

**MASTER COVENANT FOR THE OCCUPANCY AND RESALE
OF EAGLE COUNTY HOUSING**

IN EVENT OF DEFAULT OR INITIATION OF FORECLOSURE, NOTICE MUST BE PROVIDED TO EAGLE COUNTY, COLORADO PURSUANT TO THE TERMS OF THIS COVENANT, THE REFERENCED OPTION TO BUY SET FORTH IN PARAGRAPH 6 HEREOF, AND C.R.S. 38-38-101 ET. SEQ.

THIS MASTER COVENANT FOR OCCUPANCY AND RESALE OF EAGLE COUNTY 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 EAGLE COUNTY, COLORADO, or its designee (the "County") as and to the extent set forth herein.

RECITALS:

This Covenant is made with reference to the following facts:

- A. Declarant owns the real property legally described in "Master Exhibit A" attached hereto and incorporated herein by this reference (the "Unit"). For the purposes of this Covenant, the Unit includes all appurtenances, improvements, and fixtures associated therewith.
- B. The County has promulgated the Guidelines,¹ as amended from time to time, which govern development, eligibility, and transfer of Local-Resident Housing.
- C. Declarant and the County desire to enter into this Covenant, which provides for the designation of the Unit as a WHU.
- D. There is a demonstrated need for affordable housing for residents of the County.
- E. This Covenant restricts the acquisition and transfer of the Unit to Qualified Buyers.
- F. Declarant desires to enter into this Covenant restricting the acquisition or transfer of the Unit to Qualified Buyers as set forth in the Guidelines. In addition, the Declarant intends that this Covenant shall constitute the terms and provisions controlling the resale of the Unit as a WHU. Finally, by this Covenant, Declarant restricts the Unit against use and occupancy inconsistent with this Covenant and in accordance with the terms of the Guidelines.

NOW, THEREFORE, in consideration of the foregoing, Declarant hereby represents, covenants, and agrees as follows:

1. Definitions:

(a) "Agent" means the entity appointed by Eagle County to resell WHUs and to administer restrictions on them.

(b) "Guidelines" means any supplemental rules, restrictions, and guidelines that Eagle County may, from time to time at its discretion, promulgate regarding the WHUs not

¹ Defined terms are capitalized throughout and defined in Section 1.

inconsistent with this Covenant, including but not limited to the *Eagle County Local-Resident Housing Guidelines* and *Administrative Procedures*.

(c) “Owner” is the member(s) of a Qualified Buyer acquiring an ownership interest in a WHU in compliance with the terms and provisions of this Covenant and the Guidelines. Such person, persons, or entity shall be deemed an Owner of a WHU only during the period of such Owner’s ownership interest in the relevant WHU and shall be obligated hereunder for the full and complete performance and observance of all restrictions encumbering such WHU as set forth herein during such period.

(d) “Qualified Buyers” are (i) Qualified Buyers meeting the eligibility requirements as defined in Section V the Guidelines or (ii) local employers or entities purchasing WHUs for purchase or rent by their employees pursuant to the Guidelines.

(e) “WHU” is Affordable For-Sale Housing offered only to Qualified Buyers, the occupancy, sale, assignment, or transfer of which is limited by the terms of this Covenant and the Guidelines.

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

(a) The Unit is hereby designated a WHU. Its use and occupancy shall be limited to housing for Qualified Buyers as set forth in this Covenant and the Guidelines, with the following exceptions:

(i) The County may acquire title to the Unit in the event of foreclosure or as permitted by this Covenant and the Guidelines.

(ii) Certain districts or governmental entities may acquire title to the Unit from time to time, as permitted under a separate intergovernmental agreement with the County.

(b) Re-Sale of Unit: In the event that an Owner desires to sell the Unit, the Owner shall sell only to a Qualified Buyer for a maximum resale price determined by the Agent pursuant to the Guidelines. The Owner shall use the Agent as the sole and exclusive sales broker for the Unit. Any and all sales commission Eagle County or its Agent charges shall be borne by the Owner and not paid by the Qualified Buyer. This maximum resale price shall be based on the wage increases in Eagle County or a similar metric identified in the Guidelines. The Owner shall comply with and follow all of the re-sale procedures as set forth in the Guidelines, including the maximum sales price requirements provided for therein.

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 County and its Board of County Commissioners, and their respective successors and assigns, as applicable.

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

(i) If title to the Unit 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 Unit is sold or conveyed in violation of the Guidelines 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 Unit, 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 County shall follow the procedures set forth below and any additional consistent procedures provided for in the Guidelines:

(i) Upon discovery of a violation, the County shall give written notice to the Owner of the Unit. Not less than 15 days after issuing notice to the Owner of the Unit, the County may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Saturday, upon no less than 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 Unit a minimum of 24 hours in advance of the compliance hearing or inspection.

(ii) Upon completion of the hearing and inspection, the County may issue a written finding that there has been a violation of this Covenant or the Guidelines, and that the Owner of the Unit has breached this Covenant. If the Owner does not cure the breach in 60 days, the County may elect to assess penalties against the Owner. Penalties which the County may assess against the Owner include, but shall not be limited to, requiring sale of a WHU, assessing penalties and seeking remedies set forth in the County of Gypsum Land Use Regulations or the Guidelines then in effect.

(iii) In addition to any of the elective remedies enumerated above, in the event of a violation of this Covenant by an Owner, his or her heirs, successors, or assigns, the Maximum Sales Price of a WHU as defined and set forth in the Guidelines shall, upon the date of such breach as determined by the County cease to increase, and shall remain fixed until the date of cure of said violation.

(d) Remedy: If the Owner fails to cure any violation of this Covenant or the Guidelines, the County may pursue any and all available legal action, including, but not limited to, filing a complaint seeking specific performance of this Covenant or a mandatory injunction requiring the sale of the Unit 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.

4. Seniority of Covenant: Any interest in or lien upon the Unit 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 Unit. The Owner of the Unit must notify the County, 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 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 Unit, the County 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 County is entitled to require the Owner to sell the Unit to avoid the commencement or continuance of any foreclosure proceeding against the Unit. If the County determines that sale of the Unit is necessary to avoid the foreclosure process, the County may require, and the Owner shall immediately execute, a standard listing contract on forms approved by the Colorado Real Estate Commission with the County, providing for a 30-day listing period. At that time, the Owner shall deposit with the County an amount equal to one half percent ($\frac{1}{2}$ %) of the estimated value of the Unit. 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 County'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 County shall promptly advertise the Unit for sale by competitive bid to Qualified Buyers. At the time of closing, the Owner shall pay to the County 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 Unit pursuant to this Paragraph 5.b, the County 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 County as described herein, and to sell the Unit to such qualified bidder. In accordance with the Guidelines and the Guidelines, the County may in its sole discretion elect to purchase the Unit under this Paragraph 5.b for rental or for sale to a Qualified Buyer.

Upon default of Owner, as provided in Paragraphs 5.a and 5.b, the County 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 County for past due payments made by the County 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 County incurred in curing the default. The Owner shall be required by the County to execute a promissory note on commercially reasonable terms acceptable to County and secured by deed of trust encumbering the Unit in favor of the County for the amounts expended by the County as specified herein, including future advances made for such purposes. The County 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 County under this subparagraph at any time prior to execution of a contract for sale, upon such reasonable terms as specified by the County. Otherwise, Owner's indebtedness to the County shall be satisfied from the Owner's proceeds at closing.

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

(a) In the event that a holder of a first deed of trust or mortgage on the Unit becomes the record owner of the Unit by way of a deed in lieu of foreclosure, a public trustee's confirmation deed, or a sheriff's confirmation deed, the County has an Option to Buy the Unit from such record owner. Upon becoming the record owner of the Unit, such person or entity shall provide written notice thereof sent by certified mail, return receipt requested to the County as provided herein. Upon receipt of such notice, the County has the right to exercise its Option to Buy as provided in this Paragraph 6.

(b) The County or its assigns shall have (sixty) 60 days after receipt of notice by the County, as provided for in paragraph (a) 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.

- i. In the event of foreclosure and issuance of a public trustee's or sheriff's confirmation deed, the 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 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.
- ii. In the event of a deed in lieu of foreclosure, the 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. Upon receipt of the option price, the transferee shall deliver to the County or its assignee a special warranty deed, conveying the Unit to the County or its assignee. The transferee shall convey only such title to the subject Unit 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 Unit following the transferee's acquisition of title to the Unit. The transferee shall not be liable for any of the costs of conveyance to the County or its assignee. Upon notice to the County of a transferee's acquisition of title to the Unit, the County 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 to Buy.

(c) In the event that the County does not notify the transferee in writing of its intent to exercise the Option to Buy as set forth herein, the County's Option to Buy and this Covenant shall be automatically released only with respect to the Unit as of the sixty-first day after notice to the County as provided for above.

(d) In the event that the County does not notify the transferee in writing of its intent to exercise the Option to Buy as set forth herein, the County's Option to Buy and this Covenant shall be automatically released only with respect to the Unit as of the sixty-first day after notice to the County of Gypsum, as provided for above.

(e) It is the intent of the County that this Option to Buy terminate automatically upon the failure of 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 this Covenant.

(f) It is agreed that this subparagraph (d) shall not result in a release of this Covenant from the Unit that are not the subject of foreclosure or deed in lieu of foreclosure and nothing contained herein shall require County to release and waive its ability to enforce this 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.

(g) The County 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 foreclosure of the Unit, if and only (i) said holder (including assigns of the holder) of a first deed of trust or mortgage becomes the record owner of the Unit by way of deed in lieu of foreclosure, public trustee's confirmation deed or sheriff's confirmation deed; and (ii) the County fails to exercise its Option to Buy the WHU as set forth in this Paragraph 6. At the time a Qualified Buyer acquires the Unit, the County agrees to execute and record a subordination agreement with the holder of a first deed of trust or mortgage, subordinating the County's rights under this Master Covenant, including but not limited to the deed restrictions applicable to the Unit, to said first deed of trust or mortgage.

(h) If the County or its assigns exercises the Option to Buy and acquires title to the Unit, the County or its assigns may thereafter sell the Unit to a Qualified Buyer or rent the Unit in accordance with the terms of the Guidelines or Guidelines.

7. Covenant Runs with the Land. Declarant and all subsequent Owners of the Unit, and all other parties with an interest in title to the Unit hereby acknowledge or are deemed to acknowledge by virtue of recordation of the deed by which such Owner takes title to the Unit that this Covenant shall constitute a covenant running with the WHU, as a burden thereon, and shall be specifically enforceable by the County and its Board of County Commissioners, and their respective successors and assigns, as applicable, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction.

8. 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 Eagle County: Eagle County Housing Department
Post Office Box 179
Eagle, CO 81631-0179

With copy to:

Eagle County Attorney
Post Office Box 850
Eagle, CO 81631

To Owner: To the address set forth in the records of the Eagle County Tax Assessor for purposes of mailing tax bills.

9. Dispute Resolution. There is hereby reserved to the County any and all remedies provided by law 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 arising from or relating to the Covenant shall be the Eagle County District Court.

10. 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.

11. 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.

12. 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 Unit, and the County.

13. 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.

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

15. 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.

Witness my hand and official seal.

My commission expires: _____

Notary Public

ACCEPTANCE BY COUNTY OF GYPSUM

The Foregoing Deed Restriction Covenant for the Occupancy and Resale of Eagle County Housing and its terms are hereby adopted and declared by Eagle County.

EAGLE COUNTY, COLORADO
A body corporate and politic by and through its
Board of County Commissioners

By: _____
*, Chairman

STATE OF COLORADO)
) ss:
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by *, Chairman Eagle County Board of County Commissioners.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Master Exhibit A:
Legal Description of the Unit

Insert Legal Description of Unit

Master Exhibit B:
Stratton Flats Guidelines
(see following pages)