession of the Property. Ground Lessor further consents to the Loan to be made by Bank and to the encumbrance of the Tenant's interest in the Property and improvements thereon by the Bank pursuant to a Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents and Revenues, dated _____, 2002, recorded _____, 2002, at Reception No. _____ of the Official Records (the "Deed of Trust") which secures the payment and performance of all obligations under that certain Promissory Note dated of even date with the Deed of Trust ("Promissory Note"). Ground Lessor hereby agrees that the consummation of the Loan or the foreclosure or exercise of any or all rights and remedies afforded to the Bank under the Deed of Trust or any other instrument given as additional security for the Loan shall not constitute a default under the Ground Lease, nor will it constitute an event permitting Ground Lessor to terminate the Ground Lease.

4. Waiver of Purchase Option with respect to Bank. Ground Lessor hereby waives its right of first refusal ("Right of First Refusal") contained in Article XVI of the Ground Lease in the event Bank or Bank's successors or assigns foreclose or become the "Lessee" under the Ground Lease by assignment of the Ground Lease in lieu of foreclosure or other transfer of Tenant's interest in the Ground Lease to Bank or Bank's successor's or assigns. This waiver of the Right of First Refusal shall not apply to the Jefferson County Housing Authority, so long as it is the "Lessee" under the Ground Lease. The Ground Lessor agrees that so long as the Deed of Trust encumbers the Tenant's interest in the Ground Lease, no conveyance of the Property to any party shall be effective unless (a) Ground Lessor has received the Bank's written consent to the conveyance which consent may be withheld for any reason in Bank's sole discretion, and (b) such purchaser specifically consents in writing to the waiver of the Right of First Refusal, as set forth in this Paragraph 4. No conveyance of the Property to Tenant shall constitute a merger of the leasehold and the fee estates without the prior written consent of both the Bank and the Lessor.

5. No Recourse to Ground Lessor under the Loan. Ground Lessor, by its execution and delivery of this Agreement, and Bank, by accepting this Agreement, hereby mutually acknowledge and agree that Ground Lessor shall have no personal liability to Bank or to any other person or entity arising out of the execution of this Agreement with respect to the Loan, the Promissory Note, Deed of Trust or any of the other Loan Documents. However, such waiver of personal liability shall in no way apply to the liabilities between the parties to the Ground Lease,

as such liabilities arise under the terms and conditions of the Ground Lease, in the event Bank or its successors or assigns became the "Lessee" thereunder. With respect to the Loan and remedies under the Loan Documents, at no time shall any attachment, execution or other writ of process be sought, issued or levied upon any assets, properties or funds of Ground Lessor other than the properties, rights, estates and interests of the Tenant under the Ground Lease as described in this Agreement, and no judgment for any deficiency upon the indebtedness described in the Loan Documents shall be sought or obtained by Bank against Ground Lessor. No costs, fees, title insurance charges, recording fees, taxes, legal fees, or expenses of any kind incurred or payable in connection with the Deed of Trust shall be the obligation of Ground Lessor. Notwithstanding the foregoing, nothing herein contained shall be construed to impair the lien created by the Deed of Trust nor any representation or warranty of title made therein by Borrower, all of which shall remain in full force and effect to the benefit of Bank, or to preclude or limit the right of Bank to name Ground Lessor or any other person or entity as a party defendant in any foreclosure action under the Bank's Deed of Trust.

6. Additional Agreement/Modifications. Ground Lessor hereby agrees that so long as the Deed of Trust remains an encumbrance against the Tenant's interest in the Property, its rights, title and interests in the Property, as Lessor under the Ground Lease, shall be subject to the terms and conditions of this Agreement. Ground Lessor further agrees that the Deed of Trust and all other documents and instruments executed and delivered to evidence and secure the Loan (collectively, "Loan Documents"), as the Loan Documents may be revised, modified, extended, amended or restated from time to time, and all indebtedness owed thereunder. No renewal, modification, extension, amendment or restatement of the Loan Documents shall require the consent of the Ground Lessor. Further, the obligations of the Ground Lessor under this Agreement shall not be affected, modified or impaired upon the happening of any of the following:

(a) the substitution, exchange or modification of any security given to Bank by Borrower or any other party to secure repayment of the Secured Obligations (as defined in the Deed of Trust);

(b) the waiver, release or termination of any of the covenants, agreements or obligations of Borrower under the Promissory Note, Deed of Trust or any of the other Loan Documents;

(c) the modification or amendment of any obligation, covenant or agreement as set forth in the Promissory Note, Deed of Trust or in any of the other Loan Documents;

(d) any failure, omission or delay on the part of Bank to enforce, assert or exercise any right, power or remedy conferred upon it in the Promissory Note, Deed of Trust or any of the other Loan Documents, or any other acts or omissions on the part of Bank;

(e) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets of Borrower, however effected, or receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganizations, arrangement, composition with creditors or readjustment or other similar proceeding affecting Borrower as to the entire indebtedness or any portion thereof, or any of the assets, or any allegation or contest of the validity of the Deed of Trust, the Promissory Note, or any of the other Loan Documents, or the disaffirmance of the

Promissory Note, Deed of Trust or any of the other Loan Documents in any such proceeding;

(f) the invalidity, illegality or unenforceability of the Promissory Note, Deed of Trust or any provision of any of the other Loan Documents; or

(g) any other event or action that would, in the absence of this clause, result in the release or discharge by operation of law of Ground Lessor from the performance or observance of any obligation, covenant or agreement contained in this Agreement.

7. Ground Lessor's Covenants. Ground Lessor hereby covenants and agrees for the benefit of the Bank or any subsequent holder of the Loan Documents, as follows:

(a) Ground Lessor shall not amend, modify, revoke, terminate, cancel or accept surrender of the Ground Lease without the prior written consent of the Bank, which consent may be withheld in Bank's sole discretion. The Bank's consent to any amendment or modification to the Ground Lease shall not be unreasonably withheld; the Bank's consent to a termination, cancellation or acceptance of surrender of the Ground Lease may be withheld in Bank's sole discretion.

(b) Ground Lessor shall not enter into or grant any mortgage, lien, encumbrances or deed of trust with respect to Ground Lessor's interest in the Property which may be superior to the Deed of Trust.

(c) Ground Lessor agrees that, in the event of a partial taking of the Property by condemnation, if, in the opinion of Ground Lessor and Borrower, the remainder of the Property is suitable for continued operation, the Ground Lease shall not terminate in regard to the portion not taken.

(d) To the fullest extent permitted by law, Ground Lessor, for itself and for all who may claim through or under it, waives any and all right to have the Tenant's interest in the Property and estates comprising the Tenant's interest in the Property securing the obligations under the Loan Documents marshalled upon any foreclosure of the liens of the Loan Documents and agrees that any court having jurisdiction to foreclose such liens may order the Tenant's interest in the Property sold as an entirety or in any parcels or estates or combinations thereof elected by the Bank.

8. Right of First Refusal. In the event Bank or Bank's successors or assigns foreclose or become the "Lessee" under the Ground Lease by assignment of the Ground Lease in lieu of foreclosure, or other transfer of Tenant's interest in the Ground Lease to Bank or Bank's successor's or assigns, such transfer shall not be deemed a sale or option under Article XVI of the Ground Lease, and Ground Lessor's waiver of the Right of First Refusal set forth in Paragraph 4 hereof shall immediately apply.

9. Bank as Ground Lessee. In the event of a default under the Bank's Deed of Trust, the Bank, or Bank's nominee, or a court-appointed receiver, shall have the right, after giving notice to Ground Lessor, to oust the Tenant and take possession of the leased Property in accordance with the terms of the Bank's Deed of Trust. Such ouster shall not constitute a termination of the Ground Lease, but shall be deemed an exercise of a permitted assignment of the Ground Lease with respect to the Property to the Bank. Further, in the event the Bank, the Bank's affiliate, a successful bidder at a foreclosure sale or a transferee of the Bank ("Subsequent

Owner”) takes possession of the leased Property or in the event of termination of the Ground Lease for any reason including default by Tenant under the Ground Lease, or a rejection of the Ground Lease pursuant to the United States Bankruptcy Code, Ground Lessor shall, at the Subsequent Owner's request, enter into a new Ground Lease of the Property upon the same terms and conditions as the Ground Lease as modified by Paragraph 4 hereof, which shall include a conveyance of the same right, title and interest in the Property as Tenant had under the Ground Lease, with the Subsequent Owner, for the remainder of the original lease term effective as of the date of such termination, at the annual rent and additional rent and under the covenants, agreements, terms and conditions contained in the Ground Lease, provided that the Bank will only be obligated as Tenant thereunder for the duration of its ownership of the Property and a transfer of the Ground Lease by the Bank shall release the Bank from any liability for all rents and charges arising thereafter.

10. Assignment. In the event Bank or Bank's successors or assigns foreclose or become the “Lessee” under the Ground Lease by assignment of the Ground Lease in lieu of foreclosure, or other transfer of Tenant's interest in the Ground Lease to Bank or Bank's successor's or assigns, such transfer of Tenant's interest shall immediately terminate the prohibitions to assignment set forth in Article VI of the Ground Lease, and such Article shall be of no further force or effect with respect to the Subsequent Owner and its successors and assigns.

11. Rights Under the Ground Lease. Nothing contained in this Agreement shall be construed as a waiver of, or consent to subordinate the following rights of the Ground Lessor as set forth in the Ground Lease:

(a) The right to possession of the Property upon expiration of the term of the Ground lease.

(b) The right to require to require that the Tenant maintain the buildings and improvements on the Property in a good state of repair and first class condition, as provided in Article XI of the Ground Lease.

(c) The right to require that the use of the Property be limited to senior citizen housing as required by Article VIII, Paragraph 1 of the Ground Lease.

12. Binding. This Agreement shall be binding on and inure to the benefit of the parties hereto, their successors and assigns and, as to the Bank, any subsequent holders of or participants in the Loan.

13. Notices to Borrower. Ground Lessor shall furnish the Bank with copies of all notices served on the Borrower as “Lessee” under the Ground Lease concurrently with any delivery to the Borrower. Ground Lessor will furnish the Bank with copies of all notices received from the Borrower promptly after Ground Lessor's receipt thereof, by certified mail, return receipt requested, at U.S. Bank National Association, 918 17th Street, Fifth Floor, Denver, Colorado 80202, Attention: Gail Huntsman, or at such other address as the Bank may notify Ground Lessor in writing.

14. Insertion of Recording Data. By its signatures below, Ground Lessor hereby authorizes the Bank or its designee to insert the recording date from the Official Records of the Deed of Trust prior to the recordation of this Agreement.

15. Counterparts. This Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts, each of which when so executed shall be deemed an original but all of which together shall constitute one and the same agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The foregoing instrument was acknowledged before me this ____ day of _____,
2002 by _____ as _____ of U.S. Bank National Association.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[S E A L]

CONSENT BY TENANT

The undersigned, **JEFFERSON COUNTY HOUSING AUTHORITY**, hereby acknowledges and consents to the Estoppel, Subordination and Consent to Collateral Assignment and each and every term thereof and acknowledges that none of the provisions of this Agreement shall excuse the Tenant from its obligations to the Ground Lessor set forth in the Ground Lease.

Dated: _____, 2002.

BORROWER:

**JEFFERSON COUNTY HOUSING
AUTHORITY**

By: _____
Alan M. Feinstein, Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2002 by Alan M. Feinstein, as Executive Director of Jefferson County Housing Authority.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[S E A L]

EXHIBIT A
LEGAL DESCRIPTION

Leasehold Estate created by ground lease recorded November 2, 1981 at Reception No. 81080070, and addenda recorded December 31, 1981 at Reception No. 81094427, and January 12, 1983 at Reception No. 83003420 with respect to the following described property:

PARCEL A:

A parcel of land located in the SE 1/4 of the SW 1/4 of Section 28, Township 3 South, Range 70 West of the 6th P.M., being more particularly described as follows:

BEGINNING at the Southeast corner of the SW 1/4 of Section 28;
thence North along the East line of the SW 1/4 of Section 28 N 0°23.5' W a distance of 222 feet to the TRUE POINT OF BEGINNING;
thence S 60°40' W 373 feet;
thence N 0°09.5' W a distance of 215 feet more or less to an intersection with that course described as "a curve to the left an arc distance of 338.76 feet with a radius of 5830 feet and whose chord bears N 67°14' E 338.2 feet," in the instrument recorded in Book 1876 at page 658;
thence along said course in a Northeasterly direction to its Northeasterly terminus;
thence continuing along the North line of that property described in Book 1876 at page 658, N 63°38' E 91.4 feet;
thence N 62°44' E 186.7 feet;
thence S 0°23.5' E 179.9 feet, more or less, to the POINT OF BEGINNING;
County of Jefferson,
State of Colorado

PARCEL B:

A parcel of land located in the SE 1/4 of the SW 1/4 of Section 28, Township 3 South, Range 70 West of the 6th P.M., being more particularly described as follows:

BEGINNING at the Southeast corner of the SW 1/4 of Section 28;
thence North along the East line of the SW 1/4 of Section 28 N 0°23.5' W a distance of 401.9 feet to the TRUE POINT OF BEGINNING;
thence N 0°23.5' W a distance of 75.1 feet to a point;
thence S 62°44' W a distance of 222 feet;
thence S 63°38' W a distance of 91.4 feet;
thence S 67°14' W a distance of 50 feet;
thence S 0°09.5' E a distance of 72 feet, more or less, to an intersection with the course described as "a curve to the left an arc distance of 338.76 feet with a radius of 5830 feet and whose chord bears N 67°14' E 338.2 feet," in the instrument recorded in Book 1876 at page 658;
thence along said course in a Northeasterly direction to its Northeasterly terminus;

EXHIBIT A
LEGAL DESCRIPTION

thence continuing along the North line of that property described in Book 1876 at page 658 N 63°30' E 91.4 feet;
thence N 62°44' E 186.7 feet, more or less, to the POINT OF BEGINNING,
County of Jefferson,
State of Colorado:

PARCEL C:

A parcel of land located in the SE 1/4 of the SW 1/4 of Section 28, Township 3 South, Range 70 West of the 6th P.M., County of Jefferson, State of Colorado, more particularly described as follows:

Beginning at the Southeast corner of the SW 1/4 of Section 28,
thence N 0°23'30" W and along the land line of Section 28 a distance of 222.00 feet,
thence S 60°40'00" W a distance of 373.00 feet,
thence N 0°09'30" W a distance of 60.00 feet to the point of beginning,
thence N 0°09'30" W a distance of 216.55 feet to the southerly R.O.W. of 8th Street,
thence S 67°14'00" W a distance of 185.00 feet along the southerly R.O.W. of 8th Street,
thence S 22°46'00" E a distance of 115.00 feet,
thence S 72°55'21" E a distance of 132.53 feet to the point of beginning.

PARCEL D:

The non-exclusive ingress, egress and access rights described and set forth in Exhibit B of Addendum to Ground Lease recorded January 12, 1983 at Reception No. 83003420.

County of Jefferson .
State of Colorado.

(for informational purposes only) 1411 8th Street