

**MASTER COVENANT FOR THE OCCUPANCY AND RESALE
OF TOWN OF GYPSUM RESTRICTED WORKFORCE HOUSING (RWH)
WITHOUT ANNUAL INCOME RESTRICTIONS**

IN EVENT OF DEFAULT OR INITIATION OF FORECLOSURE, NOTICE MUST BE PROVIDED TO THE DECLARANT, THE STRATTON FLATS HOA, THE TOWN OF GYPSUM, ITS AGENT, AND EAGLE COUNTY PURSUANT TO THE TERMS OF THIS COVENANT, THE REFERENCED OPTION TO BUY, ATTACHED HERETO AS EXHIBIT A, AND C.R.S. 38-38-101 ET. SEQ.

THIS MASTER COVENANT FOR OCCUPANCY AND RESALE OF TOWN OF GYPSUM RESTRICTED WORKFORCE HOUSING (the “Covenant”) is made and entered into this ____ day of _____, 2008, by STRATTON FLATS, LLC, (together with its successors and assigns “Declarant”) and is enforceable by THE TOWN OF GYPSUM, its Agent, or its designee (the “Town”) as and to the extent set forth herein.

RECITALS:

This Covenant is made with reference to the following facts:

WHEREAS, Declarant owns the RWH legally described in Exhibit B attached hereto and incorporated herein.

WHEREAS, The Town has promulgated the Gypsum Ordinance as amended from time to time, which governs development, eligibility and transfer of Restricted Workforce Housing and the Town and Declarant have entered into the Stratton Flats Housing Plan and Development Assistance Agreement (the “Housing Plan”) which is attached hereto as Exhibit C and incorporated herein by reference and subject to the procedures set forth in the Gypsum Ordinance.

WHEREAS, There is a demonstrated need for affordable housing for residents of the Town of Gypsum and Eagle County and this Covenant restricting the acquisition and transfer of the RWH to “Qualified Buyers”, as defined in this Covenant, supports the health, safety, and welfare of the citizens of the Town and Eagle County.

WHEREAS, Declarant desires to enter into this Covenant, which provides for the designation of the unit described in Exhibit B as an RWH unit and restricts the acquisition or transfer of the RWH to only Qualified Buyers as set forth in the Housing Plan. In addition, the Declarant intends that this Covenant shall constitute the terms and provisions controlling the resale of the RWH. By this Covenant, Declarant restricts the RWH against use and occupancy inconsistent with this Covenant in accordance with the terms of the Housing Plan.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Declarant and Town hereby represent, covenant, and agree as follows:

1. Definitions

(a) **“Agent”** means the entity appointed by the Town to administer the RWH program, including to resell RWH units and to administer restrictions imposed against them.

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

(c) **“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 the 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.*

(d) **“Housing Plan”** means the Stratton Flats Housing Plan and Development Assistance Agreement executed between the Town of Gypsum and Declarant.

(e) **“Option to Buy”** means the Town’s right of first refusal and option to buy the RWH as provided for in Exhibit A attached hereto.

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

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

(h) **“RWH”** is a Restricted Workforce Housing unit, which is offered for sale to Qualified Buyers, whose occupancy, sale, assignment, or transfer are limited

by the terms of the Housing Plan, the Covenant and the Gypsum Ordinance. RWH, for the purposes of these Covenants, are not subject to income restrictions. The RWH is subject to this Covenant, the Housing Plan and the Gypsum Ordinance. All units will be subject to the Declaration of Covenants, Conditions, and Restrictions for Stratton Flats Master Association (the “Master Declaration”). Additionally, townhome units will be subject to the Declaration of Covenants, Conditions, and Restrictions for Stratton Flats Townhome Association (the “Townhome Declaration”), and condominium units will be subject to the Declaration of Covenants, Conditions and Restrictions for Stratton Flats Condominium Association (the “Condominium Declaration”).

(i) **“Stratton Flats HOA”** 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.

2. Restrictions on Owner’s Use, Occupancy, and Re-Sale of the RWH.

(a) The RWH is not subject to income restrictions. The use and occupancy of the RWH shall be limited to housing for Qualified Buyers meeting the qualification requirements as set forth in the Housing Plan and Gypsum Ordinance and their families with the following exceptions:

(i) Qualified Buyers need not comply with income restrictions in order to qualify to purchase this RWH.

(ii) The RWH may be held by the Town in the event of foreclosure or as permitted by this Covenant and the Gypsum Ordinance.

(iii) The RWH may be held by Eagle County in the event of foreclosure or as permitted by this Covenant and the Ordinance.

(iv) The RWH may be held from time to time by certain districts or governmental entities as permitted under a separate intergovernmental agreement with the Town.

(v) The RWH may be held by qualified employers and non-profit organizations as permitted by this Covenant and the Gypsum Ordinance.

(b) **Re-Sale of RWH.** In the event that an Owner desires to sell the RWH, the Owner shall sell to a Qualified Buyer and shall comply with and follow the re-sale procedures as set forth in the Housing Plan and the Gypsum Ordinance. The Owner shall use the Agent as the sole and exclusive sales broker for the RWH.

(c) Removal of RWH from RWH Program.

(i) The RWH may not be sold, leased, used or owned except in compliance with this Covenant, the Housing Plan, and the Gypsum Ordinance.

(ii) The RWH must remain on the market for twelve (12) months before the Town will consider its removal from the RWH program.

(iii) The RWH may only be removed from the RWH program upon written application and approval by the Town.

(iv) Gypsum's approval of the removal of the RWH from the RWH program, if granted, shall include terms and conditions designed to ensure adequate amortization or repayment of the RWH development assistance specified in the Housing Plan and Gypsum Ordinance.

(v) A rebate of not less than twenty (20) percent of the sale price of the RWH for the first sale following the removal of the RWH shall be paid to the Town to compensate the Town for the RWH development assistance.

(vi) Rebate will be calculated and due at time of closing of the first sale of the RWH following its removal from the RWH program and collected in the same manner as, and in addition to, the Town's real estate transfer tax ("RETT").

(vii) Rebates will be used to offset the cost and expense of the RWH program, including past or future RWH development assistance.

3. Breach of Covenant for Violation of Use, Occupancy or Transfer Restrictions.

(a) Any remedy for a breach of this Covenant by an Owner or a Qualified Buyer is specifically enforceable by the Town, its respective successors and assigns, including the Agent, to the maximum extent under applicable law.

(b) Sale or Transfer to a Non-Qualified Buyer or Violation of Resale Restrictions.

(i) If title to the RWH vests in any party who is not a Qualified Buyer, the terms of this Covenant that may require sale or other relief shall govern.

(ii) If the RWH is sold or conveyed in violation of the Housing Plan, the Gypsum Ordinance or this Covenant, such sale or conveyance shall be void *ab initio* and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of the RWH, for all purposes, shall be deemed to include, incorporate, and be

made subject to the covenants herein contained, even without reference therein to this Covenant.

(c) **Violation of Use or Occupancy Restrictions:** If a violation of this Covenant is discovered, the Town shall follow the procedures set forth below and any additional consistent procedures provided for in Town of Gypsum Municipal Code in effect at the time of violation or any procedures established by the Town consistent with the intent of the Ordinance:

(i) Upon discovery of a violation, the Town shall give written notice to the Owner of the RWH. Not less than fifteen (15) days after issuing notice to the Owner of the RWH, the Town may inspect the RWH between the hours of 8:00 a.m. and 5:00 p.m. Monday through Saturday upon no less than twenty-four (24) hours written notice to the Owner to investigate such alleged violation. For purposes of this paragraph only, notice of hearing or inspection to the Owner shall be provided by posting notice on the front door of the RWH a minimum of twenty-four (24) hours in advance of the compliance hearing or inspection.

(ii) Upon completion of the hearing and inspection, the Town may issue a written finding that there has been a violation of this Covenant or the Ordinance, and that the Owner of the RWH has breached this Covenant. If the Owner does not cure the breach in sixty (60) days, the Town may elect to assess penalties against the Owner as provided for in section (d) below.

(d) **Remedy.** If the Owner fails to cure any violation of this Covenant, the Housing Plan, or the Gypsum Ordinance, the Town may pursue any and all action available at law or in equity, including, but not limited to, filing a complaint seeking specific performance of this Covenant or a mandatory injunction requiring the sale of the RWH by the Owner. The costs of such sale shall be taxed against the proceeds of the sale with the balance being paid to the Owner. If the RWH is sold to a non-qualified buyer, the Town shall receive twenty (20) percent of the purchase price as provided for in Section 2(c)(v) above.

4. **Seniority of Covenant.** Any interest in or lien upon the RWH acquired by any person or entity shall be subject and subordinate to the covenants and restrictions set forth in this Covenant.

5. **Violation of Covenant in the Case of Default Under a Promissory Note or Foreclosure.**

(a) Owner shall not default in payment or other obligations due or to be performed under a promissory note secured by a first deed of trust encumbering the RWH. Owner must notify the Town, in writing, of any notification received from a lender, or its assigns, of past due payments or default in payment or other obligations

due or to be performed under a promissory note secured by a first deed of trust, as described herein, within five (5) calendar days of Owner's notification from lender, or its assigns, of said default or past due payments.

(b) Upon default by the Owner under the terms and provisions of any deed of trust or mortgage on the RWH, the Town may, in its sole discretion, offer loan counseling or distressed loan services to the Owner, if any of these services are available. Any time after default, the Town is entitled to require the Owner to sell the RWH to avoid the commencement or continuance of any foreclosure proceeding against the RWH. If the Town determines that sale of the RWH is necessary to avoid the foreclosure process, Town may require and Owner shall immediately execute a standard listing contract on forms approved by the Colorado Real Estate Commission with the Town or its Agent, providing for a 30-day listing period. At that time, the Owner shall deposit with the Town an amount equal to one half percent ($\frac{1}{2}$ %) of the estimated value of the RWH. If the Owner is unable to pay the one half percent ($\frac{1}{2}$ %) at the time of listing, the same shall be paid at the time of closing at the Town's sole discretion. If a sales contract has not been executed within the initial 30-day period, the Owner shall extend the listing period for an additional 180 days, provided such extension does not conflict with the statutory rights of any secured creditors. The Town shall promptly advertise the RWH for sale by competitive bid to Qualified Buyers. At the time of closing, the Owner shall pay to the Town in addition to the one half percent ($\frac{1}{2}$ %) paid at the time of listing an additional one and one-half percent ($1\frac{1}{2}$ %), for a maximum fee of two percent (2%) of the actual sales price. In the event of a listing of the RWH pursuant to this paragraph, the Town is entitled to require the Owner to accept the highest of any qualified bids which satisfies the Owner's financial or other obligations due under the promissory note secured by a first deed of trust and deed of trust in favor of the Town as described herein, and to sell the RWH to such qualified bidder. In accordance with the Gypsum Ordinance and the Housing Plan, the Town may in its sole discretion elect to purchase a RWH under this paragraph for rental or for sale to a Qualified Buyer.

Upon default of Owner, as provided in paragraphs 5(a) and 5(b), the Town shall have the right, in its sole discretion, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to the Town for past due payments made by the Town together with interest thereon at the rate specified in the promissory note secured by the deed of trust, plus one percent (1%) in addition to the interest rate identified in the promissory note and all actual expenses of the Town incurred in curing the default. The Owner shall be required by the Town to execute a promissory note on commercially reasonable terms acceptable to Town and secured by deed of trust encumbering the RWH in favor of the Town for the amounts expended by the Town as specified herein, including future advances made for such purposes. The Town shall be entitled to all rights and remedies under the deed of trust including the right of foreclosure. The Owner may cure the default and satisfy its obligation to the Town under

this subparagraph at any time prior to execution of a contract for sale, upon such reasonable terms as specified by the Town. Otherwise, Owner's indebtedness to the Town shall be satisfied from the Owner's proceeds at closing. If the RWH is sold to a non-qualified buyer, the Town shall receive twenty (20) percent of the purchase price as provided for in Section 2(c)(v) above.

6. Option to Buy; Release and Waiver of Restrictions on RWH.

(a) In the event that a holder of a first deed of trust or mortgage on the RWH becomes the record owner of the RWH by way of a deed in lieu of foreclosure, a public trustee's confirmation deed, or a sheriff's confirmation deed, the Town has a priority right of refusal and option to buy the RWH from such record owner pursuant to the Option to Buy. Upon becoming the record owner of such RWH, such person or entity shall provide written notice thereof to the Town as provided in the notice requirement set forth in Exhibit A, Option to Buy, attached hereto. Upon receipt of such notice, the Town has the right to exercise its option to buy as provided in said Exhibit A.

(b) The Town agrees to release and waive the deed restrictions and other covenants set forth herein, in favor of the holder of a first deed of trust or mortgage pertaining to a foreclosed RWH, if and only if (i) said holder (including assigns of the holder) of a first deed of trust or mortgage becomes the record owner of a RWH by way of deed in lieu of foreclosure, public trustee's confirmation deed or sheriff's confirmation deed; and (ii) both the Town and County fail to exercise its Option to Buy the RWH as set forth in Exhibit A hereto and as provided in paragraph 6(a) hereof. At the time a Qualified Buyer acquires the RWH, the Town, subject to the Option to Buy, agrees to execute and record a subordination agreement with the holder of a first deed of trust or mortgage, subordinating the Town's rights under this Covenant, including but not limited to the deed restrictions applicable to the RWH, to said first deed of trust or mortgage.

(c) If the Town, or its assigns, chooses not to exercise the Option to Buy as provided herein, Eagle County can exercise the right in the Town's place.

7. If the Town or its assigns exercises the Option to Buy and acquires title to the RWH as set forth in Exhibit A, the Town or its assigns may thereafter sell the RWH to a Qualified Buyer or rent the RWH in accordance with the terms of the Housing Plan or Ordinance.

8. Covenant Runs with the Land. Declarant and all subsequent Owners of the RWH, and all other parties with an interest in title to the RWH hereby acknowledge or are deemed to acknowledge by virtue of recordation of the deed by which such Owner takes title to the RWH that this Covenant shall constitute a covenant running with the RWH, as a burden thereon, and shall be specifically enforceable by the Town and their

respective successors and assigns, as applicable, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction.

9. Notices. Any notice, consent, or approval that is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the parties indicated below as long as prior written notice of the change of address has been given to the all parties as indicated.

Said notices, consents and approvals shall be sent to the following addresses unless otherwise notified in writing:

To Declarant:	
	Stratton Flats, LLC
	408 Aspen Business Center, Suite 209
	Aspen, CO 81611
To Stratton Flats HOA:	
	To the address set forth in the Articles of Incorporation and on record with the Secretary of State
To Town of Gypsum:	
	Town of Gypsum
	Post Office Box 130
	Gypsum, CO 81637-0130
To Eagle County:	
	Eagle County
	c/o County Attorney
	P.O. Box 850
	Eagle, Colorado 81631-0850
To Owner:	
	To the address set forth in the records of the Eagle County Tax Assessor for purposes of mailing tax bills.

10. Dispute Resolution. There is hereby reserved to the Town and their respective successors and assigns, any and all remedies provided in law or equity for breach of this Covenant or any of its terms. In any dispute, each party shall bear its own

costs and fees. The exclusive forum for any dispute resolution shall be the Eagle County District Court.

11. Severability. Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of such documents.

12. Choice of Law. This Covenant and each and every related document are to be governed and construed in accordance with the laws of the State of Colorado.

13. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the respective heirs, successors and assigns of the Declarant, any Owner of the RWH, and the Town.

14. Section Headings. Paragraph or section headings within this Covenant are inserted solely for convenience or reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

15. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against the Owner of the RWH and the Town except on the basis of a written instrument executed by both the Owner of the RWH and the Town. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

16. Gender and Number. Whenever the context so required herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

17. Personal Liability. By taking title to the RWH, the Owner agrees that he or she shall be personally liable for compliance with the applicable terms and conditions of this Covenant.

18. Further Actions. The Declarant for so long as Declarant owns the RWH and the Town agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any Covenant or document relating hereto or entered into in connection herewith.

19. Modifications. Any modifications of this Covenant shall be effective only when made by writings signed by the Town and the Owner of the RWH and recorded with the Clerk and Recorder of Eagle County, Colorado. The Town reserves the right to amend this Covenant unilaterally where deemed necessary to effectuate the purpose and intent of this Covenant, and where such unilateral action does not materially impair an

Owner's rights or any lender's rights under this Covenant. The Owner and the Town agree to modify this covenant as necessary to comply with lending requirements imposed by Fannie Mae and other lending entities.

20. Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Covenant or any of its Exhibits shall be unlawful or void for violation of: (a) the rule against perpetuities or some similar statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Gypsum Town Councilmembers, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year above first written.

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 _____, 20____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

ACCEPTANCE BY TOWN OF GYPSUM

The Foregoing Master Covenant for the Occupancy and Resale of Town of Gypsum Restricted Workforce Housing and its terms are hereby adopted and declared by the Town of Gypsum

TOWN OF GYPSUM, COLORADO

By: _____
Steve Carver, Mayor

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

**EXHIBIT A
OPTION TO BUY**

If the holder (or holder's assigns) of a promissory note secured by a first deed of trust on the RWH acquires title to said RWH by deed in lieu of foreclosure or by confirmation deed from the public trustee or sheriff, Town of Gypsum (or its assigns) shall have the option to purchase the Property which shall be exercised in the following manner:

1. Notice.

The Owner and the holder shall give such notice to the Town as is required by law or as required in the Master Covenant.

Said notice shall be sent by certified mail, return receipt requested, and addressed as follows:

Town of Gypsum
Post Office Box 130
Gypsum, CO 81637-0130

and

Economic Council of Eagle County
Post Office Box 1705
Edwards, CO 81632

and

Eagle County
c/o County Attorney
P.O. Box 850
Eagle, Colorado 81631-0850

2. Option to buy.

The Town or its assigns shall have (sixty) 60 days after receipt of notice by the Town of Gypsum, as provided for in paragraph 1 above, of the public trustee's or sheriff's confirmation deed or deed in lieu of foreclosure in which to exercise this Option to Buy. In the event the Town chooses not to exercise the option to buy as set forth herein, Eagle County may exercise that right in the Town's place. In the event of a public trustee's or sheriff's confirmation deed, the County or its assigns shall have until the end of redemption to exercise its option to buy as provided herein. In the event of a deed in lieu of foreclosure, Eagle County shall have twenty (20) days after either the receipt of notice

from the Town that it will not exercise its option to buy as provided herein or the expiration of sixty (60) days after the Town's receipt of notice of the deed in lieu of foreclosure.

(a) In the event of foreclosure and issuance of a public trustee's or sheriff's confirmation deed, Town or Eagle County may exercise its Option to Buy by tendering to the Transferee of such deed or its assigns, in cash or certified funds, the redemption price that would have been required to redeem from such transferee as if the Town or Eagle County were the next redemptioner entitled to redeem under Colorado law, and any additional reasonable costs incurred by said transferee during the option period directly related to the foreclosure.

(b) In the event of a deed in lieu of foreclosure, the Town or Eagle County may exercise its Option to Buy by tendering to the Transferee of the deed in lieu of foreclosure or its assigns, in cash or certified funds, an amount equal to the amount due on the note, secured by the deed of trust or mortgage, and any additional reasonable costs incurred by said transferee during the option period.

3. Title.

Upon receipt of the option price, the Transferee shall deliver to the Town, its assignee, or Eagle County a special warranty deed, conveying the subject RWH to the Town, its assignee or Eagle County. The Transferee shall convey only such title to the subject RWH as the Transferee obtained by way of the foreclosure or by deed in lieu of foreclosure. The Transferee shall not create or participate in the creation of any additional liens or encumbrances against the subject RWH following the Transferee's acquisition of title to the subject RWH. The Transferee shall not be liable for any of the costs of conveyance to the Town, its assignee or Eagle County.

4. Release.

Upon receipt of notice to the Town of a Transferee's acquisition of title to the subject RWH, the Town or its assigns shall have sixty (60) days in which to exercise the option to buy by notifying the Transferee in writing of its intent to exercise the option.

In the event the Town chooses not to exercise the Option to Buy as set forth herein, Eagle County may exercise that right in the Town's place. In the event of a public trustee's or sheriff's confirmation deed, the County or its assigns shall have until the end of redemption to exercise its option to buy as provided herein. In the event of a deed in lieu of foreclosure, Eagle County shall have twenty (20) days after either the receipt of notice from the Town that it will not exercise its option to buy as provided herein or the expiration of sixty (60) days after the Town's receipt of notice of the deed in lieu of foreclosure. In the event that the Town or Eagle County does not notify the Transferee in writing of its intent to exercise the option to buy as set forth herein, the

Town's Option to Buy and the Master Covenant recorded at Reception Number _____ in the records of the Clerk and Recorder of Eagle County, Colorado shall be automatically released only with respect to the RWH which is the subject of said Option to Buy as of the end of the redemption period in the event of a public trustee's or sheriff's confirmation deed or the end of the option period in the event of a deed in lieu of foreclosure.

It is the intent of the Town that the Option to Buy and the referenced Master Covenant be terminated automatically upon the failure of the Town or the County to provide written notice of its intent to exercise its option to buy to the Transferee, whether such failure is intentional or unintentional, and that such termination will be effected without the necessity of any affirmative action on the part of the Transferee and without the necessity of recording a release of such Master Covenant.

It is agreed that this section 4 shall not result in a release of the Master Covenant from the RWH that are not the subject of foreclosure or deed in lieu of foreclosure and nothing contained herein shall require Town to release and waive its ability to enforce the Master Covenant in the event of foreclosure of a lien in second or subsequent position or in the event of a deed in lieu of foreclosure of a lien in second or subsequent position.

5. Perpetuities Savings Clause.

If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations or options created by this Option to Buy shall be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated Gypsum Town Councilmembers, Gypsum, Colorado, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

6. Successors and Assigns.

Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties hereto.

7. Modifications.

The parties hereto agree that any modification to this Option to buy shall be effective only when made by writings signed by all parties and recorded with the Clerk and Recorder of Eagle County, Colorado.

EXHIBIT B
LEGAL DESCRIPTION OF THE RWH

EXHIBIT C
STRATTON FLATS HOUSING PLAN AND
DEVELOPMENT ASSISTANCE AGREEMENT

(see following pages)