

## **THE STRATTON FLATS HOUSING PLAN AND DEVELOPMENT ASSISTANCE AGREEMENT**

The Stratton Flats Housing Plan and Development Assistance Agreement (the “Housing Plan”), provided for herein, sets forth the type and number of units, occupancy requirements, sale, transfer, and assignment procedures for two types of Restricted Workforce Housing units (RWH): (i) income restricted RWH; and (ii) RWH without income restrictions. This Housing Plan and the Master Covenant for the Occupancy and Resale of Gypsum Restricted Workforce Housing (the “Master Covenant”) (both income restricted and non-restricted) affecting such unit govern occupancy and resale of Restricted Workforce Housing (RWH). The Town of Gypsum (“Gypsum”) may, at its discretion, promulgate additional guidelines regarding the RWH consistent with this Housing Plan. The Housing Plan controls to the extent that any inconsistencies exist between the Gypsum Ordinance and this Housing Plan.

### **ARTICLE I. DEFINITIONS**

1.1 **“Agent”** means the entity appointed by Gypsum to administer the RWH program, including to resell RWH and to administer restrictions on those units.

1.2 **“Declarant”** means Stratton Flats, LLC, a Colorado limited liability company, its successors and assigns.

1.3 **“Gypsum Ordinance”** means any ordinances, rules, restrictions, and guidelines that Gypsum may, from time to time at its discretion, promulgate regarding the RWH not inconsistent with his Housing Plan, including, but not limited to *A Gypsum Ordinance Adding Section 18.05.050, Restricted Workforce Housing, To the Gypsum Municipal Code Adding Incentives and Concessions for Developers That Develop, Build and Offer For Sale Restricted Workforce Housing In the Town of Gypsum.*

1.4 **“Owner”** is a Qualified Buyer who acquires an ownership interest in an RWH in compliance with the terms and provisions of this Housing Plan, the Master Covenant and the Gypsum Ordinance. Such person, persons, or entity shall be deemed an "Owner" of an RWH only during the period of such Owner’s ownership interest in the relevant RWH and shall be obligated hereunder for the full and complete performance and observance of all restrictions encumbering such RWH as set forth herein during such period.

1.5 **“Primary Residence”** means place of residency as determined under the criteria established for diversity of citizenship under Colorado law or as provided for herein. Owner shall be deemed to have abandoned primary residence of the unit by becoming a resident elsewhere, accepting permanent employment outside of the County,

residing in the RWH for fewer than nine months per calendar year, or as otherwise provided for in the Gypsum Ordinance, or pursuant to applicable law.

1.6 **“Project”** means the development of the Property for residential uses in accordance with and as more particularly described in the Stratton Flats PUD Guidelines, and the Stratton Flats PUD Agreement.

1.7 **“Property”** consists of all units built on the land legally described on Exhibit A, attached hereto and incorporated herein by reference, and all appurtenances, improvements, and fixtures associated therewith, commonly known as Stratton Flats. Declarant’s proposed development of the Property is subject to this Housing Plan and the Gypsum Ordinance. The Property is also subject to the Declaration of Covenants, Conditions, and Restrictions for Stratton Flats Master Association (the “Master Declaration”), the Declaration of Covenants, Conditions, and Restrictions for Stratton Flats Townhome Association (the “Townhome Declaration”), and the Declaration of Covenants, Conditions and Restrictions for Stratton Flats Condominium Association (the “Condominium Declaration”).

1.8 **“Qualified Buyers”** are (i) natural persons meeting the eligibility requirements as defined in Gypsum’s Ordinance as amended from time to time, except as otherwise expressly provided herein, or (ii) local employers or entities purchasing units for Qualified Buyers at the Town of Gypsum’s sole discretion. The Town of Gypsum, or their assigns, will review and provide verification of the eligibility of all Qualified Buyers to the Declarant in accordance with this Housing Plan.

1.9 **“RWH”** is a Restricted Workforce Housing unit located on the Property, which is offered for sale to Qualified Buyers, whose occupancy, sale, assignment, or transfer are limited by the terms of the Housing Plan, the Master Covenants and the Gypsum Ordinance. RWH shall not include any market rate residential units that may be located on the Property. RWH contains two different forms of deed restrictions: (i) earnings capped at 140% of AMI and (ii) no restrictions regarding income. A form Master Covenant for each type are attached hereto as Exhibits B and C, respectively.

1.10 **“Stratton Flats HOAs”** collectively means the Stratton Flats Master Association, Inc. as described in the Master Declaration, the Stratton Flats Townhome Association, Inc. as described in the Townhome Declaration, and the Stratton Flats Condominium Association, Inc. as described in the Condominium Declaration.

## **ARTICLE II. MATERIAL TERMS REGARDING RWH**

2.1 **Conflict:** The specific provisions of this Housing Plan shall control and govern the requirements regarding number and type of RWH, occupancy requirements for RWH, sale, transfer and assignment of RWH and other re-sale procedures for RWH, if any. In the case of express conflict between the Housing Plan, the Gypsum Ordinance,

and the Master Covenant, the Master Covenant shall control over the Housing Plan, and both shall control over the Declaration as to the RWH, and all of the aforementioned documents control over the Gypsum Ordinance.

2.2 RWH Mix and Sales Prices. Units shall be listed for sale at the price and unit mix reflected in Exhibit D. One-half (1/2) of the RWH shall be subject to income restrictions and one-half (1/2) shall not be subject to income restrictions pursuant to the Gypsum Ordinance. Due, however, to the odd number of participating RWH, there shall be fifty-seven (57) RWH subject to income restrictions and fifty-six (56) RWH not subject to income restrictions. RWH which are not subject to income restrictions remain subject to other qualifying conditions provided for herein, in the Master Covenant and in the Gypsum Ordinance.

2.3 Eligibility & Sales Process.

A. Initial Sale: All units which are to be deed restricted as RWH shall be listed for sale with the Declarant's chosen listing agent(s). All purchasers are advised to consult with legal counsel regarding examination of the sales materials and contracts. The retention of such counsel shall be the sole cost of the RWH purchaser.

B. Submittal Requirements for Initial Sale: In conjunction with submitting a purchase and sale agreement for a RWH to the Declarant, the purchaser shall provide documentation to show that Agent has confirmed such purchaser's residency and employment as set forth in the Gypsum Ordinance.

C. Each contract providing for Declarant's sale of an RWH to Qualified Buyer shall provide that the Master Covenant which deed restricts such unit as an RWH shall be recorded with the Eagle County Clerk and Recorder as an encumbrance against the RWH prior to closing, and that the recordation of the Master Covenant shall be listed as a Schedule B, Section 1 Requirement in any commitment for title insurance to be provided by Declarant to such Qualified Buyer.

2.4 Eligibility Limitations for Purchasing RWH. Any legal United States citizen working in the County and earning 75% of his or her income and earnings by working in the County and meeting other requirements as established by Gypsum's Ordinance is eligible to purchase RWH at the Property. An RWH Owner, satisfying these criteria, who becomes disabled as determined by a state or federal agency after taking possession of a RWH, shall not lose RWH eligibility. The RWH Owner must, however, provide the Agent with all requested documentation.

A. Units which are to be deed restricted as RWH shall be offered for the first forty-five (45) days to Qualified Buyers who are also residents of the Town of Gypsum and/or the Town of Eagle. After forty-five (45) days, a unit which is to be deed restricted as RWH may be offered for sale to any Qualified Buyer

2.5 Recording the Master Covenant. Any purchaser of an RWH must execute, in a form satisfactory for recording with the Eagle County Clerk and Recorder, a document acknowledging the purchaser's agreement to be bound by: (i) the Master Covenant, which shall run with title to each RWH in perpetuity; (ii) this Housing Plan; (iii) the Gypsum Ordinance; and (iv) any other document the Agent deems reasonably necessary to protect the integrity of the Master Covenant.

A. Prior to Declarant obtaining a certificate of occupancy, temporary certificate of occupancy or recording a deed conveying title to a RWH, whichever shall occur first, the Declarant shall record a Master Covenant with respect to such unit in the Eagle County Clerk and Recorder which designates such unit as an RWH.

B. Until such time as all one hundred and thirteen (113) RWH have been conveyed, Declarant shall provide the Town with a quarterly report detailing the progress of the Project. Each quarterly report shall include the number and type of units conveyed at the time of each report.

(i) The report shall be submitted to the Town no later than January 1, April 1, July 1, and October 1 of each year.

(ii) If two hundred and twenty-six (226) units have been issued a certificate of occupancy, temporary certificate of occupancy or have been conveyed and no units have been designated as RWH, the Town shall not issue any additional certificates of occupancy or temporary certificates of occupancy until such time as further units have been designated as RWH.

C. Declarant shall enter into Purchase and Sale Agreements with Owners in a form reviewed and approved by the Town.

2.6 Stratton Flats Home Owners Associations (HOAs). All Owners are required to join the Master Association, and Owners of townhome units on the Property are additionally required to join the Townhome Association, and Owners of condominium units on the Property are additionally required to join the Condominium Association, pay dues, and abide by all rules and regulations and other provisions as set forth in the Master Declaration, Townhome Declaration, and the Condominium Declaration, as applicable.

2.7 Ongoing Enforcement and Management of the RWH. Ongoing enforcement and management of the terms of a recorded Master Covenant shall be managed by the Agent.

2.8 Resale Restrictions. A Colorado licensed real estate broker, employed by or affiliated with the Agent shall act as the transactional broker for all sales subsequent to the initial sale. The Agent shall determine whether a purchaser is a Qualified Buyer.

Any person who believes he or she is a Qualified Buyer may ask the Agent to add their name to a waiting list of persons desiring to purchase an RWH. The Agent shall maintain such waiting list; such waiting list shall be comprised of the names of all persons who have asked to add their names to the list, and all names on the waiting list shall be selected to purchase an RWH pursuant to the criteria provided for in the Gypsum Ordinance or herein.

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY GYPSUM THAT ON RESALE THE OWNER SHALL OBTAIN A PARTICULAR PRICE.

2.9 Restrictions on Use and Occupancy.

A. Occupancy Requirements. Once an RWH has been purchased, it must continue to be occupied in a manner that is consistent with the Gypsum Ordinance and the Master Covenant. The purchased RWH must be owner-occupied by a Qualified Buyer, who meets the requirements (in addition to any imposed by the Gypsum Ordinance) as provided for herein and in the Master Covenant. These requirements shall be monitored and enforced by the Agent, which shall require annual verification as provided in the Gypsum Ordinance or this Housing Plan.

B. Restriction on Ownership of Multiple Properties. No Owner who has ownership in any other residential property or dwelling unit(s) shall be allowed to participate in the RWH program. In the case of an Owner whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties that constitute inventory in such an Owner's business shall not constitute "other residential property" or "dwelling unit(s)" as those terms are used in the applicable Gypsum Ordinance, this Housing Plan and the Master Covenant.

C. Rental Restrictions. An Owner may not rent the RWH for any period of time, except in the case of an approved leave of absence as provided in the Gypsum Ordinance. The requirements of this paragraph shall not preclude the Owner from sharing occupancy of the RWH with non-owners on a rental basis provided Owner continues to meet the obligations contained in the Gypsum Ordinance, this Housing Plan and the Master Covenant.

(i) IN NO EVENT SHALL AN OWNER CREATE AN ADDITIONAL DWELLING UNIT, AS DEFINED IN THE TOWN OF GYPSUM LAND USE REGULATIONS, IN OR ON THE RWH.

(ii) NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE THE TOWN OF GYPSUM TO PROTECT OR INDEMNIFY THE OWNER AGAINST ANY LOSSES ATTRIBUTABLE TO THE RENTAL, INCLUDING (NOT BY WAY OF LIMITATION) NON-PAYMENT OF RENT OR DAMAGE TO THE

PREMISES; NOR TO REQUIRE THE TOWN OF GYPSUM TO OBTAIN A QUALIFIED TENANT FOR THE OWNER IN THE EVENT THAT NONE IS FOUND BY THE OWNER.

D. Change of Primary Residence. If the Owner has not rented out the RWH in compliance with the Ordinance, or changes domicile or ceases to utilize the RWH as his or her sole and exclusive place of residence, the RWH shall be offered for sale pursuant to the Gypsum Ordinance and the Master Covenant. Owner shall be deemed to have changed Owner's domicile by becoming a resident elsewhere or accepting permanent employment outside of the County for an undefined period of time or for a defined period of time of more than three (3) months, residing in the RWH for fewer than nine months per calendar year, or as otherwise provided for in the Gypsum Ordinance

(i) Except as otherwise provided for by the Gypsum Ordinance, the Agent may grant a leave of absence of up to one year subject to clear and convincing evidence that shows a reason for leaving and a commitment to return to Eagle County. Said evidence shall be in written form presented to the Agent for review and recommendations thirty (30) days prior to leaving. The leave of absence shall be for one year and may, at the discretion of the Agent, be extended for one year, but in no event shall it exceed two years. The RWH must be rented during said year or years to residents who comply with the rental requirements established by the Gypsum Ordinance. After verification and qualification of tenant(s), a copy of the executed lease shall be furnished to the Agent.

2.10 Annual Verification. Unless the Gypsum Ordinance of this Housing Plan provides otherwise, no later than March 1 of each year the Owner of an RWH shall submit two copies of a sworn affidavit, in a form to be obtained from the Agent, verifying that the RWH continues to be Owner-occupied in accordance with the Gypsum Ordinance. The Agent may require backup documentation, including but not limited to the following:

- Federal Income Tax returns: last three years returns, audited financial statement, or acceptable documentation;
- Verification of employment in the County or proof of work to satisfy the requirement: wage stubs, employer name, address and phone number, or other appropriate documentation;
- Landlord verification (proof of residency);
- Valid Colorado driver's license; and
- Any other documentation which the Agent deems necessary, including but not limited to documentation that the Ordinance requires.

All RWH must be owner-occupied and cannot be offered as rental units at any time, except as provided in the Gypsum Ordinance or this Housing Plan. If the Town of Gypsum determines that there has been a violation of this Housing Plan, the Ordinance, or the Master Covenant, the Owner of the RWH shall be deemed to be in non-compliance in accordance with the enforcement provisions of the Master Covenant and subject to all available remedies at law and equity, including, but not limited to, elimination of appreciation or forced sale.

2.11 Foreclosure. In the event of foreclosure or acceptance of a deed in lieu of foreclosure by the holder of a promissory note secured by a first deed of trust on a RWH, the Town of Gypsum shall have the right to exercise a first right of refusal and option to purchase the RWH and the right to purchase during or after the redemption period as provided in the Master Covenant to the maximum extent provided under Colorado law. Should the Town decide not to exercise this first right of refusal and option to purchase the RWH, Eagle County shall have the option to purchase RWH in the Town's place, as provided in the Master Covenant.

2.12 Miscellaneous Provisions. All other provisions shall strictly comply with the policies of the Town of Gypsum as provided for in the Gypsum Ordinance and all applicable regulations except as provided for in the Master Covenant or as mutually agreed to by the Town of Gypsum and the Declarant.

2.13 Free Market Units. Notwithstanding that the legal description of the Property includes the entire "Stratton Flats" project, and notwithstanding anything else to the contrary in this Housing Plan, a residential housing unit shall be RWH only if it is so designated by Declarant and a Master Covenant is recorded in connection with the initial sale of such unit; otherwise, units shall not be RWH and shall not be subject to the terms, conditions, provisions and restrictions of this Housing Plan, the Gypsum Ordinance or any Master Covenant.

### **ARTICLE III. DEVELOPMENT ASSISTANCE PROVIDED BY THE TOWN**

3.1 To facilitate the prices and restrictions placed on the Property, the Town of Gypsum agrees to waive the fees, on a per-unit basis, as provided for in Exhibit E. If any RWH is sold by Declarant other than as provided for herein, Declarant shall adhere to the requirements provided for in the Gypsum Ordinance and the Master Covenant regarding removal of the unit from the RWH program, including Town approval and payment of a rebate of not less than 20% of the sale price of the unit to compensate the Town for RWH development assistance. The Declarant shall direct questions regarding qualifications for RWH to the Agent and otherwise comply with all terms of this Housing Plan and the Gypsum Ordinance.

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

TOWN OF GYPSUM

By: \_\_\_\_\_  
Stephen M. Carver, Mayor

Attest:

\_\_\_\_\_  
Jenny Ellringer, CMC  
Town Clerk

STRATTON FLATS, LLC  
By: MERITAGE DEVELOPMENT GROUP,  
LLC, MANAGER

By: \_\_\_\_\_  
Scott B. Russell, Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2008.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

PARCEL A, AMENDED LEHMANN PARCELS, ACCORDING TO THE  
“AMENDED EXEMPTION PLAT, LEHMANN PARCELS” FILED JUNE 30, 2006 AT  
RECEPTION NO. 200617646, COUNTY OF EAGLE, STATE OF COLORADO

**EXHIBIT B**  
**MASTER COVENANT FOR THE OCCUPANCY AND RESALE OF TOWN OF**  
**GYPSUM RESTRICTED WORKFORCE HOUSING**  
**WITH ANNUAL INCOME RESTRICTIONS**

(see following pages)

**EXHIBIT C**  
**MASTER COVENANT FOR THE OCCUPANCY AND RESALE OF TOWN OF**  
**GYPSUM RESTRICTED WORKFORCE HOUSING**  
**WITHOUT ANNUAL INCOME RESTRICTIONS**

(see following pages)

**EXHIBIT D**  
**UNIT MIX AND SALES PRICE**

(see following pages)

**EXHIBIT E**  
**DEVELOPMENT ASSISTANCE PROVIDED BY THE TOWN**

(see following pages)